

FORM PTO-1595 (Modified)

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05-05-2000

U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

4-14-00



ONLY

101346686

a attached original documents or copy thereof.

To the Honorable Commissioner c

1. Name of conveying party(ies):  
Luxtec Corporation

Individual(s)                       Association  
 General Partnership             Limited Partnership  
 Corporation-State MASSACHUSETTS

Other

2. Name and address of receiving party(ies):

Name: Fleet  
Internal Address:  
Street Address: 100 Federal Street  
City: Boston State: MA Zip: 02110

Individual(s) citizenship  
 Association  
 General Partnership  
 Limited Partnership  
 Corporation-State  
 Other National Bank

If assignee is not domiciled in the United States, a domestic designation is  Yes  No  
(Designations must be a separate document from Additional name(s) & address(es)  Yes  No

2000 APR 14 AM 9:44  
IPR/FINANCE

Additional names(s) of conveying party(ies)  Yes  No

3. Nature of conveyance:

Assignment                       Merger  
 Security Agreement             Change of Name  
 Other

Execution Date: January 30, 1996

4. Application number(s) or registration numbers(s):  
If this document is being filed together with a new application, the execution date of the application is:

A. Trademark Application No. (s)  
75/343,496 August 19, 1997

B. Trademark Registration No.(s)  
2,227,547 2,113,874  
2,115,776 1,956,027

Additional numbers attached?  Yes  No

5. Name and address of party of whom correspondence concerning document should be mailed:

Name: Mark S. Leonardo, Esq.

Internal Address:  
Brown, Rudnick, Freed & Gesmer, P.C.  
Box IP, 18<sup>th</sup> Floor

Street Address:  
One Financial Center

City: Boston State: MA Zip: 02111

6. Total number of applications and patents involved: **5**

7. Total fee (37 CFR 3.41):.....\$140.00

Enclosed - Any excess or insufficiency should be credited or debited to deposit account:  
 Authorized to be charged to deposit account

8. Deposit account number: 50-0369

05/04/2000 TSHRB07Z 00000111 75343496

FF:481 40.00 OP  
FF:482 100.00 OP

DO NOT USE THIS SPACE

9. Statement and signature.  
To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Mark S. Leonardo (41,433)  
Name of Person Signing

Signature

April 11, 2000  
Date

Total number of pages including cover sheet, attachments, and document: **8**

## ASSIGNMENT OF TRADEMARKS

THIS ASSIGNMENT OF TRADEMARKS (the "Assignment") is made as of the 24th day of October, 1995 by LUXTEC CORPORATION, a Massachusetts corporation having a principal business address at 326 Clark Street, Worcester, Massachusetts (the "Assignor") to THE FIRST NATIONAL BANK OF BOSTON, a national bank with its head office at 100 Federal Street, Boston, Massachusetts (the "Lender").

BACKGROUND. Assignor has executed and delivered to the Lender (a) a certain Revolving Credit Note dated of even date herewith in the principal amount of Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00), and (b) a certain Equipment Note dated of even date herewith in the principal amount of Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00) (collectively, the "Notes") pursuant to a certain Loan and Security Agreement dated of even date herewith by and among the Assignor, the Lender and certain other parties (as amended from time to time, the "Loan Agreement"). In order to induce the Lender to execute and deliver the Loan Agreement, the Assignor has agreed to assign to the Lender certain patent rights.

NOW, THEREFORE, in consideration of the premises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Assignor hereby agrees with the Lender as follows:

1. To secure the complete and timely satisfaction of all Obligations (such term, as used herein, shall have the same meaning as provided in the Loan Agreement) of the Assignor to the Lender, the Assignor hereby assigns, pledges and grants to the Lender a continuing security interest in and to the Assignor's right, title and interest in and to the trademarks and trademark applications listed in Exhibit A hereto, including without limitation all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements, all rights corresponding thereto throughout the world and all re-issues, divisions, continuations, renewals, extensions and continuations-in-part thereof (collectively, the "Trademarks").

2. The Assignor covenants and warrants that:

(a) The Trademarks are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;

(b) To the best of the Assignor's knowledge, each of the Trademarks is valid and enforceable and the Assignor has notified the Lender in writing of all prior art (including public uses and sales) of which it is aware;

(c) The Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, free and clear of any liens, charges and encumbrances, including without limitation licenses, shop rights and covenants by the Assignor not to sue third persons; and

(d) The Assignor has the unqualified right to enter into this Assignment.

3. The Assignor agrees that, until all of the Obligations shall have been satisfied in full, it will not enter into any agreement (for example, a license agreement) which is inconsistent with the Assignor's obligations under this Assignment, without the Lender's prior written consent, which consent shall not be unreasonably withheld.

4. If, before the Obligations shall have been satisfied in full, the Assignor shall obtain rights to any new trademark, or become entitled to the benefit of any trademark or trademark applications for any reissue, division, continuation, renewal, extension or continuation-in-part of any Trademark or any improvement on any Trademark, the provisions of paragraph 1 shall automatically apply thereto and the Assignor shall give to the Lender prompt notice thereof in writing.

5. The Assignor authorizes the Lender to modify this Assignment by amending Exhibit A to include any future trademarks and trademark applications which are Trademarks under paragraph 1 or paragraph 4 hereof.

