

02-24-2003



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Form PTO-1595
(Rev. 03/01)
OMB No. 0651-0027 (exp. 5/31/2002)

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office



To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof

<p>1. Name of conveying party(ies): Efratgo Limited</p> <p>Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>2. Name and address of receiving party(ies)</p> <p>Name: <u>Orthofix International BV</u></p> <p>Internal Address: _____</p> <p>Street Address: _____</p> <p>Jon Vermeersplein II 1076 DR</p> <p>City: <u>Amsterdam</u></p> <p>Country: <u>Netherlands</u> Zip: _____</p> <p>Additional name(s) & address(es) attached: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>3. Nature of Conveyance:</p> <p><input type="checkbox"/> Assignment <input type="checkbox"/> Merger</p> <p><input type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name</p> <p><input checked="" type="checkbox"/> Other <u>Supply and License Agreement</u></p> <p>Execution Date: <u>December 23, 2002</u></p>	

02-14-03

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

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

<p>A. Patent Application No.(s): 09/916,400</p>	<p>B. Patent No.(s): 5,429,641; 5,806,117</p>
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Additional numbers attached? Yes No

<p>5. Name and address of party to whom correspondence concerning document should be mailed:</p> <p>Name: <u>Sinan Utku</u></p> <p>Internal Address: _____</p> <p>Street Address: _____</p> <p><u>Covington & Burling</u> <u>265 Strand</u></p> <p>City: <u>London</u> Country: <u>United Kingdom</u> Zip: <u>WC2R 1BH</u></p>	<p>6. Total number of applications and patents involved: <u>3</u></p> <p>7. Total fee (37 CFR 3.41) \$ <u>120.00</u></p> <p><input type="checkbox"/> Enclosed</p> <p><input checked="" type="checkbox"/> Authorized to be charged to deposit account</p> <p><input type="checkbox"/> Authorized to be charged to credit card (Form 2038 enclosed)</p> <p>8. Deposit account number: <u>50-0740</u> (Attach duplicate copy of this page if paying by deposit account)</p>
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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.

<p><u>Andrea G. Reister, Reg. No. 36.253</u> Name of Person Signing</p>	<p><i>Andrea G. Reister</i> Signature</p>	<p><u>February 14, 2003</u> Date</p>
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Total number of pages including cover sheet, attachments, and documents: 14

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DC: 767542-1

PATENT
REEL: 013758 FRAME: 0679

DATED December 23, 2002

EFRATGO LIMITED

ORTHOFIX INTERNATIONAL BV

ORTHOFIX INTERNATIONAL NV

SUPPLY AND LICENCE AGREEMENT

THIS AGREEMENT is made on December 23, 2002

AMONG:

- (1) **EFRATGO LIMITED** incorporated in Israel and whose registered office is at 10 Ben-Gurion Street, Kiryat Bialik 27024, Israel with company number 51-1830291 ("Efratgo")
- (2) **ORTHOFIX INTERNATIONAL BV** incorporated in the Netherlands with registered number 8644421 and whose registered office is at Jon Vermeersplein 11, 1076 DR, Amsterdam, Netherlands ("Orthofix")
- (3) **ORTHOFIX INTERNATIONAL NV** incorporated in the Netherlands Antilles with registered number 47379 and whose registered office is at 7 Abraham de Veerstraat, Curaçao, Netherlands Antilles ("Guarantor").

WHEREAS:

- (A) Efratgo has developed and is the beneficial owner of the Know-How (as defined further below) relating to the manufacture, assembly, and commercial operation of the Products (as defined below) and is the beneficial owner of the Patents (as defined below) and of the Trademark (as defined below) and the Intellectual Property (as defined below).
- (B) Efratgo is entitled to grant the rights and licence contained in this Agreement.
- (C) Orthofix wishes to receive and Efratgo is willing to grant the rights and licences on the terms and conditions hereinafter set forth to use and exploit such Know-How, Trademark, Patents and Intellectual Property.

IT IS HEREBY AGREED as follows:

1. INTERPRETATION

1.1 In this Agreement unless the context requires otherwise:

"Bone Hook" means Efratgo's multi-purpose patented bone hook surgical tool which was developed and is being produced and sold by Efratgo for general orthopaedic surgical use. All references to Bone Hook shall be construed as inclusive of said surgical tool and an unpatented auxiliary device called the "bone hook adapter".

