

10-19-2006

Form PTO-1594 (Rev. 07/05)
OMB Collection 0651-0027 (exp. 6/30/2008)



DEPARTMENT OF COMMERCE
Patent and Trademark Office

10-17-06

RECORD/
TRADEMARKS ONLY
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To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies):
BEIERSDORF AG (Aktiengesellschaft)

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

Citizenship (see guidelines) GERMANY

Additional names of conveying parties attached? Yes No

2. Name and address of receiving party(ies) Yes
 No

Additional names, addresses, or citizenship attached?

Name: KCI NEW TECHNOLOGIES, INC.
Internal _____
Address: _____
Street Address: 8023 VANTAGE DR.
City: SAN ANTONIO
State: TEXAS
Country: U.S.A. Zip: 78230

Association Citizenship _____
 General Partnership Citizenship _____
 Limited Partnership Citizenship _____
 Corporation Citizenship _____
 Other _____ Citizenship _____

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)

3. Nature of conveyance /Execution Date(s) :

Execution Date(s) NOVEMBER 6, 1998

Assignment Merger
 Security Agreement Change of Name
 Other _____

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s) _____
B. Trademark Registration No.(s) 1,034,556

Additional sheet(s) attached? Yes No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):
EXTREMITY PUMP (Reg. Date: February 24, 1976)

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

Name: Julie A. Gillespie
Internal Address: _____
Street Address: 8023 Vantage Dr
City: San Antonio
State: Texas Zip: 78230
Phone Number: 210-255-4418
Fax Number: 210-255-6969
Email Address: julie.gillespie@kci1.com

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 40.00

Authorized to be charged by credit card
 Authorized to be charged to deposit account
 Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers _____
Expiration Date _____

b. Deposit Account Number 500326
Authorized User Name Kinetic Concepts, Inc.

9. Signature: Stephen D. Seidel 12 October 2006
Signature Date

Stephen D. Seidel
Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 34

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to: Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

10/18/2006 DBYRNE 00000005 500326 1034556

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TRADEMARK
REEL: 003412 FRAME: 0889

**TRADEMARK
PURCHASE AND ASSIGNMENT AGREEMENT**

This Trademark Purchase and Assignment Agreement (the "Agreement"), dated 6 November 1998, is by and between Beiersdorf AG, a German stock corporation ("Seller"); and KCI New Technologies, Inc., a Delaware corporation ("Buyer").

RECITALS

A. Simultaneously herewith Seller's indirect subsidiary, Beiersdorf-Jobst Inc., an Ohio corporation ("Jobst"), and Buyer are entering into that certain Asset Purchase Agreement (the "Asset Purchase Agreement"), whereby Jobst is selling certain assets and operations of Jobst in connection with the manufacture, assembly, marketing, sale, distribution and rental of athrombic and extremity pump products under certain trademarks (as defined in the Asset Purchase Agreement, the "Operations").

B. In conjunction therewith, Seller has agreed to sell and transfer to Buyer (i) all right, title, and interest in and to various trademarks relating to the Operations in the Territory (as defined in the Asset Purchase Agreement), and (ii) all of Seller's right, title, and interest in and to certain other inchoate trademark rights worldwide, if any, relating to the Operations, along with the goodwill associated with those marks, for a specified purchase price, all pursuant to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for goodwill and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, agree as follows.

ARTICLE I

Transfer and Sale; Interim License

1.1 **Transfer and Sale.** Subject to the terms and conditions set forth herein, at the Closing (as hereinafter defined) Seller shall irrevocably and finally sell, transfer, assign, and convey to Buyer, and Buyer shall purchase, acquire and accept, all right, title, and interest in and to those trademarks, service marks, designs, graphics, logos and symbols of Seller specified below, however characterized and whether or not registered or recorded (collectively herein, the "Pump Trademark Rights" or the "Source Identifiers"):

(a) **Pump Trademarks.** Those registrations in the Territory (as defined in the Asset Purchase Agreement) of the registered trademarks set forth on Exhibit A for (i) all product and

service classifications, and (ii) all subsequent registrations or uses of any of the foregoing (the "Pump Trademarks");

(b) Pump Applications. All applications for trademark registrations in the Territory set forth as Exhibit B hereto (the "Pump Applications");

(c) Inchoate Rights. Seller's right, if any, to claim other proprietary rights in and to any of the Source Identifiers listed on Exhibit A or Exhibit B in any jurisdiction outside the Territory, to the extent Seller or Jobst may have previously used such other Source Identifiers in such jurisdiction, although Buyer acknowledges that Seller has not registered or attempted to register such other Source Identifiers in such jurisdiction ("Inchoate Rights").

(d) Pump Claims. All right, title and interest in and to any and all claims and causes of action against any third party, including, without limitation, all causes of action for past infringement in regard to any of the Pump Trademark Rights or any license or contract in regard thereto (the "Pump Claims"); and

(e) Trade Dress. The color, design and appearance of the Products, but not including the Jobst Trademarks; and

(f) Pump Goodwill. The goodwill associated with the Pump Trademark Rights (the "Pump Goodwill").

The parties acknowledge and agree that their mutual intent is to transfer from Seller to Buyer all right, title and interest in and to the Pump Trademark Rights other than the Inchoate Rights, and all of Seller's right, title, and interest, if any, in and to the Inchoate Rights, in regard to products and services of all classes on a worldwide basis, including products and services in classes not yet utilized by Seller, and Seller covenants and agrees not to utilize or to register any trademarks or trade names for athrombic or extremity pumps that are the same as or confusingly similar to the Pump Trademarks or the Pump Applications, whether within or without the Territory. Except as set forth in Sections 7.1 and 7.2 hereof, nothing in this Section 1.1 shall be construed to require Seller to obtain any additional registration of any of the Pump Trademark Rights in any additional class or in any political jurisdiction within or without the Territory, or to amend any agreement previously reached with a third party in regard to the scope or use of any of the Pump Trademark Rights.

