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RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

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U.S. Patent and Trademark Office

Form PTO-1594
(Rev. 10/02)
OMB No. 0651-0027 (exp. 6/30/2005)

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

1. Name of conveying party(ies):
Imagyn Medical, Inc. 2-11-03

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

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

2. Name and address of receiving party(ies)
Name: Credit Suisse First Boston Management Corporation
Internal
Address: _____

Street Address: Eleven Madison Avenue
City: New York State: NY Zip: 10010

Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State MA
 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: November 6, 2003

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
B. Trademark Registration No.(s)
See Schedule A

Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Jacob J. Frohman
Internal Address: 46th Floor
[REDACTED]
[REDACTED]

Street Address: Kronish Lieb Weiner & Hellman
1114 Avenue of the Americas
City: New York State: NY Zip: 10036

6. Total number of applications and registrations involved: 3

7. Total fee (37 CFR 3.41)..... \$ 90

Enclosed
 Authorized to be charged to deposit account

8. Deposit account number:

(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.

Jacob J. Frohman
Name of Person Signing Signature Date

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

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

Trademarks: Imagyn Medical, Inc.

Schedule A
Trademarks

United States Registered Trademarks owned by: Imagyn Medical, Inc.

<u>Mark</u>	<u>Registration No.</u>	<u>Ref.</u>	<u>Issue Date</u>
IMAGYN & Logo	1,872,290	748	10-Jan-05
BRINGING VISION TO WOMEN'S HEALTH	2,124,260	751	23-Dec-03
OVATION	2,214,992	752	29-Dec-04

TRADEMARK AND LICENSE SECURITY AGREEMENT

This **TRADEMARK AND LICENSE SECURITY AGREEMENT** ("Agreement") is made and entered into as of November 6, 2002, by IMAGYN MEDICAL, INC., a Delaware corporation ("Borrower"), in favor of CREDIT SUISSE FIRST BOSTON MANAGEMENT CORPORATION, a Delaware corporation, having an office at Eleven Madison Avenue, Fourth Floor, New York, New York 10010 (the "Lender").

WITNESSETH:

WHEREAS, the Borrower, together with certain of its affiliates, desires to borrow up to \$1,100,000 from the Lender pursuant to the terms of a Term Note dated November 6, 2002, made by the Obligors (as defined in such note) in favor of the Lender (the "Promissory Note"); and

WHEREAS, the Lender requires, as a condition to making Advances under the Promissory Note, and as security for certain loans heretofore, now and hereafter made by the Lender to the Borrower and the other Obligors, that the Borrower execute and deliver this Agreement in order to more fully secure the payment and performance by the Borrower and the other Obligors of the Obligations.

NOW, THEREFORE, in consideration of the premises and in order to induce the Lender to make Advances, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Borrower and the Lender hereby agree as follows:

1. **Defined Terms.**

(a) Unless otherwise defined herein, the capitalized terms used herein which are defined in the Promissory Note or in that certain Security Agreement (the "Security Agreement") of even date herewith between the Obligors and the Lender, shall have the respective meanings specified in the Promissory Note or the Security Agreement, as the case may be; provided, however, that the term "Event of Default" as used herein shall have the meaning specified in the Security Agreement.

(b) The words "hereof," "herein" and "hereunder" and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section and schedule references are to this Agreement unless otherwise specified.

(c) All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural, and vice versa unless otherwise specified.

2. **Security Interest in Trademarks.** To secure the complete and timely payment, performance and satisfaction of all of the Obligations, Borrower hereby grants to the Lender, a security interest in, as and by way of a mortgage, with power of sale to the extent permitted by applicable law, all of Borrower's now owned or existing and hereafter acquired or arising:

(i) trademarks, registered trademarks and trademark applications, trade names, trade styles, service marks, registered service marks and service mark applications including, without limitation, the registered trademarks, trademark applications, registered service marks, service mark applications and unregistered trademarks listed on Schedule A attached hereto and made a part hereof, and (a) all renewals thereof, (b) all accounts receivable, income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (c) the right to sue for past, present and future infringements and dilutions thereof, and (d) all of Borrower's rights corresponding thereto throughout the world (all of the foregoing trademarks, registered trademarks, trademark applications, trade names, trade styles, service marks, registered service marks and service mark applications, together with the items described in clauses (a)-(d) in this paragraph 2(i), being sometimes hereinafter individually and/or collectively referred to as the "Trademarks");

