

3-20-01

FORM PTO-1618A
Expires 06/30/99
OMB 0651-0027

04-10-2001

U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK



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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
Effective Date
Month Day Year
- Merger
- Change of Name
- 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 Party

Mark if additional names of receiving parties attached

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

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01 FC:481 40.00 TP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

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

TRADEMARK
REEL: 002267 FRAME: 0123

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"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="1600280"/>	<input type="text"/>	<input type="text"/>
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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.) #

Deposit Account Number: #

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.

Annamarie Collins

Annamarie Collins

03/13/01

Name of Person Signing

Signature

Date Signed

RECORDATION FORM COVER SHEET
CONTINUATION
TRADEMARKS ONLY

Conveying Party

Enter Additional Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship State of Incorporation/Organization

Receiving Party

Enter Additional Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

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Registration Number(s)

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1 CROSS & MEDA, P.L.C.
ATTORNEYS AT LAW

2 JAMES E. CROSS (#009063)
3 GEOFFREY M. KHOTIM (#019513)
4 411 North Central Avenue, Suite 700
5 Phoenix, Arizona 85004
6 Telephone: (602)462-1900
7 Facsimile: (602)462-1911
8 E-Mail: jecross@uswest.net
9 gmkhotim@uswest.net

10 Attorneys For Maureen Gaughan, Trustee

11 IN THE UNITED STATES BANKRUPTCY COURT
12 FOR THE DISTRICT OF ARIZONA

13 In re

14 ERNEST D. And ANITA GOODLOE,
15 Debtors.

16 Proceedings Under Chapter 7

17 No. B-95-05286-PHX-CGC

18 **ORDER APPROVING SALE OF ESTATE**
19 **ASSETS, PURSUANT TO 11 U.S.C.**
20 **§§363(f)(4) and 363(h), FREE AND CLEAR**
21 **OF LIENS AND APPROVING SALE AND**
22 **SETTLEMENT AGREEMENT PURSUANT**
23 **TO RULE 9019, FED.R.BANKR.P.**

24 This matter was heard by the Court at a hearing held at 9:00 a.m. on the 5th day of December,
25 2000. The hearing was to consider the Motion of Trustee for Order to: 1) Sell Assets in Which the
26 Debtor's Estate has an Interest, Pursuant to 11 U.S.C. §§363(f)(4) and 363(h); 2) Approve Procedure
for Sale of Personal Property; and 3) Approve Sale and Settlement Agreement Pursuant to Rule 9019,
Fed.R.Bankr.P. (the "Motion"). The property to be sold is the Federally registered trademark known
as "Aerobic 07" (the "Trademark"). The Trademark is duly registered in the United States Patent and
Trademark Office. The settlement agreement that is to be approved is a settlement agreement between
the Trustee and Diagnostic International Inc. ("Diagnostic") for settlement of all disputes between the
bankruptcy estate and Diagnostic in connection with the Trademark.

The Court finds that the Trustee has provided adequate notice to all creditors on the master

C. Clark

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1 mailing list and other parties-in-interest.

2 No objections to the Trustee's motion were presented or filed with the Court. There have been no
3 higher or better offers made at the hearing on the Trustee's Motion.

4 Therefore, **IT IS HEREBY ORDERED:**

5 1. Authorizing the Chapter 7 Trustee to sell the Federally registered trademark known as
6 "Aerobic 07" to Diagnostic International Inc., for \$5,000, free and clear of any and all liens, interests, or
7 any future interests claimed by third parties, pursuant to 11 U.S.C. §§363(f)(4) and 363(h).

8 2. All liens, claims and interests in or to the Trademark shall attach to the sale proceeds.

9 3. Approving the Sale and Settlement Agreement Pursuant to Rule 9019, Fed.R.Bankr.P.
10 entered into between the Trustee, Maureen Gaughan, and Diagnostic International Inc., a copy of which
11 is attached hereto as **Exhibit "A."**

12 4. The Trustee shall file a written report of sale within ten (10) days after the sale of the
13 Trademark.

14 5. The Court finds that the buyer is purchasing the Trademark in good faith and pursuant to
15 11 U.S.C § 363(m).

16 6. The provisions of Fed. Rules of Bank. Proc. 6004(g) are hereby ordered waived.

17 DATED this 5 day of December, 2000.

18 REDFIELD T. BAUM
19 The Honorable ~~Charles C. Case~~
20 United States Bankruptcy Judge

SALE AND SETTLEMENT AGREEMENT

This Sale and Settlement Agreement (the "Agreement") is made this ___ day of August, 2000, by and between Diagnostic International, Inc. ("Diagnostic") and Maureen Gaughan, the duly appointed Chapter 7 Trustee in the Bankruptcy case of *In re Ernest D. and Anita Goodloe* Case No. 95-05286 ("Trustee").

