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09-26-2002

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



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

102234121

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

1. Name of conveying party(ies):  
MEDport LLC

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

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

2. Name and address of receiving party(ies)  
Name: Ironbridge Mezzanin3 Fund, L.P.

Internal Address: \_\_\_\_\_  
Street Address: 200 Fisher Drive  
City: Avon State: CT Zip: 06001-3723

Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership Connecticut  
 Corporation-State \_\_\_\_\_  
 Other \_\_\_\_\_

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

3. Nature of conveyance:  
 Assignment       Merger  
 Security Agreement       Change of Name  
 Other \_\_\_\_\_

Execution Date: 09/17/02

4. Application number(s) or registration number(s):  
A. Trademark Application No.(s) \_\_\_\_\_  
\_\_\_\_\_

B. Trademark Registration No.(s) 1,080,388  
\_\_\_\_\_

Additional number(s) attached  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:  
Name: Gregg J. Lallier  
Internal Address: Updike, Kelly & Spellacy P.C.

Street Address: One Century Tower  
265 Church Street  
City: New Haven State: CT Zip: 06510

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41).....\$ 40.00  
 Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number: \_\_\_\_\_

**DO NOT USE THIS SPACE**

9. Signature.  
Gregg J. Lallier  
Name of Person Signing

Signature

09/18/02  
Date

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

FINANCE SECTION  
SEP 24 PM 1:43  
RECORDS

09/26/2002 LHMELLER 00000026 1080388

01 FC:481

40.00 DP

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

TRADEMARK  
REEL: 2588 FRAME: 0563

## SECURITY AGREEMENT – TRADEMARKS AND PATENTS

This **SECURITY AGREEMENT – TRADEMARKS AND PATENTS** (the “**Agreement**”) is made as of this 17<sup>th</sup> day of September, 2002 by **MEDPORT LLC**, a Rhode Island limited liability company with its principal place of business at 23 Acorn Street, Providence, Rhode Island 02903 (the “**Company**”), in favor of **IRONBRIDGE MEZZANINE FUND, L.P.** with offices at 200 Fisher Drive, Avon, Connecticut 06001-3723 (the “**Investor**”).

### WITNESSETH:

**WHEREAS**, pursuant to that certain Note and Warrant Purchase Agreement dated as of September 17, 2002 (as amended and in effect from time to time, the “**Note Purchase Agreement**”), among the Company, the Investor and MEDport Investment Inc., the Company has issued and sold to the Investor a \$2,000,000 senior subordinated note upon the terms and subject to the conditions set forth therein and evidenced by the Senior Subordinated Note issued by the Company thereunder (the “**Note**”); and

**WHEREAS**, it is a condition precedent to the obligation of the Issuer to purchase the Note pursuant to the Note Purchase Agreement that the Company shall have executed and delivered this Agreement to the Investor; and

**NOW, THEREFORE**, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions set forth in the Note Purchase Agreement, the Company hereby agrees with the Investor as follows:

1. **Definitions.** Any capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Note Purchase Agreement, and the following terms shall have the following meanings:

“**Collateral**” shall have the meaning set forth in Section 2 hereof.

“**Licenses**” shall mean any agreement, written or oral, providing for the grant by the Company of any right to use any Trademark or Patent, including those listed on **Schedule A** and **Schedule B**.

“**Obligations**” means any and all loans, advances, indebtedness, liabilities, obligations, covenants or duties of the Company to the Investor of any kind or nature, including obligations to pay money and to perform acts or refrain from taking action, whether arising under a loan, lease, credit card, line of credit, guaranty, indemnity, confirmation, acceptance, currency exchange, interest rate protection arrangement, overdraft or other type of financing arrangement, and any and all extensions and renewals thereof, and modifications and amendments thereto, whether in whole or in part, whether created directly by the Investor or acquired by assignment, purchase, discount or otherwise, whether any of the foregoing are direct or indirect, joint or several, absolute or

contingent under, due or to become due, now existing or hereafter arising, whether any present or future agreement or instrument, and whether or not evidenced by a writing and specifically including but not being limited to the unpaid principal amount outstanding at any time under the Note, plus all accrued and unpaid interest thereon, together with all fees, expenses, including attorneys' fees, penalties, and other amounts owing by or chargeable to the Company under the Note Purchase Agreement, the Note or the any other document relating thereto.

