

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
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NATURE OF CONVEYANCE:	CA Court Judgment, Los Angeles Superior Ct. Case No. BC276958
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CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
Eurosurgical SA		06/23/2004	CORPORATION: FRANCE

RECEIVING PARTY DATA

Name:	Orthotec LLC
Street Address:	9595 Wilshire Blvd.
City:	Beverly Hills
State/Country:	CALIFORNIA
Postal Code:	90212
Entity Type:	LTD LIAB JT ST CO: DELAWARE

PROPERTY NUMBERS Total: 7

Property Type	Number	Word Mark
Serial Number:	78244542	ORIA ZENITH
Serial Number:	78377605	ALIS
Serial Number:	78157525	EUROSURGICAL
Serial Number:	76444638	
Serial Number:	76568102	EOVIA
Serial Number:	76462298	ORIA
Serial Number:	76189937	SPINE NETWORK GROUP OF COMPANIES

CORRESPONDENCE DATA

Fax Number: (800)864-4527
Correspondence will be sent via US Mail when the fax attempt is unsuccessful.
 Phone: 510-593-9442
 Email: omid@california.com
 Correspondent Name: Omid A. Mantashi
 Address Line 1: 360 Grand Avenue, Ste. 90
 Address Line 4: Oakland, CALIFORNIA 94610

OP \$190.00 78244542

NAME OF SUBMITTER:	Omid A. Mantashi
Signature:	/oam208226/
Date:	02/16/2005
Total Attachments: 8 source=Sup. Ct. Judgment#page1.tif source=Sup. Ct. Judgment#page2.tif source=Sup. Ct. Judgment#page3.tif source=Sup. Ct. Judgment#page4.tif source=Sup. Ct. Judgment#page5.tif source=Sup. Ct. Judgment#page6.tif source=Sup. Ct. Judgment#page7.tif source=Sup. Ct. Judgment#page8.tif	

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE 06/23/04

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE H. A. SMITH

DEPUTY CLERK

HONORABLE
6.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

N. AVALOS, C.A.

Deputy Sheriff

NONE

Reporter

BC276958

Plaintiff
Counsel

ORTHOTEC LLC
VS
EUROSURGICAL SA

Defendant
Counsel

NO APPEARANCES

NATURE OF PROCEEDINGS:

RULING ON SUBMITTED MATTER

TENTATIVE DECISION: COURT TRIAL OF EQUITABLE ISSUES

Preliminary rulings:

Eurosurgical's request that the court not consider the post-hearing letter of plaintiff's counsel dated June 7, 2004 is granted. The court has not considered it.

Orthotec has dismissed its fourth cause of action for an accounting.

Orthotec is not entitled to any relief under its tenth cause of action for violation of Business and Professions Code Sections 17200 et seq. The terms "unlawful," "unfair" and "fraudulent" are terms of art under Section 17200 and the evidence at trial does not justify a finding of any conduct to which those terms apply.

Orthotec's Equitable Remedies

Declaratory Relief

The Court makes the following findings:

Orthotec owns all the rights in the products subject to the Assignment Agreement (Exh. 44). "All rights"

MINUTES ENTERED 06/23/04 COUNTY CLERK

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Plaintiff
Counsel

NO APPEARANCES

ORTHOTEC LLC
VS
EUROSURGICAL SA

Defendant
Counsel

NATURE OF PROCEEDINGS:

includes patent rights. Assignment Agreement Paragraph C. The court declines Eurosururgical's invitation to make a more detailed finding of what rights conveyed by the Assignment Agreement Orthotec is entitled to and which it is not. The Assignment Agreement speaks for itself.

The jury found that Eurosururgical wrongfully terminated the Assignment Agreement by improperly exercising its option to reacquire the rights under Paragraph 12 of the Assignment Agreement. Orthotec's remedy at law, the damages awarded by the jury, is not adequate. Although the jury awarded Orthotec damages for the breach as of a certain date, those damages did not compensate Orthotec for the loss of the rights. Although Eurosururgical urges the court to make a contrary finding, the court cannot do so without speculation, in the absence of any instruction or even argument to the jury that their award should compensate Orthotec for its loss of the rights. The evidence, including without limitation the testimony of plaintiff's expert Robert Wunderlich, does not support such a finding. For this reason, awarding Orthotec the rights in addition to the damages awarded by the jury does not result in an inequitable double recovery.

Eurosururgical's reacquisition of the rights pursuant to Paragraph 12 of the Assignment Agreement was invalid.

Injunctive relief:

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NO APPEARANCES

ORTHOTEC LLC
VS
EUROSURGICAL SA

Defendant
Counsel

NATURE OF PROCEEDINGS:

- (1) Eurosurgical is ordered to assign to Orthotec all intellectual property rights in the products and their replacements in the territory, including without limitation patents.
- (2) Eurosurgical is prohibited from selling or marketing any of the products in the territory to anyone other than Orthotec.

Orthotec is entitled to specific performance of Paragraph 4(a)(ii) of the Assignment Agreement, which requires Eurosurgical to turn over to Orthotec all product plans and specifications.

The court rejects Eurosurgical's argument that Euro-surgical and Orthotec cannot possibly do business together in the future. There was considerable evidence of Eurosurgical's strong interest in marketing the products in the United States. It would thus behoove Eurosurgical to develop ways of working with Orthotec. In any event, any difficulty in doing business together should not deprive Orthotec of the rights under the Assignment Agreement, in light of the court's finding that Orthotec's remedy at law is inadequate.