1.2 Exclusion from Transfer. Anything in Section 1.1 to the contrary notwithstanding, Seller and Buyer acknowledge and agree that Seller is not conveying, and Buyer is not acquiring, any right, title, or interest (other than certain license rights as licensee under the Interim License Agreement (as defined in the Asset Purchase Agreement) dated the First Closing Date (as defined in the Asset Purchase Agreement) between Seller and Buyer) in or to any trademarks, service marks, designs, graphics, logos, and symbols of Seller or any of its subsidiaries or affiliates, even if used in connection with the Operations, whether within or without the Territory, not listed or described on Exhibits A and B, including, without limitation, "Jobst," "Jobst Extremity Pump," the Jobst logo

and the Jobst trade dress for any product of Seller other than the Products, "Beiersdorf," BDF," "Beiersdorf-Jobst," the four-dot logo of Seller, or "Compriflow", or any registration or applications for registration of any of the same.

1.3 Delivery of Files. Simultaneously with the Closing, Seller will deliver to Buyer all of Seller's files, documents, and records (including, without limitation, physical and electronic copies thereof to the extent the same exist) in regard to the Pump Trademark Rights.

1.4 Covenant Not to Use. In consideration of the purchase by Buyer pursuant to this Agreement of the Pump Trademark Rights and goodwill associated therewith, Seller covenants and agrees, after the First Closing Date, (a) not to use any of the Pump Trademark Rights or Source Identifiers or other symbols that are the same as or confusingly similar therewith, or to register or apply for or maintain registration of any of the Pump Trademark Rights or any such same or confusingly similar marks in any political jurisdiction in the world; (b) not to grant to any third party the right or license to use or exploit any of the Pump Trademark Rights or any trademark or service mark which is the same or confusingly similar therewith; and (c) not to attack or challenge, in any judicial, administrative or other proceeding, the validity or enforceability of the Pump Trademark Rights or Buyer's right, title or interest therein and thereto.

ARTICLE II

Closing

2.1 Closing. The consummation of the transactions contemplated hereby (the "Closing") shall take place at the offices of Walter, Conston, Alexander & Green, P.C., 90 Park Avenue, New York, New York 10016 (or at such other place as the parties may agree in writing) at 10 o'clock a.m. local time on the same date as the First Closing (as defined in the Asset Purchase Agreement) under the Asset Purchase Agreement or on another date mutually designated in writing by Seller and Buyer.

2.2 Documentation. At the Closing Seller and Buyer will:

- (i) execute and deliver certain documents and instruments evidencing and accomplishing the transfer and sale and other transactions contemplated by this Agreement, including without limitation the Deed of Transfer substantially in the form of Exhibit C attached hereto; and
- (ii) subject to the next succeeding sentence irrevocably and finally assign, transfer and convey to Buyer all of Seller's right, title, and interest in and to those licenses (to the extent assignable or sublicensable) and other contracts which are assignable and which relate principally to the Pump Trademark Rights, as set forth on Schedule 2.2(ii) hereof (the "Pump Licenses and Contracts"), and Buyer will assume and accept such Pump Licenses and

Contracts and all rights and obligations of Seller thereunder, provided, however, Seller acknowledges and agrees that Buyer will assume no license, contract, or other agreement or obligation, or any liability thereunder or in regard thereto, in regard to the Pump Trademark Rights to the extent that the same are not set forth on the said Schedule 2.2(ii) or disclosed to and accepted by Buyer in writing prior to or on the First Closing Date.

To the extent that any license or other contract is only partly in regard to the Pump Trademark Rights, the parties hereto shall use their reasonable commercial efforts (which reasonable commercial efforts shall not be construed to require an out-of-pocket expenditure of either party in excess of One Thousand Dollars (\$1,000.00) for each arrangement) to arrange with the other party or parties to such license or other contract for a novation or amendment of the same to permit the same to be appropriately separated into distinct and separate documents and instruments, with Seller and Buyer, respectively, to be a party to the appropriate document or instrument. If such an arrangement cannot be reached with such third party, then Seller shall to the extent practicable sublicense such agreement or exercise the rights and obligations under the agreement in the interest of Buyer.

2.3 Further Action. Seller further covenants and agrees that, at the request of Buyer, and without further compensation to Seller beyond the charges provided in this Agreement, it will execute and deliver, and cause Jobst to execute and deliver, any additional documents and instruments which Buyer may reasonably request thereafter in order to carry out the purposes of this Agreement and the transactions contemplated hereby. To the extent Seller and Buyer are in agreement that such relevant instrument or document is appropriate, Seller will irrevocably appoint Buyer and any of its officers or agents as Seller's attorney-in-fact coupled with an interest to execute all instruments and documents and do in Seller's name all things described in this Section 2.3 (and all other things as Seller and Buyer shall mutually agree are necessary) to preserve and protect Buyer's rights in the Pump Trademark Rights.

ARTICLE III

Payment

In full and complete consideration of the transactions contemplated by this Agreement, Buyer shall at the Closing pay to Seller, by wire transfer in immediately available funds to the account of Seller as Seller has heretofore designated or may hereafter designate in writing, the sum of One Million U.S. Dollars (U.S.\$1,000,000.00) (the "Purchase Price").

ARTICLE IV

Representations and Warranties of Buyer

Buyer hereby represents and warrants as of the date hereof and as of the Closing as follows:

4.1 Buyer's Organization. Buyer is a corporation duly organized under the laws of Delaware and has the full corporate power and authority to enter into and perform this Agreement.

