

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

Abiomed, Inc., Abiomed R&D, Inc., and Abiomed Europe GmbH
Petitioners

v.

Maquet Cardiovascular, LLC
Patent Owner

Case IPR2017-02151
U.S. Patent No. 9,327,068

PATENT OWNER'S EXHIBIT 2012

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ABIOMED, INC.,
Plaintiff and
Counter-Defendant
vs.
MAQUET CARDIOVASCULAR LLC,
Defendant and
Counter-Claimant

)
)
) Civil Action
)
) No. 16-10914-FDS
)
)
)

vs.

ABIOMED R&D, INC. and ABIOMED
EUROPE GMBH,
Third-Party Defendants

BEFORE: THE HONORABLE F. DENNIS SAYLOR, IV

MOTION HEARING

John Joseph Moakley United States Courthouse
Courtroom No. 2
1 Courthouse Way
Boston, MA 02210

OCTOBER 10, 2017
2:00 p.m.

Valerie A. O'Hara, FCRR, RPR
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14 100 Summer Street, Boston, Massachusetts 02110.

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PROCEEDINGS

THE CLERK: All rise. Thank you. Please be seated. Court is now in session in the matter of Abiomed vs. Maquet Cardiovascular, Civil Action Number 16-10914.

Would counsel please identify themselves for the record.

MR. WEINGAERTNER: Good afternoon, your Honor, Scott Weingaertner of White & Case for plaintiff Abiomed, Inc.

THE COURT: Good afternoon.

MR. MENTZER: Stefan Mentzer from White & Case for Abiomed.

THE COURT: Good afternoon.

MR. COUNIHAN: Robert Counihan from White & Case for Abiomed.

THE COURT: Good afternoon.

MR. CONNOR: Good afternoon, your Honor, Mike Connor from Alston & Bird for the defendant Maquet Cardiovascular.

THE COURT: Good afternoon.

MR. PERRIN: Your Honor, Wade Perrin of Alston & Bird for Maquet Cardiovascular.

MR. DERDERIAN: And Michael Derderian for Maquet.

1 THE COURT: All right. Good afternoon, all.
2 All right. This is a motion hearing/conference in this
3 case. I have pending plaintiff's motion for leave to
4 amend the pleadings.

5 Mr. Weingaertner, do you want to be heard on
6 that? I have read the pleadings.

7 MR. WEINGAERTNER: Thank you, your Honor.
8 I'll begin, your Honor, with the portion about the
9 motion to amend Getinge and save the issue about the
10 declaratory judgment claims for later.

02:04PM

11 THE COURT: All right.

12 MR. WEINGAERTNER: Your Honor, this case is
13 about patents that were required by an entity called
14 Getinge, an entity which continues to play a role.

15 THE COURT: Can I deny the motion just
16 because it's hard to pronounce?

17 MR. WEINGAERTNER: We struggle with it, your
18 Honor, too. I think I've got it right, but please
19 correct me, counsel, if I'm wrong.

02:04PM

20 MR. CONNOR: I think Getinge, yes, your
21 Honor.

22 MR. WEINGAERTNER: All right. Thank you.
23 As if Abiomed wasn't hard enough, your Honor.

24 THE COURT: I'm not a fan of that either,
25 but go on. Or how do you pronounce your client's name,

1 while we're on the topic?

2 MR. CONNOR: Getinge. My client is Maquet.

3 THE COURT: Maquet?

4 MR. CONNOR: Yes.

5 THE COURT: Okay, go on.

6 MR. WEINGAERTNER: We struggle with that,
7 too. So, your Honor, Getinge was really involved in
8 this case, before the case began, it acquired the
9 patents originally, did assign them, which is an issue
02:05PM 10 here that Maquet has raised, but it's maintained an
11 active role.

12 Abiomed timely moved. We raised this issue
13 with your Honor and prior to that with opposing counsel
14 in January and sought to find a way to get more
15 discovery so we could flesh out or believe that Getinge
16 was exercising substantial rights and otherwise just
17 involved in the case. Amending to add Getinge will not
18 change the scope of this case.

