

**TRADEMARK ASSIGNMENT**

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	SECURITY INTEREST

**CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
Gyrus Medical, Inc.		07/21/2005	CORPORATION: DELAWARE

**RECEIVING PARTY DATA**

Name:	The Governor and Company of the Bank of Scotland
Street Address:	155 Bishopsgate
Internal Address:	Level 7, Bishopsgate Exchange
City:	London
State/Country:	UNITED KINGDOM
Postal Code:	EC2M 3 YB
Entity Type:	Bank:

**PROPERTY NUMBERS Total: 7**

Property Type	Number	Word Mark
Registration Number:	2409496	ALTIMATE
Registration Number:	1800632	BICOAG
Registration Number:	1674137	BILAP
Registration Number:	1589839	BISNARE
Registration Number:	1464462	EVEREST MEDICAL
Registration Number:	1825058	EVERSHEARS
Registration Number:	2261215	MOLLY

**CORRESPONDENCE DATA**

Fax Number: (312)630-7388  
*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*  
 Phone: 312-368-4058  
 Email: thomas.ryan@dlapiper.com  
 Correspondent Name: Thomas W. Ryan  
 Address Line 1: P.O. Box 64807

CH \$190.00 2409496

Address Line 2: DLA Piper Rudnick Gray Cary US LLP  
Address Line 4: Chicago, ILLINOIS 60664-0807

DOMESTIC REPRESENTATIVE

Name:  
Address Line 1:  
Address Line 2:  
Address Line 3:  
Address Line 4:

NAME OF SUBMITTER:	Thomas W. Ryan
Signature:	//Thomas W. Ryan//
Date:	08/17/2005

Total Attachments: 12  
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**TRADEMARK COLLATERAL ASSIGNMENT  
AND SECURITY AGREEMENT**  
**Gyrus Medical, Inc.**

**THIS TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT** (this "Agreement") made as of the 21st day of July, 2005, by **GYRUS MEDICAL, INC.**, a Delaware corporation (the "**Debtor**"), in favor of **THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND**, in its capacity as security trustee for each Secured Lender defined below and having a mailing address at Level 7, Bishopsgate Exchange, 155 Bishopsgate, London EC2M 3YB England ("**Secured Party**").

This Agreement supplements the Security Agreement dated as of July 21, 2005, made by Debtor in favor of Secured Party (herein the "Security Agreement"). The Trademark Collateral described in this Agreement is also part of the Collateral described in the Security Agreement.

**ACCORDINGLY**, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Debtor hereby makes the following covenants, agreements, representations and warranties for the benefit and security of Secured Party:

**ARTICLE I**

**CONSTRUCTION AND DEFINED TERMS**

1.01 **Article and Section Headings.** Article and Section headings and captions in this Agreement are for convenience only and shall not affect the construction or interpretation of this Agreement. Unless otherwise expressly stated in this Agreement, references in this Agreement to Sections shall be read as Sections of this Agreement. Terms used in this Agreement shall be applicable to the singular and plural, and references to gender shall include all genders.

1.02 **Schedules and Exhibits.** Unless a Schedule or Exhibit is referred to in this Agreement as being a Schedule or Exhibit to another Credit Document, the references in this Agreement to specific Schedules and Exhibits shall be read as references to such specific Schedules or Exhibits attached, or intended to be attached, to this Agreement and any counterpart of this Agreement and regardless of whether they are in fact attached to this Agreement, and including any amendments, supplements and replacements to such Schedules or Exhibits from time to time.

1.03 **Security Agreement Defined Terms.** Capitalized terms that are not defined in this Agreement, but are defined in the Security Agreement, shall have the same definitions as in the Security Agreement, which definitions are incorporated herein by reference.

1.04 **Other Defined Terms.** Unless otherwise stated in this Agreement, capitalized terms used in this Agreement shall have the following meanings.

"**Core Trademark Collateral**" As defined in Section 2.01.