4.2 Authorization of Agreement. The execution, delivery, and performance of this Agreement by Buyer has been duly authorized by all necessary corporate action of Buyer, and this Agreement constitutes the valid and binding obligation of Buyer enforceable against it in accordance with its terms, except to the extent enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditor's rights in general and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

4.3 Consents of Third Parties. The execution, delivery and performance of this Agreement by Buyer will not

- (i) violate or conflict with the certificate of incorporation, by-laws, or other corporate documents of Buyer;
- (ii) conflict with, or result in a breach or termination of, or constitute a default under (whether with or without the giving of notice or lapse of time or both), or accelerate or permit the acceleration of the performance required by, any indenture, mortgage, lien, lease, agreement, commitment or other instrument or any order, judgment or decree, to which Buyer is a party or by which it or its properties are bound; or
- (iii) constitute a violation of any law, regulation, order, right, judgment, injunction or decree applicable to Buyer.

4.4 Litigation. There are no judicial or administrative actions, proceedings or investigations pending or, to Buyer's Knowledge (as hereinafter defined), threatened, that question the validity of this Agreement or any action taken or to be taken by Buyer in connection with this Agreement. There is no litigation or proceeding pending or, to Buyer's Knowledge, governmental investigation pending or, to Buyer's Knowledge, threatened, or any order, injunction or decree outstanding, against Buyer that, if adversely determined would have a material adverse effect upon Buyer's ability to perform its obligations under this Agreement.

ARTICLE V

Representations and Warranties of Seller

Seller hereby represents and warrants as of the date hereof and as of the Closing as follows:

5.1 Seller's Organization. Seller is a stock corporation duly organized and existing under the laws of the Federal Republic of Germany, and has full corporate power and authority to enter into and perform this Agreement.

5.2 Authorization of Agreement. The execution, delivery, and performance of this Agreement by Seller has been duly authorized by all necessary corporate action of Seller, and this Agreement constitutes the valid and binding obligation of Seller enforceable against it in accordance with its terms, except to the extent enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditor's rights in general and subject to general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

5.3 Consents of Third Parties. Except as set forth on Schedule 5.3 hereto, the execution, delivery and performance of this Agreement by Seller will not

- (i) violate or conflict with the charter documents of Seller;
- (ii) conflict with, or result in a breach or termination of, or constitute a default under (whether with or without the giving of notice or lapse of time or both), or accelerate or permit the acceleration of the performance required by, any indenture, mortgage, lien, lease, agreement, commitment or other instrument or any order, judgment or decree, to which Seller is a party or by which it or its properties are bound; or
- (iii) constitute a violation of any law, regulation, order, right, judgment, injunction or decree applicable to Seller.

5.4 Litigation. Except as set forth on Schedule 5.4 hereto or Schedule 4.14 of the Asset Purchase Agreement, there are no judicial or administrative actions (including, without limitation, final office actions), or proceedings, or, to Seller's Knowledge, investigations pending or, to Seller's Knowledge, threatened, which question the validity of this Agreement or action taken or to be taken by Seller in connection with this Agreement, or which could have an adverse effect on the Pump Trademark Rights other than the Inchoate Rights. There is no litigation, proceeding or governmental investigation pending or, to Seller's Knowledge threatened, or any order, injunction or decree outstanding, against Seller that, if adversely determined would have a material adverse effect upon Seller's ability to perform its obligations under this Agreement or upon the Operations.

5.5 Pump Trademarks. Except as disclosed on Schedule 5.5A and except as to the Inchoate Rights, Seller is the sole and exclusive owner in the Territory of all of the right, title and interest in and has the sole and exclusive right to use all of the Pump Trademark Rights, free and clear of any and all liens, claims, security interests, charges, options or encumbrances whatsoever, including, without limitation, pledges, assignments and licenses, as well as liens in favor of any federal, foreign, state or local government for nonpayment of taxes (collectively "Encumbrances"), and has the full power and authority to sell, assign, transfer and convey, and shall sell, assign, transfer and convey, such right, title, and interest in and to, and such sole and exclusive right to use, the Pump Trademark Rights to Buyer free and clear of any Encumbrances. Except as to the Inchoate Rights and except as set forth on Schedule 5.5.B, Seller and Jobst utilize the Pump Trademark Rights only in the Territory. Except as disclosed on Schedule 5.5C, Seller has not granted any outstanding licenses or other rights (including the rights of a registered user) in and to the Pump Trademark Rights, and Seller is not liable, nor has it made any contract or arrangement whereby it may become liable, to any person for any royalty or other compensation for the use of any of the Pump Trademark Rights in the Territory. Exhibits A and B accurately describe the status of all Pump Registrations and Pump Applications as of the date hereof, except as to any official action that may have already taken place but as to which Seller has not yet received notice.

5.6 Infringement. Except as set forth on Schedule 5.6A hereto and except as to the Inchoate Rights, to Seller's Knowledge the Pump Trademark Rights and the uses thereof do not infringe the rights of any person or party in the Territory, and, to Seller's Knowledge, except as set forth on Schedule 5.6B hereto, no person or party is infringing or threatening to infringe the Pump Trademark Rights anywhere in the Territory. Seller has not been charged with or charged others with infringement, unfair competition, or violation of rights with respect to the Pump Trademark Rights since 1 January 1996. Anything in this Section 5.6 to the contrary notwithstanding, Seller does not make the representations and warranties set forth in the first sentence of this Section 5.6 in regard to any country outside the Territory.

5.7 No Action. Except as set forth on Schedule 5.7 hereto, Seller has not taken any action or omitted to take any action which would adversely affect the validity of the Pump Trademark Rights in the Territory (other than the Inchoate Rights) or Seller's status as the sole and exclusive owner thereof in the Territory prior to the First Closing Date.