19 There's really the same series of
02:05PM 20 transactions and occurrences that are involved. They
21 seem to be coordinating closely in our view with Maquet,
22 so there is no risk of affect on timing, no real risk on
23 anything.

24 There has been some discovery. We don't
25 know to the extent to which Getinge has provided

1 discovery, it's really an open issue, and we believe
2 that because Getinge is playing an active role and is
3 likely to have important documents through its
4 acquisition, documents regarding valuation, documents
5 regarding the case, regarding the business issues,
6 damages surrounding that and so forth, we believe it's
7 important and fair for them to be in the case as a
8 party.

02:06PM 9 We also raised the issue of standing. It
10 seems to us that there's an exercise of substantial
11 patent rights that would affect standing, but our motion
12 doesn't turn on that, our view rather is that if Getinge
13 is not made a party but turns out to be exercising
14 substantial rights, then we believe the case at some
15 point might be ripe for dismissal under Rule 19, as has
16 happened rarely but has happened from time to time in
17 certain cases, so we simply wanted to note that for the
18 Court.

02:06PM 19 During the course of the case, some of the
20 examples of Getinge's involvement include the role of an
21 individual who we have learned recently has become the
22 general counsel of Getinge, who seems to be the tip of
23 the spear in terms of the assertion of the patents, was
24 involved with reaching out to our client before this
25 lawsuit began, was involved with another party, and I'll

1 hesitate to mention it because we've sealed that portion
2 of the pleadings, your Honor, and I could raise it if
3 your Honor has any questions about it, but there was
4 another effort in which this same individual who
5 participated who appears to be with Getinge, so they
6 appear to be closely intertwined.

7 I believe Maquet's position is that, well,
8 they really focused on the standing issue, and they say
9 that we can't point to a writing that shows any kind of
02:07PM 10 conveyance of rights back up to Getinge, but we think
11 that's, at a minimum, an open issue. We believe the
12 fact that Getinge is exercising its rights is clearly
13 doing so with the assent and approval of Maquet, whether
14 or not and the extent to which their papers are
15 evidencing that, we still have to find out.

16 There has been no submission of fact by any
17 declarant attesting to anything in Maquet's papers, and
18 so we believe that's an open issue, and we believe if
19 given full discovery, or at least a certain amount of
02:08PM 20 discovery, more than we've gotten because Getinge is
21 sort of inaccessible to us, that we'd be able to prove
22 that up.

23 So, in a nutshell, your Honor, that's where
24 we are with respect to Getinge. On the other point --

25 THE COURT: Why don't we stop there and

1 let's deal with this one first.

2 MR. CONNOR: Yes, your Honor.

3 THE COURT: Mr. Connor.

4 MR. CONNOR: So as Mr. Weingaertner --

5 THE COURT: Before we -- I think you all can
6 see that there's no exclusive licensee here, that
7 whatever the law is for exclusive licensees, we're not
8 talking about that, is that agreed?

9 MR. WEINGAERTNER: Your Honor, I think
02:08PM 10 that's correct.

11 THE COURT: Okay. Go ahead.

12 MR. CONNOR: Yes, your Honor. The only
13 writings, all of the evidence adduced today, your Honor,
14 indicates that all title, full title, is held in these
15 patents by Maquet Cardiovascular, your Honor, there's no
16 evidence to the contrary. There's no contract
17 indicating that Getinge has any rights in these patents.

18 It is true that Getinge at one time held
19 rights, and it is true that those rights were conveyed
02:09PM 20 to Maquet prior to the institution of this suit, but the
21 key point is that Mr. Weingaertner's argument that
22 Getinge is somehow involved in the matters here is
23 insufficient as a matter of law, your Honor, to add
24 Getinge as a party to a patent infringement lawsuit
25 under a claim for declaratory judgment.

1 There has been no action by Getinge that
2 would be sufficient to create a reasonable apprehension
3 of suit at Abiomed, no reasonable apprehension of suit
4 by Getinge. Getinge has done nothing to do that, and if
5 you look at the examples that Mr. Weingaertner alluded
6 to, as mentioned in Abiomed's brief, none of those
7 relate to an assertion of the patent by Getinge.

