

## TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1  
Stylesheet Version v1.2

ETAS ID: TM370665

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT		
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT OF THE ENTIRE INTEREST AND THE GOODWILL		
<b>CONVEYING PARTY DATA</b>			
<b>Name</b>	<b>Formerly</b>	<b>Execution Date</b>	<b>Entity Type</b>
9234438 Canada Inc.		12/16/2015	CORPORATION: CANADA
<b>RECEIVING PARTY DATA</b>			
<b>Name:</b>	Kyphon SARL		
<b>Street Address:</b>	Pierre-a-Bot 97		
<b>City:</b>	Neuchatel		
<b>State/Country:</b>	SWITZERLAND		
<b>Postal Code:</b>	2000		
<b>Entity Type:</b>	LIMITED LIABILITY COMPANY: SWITZERLAND		
<b>PROPERTY NUMBERS Total: 2</b>			
<b>Property Type</b>	<b>Number</b>	<b>Word Mark</b>	
<b>Registration Number:</b>	4150186	OSTEOCOOL	
<b>Registration Number:</b>	4219326	OSTEOCOOL	
<b>CORRESPONDENCE DATA</b>			
<b>Fax Number:</b>	7635052526		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>			
<b>Phone:</b>	7635052526		
<b>Email:</b>	trademark@medtronic.com		
<b>Correspondent Name:</b>	Trademark Dept.		
<b>Address Line 1:</b>	710 Medtronic Parkway		
<b>Address Line 2:</b>	LC 340		
<b>Address Line 4:</b>	Minneapolis, MINNESOTA 55432-5604		
<b>ATTORNEY DOCKET NUMBER:</b>	BAYLIS ASSIGN SP00988.230		
<b>NAME OF SUBMITTER:</b>	Cindy L. Evenson		
<b>SIGNATURE:</b>	/Cindy L. Evenson/		
<b>DATE SIGNED:</b>	01/27/2016		
<b>Total Attachments: 9</b>			
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**ASSIGNMENT AGREEMENT**

This Assignment Agreement (this “Agreement”) is effective as of December 16, 2015 (the “Effective Date”), between Kyphon SARL (“Kyphon”), and 9234438 Canada Inc., a company having a place of business at 2645 Matheson Blvd East, Mississauga, Ontario L4W 5S4 (“Assignor”).

Background

Assignor has entered into an Asset Purchase Agreement (the “APA”) with Warsaw Orthopedic, Inc. (“Warsaw”) dated April 17, 2015 whereby Assignor has agreed to sell the Assets as defined in Section 2.1 of the APA, in accordance with the terms and conditions of the APA; and

Warsaw assigned all of its rights and interests under the APA to Kyphon pursuant to a Notice of Assignment dated December 16, 2015.

The closing contemplated by the APA has taken place and the parties hereto wish to enter into this confirmatory agreement with respect to the Rights, including the Invention, the Patents and the Trademarks.

Terms

The parties agree that capitalized terms contained herein but not otherwise defined shall have the meaning ascribed thereto in the APA and furthermore agree as follows:

**1. Definitions**

- 1.1. “Affiliate” of a specified person (natural or judicial) shall mean a person that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified. As used in this definition, “control” shall mean ownership of more than fifty percent (50%) of the shares of stock entitled to vote for the election of directors in the case of a corporation, and more than fifty percent (50%) of the voting power in the case of a business entity other than a corporation.
- 1.2. “Expiration” means expiration, abandonment, cancellation, rejection, disclaimer, award to another in an interference proceeding, or declaration of invalidity or unenforceability of a Patent by a court or other authority of competent jurisdiction from which no further appeal has been or can be taken.
- 1.3. “Invention” means all embodiments of the OsteoCool RF ablation system and related components including all revisions, modifications, improvements and the like thereto, whether developed or reduced to practice by Assignor alone or jointly with others.

