

10-11-2000

FORM PTO-1619A

Expires 06/30/99  
OMB 0651-0027



U.S. Department of Commerce  
Patent and Trademark Office  
**PATENT**

101489842

*MRD*  
*9.23.00*

**RECORDATION FORM COVER SHEET  
PATENTS ONLY**

**TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).**

**Submission Type**

New

Resubmission (Non-Recordation)  
Document ID#

Correction of PTO Error  
Reel #  Frame #

Corrective Document  
Reel #  Frame #

**Conveyance Type**

Assignment       Security Agreement

License             Change of Name

Merger               Other

**U.S. Government**  
(For Use ONLY by U.S. Government Agencies)

Departmental File       Secret File

**Conveying Party(ies)**

Mark if additional names of conveying parties attached

Name (line 1)  Execution Date Month Day Year

Name (line 2)

**Second Party**

Name (line 1)

Name (line 2)

Execution Date Month Day Year

**Receiving Party**

Mark if additional names of receiving parties attached

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative is attached. (Designation must be a separate document from Assignment.)

Name (line 1)

Name (line 2)

Address (line 1)

Address (line 2)

Address (line 3)     
City State/Country Zip Code

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**FOR OFFICE USE ONLY**

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Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

**PATENT**  
**REEL: 011122 FRAME: 0461**

**Correspondent Name and Address**

Area Code and Telephone Number (303) 321-3444

Name RICHARD SCHELL

Address (line 1) COLORADO BUSINESS BANK, NA

Address (line 2) 15710 WEST COLFAX AVENUE

Address (line 3) GOLDEN, CO 80401

Address (line 4)

**Pages** Enter the total number of pages of the attached conveyance document including any attachments. # 13

**Application Number(s) or Patent Number(s)**

Mark if additional numbers attached

Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).

Patent Application Number(s)

Patent Number(s)

|  |  |  |
|--|--|--|
|  |  |  |
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|         |         |  |
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| 6093154 | 5484401 |  |
| 5997486 | 4850955 |  |
| 5725506 |         |  |

If this document is being filed together with a new Patent Application, enter the date the patent application was signed by the first named executing inventor.

Month Day Year

**Patent Cooperation Treaty (PCT)**

Enter PCT application number only if a U.S. Application Number has not been assigned.

PCT PCT PCT

**Number of Properties**

Enter the total number of properties involved. # five

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41): \$ 200.00

Method of Payment: Deposit Account

Enclosed  Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number: #

Authorization to charge additional fees: Yes  No

**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. Charges to deposit account are authorized, as indicated herein.

STEVEN K. KUHLMANN

09/21/2000

Name of Person Signing

Signature

Date

# PATENT, TRADEMARK AND LICENSE SECURITY AGREEMENT

This Patent, Trademark and License Security Agreement ("Agreement") is made by DBMI Holdings, Inc., a Colorado corporation having its principal office and place of business at 14998 West 6th Avenue, Building E-700, Golden, Colorado 80401 ("Borrower"), in favor of Colorado Business Bank, N.A., a national banking association ("Lender"). In consideration of Lender's provision of financing to Borrower pursuant to the terms and conditions of a Loan Agreement dated September 20, 2000, between Borrower and Lender as such Loan Agreement may be amended, supplemented, amended and restated, renewed or otherwise modified from time to time hereafter (the "Loan Agreement"), and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Lender agree as follows:

1. **Security Interest in Patents.** To secure the complete and timely satisfaction of all of the "Obligations" (as defined in the Loan Agreement), Borrower hereby grants and conveys to Lender a lien and security interest in all of Borrower's right, title and interest in and to all of its now owned or existing and filed and hereafter acquired or arising and filed:

(a) patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein, and those patents listed on Schedule A, attached to this Agreement and made a part of this Agreement, and (a) the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing patents and applications, together with the items described in clauses (a)-(d), are sometimes individually and/or collectively referred to in this Agreement as the "Patents"); and

(b) license agreements with any other party, whether Borrower is a licensor or licensee under any such license agreement, and the right to prepare for sale, sell and advertise for sale, all "Inventory" (as defined in the Security Agreement dated as of the date of this Agreement among Borrower and Lender) now or hereafter owned by Borrower and now or hereafter covered by such licenses (all of the foregoing is referred to collectively in this Agreement as the "Licenses").

