

03-27-2001



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RECORDATION FORM COVER SHEET TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

New

Resubmission (Non-Recordation)
Document ID #

Correction of PTO Error
Reel # Frame #

Corrective Document
Reel # Frame #

Conveyance Type

Assignment License

Security Agreement Nunc Pro Tunc Assignment

Merger Change of Name

Effective Date
Month Day Year

Other

Conveying Party

Mark if additional names of conveying parties attached

Name Execution Date
Month Day Year

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship/State of Incorporation/Organization

Receiving

Mark if additional names of receiving parties

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)
City State/Country Zip Code

Individual General Partnership Limited Partnership If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

Corporation Association

Other

Citizenship/State of Incorporation/Organization

FOR OFFICE USE ONLY

03/27/2001 DBYRNF 00000025 75423923
01 FC:482 40.00/DP

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Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

REEL: 002258 FRAME: 0362

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages Enter the total number of pages of the attached conveyance document including any attachments. #

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

<input type="text" value="757423923"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of Properties Enter the total number of properties involved. #

Fee Amount Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed Deposit Account

Deposit Account (Enter for payment by deposit account or if additional fees can be charged to the account.) #

Authorization to charge additional fees: Yes No

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. Charges to deposit account are authorized, as indicated herein.

Sandra P. Thompson
Name of Person Signing

Sandra Thompson
Signature

March 5, 2001
Date Signed

CONSENT AGREEMENT

between

ZEPHYR THERAPEUTICS, INC.

and

FLA ORTHOPEDIC, INC.

Effective as of January, 2001
Relating to the trademarks "GELCELL" and "GELCELL"

CONSENT AGREEMENT
between
ZEPHYR THERAPEUTICS, INC.
and
FLA ORTHOPEDIC, INC.

Effective as of the date of signature of the last party signing this agreement, Zephyr Therapeutics, Inc., a California corporation (hereinafter referred to as "REGISTRANT"), having a principal business address at 26071 Merit Circle #104; Laguna Hills, CA 92653, and FLA Orthopedic, Inc., a Florida corporation ("hereinafter referred to as "APPLICANT"), having a principal business address at 2881 Corporate Way, Miramar, Florida 33025, agree as follows:

ARTICLE I - RECITALS

1.01 REGISTRANT'S MARK

REGISTRANT is proprietor of U.S. Trade Mark **GELCELL**, Registration No. 2229745, registered on March 2, 1999. First Use is declared as April 1997. First Use In Commerce is declared as April 1997.

1.02 APPLICANT'S MARK

APPLICANT seeks registration of the mark **GELCELL**, Application No.: 75-423923, for Class 10: "viscoelastic block-shaped pouch for hot and cold therapy sold as an integral component of orthopedic supports". First Use is declared as February 27, 1998. First Use In Commerce is declared as February 28, 1998.

1.03 DETERMINATION OF NO LIKELIHOOD OF CONFUSION

REGISTRANT and APPLICANT have determined that there is **no** likelihood of confusion between usage of their respective marks.

1.04 BASIS FOR BELIEF

The determination of paragraph 1.03 is based on REGISTRANT's and APPLICANT's consideration of the following factors:

- I. the similarity or dissimilarity of the marks in their entireties as to appearance, sound, connotation and commercial impression;
- II. the similarity or dissimilarity and nature of the goods or services as described in an application or registration connection with which a prior mark is in use;

- III. the similarity or dissimilarity of established, likely-to-continue trade channels;
- IV. the conditions under which and buyers to whom sales are made (i.e. "impulse" vs. careful sophisticated purchasing);
- V. the fame of their respective marks (sales, advertising, length of use);
- VI. the number and nature of similar marks in use on similar goods;
- VII. the nature and extent of any actual confusion;
- VIII. the length of time during and conditions under which there has been concurrent use without evidence of actual confusion;
- IX. the variety of goods on which a mark is or is not used (house mark, "family" mark, product mark);
- X. the market interface between applicant and the owner of a prior mark;
- XI. the extent to which the applicant has a right to exclude others from use of its mark on its goods;
- XII. the extent of potential confusion; and
- XIII. other established facts probative of the effect of use.

ARTICLE II - REASONABLE EFFORTS

If REGISTRANT and APPLICANT become aware of any likelihood of confusion, mistake or deceit between REGISTRANT's usage and APPLICANT's usage, REGISTRANT and APPLICANT agree to take reasonable steps to eliminate any such likelihood.

ARTICLE III - REGISTRANT'S CONSENT TO USE

3.01 APPLICANT'S MARK

REGISTRANT consents to APPLICANT's registration and use of the mark **GELCELL** in International Class 10 only for "Viscoelastic block-shaped pouch for hot and cold therapy sold as an integral component of orthopedic devices that are worn by the patients".

