

12-31-2003



12/29/03

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

RECORDATION FORM COVER SHEET TRADEMARKS ONLY

DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

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

1. Name of conveying party(ies):

GYRUS ENT L.L.C.

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

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

2. Name and address of receiving party(ies)

Name: THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND

Internal

Address:

Street Address: 38 Threadneedle Street London EC2P 2EH, United Kingdom City: State: Zip:

- Individual(s) citizenship, Association, General Partnership, Limited Partnership, Corporation-State, Other Bank

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: September 30, 2003

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

A. Trademark Application No.(s) See attached

B. Trademark Registration No.(s) See attached

Additional number(s) attached Yes No

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

Name: Andrea M. Bond

Internal Address: Briggs and Morgan, P.A.

2200 IDS Center

Street Address: 80 South Eighth Street

City: Minneapolis State: MN Zip: 55402

6. Total number of applications and registrations involved: 30

7. Total fee (37 CFR 3.41): \$ 765.00

- Enclosed, Authorized to be charged to deposit account

8. Deposit account number:

023732

DO NOT USE THIS SPACE

9. Signature.

Mary E. Johnston

Name of Person Signing

Signature

December 19, 2003

Date

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

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

12/31/2003 6TON11 00000009 2731473

01 FC:8521 02 FC:8522

40.00 OP 725.00 OP

US TRADEMARK REGISTRATIONS AND APPLICATIONS

Mark	U.S. Registration/ Serial No.	Reg Date
DiEGO	2731473	07/01/03
DIEGO (LOGO)	76/406060	
DURAVIEW	2422093	01/16/01
HEMOSTATIX	2128414	01/13/98
HYDRACLEAR	2317218	02/08/00
HYDROCELL	2188065	09/08/98
HYDROXYLVENT	2110401	11/04/97
MICRON	2105422	10/14/97
MICRON	2667009	12/24/02
OTOVIEW	2015764	11/12/96
PLASTI-PORE	2037227	02/11/97
PORP	2084020	07/29/97
POSIGATOR	2037240	02/11/97
REPAIR EXPRESS	1908825	08/01/95
SET-OP	1782553	07/20/93
TILT-TOP	2256206	06/29/99
TOPR	1640917	04/09/91
VOCOM	1889207	04/11/95
SMART	2690684	02/25/03
SOMNUS	2206753	12/01/98
SOMNUS	2285512	10/12/99
SOMNOPLASTY	2271303	08/24/99
SOMNOPLASTY	2316068	02/08/00
SOMNOPLASTY	2367751	07/18/00
PRESERVE/CONTROL/ENHANCE	76/410422	
CHART-STIK	78/233063	
PACIFIC	2586332	06/25/02
CLINICAM	76/150745	
DRUMSTICK	78/046005	
HAPEX	2079674	07/15/97

TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (the "Security Agreement") made as of this 30th day of September, 2003, by GYRUS ENT L.L.C. (formerly known as ENT L.L.C.), a Delaware limited liability company ("Borrower") in favor of THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND with an office at 38 Threadneedle Street, London EC2P 2EH, United Kingdom ("Lender"):

WITNESSETH

WHEREAS, Borrower is party to a letter agreement dated June 27, 2001 and amended October 15, 2002 among Borrower, certain affiliates of Borrower, and Lender (as it may be amended from time to time, the "Revolving Loan Letter") and a Security Agreement dated June 27, 2001 by Borrower in favor of Lender (as it may be amended from time to time, the "Security Agreement"), and other related loan documents (collectively with the Revolving Loan Letter and the Security Agreement, and as each such other document may be amended from time to time, the "Financing Agreements"); and

WHEREAS, the Financing Agreements provide (i) for Lender from time to time to extend credit to or for the account of Borrower and certain of its affiliates and (ii) for the grant by Borrower to Lender of a security interest in certain of Borrower's assets, including, without limitation, its trademarks and trademark applications, to secure the Obligations (as defined in the Security Agreement);

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Borrower agrees as follows:

1. Incorporation of Financing Agreements. The Financing Agreements and the terms and provisions thereof are hereby incorporated herein in their entirety. All capitalized terms not otherwise defined in this Agreement shall have the same meanings in this Agreement as in the Revolving Loan Letter.

2. Grant and Reaffirmation of Grant of Security Interests. To secure the complete and timely payment and satisfaction of the Obligations, Borrower hereby grants to Lender, and hereby reaffirms its prior grant pursuant to the Financing Agreements of, a continuing security interest in (a) Borrower's entire right, title and interest in and to all of its now owned or existing and hereafter acquired or arising trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other business identifiers, prints and labels on which any of the foregoing have appeared or appear, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, the trademarks and applications listed on Schedule A attached hereto and made a part hereof and the trademarks, and renewals thereof, and (b) all income, royalties, damages and payments now or hereafter due and/or payable under or with respect to any of the foregoing, including, without limitation, damages and payments for past, present and future infringements of any of the foregoing (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Trademarks"); all rights corresponding to any

of the foregoing throughout the world and the goodwill of the Borrower's business connected with the use of and symbolized by the Trademarks.