WHEREAS Diagnostic as the Reorganized Debtor in the proceedings *In re Diagnostic International, Inc.*, Case No. B-97-12293-PHX-CGC (the "Diagnostic Bankruptcy") claims to be the owner of that certain Federally registered trademark known as "Aerobic 07";

WHEREAS Anita Goodloe claims ownership to the trademark "Aerobic 07";

WHEREAS any ownership rights alleged to be owned by Mrs. Goodloe, individually, or by Mrs. Goodloe, dba Aerobic Life Products in the trademark "Aerobic 07" are property of the Bankruptcy Estate in Case No. 95-05286;

WHEREAS Diagnostic disputes the validity of the alleged Assignment of Trademark to Mrs. Goodloe and whether any ownership rights as to that trademark were ever actually transferred to Mrs. Goodloe;

WHEREAS, a dispute exists between Diagnostic and the Trustee as to whether Diagnostic or the Trustee is the actual owner of the trademark rights to the Federally registered trademark "Aerobic 07" and litigation between the Trustee and Diagnostic would be unduly costly and burdensome for both Diagnostic and the Trustee and it is in the best interests of both the Goodloe Bankruptcy Estate and Diagnostic for the Trustee to sell all ownership rights, title and interest that the Goodloe Bankruptcy Estate holds as to the trademark "Aerobic 07";

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. **Absolute Transfer.** Trustee does hereby sell, assign, convey and transfer, absolutely, to Diagnostic all rights, title and interest held by the Bankruptcy Estate of *In re Ernest D. and Anita Goodloe*, Case No. 95-05286 in and to the trademark "Aerobic 07", including, without limitation, all associated good will, pursuant to 11 U.S.C. §363(f), free and clear of all liens, interests and claims of any person, with any such liens, interests or claims to attach to the proceeds of this sale.

2. **Consideration.** In consideration of the sale, transfer, and release Diagnostic shall pay to the Bankruptcy Estate of Ernest D. and Anita Goodloe, c/o the Trustee, the sum of \$5,000.00 as follows: (i) \$1,000.00 in the form of a cashier's check or other certified funds, within five business days of the execution of this Sale Agreement and (ii) \$4,000.00 within 24 hours after the date on which Diagnostic is the prevailing bidder at a hearing before the Bankruptcy Court in the *In re Anita Goodloe* bankruptcy case to authorize the sale of the Aerobic 07 trademark. The Trustee shall file a Motion to Sell Trademark Rights pursuant to 11 U.S.C. §§363(f)(4) and 363(h) and to settle claims pursuant to Rule 9019, Fed.R.Bankr.P. (the "Sale and Settlement Motion") within seven business after the execution of this Agreement. The Order authorizing such sale to Diagnostic shall provide

that the trademark "Aerobic 07" and all related trademark rights are sold and transferred to Diagnostic free and clear of all liens, encumbrances, interests, rights and claims of all other persons. In the event that Diagnostic is not the prevailing bidder at such an auction, the \$1,000.00 down payment shall be fully refundable to Diagnostic.

3. Procedure for Court Approval and Auction. Within seven business days of the execution of this Sale Agreement, the Trustee shall file the Sale & Settlement Motion with the Bankruptcy Court in Case No. 95-05286, at which time the Court may receive higher and better cash bids for the purchase of the trademark "Aerobic 07" and all related trademark rights. At the auction, all bidders shall be required to post with the Trustee a \$1,000.00 good faith deposit, in the form of a cashier's check or other certified funds and made payable to the Bankruptcy Estate of Ernest & Anita Goodloe, c/o the Trustee, identical to the \$1,000.00 deposit by Diagnostic, demonstrate to the Trustee's satisfaction that they have the financial wherewithal and ability to complete any sale and pay in full any additional bid amounts. All bids shall be in additional increments of not less than \$500.00.

4. The Adversary Case, *Diagnostic International, Inc. v. Anita Goodloe*, Case No. 99-511, shall not be dismissed as Diagnostic wishes to pursue claims against persons not parties to this Agreement in the *Diagnostic* bankruptcy.

5. Governing Law, Jurisdiction And Venue.

5.1. The enforcement, performance, discharge, lack of performance and formation of this Agreement shall be governed by, and construed and enforced in accordance with, the law of the State of Arizona, regardless of any applicable conflict-of-law rules to the contrary.

