

FORM PTO-1619A  
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FEB 21 2001

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### 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

#### Second Party

Name (line 1)

Name (line 2)

Execution Date  
Month Day Year

#### Receiving Party

Mark if additional names of receiving parties attached

Name (line 1)   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 2)

Address (line 1)

Address (line 2)

Address (line 3)    Zip Code  
City State/Country

#### 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)

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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: 011551 FRAME: 0667

**Correspondent Name and Address**

Area Code and Telephone Number **973-992-1990**

Name **Beth Kotran, Esq.**

Address (line 1) **Goodwin Procter LLP**

Address (line 2) **7 Becker Farm Road**

Address (line 3) **Roseland, New Jersey 07068**

Address (line 4)

FEB 21 2001

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

# **31**

**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)**

**09477900**

**5470752**

**5639672**

**5885839**

**09264249**

**5695949**

**5725774**

**6024919**

**09261707**

**6027692**

**5762871**

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   
PCT  PCT  PCT

**Number of Properties**

Enter the total number of properties involved.

# **11**

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41): \$ **440.00**

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:

# **06-0923**

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.

Beth Kotran, Esq.

February 21, 2001

Name of Person Signing

Signature

Date

## INTELLECTUAL PROPERTY SECURITY AGREEMENT

INTELLECTUAL PROPERTY SECURITY AGREEMENT (this "Agreement") dated as of February 15, 2001 made by LXN Corporation, a Delaware corporation, with an office at 6325 Lusk Boulevard, San Diego, California ("Grantor"), for the benefit of Inverness Medical Technology, Inc., a Delaware corporation, with an office at 200 Prospect Street, Waltham, Massachusetts ("Lender"). All capitalized terms used herein, unless otherwise defined, shall be defined as provided in the Loan Agreement (as defined below).

WHEREAS, Grantor and Lender have entered into a Loan Agreement dated as of the date hereof, (the "Loan Agreement"), pursuant to which the Lender extended certain credit to Grantor;

WHEREAS, it is a condition to the making of the loan under the Loan Agreement that Grantor enter into this Agreement;

WHEREAS, Grantor has entered or will enter into that certain Agreement and Plan of Merger with Lender and certain other parties, dated on or about the date hereof (the "Acquisition Agreement") regarding the acquisition of Grantor by Lender (the "Acquisition").

WHEREAS, Grantor's access to the loan to be extended by the Lender will confer direct benefits on Grantor, and Grantor's execution, delivery and performance of this Agreement are in furtherance of Grantor's purposes and are necessary or convenient to the conduct, promotion or attainment of Grantor's business.

NOW THEREFORE, in consideration of the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Grant of Security.

Grantor hereby grants and pledges to Lender for its benefit a security interest in the following, in each case, as to each type of property described below, whether now owned or hereafter acquired by Grantor, and whether now or hereafter existing (collectively, the "Intellectual Property Collateral"):

- (a) all patents, patent applications and patentable inventions, including, without limitation, each patent identified in Schedule I attached hereto and made a part hereof and each patent application identified in such Schedule I, and including, without limitation, (i) all inventions and improvements described and claimed therein and the right to make, use, sell, or advertise for sale the same, (ii) the right to sue or otherwise recover for any infringements or misappropriations thereof, (iii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past and future

infringements thereof), and (iv) all rights corresponding thereto throughout the world and all reissues, divisions, continuations, continuations-in-part, substitutes, renewals and extensions thereof, all improvements thereon and all other rights of any kind whatsoever of Grantor accruing thereunder or pertaining thereto (the "Patents");

(b) all trademarks, service marks, trade names, trade dress or other indicia of trade origin, whether registered or unregistered, trademark and service mark registrations, and applications for trademark or service mark registrations and any renewals thereof, including, without limitation, each registration and application identified in Schedule II attached hereto and made a part hereof, and including, without limitation, (i) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (ii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past or future infringements thereof), and (iii) all rights corresponding thereto throughout the world and all other rights of any kind whatsoever of Grantor accruing thereunder or pertaining thereto, together in each case with the goodwill of the business connected with the use of, and symbolized by, each such trademark, service mark, trade name, trade dress or other indicia of trade origin (the "Trademarks");

(c) all license agreements with any other Person in connection with any of the Patents, Trademarks, or such other Person's patents, trade names, trademarks, service marks, copyrights or works of authorship, or other intellectual property, whether Grantor is a licensor or licensee under any such license agreement, including, without limitation, the license agreements listed on Schedule III attached hereto and made a part hereof, and any right to prepare for sale, sell and advertise for sale, all inventory now or hereafter owned by Grantor and now or hereafter covered by any such licenses (the "Licenses" and each a "License"); and

(d) all proceeds of any of the foregoing Patents, Trademarks and Licenses, including, without limitation, any claims by Grantor against third parties for infringement of the Patents, Trademarks or Licenses.

For purposes of this Agreement, "Person" shall mean an individual, a corporation, an association, a joint venture, a partnership, a limited liability company, an estate, a trust, an unincorporated organization and any other entity or association, governmental or otherwise.

## SECTION 2. Security for Lender Obligations.

This Agreement secures the payment of all obligations of Grantor now or hereafter existing under the Loan Agreement, the Note and all other documents or agreements executed in connection therewith (the "Secured Obligations").

