

09-21-2000

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U.S. DEPARTMENT OF COMMERCE

D

Docket No.: 1229.12US01 (M104.109.101)



Patent and Trademark Office
PATENT

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9-11-00

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101463973

thereof.

1. Name of conveying party(ies):
Coalescent Surgical, Inc.
559 E. Weddell Drive
Sunnyvale, CA 94089

2. Name and address of receiving party(ies):

Name: Metacardia, Inc.

Internal Address: 4702 Lakeview Drive

Street Address: same

City: Edina State: MN ZIP:55424

Country: USA

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



3. Nature of conveyance:
 Assignment Merger
 Security Agreement Change of Name
 Other _____

Additional name(s) & addresses attached?
 Yes No

Execution Date: June 21, 2000

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

If this document is being filed together with a new application, the execution date of the application is: _____

A. Patent Application Serial No.(s)/Filing Date(s)

B. Patent No.(s)

5,972,024

Additional numbers attached? Yes No

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

6. Total number of applications and patents involved:

Name: William M. Hienz III

7. Total fee (37 CFR 3.41). . \$40.00

- Enclosed.
- Authorized to be charged to deposit account.
- Any deficiencies in enclosed fees should be charged to deposit account 500471.

Address: DICKE, BILLIG & CZAJA, P.A.
701 Building, Suite 1250
701 Fourth Avenue South
Minneapolis, MN 55415

8. Deposit Account Number: 500471
(Attach duplicate copy of this page if paying by deposit account)

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9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

William M. Hienz III
(Name of Person Signing)

William M. Hienz III
Signature

September 6, 2000
Date

Total number of pages comprising cover sheet, attachments and document: 4

OMB No. 0651-0011 (exp. 4/94)

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PATENT
REEL: 011072 FRAME: 0652

SECURITY AGREEMENT

THIS SECURITY AGREEMENT (the "Security Agreement") effective as of June 21, 2000 ("Effective Date") is made and entered into by and between Metacardia, Inc., a Minnesota corporation having an office at 4702 Lakeview Drive, Edina, Minnesota 55424 ("Metacardia") and Coalescent Surgical, Inc., a Delaware corporation having a principal place of business at 559 E. Weddell Drive, Sunnyvale, California 94089 ("Coalescent").

WHEREAS, pursuant to that certain Assignment by and between Coalescent and Metacardia of even date herewith (the "Assignment"), Metacardia assigned certain Patent Rights and Technology (each as defined in Section 1) (the "Patent"); and

NOW THEREFORE, as an inducement to Metacardia to assign the Patent, Coalescent has agreed to grant a security interest as set forth herein:

1. Security Interest. Pursuant to the California Commercial Code, Coalescent hereby grants to Metacardia a security interest in the Patent Rights and Technology (the "Collateral") to secure Coalescent's obligation to pay to Metacardia \$ _____ pursuant to Section 6 of the Assignment. As used in this Agreement, "Patent Rights" means all intellectual property rights covering the Technology including without limitation any and all (i) pending and issued United States and foreign patents, including without limitation the United States Patent Number 5,972,024 titled "Suture-Staple Apparatus and Method" issued on October 26, 1999 (the "'024 Patent"); (ii) continuations, continuations-in-part (to the extent that subject matter contained in any such continuation-in-part was disclosed previously in a patent application within the Patent Rights) and divisionals based upon a patent application within (i) above; (iii) patents and other forms of industrial property rights obtained from any patent application within (i) or (ii) above; and (iv) additions, reissues, reexaminations and extensions of any patent within (iii) above. As used in this Agreement, "Technology" means all discoveries and inventions of Metacardia described in the '024 Patent.

2. Covenants. As to the Collateral, Coalescent covenants that (i) except as created by this Security Agreement, Coalescent will keep the Collateral free and clear of all levies, liens, encumbrances and other security interests of any nature whatsoever and (ii) will deliver or caused to be delivered, such other documents as may be reasonably requested by Metacardia to perfect its security interest, including but not limited to filing a notice with the U.S. Patent and Trademark Office.

3. Default. In the event of default in payment when due of any amount owed to Metacardia pursuant to Section 6 of this Assignment, and upon failure to cure such default within ten (10) days after written notice, Metacardia may elect then, or at any time thereafter, to exercise all rights, if any, available to a secured party under the California Commercial Code including the right to sell the Collateral at a private or public sale or repurchase the Collateral as provided below. The proceeds of any sale shall be applied in the following order:

- (a) To the extent necessary, proceeds shall be used to pay all reasonable expenses of Metacardia in enforcing this Agreement and the Assignment, including, without limitation, reasonable attorney's fees and legal expenses incurred by Metacardia.

(b) To the extent necessary, proceeds shall be used to satisfy any remaining indebtedness under the Assignment.

(c) Any remaining proceeds shall be delivered to Coalescent.