**"Patents"** means (a) all patents of the United States and all reissues and extensions thereof, (b) all applications for patents of the United States and all divisions, continuations and continuations-in-part thereof or any other country, including, without limitation, any thereof referred to in the **Schedule A** attached hereto, and (c) all Proceeds thereof.

**"Proceeds"** shall have the meaning ascribed to such term in the UCC.

**"Trademarks"** means (a) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers and the goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, whether or not registered in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof or otherwise, including, without limitation, any thereof referred to in **Schedule B** attached hereto, (b) all renewals thereof, and (c) all Proceeds thereof, including the goodwill of the business connected with the use of and symbolized by the Trademarks.

**"UCC"** means the Uniform Commercial Code as in effect in the State of Rhode Island from time to time.

2. **Grant of Collateral.** The Company hereby grants to the Investor, its successors and assigns, on the terms and conditions set forth in the Note Purchase Agreement, and as security for the Obligations, a lien upon and security interest in all of the Company's right, title, and interest in, to and under the Trademarks and Patents, and any Licenses thereto, (hereinafter sometimes collectively referred to as the **"Collateral"**).

3. **No Prior Encumbrances.** The Company represents and warrants to the Investor that the Company has not heretofore assigned, transferred or encumbered its right, title and interest in, to and under the Collateral except as permitted under the Note Purchase Agreement, including, a prior and senior grant to Fleet National Bank (**"Fleet"**) pursuant to the terms of a Security Agreement-Patents and Trademarks of even date herewith. The relative interests of Fleet and Investor in the Collateral are set forth in an Intercreditor and Subordination Agreement among Fleet, Investor and the Company of even date herewith.

4. **Representations and Warranties.** The Company represents and warrants that all Patents, Trademarks and Licenses owned by the Company in its own name as of the date hereof are listed on **Schedule A** and **Schedule B**. To the best of the Company's knowledge, each Patent and Trademark is valid, subsisting, unexpired, and enforceable and has not been abandoned. Except for the Licenses listed on **Schedule A** or **Schedule B**, none of such Patents or Trademarks

are the subject of any licensing or franchise agreement. No holding, decision or judgment has been rendered by any governmental authority against the Company that would limit, cancel or question the validity of any Patent or Trademark. No action or proceeding is pending (i) seeking to limit, cancel or question the validity of any Patent or Trademark or (ii) which, if adversely determined, could reasonably be expected to have a Material Adverse Effect.

**5. Covenants.** The Company covenants and agrees with the Investor that, from and after the date of this Agreement until the Obligations are paid in full:

(a) Unless otherwise agreed in writing by Investor prior to the occurrence of any of the following events, the Company (either itself or through licensees) will (i) continue to use each Trademark, except with respect to any Trademark that the Company shall reasonably determine is of negligible economic value to it, on each and every trademark class of goods or services applicable to any such Trademark in order to maintain such Trademark in full force free from any claim of abandonment for non-use, (ii) maintain, as in the past and currently exists, the quality of products and services offered under such Trademark, (iii) with respect to a registered Trademark, employ such Trademark with the appropriate notice of registration, (iv) not adopt or use any mark which is confusingly similar or a colorable imitation of such Trademark unless the Investor shall obtain a perfected security interest in such mark pursuant to this Agreement, and (v) not (and not permit any licensee or sublicensee thereof to) do any act or knowingly omit to do any act whereby any Trademark may become invalidated.

(b) The Company will not do any act, or omit to do any act, whereby any Patent, except with respect to any Patent that the Company shall reasonably determine is of negligible economic value to it, may become abandoned or terminated, including without limitation the non-payment of any necessary issue and maintenance fees.

(c) Whenever the Company, either by itself or through any secured party, employee, licensee or designee, shall file an application for the registration of any Patent or Trademark with the United States Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof, the Company shall report such filing to the Investor within five (5) Business Days after the last day of the fiscal quarter in which such filing occurs.