(ii) the goodwill of Borrower's business connected with and symbolized by the Trademarks; and

(iii) license agreements with any other party in connection with any Trademarks or such other party's trademarks, registered trademarks and trademark applications, trade names, service marks, registered service marks and service mark applications, whether Borrower is a licensor or licensee under any such license agreement, including, but not limited to, the license agreements listed on Schedule B attached hereto and made a part hereof, and the right upon the occurrence and during the continuance of an Event of Default to use the foregoing in connection with the enforcement of the Lender's rights under the Loan Documents (all of the foregoing being hereinafter referred to collectively as the "Licenses"). Notwithstanding the foregoing provisions of this Section 2, the Licenses shall not include any license agreement which by its terms prohibits the grant of the security interest contemplated by this Agreement.

3. **Restrictions on Future Agreements.** Borrower will not, without the Lender's prior written consent, enter into any agreement, including, without limitation, any license agreement, or other agreement which is inconsistent with this Agreement, and Borrower further agrees that it will not take any action, and will use its best efforts not to permit any action to be taken by others subject to its control, including licensees, or fail to take any action, such as the timely filing of maintenance documents and fees, which would in any material respect affect the validity or enforceability of the rights transferred to the Lender under this Agreement or the rights associated with those Trademarks which are necessary or desirable in the operation of Borrower's business.

4. **New Trademarks.** Borrower represents and warrants that the Trademarks and Licenses listed on Schedules A and B respectively, include all of the trademarks, trademark registrations, trademark applications, trade names, trade styles, service marks, service mark registrations, service mark applications and license agreements now owned or held by Borrower. Notwithstanding the generality of the foregoing, Borrower further represents and warrants (i) that the Trademarks listed on Schedule A are owned by Borrower free and clear of any liens or

encumbrances (other than liens and encumbrances granted to the agent and lenders under the Credit Agreement) and all registrations therefor are valid, subsisting and enforceable and all applications therefor are in good standing and (ii) that the Licenses listed on Schedule B are owned by Borrower free and clear of any liens and encumbrances (other than liens and encumbrances granted to the agent and lenders under the Credit Agreement) and are in full force and effect. Except as stated on Schedule A Borrower further represents and warrants that there are no pending lawsuits or other proceedings with respect to the Trademarks, that there have been no claims or threatened claims of infringement or dilution with respect to the Trademarks and that there has been no breach or threatened breach with respect to the Licenses. If, prior to the termination of this Agreement, Borrower shall (i) create or obtain rights to any new trademarks, trademark registrations, trademark applications, trade names, trade styles, service marks, service mark registrations, service mark applications or license agreements, or (ii) become entitled to the benefit of any trademark, trademark registration, trademark application, trade name, service mark, service mark registration or service mark application, the provisions of Section 2 shall automatically apply thereto and Borrower shall give to the Lender prompt written notice thereof. Regardless of whether or not such notice from Borrower has been given or received, Borrower hereby authorizes the Lender to modify this Agreement by (i) amending Schedules A or B as the case may be, to include any future trademarks, trademark registrations, trademark applications, trade names, trade styles, service marks, service mark applications and license agreements that are Trademarks or Licenses under Section 2 or under this Section 4 and (ii) filing, in addition to and not in substitution for, this Agreement, a duplicate original of this Agreement containing on Schedules A or B thereto, as the case may be, such future trade marks, trademark applications, trade names, trade styles, service marks, service mark applications and license agreements which are Trademarks or Licenses under Section 2 or this Section 4 and to take any action Lender otherwise deems appropriate to perfect or maintain the rights and interests of the Lender under this Agreement with respect to such Trademarks and Licenses. Lender agrees to provide Borrower notice after taking such action but the failure to do so shall not impair any rights of Lender. Borrower hereby irrevocably appoints the Lender as Borrower's attorney-in-fact, with full authority in the place and stead of Borrower and in the name of Borrower or otherwise to carry out the acts described above. Borrower hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until this Agreement shall have been terminated pursuant to Section 6.

5. **Royalties.** Borrower hereby agrees that the use by the Lender of the Trademarks and Licenses as authorized hereunder shall be co-extensive with Borrower's rights thereunder and with respect thereto and without any liability for royalties or other related charges from the Lender to Borrower or anyone.

6. **Nature and Continuation of the Lender's Security Interest.** This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Trademarks and Licenses and shall remain in full force and effect until the Obligations have been paid in full.

