

05-21-2003

Form PTO-1595

(Rev. 10/02)

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

OMB No. 0651-0027 (exp. 6/30/2005)

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

## 1. Name of conveying party(ies):

Robert E. Kellan, M.D.

5-14-03

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

Name: Medical Sterile Products, Inc.

Internal Address: \_\_\_\_\_

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

## 3. Nature of conveyance:



Assignment



Merger



Security Agreement



Change of Name



Other \_\_\_\_\_

Street Address: Road 413 KNO. 2

City: Rincon State: PR Zip: 00677

Execution Date: 3/14/1996

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

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

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

A. Patent Application No.(s) 07/958,259

B. Patent No.(s) \_\_\_\_\_

Additional numbers attached? ☐ Yes ☒ No

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

Name: Thomas W. Ryan

Internal Address: Piper Rudnick

Intellectual Property Dept.

Street Address: P.O. Box 64807

City: Chicago State: IL Zip: 60664-0807

## 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:

18-2284

DO NOT USE THIS SPACE

## 9. Signature.

Thomas W. Ryan

Name of Person Signing

Signature

May 13, 2003

Date

Total number of pages including cover sheet, attachments, and documents: 10

05/20/2003 LMUELLER 00000228 07958259

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

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40.00 DP

PATENT  
REEL: 014073 FRAME: 0166

## ASSIGNMENT AND ROYALTY AGREEMENT

Agreement entered into this 14th day of March 1996, 1993 by PEK  
and between Robert E. Kellan, M.D., an individual whose address is  
60 East Street, Suite 1100, Methuen, Massachusetts 01844  
(hereinafter referred to as "KELLAN") and Medical Sterile Products,  
Inc., a corporation of Puerto Rico, having a place of business at  
Road 413 KNO.2, Rincon, Puerto Rico 00677 (hereinafter referred to  
as "MSP").

WHEREAS, KELLAN has invented certain new and useful  
improvements in Surgical Knife Blades For Making Sutureless  
Incision In The Eye And Methods Therefor (hereinafter referred to  
as "Invention") for which an application for United States Letters  
Patent was filed in the U.S. Patent and Trademark Office on October  
8, 1992 and given Serial No. 07/958,259 (hereinafter referred to as  
"Patent Application").

WHEREAS, MSP is desirous of acquiring the entire right, title  
and interest in and to said Invention, said Patent Application and  
in and to any Letters Patent that may be granted therefor in the  
United States and in any and all foreign countries.

NOW, THEREFORE, in consideration of the foregoing, the mutual  
covenants herein and other good and valuable consideration, the  
parties hereto mutually agree as follows:

PEK

WITNESSETH THAT THE ABOVE SIGNED INSTRUMENTS ARE TRUE AND CORRECT

P.3/10

p/c: P. Molinaro, S. Bryant

1. The following terms as used in this Agreement shall, unless the context clearly indicates to the contrary, have the following meanings:

"Royalty Bearing Products" shall mean surgical knife blades for making sutureless incisions in the eye as disclosed in said Patent Application or covered by claims in any patents issuing from said Patent Application or from any divisions, reissues, continuations or extensions thereof.

"Net Sales Price" shall mean the aggregate billing price for Royalty Bearing Products sold by MSP less commissions to independent distributors and representatives, less discounts allowed on a uniform basis in a manner consistent with other products sold by MSP, less credits for allowances and returns, less rebates actually paid, less prepaid freight, and less taxes and other governmental charges added to the face of invoices for said Royalty Bearing Products and paid by MSP.

2. KELLAN hereby sells, assigns and transfers unto MSP, the full and exclusive right to said Invention and said Patent Application in the United States and its territorial possessions and in all foreign countries and the entire right, title and interest in and to any and all Letters Patent which may be granted thereon in the United States and its territorial possessions and in any and all foreign countries, and in and to any and all divisions, reissues, continuations and extensions thereof.

*JK*

3. KELLAN hereby authorizes and requests the Patent and Trademark Office officials in the United States and in any all foreign countries to issue any and all of said Letters Patent, when granted, to MSP as the assignee of the entire interest in and to the same for the sole use and behoof of MSP and its successors.

4. KELLAN agrees to communicate to MSP or its representatives any facts known to KELLAN respecting said Invention and testify in any legal proceedings, sign all lawful papers, execute all divisional, continuation, substitution, renewal and reissue applications, execute all necessary assignment papers to cause any and all of said Letters Patent to be issued to MSP, make all rightful oaths and generally do everything possible to aid MSP and its successors to obtain and enforce proper protection for said Invention in the United States and in any and all foreign countries.

5. In consideration for the assignment of said Invention, said Patent Application and any and all Letters Patent granted thereon by KELLAN to MSP, MSP shall pay KELLAN a royalty of five percent (5%) of the Net Sales Price of Royalty Bearing Products manufactured or sold by MSP, worldwide.

