

09-20-2002

Form PTC



ON FORM COVER SHEET

U.S. DEPARTMENT OF COMMERCE

OMB No.

REMARKS ONLY

Patent and Trademark Office

To the F. 102228771

Trademarks: Please record the attached original document or copy thereof

1. Name of conveying party(ies):

AFx inc. 9-18-02

Individual(s) Association
 General Partnership Limited Partnership
 Corporation: State of California
 Other _____

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

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

Guidant Investment Corporation
 3200 Lakeside Drive
 Santa Clara, CA 95054

Individual(s) Association
 General Partnership Limited Partnership
 Corporation: State of California
 Other _____

3. Nature of conveyance:

Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: 08072002

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)

4. Application number(s) or trademark number(s), and identification or description of the mark(s):

<p>A. Trademark Application No(s). and description</p> <p>75/869,118 PIONEERING A 2 HOUR CURE FOR ATRIAL FIBRILLATION 76/292,631 FLEX 4 76/389,366 FLEX 10 76/389,365 MICROMAZE</p>	<p>B. Trademark Registration No(s). and description</p> <p><u>2,548,340</u> – AFX (Block Letters)</p>
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5. Name and address of party to whom correspondence concerning document should be mailed:

Karl G. Schwappach
 FAEGRE & BENSON LLP
 2200 Wells Fargo Center
 90 South Seventh Street
 Minneapolis, MN 55402-3901
 612/766-7773

6. Total number of applications and registrations involved: 5

7. Total fee (37 CFR 3.41) \$100.00

Enclosed
 Authorized to be charged to deposit account for underpayment

8. Deposit Account number: 06-0029

OFFICE OF RECEIVED
 2002 SEP 18 AM 10:00
 FINANCE SECTION

09/19/2002 LUMELLER 00000216 75869118
 01 FC:481 40.00 OP
 02 FC: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.

Karl G. Schwappach, #35,786
 Name of person signing

Karl Schwappach
 Signature

September 13, 2002
 Date

Total number of pages including cover sheet, attachments, and document: 12

Mail documents to be recorded with required cover sheet information to:
 Director – U.S. Patent and Trademark Office, Box Assignments
 Washington, D.C. 20231

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Agreement") is made as of this 7th day of August, 2002 by AFx inc., a California corporation (the "Debtor"), in favor of Guidant Investment Corporation (the "Secured Party").

In order to induce the Secured Party to extend the Loan (as defined in the Credit Agreement by and between Debtor and the Secured Party dated as of August 7, 2002 (the "Credit Agreement")), Debtor has agreed to grant a security interest in certain of Debtor's intellectual property described herein, to the Secured Party for purposes of securing certain obligations of Debtor to the Secured Party.

In connection with the execution of the Credit Agreement, the Secured Party has required the execution and delivery of this Agreement by Debtor and the parties hereby agree as follows:

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Grant of Security Interest. As collateral security for the prompt and complete payment and performance of the Obligations (as defined in the Credit Agreement), Debtor hereby irrevocably pledges, assigns, grants, transfers, and conveys a security interest to the Secured Party, with power of sale to the extent permitted by law, in and to Debtor's entire right, title and interest in, to and under the following (all of which shall collectively be called the "Collateral"):

(a) All classes or types of patents, design patents, utility patents whether now owned or hereafter acquired by Debtor, including, without limitation, originals, divisions, continuations, continuations-in-part, extensions, reexaminations, or reissues, and published and non-published patent applications for these classes or types of patent rights (whether or not patentable and whether or not reduced to practice) in any country of the world, including without limitation those listed on Exhibit A attached hereto (collectively, the "Patents").

(b) Any trademark and servicemark rights whether now owned or hereafter acquired by Debtor, whether registered or not, applications to register and registrations of the same and like protections, including without limitation those set forth on Exhibit B attached hereto (collectively, the "Trademarks"); provided, however, that the Secured Party shall not acquire any interest in any intent to use a federal trademark application for a trademark, servicemark, or other mark filed on Debtor's behalf before the filing under applicable law of a verified statement of use (or equivalent) for such mark that is the subject of such application.

(c) All present and future license agreements with respect to intellectual property to which Debtor is a licensee or sublicensee (the "Licenses"), including without limitation the license agreements listed in Exhibit C to this Agreement; provided, however, that any future license agreements with respect to intellectual property that are not transferable shall not be included in the Licenses.

(d) All present and future accounts, accounts receivable and other rights to payment arising from, in connection with or relating to the sale or license of the Collateral.

(e) Any and all claims for damages by way of past, present and future infringements of any of the rights in the Collateral, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above.