**"Goodwill"** As defined in Section 2.01.

**"Event of Default"** The occurrence of any Event of Default under the Security Agreement.

**"License"** As defined in Section 2.02.

**"Licensed Rights"** As defined in Section 2.01.

**"Proceeds"** As defined in Section 2.01.

**"Property"** Any right, title or interest in or to property of any kind whatsoever, whether real, personal, or mixed, and whether tangible or intangible.

**"Security Agreement"** As defined on the first page of this Agreement.

**"Scheduled Trademark"** or **"Scheduled Trademarks"** Debtor's Trademarks, and any filings, registrations and recordings of, and applications for, any thereof, listed on Schedule 1 to this Agreement.

**"Trademark"** or **"Trademarks"** Any trademark, service mark, collective mark, certification mark, or other distinctive mark, or other Property, that may be entitled to trademark protection under any Law.

**"Trademark Collateral"** As defined in Section 2.01.

**"Trademark Office"** The United States Patent and Trademark Office, and any successor thereto.

**"Trademark Records"** As defined in Section 2.01.

## ARTICLE II

### COLLATERAL ASSIGNMENT; SECURITY INTEREST; LICENSE

2.01 **Collateral Assignment; Security Interest.** To further secure the full and timely payment, performance and satisfaction of the Secured Obligations, and without limiting the legal operation and effect of any other Credit Document, Debtor hereby collaterally assigns to Secured Party, and grants to Secured Party a security interest in, all of Debtor's now owned and hereafter acquired, created or arising Property described below (referred to herein as "Trademark Collateral"):

(a) All of Debtor's Trademarks, including but not limited to the Scheduled Trademarks, and all renewals thereof, and any filings, registrations and recordings of, and applications for, any thereof, and all (i) income, royalties, license fees, damages and payments now and hereafter due or payable with respect thereto, including payments under all licenses entered into in connection therewith and damages and payments for

past or future infringements thereof, (ii) the right to sue for past, present and future infringements thereof, and (iii) all rights corresponding thereto throughout the world (the Property described in this clause (a) being referred to herein as the "Core Trademark Collateral"); and

(b) All of Debtor's goodwill of Debtor's business connected with or associated with and symbolized by the Core Trademark Collateral (the Property described in this clause (b) being referred to herein as "Goodwill"); and

(c) All of Debtor's right, title and interest (but not Debtor's obligations) as a licensee of any Trademarks of and from any other Person for use in the business that Debtor is engaged in on the date of this Agreement (including any license granted to Debtor under this Agreement) (the Property described in this clause (c) being referred to herein as "Licensed Rights"); and

(d) All of Debtor's cash and non-cash proceeds (as "proceeds" is defined in Article 9) and all other amounts and royalties received or to be received in respect of any sale, exchange, lease, license or other disposition of any Core Trademark Collateral, Goodwill, or Licensed Rights, and including insurance proceeds (the Property described in this clause (d) being referred to herein as "Proceeds"); and

(e) All of Debtor's Records relating to the Core Trademark Collateral, Goodwill, Licensed Rights, or Proceeds, together with any containers or media in which the foregoing are stored (including any rights of Debtor with respect to the foregoing maintained with or by any other Person), and if any of the foregoing are stored with any other Person, all of Debtor's rights relating to the storage and retrieval thereof and access thereto (the Property described in this clause (e) being referred to herein as "Trademark Records").

2.02 **License to Debtor**. Upon the occurrence and during the continuation of an Event of Default (in accordance with the Facilities Agreement), Debtor hereby grants to Secured Party an exclusive, revocable, nontransferable license under the Scheduled Trademarks to use and display the Scheduled Trademarks in connection with the Debtor's business for Debtor's own benefit and account and for none other (referred to herein as the "License"). The License is granted without any representation or warranty of any kind by, or any other obligation or duty of any kind on, Secured Party, all of which are expressly disclaimed. Debtor shall indemnify and hold harmless Secured Party from and against any and all claims, penalties, damages, costs, fees and expenses (including attorney's fees and litigation expenses) arising out of or relating to the License, and Debtor's obligations to indemnify and hold harmless Secured Party shall survive the termination of this Agreement. Without limiting the generality or legal effect of any provision of this Agreement, it is a requirement of the License that Debtor shall comply fully with the terms of this Agreement and the other Credit Documents, and the License is conditioned upon such full compliance by Debtor. Debtor shall not sell or assign Debtor's interest in the License without the prior written consent of Secured Party, which consent may be withheld in Secured Party's sole discretion.

