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

102274856

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

1. Name of conveying party(ies): 11-4-02
Nicolet Instrument Corporation
 Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State
 Other _____
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)
Name: BMSI Holdings, Inc.
Internal
Address: _____
Street Address: 5225 Verona Road
City: Madison State: WI Zip: 53711
 Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State California
 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: 05/26/1993

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
B. Trademark Registration No.(s)
1,360,374
Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Lydie Arthos Hudson
Internal Address: P.O. Box 1507

Street Address: 740 Regent Street,
Suite 400
City: Madison State: WI Zip: 53715

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:
15-0660
(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.
Lydie Arthos Hudson *Lydie Arthos Hudson* October 28, 2002
Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments, and document: 7

11/07/2002 LMUELLER 00000073 1360374

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

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(40.00 OP)

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ASSIGNMENT AND INSTRUMENT OF ASSUMPTION

This is an Assignment and Instrument of Assumption made as of the 26th day of May, 1993, by and between Nicolet Instrument Corporation, a Wisconsin company ("Nicolet"), and BMSI Holdings, Inc., a California corporation and a wholly-owned subsidiary of Nicolet ("Holdings").

Nicolet is engaged in the design, development, manufacture and sale of biomedical instruments used in various diagnostic and monitoring applications, including electrodiagnostic testing, automated sleep analysis, auditory testing, epilepsy monitoring and blood flow analysis (the "Business"). Nicolet desires to assign to Holdings and Holdings desires to receive all of the assets used primarily in or relating primarily to the Business, subject to the assumption by Holdings of certain of the liabilities related thereto, all upon the terms and conditions hereinafter set forth. For purposes of this Agreement, "primarily" shall mean more than 50%.

1. Contribution of Assets. As a contribution to the capital of Holdings, Nicolet hereby assigns, transfers and delivers to Holdings all of Nicolet's properties, rights and assets, of every kind, nature and description that are used or held for use primarily in the Business (the "Assets"). The Assets include, but are not limited to, the following categories:

(a) Inventories. All inventories of raw materials, work in process, finished products and resale merchandise, scrap inventory, expendable manufacturing supplies and related items related primarily to the Business;

(b) Machinery and Equipment. The machinery and equipment used primarily in the Business in the research and development, manufacture, production, assembly, handling, distribution and sale of products, together with the spare parts inventories and all manufacturing or production tools and maintenance supplies pertaining thereto;

(c) Accounts Receivable. All trade and other accounts and notes receivable associated primarily with the Business and any related rights of recovery or set-off of every type and character;

(d) Personal Property Leases. All right, title and interest of Nicolet under the leases for personal property associated primarily with the Business;

(e) Patents and Trademarks, Etc. All right, title and interest in, under or to all patents, trademarks, service marks, copyrights and trade names and applications therefor under license to or owned by Nicolet and used primarily in the Business;

(f) Technical Information. All inventions, discoveries (whether patentable or unpatentable), processes, designs, know-how, trade secrets, proprietary data and intellectual property of all kinds and other technology under license to or owned by Nicolet and used

primarily in the Business, including all drawings, plans, specifications, processes, patterns, dies, designs, blueprints, records, data, product development records, production outlines, information or knowledge and procedures;

(g) Contract Rights and Miscellaneous Intangibles. All right, title and interest of Nicolet in, under and to sales, distribution and other agreements and contracts related primarily to the Business, and lists of customers and suppliers, equipment lists, parts lists, computer tapes and discs, systems and programs, proprietary software, existing governmental permits, licenses and franchises (to the extent transfer is permitted by law), purchase contracts, sales order backlog and commitments of Nicolet pertaining to the Business and all other intangibles, including rights, causes of action and claims, related thereto;

(h) Books and Records. General books of account and books of original entry, if any, relating primarily to the operation of the Business;

(i) Miscellaneous Supplies. All catalogs, brochures, product literature, printed materials, shipping and packaging materials and labels, cartons and shipping containers, pallets, shipping equipment, graphics, art work, photographic film, slides, negatives, color separations, printer's and photographer's plates and so-called "camera ready materials" and sales and advertising materials used primarily in the Business; and

(j) Stock of Subsidiaries. All of the issued and outstanding shares of capital stock of Eden Medizinische Elektronik, GmbH, Project Phoenix of Madison, Inc., Eden Medical Electronics, Inc., and Neuroscience Limited, which are wholly-owned subsidiaries of Nicolet.