8 We have cited cases, your Honor, that
9 indicate that a parent is well within its rights, a
02:10PM 10 parent corporation is well within its rights to oversee
11 the activities of its subsidiary. That's exactly what's
12 going on here, your Honor, with Getinge's relationship
13 with its wholly-owned subsidiary, Maquet, the owner of
14 the patents.

15 We have cited authorities in the briefing,
16 your Honor, to which no response has been made, in
17 particular, the *Mobile Media* case and the *Google* case
18 that we cited that indicate that the parent has the
19 right to oversee the activities of its subsidiary.

02:10PM 20 Mr. Weingaertner mentions a desire for
21 discovery, and I would note that they have pursued no
22 discovery through Hague or any other means, your Honor,
23 and that has been discussed at various prior appearances
24 before your Honor, including the status conference back
25 in June.

1 THE COURT: Is Getinge, a Swedish company,
2 not subject to discovery in this jurisdiction in any way
3 other than through the Hague Convention?

4 MR. CONNOR: I'm not -- are you asking
5 whether they're subject to subpoena or --

6 THE COURT: Yes. In other words, I
7 obviously don't know what the company does, you know,
8 for all I know, they have a huge building out on
9 Route 128.

02:11PM

10 MR. CONNOR: I don't know any facility in
11 the District of Massachusetts, your Honor. They
12 certainly -- there are Getinge facilities in the
13 United States. There are various Getinge entities, but
14 the Getinge headquarters are in Sweden, Getinge AB, that
15 is, which I believe is the ultimate parent company.

16 But, in any event, if you look at the
17 authorities that plaintiff has cited, they have cited no
18 authority, your Honor, that indicates that a party may
19 assert a declaratory judgment claim against a parent
20 entity based on the assertions of a patent by its
21 subsidiary, there's just no authority to substantiate
22 that.

02:12PM

23 I have nothing else at this time, your
24 Honor.

25 THE COURT: Okay. Do you want to respond?

1 MR. WEINGAERTNER: Yes, your Honor,
2 thank you. A couple of points. The issue of title
3 really has more to do with the issue of standing, which
4 we believe is one of the bases for which this Court
5 should assert jurisdiction, but we don't think it's the
6 only one, and on page 11 of Maquet's brief, there's an
7 admission that Getinge has been involved in the bringing
8 of this action.

9 I also want to make a point about the case
02:12PM 10 law that Mr. Connor mentioned regarding, for example,
11 *In Re: Google*. I was actually lead counsel in that
12 case, so I know a little bit about it, and that's -- I
13 think it's a distinguished fact pattern. That
14 actually -- there was an actual writing.

15 The Court interpreted it in a way that
16 wasn't in accordance with the way we had, but that's the
17 way it worked out, and the Court said that the actions
18 of the parties didn't override the way the Court had
19 interpreted the agreement. It was Judge White in
02:13PM 20 Northern California on that, your Honor, and you'll see
21 there's been a certain amount of discovery.

22 We have not had a chance -- we actually
23 issued a 30(b)(6) notice on this at the beginning of
24 September. We were told we couldn't get the witness
25 until the end of October, so we're kind of stuck short

1 there. Regarding the Hague, I also have one note about
2 that. We have an office in Sweden, and we have
3 litigators there who advised me that in order -- it's
4 very difficult to get documents.

5 You have to know exactly what you're asking
6 for in advance, which is a kind of a no end situation
7 for us because we don't know what to ask for, and we
8 were very hesitant to go down that path only to find
9 ourselves caught short because of the lack of
02:13PM 10 specificity that we were hoping to get in advance
11 through 30(b)(6) and through the examination of
12 Mr. Ronai, who we noticed back in May, who we think is a
13 central figure who would know this, and Maquet initially
14 gave us some dates and then changed their mind, and we
15 moved to compel, and Judge Boal has said that she has
16 denied without prejudice to pursue it, our deposition of
17 him, so we've tried a number of ways.