"Business Day" means any day other than a Saturday or Sunday upon which banks in London, England are open for normal banking business;

"Carmelwise" means Carmelwise Ltd., a company incorporated in the British Virgin Islands and having its registered address at Geneva

Place, 2nd Floor, 333 Waterfront Drive, Road Town, Tortola, British Virgin Islands, at: Abacus Trust and Management Services Limited;

"Consultancy Agreement" means the Consultancy Agreement entered into between Orthofix and Carmelwise, as described in Clause 6.3 below.

"Dr. Gotfried" means Dr. Yechiel Gotfried, the founder of Efratgo.

"Effective Date" means the date upon which the last of the following shall have occurred: (i) this Agreement has been executed by both parties; and (ii) the First Payment (as such term is defined in Clause 15.1) has been remitted by Orthofix to Efratgo.

"Field" means percutaneous plating in humans for treatment of the following: i) pertrochanteric hip fractures; ii) base of neck hip fractures.

"Firm Order" shall have the meaning set forth at Clause 3.3 to Schedule 3 of this Agreement.

"Group" means in relation to any company, that company and any other company, which, at the relevant time, is that company's holding company or subsidiary, or the subsidiary of any such holding company, and a "Member" of a Group has a corresponding meaning.

"holding company" and **"subsidiary"** shall have the following meanings: a company is a **"subsidiary"** of another company, its **"holding company"**, if that other company:

- (a) holds a majority of the voting rights in it; or
- (b) is a member of it and has the right to appoint or remove a majority of its board of directors; or
- (c) is a member of it and controls alone, pursuant to an agreement with either shareholders or members, a majority of the voting rights in it,

or if it is a subsidiary of a company which is itself a subsidiary of that other company, or the subsidiaries of that other company, between them, meet the criteria in paragraphs (a), (b) or (c) above with respect to it.

"Improvement" means any modification or adaptation to the Products or the Inventions in the Field and any further development, discovery or invention relating to the Products or the Inventions in the Field and including any additional Know-How including any modified or adapted technique relating to the use of the Products in the Field which is developed or acquired by Efratgo or Orthofix (whether patentable or

not) at any time during the term hereof prior to the acquisition by Orthofix of the Intellectual Property. For the avoidance of doubt, the definition of Improvement excludes the modification or adaptation of surgical tools and implants for applications outside of the Field.

"Independent Distributor" shall mean any distributor that is not a Member of the Orthofix Group.

"Intellectual Property" means the Patents, the Trademark, and the Know-How, as well as any copyrights and design rights in connection with the Products (with the exception of the Bone Hook), and the legal protection thereof including the right to sue for damages and other remedies in respect of any infringement thereof.

"Inventions" means the inventions for use in connection with the Products or as disclosed in the Patents.

"Israeli Patent" means any patents or patent applications in Israel that issue or are filed by Efratgo, Carmelwise or Dr. Gotfried or to which Efratgo or Carmelwise may become entitled in Israel at any time during the term hereof prior to the acquisition by Orthofix of the Intellectual Property, and that is either (i) a counterpart of a Patent; or (ii) that discloses or claims an invention in the Field.

"Know-How" means any information and knowledge relating to the application and use of the Products (with the exception of the Bone Hook) in the Field or Improvements in the possession of Efratgo at the Effective Date or to which Efratgo or Orthofix may become entitled or gain possession of at any time during the term hereof prior to the acquisition by Orthofix of the Intellectual Property.

"Licences" means the licences granted or to be granted under this Agreement;

"Major Country" means the USA, Germany, the United Kingdom, France and Italy.

"Member" shall have the meaning set forth in the definition of **"Group"**.

"Month" means a calendar month.

"Net Sales" means any amounts invoiced by a Member of the Orthofix Group to either an Independent Distributor or an end-user in respect of sales of the Products within a specified period, less returns, allowances, damaged inventory, freight costs, rebates, credits, sales and value-added taxes. When a sale of a Product is made by a Member of the Orthofix Group to an Independent Distributor or an end-user, the Net Sales from that sale shall be the invoice price to the

Independent Distributor or the end-user, respectively. The Net Sales from a sale of a Unit at a discount by Orthofix for the purpose of marketing any products that are not Products and where the purpose does not include the marketing of Products shall be the full market value payable by a purchaser at arm's length. Net Sales shall be recorded in units of United States Dollars for purposes of calculation of any payments under this Agreement based on Net Sales. If Products are sold by the Orthofix Group in a currency other than United States Dollars, then the Net Sales arising from such Products shall be determined on a monthly basis by summing the Net Sales from such Products in the local currency for the calendar month and converting the sum into equivalent United States Dollars at the rate of exchange as quoted in the Financial Times at the close of business of the last Business Day of the prior calendar month.