- 1.4. “Know-How” means the assets, properties and contractual rights of Seller used or otherwise useful in the operation of the Seller’s OsteoCool System as referred to in Article 2 of the APA.
- 1.5. “Patent(s)” shall mean any all patents and patent applications in any country of the world that have claims to the Invention, including any provisional, divisional, continuation, continuation-in-part, substitution, extension, renewal, parent, utility model, patent of addition, reexaminations, reissues or registration of such patents or patent applications, including, but not limited to, the patents and patent applications listed in Exhibit A, any patents or patent applications claiming domestic or international priority from any of the patents and patent applications listed in Exhibit A and any patent rights obtained through an interference involving any of the foregoing.
- 1.6. “Rights” shall mean the Trademarks, as well as the Know-How, Patents and any other intellectual property rights throughout the world based on the Inventions.
- 1.7. “Territory” is all countries in which at least one of the Rights is in force.
- 1.8. “Trademarks” shall mean the trademarks listed in Exhibit A.

## **2. Assignment to Kyphon**

- 2.1. Assignor, for good and valuable consideration as further described in the APA, the sufficiency of which is acknowledged by the parties, hereby transfers, sells and assigns to Kyphon all right, title and interest in and to the Rights, including, without limitation, the Trademarks included in Exhibit A, the Patents included in Exhibit A, the right to apply for and receive Patents in each country in Kyphon’s own name and to claim all rights to priority to which such applications are entitled under international conventions, treaties or otherwise.
- 2.2. Assignor shall, at Kyphon’s expense, for the purpose of conveying all its right, title and interest to the Rights, do all things and execute all documents necessary to assist Kyphon in conveying all right, title and interest to the Inventions and Rights. In particular, Assignor, or its or assigns, will sign all papers and drawings, take all rightful oaths, and do all acts necessary or required to be done for the procurement of valid Patents, or for the reissue, re-examination or extension of the same, without charge to Kyphon, but at Kyphon’s expense.
- 2.3. Assignor will convey the Know-How to Kyphon as set forth in the definition of Know-How above and useful in the operation of the Seller’s OsteoCool System as referred to in Article 2 of the APA.
- 2.4. Notwithstanding any other provision of this Agreement, Kyphon is not under any obligation to pursue development and/or commercialization of OsteoCool System referred to in Article 2 of the APA, or to make any particular level of Commercial sales.

- 2.5. Kyphon will be solely responsible for preparation, prosecution and maintenance of the Patents; provided, that as requested by Kyphon and at Kyphon's expense, Assignor agrees to cooperate fully with Kyphon regarding drafting patent applications and in connection with material filings and responses in prosecuting the Patent Rights.

### **3. Infringement**

- 3.1. Kyphon shall have the right, but not the obligation, to enforce or defend the Rights, including without limitation the right to enforce the Rights against infringement or misappropriation occurring before or after the Effective Date, and to collect past or future damages for such infringement or misappropriation.
- 3.2. If Assignor knows or has reason to believe that any Rights are being infringed or misappropriated either directly or indirectly by a third party, Assignor shall promptly notify Kyphon thereof.
- 3.3. Assignor agrees to cooperate fully with Kyphon, including being added as a party to the litigation if needed, in the event of any litigation regarding the Inventions or Rights.
- 3.4. If Kyphon elects to enforce the Rights, Kyphon shall be responsible for all costs thereof, will reimburse Assignor for all costs arising because of or out of Assignor's participation in such litigation, including, without limitation, attorneys' fees, discovery costs and the like, and will pay Assignor a reasonable hourly rate for the time Kyphon requests that Assignor and its personnel spend in connection with such litigation.
- 3.5. Kyphon shall be entitled to retain all damages or other awards recovered in the course of such litigation, including any settlement of such litigation.

### **4. Representations and Warranties**

- 4.1. Assignor acknowledges its representations and warranties as the Representations and Warranties of Seller in Article 4 of the APA.