7. **Right to Inspect; Further Assignments and Security Interests.** The Lender shall have the right, at any reasonable time and from time to time, to inspect Borrower's premises and to examine Borrower's books, records and operations relating to the Trademarks,

including, without limitation, Borrower's quality control processes; provided, that in conducting such inspections and examinations, the Lender shall use its best efforts not to disturb unnecessarily the conduct of Borrower's ordinary business operations. From and after the occurrence of an Event of Default, Borrower agrees that the Lender or a conservator appointed by the Lender, shall have the right to establish such reasonable additional product quality controls as the Lender or such conservator, in its sole judgment, may deem necessary or desirable to assure maintenance of the quality of products produced or sold by Borrower under the Trademarks. Borrower agrees (i) not to sell or assign its interests in, or grant any material license under, the Trademarks without the prior written consent of the Lender, (ii) to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with the quality of said products as of the date hereof, and (iii) not to reduce the quality of such products in any material respect without the prior written consent of the Lender, which consent shall not be unreasonably withheld.

8. **Duties of the Borrower.** Borrower shall have the duty (i) to prosecute diligently any trademark application or service mark application that is part of the Trademarks pending as of the date hereof or thereafter until the termination of this Agreement, (ii) to make applications for trademarks and service marks as Borrower deems appropriate, and (iii) to preserve and maintain all of Borrower's rights in the trademark applications, service mark applications and trademark registrations and service mark registrations that are part of the Trademarks and Licenses. Any expenses incurred in connection with the foregoing shall be borne by the Borrower. Borrower shall not abandon any trademark or service mark which is the subject of a registered trademark, service mark or application therefor and which is or shall be necessary or economically desirable in the operation of Borrower's business. Borrower agrees to retain an experienced trademark attorney reasonably acceptable to the Lender for the filing and prosecution of all such applications and other proceedings which are material to the business of Borrower and Borrower's current counsel is so acceptable for such purposes at this time. The Lender shall not have any duty with respect to the Trademarks. Without limiting the generality of the foregoing, the Lender shall not be under any obligation to take any steps necessary to preserve rights in the Trademarks and Licenses against any other parties, but may do so at its option during the continuance of an Event of Default, and all reasonable expenses incurred in connection therewith shall be for the sole account of Borrower and added to the Obligations secured hereby. Any recovery from such action taken pursuant to Section 9 shall be credited to Borrower with respect to the Obligations secured hereby but only after reimbursement of all of Lender's reasonable costs and expenses.

9. **The Lender's Right to Sue.** From and after the occurrence and during the continuance of an Event of Default, the Lender shall have the right, but shall not be obligated, to bring suit or take any other action to enforce the Trademarks and Licenses and, if the Lender shall commence any such suit or take any such action, the Borrower shall, at the request of the Lender, do any and all lawful acts and execute any and all proper documents required by the Lender in aid of such enforcement. Borrower shall, upon demand, promptly reimburse and indemnify the Lender for all costs and reasonable expenses incurred by the Lender in the exercise of its rights under this Section 9 (including, without limitation, all attorneys' and paralegals' fees). If, for any reason whatsoever, the Lender is not reimbursed with respect to the costs and expenses referred to in the preceding sentence, such costs and expenses shall be added to the Obligations secured hereby.

10. **Waivers.** No course of dealing between Borrower and the Lender, and no failure to exercise or delay in exercising on the part of the Lender any right, power or privilege hereunder or under the Loan Documents shall operate as a waiver of any of the Lender's rights, powers or privileges. No single or partial exercise of any right, power or privilege hereunder or under the Loan Documents shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

11. **The Lender's Exercise of Rights and Remedies upon Default.** Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence and during the continuance of an Event of Default, the Lender may exercise any of the rights and remedies provided in this Agreement, the Loan Documents, or any other agreement executed in connection therewith. Without limiting the generality of the foregoing, Borrower acknowledges and agrees that (i) the Trademarks and Licenses comprise a portion of the Collateral and the Lender shall have the right to exercise its rights under the Loan Documents with respect to the Trademarks and Licenses to the same extent as with respect to all other items of Collateral described therein, and (ii) from and after the occurrence and during the continuance of an Event of Default, the Lender or its nominee may use the Trademarks and Licenses to complete the manufacture of, assemble, package, distribute, prepare for sale and sell the Inventory, or otherwise in connection with the conduct of Borrower's business.

