

06-18-2002

N FORM COVER SHEET Patents Only



To the Honorable
Please record this

102126340

Attorney Dkt. No.: 035626/234825

1. Name of conveying party(ies):

Anton-Lewis Usala

6-11-02

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

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

Encelle, Inc.
1800 N. Greene Street
Greenville, North Carolina 27834

Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

 Assignment
 Merger
 Security Agreement
 Change of Name
 Other _____
Execution Date: January 1, 1996

4. Application No. 09/870,414 Patent No. _____

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

Additional numbers attached? Yes No

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

ALSTON & BIRD LLP
Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000

6. Total number of applications and patents involved:

1

7. Total fee (37 CFR 3.41) \$40.00
 Enclosed
 Authorized to be charged to deposit account

8. Deposit account number: 16-0605

16/17/2002 DBYRNE 00000223 09070414
11 FC:581 40.00 DP

DO NOT USE THIS SPACE

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.*

[Signature]
Name of Person Signing: Christopher M. Humphrey
Reg. No. 43,683

5/29/02
Date

Total number of pages including cover sheet, attachments, and document: 11

RTA 2118026v1

ENCELLE, INC.

EMPLOYEE NONDISCLOSURE, DEVELOPMENTS, NONSOLICITATION AND NONCOMPETITION AGREEMENT

THIS EMPLOYEE NONDISCLOSURE, DEVELOPMENTS, NONSOLICITATION AND NONCOMPETITION AGREEMENT (the "Agreement") is made and entered into this 1st day of January, 1996 by and between Encelle, Inc., a Delaware corporation (the "Company") and Anton-Lewis Usala (the "Employee").

WHEREAS, the Company desires to employ, or to continue the employment of, the Employee subject to the terms and conditions set forth herein; and

WHEREAS, Employee desires to be employed or to continue employment with the Company and is willing to agree to the terms and conditions set forth herein; and

WHEREAS, Employee understands that, in its business, the Company has developed and uses commercially valuable technical and nontechnical information and that, to guard the legitimate interests of the Company, it is necessary for the Company to keep such information confidential and to protect such information as trade secrets or by patent or copyright; and

WHEREAS, Employee understands that all such information is vital to the success of the Company's business and that Employee, through Employee's employment, may become acquainted with such information and may contribute to that information through inventions, discoveries, improvements, software development, or in some other manner;

NOW, THEREFORE, for and in consideration of the premises and mutual covenants contained herein, and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the terms and conditions hereinafter set forth, the parties hereto agree as follows.

1. Employee will not at any time, whether during or after the termination of his/her employment, reveal to any person or entity any of the trade secrets or confidential information concerning the organization, business or finances of the Company or of any third party that the Company is under an obligation to keep confidential (including but not limited to trade secrets or confidential information respecting inventions, research, products, designs, methods, know-how, formulae, techniques, systems, processes, software programs, works of authorship, customer lists, projects, plans and proposals), except as may be required in the ordinary course of performing his/her duties as an employee of the Company, and Employee shall keep secret all matters entrusted to him/her and shall not use or attempt to use any such information in any manner that may injure or cause loss or may be calculated to injure or cause loss whether directly or indirectly to the Company.

Further, Employee agrees that during his/her employment Employee shall not make, use or permit to be used any notes memoranda, reports, lists, records, drawings, sketches, specifications, software programs, research, data, formulae, documentation or other materials of any nature relating to any matter within the scope of the business of the Company or concerning any of its dealings or affairs otherwise than for the benefit of the Company. Employee further agrees that he/she shall not, after the termination of his/her employment, use or permit to be used any such notes, memoranda, reports, lists, records, drawings, sketches, specifications, formulae, software programs, data, research, documentation or other materials, it being agreed that all the foregoing shall be and remain the sole and exclusive property of the Company and that immediately upon the termination of Employee's employment, Employee shall deliver all the foregoing, and all copies thereof, to the Company, at its main office.

