

06-22-2001

Form PTO-1594
(Rev. 03/01)
OMB No. 0651-0027 (exp. 5/31/2002)



U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

Tab settings

101758177

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Southwest Medical, Inc.
(a California corporation)

- Individual(s)
- Association
- General Partnership
- Limited Partnership
- Corporation-State (California)
- Other

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other

Execution Date: April 4, 2001

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

Triline Medical, LLC
(a California limited liability company)
7035 Hayvenhurst Avenue
Van Nuys, CA 91406

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State
- Other CA limited liability company

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

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

75/842,253

B. Trademark Registration No.(s)

2,414,692

Additional number(s) attached Yes No

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

Bernard R. Gans, Esq.
Jeffer, Mangels, Butler & Marmaro, LLP
2121 Avenue of the Stars
10th Floor
Los Angeles, CA 90067

6. Total number of applications and registrations involved: 10

7. Total fee (37 CFR 3.41).....\$ 265.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

10-0440

(Attach duplicate copy of this page if paying by deposit account)

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.

Bernard R. Gans, Esq.

Name of Person Signing

Bernard R. Gans

Signature

June 13, 2001

Date

Total number of pages including cover sheet, attachments, and document: 11

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

TRADEMARK
REEL: 002317 FRAME: 0610

06/21/2001 TDIAZ1 00000078 75842253
01 FC:48 40.00 DP
02 FC:48 225.00 DP

Continuation of Recordation Form Cover Sheet for Trademarks

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)		B. Trademark Registration No.(s)	
75/839,569	75/874,212	2,404,028	2,379,765
75/686,635	75/467,363	2,278,167	2,262,284

TRADEMARK AGREEMENT

This Agreement ("Agreement") is made effective on April 4, 2001, the date on which the Settlement Agreement and Mutual Release was entered into and is made by and among:

- (1) Cathy Orr, an individual;
- (2) James Orr, an individual;
- (3) Southwest Medical, Inc., a California corporation ("**Southwest Medical**");
- (4) Zephtex Industries, Inc., a California corporation ("**Zephtex**"); and
- (5) Zephyr Therapeutics, Inc., a California corporation ("**Zephyr**"), (hereinafter parties (1) - (5) may be referred to individually and collectively as "**ORR**") on the one hand; and
- (6) TriLine Medical, LLC, a California limited liability company;
- (7) TriLine Products, LLC, a California limited liability company; and
- (8) Southwest Clinical Services, Inc., a California corporation (hereinafter parties (6) - (8) may be referred to collectively as "**TRILINE**") on the other hand.

RECITALS

ORR possesses and utilizes intellectual property rights related to the medical bed, specialty support surface and wound management industry, including without limitation those described in Exhibits "A" and "B", attached hereto (collectively hereafter, the "**Assets**");

Southwest Medical solely owns all right, title, and interest in and to the intellectual property described in Exhibit B (hereinafter "**SWM Assets**");

TriLine Medical, LLC, in a series of transactions related to a UCC foreclosure sale, acquired the SWM Assets;

TriLine Medical desires to better document and memorialize the acquisition of the SWM Assets;

TRILINE desires to obtain a non-exclusive license to the remaining Assets (the "**Licensed Assets**") including but not limited to those described in Exhibit A; and

The parties are desirous of fixing and defining between themselves their respective ongoing interests, rights, responsibilities, and limits in connection with such license.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties agree to be legally bound by the following covenants and they agree and certify as follows:

1. Grant of License

ORR hereby grants to TRILINE a non-exclusive, royalty-free license to use any and all of the Licensed Assets on the goods TRILINE makes, markets or distributes and the services it renders subject to the terms of the Agreement.

2. Representations and Warranties

(a) ORR represents and warrants that:

(i) it has the full right and authority to enter into and grant the rights, including the trademark and intellectual property licenses, and that entering into and performing the Agreement will not violate or be inconsistent with any other agreement, judgment, order, decree or obligation to which ORR is a party or by which it is bound;

(ii) to the best of its knowledge, it owns all right, title and interest to the Licensed Assets, free of any encumbrances or restrictions;

(iii) there is no outstanding litigation, arbitrated matter or other dispute to which ORR is a party which, if decided unfavorably to ORR, would reasonably be expected to have a potential or actual material adverse effect on ORR's ability to fulfill its obligations under this Agreement;

(iv) to the best of its knowledge, the use and marketing of the Licensed Assets and the SWM Assets (i) have not and will not violate any U.S., Federal, state or other governmental laws or regulations; and (ii) have not and will not infringe on the rights of others including, without limitation, any patent, copyright, trademark, trade dress, trade secret, or privacy rights; and

(v) no current licenses of the Licensed Assets exist other than to American National.

(b) TRILINE represents that:

(i) it has the full right and authority to enter into this Agreement, and that entering into and performing the Agreement will not violate any other agreement, judgment, order, decree or obligation to which TRILINE is a party or by which it is bound; and

(ii) it will not use the Licensed Assets in any manner which is in violation of any law or governmental regulations.