5.8 Tax Obligations Seller has filed or shall file within the time prescribed by law or regulations all tax returns or reports, and shall pay all taxes required by any jurisdiction or subdivision or agency thereof, in each case attributable to periods on or prior to the First Closing Date with respect to and to the extent of its ownership and/or use by it of the Pump Trademark Rights.

ARTICLE VI

Conditions to Closing

6.1 Buyer's Conditions. Buyer's obligation to consummate the transactions contemplated by this Agreement is subject to the satisfaction at or prior to the Closing of the following conditions precedent, provided, however, that Buyer may waive compliance with all or any of such conditions, or any portion thereof.

(a) Representations, Warranties and Covenants of Seller. The representations and warranties of Seller under Article V or elsewhere of this Agreement shall be true and correct as of the Closing, Seller shall be in compliance with all of its covenants or obligations under this Agreement as of the Closing, and Buyer shall receive at the Closing a certificate signed by an executive officer of Seller to such effect, provided, however, that Buyer may not fail to consummate the Closing by reason of a breach of representation or warranty or breach of covenant of Seller hereunder unless such breach has a material adverse effect on the Operations or materially and adversely affects Seller's right, title and interest in and to the Pump Trademark Rights other the Inchoate Rights.

(b) Closing Documents. Seller shall execute and deliver all documents and instruments evidencing and accomplishing the sale, transfer, assignment and conveyance of the Pump Trademark Rights, including without limitation recordable forms of assignments in all countries in the Territory.

(c) No Adverse Change. There shall have been no material adverse change in the status of Seller's legal or ownership rights in regard to any material aspect of the Pump Trademark Rights.

(d) Legal Action. As of the Closing there shall be no action or proceeding pending or threatened against Buyer, Seller or any affiliate of either in connection with the consummation of the transactions contemplated by this Agreement, any of the Closing documents or in connection with any material aspect of the Pump Trademark Rights.

6.2 Seller's Conditions. Seller's obligations to consummate the transactions contemplated by this Agreement is subject to the satisfaction at or prior to the Closing of the following conditions precedent, provided, however, that Seller may waive compliance with all or any of such conditions, or any portion thereof.

(a) Representations, Warranties and Covenants of Buyer. The representations and warranties of Buyer under Article IV or elsewhere of this Agreement shall be true and correct as of the Closing, Buyer shall be in compliance with all of its covenants or obligations under this Agreement as of the Closing, and Seller shall receive at the Closing a certificate signed by an executive officer of Buyer to such effect, provided, however, that Seller may not fail to consummate the Closing by reason of a breach of representation or warranty or breach of covenant of Buyer hereunder unless such breach materially and adversely affects Buyer's ability to complete the transactions contemplated by this Agreement.

(b) Payment of the Purchase Price. Buyer shall pay the Purchase Price in the manner provided in Article III.

(c) Closing Documents. Buyer shall execute and deliver all appropriate documents and instruments evidencing and accomplishing the transfer, sale, assignment and conveyance of the Pump Trademark Rights.

(d) Legal Action. As of the Closing there shall be no action or proceeding pending or threatened against Buyer, Seller or any affiliate of either in connection with the consummation of the transactions contemplated by this Agreement or any of the Closing documents.

ARTICLE VII

Interim Covenants

Seller and Buyer covenant and agree as follows in regard to the period from the date hereof to the earlier of (i) the Closing and (ii) the termination of this Agreement (the "Interim Period").

7.1 Maintenance of Pump Trademarks. Seller shall at its own cost and expense:

(i) maintain the registrations of the Pump Trademarks existing as of the date of this Agreement in the Territory, including the preparation and filing of all renewals and extensions and other documents required to keep such Pump Trademarks valid and in full force and effect, and

(ii) pursue and prosecute all Pump Applications pending as of the date hereof;

unless Seller and Buyer shall mutually agree otherwise.

7.2 Claims and Licenses. Seller shall not without the prior written consent of Buyer:

(i) pledge or encumber any of the Pump Trademark Rights;

(ii) grant any licenses or sublicenses (whether exclusive or non-exclusive) to, or waive any claims for infringement against, any person or party in regard to the Pump Trademark Rights.

7.3 Notice of Infringement. Seller and Buyer shall promptly notify the other in writing if Seller or Buyer shall become aware:

(i) of any infringement or suspected infringement in the Territory of the rights of any third party by the Pump Trademark Rights; and

(ii) any infringement or suspected infringement in the Territory of the Pump Trademark Rights by any third party.

7.4 Additional Action. Seller shall notify Buyer in advance in writing of any action contemplated to be taken prior to the Closing by Seller in regard to the Pump Trademark Rights, including, without limitation, the filing of any additional registrations of the Pump Trademarks or applications therefor, or any amendment of the registrations of any Pump Trademarks or application therefor, and such actions shall only be taken with the prior written approval of Buyer, which approval shall not be unreasonably withheld.

ARTICLE VIII

Indemnification and Related Matters

8.1 Indemnification.

(a) Seller's Indemnity Obligation. Subject to the provisions of this Article VIII, Seller agrees to indemnify and hold Buyer and its affiliates and their respective successors and assigns (and their respective officers, directors, employees and agents) harmless from and against:

- (i) any and all losses, liabilities, claims, obligations, damages, penalties, interest, tax deficiencies, costs and expenses (collectively, "Damages") resulting from any misrepresentation, breach of warranty or breach of any covenant or agreement on the part of Seller under this Agreement; and
- (ii) all actions, suits, proceedings, demands, assessments, judgments, costs and expenses, including attorneys' fees and disbursements, with respect to the foregoing.

(b) Buyer's Indemnity Obligation. Subject to the provisions of this Article VIII, Buyer agrees to indemnify and hold Seller and its affiliates, and their respective successors and assigns (and their respective officers, directors, employees and agents) harmless from and against:

- (i) any and all Damages resulting from any misrepresentation, breach of warranty or breach of any covenant or agreement on the part of Buyer under this Agreement; and
- (ii) all actions, suits, proceedings, demands, assessments, judgments, costs and expenses, including attorneys' fees and disbursements, with respect to the foregoing.