2. If at any time or times during Employee's employment (whether before or after the date hereof, Employee shall (either alone or with others) make, conceive, discover or reduce to practice any invention, modification, discovery, design, development, improvement, process, software program, work of authorship, documentation, formula, data, technique, know-how, secret or intellectual property right whatsoever or any interest therein (whether or not patentable or registrable under copyright or similar statutes or subject to analogous protection) (herein called "**Developments**") that (a) relates to the business of the Company or any of the products or services being developed, manufactured or sold by the Company or that may be used in relation therewith, (b) results from tasks assigned him/her by the Company or (c) results from the use of premises or personal property (whether tangible or intangible) owned, leased or contracted for by the Company, such Developments and the benefits thereof shall immediately become the sole and absolute property of the Company and its assigns, and Employee shall promptly disclose to the Company (or any persons designated by it) each such Development and hereby assigns any rights Employee may have or acquire in the Developments and benefits and/or rights resulting therefrom to the Company and its assigns without further compensation and shall communicate, without cost or delay, and without publishing the same, all available information relating thereto to the Company.

Upon disclosure of each Development to the Company, Employee will, during his/her employment and at any time thereafter, at the request and expense of the Company, sign, execute, make and do all such deeds, documents, acts and things as the Company and its duly authorized agents may reasonably require:

(a) to apply for, obtain and vest in the name of the Company alone (unless the Company otherwise directs) letters patent, copyrights or other analogous protection in any country throughout the world and when so obtained or vested to renew and restore the same; and

(b) to defend any opposition proceedings in respect of such applications and any opposition proceedings or petitions or applications for revocation of such letters patent, copyright or other analogous protection.

In the event the Company is unable, after reasonable effort, to secure Employee's signature on any letters patent, copyright or other analogous protection relating to a

Development, whether because of Employee's physical or mental incapacity or for any other reason, Employee hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Employee's agents and attorneys-in-fact, to act for and in behalf of Employee and stand to execute and file any such application or applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent, copyright or other analogous protection thereon with the same legal force and effect as if executed by Employee.

Notwithstanding the foregoing, this Agreement shall not be construed to apply to, and shall not create any assignment of, any Developments of the Employee that are covered by Section 66-57.1 of the North Carolina General Statutes, a copy of which is attached hereto as Exhibit A.

3. Employee agrees that any breach of this Agreement by him/her will cause irreparable damage to the Company. In the event of such breach the Company shall have, in addition to any and all remedies at law, the right to an injunction, specific performance and other equitable relief to prevent the violation of Employee's obligations hereunder.

4. Employee understands that this Agreement does not create an obligation on the Company or any other person or entity to continue Employee's employment.

5. Employee represents that the Developments, if any, identified on Exhibit B attached hereto comprise all the unpatented and uncopyrighted Developments that Employee has made or conceived prior to Employee's employment by the Company, which Developments are excluded from this Agreement. Employee understands that it is necessary only to list the title and purpose of such Developments but not details thereof.

Employee agrees that Employee will not, during the term of his or her employment, improperly use or disclose any proprietary information or trade secrets of any former or concurrent employer, or other person or entity, and that Employee will not bring onto the premises of the Company any unpublished document or proprietary information belonging to any such employer, person or entity unless consented to in writing by such party. Employee further represents that Employee's performance of all the terms of this Agreement and as an employee of the Company does not and will not breach any agreement to keep in confidence proprietary information acquired by Employee in confidence or in trust prior to Employee's employment by the Company. Employee has not entered into, and Employee agrees he/she will not enter into, any agreement either written or oral in conflict herewith.

6. Nonsolicitation and Noncompetition Covenants

(a) The following terms used in this Section 6 shall have the definitions set forth below.

(i) "**Affiliate**" means any person or entity directly or indirectly controlling, controlled by or under common control with Employee. As used herein, the word "**control**" means the power to direct the management and affairs of a person or entity.

(ii) "**Business**" means the business of developing, manufacturing, marketing and/or selling biopassive implantable medical devices.

(iii) "**Competing Enterprise**" means any person or any business organization of whatever form, wherever located, engaged directly or indirectly in the Business.