4. Sale or Repurchase of the Collateral. In the event of any foreclosure of the security interest created by this Agreement, Metacardia may sell the Collateral at a private sale or may repurchase the Collateral itself. To the extent permitted by applicable law, the parties agree that a public sale of the Collateral would be commercially unreasonable and that the repurchasing of the Collateral by Metacardia, or by any person to whom Metacardia may have assigned its rights under this Agreement, is commercially reasonable if made at a price equal to the aggregate amount paid by Coalescent for the Collateral under the Assignment. In the event of a repurchase of the Collateral, Coalescent shall deliver to Metacardia the items provided by Metacardia under Section 5 of this Assignment, including but not limited to an assignment and documents as reasonably necessary and as required by Metacardia for submission to the United States Patent and Trademark Office in a form substantially as set forth on Attachment 2 to the Assignment (substituting the names of the parties as Assignor and Assignee). In addition, Coalescent shall take such action, render such assistance, and execute and deliver, or caused to be executed and delivered, to Metacardia, at Metacardia's expense, such further instruments, as reasonably requested by Metacardia in order to give effect to or evidence the sale of the Collateral or to enforce or defend any intellectual property rights included therein.

5. Transfer Restriction. Except as required to enable Metacardia to exercise its rights as a secured party, none of the Collateral may be sold, transferred, pledged, hypothecated or otherwise disposed of by Coalescent; provided, however, nothing in this Section 5 shall be interpreted in any way to limit Coalescent's right to grant licenses to and in connection with the Collateral.

6. Binding Effect. The parties agree that all of the terms of this Agreement shall be binding on their respective successors and assigns, and that the term "Metacardia" and the term "Coalescent" as used herein shall be deemed to include, for all purposes, the respective designees, successors, assigns, heirs, executors and administrators.

7. Termination. This Security Agreement and the security interest granted to Metacardia by Coalescent hereunder shall terminate immediately, without further action by Coalescent or Metacardia, at such time as Coalescent has paid to Metacardia \$ _____ pursuant to Section 6 of the Assignment or any amount owed by Coalescent to Metacardia pursuant to Section 3 of this Security Agreement. If applicable, and promptly upon termination of this Security Agreement, Metacardia, at Metacardia's expense, agrees to execute and file any and all such certificates and documents necessary to terminate or otherwise release Metacardia's security interest in this Patent, including without limitation, a termination statement on Form UCC-2 with the California Secretary of State and a collateral assignment in the U.S. Patent and Trademark Office.

8. Miscellaneous.

(a) Governing Law. This Security Agreement is to be construed in accordance with and governed by the internal laws of the State of California (as permitted by Section 1646.5 of the California Civil Code or any similar successor provision) without giving effect to any choice of law

rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties.

(b) Entire Agreement. This Security Agreement and the Assignment represents and constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings, oral or written, dealing with the same subject matter.

(c) Modification. No modification or amendment to this Security Agreement shall be effective unless assented to in writing by the party to be charged.

(d) Waiver. No waiver of any rights shall be effective unless assented to in writing by the party to be charged and the waiver of any breach of default shall not constitute a waiver of any other right hereunder or any subsequent breach or default.

(e) Notices. Any required notices hereunder shall be given in writing at the address of each party set forth above, or to such other address as either party may substitute by written notice to the other in the manner contemplated herein, and shall be deemed served when delivered or, if delivery is not accomplished by reason or some fault of the addressee, when tendered.

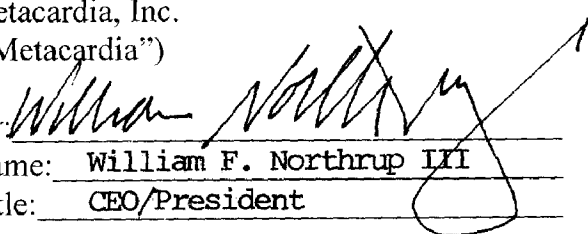
(f) Severability. If one or more of the provisions of this Security Agreement are deemed void by law, then the remaining provisions will continue in full force and effect, to the extent the economic benefits conferred upon the parties by this Security Agreement remain substantially unimpaired.

(g) Independent Contractors. The relationship of Coalescent and Metacardia established in this Security Agreement is that of independent contractors, and nothing in this Security Agreement will be construed to constitute the parties as partners, joint venturers, co-owners or otherwise participants in a joint or common undertaking.

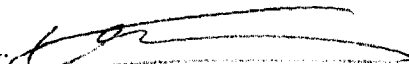
(h) Counterparts. This Security Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned are duly authorized to execute this Security Agreement on behalf of Metacardia and Coalescent, respectively.

Metacardia, Inc.
("Metacardia")

By: 
Name: William F. Northrup III
Title: CEO/President

Coalescent Surgical, Inc.
("Coalescent")

By: 
Name: Charles T. Maroney
Title: President/CEO