2.03 **Supplement to Security Agreement.** This Agreement has been entered into in conjunction with the security interests granted to Secured Party under the Security Agreement. The rights and remedies of Secured Party with respect to the security interests granted herein are without prejudice to, and are in addition to, those set forth in the Security Agreement and the other Credit Documents, all terms of which are incorporated herein by reference. Debtor shall fulfill all of Debtor's covenants and other obligations under the Security Agreement.

### **ARTICLE III**

#### **REPRESENTATIONS AND WARRANTIES**

Debtor makes the following representations and warranties to Secured Party:

3.01 **Ownership.** Debtor is the sole and exclusive owner of the entire and unencumbered right, title and interest in the Scheduled Trademarks, free from any Lien other than the first priority Lien in favor of Secured Party under the Credit Documents or Permitted Security. Debtor has made no previous assignment, transfer or agreement in conflict with this Agreement or constituting a present or future assignment or transfer of, or encumbrance on, any of the Scheduled Trademarks other than Permitted Security. Debtor represents and warrants that Debtor is not a party to, or otherwise bound by, any assignment, license, covenant or other agreement relating to the Scheduled Trademarks, other than any assignment, license, covenant or other agreement in favor of Secured Party or specifically disclosed to Secured Party in the Security Agreement.

3.02 **Trademarks.** The Scheduled Trademarks constitute all of the unexpired Trademarks, and filings, registrations and recordings of, and applications for, Trademarks, that are as of the date hereof owned by Debtor or are pending on behalf of Debtor in the United States or in any other country or jurisdiction (as set forth on Schedule 1 to this Agreement).

### **ARTICLE IV**

#### **COVENANTS**

Debtor covenants and agrees to the following:

4.01 **Special Power of Attorney.** Upon the occurrence and during the continuation of an Event of Default (in accordance with the Facilities Agreement), and to supplement Debtor's rights under this Agreement and the other Credit Documents, Debtor shall execute and deliver to Secured Party the Special Power of Attorney in the form of Exhibit A.

4.02 **Liens; Lien Notices; Dispositions.** Debtor shall not (a) create, incur, assume, or suffer to exist any Liens upon any Trademark Collateral, (b) execute or authorize, or file or permit to be on file in any public office, any Lien Notice regarding any Trademark Collateral, or (c) sell, assign, lease, license, transfer, surrender, or otherwise dispose of any Trademark Collateral, unless (with respect to each of clauses (a), (b) and (c)) Debtor shall be expressly permitted to do so by the terms of the Security Agreement.

## ARTICLE V

### REMEDIES

5.01 **Remedies.** Secured Party shall have all of the rights and remedies available under this Agreement, the Security Agreement and any other Credit Document, the UCC, at law, and in equity. The commencement of any action, legal or equitable, or the rendering of any judgment or decree for deficiency, shall not affect Secured Party's interest in the Trademark Collateral until the Secured Obligations have been fully paid and satisfied and the Security Agreement has been terminated.

#### 5.02 **Separate Assignment; Attorney-in-Fact.**

(a) Upon the occurrence and continuation of any Event of Default (in accordance with the Facilities Agreement), and in addition to such other rights and remedies as Secured Party may have under other provisions of this Agreement or any other Credit Document, or under common or statutory law, Secured Party may require Debtor forthwith to take such other action as Secured Party may request to evidence the outright assignment of such Scheduled Trademarks or to exercise, register or further perfect and protect Secured Party's rights and remedies with respect to such assigned Scheduled Trademarks, in which event Debtor immediately shall execute and deliver such assignment and take such other action as Secured Party so requests.