## SECTION 3. Grantor Remains Liable.

Anything herein to the contrary notwithstanding, (a) Grantor shall remain liable under the contracts and agreements included in the Intellectual Property Collateral to which it is a party to the extent set forth therein to perform all of its duties and obligations thereunder to the same

extent as if this Agreement had not been executed, (b) the exercise by Lender of any of the rights or remedies hereunder shall not release Grantor from any of its duties or obligations under any of the contracts and agreements included in the Intellectual Property Collateral, and (c) Lender shall have no obligation or liability under any of the contracts and agreements included in the Intellectual Property Collateral by reason of this Agreement, nor shall Lender be obligated to perform any of the obligations or duties of Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

#### SECTION 4. Representations and Warranties.

Grantor represents and warrants as follows:

(a) Grantor is the legal and beneficial owner of the Intellectual Property Collateral pledged by Grantor free and clear of any lien, claim, option or right of others, except for the liens and security interests created under: (i) this Agreement, the Security Agreement and the Loan Agreement each by and between Grantor and Lender and each of even date herewith or the Note (the "Lender Agreements") or (ii) the agreements listed on Schedule 4(a) attached hereto (collectively, the "Bank Loan Agreements"); provided, however, that the liens and security interests created under the Bank Loan Agreements shall terminate upon the Imperial Bank Payoff (as defined in the Loan Agreement). No effective financing statement or other instrument similar in effect covering all or any part of the Intellectual Property Collateral or listing Grantor or any trade name of Grantor as debtor is on file in any recording office (including, without limitation, the United States Patent and Trademark Office), except such as may have filed pursuant to this Agreement or the Bank Loan Agreements.

(b) Set forth in Schedule I is a complete and accurate list of all patents and patent applications owned by Grantor. Set forth in Schedule II is a complete and accurate list of all trademark and service mark registrations and all trademark and service mark applications owned by Grantor. Set forth in Schedule III is a complete and accurate list of all Licenses in which Grantor is (i) a licensor with respect to any of the Patents or Trademarks or (ii) a licensee of any other Person's patents, trade names, trademarks or service marks. Grantor has made all necessary filings and recordations to protect and maintain its interest in the patents, patent applications, trademark and service mark registrations, trademark and service mark applications and Licenses set forth in Schedules I, II and III hereto.

(c) Each patent, patent application, trademark or service mark registration and trademark or service mark application of Grantor set forth in Schedule I or II hereto is subsisting and has not been adjudged invalid, unregistrable or unenforceable, in whole or in part, and is valid, registrable and enforceable. Each License of Grantor identified in Schedule III is subsisting and has not been adjudged invalid or unenforceable, in whole or in part, and is valid and enforceable. Grantor is not aware of any uses of any item of Intellectual Property Collateral which would be expected to lead to such item becoming invalid or unenforceable, including unauthorized uses by third parties and uses which were not supported by the goodwill of the business connected with such Intellectual Property Collateral.

(d) Other than pursuant to the secured note to Cooley Godward LLP referenced in Section 5.9(m) of the Company Disclosure Schedule to the Acquisition Agreement (the "Cooley Note"), Grantor has not made any previous assignment, transfer or agreement constituting a present or future assignment, transfer or encumbrance of any of the Intellectual Property Collateral, other than encumbrances created by the Bank Loan Agreements. Grantor has not granted any License (other than those listed on Schedule III hereto), release, covenant not to sue, or non-assertion assurance to any Person with respect to any part of the Intellectual Property Collateral except such as may have been provided under the Lender Agreements.

(e) Grantor has used proper statutory notice in connection with its use of each patent and registered trademark and service mark contained in Schedule I or II.

(f) This Agreement, together with the filing of this Agreement and/or appropriate Uniform Commercial Code financing statements in the appropriate offices and the filing of terminations of Uniform Commercial Code financing statements or Patent and Trademark Office filings described in the Imperial Bank Payoff Letter, creates in favor of Lender a valid and perfected, first priority security interest in the Intellectual Property Collateral of Grantor, securing the payment of the Secured Obligations.

(g) No consent of any Person and no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body or other Person is required (i) for the grant by Grantor of the security interest granted hereby, for the pledge by Grantor of the Intellectual Property Collateral pursuant hereto, or for the execution, delivery or performance of this Agreement by Grantor, (ii) for the perfection or maintenance of the pledge and security interest created hereby (including the first and only priority nature of such pledge and security interest), except for the filing of financing and continuation statements under the Uniform Commercial Code, which financing statements are in proper form and are duly executed, and the filing and recording of this Agreement in the United States Patent and Trademark Office against each patent, patent application, trademark or service mark registration, trademark or service mark application, of Grantor set forth in Schedule I or II hereto, or (iii) for the exercise by the Lender of its rights provided for in this Agreement or the remedies in respect of the Intellectual Property Collateral pursuant to this Agreement.

(h) Other than pursuant to the Cooley Note, there are no claims by any third party relating to any item of Intellectual Property Collateral.

(i) No claim has been made and is continuing or overtly threatened that any item of Intellectual Property Collateral is invalid or unenforceable or that the use by Grantor of any Intellectual Property Collateral does or may violate the rights of any Person. To the best of Grantor's knowledge, there is currently no infringement or unauthorized use of any item of Intellectual Property Collateral.

(j) Grantor has taken all reasonably necessary steps to use consistent standards of quality in the provision of all services provided under or in connection with any of the Intellectual Property Collateral and has taken all necessary steps to ensure that all licensed users of any of the Intellectual Property Collateral use such consistent standards of quality.

SECTION 5. Further Assurances.

