

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE

ARTHROCARE CORPORATION,            )  
  )  
          Plaintiff,                    )  
  )  
          v.                            )     Civil Action No. 01-504-SLR  
  )  
SMITH & NEPHEW, INC.,            )  
  )  
          Defendant.                 )

**MEMORANDUM ORDER**

At Wilmington this 14th day of April, 2003, having reviewed the parties' motions in limine;

IT IS ORDERED that:

1) Arthrocare's motion in limine to try inequitable conduct to the court and to preclude Smith & Nephew from raising issues of inequitable conduct before the jury (D.I. 322) is granted. The parties shall reserve part of their allocated time to try the inequitable conduct defense to the court, either at the end of each trial day or at the end of the jury trial.

2) Arthrocare's motion in limine to exclude the testimony of Smith & Nephew's patent law expert Ronald L. Panitch (D.I. 316) is granted.

3) Arthrocare's motion in limine to preclude Smith & Nephew from referring to Arthrocare's withdrawal of certain claims (D.I. 320) is granted.

4) Arthrocare's motion in limine to preclude Smith & Nephew from relying on any undisclosed facts or defenses (D.I. 317) is granted. To be tried, issues must have been adequately identified in a pleading or in motion papers.

5) Arthrocare's motion in limine to preclude Smith & Nephew from referring to Judge Orrick's December 1, 1998 interlocutory decision in the Ethicon case (D.I. 321) is granted.

6) Arthrocare's motion in limine that Smith & Nephew's indefiniteness defenses not be presented to the jury (D.I. 323) is denied.

7) Arthrocare's motion in limine to preclude Smith & Nephew from referring to its antitrust counterclaim or allegedly harmful effects of Arthrocare's RF devices (D.I. 324) is conditionally granted, so long as Arthrocare does not introduce evidence regarding the Ethicon license and industry acclaim for its RF devices.

8) Arthrocare's motion in limine to preclude Smith & Nephew from referring to a purported control RF settlement agreement (D.I. 319) is granted as unopposed.

9) Arthrocare's motion to strike the Roos declaration (D.I. 274) is granted.

10) Arthrocare's unopposed motion in limine to preclude Smith & Nephew from referring to injunctive relief that may be

sought as a result of a finding of infringement (D.I. 318) is granted as unopposed.

11) Smith & Nephew's motion in limine 1 of 6 to exclude certain Arthrocare expert testimony (D.I. 325) is granted to the extent it relates to claim construction and the fact that experts are limited by their reports.

12) Smith & Nephew's motion in limine 2 of 6 to exclude certain evidence related to Arthrocare's products (D.I. 326) is denied as evidence of copying and of commercial success is relevant to obviousness.

13) Smith & Nephew's motion in limine 3 of 6 to exclude evidence of the reexamination of the '536 patent (D.I. 327) is denied.

14) Smith & Nephew's motion in limine 4 of 6 to exclude certain evidence related to licensing (D.I. 328) is granted.<sup>1</sup>

15) Smith & Nephew's motion in limine 5 of 6 to exclude certain Smith & Nephew documents (D.I. 329) is granted to the extent it relates to the parties' 510(k) FDA filings and inadvertently produced privileged documents. The motion is denied as it relates to Smith & Nephew's marketing documents.

16) Smith & Nephew's motion in limine 6 of 6 to exclude evidence related to the control RF product (D.I. 330) is denied.

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<sup>1</sup>Smith & Nephew's motion to compel in this regard (D.I. 198) is denied.

17) Smith & Nephew's motion to strike the expert reports of Creighton G. Hoffman and Elliott H. Leitman (D.I. 272) is denied.

Sue L. Robinson  
United States District Judge