8.2 Determination of Damages and Related Matters. No amount shall be paid for Buyer's or Seller's, as the case may be, special or consequential damages, but the same shall be indemnified if the same shall be required to pay any amounts to any third party for the special or consequential damages of such third party in regard to a matter which is otherwise indemnifiable under Section 8.1(a) or Section 8.1(b), as the case may be. Seller, on the one hand, and Buyer, on the other hand, shall have no liability under this Article VIII unless the aggregate amount of the Damages to Buyer, on the one hand, or Seller, on the other hand, from all claims against such party finally determined to arise under this Article VIII in the aggregate exceed the sum of Thirty Thousand U.S. Dollars (U.S.\$30,000.00) and, in such event, Seller, on the one hand, or Buyer, on the other hand, shall be required to pay only the amount by which such aggregate amount of claims exceeds said amount, provided, however, that in no event shall the amount of such liability of Seller or Buyer, respectively, under this Article VIII exceed in the aggregate One Million Dollars (\$1,000,000.00).

8.3 Time and Manner of Certain Claims. Except as otherwise expressly provided herein, Seller and Buyer shall be liable for damages under Section 8.1(a)(i) or Section 8.1(b)(i), respectively, only to the extent that notice of a claim therefor is asserted by the other in writing and delivered prior to the expiration of the period ending on the second anniversary of the First Closing Date, provided, however, that any claims by Buyer pursuant to Section 8.1(a)(i) in regard to Seller's breach of any warranty or representation in Section 5.5 may be asserted in writing and notice thereof given prior to the expiration of a period ending on the fourth anniversary of the First Closing Date. Any notice of a claim shall state specifically the facts giving rise to the alleged basis for the claim and the amount of liability asserted against the other party by reason of the claim.

8.4 Defense of Claims of Third Parties. If any third-party claim is made against Buyer on the one hand, or Seller on the other hand, that, if sustained, would give rise to a liability of the other of Buyer and Seller under this Agreement, the party seeking indemnification (the "Indemnified Party") shall promptly cause notice of the claim to be delivered to the Indemnifying Party from whom indemnification is sought; provided, however, that the failure to so notify the Indemnifying Party (i) will not relieve the Indemnifying Party from liability under Sections 8.1(a) or (b) unless and to the extent it did not otherwise learn of such action and such failure results in the forfeiture by the Indemnifying Party of substantial rights or defenses, and (ii) will not, in any event, relieve the Indemnifying Party from any obligations to the Indemnified Party other than the obligations provided in Sections 8.1(a) and (b). The Indemnified Party shall afford the Indemnifying Party and its counsel, at the Indemnifying Party's sole cost and expense, the opportunity to defend or settle the claim (in which case the Indemnifying Party shall not be responsible for the attorneys' fees of the

Indemnified Party with respect to such claim, and the Indemnified Party shall cooperate to the extent reasonably requested by the Indemnifying Party in the investigation and defense of such claim); provided, however, that any settlement of any such claim which would adversely affect the rights of the Indemnified Party or which does not include an unconditional release of the Indemnified Party from all liability arising out of such claim shall require the prior written approval of such Indemnified Party which approval shall not be unreasonably withheld; and provided further that no Indemnified Party shall settle any claim without the prior written approval of the Indemnifying Party which approval shall not be unreasonably withheld.

ARTICLE IX

Miscellaneous

9.1 Covenant of Non-Competition.

(a) Definitions. The terms "Products" and "Relevant Applications" shall mean those products marketed and sold in the Operations and those applications for the Products as are described on Exhibit A of the Asset Purchase Agreement.

(b) Covenant. In order to protect for Buyer and its affiliates the good will and the going concern value of the Operations being acquired by Buyer and its affiliates under this Agreement and under certain of the Additional Agreements as of the First Closing, Seller, on behalf of itself and its affiliates, covenants and agrees, for the period commencing the First Closing Date (as defined in the Asset Purchase Agreement) and ending on the fifth (5th) anniversary thereof (the "Non-Competition Term"), to refrain from engaging, or participating directly or indirectly as a principal, shareholder, investor, partner, joint venturer, equity owner, agent, creditor, guarantor, consultant or advisor or any other capacity in or to, any business enterprise (including without limitation any individual, corporation, limited liability company, partnership, or proprietorship) (each, an "Entity") that engages, anywhere in the Territory, in the design, assembly, manufacture, marketing, distribution, sale or rental of any pump products that are marketed or otherwise targeted to customers as competitive with any of the Products for the Relevant Applications ("Equivalent Products").

(c) Proviso. The foregoing provisions of Section 9.1(b) to the contrary notwithstanding, nothing in Section 9.1 hereof shall prohibit Seller or any of its affiliates after the First Closing Date from:

- (A) manufacturing and selling any products to Buyer;
- (B) selling Products that it has bought from Buyer, provided that Buyer has expressly agreed in writing that Seller may resell those Products for the Relevant Applications;

- (C) from and after six (6) months after the First Closing, acquiring and thereafter continuing to conduct the business of any Entity that prior to the date of such acquisition was engaged in the business of designing, manufacturing, importing, marketing or selling Equivalent Products, provided that such Entity's sales in the Territory attributable to such activities in regard to the Equivalent Products in the twelve (12) months prior to the acquisition (i) did not exceed ten percent (10%) of such Entity's total sales for such twelve (12)-month period; and (ii) were less than Two Million Dollars (\$2,000,000.00) for such twelve (12)-month period; and Seller represents that currently there are no pending or planned acquisitions of the type described in this Section 9.1(c)(C) of any Entity engaged in the sale of Equivalent Products in the Territory;
- (D) with respect to any Entity that becomes an affiliate as a result of a change of control of Seller, engaging in any activity otherwise prohibited by this Section 9.1, but in the event of such change of control, Seller or its acquiror in any case shall not utilize any of its employees previously engaged in the Operations in the manufacture, distribution or sale of Equivalent Products by such other Entity until the earlier to occur of (i) the first anniversary of the acquisition or (ii) the expiration of the Non-Competition Period; or
- (E) selling the Equipment and the Inventory (as defined in the Asset Purchase Agreement) to any persons or parties if the First Closing shall occur but the Equipment and Inventory Closing (as defined in the Asset Purchase Agreement) does not take place within fifteen (15) days after its scheduled date.