(a) Grantor agrees that from time to time, at the expense of Grantor, Grantor shall promptly execute and deliver all further instruments and documents, and take all further action, that Lender believes may be reasonably necessary or reasonably desirable, or that Lender may reasonably request, in order to perfect and protect any pledge or security interest granted or purported to be granted hereby or to enable Lender to exercise and enforce its rights and remedies hereunder with respect to any part of the Intellectual Property Collateral. Without limiting the generality of the foregoing, Grantor will, upon the reasonable request of Lender, with respect to the Intellectual Property Collateral owned by Grantor, execute and file such financing or continuation statements, or amendments thereto, and such other instruments or notices, as may be reasonably necessary or desirable, or as Lender may reasonably request, in order to perfect and preserve the pledge and security interest granted or purported to be granted hereby.

(b) Grantor hereby authorizes Lender to file one or more financing or continuation statements, and amendments thereto, relating to all or any part of the Intellectual Property Collateral without the signature of Grantor where permitted by law. A photocopy or other reproduction of this Agreement or any financing statement covering the Intellectual Property Collateral or any part thereof will be sufficient as a financing statement where permitted by law.

(c) Grantor will furnish to Lender from time to time statements and schedules further identifying and describing the Intellectual Property Collateral and such other reports in connection with the Intellectual Property Collateral as Lender may reasonably request, all in reasonable detail.

(d) Grantor agrees that, should it obtain an ownership interest in any patent, patent application, patentable invention, trademark, service mark, trade name, trade dress, other indicia of trade origin, trademark or service mark registration, trademark or service mark application, copyright or copyright application, or License, which is not now a part of the Intellectual Property Collateral, (i) the provisions of Section 1 will automatically apply thereto, and (ii) any such patent, patent application, patentable invention, trademark, service mark, trade name, trade dress, indicia of trade origin, trademark or service mark registration, trademark or service mark application (together with the goodwill of the business connected with the use of same and symbolized by same) copyright or copyright application or License will automatically become part of the Intellectual Property Collateral. Grantor further agrees that it shall deliver to Lender a written report, in reasonable detail, setting forth each new patent, patent application, trademark or service mark registration, trademark or service mark application copyright or copyright application or License that Grantor has filed, acquired or otherwise obtained, within five (5) business days of being obtained or acquired. Grantor authorizes Lender to modify this Agreement by amending Schedules I, II and III hereto (and shall cooperate with Lender in effecting any such amendment) to include any patent, patent application, trademark or service mark registration, trademark or service mark application or License which becomes part of the Intellectual Property Collateral.

(e) With respect to each patent, patent application, trademark or service mark registration and trademark or service mark application set forth in Schedule I or II hereto,

Grantor agrees to take all necessary or desirable steps, including, without limitation, in the United States Patent and Trademark Office or in any court, to (i) maintain each such patent and trademark or service mark registration, and (ii) pursue each such patent application and trademark or service mark application now or hereafter included in the Intellectual Property Collateral, including, without limitation, the filing of responses to office actions issued by the United States Patent and Trademark Office, the filing of Statements of Use or Extensions of Time for Filing a Statement of Use in those cases of intent to use trademark and service mark applications, the filing of affidavits under Sections 8 and 15 of the United States Trademark Act, the filing of divisional, continuation, continuation-in-part and substitute applications, the filing of applications for re-issue, renewal or extensions, the payment of maintenance fees, and the participation in interference, reexamination, opposition, cancellation, infringement and misappropriation proceedings. Grantor agrees to take corresponding steps with respect to each new or acquired patent, patent application, trademark or service mark registration or trademark or service mark application to which it is now or later becomes entitled. Any and all expenses incurred in connection with such activities will be borne by Grantor. Grantor shall not discontinue use of or otherwise abandon any patent, patent application, trademark or service mark, trademark or service mark registration or trademark or service mark application now or hereafter included in the Intellectual Property Collateral, unless Grantor shall have first determined in its reasonable business judgment that such use or pursuit or maintenance of same is no longer desirable in the conduct of Grantor's business, in which case, Grantor shall give written notice of any such abandonment or discontinuance to the Lender within five (5) business days of such abandonment or discontinuance.

(f) Grantor agrees to notify the Lender promptly and in writing if it learns (i) that any item of the Intellectual Property Collateral has been determined to have become abandoned or dedicated to the public, (ii) of the institution of any proceeding (including, without limitation, the institution of any proceeding in the United States Patent and Trademark Office or any court) regarding any item of the Intellectual Property Collateral, or (iii) of any adverse determination regarding any item of the Intellectual Property Collateral.

(g) In the event that Grantor makes a determination in its reasonable business judgment that any item of the Intellectual Property Collateral is infringed or misappropriated by a third party, Grantor shall promptly notify Lender and will take such actions as Grantor or Lender deems appropriate under the circumstances to protect such Intellectual Property Collateral, including, without limitation, suing for infringement or misappropriation and for an injunction against such infringement or misappropriation. Any expense in connection with such activities will be borne by Grantor.

(h) Grantor shall continue to use proper statutory notice in connection with its use of each of its patents and registered trademarks and service marks contained in Schedule I or II.

(i) Other than the issuance of the Cooley Note, Grantor shall take all steps which it or Lender deems appropriate under the circumstances to preserve and protect its Intellectual Property Collateral, including, without limitation, maintaining the quality of any and all products or services used or provided in connection with any of the Intellectual Property Collateral, consistent with the quality of the products and services as of the date hereof, and taking all steps



necessary to ensure that all licensed users of any of the Intellectual Property Collateral use such consistent standards of quality.

**SECTION 6. Transfers and Other Liens.**

Grantor agrees that it shall not (i) sell, assign (by operation of law or otherwise) or otherwise dispose of (except as provided in Section 5(e)) or grant any option with respect to, any of the Intellectual Property Collateral, or (ii) create or suffer to exist any lien upon or with respect to any of the Intellectual Property Collateral except for the pledge and security interest created by this Agreement.