"Party" or "Parties" shall mean Efratgo and/or Orthofix.

"Patents" mean those patents and patent applications that

- (i) are listed in Schedule 1; or
- (ii) issue in the name of Efratgo, Carmelwise or Dr. Gotfried, or are filed anywhere in the Territory by Efratgo, Carmelwise or Dr. Gotfried, at any time during the term of this Agreement prior to the acquisition by Orthofix of the Intellectual Property, that disclose or claim an invention in the Field.

This term shall additionally include:

- (a) continuations and continuations-in-part of (i) or (ii), and
- (b) reissues, reexaminations and extensions of (i), (ii) or (a).

"Products" means the products which are described in Schedule 4, and any Improvements incorporated in or used with such products.

"Territory" means the whole world excluding Israel.

"Trademark" means the trademarks representations of which are set out in Schedule 2 and such other trademark(s) owned by Efratgo as are used in connection with the Inventions and/or with the manufacture, marketing, promotion or sale of the Products and/or in relation to any literature produced in relation to the Products or their use.

"Triggering Event" means the consummation of a transaction whereby Orthofix merges with, consolidates with or sells all or substantially all of its assets or its orthopaedic division to, or a majority of its stock is owned by, a company that is engaged in developing, manufacturing, marketing or selling plating products based on methods for the

treatment of pertrochanteric hip fractures or base of neck hip fractures that are neither disclosed nor claimed in any of the Patents.

"Unit" shall have the meaning set forth at Clause 1.3 to Schedule 3 of this Agreement.

"Year" means each year of this Agreement, the first year commencing on the Effective Date.

1.2 Any reference in this Agreement to:

1.2.1 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.2.2 "writing" or any cognate expression includes a reference to any communication effected by telex, facsimile transmission or similar means.

1.3 The headings in this Agreement are for convenience only and shall not affect its interpretation.

1.4 The expression "person" shall mean any natural person, partnership, joint venture, corporation, limited liability company, trust, firm, association, government, governmental (or supra-governmental) agency or department, or any other entity whether acting in an individual, fiduciary or other capacity.

2. COMMENCEMENT AND DURATION

2.1 *Commencement.* This Agreement shall come into force on the Effective Date.

2.2 *Term of Agreement.* This Agreement shall continue in force until the earlier to occur of (i) termination, to the extent specified therein, under the provisions of Clause 19 (*Termination*), and (ii) the expiration of the patent that is the last-to-expire from among the Patents listed in Schedule 1.

3. GRANT OF LICENCES

3.1 *Licences.* In consideration of the payments as provided for in Clause 15 (*Royalties and other payments*) and subject to the terms and conditions of this Agreement, Efratgo grants to Orthofix on and from the Effective Date,

3.1.1 an exclusive licence under the Intellectual Property to use, sell, offer to sell, import and otherwise dispose of Products in the Territory;