18 We have some interrogatories that are out
19 there that we don't think we have adequate responses to,
02:14PM 20 so there's open fact questions, and just one last point
21 is we believe that the standard for this is really that
22 it should be liberally granted and that Maquet's
23 position seems to be we need to prove our case before we
24 are allowed to bring it.

25 They will have ample opportunity if it turns

1 out that we are wrong, which we don't think we are, to
2 move to dismiss. We think we'll survive that, but we
3 think it would be wrong to preclude us even from going
4 down that path at this stage, your Honor.

5 THE COURT: What is your response to the
6 argument that there has to be an instrument in writing
7 under Section 261? In other words, it seems to me that
8 if there is an instrument in writing and it grants, you
9 know, the rights to Maquet, isn't that the end of the
02:15PM 10 story, you know, assuming that no one is perpetrating a
11 fraud on the Court, I mean, that it's a legitimate
12 document, you know, that's what the statute says?

13 MR. WEINGAERTNER: Your Honor, I don't think
14 that that actually is the end of the story. If it turns
15 out that after discovery and there was -- well, right as
16 we stand here right now, there really is no explanation
17 for under what framework Getinge is actually
18 participating in this case. We haven't seen anything.

19 There's been no explanation proffered for
02:15PM 20 it, and I would disagree with Mr. Connor's
21 characterization. The supervision of a company, of a
22 subsidiary is one thing, but to specifically take direct
23 action in that case, to appear to be on phone calls
24 asserting rights to be presented to other parties, it
25 seems to us to be a different species of act, which is a

1 sort of Rule 20 involvement, you know, they are involved
2 in the case separate and apart from standing.

3 I think standing is an issue if it turns out
4 they are not joined and needed to be, then there's a
5 real problem with their case, but I don't think standing
6 is necessary for Getinge to be a party. I think they're
7 jointly involved from what we can tell, and I don't
8 think there's been a real denial of Getinge's
9 involvement.

02:16PM 10 There was a characterization, well, that's
11 just what parent companies do, but it seems to us, if
12 that's the argument, then the corporate form is sort of
13 being ignored to bring this case but is being strictly
14 enforced to deny us discovery, and we don't think that's
15 fair, your Honor.

16 MR. CONNOR: Your Honor, if I might address
17 that quickly.

18 THE COURT: Yes.

19 MR. CONNOR: The *Google* case that
02:16PM 20 Mr. Weingaertner mentioned and apparently was involved
21 in, that is not analogous, your Honor, that's an order
22 concerning a motion to dismiss. It's not a motion to
23 bring or motion to amend to bring a declaratory judgment
24 counterclaim where a party had not taken any affirmative
25 action to enforce the patents in its own name, your

1 Honor. There's no, as I mentioned, no affirmative act
2 by Getinge to assert the patent in the name of Getinge.

3 Mr. Ronai does perform services for the
4 subsidiary Maquet, but there's no indication that Maquet
5 does not control what happens in this case. Merely that
6 he's involved is not sufficient to include Getinge as a
7 party in a declaratory judgment claim, and I think your
8 Honor is correct that, you know, the writing answers the
9 question, your Honor, as to who has standing to sue for
02:17PM 10 purposes of this case.

11 THE COURT: All right. Let's talk about the
12 second piece of this now, which I'm struggling to
13 understand what difference it makes, frankly, whether,
14 you know, how this claim is framed, but let me hear from
15 you, Mr. Weingaertner.

16 MR. WEINGAERTNER: Thank you, your Honor,
17 and I recall your Honor raised this precise issue the
18 last time we met, and we didn't disagree. We think it
19 may be a form over substance issue. It's sort of the
02:18PM 20 way things unfolded.

21 Maquet sought earlier for leave to amend to
22 add some false advertising claims and then said they
23 want to add the additional patents, and then we said we
24 won't oppose the motion for leave to amend on that,
25 please go ahead and do it.