(d) The Company shall execute and deliver any and all agreements, instruments, documents, and papers as the Investor may request to evidence the Investor's security interest in any Patent or Trademark and the goodwill and General Intangibles of the Company relating thereto or represented thereby, and the Company hereby constitutes the Investor its attorney-in-fact to execute and file all such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed (such power being coupled with an interest is irrevocable until the Obligations are paid in full and the commitment is terminated).

(e) The Company will take all reasonable and necessary steps, including, without limitation, in any proceeding before the United States Patent and Trademark Office, or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue each application (and to obtain the relevant registration) and to maintain each registration of any

registered Patents or Trademarks, including, without limitation, filing of applications for renewal, payment of maintenance and renewal fees, affidavits of use and affidavits of incontestability.

(f) In the event that any material Patent or Trademark included in the Collateral is infringed, misappropriated or diluted by a third party, the Company shall, unless the Company shall reasonably determine that such Patent or Trademark is of negligible economic value to the Company, take such actions as the Company shall reasonably deem appropriate under the circumstances to protect such Patent or Trademark, including without limitation suing for infringement, misappropriation or dilution, seeking injunctive relief where appropriate and recovering any and all damages for such infringement, misappropriation or dilution.

6. **Proceeds.** It is agreed that if an Event of Default shall occur and be continuing (a) all Proceeds of the Collateral received by the Company consisting of cash, checks and other near-cash items shall be held by the Company in trust for the Investor, segregated from other funds of the Company, and shall, forthwith upon receipt by the Company, be turned over to the Investor in the exact form received by the Company (duly endorsed by the Company to the Investor, if required), and (b) any and all such Proceeds received by the Investor (whether from the Company or otherwise) may, in the sole discretion of the Investor, be held by the Investor as collateral security for, and/or then or at any time thereafter may be applied by the Investor against the Obligations (whether matured or unmatured), such application to be made in accordance with the provisions of the Note Purchase Agreement and the Note. Any balance of such Proceeds remaining after the Obligations shall have been paid in full shall be paid over to the Company.

7. **Remedies.** Subject to the Subordination Agreement, if an Event of Default shall occur and be continuing the Investor may exercise, in addition to all other rights and remedies granted to it in this Agreement and in any other instrument or agreement securing, evidencing or relating to the Obligations, all rights and remedies of a secured party under the UCC, including without limitation the immediate right to enforce or realize on any Collateral in any manner or order it deems expedient without regard to any equitable principles of marshalling or otherwise.

8. **Performance by Bank of Debtor's Obligations.** If the Company fails to perform or comply with any of its agreements contained herein and the Investor, as provided for by the terms of this Agreement, shall itself after reasonable prior notice perform or comply, or otherwise cause performance or compliance, with such agreement, the reasonable expenses of the Investor incurred in connection with such performance or compliance, together with interest thereon at a rate per annum equal to sixteen percent (16%) or such lesser rate as required by applicable law, shall be payable by the Company to the Investor on demand and shall constitute Obligations secured hereby.

9. **Indemnification.** The Company agrees to pay, and to save the Investor harmless from any and all liabilities, reasonable costs and expenses (including, without limitation, reasonable legal fees and expenses) (i) with respect to, or resulting from, any delay in paying, any and all excise, sales or other taxes which may be payable or determined to be payable with respect to any of the Collateral, (ii) with respect to, or resulting from, any delay not caused by the Investor in complying with any requirement of law applicable to any of the Collateral or (iii) in connection with any of the transactions contemplated by this Agreement.

10. **Company's Liability under Licenses.** Notwithstanding anything to the contrary, nothing herein contained shall relieve the Company from the performance of any covenant, agreement or obligation on the Company's part to be performed under any License now existing or hereafter executed by the Company licensing the use of the Collateral or any part thereof or from liability to any licensee thereunder or other party or impose any liability on the Investor for the acts or omissions of the Company in connection with any such License.

11. **Termination.** This Agreement shall terminate upon written notice by the Investor to the Company that all of the Obligations secured hereby have been fully paid and performed and, upon such event, the security interest granted hereunder against the Collateral shall be terminated and the Investor shall promptly execute and deliver to the Company such documents or instruments as the Company may reasonable request of such termination.

12. **Successors and Assigns.** This Agreement shall be binding upon the Company and its successors, and assigns and shall inure to the benefit of the Investor and its successors and assigns.