**SECTION 7. Lender Appointed Attorney-in-Fact.**

Grantor hereby irrevocably appoints Lender to act as its attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor or otherwise, upon the occurrence and during the continuance of an Event of Default and upon notice to such Grantor to take any action and to execute any instrument that Lender may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation:

- (a) to ask for, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Intellectual Property Collateral;
- (b) to receive, endorse and collect any drafts or other instruments, documents and chattel paper, in connection with clause (a) above; and
- (c) to file any claims or take any action or institute any proceedings that Lender may deem necessary or desirable to enforce the rights of Lender with respect to any of the Intellectual Property Collateral.

**SECTION 8. Lender May Perform.**

If Grantor fails to perform any agreement contained herein, Lender may itself, upon fifteen (15) days' notice to Grantor, perform, or cause performance of, such agreement, and the reasonable expenses of Lender incurred in connection therewith shall be borne by Grantor.

**SECTION 9. Lender's Duties.**

The powers conferred on Lender hereunder are solely to protect its interest in the Intellectual Property Collateral and shall not impose any duty upon it to exercise any such powers. Except for the safe custody of any Intellectual Property Collateral in its possession and the accounting for moneys actually received by it hereunder, Lender shall have no duty as to any Intellectual Property Collateral, whether or not Lender has or is deemed to have knowledge of such matters, or as to the taking of any necessary steps to preserve rights against any parties or

any other rights pertaining to any Intellectual Property Collateral. Lender shall exercise reasonable care in the custody and preservation of any Intellectual Property Collateral in its possession and shall accord such Intellectual Property Collateral treatment equal to that which Lender accords its own property.

**SECTION 10. Remedies.**

If any Event of Default shall have occurred and be continuing:

(a) Lender may exercise in respect of the Intellectual Property Collateral, in addition to other rights and remedies provided for herein or in any other Document or otherwise available to it, all the rights and remedies of a secured party upon default under the Uniform Commercial Code in effect in the State of California at such time (the "California Uniform Commercial Code") (whether or not the California Uniform Commercial Code applies to the affected Intellectual Property Collateral) and also may (i) require Grantor to, and Grantor hereby agrees that it will at its expense and upon request of Lender forthwith, assemble all or part of the documents and things embodying any part of the Intellectual Property Collateral as directed by Lender and make them available to Lender at a place and time to be designated by Lender; (ii) without notice except as specified below and as required by law, sell the Intellectual Property Collateral or any part thereof in one or more parcels at public or private sale, at any of Lender's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as Lender may deem commercially reasonable; and (iii) occupy any premises owned or leased by Grantor where documents and things embodying the Intellectual Property Collateral or any part thereof are assembled or located for a reasonable period in order to effectuate its rights and remedies hereunder or under law, without obligation to Grantor in respect of such occupation. In the event of any sale, assignment, or other disposition of any of the Intellectual Property Collateral, the goodwill of the business connected with and symbolized by any of the Intellectual Property Collateral subject to such disposition will be included, and Grantor will supply to Lender or its designee Grantor's know-how and expertise, and documents and things embodying the same, relating to the manufacture, distribution, advertising and sale of products or the provision of services relating to any Intellectual Property Collateral subject to such disposition and, including, but not limited to, Grantor's customer lists and other records and documents relating to such Intellectual Property Collateral and to the manufacture, distribution, advertising and sale of such products and services. Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to Grantor of the time and place of any public sale or the time after which any private sale is to be made will constitute reasonable notification. Lender shall not be obligated to make any sale of Intellectual Property Collateral regardless of notice of sale having been given. Lender may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice except as required by law, be made at the time and place to which it was so adjourned.

(b) All cash proceeds received by Lender in respect of any sale of, collection from, or other realization upon, all or any part of the Intellectual Property Collateral may, in the discretion of Lender, be held by Lender as collateral for, and/or then or at any time thereafter applied (after payment of any amounts payable to Lender pursuant to Section 11(b)), in whole or in part, by Lender, for its benefit against all or any part of the Secured Obligations in such order as the Loan

Agreement may require and otherwise as Lender may elect. Any surplus of such cash or cash proceeds held by Lender and remaining after payment in full of all of the Secured Obligations shall be paid over to the applicable Grantors or to whomever may be lawfully entitled to receive such surplus.

(c) Lender may exercise any and all rights and remedies of Grantor in respect of the Intellectual Property Collateral.

(d) All payments received by Grantor in respect of the Intellectual Property Collateral shall be received in trust for the benefit of Lender, shall be segregated from other funds of Grantor and shall be forthwith paid over to Lender in the same form as so received (with any necessary or desirable endorsement or assignment).

#### SECTION 11. Indemnity and Expenses.

(a) Grantor hereby agrees to indemnify Lender from and against any and all claims, losses and liabilities arising out of or resulting from this Agreement (including, without limitation, enforcement of this Agreement), except claims, losses or liabilities resulting from Lender's gross negligence or willful misconduct as determined by a final non-appealable judgment of a court of competent jurisdiction.

(b) Grantor will, upon demand, pay to Lender the amount of any and all reasonable expenses, including the reasonable fees and expenses of its counsel and of any experts and agents, that the Lender may incur in connection with (i) the administration of this Agreement, (ii) the custody, preservation, use, or operation of, or the sale of, collection from or other realization upon, any of the Intellectual Property Collateral, (iii) the exercise or enforcement of any of the rights of the Lender or Lenders hereunder or (iv) the failure by Grantor to perform or observe any of the provisions hereof.