(b) Employee covenants that Employee shall, while employed by the Company and for a period of twelve (12) months following the termination of Employee's employment, observe the following separate and independent covenants.

(i) Neither Employee nor any Affiliate will, without the prior written consent of the Company, either directly or indirectly, (1) become financially interested in a Competing Enterprise (other than as holder of less than five percent (5%) of the outstanding voting securities of any entity whose voting securities are publicly traded on a nationally recognized securities exchange or quotation system), or (2) engage in or be employed by any Competing Enterprise as a consultant, officer, director, employee, or in any other capacity.

(ii) Neither Employee nor any Affiliate will, without the prior written consent of the Company, either directly or indirectly, on Employee's own behalf or in the service or on behalf of others, solicit, divert or appropriate, or attempt to solicit, divert or appropriate, to any Competing Enterprise, any person or entity that is or was a customer of the Company during Employee's employment by the Company.

(iii) Neither Employee nor any Affiliate will, without the Company's prior written consent, either directly or indirectly, on Employee's own behalf or in the service or on behalf of others, solicit, divert or hire away, or attempt to solicit, divert or hire away, to any Competing Enterprise, any person employed by the Company, whether or not such employee is a full-time or a temporary employee of the Company, whether or not such employment is pursuant to written agreement, and whether or not such employment is at-will.

(c) Employee acknowledges that the nature of the Business of the Company is such that the Company competes with any Competing Enterprises on a global basis and, accordingly, the application of the foregoing noncompetition provisions on a worldwide basis is not unfairly restrictive.

7. Any waiver by the Company of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of such provision or any other provision hereof.

8. Employee hereby agrees that each provision herein shall be treated as a separate and independent clause, and the unenforceability of any one clause shall in no way impair the enforceability of any of the other clauses herein. Moreover, if one or more of the provisions contained in this Agreement shall for any reason be held to be excessively broad as to scope, activity or subject so as to be unenforceable at law, such provision or provisions shall be

construed by the appropriate judicial body by limiting and reducing it or them, so as to be enforceable to the maximum extent compatible with the applicable law as it shall then exist.

9. Employee's obligations under this Agreement shall survive the termination of this Agreement and Employee's employment regardless of the manner of such termination and shall be binding upon Employee's heirs, executors, administrators and legal representatives.

10. The term "**Company**" shall include the company named on the first page of this Agreement and any of its subsidiaries, subdivisions or affiliates. The Company shall have the right to assign this Agreement to its successors and assigns, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by said successors or assigns. This Agreement may be amended only in a writing signed by each of the parties hereto.

11. This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement may be executed in counterparts.

12. The Company shall treat the disclosures made on Exhibit B as the confidential information of the Employee and shall not disclose any such information, other than to the Company's professional advisors or as may otherwise be required by law, without the prior written consent of the Employee.

[REMAINDER OF PAGE LEFT BLANK INTENTIONALLY]

IN WITNESS WHEREOF, the undersigned have executed this Agreement as a sealed instrument as of the date first above written.

EMPLOYEE:

Anton-Lewis Usala MD
(Printed or Typed Name)

 (SEAL)
(Signature)

COMPANY:

ENCELLE, INC.

By: James D. Woodward
Title: President & CEO

EXHIBIT A

SECTION 66-57.1 OF THE NORTH CAROLINA GENERAL STATUTES

Any provision in an employment agreement which provides that the [employee] shall assign or offer to assign any of his rights in an invention to his employer shall not apply to an invention that the employee developed entirely on his own time without using the employer's equipment, supplies, facility or trade secret information except for those inventions that:

- (i) relate to the employer's business or actual or demonstrably anticipated research or development, or
- (ii) result from any work performed by the employee for the employer.

To the extent a provision in an employment agreement purports to apply to the type of invention described, it is against the public policy of this State and [is] unenforceable. The employee shall bear the burden of proof in establishing that his invention qualifies under this section.

EXHIBIT B

PRIOR DEVELOPMENTS BY EMPLOYEE

None