### **5. Termination**

- 5.1. The term of this Agreement shall commence on the Effective Date and end upon Expiration of the last of the Patents (the "Term"), unless otherwise terminated in accordance with this Article.
- 5.2. If Kyphon fails to pay the OVBC Payment when due, Assignor shall provide written notice to Kyphon of the nature of Kyphon's payment failure and provide Kyphon with a period of sixty (60) days in which to cure such failure. If Kyphon does not dispute the OVBC Payment and does not cure the failure within such sixty (60) day period, then Assignor may terminate this Agreement with written notice to Kyphon and all Rights will revert to Assignor. If Kyphon disputes the

OVBC Payment, the Dispute shall be arbitrated in accordance with Section 11.15 of the APA. If, after the Dispute has been arbitrated in accordance with Section 11.15 of the APA, the arbitrator determines that Kyphon is obligated to pay all or a portion of the OVBC Payment, Kyphon shall make such payment within thirty (30) days of the arbitrator's decision, failing which Assignor may terminate this Agreement with written notice to Kyphon and all rights will revert to Assignor.

- 5.3. The termination of this Agreement shall not relieve Kyphon of its obligation to make any payments due on or before the effective date of termination.
- 5.4. Notwithstanding anything in this Article and in accordance with the APA, the assignment of Know-How under Section 2.1 shall be considered irrevocable and paid up, and shall survive any termination of this Agreement.
- 5.5. Articles 1 and 6 shall survive any termination of this Agreement.

**6. Miscellaneous**

- 6.1. The rights and obligations of Assignor under this Agreement may not be assigned or transferred. Kyphon may assign or otherwise transfer its rights and obligations under this Agreement.
- 6.2. This Agreement forms an integral part of the APA and shall be governed by the provisions of the APA, including indemnification and limitation on indemnification provisions, any choice of law and dispute resolution process set forth therein.
- 6.3. Assignor shall execute all documents and do all acts that Kyphon reasonably requests to effectuate the transactions and fulfill Assignor's obligations under this Agreement, all at no charge to Kyphon but at Kyphon's expense.
- 6.4. The headings of the articles and paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute a part thereof.
- 6.5. More than one counterpart of this Agreement may be executed by the parties, and each fully executed counterpart shall be deemed an original.
- 6.6. In the event of any inconsistency between the provisions of this Agreement and the provisions of the APA, then the conflicting provisions of the APA shall govern and prevail.
- 6.7. All notices and demands hereunder shall be in writing and shall be made by certified or registered mail, return receipt requested, or by a nationally recognized private express courier to the address of the receiving party set forth in this Agreement (or at such different address as may be designated by such party by written notice to the other party) and shall be deemed complete upon receipt. Notices addressed to Kyphon shall be sent to:

If to Assignor:

9234438 Canada Inc.  
2645 Matheson blvd East  
Mississauga, Ontario L4W 5S4  
Attn: The President

If to Kyphon:

Kyphon SARL  
c/o Medtronic Sofamor Danek USA, Inc.  
2600 Sofamor Danek Drive  
Memphis, TN 38132  
Attn: Tommy Carls

With a copy to:

BCF LLP (which shall not  
constitute notice)  
1100 René-Lévesque Blvd. West  
25<sup>th</sup> Floor  
Montreal, Quebec H3B 5C9  
  
Attn: Gino Martel

With a copy to:

Medtronic Sofamor Danek USA, Inc.  
2600 Sofamor Danek Drive  
Memphis, TN 38132  
Attn: Vice President, RTG Group  
Counsel and Chief Legal Counsel


- or to such other address as a party may specify in writing.
- 6.8. Any term, condition, stipulation, provision or covenant in this Agreement or in the APA, which is illegal, prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such illegality, voidness, prohibition or unenforceability, and shall not invalidate or render illegal, void or unenforceable any such term, condition, stipulation provision or covenant in any other jurisdiction.
- 6.9. This Agreement may not be released, discharged, abandoned, changed or modified in any manner, except by an instrument in writing signed on behalf of each of the parties to this Agreement by their duly authorized representatives. The failure of either party to enforce at any time any of the provisions of this Agreement shall in no way be construed to be a waiver of any such provision, nor in any way to affect the validity of this Agreement or any part of it or the right of either party after such failure to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach.
- 6.10. Nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties to this Agreement or their respective successors or assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.
- 6.11. Neither party may incur any liability on behalf of the other party nor bind the other party to any contractual or payment obligation without the prior written consent of the other party.