(d) Covenant Not to Use or License. Seller covenants and agrees that, for a period of five (5) years after the First Closing Date, Seller and its subsidiaries and affiliates will (i) not use any of the Jobst Trademarks (as defined in the Interim License Agreement) or any trademark or service mark confusingly similar therewith, or register or apply for registration of any of the Jobst Trademarks or any such confusingly similar marks in any political jurisdiction in the world in connection with the design, manufacture, assembly, marketing, sale, rental or distribution of any Equivalent Products; and (ii) not grant to any third party the right or license to utilize or exploit any of the Jobst Trademarks or any trademark or service mark confusingly similar therewith in connection with the design, manufacture, assembly, marketing, sale, rental or distribution of any Equivalent Products.

(e) Compensation. In consideration of the observance by Seller of the obligations set forth in this Section 9.1, Buyer hereby covenants and agrees to pay to Seller, by wire transfer in immediately available funds to an account designated by Seller, at the First Closing the sum of Two Hundred Fifty Thousand Dollars (\$250,000).

(f) Construction. The parties hereto acknowledge and agree that any court of competent jurisdiction, if it determines that any provision of this Section 9.1 is, despite the

agreement of the parties to the contrary, unreasonable in regard to geographic boundaries, scope, or term, is empowered and authorized to amend the provisions of this Section 9.1 to render such provisions lawful and enforceable.

9.2 No Legal Succession. Seller acknowledges and agrees, that, although Buyer is pursuant hereto acquiring the Pump Trademark Rights and associated goodwill, Buyer is not the legal or de facto successor and assign of Seller in connection with the prior operations of Seller or Jobst involving the Operations, and Buyer is not assuming any liability, obligation or responsibility of Seller or Jobst in connection with the Operations as heretofore conducted except to the extent expressly set forth in Section 2.2(ii) hereof or in the Asset Purchase Agreement.

9.3 Entire Agreement. This Agreement, together with the Exhibits and Schedules attached hereto and the other agreements and documents referenced herein, contains the entire agreement and understanding of the parties hereto with respect to the matters herein set forth, and all prior negotiations and understandings relating to the subject matter of this Agreement are merged herein and are superseded and canceled by this Agreement, the Asset Purchase Agreement and the Interim License Agreement, as the case may be. This Agreement may not be modified except in a writing signed by both of the parties hereto.

9.4 Governing Law and Arbitration. This Agreement shall be governed by and construed in accordance with the law of the State of Delaware without giving effect to conflicts of law principles thereof, provided, however, that the provisions of the United Nations Convention on Contracts for the International Sale of Goods are excluded in their entirety. Other than the first sentence thereof, the provisions of Section 10.3 of the Asset Purchase Agreement are incorporated herein, mutatis mutandis, as is set forth in full herein, except that Delaware law shall apply.

9.5 Notices. Any notices or other communications required to be given pursuant to this Agreement shall be in writing and shall be deemed given: (i) upon delivery, if by hand; (ii) after one (1) business day, if sent between destinations within the continental United States, and (2) business days, when sent between the continental United States and any other jurisdiction, if sent by express mail or air courier; or (iii) upon transmission, if sent by facsimile (provided that a confirmation copy is sent in the manner provided in clause (ii) of this Section 9.5 within thirty-six (36) hours after such transmission), except that if notice is received by facsimile on any day not a business day or after 5:00 p.m. on any business day at the place of receipt, it shall be effective as of the following business day. All notices hereunder shall be given as follows:

If to Buyer, to:

KCI New Technologies, Inc.
8023 Vantage Drive
San Antonio, Texas 78230
Telefax: (210) 255-6993
Attention: Dennis E. Noll, Esq.

with a copy to:

Cox & Smith Incorporated
112 E. Pecan, Suite 1800
San Antonio, Texas 78205
Telefax: (210) 226-8395
Attention: Stephen D. Seidel, Esq.

If to Seller, to:

Beiersdorf AG
Unnastrasse 48
20245 Hamburg, Germany
Telefax: 011-49-40-4909-6004
Telefax Confirmation: 011-49-40-4909-2245
Attention: Leiter der Rechtsabteilung

with a copy to:

Walter, Conston, Alexander Green, P.C.
90 Park Avenue
New York, New York 10016
Telefax: 212-210-9444
Telefax Confirmation: 212-210-9400
Attention: David W. Detjen, Esq.

or at such other address (or to such other person's attention), or to such other telefax number, as shall be specified by like notice.

9.6 Severability. In the event that any provision of this Agreement is declared by a court of competent jurisdiction or arbitration tribunal to be void or unenforceable, the parties hereto expressly agree that such void or unenforceable provision shall be deemed severed from this Agreement, and the remainder of this Agreement shall not be affected thereby and shall remain in full force and effect to the extent feasible in the absence of the void and unenforceable provision. The parties furthermore agree to execute and deliver such amendatory contractual provisions to accomplish lawfully as nearly possible the goals and purposes of the provision so held to be void or unenforceable.