3. Warranties and Representations. Borrower warrants and represents to Lender that:

(i) no registered Trademark listed in Exhibit A (including amended versions) has been adjudged invalid or unenforceable by a court of competent jurisdiction nor has any such Trademark been cancelled, in whole or in part, and each such Trademark is presently subsisting;

(ii) Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each registered Trademark listed in Exhibit A, free and clear of any liens, charges and encumbrances, including without limitation, covenants by Borrower not to sue third persons, except for liens permitted by the Financing Agreements;

(iii) Borrower has no notice of any suits or actions commenced or threatened with reference to any Trademark, except as disclosed in the Revolving Loan Letter and related schedules thereto; and

(iv) Borrower has the unqualified right to execute and deliver this Security Agreement and perform its terms.

4. Restrictions on Future Agreements. Borrower agrees that until the Obligations shall have been satisfied in full and the Financing Agreements shall have been terminated, Borrower shall not, without the prior written consent of Lender, sell or assign its interest in any material Trademark or enter into any other agreement with respect to any Trademark which would affect the validity or enforcement of the rights transferred to Lender under this Security Agreement.

5. New Trademarks. Borrower represents and warrants that, based on a diligent investigation by Borrower, the Trademarks listed on Schedule A constitute all of the U.S. registered Trademarks and U.S. applications for registration of Trademarks now owned by Borrower. If, before the Obligations shall have been satisfied in full or before the Financing Agreements have been terminated, Borrower shall (i) become aware of any existing registered Trademarks of which Borrower has not previously informed Lender, or (ii) become entitled to the benefit of any registered Trademarks, which benefit is not in existence on the date hereof, the provisions of this Security Agreement shall automatically apply thereto and Borrower shall give to Lender prompt written notice thereof. Borrower hereby authorizes Lender to modify this Security Agreement by amending Schedule A to include any such Trademarks. To the extent any new trademarks are acquired and subject to an intent to use application, Lender agrees that its interest therein shall not be viewed as ownership of title or any other interest that is inconsistent with the assignability restrictions of 15 USC Section 1060(a)(1).

6. Term. The term of this Security Agreement shall extend until the payment in full of the Obligations and the termination of the Financing Agreements. Borrower agrees that upon the occurrence of an Event of Default, the use by Lender (consistent with its role and rights

as a secured party) of all Trademarks shall be without any liability for royalties or other related charges from Lender to Borrower.

7. Product Quality. Borrower agrees to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with commercially reasonable business practices. After the occurrence of an Event of Default that is continuing, Borrower agrees that Lender, or a conservator appointed by Lender, shall have the right to establish such additional product quality controls as Lender, or said conservator, in its commercially reasonable judgment, may deem necessary to assure maintenance of the quality of products sold by Borrower under the Trademarks.

8. Release of Security Agreement. This Security Agreement is made for collateral purposes only and effects no present transfer of title as to any Trademarks. Upon payment in full of Borrower's Obligations and termination of the Financing Agreements, Lender shall take such actions as may be necessary or proper to terminate the security interests created hereby and pursuant to the Financing Agreements.

9. Expenses. All expenses incurred in connection with the performance of any of the agreements set forth herein shall be borne by Borrower. All fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and legal expenses, incurred by Lender in connection with the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, reasonable counsel fees, maintenance fees, encumbrances or otherwise in protecting, maintaining or preserving the Trademarks or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks shall be borne by and paid by Borrower and until paid shall constitute Obligations.

10. Duties of Borrower. Borrower shall have the duty (i) to file and prosecute with commercially reasonable diligence any trademark applications pending as of the date hereof or hereafter until Borrower's Obligations shall have been paid in full and the Financing Agreements have been terminated, (ii) to preserve and maintain all rights in the Trademarks, as commercially reasonable and (iii) to ensure that the Trademarks are and remain enforceable, as commercially reasonable. Any expenses incurred in connection with the Obligations under this Section 10 shall be borne by Borrower. For the avoidance of doubt, Borrower may permit Trademarks having no material commercial value to lapse or become abandoned.

11. Lender's Right to Sue. After the occurrence of an Event of Default that is continuing, Lender shall have the right, but shall in no way be obligated, to bring suit in its own name, or in the name of Lender, to enforce the Trademarks and, if Lender shall commence any such suit, Borrower shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents reasonably required by Lender in aid of such enforcement and Borrower shall promptly, upon demand, reimburse and indemnify Lender for all costs and expenses incurred by Lender in the exercise of its rights under this Section 11.

12. Waivers. No course of dealing between Borrower and Lender, nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or privilege hereunder or under the Financing Agreements shall operate as a waiver thereof; nor

shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

13. Severability. The provisions of this Security 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 Security Agreement in any jurisdiction.