1 Then we answered, but we knew we were going
2 to be moving basically to add our DJ claims to make them
3 symmetrical to the ones that are already pending in the
4 case, and we thought it should be pro forma, it
5 shouldn't really be a big deal and it just would be
6 sorted out, but we thought it might be less confusing
7 for all of the claims to be aligned among all six
8 patents, and Maquet, for reasons I didn't quite
9 understand, but I assume they were for good reasons,
02:18PM 10 said that they wouldn't oppose our motion to amend, and
11 we assumed that by doing that, they would simply be in
12 the case.

13 There seemed to be no controversy about
14 that, and then if need be, the defenses we had to raise
15 as counterclaims would simply be joined in because
16 they're really the same thing, they're just declaratory
17 judgment claims. So we think it's a real form over
18 substance issue, your Honor, as best we can figure.

19 THE COURT: Okay.

02:19PM 20 MR. CONNOR: Your Honor, so I think the
21 situation is that we've already pled, right, our
22 pleading has already been filed some time ago. Of
23 course, we think that the declaratory judgment claim
24 shouldn't be allowed, but if they are allowed, we would
25 have no problem to Abiomed asserting them or pleading

1 them in response to our already pled counterclaims, and
2 if we need to file a pleading denying or otherwise
3 responding to the declaratory judgment claims, we would
4 do so, but I think that reflects accurately what has
5 happened here, your Honor, is that we had the patents
6 that were issued, we asked your Honor for leave, your
7 Honor granted leave, and we pled, and if a declaratory
8 judgment claim is to be brought, it should be in
9 response, which is properly what it is.

02:19PM

10 THE COURT: All right. On the second part,
11 here's what I'm going to do. I can't figure out,
12 frankly, what difference it makes, so I'm going to allow
13 that amendment to that extent because, you know, on the
14 theory that sometimes we have alternative forms of the
15 pleading in the sense, you know, they're inconsistent.

16 At the end of the day, if this claim somehow
17 winds up being litigated, if it affects the burden of
18 proof, if it affects how it's presented to a jury or
19 something, I may revisit them, I may realign it.

02:20PM

20 I'm just struggling to understand what
21 difference it makes, so I'm just simply going to allow
22 it because I don't see, at least as I sit here, that it
23 prejudices either side or it helps either side. We're
24 going to litigate this one way or the other, so to that
25 extent, I'm going to allow it.

1 On the motion, the more substantive piece of
2 it, to permit the amendment to add Getinge, the Swedish
3 corporate parent, I'm going to deny that motion without
4 prejudice. As I understand it, the question is whether
5 the parent has substantial rights to the patents.

6 The statute does provide that any transfer
7 has to be by instrument in writing. It appears, and it
8 has been represented, and I'm expressly relying on the
9 representation that all the rights have been conveyed to
02:21PM 10 Maquet. It appears from the record that this appears to
11 be a relatively commonplace exercise of control by a
12 corporation over its subsidiary, not an assertion of
13 actual patent rights.

14 In the corporate world, people wear multiple
15 hats all the time, and that's particularly true for
16 things like a general counsel's office, where it's quite
17 difficult for there to be a substantial overlap of the
18 role of general counsel of a parent with the affairs of
19 its subsidiary, and I'd be concerned that if substantial
02:22PM 20 parental involvement in the sub's affairs, such as
21 helping direct negotiations and discuss settlements and
22 so forth, if that were enough to trigger a transfer of
23 substantial rights, it could be a considerable impact in
24 the way corporations handle their affairs, that people
25 would be afraid of crossing the line or getting involved

1 for fear of creating this transfer of rights
2 inadvertently.

3 It doesn't seem to be what the statute
4 requires. I don't see any practical reason for having
5 such a rule. Again, there has to be standing, the
6 proper entity has to own the patents and assert the
7 patents, that has to be in writing, and at least as I
8 see it on the record here before me, it all looks fairly
9 commonplace to me.

02:23PM 10 I'm not going to permit an amendment to the
11 complaint in order to permit fishing around to see if
12 there's something more going on. Normally to get a
13 license to go fishing, you need a little bit more than
14 that, and I don't see it here.