2. **Security Interest in Trademark and Goodwill.** To secure the complete and timely satisfaction of all of the Obligations, Borrower hereby grants and conveys to Lender a lien and security interest in all of Borrower's right, title and interest in and to all of its now owned or existing and filed and hereafter acquired or arising and filed:

(a) trademarks, trademark registrations, trade names and trademark applications, service marks, service mark registrations, service names and service mark applications, including, without limitation, the trademarks, trademark registrations, trade names

and trademark applications, service marks, service mark registrations, service names and service mark applications listed on Schedule B, attached to this Agreement and made a part thereof, and (a) renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payment for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing trademarks, service marks, trademark and service mark registrations, trade names, service names and applications, together with the items described in clauses (a) through (d), are sometimes individually and/or collectively referred to in this Agreement as the "Trademarks"); and

(b) the goodwill of Borrower's business, including, but not by way of limitation, such goodwill connected with and symbolized by the Trademarks.

3. **Term.** This Agreement and the security interests granted in this Agreement shall extend until the earlier of (i) the expiration of each of the respective Patents, Trademarks and Licenses assigned under this Agreement, or (ii) the Obligations have been paid in full and the Loan Agreement has been terminated.

4. **Restrictions on Future Assignments.** Borrower will not, without Lender's prior written consent, enter into any agreement relating to the Patents, Trademarks or Licenses (for example, a license agreement), other than non-exclusive licenses in the ordinary course of business consistent with past practice, and Borrower further agrees that it will not take any action, or permit any action to be taken by others subject to its control, including licensees, or fail to take any action which would affect the validity or enforcement of the rights transferred to Lender under this Agreement.

5. **New Patents, Trademarks, and Licenses.** Borrower represents and warrants that the Patents and Trademarks listed on Schedules A and B, respectively, constitute all of the patents, service marks, trademarks, and applications now owned by Borrower. If, before the Obligations shall have been satisfied in full, Borrower shall (a) obtain rights to any new patentable inventions, trademarks, trademark registrations, trade names, service marks, service mark registrations, service names, or licenses, or (b) become entitled to the benefit of any patent, service mark or trademark application, service mark, service mark registration, trademark, trademark registration, or license renewal, or patent for any reissue, division, continuation, renewal, extension, or continuation-in-part of any Patent or any improvement on any Patent, the provisions of this Agreement shall automatically apply thereto and Borrower shall give to Lender prompt written notice thereof. Borrower hereby authorizes Lender as attorney in fact to file or refile this Agreement with the United States Patent and Trademark Office.

6. **Representations and Warranties.** Borrower represents and warrants to and agrees with Lender that:

(a) The Patents and Trademarks are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;

(b) Each of the Patents and Trademarks is valid and enforceable;

(c) Borrower is the owner of the Patents and Trademarks and has the power and authority to make, and will continue to have authority to perform, this Agreement according to its terms,

(d) There has been no other sale, pledge, encumbrance, assignment or other transfer or disposition of any of the Patents, Trademarks or Licenses or any part thereof and the same are free from all liens, charges and encumbrances of any kind, including but not limited to licenses, shop rights and covenants not to sue third persons, other than Permitted Liens (as defined in the Loan Agreement); and

(e) The Licenses are valid and binding agreements enforceable according to their terms, subject to any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law). Each of the Licenses is in full force and effect and has not been amended or abrogated and there is no default under any of the Licenses.

7. **Contingent Assignment.** Borrower has executed in blank and delivered to Lender an assignment of federally registered trademarks in substantially the form of Appendix 1 to this Agreement (the "Assignment of Trademarks") and an assignment of federally registered patents in substantially the form of Appendix 2 to this Agreement (the "Assignment of Patents"). Borrower hereby authorizes Lender to complete as assignee and record with the United States Patent and Trademark Office the Assignment of Trademarks and the Assignment of Patents upon the occurrence and during the continuance of an Event of Default and the proper exercise of Lender's remedies under this Agreement. Upon the occurrence of and during the continuance of an Event of Default, Borrower hereby authorizes the Commissioner of Patents and Trademarks to issue any and all Patents on said inventions and any and all certificates of registration on all Trademarks to Lender as assignee of Borrower's entire interest.

8. **Duties of Borrower.** Borrower shall have the duty to use its reasonable best efforts to (a) prosecute diligently any patent application of the Patents made by it and any trademark or service mark application of the Trademarks made by it pending as of the date of this Agreement or thereafter until the Obligations shall have been paid in full, (b) make application on unpatented but patentable inventions and on trademarks and service marks, as reasonably appropriate, and (c) preserve and maintain all of its rights in patent applications and patents of the Patents and in trademark applications, trademarks, trademark registrations, service mark applications, service marks, and service mark registrations of the Trademarks. Any expenses incurred in connection with such applications shall be borne by Borrower. Borrower shall not abandon any right to file a Patent application or Trademark application, or any pending Patent application, Trademark application, Patent, or Trademark without the consent of Lender.