(f) All licenses or other rights to use any of the Collateral, and all license fees and royalties arising from such use to the extent permitted by such license or rights.

(g) All amendments, extensions, renewals and extensions of any of the Collateral.

(h) All proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the Collateral.

2. Authorization and Request. Debtor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this Agreement.

3. Covenants and Warranties. Debtor represents, warrants, covenants and agrees as follows:

(a) Schedules. Listed on Exhibit A are all Patents. Listed on Exhibit B are all material Trademarks. Listed on Exhibit C are all Licenses.

(b) Title. Debtor owns all legally enforceable right, title and interest to all Collateral free and clear of all liens, claims, encumbrances and other restrictions without an obligation to pay any royalties, license fees or other amounts to any other person or entity, except as set forth on Schedule 3(b) to this Agreement and all Permitted Encumbrances. Debtor has not received and Debtor does not have any knowledge of any notice, claim or allegation from any person or entity questioning the right of Debtor to use, possess, transfer, convey or otherwise dispose of any Collateral or questioning the right of Debtor to use any Collateral.

(c) Employees. To the knowledge of Debtor, each employee, agent, consultant and contractor, who has contributed to or participated in the conception, creation or development of the Collateral (other than licensed Collateral) on behalf of Debtor has executed valid written assignment in favor of Debtor as assignee, that has caused the conveyance to such Debtor all right, title and interest in and to all Collateral arising from such individual's work throughout the world. Debtor shall undertake all reasonable measures to cause its employees, agents and independent contractors to assign to Debtor all rights in Collateral in which Debtor may subsequently acquire any right or interest.

(d) Third-Party Infringement. To the knowledge of Debtor, there is no unauthorized use, disclosure, infringement, dilution, misappropriation, or other violation by any third party (including any employee or former employee of Debtor) of any Patent.

(e) Freedom to Operate. To the knowledge of Debtor, Debtor's use of the Collateral in its business as presently conducted, has not and will not violate, interfere with or infringe upon the rights of any other individual or entity nor does such use by Debtor constitute a

breach of any agreement, obligation, promise or commitment by which Debtor may be bound or constitute a violation of any laws, regulations, ordinances, codes or statutes in any jurisdiction.

(f) Licenses. As of the date hereof, Debtor has not (A) granted any licenses or other rights, and Debtor has no obligation to grant any licenses or other rights, with respect to any Collateral or (B) entered into any covenant not to compete or contract limiting or purporting to limit the ability of Debtor to exploit fully any Collateral or to transact business in any market or geographical area or with any person, except for distribution agreements relating to distribution of Debtor's products outside the United States and Debtor's distribution agreement with Guidant Corporation. With respect to third party licenses, (A) Debtor is not in breach or default with respect thereto, and no event has occurred which with notice or lapse of time would constitute a breach or default or permit termination, modification or acceleration thereunder and (B) Debtor has not repudiated any provision thereof. Debtor has no agreement to indemnify any individual or entity against any charge of infringement of any Collateral, other than indemnification provisions normal and usual for Debtor's industry contained in purchase orders or license agreements arising in the ordinary course of business. For greater certainty in connection with any bring-down of the representation and warranties contained in this Section 3(f) in connection with any draw-down of Debtor's line of credit under the Credit Agreement, nothing in this Section 3(f) shall be construed to prevent Debtor from undertaking the following actions: (i) non-exclusive licenses in the Collateral granted by Debtor; or (ii) any exclusive or non-exclusive licenses in the Collateral granted by Debtor for applications other than surgical (both open and minimally invasive, but not including transluminal) cardiac ablation for treating arrhythmias.

(g) Validity. There is no interference, opposition, cancellation, reexamination or other contest, proceeding, action, suit, hearing, investigation, charge, complaint, demand, notice, claim, dispute nor any claim of infringement, dilution, misappropriation or other violation by Debtor of any Patent. To the knowledge of Debtor, all statements and representations made by Debtor in any pending Patent applications, filings or registrations were true in all material respects as of the time they were made. No Patent used in the business (other than in circumstances where Debtor has allowed a Patent not material to the business to lapse, expire, become abandoned or be canceled) has lapsed, is being allowed to lapse, expired or been abandoned, invalidated, or canceled, in whole or in part, or is subject to any injunction, judgment, order, decree, ruling or charge or is subject to any pending or, to the knowledge of Debtor, threatened oppositions, cancellations, interferences or other proceedings before the United State Patent and Trademark Office or in any other registration authority in any country.