2. Excluded Assets. Notwithstanding anything contained in Section 1 to the contrary, the Assets shall not include any of the following assets related to or used in the Business (the "Excluded Assets"):

(a) Employee Benefit Plans. Assets held under and amounts due or payable under any employee pension or benefit plan, program or arrangement under which Nicolet contributes for the benefit of employees of Nicolet employed primarily in connection with the Business and their beneficiaries in respect of employment prior to April 5, 1993;

(b) Tax Refunds. All rights to government refunds of all federal, state, local and foreign income, capital gains, property transfer, payroll, withholding, excise, sales, use, use and occupancy, real estate, personal property, value added, capital stock, franchise or other taxes and estimated taxes (and interest and penalties thereon) with respect to all taxable periods ending on or before April 5, 1993;

(c) Real Property Rights. All rights relating to any real property, and any improvements thereto, owned or leased by Nicolet;

(d) Office Systems. All rights relating to any MIS systems and related equipment and telephone systems.

(e) Rights of Action. All rights, causes of action and claims arising out of any of the assets described in paragraphs (a) through (d), inclusive, of this Section 2.

3. Assumption of Liabilities.

(a) Liabilities Assumed. Holdings hereby assumes all of the liabilities and obligations of Nicolet that relate primarily to the Business and that are reflected on the balance sheet of Nicolet as of April 5, 1993 (the "Assumed Liabilities"). The Assumed Liabilities include but are not limited to, the following categories:

(i) Unperformed Contracts. All liabilities and obligations of Seller under the Contracts which have not been performed prior to April 5, 1993; including, without limitation, (a) all purchase orders received from, and sales commitments made to, customers in the ordinary course of the Business that remain outstanding on April 5, 1993 and (b) purchase orders and commitments made in the ordinary course of the Business for raw materials, components and parts that remain outstanding on April 5, 1993; and

(ii) Warranty Service. All normal customer repair and/or replacement services on products of the Business sold prior to or on April 5, 1993 in accordance with Nicolet's normal warranties for products of the Business.

(b) Excluded Liabilities. Notwithstanding anything to the contrary contained in this Section 3, Holdings shall not assume, agree to pay, perform, discharge or be liable with respect to the following liabilities and obligations (the "Excluded Liabilities"), which shall be paid and satisfied by Nicolet, or any successor obligor:

(i) Pre-Transfer Taxes. Any liability, whether direct, indirect or contingent, arising from the operation of the Business prior to April 5, 1993 for federal, state, local, foreign or other income, capital gains, property transfer, real estate, value added, capital stock, franchise or other taxes and estimated taxes relating thereto (including interest, penalties and additions to such taxes);

(ii) Employee Health Claims. Any liability of Nicolet to retired, deceased, disabled or former employees of Nicolet or their survivors or beneficiaries relating to injuries, sickness or conditions arising prior to April 5, 1993;

(iii) Debt and Guarantees. Any liability of Nicolet for borrowed money or in respect of letters of credit, guarantees or bid or performance bonds;

(iv) Product Liability. Any liability for claims in negligence or with respect to product liability (including, without limitation, claims alleging death or injury to persons or damage to property caused by, or resulting from, any defect or claimed defect in or with respect to products of the Business, liability in tort or for consequential damages) relating to

products or services of the Business sold or provided prior to April 5, 1993, except to the extent reserved for on the balance sheet of Nicolet as of April 5, 1993 (the "Balance Sheet");

(v) Noncompliance with Law. Any liability for any claim, dispute or litigation asserted or threatened or governmental proceeding or investigation instituted or threatened relating to, arising out of, or in connection with any alleged violation of or noncompliance by Nicolet with, or failure to perform, any obligations imposed upon Nicolet in its conduct of the Business under any statute, rule, regulation or ordinance pertaining to protection of the environment, employee or occupational safety and health, wages and hours of employees, hazardous substances, civil rights, customs, zoning or other matter, which alleged violation, noncompliance or failure to perform occurred or existed prior to April 5, 1993;

(vi) Worker's Compensation. Any liability for worker's compensation arising out of events occurring prior to April 5, 1993;

(vii) Employee Grievances. Any liability arising out of any grievance, arbitration, charge or other proceeding arising from or relating to employee complaints made or filed against Nicolet, which complaints relate to the operation of the Business prior to April 5, 1993, except to the extent reserved for on the Balance Sheet; and

(viii) Salary and Payroll Related Costs. Any salary due employees relating to work performed prior to April 5, 1993 and payroll related costs incurred prior to April 5, 1993, except to the extent reserved for on the Balance Sheet.