9. **Financing Statements; Documents.** At the request of Lender, Borrower will join with Lender in executing one or more financing statements pursuant to the Colorado version of the Uniform Commercial Code in form satisfactory to Lender and will pay the costs of filing and/or recording this Agreement and all financing, continuation and termination statements in all public offices where filing or recording is deemed necessary or desirable by Lender. Borrower

will execute and deliver to Lender from time to time such supplemental assignments or other instruments, including, but not by way of limitation, additional assignments to be filed with the United States Patent and Trademark Office, as Lender may require for the purpose of confirming Lender's interest in the Patents, Trademarks and Licenses.

10. **Lender's Right to Sue.** Lender shall have the same rights, if any, as Borrower has, but shall in no way be obligated, to bring suit in its own name to enforce the Licenses and the Patents and Trademarks, and any licenses thereunder, and, if Lender shall commence any such suit, Borrower shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents required by Lender in aid of such enforcement and Borrower shall promptly, upon demand and as a part of the Obligations, reimburse and indemnify Lender for all costs and expenses incurred by Lender in the exercise of its rights under this Section 10.

11. **Waivers.** No course of dealing between Borrower and Lender nor any failure to exercise nor any delay in exercising, on the part of Lender, any right, power or privilege under this Agreement or under the Loan Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege under this Agreement or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

12. **Severability.** The provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

13. **Modification.** This Agreement cannot be altered, amended or modified in any way, except by a writing signed by the parties to this Agreement.

14. **Cumulative Remedies; Loan Agreement; Notices.** The Loan Agreement and the terms and provisions thereof are hereby incorporated in this Agreement in their entirety by this reference. Any notice or notification required, permitted or contemplated under this Agreement shall be provided in accordance with the provisions of the Loan Agreement. All of Lender's rights and remedies with respect to the Patents, Trademarks and Licenses, whether established hereby or by the Loan Agreement or any other Financing Document, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Borrower acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of Lender under Loan Agreement but rather is intended to facilitate the exercise of such rights and remedies.

15. **Binding Effect; Benefits.** This Agreement shall be binding upon Borrower and its respective successors and assigns, and shall inure to the benefit of Lender, its successors and assigns.

16. **Governing Law.** This Agreement has been delivered and accepted in Denver, Colorado, and shall be governed by and construed in accordance with the local laws of the State of Colorado.

17. **Security Interest in favor of NewWest Mezzanine Fund, LP.** Lender acknowledges that contemporaneously with the execution and delivery of this Agreement, Borrower is granting to NewWest Mezzanine Fund, LP ("NewWest") a junior security interest in certain collateral to secure the payment in full of certain obligations of Borrower to NewWest. Borrower represents that such interest granted to NewWest is a junior lien interest and subject to the terms and conditions of the Intercreditor and Subordination Agreement between NewWest, Borrower and Lender, dated September 20, 2000.

IN WITNESS WHEREOF, DBMI Holdings, Inc., by its duly authorized officer, has executed this Agreement as of September 20, 2000.

Signed and acknowledged  
in the presence of:

DBMI HOLDINGS, INC.

Katherine A. LeVay

Bonnie Vivian

By: Bonnie Vivian  
Title: Chief Executive Officer

STATE OF COLORADO )  
) ss:  
CITY AND COUNTY OF DENVER )

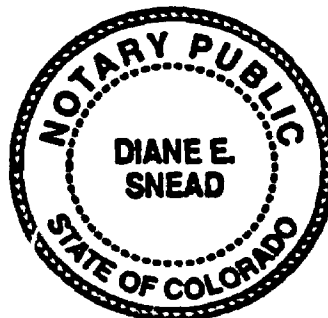
The foregoing Patent, Trademark and License Security Agreement was executed and acknowledged before me on September 20, 2000, by Bonnie Vivian, the Chief Executive Officer of DBMI Holdings, Inc., a Colorado corporation, on behalf of the corporation.

Diane E. Snead  
Notary Public 555 117th St. Suite 2100  
Denver, CO 80202

Accepted at Denver, Colorado,  
as of September 20, 2000.