Similarly, Orthotec should not be denied equitable relief based on an unclean hands theory. The evidence supports a finding that Orthotec's violation of the Partnership Agreement, for which the jury awarded

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ELECTRONIC RECORDING MONITOR

N. AVALOS, C.A.

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BC276958

Plaintiff
Counsel

ORTHOTEC LLC
VS
EUROSURGICAL SA

Defendant
Counsel

NO APPEARANCES

NATURE OF PROCEEDINGS:

Eurosurgical \$70,000 in damages, does not justify a finding that Orthotec had unclean hands.

Eurosurgical's Equitable Remedies

For the reasons stated above, the equitable relief sought by Eurosurgical in the fourth, fifth, seventh, twelfth and fourteenth causes of action of its first amended cross-complaint is denied. Eurosurgical's motions (1) to amend the seventh cause of action to conform to proof and (2) for directed verdict as to the tenth cause of action are denied.

The declaratory relief sought by Eurosurgical in its fifteenth cause of action is denied in part and granted in part:

- (1) The Assignment Agreement is not void ab initio for lack of consideration. The evidence established that Eurosurgical never accepted the ownership interest in Orthotec to which it was entitled under the Assignment Agreement. (For the same reason, Eurosurgical is not entitled to the accounting it requests in the seventh cause of action of its cross-complaint.)
- (2) Having found that Eurosurgical did not properly exercise its right to reacquire the rights under Paragraph 12 of the Assignment Agreement, the court cannot grant Eurosurgical's request

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Deputy Sheriff

NONE

Reporter

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Plaintiff
Counsel

ORTHOTEC LLC
VS

NO APPEARANCES

EUROSURGICAL SA

Defendant
Counsel

NATURE OF PROCEEDINGS:

for a declaration to the contrary.

- (3) EuroSurgical has the exclusive right to manufacture the products for 36 months after Orthotec's termination of the Partnership Agreement.

Plaintiff's counsel is ordered to prepare a proposed statement of decision consistent with this tentative decision and a proposed judgment that includes the jury's verdict.

Clerk to give notice of the Court's ruling.

**CLERK'S CERTIFICATE OF MAILING/
NOTICE OF ENTRY OF ORDER**

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 06-22-04 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: 06-22-04

MINUTES ENTERED 06/23/04 COUNTY CLERK
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/23/04

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Deputy Sheriff

NONE

Reporter

BC276958

Plaintiff
Counsel

ORTHOTEC LLC
VS
EUROSURGICAL SA

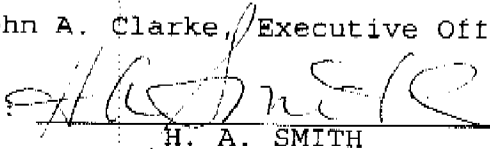
Defendant
Counsel

NO APPEARANCES

NATURE OF PROCEEDINGS:

John A. Clarke, Executive Officer/Clerk

By:



H. A. SMITH

Peter W. Ross
BROWNE & WOODS
450 N. Roxbury Dr., 7th Floor
Beverly Hills, CA 90210

Michael J. Perry, Esq.
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Michael R. Newman
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865 S. Figueroa St., Suite 2300
Los Angeles, CA 90017-2565

MINUTES ENTERED
06/23/04
COUNTY CLERK

ORIGINAL FILED

JUN 23 2004

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

ORTHOTEC, LLC

CASE NUMBER

BC276958

vs.

Plaintiff(s)

EUROSURGICAL, S.A.

Defendant(s)

CERTIFICATE
OF
MAILING

I, JOHN A. CLARKE, Executive Officer/Clerk of the Superior Court of the State of California for the County of Los Angeles, and not a party to the action, hereby certify that on June 23, 2004, I mailed copies of the court's tentative decision in the within action to all parties who appeared at the trial by depositing

true copies of the minute order of June 23, 2004, Department 37 of the Superior Court of the State of California, County of Los Angeles,

true copies of the written statement of tentative decision filed herein _____ 19__

true copies of the memorandum of decision filed by the court on _____ 19__

enclosed in a sealed envelope with postage thereon fully prepaid in the United States Post Office Mail Box at 111 North Hill Street, Los Angeles California, addressed as follows:

Peter W. Ross
BROWNE & WOODS
450 N. Roxbury Dr., 7th Floor
Beverly Hills, CA 90210

Michael J. Perry
330 Washington Blvd., Suite 400
Marina del Rey, CA 90292

Michael R. Newman
Jeffery J. Daar
DAAR & NEWMAN
865 S. Figueroa St., Suite 2300
Los Angeles, CA 90017-2565

JOHN A. CLARKE,
Executive Officer/Clerk
of the Superior Court

Dated: **JUN 23 2004**

By H.A. SMITH Deputy

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action; my business address is 1511 West Beverly Blvd., Los Angeles, CA 90026.

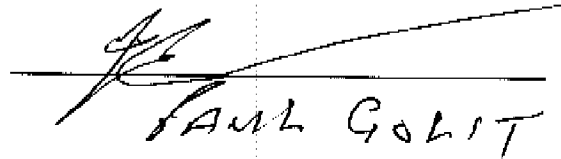
On August 2, 2004, I personally served the foregoing documents described as: PROPOSED JUDGMENT on interested party in this action by hand delivery of said documents in sealed envelopes to:

Michael R. Newman, Esq.
Daar & Newman
865 S. Figueroa Street, Suite 2300
Los Angeles, CA 90017 2565

Curtis A. Cole, Esq.
THELIN REID & PRIEST LLP
333 South Hope Street, 29th Floor
Los Angeles, California 90071

Executed on August 2, 2004, at Los Angeles, CA.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.


PAUL GOLIT