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

13. **Modification.** This Agreement cannot be altered, amended or modified in any way, except as specifically provided in Sections 2 and 4 hereof or by a writing signed by the parties hereto.

14. **Cumulative Remedies; Power of Attorney.** All of the Lender's rights and remedies with respect to the Trademarks and Licenses, whether established hereby, by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently. Borrower hereby irrevocably appoints the Lender as Borrower's attorney-in-fact, with full authority in the place and stead of Borrower and in the name of Borrower or otherwise to carry out the acts described below. Upon the occurrence and during the continuance of an Event of Default and the giving by the Lender of written notice to the Borrower of the Lender's intention to enforce its rights and claims against Borrower, Borrower hereby authorizes the Lender to, in its sole discretion, (i) endorse Borrower's name on all applications, documents, papers and instruments necessary or desirable for the Lender in the use, maintenance or transfer of the Trademarks and the Licenses, (ii) take any other actions with respect to the Trademarks and the Licenses as the Lender deems is in its best interest, (iii) grant or issue any exclusive or nonexclusive license under the Trademarks to anyone on commercially reasonable terms, and (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone on commercially reasonable terms. The Lender shall take no action pursuant to subsection (i), (ii), (iii) or (iv) of this Section 14 without taking like action with respect to the entire goodwill of Borrower's business connected with the use of, and symbolized by, such Trademarks. Borrower

hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until this Agreement shall have been terminated pursuant to Section 6. Borrower acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of the Lender under the Loan Documents, but rather is intended to facilitate the exercise of such rights and remedies. The Lender shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks may be located or deemed located.

15. **Binding; Effect Benefits.** This Agreement shall be binding upon Borrower and its respective successors and assigns, and shall inure to the benefit of the Lender and its nominees, successors and assigns. Borrower's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession of or for Borrower; provided, however that Borrower shall not voluntarily assign its obligations hereunder without the prior written consent of the Lender.

16. **Governing Law.** This Agreement shall be governed by, construed and interpreted in accordance with the internal law (as distinguished from the conflicts of law rules) of the State of New York.

17. **Notices.** All notices or other communications hereunder shall be given in the manner and to the addresses set forth in the Security Agreement.

18. **Section Headings.** The section headings herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.

19. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

20. **Jurisdiction.** Any legal action, suit or proceeding with respect to this Agreement or any document related thereto may be brought in the courts of the State of New York or the United States of America for the Southern District of New York, and appellate courts thereof, and, by execution and delivery of this Agreement, the Borrower hereby accepts for itself and in respect of its property, generally and unconditionally, the jurisdiction of the aforesaid courts. The Borrower hereby irrevocably waives any objection, including, without limitation, any objection to the laying of venue or based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any such action, suit or proceeding in such respective jurisdictions and consents to the granting of such legal or equitable relief as is deemed appropriate by the court.

21. **Service of Process.** The Borrower irrevocably consents to the service of process of any of the aforesaid courts in any such action, suit or proceeding by the mailing of copies thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Borrower at its address provided in the Security Agreement, such service to

become effective when received or 10 days after such mailing, whichever first occurs. Nothing contained herein shall affect the right of Lender to serve process in any other manner permitted by law or commence legal proceedings or otherwise proceed against the Borrower or any property of the Borrower in any other jurisdiction.

22. **Waiver of Jury Trial**. THE BORROWER AND (BY ITS ACCEPTANCE OF THE BENEFITS OF THIS AGREEMENT) THE LENDER WAIVE ANY RIGHT THEY MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, VERBAL OR WRITTEN STATEMENT OR OTHER ACTION OF THE PARTIES HERETO.

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

BORROWER:

IMAGYN MEDICAL, INC.

By: _____

Name:

Title:

LENDER:

CREDIT SUISSE FIRST BOSTON
MANAGEMENT CORPORATION

By: _____

Name:

Title:

Trademarks: Imagyn Medical, Inc.

Schedule A
Trademarks

United States Registered Trademarks owned by: Imagyn Medical, Inc.

<u>Mark</u>	<u>Registration No.</u>	<u>Ref.</u>	<u>Issue Date</u>
IMAGYN & Logo	1,872,290	748	10-Jan-05
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OVATION	2,214,992	752	29-Dec-04

Trademarks Applications

None.

Schedule B
Trademark License Agreements

None.