15 Now, the denial will be without prejudice.
16 It's possible the evidence will develop differently over
17 time, and, of course, we can revisit it, and, again, I'm
18 expressly relying on representations made by Maquet as
19 to ownership of the patents, and if it turns out that
02:23PM 20 those are not accurate in any way, we'll revisit that in
21 any variety of ways, but in the short term, anyway, the
22 motion to amend to the extent it seeks to add a new
23 defendant of Getinge is denied, it's granted otherwise
24 to permit the declaratory judgment claim, which is
25 almost certainly redundant, but we'll sort out all of

1 that later on as may be required.

2 All right. With that, let me turn to, and I
3 appreciate the letter that the parties sent, which was
4 quite helpful talking about claim construction and kind
5 of where we are from here.

6 In terms of my preferences on the technology
7 tutorial, I don't really care. These things are
8 expensive. I'll let you present this any way you want
9 to present it. If you think it's better to have some
02:25PM 10 expert show up on autopilot, that's fine, if you think
11 you're a better presenter than your expert because
12 they're too technical, you can have a lawyer do it. It
13 really doesn't matter, whatever you think is the best
14 and most cost-effective way to get this across.

15 I hope you aren't going to spend an enormous
16 amount of money attempting to get me to understand
17 something, but, again, that's your choice. I don't
18 consider myself unintelligent. On the other hand,
19 sometimes it helps to have things laid out basically,
02:25PM 20 and it's really up to you.

21 I do tend to like charts, graphs, pictures,
22 visual presentations and so forth, but don't create
23 something to, you know, just because it can convey
24 visually what is not really that difficult to
25 understand, but you asked for my preferences, those are

1 my preferences.

2 Anything else on the tutorial? I will leave
3 it up to you. I guess I will want to know how much
4 time, if it's going to be more than let's say an hour or
5 so per side, we're going to need to know that so we can
6 set aside enough time. I don't know how complex it is,
7 so it's up to you.

8 In terms of the indefinite issues, it's not
9 at all clear to me what the right way to approach this
02:26PM 10 is, whether it's intertwined with claim construction or
11 not, I'm just not deep enough into the case. I'm not
12 going to constrain you. I guess I'll let you frame the
13 issues how you think they are best framed taking into
14 account efficiency and all of that.

15 I guess I'll ask only that you have sympathy
16 on the Judge and his law clerks. Don't overburden us
17 necessarily or, you know, try to get two bites at the
18 apple if really only one is called for, but I can't
19 answer the question which is the best way to frame this,
02:27PM 20 I just don't have enough information.

21 You know, it's, in my experience, often so
22 intertwined with claim construction, it is dealt with at
23 the same time, but this may be different, or it may be
24 different in part.

25 In terms of narrowing the number of asserted

1 claims, I think that is a highly useful exercise. What
2 I'm going to do is to -- you've got a meet and confer
3 coming up, right, is it scheduled in November; is that
4 right?

5 MR. CONNOR: November 1, your Honor.

6 THE COURT: November 1. If I get involved
7 in this, it's going to be ham-handed and arbitrary. I
8 can't say what is the right number. I mean, you know, I
9 see the figure that I have to interpret 7,926 words, and
02:28PM 10 it gives me some pause, but I'm sure there's a whole lot
11 of duplication in that. I will leave it up to you to
12 see if you can meet and confer and either agree or
13 narrow this as much as possible.

14 I ask that you be practical. I know a lot
15 of courts will say, you know, pick the five you really
16 care about or pick the ten or two or six or whatever the
17 number is. Again, I don't know enough about this case
18 to know whether or not that makes sense, all right, so
19 pick the ones you care most about, focus on those, make
02:29PM 20 sure that they're on the list.

21 Maybe we need -- maybe we can narrow this
22 down, maybe I need to decide, I don't know, but
23 let's -- I would like you to meet and confer, and I'd
24 like to have a clear position, and why don't I set a
25 deadline. How about two weeks after November 1st for

1 written submissions to the Court about how you think we
2 ought to proceed, either joint submission if you agree,
3 separate submissions or joint in part, separate in part,
4 and we'll just take it from there.

