

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

PRE HOLDING, INC., <i>et al.</i> ,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 3:09cv458 - HEH
)	
MONAGHAN MEDICAL CORPORATION,)	
<i>et al.</i> ,)	
)	
Defendants.)	

STIPULATED ORDER OF DISMISSAL WITHOUT PREJUDICE
(Final Order)

On January 20, 2010, the United States Patent & Trademark Office (“PTO”) granted Defendant Monaghan Medical Corporation’s (“Monaghan’s”) Request for an *Inter Partes* Reexamination of the Patent-in-Suit and entered a First Office Action rejecting all of the asserted claims as unpatentable. Defendant Trudell Medical International (“TMI”) has agreed to be bound by the PTO’s disposition of this Reexamination Proceeding to the same extent that Monaghan is bound by this proceeding.

Defendants have informed Plaintiffs that the Defendants will discontinue selling the accused AeroChamber MAX® with mouthpiece and the accused AeroPEP Plus® products in the United States before the presently scheduled July 12, 2010 trial date.

In view of the foregoing, and pursuant to Federal Rule of Civil Procedure 41(a)(2) & (c), the Parties hereby stipulate to, and respectfully request the entry of, the Order of Dismissal set forth herein below.

ORDER OF DISMISSAL


1) At the request of the parties and pursuant to Fed. R. Civ. P. 41(a)(2) & (c), IT IS ORDERED that all claims and counterclaims asserted by all parties to this action are HEREBY DISMISSED WITHOUT PREJUDICE, with each side to bear its own costs and fees incurred herein.

2) IT IS FURTHER ORDERED that the time limitations for obtaining damages provided in 35 U.S.C. §154(d)(3) and § 286 are tolled from the date on which this suit was filed, July 21, 2009, through the date on which a final, non-appealable ruling is entered in the Reexamination Proceeding, Control Number: 95/001,216 ("the Tolling Period"). The Tolling Period shall not be used as, or provide a basis for, limiting damages.

3) IT IS FURTHER ORDERED that the provisions of Fed. R. Civ. P. 41 (d) shall not apply to this dismissal.

It is SO ORDERED.

Entered: Jan 27, 2010
Richmond, Virginia


_____/s/
United States District Judge Henry E. Hudson

WE ASK FOR THIS:



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