3. Assignment

Southwest Medical hereby confirms the sale of and otherwise transfers and assigns to TRILINE all right, title, and interest in the SWM Assets, and the goodwill associated therewith, which were the subject of the Merrill Lynch UCC Foreclosure sale conducted in July 2000.

4. Term and Termination

(a) Term. The term of the license is ongoing subject only to ORR's right to terminate the license as set forth in Section 4.(b).

(b) Termination for Cause.

ORR may terminate the license only if:

(i) ORR shall raise in sufficient written detail any objection to the nature of or the quality of the goods and services offered by TRILINE in connection with the Licensed Assets, and TRILINE shall have thirty (30) days from receipt of ORR's objection in which to cure the deficiency; and

(ii) If TRILINE, in the opinion of ORR, fails to cure the deficiency within the thirty (30) day period, the parties agree to submit to binding arbitration with a single arbitrator who has experience in the relevant industry, to be mutually approved by the parties. The parties recognize and consent to the jurisdiction over them of the American Arbitration Association for the resolution of disputes as provided in this Section 4, and agree that the decision of the arbitrator shall be final. The arbitration shall be held in the principal place of business of TRILINE, or at such other place as the parties shall mutually agree to in writing; and

(iii) In accordance with paragraph (ii) above, if, and only if, the arbitrator finds that TRILINE has violated the provisions set forth herein, the arbitrator shall provide TRILINE an additional time period of at least thirty (30) days within which to cure the deficiency; and

(iv) If TRILINE does not then cure the deficiency as determined by the arbitrator within the additional period, this Agreement may be terminated.

Any other attempt to terminate the license by ORR will constitute a breach of this Agreement, and, notwithstanding Section 10.(e), shall subject the breaching party to

liability for the attorneys' fees and costs of the non-breaching party in any legal proceeding stemming from such breach.

5. Responsibilities of ORR

(a) During the term of this license, ORR shall, at its own expense and effort, maintain its right, title and interest in all of the Licensed Assets. Such maintenance shall include filing and conducting of all legal actions necessary to maintaining such exclusive right, title and interest, including filing new U.S. trademark registrations.

(b) ORR shall take no steps, other than those set forth in Section 4, above, to preclude TRILINE from, or interfere with, TRILINE's use of the Licensed Assets.

(c) ORR shall indemnify, defend and hold TRILINE harmless from and against, any liability or expenses (including reasonable attorney's fees and expenses) arising out of or relating to any claim:

(i) that is based on the infringement of any patent, copyright, trade secret, trademark or other proprietary rights of others by the use of the Licensed Assets; or

(ii) relating to ORR's inaccuracy or untruthfulness of any representation or warranty made by ORR under this Agreement.

6. Responsibilities of TRILINE

TRILINE shall indemnify, defend and hold ORR harmless from and against, any liability or expenses (including reasonable attorneys' fees and expenses) arising out of or relating to any claim:

(a) that is based on the infringement of any patent, copyright, trade secret, trademark or other proprietary rights of others by TRILINE-supplied intellectual property, including trademarks, designs and logos (except to the extent that such intellectual property is part of the Licensed Assets or except when such infringement may have been caused by ORR or its agents); or

(b) relating to TRILINE's inaccuracy or untruthfulness of any representation or warranty made by TRILINE under this Agreement; or

(c) relating to personal injury or property damage resulting from TRILINE's or TRILINE's agents' acts or omissions.

TRILINE shall indemnify ORR from any costs and expenses incurred in connection with the enforcement of this Section 6.

7. **License Fee**

On _____, TRILINE shall pay to ORR a sum of ten thousand dollars (US \$10,000.00), which shall constitute full payment for this Agreement and the license provided herein.

8. **Quality Control**

(a) ORR acknowledges that it is familiar with the current operations and offerings of TRILINE, and that said operations and offerings exceed the minimum quality requirements contemplated under this Agreement.

(b) Upon reasonable written request, TRILINE shall make available to ORR the goods and services provided in conjunction with the Licensed Assets.

(c) Upon reasonable written request, TRILINE shall allow ORR to inspect TRILINE's facilities for the manufacture of the goods and/or provision of services with which the Licensed Assets are used.

(d) Products bearing the marks, GELCELL, GELCELL PLUS, or THERA TEX will only be manufactured by Zephtex authorized manufacturers or by American National so long as such manufacturers are able to adequately and reasonably supply such products and to do so at a fair, competitive, and non-discriminatory price.

9. **Litigation**

Either party may enforce the Licensed Assets pursuant to this license. In any infringement suit either party may institute to enforce the Licensed Assets, the other party hereto shall, at the request and expense of the party initiating such suit, cooperate in all respects and, to the extent possible, have its employees testify when requested and make available relevant records, papers, information, samples, specimens, and the like.