(h) No Conflict. Performance of this Agreement does not conflict with or result in a breach of any material agreement to which Debtor is bound, except to the extent that certain intellectual property agreements prohibit the assignment of the rights thereunder to a third party without the licensor's or other party's consent and this Agreement constitutes an assignment.

(i) Prohibition on Certain Transfers. During the term of this Agreement, Debtor will not transfer or otherwise encumber any interest in the Collateral; provided, however, that such prohibition shall not apply to: (i) non-exclusive licenses in the Collateral granted by Debtor; or (ii) any exclusive or non-exclusive licenses in the Collateral granted by Debtor for

applications other than surgical (both open and minimally invasive, but not including transluminal) cardiac ablation for treating arrhythmias.

(j) Material Adverse Changes. Debtor shall promptly advise the Secured Party of any material adverse change in the composition of any Patent, including but not limited to any subsequent ownership right of Debtor in or to any material Patent not specified in this Agreement. Upon any executive officer of Debtor obtaining actual knowledge thereof, Debtor will promptly notify the Secured Party in writing of any event that materially adversely affects the value, in the aggregate, of any of the Collateral.

(k) Duty to Protect and Defend. Debtor shall (i) protect, defend and maintain the validity and enforceability of all Collateral that is material to the business of Debtor, taken as a whole, unless Debtor determines that reasonable business practices suggest that such protection, defense or maintenance is not appropriate and (ii) not allow any Patent to be abandoned, forfeited or dedicated to the public without the written consent of the Secured Party, which shall not be unreasonably withheld if Debtor determines that reasonable business practices suggest that abandonment is appropriate.

(l) After Acquired Collateral. This Agreement creates, and in the case of after acquired Collateral, this Agreement will create at the time Debtor first has rights in such after acquired Collateral, in favor of the Secured Party a valid and perfected first priority security interest (subject only to Permitted Encumbrances (if any) that are specifically entitled pursuant to applicable law, or specifically acknowledged in writing by the Secured Party, to have priority over the Secured Party's security interest) in the Collateral securing the payment and performance of the Obligations.

(m) Accuracy of Information. All information now or hereafter supplied to the Secured Party by or on behalf of Debtor herein or pursuant hereto with respect to the Collateral is or will be, when so supplied, accurate and complete in all material respects.

(n) Other Impairments. Except for: (i) non-exclusive licenses in the Collateral granted by Debtor; or (ii) any exclusive or non-exclusive licenses in the Collateral granted by Debtor for applications other than surgical (both open and minimally invasive, but not including transluminal) cardiac ablation for treating arrhythmias, Debtor shall not enter into any agreement that would materially impair the Secured Party's rights in connection with the Collateral without the Secured Party's prior written consent, which consent shall not be unreasonably withheld. Debtor shall not permit the inclusion in any material contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a security interest in Debtor's rights and interest in any intellectual property included within the definition of the Collateral acquired under such contract, except that contracts may contain anti-assignment provisions that could in effect prohibit the creation of a security interest in such contracts.

4. Secured Party's Rights. The Secured Party shall have the right, but not the obligation, to take, at Debtor's sole expense, any actions that Debtor is required under this Agreement to take but which Debtor fails to take, after fifteen (15) days written notice to Debtor. Debtor shall reimburse and indemnify the Secured Party for all reasonable costs and reasonable

expenses incurred in the reasonable exercise of its rights under this section 4, subject to the limitations on reimbursement contained in the Credit Agreement.

5. Further Assurances; Attorney in Fact.

(a) Debtor will, subject to Permitted Encumbrances, make, execute, acknowledge and deliver, and file and record in the proper filing and recording places in the United States, all such instruments, including appropriate financing and continuation statements and collateral agreements and filings with the United States Patent and Trademarks Office and take all such action as may reasonably be deemed necessary or advisable, or as reasonably requested by the Secured Party, to perfect the Secured Party's security interest in all Collateral and otherwise to carry out the intent and purposes of this Agreement, or for assuring and confirming to the Secured Party the grant or perfection of a security interest in all Collateral.

(b) Upon the occurrence and during the continuation of an Independent Insolvency Default (as defined below), Debtor hereby irrevocably appoints the Secured Party as Debtor's attorney-in-fact, with full authority in the place and stead of Debtor and in the name of Debtor, the Secured Party or otherwise, from time to time in the Secured Party's reasonable business judgment, upon Debtor's failure or inability to do so, to take any action and to execute any instrument which the Secured Party may deem necessary or advisable in the Secured Party's reasonable business judgment to accomplish the purposes of this Agreement, including:

(i) To modify, in the Secured Party's reasonable business judgment, this Agreement without first obtaining Debtor's approval of or signature to such modification by amending Exhibit A, Exhibit B or Exhibit C hereof, as appropriate, to include reference to any right, title or interest in any Collateral acquired by Debtor after the execution hereof or to delete any reference to any right, title or interest in any Collateral in which Debtor no longer has or claims any right, title or interest; and

(ii) To file, in the Secured Party's reasonable business judgment, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of Debtor where permitted by law.