9.7 Waiver. Any party may waive compliance by another with any of the provisions of this Agreement. No waiver of any provision shall be construed as a waiver of any other provision. Any waiver must be in writing.

9.8 Binding Effect; Assignment. This Agreement shall be binding upon and inure to the

benefit of the parties and their respective successors and permitted assigns. No assignment of this Agreement or of any contractual rights or obligations hereunder may be made by any party (by operation of law or otherwise) without the prior written consent of the other parties hereto and any attempted assignment without the required consent shall be void; provided, however, that no such consent shall be required of Seller or Buyer to assign part or all of its rights under this Agreement to one or more of its subsidiaries or affiliates, but no such assignment by Seller or Buyer of its rights or obligations hereunder shall relieve the same of any of its obligations under this Agreement.

9.9 Interest and Taxes. Any amounts not paid when due under this Agreement shall accrue interest from the due date at a varying rate equal to the sum of

(i) the prime rate (sometimes called base rate) (on the basis of a 360-day year) announced publicly by Citibank N.A. in New York City from time to time plus

(ii) two (2) percentage points.

Buyer shall be responsible for all transfer, registration, stamp, recording and similar taxes and fees assessed or payable in connection with the transfer by Seller to Buyer of the Pump Trademark Rights. Seller shall be responsible for all sales taxes or value added taxes assessed or payable in connection with the transfer by Seller to Buyer of the Pump Trademark Rights, and Seller shall be responsible for all income and/or gains taxes assessed or payable in connection with the transfer by Seller to Buyer of the Pump Trademark Rights. Buyer shall be responsible for all use taxes incurred or payable in connection with the transfer by Seller to Buyer and subsequent use by Buyer of the Pump Trademark Rights.

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

9.11 Headings. The section and other headings contained in this Agreement are for reference purposes only and shall not affect any way the meaning or interpretation of this Agreement.

9.12 Knowledge. "Knowledge" means the actual knowledge of an individual of a fact, circumstance or situation, or any fact, circumstance or situation of which the relevant individual has received Notice. "Notice" shall in each case mean any notice of a fact, circumstance or situation set forth in any writing (whether in the form of a letter, memorandum, certificate, summons, complaint, notice of violation, or otherwise) delivered to the address of or received by such individual. As used in this Agreement, "to Seller's Knowledge" shall mean the Knowledge possessed by any of the Members of the Vorstand of Seller and anyone with the title equivalent to Vice President of Seller. As used in this Agreement, "to Buyer's Knowledge" shall mean the Knowledge possessed by any of the executive officers of Buyer or Buyer's parent (meaning all directors and anyone with the title of Vice President or Assistant General Counsel or higher of Buyer or Buyer's parent).


9.13 No Third Party Beneficiaries. The parties acknowledge and agree that there are no third party beneficiaries entitled to enforce any provision of this Agreement.

9.14 Termination. Subject to the provisions of Section 6.1(a) and Section 6.2(a) hereof, either party may terminate this Agreement, or require specific performance of this Agreement, if the Closing has not occurred before 1 January 1999, due to a breach of any covenant or warranty by the other party, provided that the right to terminate this Agreement (but not the right to demand specific performance) shall not be available to a party that is then in breach of this Agreement and provided, further, that no such termination or exercise of the right to require specific performance shall release any party of liability for the breach of any of its representations, warranties, covenants and agreements under this Agreement. The provisions of Article VIII shall survive any such termination.

IN WITNESS WHEREOF, this Agreement has been duly executed by or on behalf of each of the parties hereto as of the date first above written.

KCI New Technologies, Inc.

BEIERSDORF AG

By: 
Name: RICHARD F. JOEEL
Title: VP/OM


By: 
Name: DAVID W. DEJEN
Title: ATTORNEY-IN-FACT

EXHIBIT A

REGISTERED TRADEMARKS

Trademark: ATHROMBIC PUMP

| <u>Country</u> | <u>Registration No.</u> | <u>Date of application</u> | <u>Date of registration</u> |
|----------------|-------------------------|----------------------------|-----------------------------|
| Canada | 303719 | 1/30/1984 | 6/14/1985 |

Goods:

Pneumatically operated appliances for application to a patient's leg to effect intermittent venous compression.

Trademark: EXTREMITY PUMP

| <u>Country</u> | <u>Registration No.</u> | <u>Date of application</u> | <u>Date of registration</u> | <u>Class</u> |
|----------------|-------------------------|----------------------------|-----------------------------|--------------|
| USA | 1034556 | 2/9/1973 | 2/24/1976 | 10 |

Goods:

Control and source of intermittently applied pressure for pneumatic appliances for animal bodies.

Trademark: ATHROMBIC PUMP

| <u>Country</u> | <u>Registration No.</u> | <u>Date of application</u> | <u>Date of registration</u> | <u>Class</u> |
|----------------|-------------------------|----------------------------|-----------------------------|--------------|
| USA | 1207101 | 3/23/1981 | 9/7/1982 | 10 |

Goods:

Pneumatically operated appliances for application to a patient's leg to effect intermittent venous compression.

EXHIBIT B

APPLICATION FOR TRADEMARK REGISTRATIONS

None

EXHIBIT C

FORM OF DEED OF TRANSFER

513257.4

11/5/98 8:28 PM

TRADEMARK
REEL: 003412 FRAME: 0909

DEED OF TRANSFER

(UNITED STATES AND CANADIAN TRADEMARK RIGHTS)

This Deed of Transfer of Trademark Rights (the "Deed"), dated 6 November 1998, is by and between Beiersdorf AG, a German stock corporation ("Assignor"); and KCI New Technologies, Inc., a Delaware stock corporation ("Assignee").

RECITALS

A. All capitalized terms herein have the meanings attributed to them in the Trademark Purchase and Assignment Agreement, dated 30 October 1998, by and between Assignor and Assignee (the "Agreement").