COLORADO BUSINESS BANK, N.A.,  
a national banking association

By: Jim Scheel  
Its: Vice President



My Commission Expires March 1, 2003

**SCHEDULE A  
(Patents)**

| Patent                                    | Serial #   | Filing Date | Registration # | Issue Date | Status   |
|---|------------|-------------|----------------|------------|--|
| Biopsy Needle                             | 09/069,782 | 4/29/98     | 6,093,154      | 7/25/00    | Active   |
| Device for Paracentesis and Thoracentesis | 08/583,813 | 1/5/96      | 5,997,486      | 12/7/99    | Active   |
| Device for Paracentesis and Thoracentesis |            | 1/15/96     | 5,725,506      | 3/10/98    | Active   |
| Treatment Method for Pleural Effusion     | 08/251,692 | 5/31/94     | 5,484,401      | 1/16/96    | Active   |
| Body fluid transfer device                | 06/936,888 | 12/2/86     | 4,850,955      | 7/25/89    | Active (assigned to DBI 6/25/90; recorded 9/__/00) |



**SCHEDULE B  
(Trademarks)**

| <b>Trademark</b> | <b>Serial #</b> | <b>Filing Date</b> | <b>Registration #</b> | <b>Issue Date</b> | <b>Status</b>         |
|------------------|-----------------|--------------------|-----------------------|-------------------|-----------------------|
| Denver (US)      | 73505092        | 10/22/84           | 1,450,584             | 8/4/87            | Active                |
| Denver (Japan)   | 52363           | 1989               | 4091499               | 12/12/97          | Active                |
|                  | 52364           | 1989               | 4091500               | 12/12/97          | Active                |
| Denver (Brazil)  |                 |                    | 815433875             |                   | Pending republication |
| ParaPro          | 75120984        | 6/20/96            | 2,186,396             | 9/1/98            | Active                |
| Pleurx           | 75279136        | 4/22/97            | 2,174,010             | 7/14/98           | Active                |

ASSIGNMENT OF TRADEMARKS AND SERVICE MARKS (U.S.)

WHEREAS, DBMI Holdings, Inc., a corporation organized and existing under the laws of the State of Colorado, having a place of business at 14998 West 6<sup>th</sup> Avenue, Building E-700, Golden, Colorado 80401 (the "Assignor"), has adopted and used and is using the trademarks (the "Trademarks") identified on the Annex to this Agreement, and is the owner of the registrations of and pending registration applications for such Trademarks in the United States Patent and Trademark Office identified on such Annex; and

WHEREAS, \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_, having a place of business at \_\_\_\_\_ (the "Assignee"), is desirous of acquiring the Trademarks and the registrations thereof and registration applications therefor;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the Assignor does hereby assign, sell and transfer unto the Assignee all right, title and interest in and to the Trademarks, together with (a) the registrations of and registration applications for the Trademarks, (b) the goodwill of the business symbolized by and associated with the Trademarks and the registrations thereof, and (c) the right to sue and recover for, and the right to profits or damages due or accrued arising out of or in connection with, any and all past, present or future infringements or dilution of or damage or injury to the Trademarks or the registrations thereof or such associated goodwill

This Assignment of Trademarks and Service Marks (U.S.) is intended to and shall take effect as a sealed instrument at such time as the Assignee shall complete this instrument by inserting its name in the second paragraph above and signing its acceptance of this Assignment of Trademarks and Service Marks (U.S.) below.

IN WITNESS WHEREOF, the Assignor, by its duly authorized officer, has executed this assignment, as an instrument under seal, on September 20, 2000.

DBMI HOLDINGS, INC.

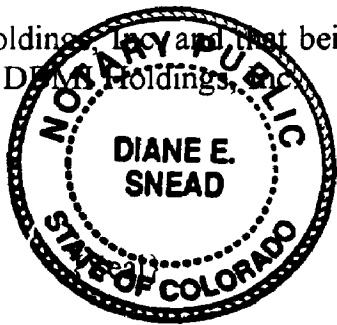


By: Bonnie Vivian  
Title: Chief Executive Officer

STATE OF COLORADO )  
) ss:  
CITY AND COUNTY OF DENVER )

On September 20, 2000, before me appeared Bonnie Vivian, the person who signed this instrument, who acknowledged that (s)he is the Chief Executive Officer of DBMI

Holding, Inc. and that being duly authorized (s)he signed such instrument as a free act on behalf of DEVA Holdings, Inc.