14. Modification. This Security Agreement cannot be altered, amended or modified in any way, except as specifically provided in Section 5 hereof or by a writing signed by the parties hereto.

15. Cumulative Remedies; Power of Attorney; Effect on Financing Agreements. All of Lender's rights and remedies with respect to the Trademarks, whether established hereby or by the Financing Agreements, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Borrower hereby authorizes Lender after the occurrence of an Event of Default that is continuing, to make, constitute and appoint any officer or agent of Lender as Lender may select, in its sole discretion, as Borrower's true and lawful attorney-in-fact, with power to (i) endorse Borrower's name on all applications, documents, papers and instruments necessary or desirable for Lender in the use of the Trademarks or (ii) take any other actions with respect to the Trademarks as Lender deems to be in the best interest of Lender, or (iii) grant or issue any exclusive or non-exclusive license under the Trademarks to anyone, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone. Borrower hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until the Obligations shall have been paid in full and the Financing Agreements have been terminated. Borrower acknowledges and agrees that this Security Agreement is not intended to limit or restrict in any way the rights and remedies of Lender under the Financing Agreements but rather is intended to facilitate the exercise of such rights and remedies. Lender shall have, in addition to all other rights and remedies given it by the terms of this Security Agreement and the Financing Agreements, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in Minnesota.

16. Binding Effect; Benefits. This Security Agreement shall be binding upon Borrower and its respective successors and assigns, and shall inure to the benefit of Lender, its successors, nominees and assigns.

17. Governing Law. This Security Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota and applicable federal law.


18. Headings. Paragraph headings used herein are for convenience only and shall not modify the provisions which they precede.

19. Further Assurances. Borrower agrees to execute and deliver such further agreements, instruments and documents, and to perform such further acts, as Lender shall reasonably request from time to time in order to carry out the purpose of this Security Agreement and agreements set forth herein.

20. Survival of Representations. All representations and warranties of Borrower contained in this Security Agreement shall survive the execution and delivery of this Security Agreement and shall be remade on the date of each borrowing under the Financing Agreements.


IN WITNESS WHEREOF, Borrower has duly executed this Security Agreement as of the date first written above.

GYRUS ENT L.L.C.

By: 
Its: Authorized Signatory

Agreed and Accepted
As of the Date First Written Above

The Governor and Company
Of the Bank of Scotland

By: 
Its: _____

SCHEDULE A

US TRADEMARK REGISTRATIONS AND APPLICATIONS

Mark	U.S. Registration/ Serial No.	Reg Date
DIEGO	2731473	07/01/03
DIEGO (LOGO)	76/406060	
DURAVIEW	2422093	01/16/01
HEMOSTATIX	2128414	01/13/98
HYDRACLEAR	2317218	02/08/00
HYDROCELL	2188065	09/08/98
HYDROXYLVENT	2110401	11/04/97
MICRON	2105422	10/14/97
MICRON	2667009	12/24/02
OTOVIEW	2015764	11/12/96
PLASTI-PORE	2037227	02/11/97
PORP	2084020	07/29/97
POSIGATOR	2037240	02/11/97
REPAIR EXPRESS	1908825	08/01/95
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DRUMSTICK	78/046005	
HAPEX	2079674	07/15/97

NON - US TRADEMARK REGISTRATIONS AND APPLICATIONS

Mark	Country	Registration/ Serial No.	Reg Date
DIEGO	EUROPE	2815272	
DIEGO	JAPAN	4635671	01/10/03
DIEGO (LOGO)	EUROPE	292160	
DIEGO (LOGO)	JAPAN	2002-092732	

NOTICE
OF
GRANT OF SECURITY INTEREST
IN
TRADEMARKS

United States Patent and Trademark Office

Ladies and Gentlemen:

Please be advised that pursuant to the Trademark Security Agreement dated as of September 30, 2003 (as the same may be amended, modified, extended or restated from time to time, the "Security Agreement") from Gyrus ENT L.L.C., a Delaware limited liability company ("Assignor"), in favor of The Governor and Company of the Bank of Scotland ("Assignee"), Assignor has granted in favor of Assignee a continuing security interest in and lien upon the trademarks and the registrations and applications for registration thereof identified on Exhibit A.

Assignor and Assignee hereby acknowledge and agree that the security interest in the trademarks, registrations and applications (i) may only be terminated in accordance with the terms of the Security Agreement and (ii) is not to be construed as an assignment of any trademark.

Very truly yours,

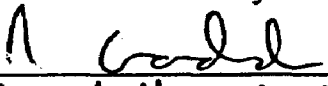
Dated: 12 December, 2003

The Governor and Company of the
Bank of Scotland

By 
Its _____

Acknowledged and Accepted:

Gyrus ENT L.L.C.,
a Delaware limited liability company.

By 
Its Authorized Signatory

SCHEDULE A

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HAPEX	2079674	07/15/97

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