#### SECTION 12. Security Interest Absolute.

The obligations of Grantor under this Agreement are independent of the Secured Obligations, and a separate action or actions may be brought and prosecuted against Grantor to enforce this Agreement, irrespective of whether any action is brought against Grantor or whether Grantor is joined in any such action or actions. All rights of Lender and the pledge and security interest created hereunder, and all obligations of Grantor hereunder, shall be absolute and unconditional, irrespective of:

(a) any lack of validity or enforceability of any Lender Agreement or any other agreement, instrument or document relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the Secured Obligations or any other amendment, restatement or other modification or waiver of or any consent to any departure from any Lender Agreement, including, without limitation, any increase in the Secured Obligations resulting from the extension of additional credit to Grantor or otherwise;

(c) any taking, exchange, release or non-perfection of any other collateral, or any taking, release or amendment, restatement, other modification or waiver of or consent to any departure from any guaranty, for all or any of the Secured Obligations;

(d) any manner of application of collateral, or proceeds thereof, to all or any of the Secured Obligations, or any manner of sale or other disposition of any collateral for all or any of the Secured Obligations or any other assets of Grantor;

(e) any change, restructuring or termination of the corporate structure or existence of Grantor or any Guarantor; or

(f) any other circumstance that might otherwise constitute a defense available to, or a discharge of, Grantor or a third party grantor of a security interest.

### SECTION 13. Amendments, Waivers, Supplements, Etc.

(a) No amendment or waiver of any provision of this Agreement, and no consent to any departure by Grantor herefrom, shall in any event be effective unless the same shall be in writing and signed by Lender, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

(b) No failure on the part of Lender to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

(c) Upon the execution and delivery by any Person of an intellectual property security agreement supplement, in each case in substantially the form of Exhibit A hereto (each an "Intellectual Property Security Agreement Supplement"), (i) such Person shall be referred to as an "Additional Grantor" and shall be and become a Grantor, and each reference in this Agreement to "Grantor" shall also mean and be a reference to such Additional Grantor and each reference in any other Document to a "Grantor" shall also mean and be a reference to such Additional Grantor, and (ii) the annexes attached to each Intellectual Property Security Agreement Supplement shall be incorporated into and become a part of and supplement Schedules I, II and III, as appropriate, hereto and Lender may attach such annexes as supplements to such Schedules, and each reference to such Schedules shall mean and be a reference to such Schedules, as so supplemented.

### SECTION 14. Addresses for Notices.

All notices and other communications provided for hereunder shall be in writing (including telegraphic, telecopy or telex communication) and mailed, telegraphed, telecopied, telexed or delivered, if to Grantor, addressed to it at the address set forth below its name on the signature page hereof; if to any Additional Grantor, addressed to it at the address set forth below its name on the signature page to the Intellectual Property Security Agreement Supplement executed and delivered by such Additional Grantor; if to Lender, addressed to it at its address set

forth below; or, as to each other party, at such other address as shall be designated by such party in a written notice to Grantor and Lender.

To Lender: Inverness Medical Technology, Inc.  
200 Prospect Street  
Waltham, MA 02453  
Attention: Chief Executive Officer  
Facsimile: (781) 647-3939

With a copy to: Goodwin Procter LLP  
Exchange Place  
Boston, Massachusetts 02109  
Attention: Stephen W. Carr, P.C.  
Scott F. Duggan, Esq.  
Facsimile: (617) 523-1231

To Grantor: LXN Corporation  
6325 Lusk Boulevard  
San Diego, California 92121  
Attention: Chief Executive Officer  
Facsimile: (858) 546-7505

With a copy to: Cooley Godward LLP  
4365 Executive Drive, Suite 1100  
San Diego, California 92121  
Attention: Christopher J. Kearns, Esq.  
Carl R. Sanchez, Esq.  
Facsimile: (858) 453-3555

All such notices and communications shall, when mailed by certified mail, return receipt requested, telegraphed, telecopied or telexed, be effective three (3) days after mailing, upon delivery to the telegraph company, upon transmission by telecopier or upon confirmation by telex answerback, respectively, addressed as aforesaid. Any party hereto may change the Person, address or telecopier number to whom or which notices are to be given hereunder, by notice duly given hereunder; provided, however, that any such notice shall be deemed to have been given hereunder only when actually received by the party to which it is addressed.

**SECTION 15. Continuing Security Interest, Assignments.**

This Agreement shall create a continuing security interest in the Intellectual Property Collateral and shall (a) remain in full force and effect until the latest of (i) the indefeasible payment in full in cash of all of the Secured Obligations and (ii) the date of termination in whole of the commitment of Lender under the Loan Agreement, (b) be binding upon Grantor, its successors and assigns and (c) inure, together with the rights and remedies of Lender hereunder, to the benefit of Lenders and their respective successors, transferees and assigns. Without

limiting the generality of the foregoing clause (c), Lender may assign or otherwise transfer all or any portion of its rights and obligations under the Loan Agreement (including, without limitation, all or any portion of its commitment under the Loan Agreement, the Advances owing to it and the Note held by it) to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Lender herein or otherwise.