13. **Waivers and Amendments; Successors and Assigns, Governing Law.** None of the terms or provisions of this Agreement may be waived, amended, supplemented or otherwise modified except as provided by the Note Purchase Agreement. This Agreement shall be binding upon the successors and assigns of the Company and shall inure to the benefit of the Investor and its successors and assigns. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Connecticut.

14. **Powers coupled with an Interest.** All authorizations and agencies herein contained with respect to the Collateral are irrevocable and powers coupled with an interest.

15. **Severability.** Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

16. **Paragraph Headings.** The paragraph headings used in this Agreement are for convenience of reference only and are not to affect the construction hereof or be taken into consideration in the interpretation hereof.

17. **No Waiver; Cumulative Remedies.** The Investor shall not, by any act (except by a written instrument pursuant to Section 13 hereof), delay, indulgence, omission or otherwise, be deemed to have waived any right or remedy hereunder or to have acquiesced in any Event of Default or in any breach of any of the terms and conditions hereof. No failure to exercise, nor any delay in exercising, on the part of the Investor, any right, power or privilege hereunder shall operate as a waiver thereof. No single or partial exercise of any right, power or privilege hereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege. A waiver by the Investor of any right or remedy hereunder on any one

occasion shall not be construed as a bar to any right or remedy that the Investor would otherwise have on any future occasion. The rights and remedies herein provided are cumulative, may be exercised singly or concurrently and are not exclusive of any rights or remedies provided by law.

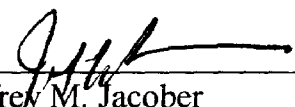
**18. Notices.** Notices hereunder shall be given to the Company in care of the Company in the manner set forth in the Note Purchase Agreement.

**19. Collateral – Note Purchase Agreement.** The parties hereby acknowledge and agree that the Patents, Trademarks and Licenses described herein shall constitute “Collateral” as defined by the Note Purchase Agreement and all terms, covenants, obligations and conditions contained in the Note Purchase Agreement relating to or affecting the Collateral shall apply to such Patents, Trademarks and Licenses.

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IN WITNESS WHEREOF, the Company and the Investor have executed this Agreement as of the date first set forth above.

**MEDPORT LLC**

By:   
Jeffrey M. Jacober  
Its President

**IRONBRIDGE MEZZANINE FUND, L.P.**

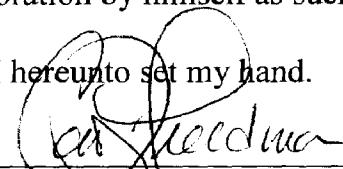
By: Ironbridge Capital Management, LLC  
Its General Partner

By:   
Roger J. Roche, Jr.  
A Manager, duly authorized

STATE OF RHODE ISLAND)  
COUNTY OF PROVIDENCE) at Providence

On this the 17<sup>th</sup> day of September, 2002, before me, the undersigned officer, personally appeared Jeffrey M. Jacober, who acknowledged himself to be the President of MEDport LLC, and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained as his free act and deed and the free act and deed of the corporation, by signing the name of the corporation by himself as such officer.

In Witness Whereof I hereunto set my hand.

  
\_\_\_\_\_  
Notary Public/My Commission Expires: 8/10/05  
Commissioner of the Superior Court



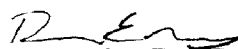
STATE OF CONNECTICUT)

) at Hartford

COUNTY OF HARTFORD )

On this the 16<sup>th</sup> day of September, 2002, before me, the undersigned officer, personally appeared Roger J. Roche, who acknowledged himself to be the Manager of Ironbridge Capital Management, LLC, the General Partner of Ironbridge Mezzanine Fund, L.P., and that he, as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained as his free act and deed and the free act and deed of the corporation, by signing the name of the corporation by himself as such officer.

In Witness Whereof I hereunto set my hand.

  
\_\_\_\_\_  
~~Notary Public/My Commission Expires:~~  
Commissioner of the Superior Court

**SCHEDULE A**

**PATENTS AND LICENSES THEREOF**

Digital Thermometer      Patent Application No. 10/141,429  
Filed: May 8, 2002

**SCHEDULE B**

**TRADEMARKS AND LICENSES THEREOF**

Vitaminder Registration Number 1,080,388