6. Unless and until there shall have occurred and be continuing an Event of Default (as defined in the Loan Agreement), the Lender hereby grants to the Assignor the exclusive, worldwide non-transferable right and license to make, have made, use and sell the inventions disclosed and claimed in the Trademarks for the Assignor's own benefit and account and for none other. The Assignor agrees not to sell or assign its interest in, or grant any sublicense under, the license granted to the Assignor in this paragraph 6, without the prior written consent of the Lender.

7. If any Event of Default shall have occurred and be continuing, the Assignor's license under the Trademarks as set forth in paragraph 6 shall terminate forthwith, and the Lender shall have, in addition to all other rights and remedies given it by this Assignment, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks may be located and, without limiting the generality of the foregoing, the Lender may immediately, without demand of performance and without other notice (except as set forth below) or demand whatsoever to the Assignor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon, in Massachusetts or elsewhere, the whole or from time to time any part of the Trademarks, or any interest which the

Assignor may have therein, and after deducting from the proceeds of sale or other disposition of the Trademarks all expenses (including all reasonable expenses for brokers' fees and legal services), shall apply the remainder of such proceeds toward the payment of the Obligations. Any remainder of the proceeds after payment in full of the Obligations shall be paid over to the Assignor. Notice of any sale or other disposition of the Trademarks shall be given to the Assignor at least five (5) days before the time of any intended public or private sale or other disposition of the Trademarks is to be made, which the Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, any holder of any of the Obligations or the Lender may, to the extent permissible under applicable law, purchase the whole or any part of the Trademarks sold, free of any right of redemption on the part of the Assignor, which right is hereby waived and released.

8. At such time as the Assignor shall completely satisfy all of the Obligations, the Lender shall execute and deliver to the Assignor all deeds, assignments and other instruments as may be necessary or proper to re-vest in the Assignor full title to the Trademarks, subject to any disposition thereof which may have been made by the Lender pursuant hereto.

9. Any and all fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and legal expenses, incurred by the Lender in connection with the preparation of this Assignment and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining, preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, shall be borne and paid by the Assignor on demand by the Lender and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the rate prescribed in the Loan Agreement.

10. If, in the Assignor's reasonable business judgment, any Trademark shall have significant value to the business of the Assignor, the Assignor shall have the duty, through counsel acceptable to the Lender, to prosecute diligently any application with respect to the Trademarks pending as of the date of this Assignment or thereafter until the Obligations shall have been paid in full, to make application on unpatented but patentable inventions and to preserve and maintain all rights in the Trademarks. Any expenses incurred in connection with such an application shall be borne by the Assignor. The Assignor shall not abandon any right to file a patent application, or any pending patent application or patent without the consent of the Lender, which consent shall not be unreasonably withheld.

11. The Lender shall have the right but shall in no way be obligated to bring suit in its own name to enforce the Trademarks or any license thereunder, in which event the Assignor shall at the request of the Lender do any and all lawful acts and execute any and all proper documents required by the Lender in aid of such enforcement and the Assignor shall promptly, upon demand, reimburse and indemnify the Lender for all costs and expenses incurred by the Lender in the exercise of its rights under this paragraph 11.

12. No course of dealing between the Assignor and the Lender, nor any failure to exercise, nor any delay in exercising, on the part of the Lender, any right, power or privilege hereunder or under the Loan Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

13. All of the Lender's rights and remedies with respect to the Trademarks, whether established hereby, by the Loan Agreement, by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently.

14. The provisions of this Assignment are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Assignment in any jurisdiction.

15. This Assignment is subject to modification only by a writing signed by the parties, except as provided in paragraph 5.

16. The benefits and burdens of this Assignment shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

17. The validity and interpretation of this Assignment and the rights and obligations of the parties shall be governed by the laws of The Commonwealth of Massachusetts.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment as an instrument under seal as of the day and year first above written.

Kelly J. Gilbert  
Witness

Ronald Porrasini  
Witness

LUXTEC CORPORATION

BY: Samuel M. Stein  
Its Treasurer

THE FIRST NATIONAL BANK  
OF BOSTON

BY: G. Charles Miller  
Its Vice President

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

January 30, 1996

Then personally appeared the above-named Samuel M. Stein, Treasurer of Luxtec Corporation, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of Luxtec Corporation, before me.

Kristen Patton  
Notary Public  
My Commission Expires:  
My Commission Expires Jan. 13, 2002

COMMONWEALTH OF MASSACHUSETTS

Worcester, ss.

January \_\_, 1996

Then personally appeared the above-named G. Christopher Miller, Vice President of The First National Bank of Boston, and acknowledged the foregoing instrument to be his free act and deed and the free act and deed of The First National Bank of Boston, before me.

Ronald Porrasini  
Notary Public  
My Commission Expires: 6/23/02

EXHIBIT A

LUXTEC (US)

1,451,098  
1,476,726  
1,738,176

REGISTRATION FOR LUXTEC  
LUXTEC (stylized design)  
LUXTEC (stylized design)

AUG 18, 1987  
FEB 16, 1988  
MAR 16, 1993

**Exhibit A (Cont.)**

<b>Trademark</b>	<b>Assignee/ Owner</b>	<b>Registration/ Application No.</b>	<b>Filing Registration Date</b>
NBP 2000	Luxtec Corp.	2,227,547	March 2, 1999
ULTRALITE	Luxtec Corp.	2,115,776	Nov. 25, 1997
MICROLUX	Luxtec Corp.	2,113,874	Nov. 18, 1997
LUXTEC	Luxtec Corp.	1,956,027	February 13, 1996
CARDIODYNE	Luxtec Corp.	75-343496	August 19, 1997