5 November 15th. I'll set it for -- do I have
6 another conference in the calendar? I'll put one in the
7 calendar and talk about that. An inter partes' review,
8 I understand that there's nothing for me to do at this
9 point, you're just letting me know where things stand?

02:30PM

10 MR. CONNOR: Correct, your Honor.

11 MR. WEINGAERTNER: Sure.

12 THE COURT: Before I forget the thought, let
13 me put this in the calendar for a further conference. I
14 have some time November 16th on Thursday. What I was
15 going to propose though is to make sure I have had a
16 chance to digest this. How about the Tuesday before
17 Thanksgiving and the parties appear by telephone?

18 MR. WEINGAERTNER: Sure.

19 MR. CONNOR: That's fine, your Honor.

02:30PM

20 THE COURT: 2:00, Tuesday, November 21st,
21 and you don't need to get on airplanes during that
22 Tuesday travel day is just about as bad as Wednesday
23 nowadays, so I'm happy to see your smiling faces, but
24 don't do it unless you absolutely think you need to be
25 here for some reason.

1 Why don't we leave it this way, if you do
2 want a substantive hearing, let's move it to a different
3 date, if you think you do need to be here and we need
4 argument and all of that, let's just move it to a
5 different date.

6 MR. WEINGAERTNER: Thank you, your Honor.

7 MR. CONNOR: Thank you.

8 THE COURT: Otherwise Tuesday, November 21st
9 at two.

02:31PM 10 All right. Is there anything else that we
11 ought to talk about or that you need more guidance such
12 as it is from me about how to proceed going forward?

13 MR. WEINGAERTNER: Yes, your Honor. My
14 colleague, Robert Counihan, would like to raise a
15 discovery issue.

16 THE COURT: Yes, Mr. Counihan.

17 MR. COUNIHAN: Yes, your Honor, thank you.
18 On Friday, Judge Boal issued an order on some discovery
19 issues, including granting Maquet's motion for us to
02:32PM 20 produce certain documents. We're working through with
21 our client how exactly to do that, and we're working
22 with Maquet on a path forward. It might involve the
23 magistrate as well, but we would just like to ask your
24 Honor if we could have two extra weeks in case we do
25 need to object to the order in the end?

1 THE COURT: Two weeks to object, in other
2 words, from your normal, whatever it is, 14-day period
3 for objecting?

4 MR. COUNIHAN: Correct. I believe the
5 objections would be due next Friday. We are just asking
6 for two extra weeks so that the process can work itself
7 out.

8 THE COURT: Any problem with that,
9 Mr. Connor?

02:32PM 10 MR. CONNOR: That's okay, your Honor.

11 THE COURT: Okay. So any objections/appeal
12 to the magistrate judge's order, you'll have an extra
13 two weeks in which to do that.

14 MR. COUNIHAN: Thank you, your Honor.

15 THE COURT: Anything else?

16 MR. CONNOR: I have nothing, your Honor.

17 THE COURT: Thank you, all, and I will see
18 or hear from you in a little more than a month.
19 Thank you.

02:32PM 20 THE CLERK: All rise.

21 (Whereupon, the hearing was adjourned at
22 2:32 p.m.)
23
24
25

C E R T I F I C A T E

UNITED STATES DISTRICT COURT)
DISTRICT OF MASSACHUSETTS) ss.
CITY OF BOSTON)

I do hereby certify that the foregoing
transcript, Pages 1 through 26 inclusive, was recorded
by me stenographically at the time and place aforesaid
in Civil Action No. 16-10914-FDS, ABIOMED, INC. vs.
MAQUET CARDIOVASCULAR, LLC, and thereafter by me reduced
to typewriting and is a true and accurate record of the
proceedings.

Dated October 17, 2017.

s/s Valerie A. O'Hara

VALERIE A. O'HARA

OFFICIAL COURT REPORTER