3.02 REGISTRANT'S MARK

APPLICANT consents to REGISTRANT's registration and use of the mark **GELCELL** in International Class 10 for "Medical gel and foam mattresses."

ARTICLE IV - MISCELLANEOUS PROVISIONS

4.01 COMPLETE AGREEMENT

This AGREEMENT constitutes the complete and exclusive statement of agreement between REGISTRANT and APPLICANT with respect to the GELCELL Marks. This AGREEMENT replaces and supersedes all prior agreements by and between REGISTRANT and APPLICANT with respect to the GELCELL Marks. This AGREEMENT supersedes all prior written and oral statements with respect to the GELCELL Marks; no representation, statement, or condition or warranty not contained in this AGREEMENT is binding on the members or has any force or effect.

4.02 NOT AN ASSIGNMENT OR LICENSE

This Agreement shall not be interpreted to constitute a grant, or an agreement to grant, any license or assignment of any present or future intellectual property rights of either REGISTRANT and APPLICANT.

4.03 GOVERNING LAW

This Agreement and the rights of the parties under this Agreement will be governed by, interpreted, and enforced in accordance with the laws of the State of California without reference to its choice of law rules and as if wholly performed within the State of California. The parties further agree that any litigation regarding the interpretation, breach or enforcement of this Agreement will be filed in and heard only by the state or federal courts with jurisdiction to hear such disputes in the County of Orange, California, and the parties hereby expressly submit to the jurisdiction of such courts.

4.04 BINDING EFFECT

Subject to the provisions of this AGREEMENT relating to transferability, this AGREEMENT is binding on and inures to the benefit of REGISTRANT and APPLICANT, and their respective subsidiaries, distributees, successors, and assigns.

4.05 SEVERABILITY

If any provision of this AGREEMENT is held to be illegal, invalid, or unenforceable under the present or future laws effective during the term of this AGREEMENT, the provision is fully severable; this AGREEMENT is construed and enforced as if the illegal, invalid, or unenforceable provision had never comprised a part of this agreement; and the remaining provisions of this AGREEMENT will remain in full force and effect and will not be affected by the illegal, invalid, or unenforceable provision; and there will be added automatically as a part of this AGREEMENT a provision as similar in terms to the illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

4.06 MULTIPLE COUNTERPARTS

This Agreement may be executed in several counterparts, each of which is deemed an original but all of which constitute one and the same instrument. However, in making proof only one copy signed by the party to be charged is required.

4.07 NO THIRD PARTY BENEFICIARY

This AGREEMENT is made solely and specifically among and for the benefit of REGISTRANT and APPLICANT, and their respective successors and assigns, subject to the provisions of the AGREEMENT relating to successors and assigns, and no other person has or will have any rights, interest, or claims under this AGREEMENT as a third-party beneficiary or otherwise.

4.08 AMENDMENTS

All amendments to this AGREEMENT must be in writing and signed by both REGISTRANT and APPLICANT.

4.09 CONSTRUCTION AND INTERPRETATION

This Agreement shall not be deemed, for purpose of construction and interpretation, to be drafted by either party.

4.10 REPRESENTATION BY COUNSEL

Each of the parties hereto acknowledges that it has been represented by legal counsel of its own choice throughout all of the negotiations that preceded the execution of this Agreement and that each has executed this Agreement with the consent and on the advice of such legal counsel; and further acknowledges that it and its counsel have had an adequate opportunity to make whatever investigation or inquiry they may deem necessary or desirable in connection with any of the subjects of this Agreement prior to the execution hereof and the delivery and acceptance of the consideration specified herein.

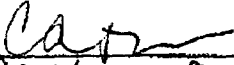
4.11 NO ADMISSION OF LIABILITY

This Agreement affects the settlement of disputes that are denied and contested, and nothing contained herein should be construed as an admission by any party of any liability of any kind with respect thereto. Each party to this Agreement expressly denies all such liability.

SIGNATURES


IN WITNESS WHEREOF, each of the parties has caused this agreement to be executed in duplicate originals by its duly authorized representatives on the respective dates entered below.

REGISTRANT


By: Cathy K. Orr
Title: President
Zephyr Therapeutics, Inc.

Date: 12/22/00

APPLICANT


By: E. G. Slauterback
Title: President
FLA Orthopedics, Inc.

Date: 1/24/01

THIS AGREEMENT DOES NOT BIND OR OBLIGATE EITHER PARTY IN ANY MANNER UNLESS DULY EXECUTED BY AUTHORIZED REPRESENTATIVES OF BOTH PARTIES.