

**UNITED STATES DISTRICT COURT
DISTRICT OF DELAWARE**

LEONARD P. STARK
UNITED STATES DISTRICT JUDGE

U.S. COURTHOUSE
844 KING STREET
UNIT 26
WILMINGTON, DE 19801-3556

June 20, 2018

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**RE: Integra LifeSciences Corp., et. al v. HyperBranch Medical Tech., Inc.,
C.A. No. 15-819-LPS**

Dear Counsel:

I have completed my review of the parties' identification of issues on which each currently intends to seek post-trial relief. (D.I. 758) As a result, I have formed tentative views as to how any motions, including those challenging the jury verdict, are likely to come out. Those inclinations have informed my decision as to how this matter will proceed. I thought it would be beneficial for you to know my tentative views of the proposed motions, in the hope that this will make briefing and resolution of those motions more efficient for you and for me.

As to Integra's proposed motions for judgment as a matter of law and/or new trial, I am likely to deny these motions on all grounds. It seems to me at present that there was an adequate evidentiary record to support each of the jury's findings, including non-infringement and invalidity of each of the asserted claims.

Particularly given my inclination to deny all of Integra's requested relief, I believe it is most appropriate for briefing on the issues of equitable estoppel and whether this is an "exceptional" case

within the meaning of 35 U.S.C. § 285 to proceed in parallel with briefing on Integra's motions (should HyperBranch wish to seek relief with respect to either of these issues).

I agree with the parties' joint position that the evidence presented at trial is sufficient for the Court (after briefing, and potentially oral argument) to decide the issue of equitable estoppel, without the need of an additional evidentiary proceeding. My present inclination is to find that Integra is not equitably estopped.

My present inclination is also to find that this case is not "exceptional" within the meaning of § 285, for reasons including that *both sides* have been extraordinarily litigious in this case,¹ Integra prevailed on a substantial portion of the numerous pretrial disputes,² and Integra appears to have adduced sufficient evidence on which it could have prevailed on each contested issue at trial. The facts that HyperBranch defeated a preliminary injunction motion, prevailed on all issues at trial, and has evidently had to endure the "cloud" of litigation over it for years are not (in the totality of circumstances presented here) sufficient to persuade me that Integra should pay HyperBranch for having lost this case. The Court is presently inclined to agree with Integra that "[a]lthough this patent case was hotly contested with a number of disputes between the parties, there is no evidence Plaintiffs adopted unreasonable or frivolous litigation positions, litigated in an unreasonable manner, or acted in bad faith." (D.I. 758 at 2)

Briefing on (i) Integra's motions under Rule 50 and/or 59, and (ii) HyperBranch's motions on

¹The parties filed a combined 21 substantive motions, supported by 906 pages of briefing. The parties' disputes resulted in 20 Reports and Recommendations and Memorandum Orders from Judge Burke, 16 of which were objected to, leading to 10 opinions or memorandum orders from the undersigned Judge. Together, Judges Stark and Burke wrote 503 pages addressing the parties' motions.

²The Court found in favor of Integra on multiple motions and many claim construction disputes. (*See, e.g.*, D.I. 307, 316, 321, 379, 384, 512, 554, 555, 586, 658, 672, 680, 691, 704, 714, 735, 736)

equitable estoppel and/or exceptional case, shall be limited to 20 pages, 20 pages, and 10 pages, and filed according to the following schedule: (a) motions and opening briefs due July 6; (b) answering briefs due July 27; and (c) reply briefs due August 3. These page limits apply as a total no matter how many motions either party files. Accordingly, the Court will not receive more than 100 pages briefing in total (i.e., up to 50 pages on Integra's motion(s) and up to 50 pages on HyperBranch's motion(s)).

I conclude by emphasizing that the views expressed in this letter do not constitute an order or findings of fact but are merely my present inclinations, based principally on my recollection of the trial and the parties' limited post-trial submissions. I will only be able to make final decisions after receiving the forthcoming briefing and, if necessary, conducting oral argument.

Sincerely,

A handwritten signature in black ink, appearing to read "L. Stark", with a long horizontal flourish extending to the right.

Honorable Leonard P. Stark
United States District Judge
District of Delaware