Diane E. Sneed  
Notary Public 755 17th St - Ste 2700  
Boulder CO 80502

My commission expires: 3-1-2003

*My Commission Expires March 1, 2003*

The foregoing assignment of the Trademarks and the registration thereof and registration applications therefor by the Assignor to the Assignee is hereby accepted as of the \_\_\_\_ day of September 2000.

COLORADO BUSINESS BANK, N.A.,  
a national banking association

By: R. M. Scheu  
Its: Vice President

**ANNEX**

| <b>Trademark</b> | <b>Serial #</b> | <b>Filing Date</b> | <b>Registration #</b> | <b>Issue Date</b> | <b>Status</b>         |
|------------------|-----------------|--------------------|-----------------------|-------------------|-----------------------|
| Denver (US)      | 73505092        | 10/22/84           | 1,450,584             | 8/4/87            | Active                |
| Denver (Japan)   | 52363           | 1989               | 4091499               | 12/12/97          | Active                |
|                  | 52364           | 1989               | 4091500               | 12/12/97          | Active                |
| Denver (Brazil)  |                 |                    | 815433875             |                   | Pending republication |
| ParaPro          | 75120984        | 6/20/96            | 2,186,396             | 9/1/98            | Active                |
| Pleurx           | 75279136        | 4/22/97            | 2,174,010             | 7/14/98           | Active                |

ASSIGNMENT OF PATENTS (U.S.)

WHEREAS, DBMI Holdings, Inc., a corporation organized and existing under the laws of the State of Colorado, having a place of business at 14998 West 6<sup>th</sup> Avenue, Building E-700, Golden, Colorado 80401 (the "Assignor"), has adopted and used and is using the patents (the "Patents") identified on the Annex to this Agreement, and is the owner of the registrations of and pending registration applications for such Patents in the United States Patent and Trademark Office identified on such Annex; and

WHEREAS, \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_, having a place of business at \_\_\_\_\_ (the "Assignee"), is desirous of acquiring the Patents and the registrations thereof and registration applications therefor;

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, the Assignor does hereby assign, sell and transfer unto the Assignee all right, title and interest in and to the Patents, together with (a) the registrations of and registration applications for the Patents, (b) the goodwill of the business symbolized by and associated with the Patents and the registrations thereof, and (c) the right to sue and recover for, and the right to profits or damages due or accrued arising out of or in connection with, any and all past, present or future infringements or dilution of or damage or injury to the Patents or the registrations thereof or such associated goodwill.

This Assignment of Patents (U.S.) is intended to and shall take effect as a sealed instrument at such time as the Assignee shall complete this instrument by inserting its name in the second paragraph above and signing its acceptance of this Assignment of Patents (U.S.) below.

IN WITNESS WHEREOF, the Assignor, by its duly authorized officer, has executed this assignment, as an instrument under seal, on September 20, 2000.

DBMI HOLDINGS, INC.



By: Bonnie Vivian  
Title: Chief Executive Officer

STATE OF COLORADO )  
) ss:  
CITY AND COUNTY OF DENVER )

On September 20, 2000, before me appeared Bonnie Vivian, the person who signed this instrument, who acknowledged that (s)he is the Chief Executive Officer of DBMI

Holdings, Inc. and that being duly authorized (s)he signed such instrument as a free act on behalf of DBM Holdings, Inc.



My Commission Expires March 1, 2003

Diane E. Sneed  
Notary Public 555 17th St - Ste 200  
Denver CO 80202

My commission expires: 3-1-00

The foregoing assignment of the Patents and the registration thereof and registration applications therefor by the Assignor to the Assignee is hereby accepted as of September \_\_\_\_, 2000.

**ASSIGNEE:**

COLORADO BUSINESS BANK, N.A.,  
a national banking association

By R/m Schell  
Its: Vice President

# ANNEX

| Patent                                    | Serial #   | Filing Date | Registration # | Issue Date | Status   |
|---|------------|-------------|----------------|------------|--|
| Biopsy Needle                             | 09/069,782 | 4/29/98     | 6,093,154      | 7/25/00    | Active   |
| Device for Paracentesis and Thoracentesis | 08/583,813 | 1/5/96      | 5,997,486      | 12/7/99    | Active   |
| Device for Paracentesis and Thoracentesis |            | 1/15/96     | 5,725,506      | 3/10/98    | Active   |
| Treatment Method for Pleural Effusion     | 08/251,692 | 5/31/94     | 5,484,401      | 1/16/96    | Active   |
| Body fluid transfer device                | 06/936,888 | 12/2/86     | 4,850,955      | 7/25/89    | Active (assigned to DBI 6/25/90; recorded 9/__/00) |

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