- 3.1.2 an exclusive licence to advertise, market and promote the Products throughout the Territory;
- 3.1.3 an exclusive licence to produce and distribute instruction manuals or other materials in the Territory explaining the use of the Products, subject always to the provisions of Clauses 8.4.1, 8.4.2 and 8.4.3 below.
- 3.2 Orthofix shall be entitled, in its sole discretion and at its sole responsibility, to market and distribute the Products itself or through Independent Distributors. Orthofix shall not be entitled to sublicense the rights and obligations hereunder in whole or in part to any other third party without the prior written consent of Efratgo, which consent shall not be unreasonably denied. Notwithstanding this Clause 3.2 and any other provision in this Agreement, any Member of the Orthofix Group shall have the right to benefit from all rights of Orthofix under this Agreement during the time period it remains a Member of the Orthofix Group.
- 3.3 Efratgo additionally grants Orthofix an exclusive license to make and have made Products and to use, sell and otherwise dispose of Products so made, in the Territory, which license may not be exercised prior to the occurrence of the events listed in Clause 4.3. For the purposes of clarity, Orthofix may not either itself engage, or have a third party engage on its behalf, in any manufacturing activity in respect of the Products without the occurrence of an event listed in Clause 4.3.
- 3.4 Nothing in this Agreement shall be construed as conveying to Orthofix, in the period before any purchase by Orthofix of the Intellectual Property, any right under the Patents or any right to use the Invention or any Improvement for any purpose other than use, sell and otherwise dispose of Products and, if applicable, to make and have made Products, in the Territory and in the Field. Further, Orthofix may not sell the Products in Israel, or to persons located in Israel, or sell the Products directly or indirectly for re-sale or use in Israel.
- 3.5 Efratgo shall not assign, or license any rights under, the Israeli Patents to any third parties without the prior written consent of Orthofix. Further, Efratgo may not sell the Products, or other products in the Field, in the Territory, or to persons located in the Territory, or sell the Products, or other products in the Field, directly or indirectly for re-sale or use in the Territory.
- 3.6 For the purpose of clarity, Efratgo is not reserving any rights under the rights granted Orthofix in Clauses 3.1.1, 3.1.2 and 3.1.3.
- 3.7 For the purposes of clarity, Orthofix shall have all the incidents of ownership of the Intellectual Property after any exercise of its right to purchase the Intellectual Property under Clause 17.

17. PURCHASE RIGHTS OF ORTHOFIX

- 17.1 *Orthofix Right to Purchase the Intellectual Property.* Orthofix shall be entitled to elect to purchase the Intellectual Property at any time during the Exercise Period (as defined in Clause 17.2 below) in accordance with the following provisions.
- 17.2 *Exercise of Right to Purchase.* If Orthofix wishes to exercise its right to purchase the Intellectual Property it shall, at any time as from the date of this Agreement but by not later than 90 (ninety) days following the fourth anniversary of the Effective Date ("Exercise Period"), give notice in writing of such intention to Efratgo ("Purchase Notice"). Such notice shall be addressed to Efratgo and shall identify itself as a Purchase Notice for the purposes of this Agreement. A Purchase Notice shall, save as provided in Clause 17.5 (*Limited Right of Rescission of Purchase Notice*), be irrevocable. Notwithstanding the foregoing, the Exercise Period shall be deemed as having prematurely terminated, 60 (sixty) days after the occurrence of a Triggering Event.
- 17.3 *Right to request information.* Without prejudice to any other rights that it may have under this Agreement, Orthofix shall be entitled, at any time during the six-month period prior to the expiry of the fourth Year of the Term, to ask Efratgo for any information in relation to the Intellectual Property. Efratgo shall be obliged to respond fully to any such request and in making such response shall make such enquiries of such persons as might reasonably be expected in order to provide the requested information. Efratgo shall be deemed to warrant that its response is fair, accurate and not misleading.
- 17.4 *Effect of Purchase Notice.* Upon delivery of a Purchase Notice by Orthofix, Efratgo shall be bound to sell and Orthofix shall be bound, save as mentioned in Clause 17.5 (*Limited Right of Rescission of Purchase Notice*), to purchase the Intellectual Property, and completion of such sale and purchase shall take place on the 28th day thereafter (or if such day is not a Business Day, on the next succeeding Business Day) or on such other date, whether before or after such 28th day, as Efratgo and Orthofix shall agree in writing ("Completion").
- 17.5 *Limited Right of Rescission of Purchase Notice.* In the event that at any time prior to Completion Orthofix becomes aware of any material breach of any of the warranties and undertakings referred to in Clauses 10.1. and 10.2, or the Company is in breach of any material term of this Agreement, then Orthofix may, by giving written notice to the Company rescind the Purchase Notice in which event neither Party shall be obliged to proceed with such sale and purchase.