**SECTION 16. Release and Termination.**

(a) Upon any sale, lease, transfer or other disposition of any item of Intellectual Property Collateral in accordance with the terms of the Lender Agreements, Lender will, at Grantor's expense, execute and deliver to Grantor such documents as Grantor shall reasonably request to evidence the release of such item of Intellectual Property Collateral from the security interest granted hereby; provided, however, that (i) at the time of such request and such release, no Event of Default shall have occurred and be continuing, (ii) Grantor shall have delivered to Lender, at least thirty (30) business days prior to the date of the proposed release, a written request for release describing the item of Intellectual Property Collateral and the terms of the sale, lease, transfer or other disposition in reasonable detail, including the price thereof and any expenses in connection therewith, together with a form of release for execution by Lender and a certification by Grantor to the effect that the transaction is in compliance with the Lender Agreements and as to such other matters as Lender may request and (iii) the proceeds of any such sale, lease, transfer or other disposition required to be applied in accordance with the Loan Agreement and (iv) Lender shall have approved such sale, lease, transfer or other disposition in writing which approval shall not be unreasonably withheld.

(b) Upon the latest of (i) the indefeasible payment in full in cash of the Secured Obligations and (ii) the date of termination in whole of the commitments of Lender under the Loan Agreement, the pledge and security interest granted by each of Grantors hereby shall terminate and all rights to the Intellectual Property Collateral shall revert to Grantor. Upon any such termination, Lender will, upon receipt of a written request and at Grantor's expense, execute and deliver to Grantor such documents as Grantor shall reasonably request to evidence such termination.

**SECTION 17. Execution in Counterparts.**

This Agreement may be executed in any number of counterparts and by the different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopier shall be as effective as delivery of a manually executed counterpart of this Agreement.


**SECTION 18. Governing Law; Terms.**

This Agreement shall be governed by and construed in accordance with the laws of The Commonwealth of Massachusetts (without giving effect to its conflicts of law principles), except to the extent that the validity or perfection of the security interest hereunder, or remedies

hereunder, in respect of the Intellectual Property Collateral are governed by the laws of a jurisdiction other than The Commonwealth of Massachusetts.

IN WITNESS WHEREOF, Grantor has caused this Intellectual Property Security Agreement to be duly executed and delivered by its officer, thereunto duly authorized, as of the date first above written.

LXN CORPORATION

By:   
Name: MICHAEL A. BEUWSTERT  
Title: PRESIDENT & CEO

ACCEPTED:

INVERNESS MEDICAL TECHNOLOGY, INC.

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

Name:

Title:



STATE OF CA )

) ss:

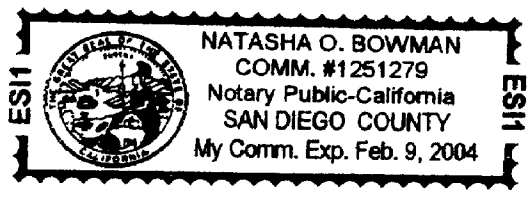
COUNTY OF San Diego )

ACKNOWLEDGEMENT

On this 16<sup>th</sup> day of February, 2001, before me came Michael A. Brewster who stated that he/~~she~~ is the President - CEO of LXN Corporation and acknowledged that he/~~she~~ executed the above instrument as the act and deed of LXN Corporation with the full authority to do so.

Natasha O. Bowman  
Notary Public

My Commission Expires: 2-9-2004



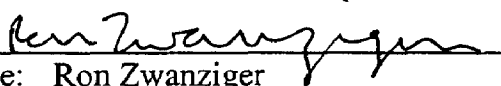
IN WITNESS WHEREOF, Grantor has caused this Intellectual Property Security Agreement to be duly executed and delivered by its officer, thereunto duly authorized, as of the date first above written.

**LXN CORPORATION**

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

ACCEPTED:

**INVERNESS MEDICAL TECHNOLOGY, INC.**

By:   
Name: Ron Zwanziger  
Title: President and CEO

STATE OF MA )

) SS:

COUNTY OF SUFFOLK )

ACKNOWLEDGEMENT

On this 15<sup>th</sup> day of February, 2001, before me came Ron Zwan 2-1965 who stated that he/she is the President, CEO of Inverness Medical Technology, Inc. and acknowledged that he/she executed the above instrument as the act and deed of Inverness Medical Technology, Inc. with the full authority to do so.

James J. O'Brien  
Notary Public

My Commission Expires: June 1, 2001

STATE OF MA )

) ss:

COUNTY OF SUFFOLK )

ACKNOWLEDGEMENT

On this 15<sup>th</sup> day of February, 2001, before me came Ron Zwanziger who stated that he/she is the President, CEO of Inverness Medical Technology, Inc. and acknowledged that he/she executed the above instrument as the act and deed of Inverness Medical Technology, Inc. with the full authority to do so.

James J. Ottina  
Notary Public

My Commission Expires: June 1, 2001

Schedule I: Patents

See attached memorandum.

I. **Multi-layer Devices** (Burd et al.)

- A. **P-LX 9880**: "Multi-layer devices and methods of assaying for fructosamine," filed June 29, 1994, as U.S. App. 08/269,351; issued Nov. 28, 1995, as U.S. Patent No. 5,470,752.
- B. **FP-LX 1734 (PCT)**: "Multi-layer test devices and methods of assaying for fructosamine" [*note title change*], filed June 23, 1995, as Int'l App. PCT/US95/08029 (national phase).
- C. **FP-LX 2381 (Jap)**: "Multi-layer test devices and methods of assaying for fructosamine," filed June 23, 1995, as Jap. App. 8-503373 (pending).
- D. **FP-LX 2382 (EPO)**: "Multi-layer test devices and methods of assaying for fructosamine," filed June 23, 1995, as Eur. App. 95924693.5 (pending).

