

**Cross-Practice Trial Team Defeats TRO for Smith & Nephew**  
**The Reporter**  
**Published: August 5<sup>th</sup>, 2010**  
**Text:**

A cross-practice Nixon Peabody team defeated a temporary restraining order (TRO) sought by a competitor of *NP Focus40* client Smith & Nephew, Inc., a medical device developer. The win allows Smith & Nephew to protect its business interests while continuing its patent infringement suit against the competitor.

Smith & Nephew filed the patent infringement lawsuit against Interlace Medical, Inc. in June, claiming that Interlace's MyoSure tissue-removal device infringes on Smith & Nephew's Hysteroscopic Reciprocating Morcellator (U.S. Patent No. 7,226,459)—a device that is designed to cut semi-rigid tissue. Smith & Nephew alleges that Interlace's infringement is willful, because its chief technology officer had previously worked for Smith & Nephew in the business unit that oversaw the development and commercialization of the technology at issue and, therefore, had full knowledge of the patent and the patented technology at the time Interlace began developing the allegedly infringing product.

After filing suit, Smith & Nephew, Inc., sent letters to current and prospective customers about the patent infringement suit against Interlace. Interlace filed a TRO seeking to enjoin Smith & Nephew from sending the letters, denying infringement and claiming that the letters are doing harm to its business as a start-up company. But Smith & Nephew countered that it was within its First Amendment and patent rights to make truthful statements about the infringement claim and the lawsuit.

U.S. District Court Judge Rya Zobel ruled in favor of Smith & Nephew on the TRO, finding that Interlace had not "met its burden of demonstrating a likelihood of prevailing on the merits of the infringement action." The judge also based her decision on the "broad protections" of the First Amendment in not restraining speech.

This was a key win for the client and an excellent example of NP lawyers working together across practices and across offices. Joining Products: Class Action, Trade & Industry Representation partner Joe Leghorn who argued the motion, are IP Litigation partner Maia Harris, who is leading Markman hearing preparation; Patents associate Sorin Cimpoes from Chicago; Products associate Josh Barlow; and Brands and Creations associate David Murphy.