B. Pursuant to the Agreement, Assignor wishes to sell, transfer, assign and convey to Assignee, and Assignee wishes to acquire, all of Assignor's Trademark Rights relating to the Territory and all attendant goodwill, which are specified below (the "Pump Trademark Rights"):

(a) Pump Trademarks and Pump Applications. (i) Those trademarks and corresponding registrations in the United States of America and the Dominion of Canada set forth on Exhibit A (the "Pump Trademarks"), and (ii) the trademarks and all pending applications for registration in the United States of America and the Dominion of Canada set forth on Exhibit B attached hereto (the "Pump Applications");

(b) Inchoate Rights. All Assignor's right, if any, to claim proprietary rights in and to any of the other Pump Trademark Rights in any jurisdiction outside the Territory, to the extent Assignor may have previously used such Pump Trademarks Rights in such jurisdiction (the "Inchoate Rights");

(c) Pump Claims. All right and title in and to any and all claims and causes of action against any third party, including, without limitation, all causes of action for past infringement in regard to any of the Pump Trademark Rights or any license or contract in regard thereto (the "Pump Claims");

(d) Pump Goodwill. The goodwill associated with the Pump Trademark Rights (the "Pump Goodwill").

NOW, THEREFORE, hereby and for good and valuable consideration, the receipt and sufficiency of which are acknowledged, Assignor hereby irrevocably and finally sells, transfers, assigns, and conveys to Assignee, and Assignee hereby purchases, acquires and

accepts, subject to restrictions contained in the Agreement, all of Assignor's and Assignor's affiliates' right, title, interest in and to the Pump Trademark Rights.

The parties hereto acknowledge and agree that their mutual intent is to effect the transfer from Assignor to Assignee of all Pump Trademark Rights, and Assignor covenants and agrees, at its own cost and expense, to take any additional action, even after the Closing, necessary or appropriate in order to carry out the aforementioned mutual intent of the parties, including without limitation executing and delivering any specific instruments or documents of transfer or assignment or registration in regard to any such Pump Trademark Rights which may be necessary or appropriate to be filed or recorded pursuant to law or practice in any jurisdiction in order to effectuate valid transfer of title thereto.

Nothing in this Deed shall be deemed to modify, amend or alter any of the representations, warranties and covenants contained in the Agreement, all of which survive the execution and delivery of this Deed. However, any and all other representations and warranties, including any which are otherwise implied by law, are hereby excluded in their entirety.

This Deed shall be binding upon Assignor, its successors and assigns, and shall inure to the benefit of Assignee, its successors and assigns.

This Deed shall be governed by and construed in accordance with the law of the State of New York (without giving effect to conflicts of law principles thereof) and, where appropriate, applicable local law.

BEIERSDORF AG

By: _____
Name:
Title:

The undersigned accepts the above Deed of Transfer.

KCI NEW TECHNOLOGIES, INC.

By: _____
Name:
Title:

EXHIBIT A
US AND CANADIAN PUMP REGISTRATIONS AND APPLICATIONS

Trademark Registrations

| <u>Country</u> | <u>Trademark</u> | <u>Registration Number</u> |
|----------------|------------------|----------------------------|
| U.S. | Athrombic Pump | 1,207,101 |
| U.S. | Extremity Pump | 1,034,556 |
| Canada | Athrombic Pump | 303,719 |

EXHIBIT B
US AND CANADIAN PUMP REGISTRATIONS AND APPLICATIONS

APPLICATION FOR TRADEMARK REGISTRATIONS

None

SCHEDULE 2.2(ii)

PUMP LICENSES AND CONTRACTS TO BE ASSIGNED

None

SCHEDULE 5.3

CONSENTS OF THIRD PARTIES

None

SCHEDULE 5.4

LITIGATION

None

SCHEDULE 5.5A

ENCUMBRANCES

Seller has made the following disclaimers with respect to the Pump Trademark Rights:

Trademark: ATHROMBIC PUMP (USA):

Applicant has disclaimed the word "PUMP" from the trademark ATHROMBIC PUMP.

Trademark: EXTREMITY PUMP (USA):

The word "PUMP" has been disclaimed apart from the trademark EXTREMITY PUMP.

Trademark: ATHROMBIC PUMP (Canada):

The right to the exclusive use of the word "PUMP" is disclaimed apart from the trade mark ATHROMBIC PUMP.

SCHEDULE 5.5B

EXTRA-TERRITORIAL USES

- A. There are no applications or registrations regarding the trademarks "ATHROMBIC PUMP" and/or "EXTREMITY PUMP" in any country other than USA and Canada for "ATHROMBIC PUMP" and USA for "EXTREMITY PUMP".
- B. Sales to Beiersdorf AG in Germany, Dirame in Belgium and isolated sales to customers in the following countries:
- 1) Mexico
 - 2) Panama
 - 3) Puerto Rico
 - 4) Argentina
 - 5) Belgium
 - 6) Germany
 - 7) Brazil
 - 8) Philippines
 - 9) Taiwan
 - 10) Italy
 - 11) France
 - 12) Saudi Arabia
 - 13) Guadeloupe
 - 14) Columbia
 - 15) Greece
 - 16) Barbados
 - 17) Jordan
 - 18) Spain
 - 19) Switzerland
 - 20) Chile
 - 21) South Korea
 - 22) Kuwait
 - 23) Australia
 - 24) Canada

SCHEDULE 5.5C

LICENSES

License has been granted to Beiersdorf Jobst Inc., which will be terminated as of the First Closing Date.

SCHEDULE 5.6A

INFRINGEMENT OF OTHERS

None

Schedule 5.6B

INFRINGEMENT BY OTHERS

None

SCHEDULE 5.7

ACTIONS

None