II. **Combined Assay** (Galen et al.)

- A. **P-LX 1077**: "Combined assay for current glucose level and intermediate or long-term glycemic control," filed Apr. 7, 1995, as U.S. App. 08/418,495; issued Dec. 9, 1997, as U.S. Patent No. 5,695,949.
- B. **P-LX 2384 (divisional of 1077)**: "Apparatus for combined assay for current glucose level and intermediate or long-term glycemic control" [*note title change*], filed Dec. 12, 1996, as U.S. App. 08/764,320; issued Feb. 22, 2000, as U.S. Patent No. 6,027,692.
- C. **P-LX 3898 (continuation of 2384)**: "Combined assay for current glucose level and intermediate or long-term glycemic control," filed Jan. 5, 2000, as U.S. App. 09/477,900 (pending)

- D. **FP-LX 2058 (PCT):** "Combined assay for current glucose level and intermediate or long-term glycemic control," filed Apr. 5, 1996, as Int'l App. PCT/US96/04703 (national phase).
- E. **FP-LX 2738 (Can):** "Combined assay for current glucose level and intermediate or long-term glycemic control," filed Apr. 5, 1996, as Can. App. 2,215,914 (pending).
- F. **FP-LX 2739 (EPO):** "Combined assay for current glucose level and intermediate or long-term glycemic control," filed Apr. 5, 1996, as Eur. App. 96911596.3 (pending).
- G. **FP-LX 2740 (Jap):** "Combined assay for current glucose level and intermediate or long-term glycemic control," filed Apr. 5, 1996, as Jap. App. 8-530500 (pending)

### III. *Electrochemical* (Burd and Neyer)

- A. **P-LX 1173:** "Electrochemical determination of fructosamine," filed Oct. 16, 1995, as U.S. App. 08/543,482; issued June 17, 1997, as U.S. Patent No. 5,639,672.
- B. **FP-LX 2235 (PCT):** "Electrochemical determination of fructosamine," filed Oct. 16, 1996, as Int'l App. PCT/US96/16541 (national phase).
- C. **FP-LX 3070 (Jap):** "Electrochemical determination of fructosamine," filed Oct. 16, 1996, as Jap. App. 9-515918 (pending).
- D. **FP-LX 3071 (EPO):** "Electrochemical determination of fructosamine," filed Oct. 16, 1996, as Eur. App. 96936479.3 (pending).

**IV. Whole Blood Separation (Gebhard Neyer)**

- A. **P-LX 1452:** "Whole blood separation method and devices using the same," filed Apr. 7, 1995, as U.S. App. 08/418,523; issued Mar. 10, 1998, as U.S. Patent No. 5,725,774.
- B. **P-LX 2539** (divisional of 1452): "Multi-layer test device for analyzing the concentration of analyte in a blood sample" [*note title change*], filed July 15, 1997, as U.S. App. 08/892,697; issued June 9, 1998, as U.S. Patent No. 5,762,871.
- C. **FP-LX 2059 (PCT):** "Whole blood separation method and devices" [*note title change*], filed Apr. 5, 1996, as Int'l App. PCT/US96/04697 (national phase).
- D. **FP-LX 2741 (Can):** "Whole blood separation method and devices," filed Apr. 5, 1996, as Can. App. 2,215,948 (pending).
- E. **FP-LX 2742 (EPO):** "Whole blood separation method and devices," filed Apr. 5, 1996, as Eur. App. 96911595.5 (pending).
- F. **FP-LX 2743 (Jap):** "Whole blood separation method and devices," filed Apr. 5, 1996, as Jap. App. 8-530498 (pending).

**V. Initiation and Variable End Points (Lingane et al.)**

- A. **P-LX 2222:** "Methods of determining initiation and variable end points for measuring a chemical reaction," filed Apr. 15, 1997, as U.S. App. 08/842,616; issued Mar. 23, 1999, as U.S. Patent No. 5,885,839.

**VI. Sonic Treatment (Nelson and White)**

- A. **P-LX 2825:** "Sonic treatment to selectively reduce the void volume of sintered polymers," filed Jan. 14, 1998, as U.S. App. 09/006,787; issued Feb. 15, 2000, as U.S. Patent No. 6,024,919.



**VII. *Organ Function* (Burd and Edelman)**

- A. **P-LX 3194**: "Integrated assay for organ function, drug and/or one or more metabolites," filed on Mar. 8, 1999, as U.S. App. 09/264,249 (pending).
- B. **FP-LX 4013 (PCT)**: "Integrated assay for organ function, drugs and/or one or more metabolites" [*note title change*], filed Mar. 1, 2000, as Int'l App. PCT/US00/05369 (in Chapter II).

**VIII. *Air Gap* (Nelson and Coe)**

- A. **P-LX 3339**: "Air gap for controlling sample absorption and hematocrit dependence," on Mar. 3, 1999, as U.S. App. 09/261,707 (pending).
- B. **FP-LX 4012 (PCT)**: "Method and apparatus for controlling the adsorption of a liquid sample through an absorbent layer" [*note title change*], filed Mar. 2, 2000, as Int'l App. PCT/US 00/05509 (in Chapter II).

Schedule II: Trademarks

See attached memorandum.