REDACTED

- 17.7 *Completion.* Upon Completion of the sale and purchase of the Intellectual Property the following events shall take place:
- 17.7.1 Orthofix will be deemed to have acquired the Israeli Patents and the Intellectual Property, which shall be assigned to Orthofix;

REDACTED

- 17.7.5 Orthofix shall be deemed as having granted back to Efratgo a non-exclusive, perpetual, worldwide, royalty-free license, with the right to sublicense, under Orthofix's rights in the Intellectual Property and Israeli Patents, solely to the extent necessary to allow Efratgo to develop and/or commercialise and/or utilize the Intellectual Property and Israeli Patents for applications outside of the Field. Orthofix shall be deemed to also having granted Efratgo an exclusive, perpetual, royalty-free license, without the right to sublicense, under Orthofix's rights in the Israeli Patents, for use solely in the Field and solely within the territory of Israel. Orthofix shall, upon demand, execute and deliver counsel for the Efratgo for filing in the appropriate patent offices to evidence Efratgo's license;

REDACTED

REDACTED

17.7.7 Efratgo shall grant Orthofix an exclusive, perpetual, worldwide, royalty-free license to manufacture and sell the Bone Hook along with the other Products for use in the Field. For the purpose of clarity, Efratgo is not reserving any rights under the rights granted Orthofix by this Clause 17.7.7;

REDACTED

17.8 *Post-Completion Assurance.* Following Completion, Efratgo undertakes to execute such further documents and/or do such other things as Orthofix shall reasonably request and which may be necessary or desirable to give effect to the sale and purchase of the Intellectual Property and Israeli Patents.

REDACTED

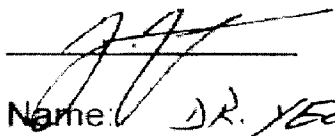
24. MISCELLANEOUS

- 24.1 *Assignment.* Save as for Orthofix's right to appoint or contract with Independent Distributors hereunder, Orthofix shall not, in the period prior to any exercise by Orthofix of its right to purchase the Intellectual Property pursuant to Clause 17, assign, charge or otherwise dispose of any of its rights or obligations under this Agreement except with the written consent of Efratgo, and provided that Efratgo shall not, in the period prior to any exercise by Orthofix of its right to purchase the Intellectual Property pursuant to Clause 17 unreasonably withhold or delay giving its consent to the assignment of any such rights to any Member of the Orthofix Group. Efratgo shall not, in the period prior to any exercise by Orthofix of its right to purchase the Intellectual Property pursuant to Clause 17, assign, charge or otherwise dispose of any of its rights or obligations under this Agreement except with the written consent of Orthofix, save that this shall be without prejudice to the right of Efratgo to contract with subcontractors with respect to the manufacture of the Products for sale by Efratgo to Orthofix.
- 24.2 *Non-Enforcement and Waiver.* The failure by either Party to exercise or enforce any rights under this Agreement shall not be deemed to be a waiver of any such rights, nor shall any single or partial exercise of any right, power, or privilege, or further exercise thereof, operate so as to bar the exercise or enforcement thereof at any later time.
- 24.3 *Illegal or unenforceable provisions.* If any part or provision of this Agreement is prohibited, or rendered void or unenforceable, by any legislation or decision of a court of competent jurisdiction, the validity

SCHEDULE 1**Patents**

Country	Short title	Status	Application / Grant No.	Filing / Grant date
USA	PC.C.P. – Surgical devise for connection of fractured bone	Patent granted	5,429,641	July 4, 1995
USA	PORD – Height-adjustable support for lower limb operations	Patent granted	5,806,117	September 15, 1998
USA	SCREW DRIVER – Surgical device and method for connection of fractured bones	Patent pending	Application Serial No. 09/916,400	July 26, 2001
EUROPE	PC.C.P – Surgical device for connection of fractured bones	Patent granted	0617927	January 20, 1999
EUROPE	SCREW DRIVER -	Patent application (US) is being filed	No number yet designated	July 19, 2002
JAPAN	A surgical devise for percutaneous connection	Patent pending	Application No. 6-239049	October 3, 1994

Signed for and on behalf of
EFRATGO LIMITED



Name: DR. YECHIEL GOTTFRIED

Title: DIRECTOR

Date: DECEMBER 23, 2002

Signed for and on behalf of
ORTHOPIX INTERNATIONAL BV



Name: R. GAINES-COOPER

Title: GROUP CHAIRMAN

Date: 23 DECEMBER 2002

Signed for and on behalf of
ORTHOPIX INTERNATIONAL NV



Name: R. GAINES-COOPER

Title: GROUP CHAIRMAN

Date: 23 DECEMBER 2002