EXECUTION VERSION

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

9234438 Canada Inc.

Kyphon SARL

By: 

By: \_\_\_\_\_

Name: Krishan Shah

Name: John Barrett

Title: President

Title: Director

Date: 15-Dec-2015

Date: \_\_\_\_\_

Attached Exhibits:

Exhibit A Patent(s) and Patent Application(s); Trademarks



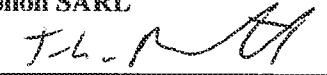
**EXECUTION VERSION**

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

**9234438 Canada Inc.**

**Kyphon SARL**

By: \_\_\_\_\_

By:  \_\_\_\_\_

Name:     Krishan Shah    

Name:     John Barrett    

Title:     President    

Title:     Director    

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Attached Exhibits:

Exhibit A      Patent(s) and Patent Application(s); Trademarks

## Exhibit A

## Patent(s) and Patent Application(s)

Country	Type	Title	Filing Date	Application Number	Status
US	Provisional	Electrosurgical Device and Methods	26 April 2010	61/328,118	Lapsed
	PCT	Electrosurgical Device and Methods	15 April 2011	PCT/CA2011/050203	Lapsed
US	US National Phase	Electrosurgical Device and Methods	25 October 2012	13/643,310	Issued
US	US Bypass Continuation	Electrosurgical Device and Methods	23 October 2012	13/660,353	Pending
EP	European National Phase	Electrosurgical Device and Methods	23 November 2012	11774249.4	Pending
US	Provisional	Systems and Methods for Track Coagulation	07 March 2013	61/774,213	Lapsed
US	Provisional	Electrosurgical Mapping Tools and Methods	15 March 2013	61/786,986	Lapsed
US	Regular Utility	Systems and Methods for Track Coagulation	04 March 2014	14/195,972	Pending
	PCT	Electrosurgical Mapping Tools and Methods	14 March 2014	PCT/IB2014/059846	Pending
US	US National Phase	Electrosurgical mapping tools and methods	9/14/2015	14/852,761	Pending
US	US Design	Connector Hub	9/14/2015	29/539,388	Pending
CA	CA National Phase	Electrosurgical Mapping Tools and Methods	9/14/2015	2,906,286	Pending
EP	EPO National Phase	Electrosurgical mapping tools and methods	9/14/2015	EP14764517.0	Pending

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US	US Design	Burette	9/16/2015	29/539,671	Pending
AU	AU National Phase	Electrosurgical mapping tools and methods	9/23/2015	2014229253	Pending
US	US Design	Probe handle	10/14/2015	29/542,486	Pending
KR	KR National Phase	Electrosurgical mapping tools and methods	10/14/2015	10-2015-7029265	Pending
US	Provisional	Electrosurgical Apparatus with Temperature Sensing & Methods of use Thereof	10/29/2015	62/248,019	Pending
US	US Non-Provisional	Electrosurgical Device and Methods	10/30/2015	14/928,568	Pending
CN	CN National Phase	Electrosurgical mapping tools and methods	11/16/2015	-	Pending
US	US Design	Pump Chassis	12/11/2015	29/548,256	Pending
US	US Design	Probe Handle	12/09/2015	29/547,917	Pending

**Trademarks**

<b>Country</b>	<b>Mark</b>	<b>Serial Number</b>	<b>Reg. Number</b>	<b>Status</b>
U.S.	OsteoCool	85444494	4150186	Registered
U.S.	OsteoCool	85444515	4219326	Registered
N/A	DuoCool	N/A	N/A	Common Law TM