**LXN CORPORATION**  
**U.S. and International Trademark Status Chart**  
**November 2000**

CLASSIFICATION		CURRENT STATUS		NEXT ACTION DUE	
UNITED STATES					
BETTER KNOWLEDGE BETTER HEALTH United States	September 29, 1999 75/811,839	N/A	Int'l Class 5: Medical diagnostic test kits.	Office action issued February 16, 2000; Response filed August 4, 2000	Status on acceptance of arguments January 5, 2001
DUET United States	March 20, 1996 75/077,081	July 14, 1998 2,173,453	Int'l Class 5: In-vitro diagnostic test kit	Registered	File Section 8 & 15 between July 14, 2003 - July 14, 2004  File Renewal by July 14, 2008
DCHANNEL NETWORK United States	N/A	N/A	Int'l Class 5: In-vitro diagnostic test kits.	Preliminary Search conducted	Check on client's intentions with respect to pursuing mark December 30, 2000
EXPRESSVIEW United States	December 3, 1999 75/863,376	N/A	Int'l Class 5: Medical diagnostic kits.	Office Action issued May 16, 2000; Response filed October 19, 2000	Status on acceptance of arguments March 20, 2001
GLUCOPROTEIN United States	March 7, 1997 75/253,531	May 11, 1999 2244976	Int'l Class 5: Diagnostic test kit comprised primarily of reagent test strips and a matter for reading the test strips.	Registered	File Section 8 & 15 between May 11, 2004 - May 11, 2005  File Renewal by May 11, 2009

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 1206601602

IN CHARGE United States	June 9, 1999 75/725,627	N/A	Int'l Class 5: Medical diagnostic test kits.	Office action issued 9/24/99; Response to office action filed March 22, 2000	Check status of reinstatement December 15, 2000
LXN United States	August 24, 1995 74/719,617	October 6, 1998 2194000	Int'l Class 5: In-vitro diagnostic test kit for blood testing and analysis of diabetics.	Registered	File Sections 8 & 15 between October 6, 2003 - October 6, 2004
THE AXIS OF DIABETES HEALTHCARE United States	N/A	N/A	Int'l Class 5: In-vitro diagnostic test kits.	Preliminary Search conducted	File Renewal by October 6, 2008 Check on client's intentions with respect to pursuing work December 30, 2000

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130600/1607

NEW ACTION	CURRENT STATUS	CLASSIFICATION	PRIORITY	PRIORITY	PRIORITY
<b>EUROPEAN COMMUNITY</b>	Registered	Use - January 17, 2005 File Renewal by April 1, 2006	<p>Int'l Class 1: Chemical products used in industry, science photography, horticulture and forestry not for use in agriculture; artificial and synthetic resins; plastics in the forms of powders, liquids or pastes; manures (natural and artificial); fire extinguishing compositions; tempering substances and chemical preparations for soldering; chemical substances for preserving foodstuffs; tanning substances; adhesive substances used in industry; none of these goods for use in the dental industry.</p> <p>Int'l Class 5: Pharmaceutical, veterinary and sanitary substances; diuretic substances adapted for medical use, food for babies; plasters, material for dressings; disinfectants not for use in agriculture; preparations for destroying vermin; fungicides; herbicides; none of these goods for use in the dental industry.</p> <p>Int'l Class 10: Surgical and veterinary apparatus and instruments; artificial limbs and eyes; orthopedic articles; suture materials; none of these goods for use in the dental industry or for use in stomal care.</p>	<p>January 17, 2000 126359</p> <p>April 1, 1996 126359</p>	<p>DUJET</p> <p>ECTM</p>

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EXPRESSVIEW ECTM	May 23, 2000 Not Yet Assigned	N/A	<p>Int'l Class 1: Chemicals used in industry, science photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins; unprocessed plastics; manure; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry; diagnostic reagents.</p> <p>Int'l Class 5: Pharmaceutical, veterinary and sanitary substances; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; materials for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides; diagnostic reagents.</p> <p>Int'l Class 10: Surgical, medical, dental and veterinary apparatus and instruments; artificial limbs, eyes and teeth; orthopedic articles; suture materials; diagnostic test kits.</p>	Newly filed application	Confirm examination of mark December 15, 2000
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1/30/00/1602

<p>GLUCO-PROTEIN ECTM</p>	<p>August 26, 1997 613281</p>	<p>N/A</p>	<p>Int'l Class 1: Chemical products used in industry, science photography, horticulture and forestry not for use in agriculture; artificial and synthetic resins; plastics in the forms of powders, liquids or pastes; manures (natural and artificial); fire extinguishing compositions; tempering substances and chemical preparations for soldering chemical substances for preserving foodstuffs; tanning substances; adhesive substances used in industry; none of these goods for use in the dental industry.</p> <p>Int'l Class 5: Pharmaceutical, veterinary and sanitary substances; dietetic substances adapted for medical use, food for babies; plasters, material for dressing; disinfectants not for use in agriculture; preparations for destroying vermin; fungicides; herbicides.</p> <p>Int'l Class 10: Surgical and veterinary apparatus and instruments; artificial limbs and eyes; orthopedic articles; suture materials.</p>	<p>Pending. Examiner's objection issued re mark being descriptive of goods claimed; foreign associate filed response arguing against Examiner's registrability objections; awaiting response to same</p>	<p>Verify status of application December 15, 2000</p>
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IN CHARGE ECTM	December 8, 1999 1414994	N/A	<p>Int'l Class 1: Chemical products used in industry, science, photography, agriculture, horticulture, forestry; artificial and synthetic resins; plastics in the form of powders, liquids or pastes; manures (natural and artificial); fire extinguisher compositions; tempering substances and chemical preparations for soldering; chemical substances for preserving foodstuffs; tanning substances; adhesive substances used in industry.</p> <p>Int'l Class 5: Pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.</p> <p>Int'l 10: Surgical, medical dental and veterinary apparatus and instruments; artificial limbs, eyes and teeth; orthopedic articles; suture materials.</p>	Published for Opposition August 14, 2000	Confirm payment of registration fee March 15, 2001
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Schedule III: License Agreements

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Schedule 4(a)

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