4. Further Assurances. At the request of Holdings, at any time on or after the date hereof, Nicolet will execute and deliver such further instruments of transfer and conveyance and take such other action as Holdings reasonably may request effectively to assign and transfer to Holdings any of the Assets.

5. Use of Name. Nicolet hereby consents to the use by Holdings of the name "Nicolet" in connection with the manufacture and sale of the products of the Business; provided, however, that Holdings agrees to indemnify Nicolet from and against all losses, costs, expenses or damages incurred by Nicolet as a result of any confusion by third parties of Nicolet with Holdings, which confusion results from Holdings' continued use of the name "Nicolet" as permitted by this Section 5.

6. Regarding Certain Consents. Nothing in this Agreement shall be construed an attempt to assign any contract, agreement, permit, franchise, or claim included in the Assets that is, by its term or in law, nonassignable without the consent of the other party or parties thereto, unless such consent shall have been given, or as to which all the remedies for the enforcement thereof enjoyed by Nicolet would not, as a matter of law, pass to Holdings as an incident of the assignments provided for by this Agreement. In order, however to provide Holdings the full realization and value of every contract, agreement, permit, franchise and claim of the character described in the preceding sentence, Nicolet, on and after the date hereof by itself or by its agents, shall, at the request and expense and under the direction of Holdings in the name of Nicolet or

otherwise as Holdings shall specify and as shall be permitted by law, take all such reasonable action (including without limitation the appointment of Holdings as an attorney-in-fact for Nicolet) and do or cause to be done all such things as shall in the opinion of Holdings be necessary or proper (a) to assure that the rights and obligations of Nicolet under such contracts, agreements, permits, franchises, and claims shall be preserved for the benefit of Holdings and (b) to facilitate receipt of the consideration to be received by Nicolet in and under every such contract, agreement, permit, franchise, and claim, which consideration Nicolet shall hold for the benefit of, and upon request of Holdings shall deliver to, Holdings.

7. Costs, Expenses and Taxes. Except as otherwise provided in this Agreement, Nicolet shall pay all expenses incurred in connection with this Agreement and the transactions contemplated hereby, including (a) all accounting, legal and appraisal fees and (b) all personal and real property transfer taxes.

8. Representations or Warranties. Nicolet expressly disclaims any representations or warranties as to the condition or status (financial or otherwise) of the Business or the Assets.

9. Indemnification by Holdings. Holdings hereby agrees to reimburse, indemnify, defend, save and hold harmless Nicolet and each director, officer, and any other affiliate of Nicolet, other than Holdings and its directors, officers and employees (each a "Holdings Indemnified Person"), from and against any and all claims, demands, damages, liabilities, losses, costs, expenses, assessments, settlement payments and judgments of any nature whatsoever (including without limitation incidental, indirect, special or consequential damages, reasonable attorneys' fees and other costs and expenses incident to any actual or threatened claim, suit, action or proceeding) ("Costs") suffered, sustained, incurred or required to be paid by such Holdings Indemnified Person because of or that result from, relate to or arise out of the Assumed Liabilities.

10. Indemnification by Nicolet. Nicolet hereby agrees to reimburse, indemnify, defend, save and hold harmless Holdings and each director, officer, and employee of Holdings (each a "Nicolet Indemnified Person") from and against Costs suffered, sustained, incurred or required to be paid by such Nicolet Indemnified Person because of or that result from, relate to or arise out of the Excluded Liabilities.

11. Successors and Assigns. This Agreement, and all rights and powers granted hereby, will bind and inure to the benefit of the parties hereto and their respective successors and assigns.

12. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.


13. Headings. The headings preceding the text of the sections and subsections hereof are inserted solely for convenience of reference, and shall not constitute a part of this Agreement, nor shall they affect its meaning, construction or effect.

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

15. Effective Time. The transfer of the Assets and assumption of the Assumed Liabilities shall be deemed to be effective as of April 5, 1993.

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

NICOLET INSTRUMENT CORPORATION

By: 

BMSI HOLDINGS, INC.

By: 

AA931180051