10. **Miscellaneous**

(a) Notices. All notices required hereunder shall be given in writing and shall be personally delivered or sent by postage prepaid mail, addressed to the parties at their addresses listed above, or at such other addresses as the respective parties may designate from time to time to the other by written notice. Notice is presumed to have been received five days after the mailing date.

(b) Choice of Law. This License shall be governed by, construed, interpreted and enforced under and according to the laws of the State of California. The parties expressly agree to the jurisdiction of the Superior Court of the State of California and

to the jurisdiction of the Central District Court of California, with venue in Los Angeles County, California, for the resolution of any dispute concerning the enforcement, breach, interpretation or validity of this License.

(c) Severability. In the event any part or parts of this License are found to be invalid, illegal, or unenforceable in any respect, the remaining provisions shall nevertheless be binding with the same effect as if the invalid, illegal, or unenforceable part or parts were originally deleted.

(d) Successors and Assigns. This License shall be binding upon and inure to the benefit of the parties to this License and their respective successors, sublicensees, assignees and agents.

(e) Costs and Fees. In the event that binding arbitration arises as a result of this license, each party shall pay its own costs and attorneys' fees.

(f) Failure to Enforce. Failure of any party herein to enforce any of the terms of this License shall not constitute waiver to enforce that term in the future.

(g) Expected Performance. Each party herein agrees to perform all acts and execute and deliver all documents as may be necessary or appropriate to carry out the intent and purposes of this license.


(h) Modifications. Neither this license nor any provision herein may be modified, waived, discharged or terminated orally. Any and all modifications must be made by mutual written agreement.

(i) No Construction. No party hereto nor any attorney for any party shall be deemed the drafter of this License for the purpose of interpreting or construing any of the provisions hereof.

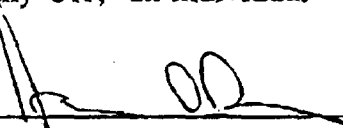
(j) Representation by Counsel. Each of the parties hereto acknowledges that it has been represented by independent legal counsel of its own choice throughout all of the negotiations that preceded the execution of this license and that each has executed this Agreement with the consent and on the advice of such independent 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.


(k) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

So agreed and executed this 4th day of April, 2001.


Kathy Orr, an individual


TriLine Medical, LLC



James Orr, an individual

By: 
Name: SHAWN LIPMAN
Title: PRESIDENT

Southwest Medical, Inc.


TriLine Products, LLC


By: 
Name: Cathy K. Orr
Title: President

By: 
Name: SHAWN LIPMAN
Title: PRESIDENT

Zephtex Industries, Inc.

Southwest Clinical Services, Inc.

By: 
Name: James Orr
Title: President

By: 
Name: SHAWN LIPMAN
Title: PRESIDENT

Zephyr Therapeutics, Inc.


By: 
Name: Cathy K. Orr
Title: President

EXHIBIT "A"

<u>Mark</u>	<u>Serial No.</u>	<u>Reg. No.</u>
Southwest Medical Inc.:		
PREVENTION TO INTERVENTION		2,414,692
CAIR 1000		2,404,028
PRO CAIR	75/842,253	
CAIRSEAT	75/839,569	
FLAPCAIR		2,379,765
WOUND CARE HOTLINE	75/874,212	
SHOWERCHEX	75/686,635	
TURN CAIR		2,278,167
THERA CAIR	75/467,363	
PLATINUM PARTNERS		2,262,284
Zephyr Therapeutics:		
ZEPHYR THERAPEUTICS	75/808,634	
REPLAMATT LTC		2,372,157
ZEPH-TEX	75/686,681	
REPLAMATT BASIC		2,348,260
REPLAMATT DELUXE		2,349,616
GEL SEAT		2,267,938
GELCELL		2,229,745
GELCELL PLUS		
FLEXCELL CELLULAR SUPPORT & DESIGN		2,171,476
COMFORT CAIR	75/467,362	
Cathy Orr:		
CALIFORNIA EXTENDED CARE ALLIANCE	75/898,192	
Other Marks:		
THERATOP		
DYNA CAIR		
THERA TEX		
NATIONAL EXTENDED CARE		
ACHES-OFF and Design		

EXHIBIT "B"

<u>Mark</u>	<u>Serial No.</u>	<u>Reg. No.</u>
Southwest Medical Inc.: PREVENTION TO INTERVENTION CAIR 1000 PRO CAIR CAIRSEAT FLAPCAIR WOUND CARE HOTLINE SHOWERCHEX TURN CAIR THERA CAIR PLATINUM PARTNERS	 75/842,253 75/839,569 75/874,212 75/686,635 75/467,363	 2,414,692 2,404,028 2,379,765 2,278,167 2,262,284
and all other intellectual property owed by Southwest Medical and purchased by TriLine Medical, LLC at the foreclosure sale.		