6. Independent Insolvency Default. An "Independent Insolvency Default" means an Event of Default pursuant to Section 7.1(f) of the Credit Agreement, but no other single provision of Section 7.1 of the Credit Agreement; provided, however, an Independent Insolvency Default may only occur (a) after the date that is the six month anniversary of the date hereof and (b) in the event that the Secured Party has not demanded repayment of any then outstanding promissory notes issued by Debtor to the Secured Party pursuant to the Credit Agreement before the occurrence of an Event of Default (except as contemplated pursuant to Section 2.3(d) of the Credit Agreement and the giving of any notices in accordance with this Agreement or the Credit Agreement).

7. Remedies. Upon the occurrence and during the continuation of an Independent Insolvency Default, the Secured Party shall have the right to exercise all the remedies of a secured party under the California Uniform Commercial Code or other applicable law, including without limitation the right to require Debtor to assemble the Collateral and any tangible

property in which Secured Party has a security interest under this Agreement and to make it available to the Secured Party at a place designated by the Secured Party. The Secured Party shall have a nonexclusive, royalty free license to use the Collateral to the extent reasonably necessary to permit the Secured Party to exercise its rights and remedies upon the occurrence and during the continuation of an Independent Insolvency Default. Debtor will pay any reasonable expenses (including reasonable attorney's fees) incurred by the Secured Party in connection with the exercise of any of the Secured Party's rights hereunder, including without limitation any reasonable expense incurred in disposing of the Collateral, subject to the limitations on reimbursement contained in the Credit Agreement.

8. Indemnity. Debtor agrees to defend, indemnify and hold harmless the Secured Party and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement, and (b) all losses or reasonable expenses in any way suffered, incurred, or paid by the Secured Party as a result of or in any way arising out of or consequential to transactions between the Secured Party and Debtor under this Agreement (including without limitation, reasonable attorneys fees), except for losses arising from or out of the Secured Party's negligence or willful misconduct.

9. Release. At such time as Debtor shall completely satisfy all of the obligations secured hereunder (other than contingent indemnification obligations not yet due), the Secured Party shall execute and deliver to Debtor all lien releases and other instruments as may be reasonably necessary or proper to terminate the Secured Party's security interest in the Collateral, subject to any disposition of the Collateral which may have been made by the Secured Party pursuant to this Agreement. For the purpose of this Agreement, the obligations secured hereunder shall be deemed to continue if Debtor enters into any bankruptcy or similar proceeding at a time when any amount paid to the Secured Party could be ordered to be repaid as a preference or pursuant to a similar theory, and shall continue until it is finally determined that no such repayment can be ordered (provided that nothing herein shall limit the obligation of the Secured Party under the immediately preceding sentence to execute lien releases and other instruments during any preference period unless a bankruptcy or similar proceeding has been entered into at the time such execution would otherwise be required).

10. Confidentiality. The Non-Disclosure Agreement dated July 18, 2002 (the "CDA") between Debtor and Guidant Corporation ("Guidant") and all terms contained therein shall remain in full force and effect after the date hereof and shall survive both the execution of this Agreement and any termination of this Agreement. In addition, each party agrees that all information furnished by one party to the other pursuant to this Agreement will be held by the recipient party in confidence; provided, however, that each party may disclose such information to the extent necessary to enforce the terms and conditions of this Agreement. Except as expressly permitted above, each recipient of such confidential information of the other party agrees not to disclose such confidential information to any third party other than its directors, officers, employees and agents, advisers (including legal, financial and accounting advisers) and other persons directly or indirectly engaged on matters relating to this Agreement. The Secured Party further agrees that:

- (a) commencing on the date hereof and ending on the four month anniversary of this Agreement, the content of any patent applications of Debtor included in the Collateral that are not available to the public (“Confidential Patent Applications”) shall only be made available to (i) Guidant’s Cardiac Surgery Division’s general counsel (“General Counsel”), such individual who is currently Greg Garfield, (ii) Guidant’s outside corporate legal counsel (“Outside Counsel”), as may be under the direction of the General Counsel from time to time, such corporate legal counsel who is currently Faegre & Benson LLP, and (iii) Guidant’s outside intellectual property legal counsel (“IP Counsel”), for intellectual property diligence purposes, as may be under the direction of the General Counsel from time to time;
- (b) after the four month anniversary of this Agreement, all confidential information relating to the Collateral, all Confidential Patent Applications, all Debtor in-bound or out-bound license agreements related to the Collateral, all Debtor distribution agreements, all Debtor co-development agreements, and all other confidential contracts (collectively, the “Confidential Collateral Information”) entered into by Debtor with third parties, shall only be made available to (i) the General Counsel, (ii) the Outside Counsel, and (iii) the IP Counsel;
- (c) the General Counsel, the Outside Counsel, and any IP Counsel who have reviewed or otherwise accessed the content of any Confidential Collateral Information shall in no way assist in, or contribute to, the drafting or creation of any patent applications for Guidant, or any of its subsidiaries, related to the field covered by the Business (as such term is defined in the Credit Agreement); and
- (d) not to use any Confidential Collateral Information after the four month anniversary of this Agreement, for any purpose except in connection with Secured Party availing itself of its rights under the Credit Agreement and/or this Agreement.

If Secured Party is required by law to make any disclosure of Confidential Patent Applications that is prohibited or otherwise constrained by this Agreement, Secured Party will provide Debtor with prompt written notice of such requirement so that Secured Party may seek a protective order or other appropriate relief. Subject to the foregoing sentence, Secured Party may furnish that portion (and only that portion) of the Confidential Patent Applications that Secured Party is legally compelled or is otherwise legally required to disclose; provided, however, that Secured Party provides such assistance as Debtor may reasonably request in obtaining such order or other relief. Secured Party shall not reverse engineer, disassemble or decompile any prototypes, software or other tangible objects that embody the Confidential Patent Applications and that are provided to Secured Party under this Agreement.

11. No Waiver. No course of dealing between Debtor and the Secured Party, nor any failure to exercise nor any delay in exercising, on the part of the Secured Party, any right, power,

or privilege under this Agreement or any other document, shall operate as a waiver. No single or partial exercise of any right, power, or privilege under this Agreement or any other document by the Secured Party shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege by the Secured Party.

12. Rights Are Cumulative. All of the Secured Party's rights and remedies with respect to the Collateral whether established by this Agreement or any other documents or agreements, or by law shall be cumulative and may be exercised concurrently or in any order.

13. Attorneys' Fees. If any action relating to this Agreement is brought by any party hereto against any other party, the prevailing party shall be entitled to recover reasonable attorneys fees, costs and disbursements.

14. Amendments. This Agreement may be amended only by a written instrument signed by the parties. This Agreement, the Credit Agreement, the exhibits to the Credit Agreement, and the CDA comprise the entire agreement of the parties with respect to the matters addressed in this Agreement.

15. Severability. The provisions of this Agreement are severable. If any provision of this Agreement is held invalid or unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such provision, or part thereof, in such jurisdiction, and shall not in any manner affect such provision or part thereof in any other jurisdiction, or any other provision of this Agreement in any jurisdiction.

16. California Law and Jurisdiction. This Agreement shall be governed by the laws of the State of California, without regard for choice of law provisions. Debtor and the Secured Party consent to the nonexclusive jurisdiction of any state or federal court located in Alameda County, California in respect of all actions and proceedings relating directly or indirectly to this Agreement.

17. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.

[Signature Page Follows]

WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

AFx inc.

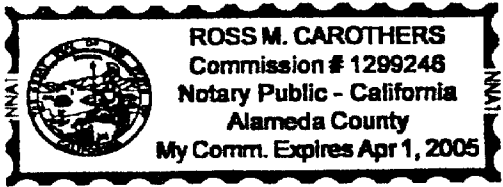
By:

Dinesh I Mody
Dinesh Mody,
President


STATE OF CALIFORNIA)
)
COUNTY OF ALAMEDA)

The foregoing instrument was acknowledged before me this 7th day of August, 2002, by Dinesh Mody, the President of AFx inc., a California corporation, on behalf of the corporation.

Ross M. Carothers
Notary Public



Guidant Corporation

By: 
Name: Ron Dollens
Title: President & CEO

[Signature Page to Security Agreement]

EXHIBIT B

TRADEMARKS

Registered Trademarks

Item	Reg. No.	Mark
1	2,548,340	AFX (Block Letters)

Trademark Applications

Item	App. Ref.	Mark
1	T002	PIONEERING A 2-HOUR CURE FOR ATRIAL FIBRILLATION
2	T004	FLEX 4
3	T005	FLEX 10
4	T006	MICROMAZE