(b) Debtor hereby authorizes Secured Party to make, constitute and appoint any officer or agent of Secured Party as Secured Party may select, in Secured Party's sole discretion, as Debtor's true and lawful attorney-in-fact, with power of substitution, from and after the occurrence of an Event of Default (in accordance with the Facilities Agreement) to (i) sign and endorse Debtor's name on all applications, documents, papers and instruments necessary or desirable for Secured Party in the use of the Scheduled Trademarks, (ii) take any other actions with respect to the Scheduled Trademarks as Secured Party deems in the best interest of Secured Party, (iii) grant or issue any exclusive or non-exclusive license under the Scheduled Trademarks to anyone, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Scheduled Trademarks to anyone. Debtor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney, being coupled with an interest, shall be irrevocable until all Secured Obligations shall have been fully paid and satisfied and the Security Agreement has been terminated. Debtor acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of Secured Party under the Security Agreement, but rather is intended to facilitate the exercise of such rights and remedies.

## ARTICLE VI

### GENERAL PROVISIONS

6.01 **Remedies Cumulative.** Upon the occurrence and continuation of any Event of Default (in accordance with the Facilities Agreement), and in addition to such other rights and remedies as Secured Party may have under other provisions of this Agreement or any other Credit Document, Secured Party may exercise any one or more of its rights and remedies under common or statutory law, and Secured Party may exercise such rights and remedies cumulatively and simultaneously. No failure or delay on the part of Secured Party in exercising any right, power or privilege hereunder or under any other Credit Document and no course of dealing between Debtor or any other Person and Secured Party shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Credit Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. No notice to or demand on Debtor in any case shall entitle Debtor or any other Person to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of Secured Party to any other or further action in any circumstances without notice or demand.

6.02 **Notices.** Any notice or other communication required or permitted by or in connection with this Agreement shall be given in accordance with the notice provision in the Security Agreement.

6.03 **Successors and Assigns.** This Agreement shall create a continuing security interest in the Trademark Collateral and shall (i) be binding upon Debtor and its successors and assigns, and (ii) inure, together with the rights and remedies of Secured Party hereunder, to the benefit of Secured Party and Secured Party's successors, transferees and assigns. This Agreement may not be assigned by Debtor without the prior written consent of Secured Party.

6.04 **Filing, Registering, Recording.** Either party hereto may file, record or register this Agreement (or a photocopy of this Agreement) with any Governmental Authority to give notice of, and to further the legal operation and effect of, and perfect the interests of Secured Party under, this Agreement, including any filing, registration or recording with the Trademark Office or any public office for recording UCC financing statements. Debtor shall pay all of Secured Party's costs and expenses (including attorney's fees) of filing, registering or recording this Agreement.

6.05 **Termination.** At such time as Debtor shall have fully paid and satisfied all of the Secured Obligations and the Security Agreement has been terminated, and Secured Party shall have no further commitment or other obligation to extend or advance credit to or for the account of Debtor, this Agreement shall terminate (excepting any provisions which expressly survive the termination of this Agreement) and Secured Party shall, at Debtor's sole cost and expense, execute and deliver to Debtor all deeds, assignments and other instruments as may be reasonably necessary to re-vest in Debtor all remaining right, title and interest in and to the Trademark Collateral, without any representation or warranty of any kind by, or any other obligation or duty of any kind on, Secured Party, and subject to any disposition thereof which may have been made



by Secured Party pursuant to this Agreement or the other Credit Documents. Notwithstanding anything to the contrary in this Agreement or any other Credit Document, this Agreement shall continue to be effective or be reinstated, as the case may be, if at any time any amount received by Secured Party in respect of the Secured Obligations is rescinded or must otherwise be restored or returned by Secured Party upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Debtor or upon the appointment of any intervenor or conservator of, or trustee or similar official for, Debtor or any substantial part of Debtor's assets, or otherwise, all as though such payments had not been made.

6.06 **Miscellaneous**. This Agreement may be executed in counterparts and each shall be effective as an original, and a telecopy of this executed Agreement shall be effective as an original. In making proof of this Agreement, it shall not be necessary to produce more than one counterpart of this Agreement. All representations, warranties and covenants of Debtor contained herein shall survive the execution and delivery of this Agreement and shall terminate only upon the full payment and satisfaction by Debtor of the Secured Obligations and the termination of the Security Agreement. This Agreement is a Credit Document within the definition of "Credit Documents" in the Security Agreement.