5.2. The Trustee and Diagnostic also hereby:

(A) irrevocably submit to the jurisdiction of the Bankruptcy Court for the United States District Court for the District of Arizona, or any successor to said court (hereinafter referred to as the "Federal Courts") for purposes of any suit, action or other proceeding which relates to the transactions contemplated in this Agreement;

(B) to the extent permitted by applicable law, waive and agree not to assert by way of motion, as a defense or otherwise in any such suit, action or proceeding, any claim that they are not personally subject to the jurisdiction of the Federal Courts; that the suit, action or proceeding is brought in an inconvenient forum; that the venue of the suit, action or proceeding is improper; or that this Agreement or any transaction provided for herein may not be enforced in or by the Federal Courts; and

(C) agree not to seek, and hereby waive, any collateral review by any other court, which may be called upon to enforce the judgment or any of the Federal Courts, of the merits of any such suit, action or proceeding or the jurisdiction of said Federal Court.

5.3 Mutual Release. The Trustee and Diagnostic hereby mutually release, waive and

forgive each other and/or any of their agents, employees, attorneys or representatives from any and all claims, causes of action, and liabilities about which they may have knowledge or acquire knowledge in the future arising prior to the date of the Agreement in exchange for the mutual covenants and undertakings set forth herein.

6. General.

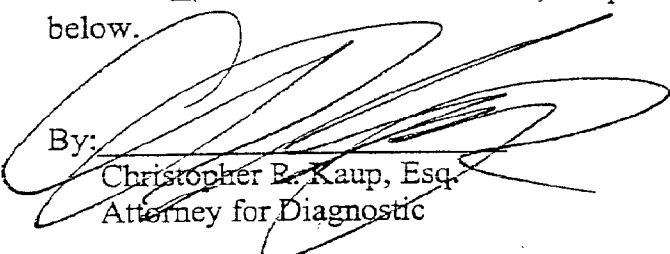
6.1. This Agreement sets forth the entire understanding and agreement between the parties. This Agreement may be modified or changed only in writing; all such modifications and changes must be signed by both parties.

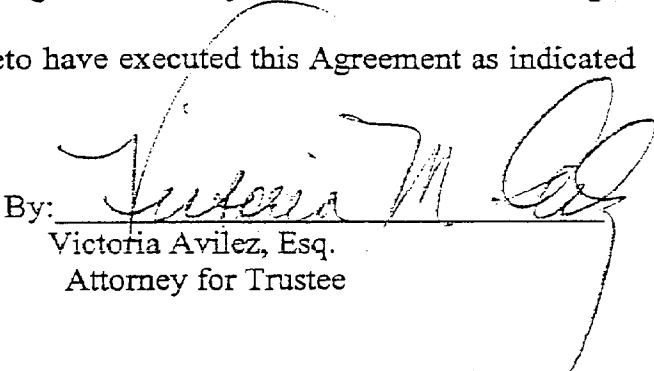
6.2. This Agreement is binding upon the legal successors of the parties.

6.3. This Agreement shall be effective as of the first date on which all parties have signed it.

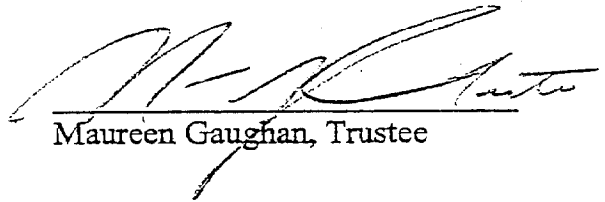
6.4. The failure of a party to insist upon strict adherence to any term of this agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term of any other term of this agreement. Any waiver must be in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as indicated below.

By: 
Christopher R. Kaup, Esq.
Attorney for Diagnostic

By: 
Victoria Avilez, Esq.
Attorney for Trustee

DIAGNOSTIC INTERNATIONAL, INC.


Maureen Gaughan, Trustee

By:
Its:

146800

forgive each other and/or any of their agents, employees, attorneys or representatives from any and all claims, causes of action, and liabilities about which they may have knowledge or acquire knowledge in the future arising prior to the date of the Agreement in exchange for the mutual covenants and undertakings set forth herein.

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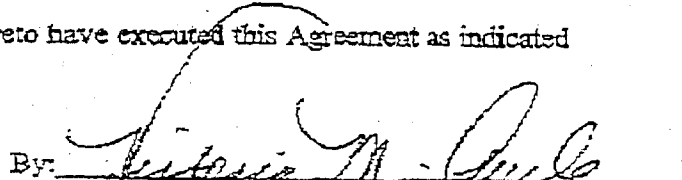
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Christopher R. Kaup, Esq.
Attorney for Diagnostic

By: 
Victoria Avilca, Esq.
Attorney for Trustee

DIAGNOSTIC INTERNATIONAL, INC.


By: CEO
Its:


Maureen Gaughan, Trustee

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