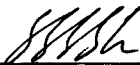
6.07 **Governing Law**. This Agreement shall, except to the extent that federal law or laws of another state apply to the Trademarks or any part thereof, be governed by and construed in accordance with the internal laws of the State of New York, without regard to conflicts of law principles.

**[SIGNATURE PAGE FOLLOWS]**

IN WITNESS WHEREOF, and intending to be legally bound hereby, Debtor executes this Agreement under seal as of the day and year first above written.


**DEBTOR:**

**GYRUS MEDICAL, INC.**

By:   
Name: SIMON SHAW  
Title: DIRECTOR / TREASURER

**SECURED PARTY:**

**THE GOVERNOR AND COMPANY  
OF THEN BANK OF SCOTLAND, as  
Security Trustee**

By:   
Name: RONNIE ALLAN  
Title: DIRECTOR OF CORPORATE BANKING

**Attachments:**

Schedule 1 (Trademarks)  
Exhibit A (Special Power of Attorney)

**SCHEDULE 1 TO  
TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT**

**Part 1:** U.S. Trademarks of Debtor:

Mark	Country	Class	Reg No.	Reg Date	Renewal
ALTIMATE	US	10	2409496	28.11.00	28.11.10
BIGOAG	US	10	1800632	26.10.93	26.10.13
BILAP	US	10	1674137	4.2.92	4.2.12
BISNARE	US	10	1589839	3.4.90	3.4.10
EVEREST (DESIGN)	US	10	1464462	10.11.87	10.11.07
EVERSHEARS	US	10	1825058	8.3.94	8.3.14
MOLLY	US	10	2261215	13.7.99	13.7.09

**Part 2:** Pending U.S. Trademark Applications of Debtor:

None

**Part 3:** Foreign (non-U.S.) Trademarks of Debtor:

None

**Part 4:** Pending Foreign (non-U.S.) Trademark Applications of Debtor:

None

**EXHIBIT A TO  
TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT**

**SPECIAL POWER OF ATTORNEY**

**KNOW ALL MEN BY THESE PRESENTS**, that Gyrus Medical, Inc., a Delaware corporation (referred to herein as "Debtor"), pursuant to a Trademark Collateral Assignment and Security Agreement dated July 21, 2005 (referred to herein as the "Security Agreement"), made by Debtor in favor of **THE GOVERNOR AND COMPANY OF THE BANK OF SCOTLAND**, in its capacity as security trustee for each Secured Lender defined below and having a mailing address at Level 7, Bishopsgate Exchange, 155 Bishopsgate, London EC2M 3YB England (the "Secured Party") hereby appoints and constitutes Secured Party as Debtor's true and lawful attorney, with full power of substitution, and with full power and authority to perform the following acts on behalf of Debtor:

1. Assigning, selling or otherwise disposing of all right, title and interest of Debtor in and to the trademarks, service marks, collective marks, certification marks, or other distinctive marks listed on Schedule 1 attached hereto, and including those trademarks, service marks, collective marks, certification marks, or other distinctive marks which are added to the same subsequent hereto, and all filings, registrations and recordings thereof, and all pending applications therefor, and for the purpose of the filing, recording and registering of, or accomplishing any other formality with respect to, the foregoing, and to execute and deliver any and all agreements, documents, instruments of assignment or other writings necessary or advisable to effect such purpose.

2. To execute any and all documents, statements, certificates or other writings necessary or advisable in order to effect the purposes described above as Secured Party may in its sole discretion determine.

This power of attorney is made to supplement the Security Agreement and may not be revoked until all Secured Obligations secured by the Security Agreement have been fully paid and satisfied and the Security Agreement has been terminated. This power of attorney is not in limitation of any power of attorney or other rights granted to Secured Party, or obligations imposed upon Debtor, in or by the Security Agreement.

**GYRUS MEDICAL, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**(Schedule 1 on following page)**

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None

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None

**Part 4:** Pending Foreign (non-U.S.) Trademark Applications of Debtor:

None