6. MSP shall render to KELLAN a written report setting forth the calculation of the amount of royalty due and payable based on sales of Royalty Bearing Products pursuant to this Agreement within

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thirty (30) days of the end of each calendar quarter and shall simultaneously therewith pay KELLAN the royalty due for the preceding calendar quarter. Such quarterly reports shall indicate the gross invoice price of all Royalty Bearing Products sold by MSP, the itemized deductions from such gross invoice price permitted hereunder in arriving at the Net Sales Price of such Royalty Bearing Products and the amount of payment due hereunder based on such Net Sales Price.

7. MSP agrees to keep records in sufficient detail and, upon reasonable notice, to allow an independent certified public accountant appointed by KELLAN, reasonably acceptable to and approved by MSP, to have access to MSP's records pertaining to Royalty Bearing Products during reasonable business hours for the purpose of verifying the royalty payable as provided for in this Agreement.

8. This Agreement shall have an effective date of October 8, 1992 and shall continue from its effective date until the expiration date of the last of any Letters Patent issuing from said Patent Application or any division, reissue, continuation, or extension thereof or until October 8, 2002, whichever date is latest.

9. MSP shall use its best efforts to market Royalty Bearing Products with the exception that MSP may decide to stop marketing

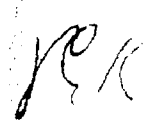
Royalty Bearing Products entirely at any time. In the event MSP makes such a decision, MSP will notify KELLAN thereof within thirty (30) days of such decision, and MSP shall duly account to KELLAN and transfer and assign all of MSP'S patents or patent applications covered by this Agreement to KELLAN.

10. Neither this Agreement nor said invention or patents and patent applications thereon shall be assigned or licensed by MSP to a third party without said third party agreeing in writing to abide by the terms of this Agreement, a copy of which shall be provided to KELLAN.

11. Any notice, report or payment required or permitted to be given or made under this Agreement shall be in writing and shall be deemed to have been sufficiently given or made for all purposes if personally delivered to the other party or if mailed by registered or certified mail, postage prepaid, addressed to the other party at its respective address as follows (or to such other address as the addressee shall have furnished to the addressor in the manner provided in this Paragraph).

TO KELLAN: Robert E. Kellan, M.D.  
60 East Street  
Suite 1100  
Methuen, Massachusetts 01844

TO MSP: Medical Sterile Products, Inc.  
Road 413 KNO.2  
Rincon, Puerto Rico 00677  
Attn: President



12. The rights and obligations in and to this Agreement shall be binding upon and inure to the benefit of the parties, their respective heirs, legal representatives, successors and assigns.

13. MSP agrees to conduct all testing that may be necessary or appropriate with respect to said Royalty Bearing Products before selling the same and assumes all risk of the safety and effectiveness thereof. MSP further agrees to forever indemnify, defend and hold harmless KELLAN from and against any claim, demand, suit, damage, loss, liability, judgment, cost and expense (referred to in this Paragraph as a Claim or Claims) including attorney's fees, that KELLAN may incur arising out of or as a result of or in connection with, directly or indirectly, the design, manufacture, marketing, advertising, labeling, sale or distribution of any Royalty Bearing Products or the use or misuse of any such Royalty Bearing Products, including, but not limited to, any Claim for personal injury or death or loss or damage to property resulting from or claimed to have resulted from any of the foregoing. However, to the extent that any Claim results from the professional medical liability or malpractice in the surgical use by KELLAN of a Royalty Bearing Product, the indemnification provided hereunder shall not apply unless MSP was negligent in the design, manufacture, marketing, advertising, labeling, sale or distribution of such Royalty Bearing Product. It is agreed that the indemnification provided hereunder shall not apply to attorney's fees to the extent that they result from a Claim of professional medical liability or malpractice.

14. KELLAN represents and warrants to MSP that he is an inventor and the sole owner of said invention, that he has not heretofore granted any exclusive or non-exclusive license to anyone relating to said invention, and that he has the right to grant the assignment to MSP under this Agreement. MSP represents and warrants to KELLAN that MSP has the right and authority to enter this Agreement and to accept the assignment hereunder.

15. MSP agrees to display KELLAN's name prominently on all printed materials relating to said Royalty Bearing Products and will take reasonable steps to assure that KELLAN is credited with development thereof in all promotional activities, subject to the prior written approval of KELLAN which shall not be unreasonably withheld.

16. MSP agrees to bear the expense of preparation, prosecution and maintenance of said Patent Application, any divisions, reissues, continuations and extensions thereof and any patents issuing therefrom with the exception that MSP shall deduct one-half the cost of such expense from royalties payable to KELLAN under Paragraph 5 of this Agreement.

17. This Agreement shall be construed, and the legal relations between the parties determined, in accordance with the laws of the state of Massachusetts and, to the extent applicable, the laws of the United States. The relationship between the

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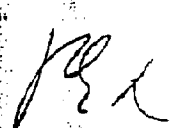


parties is solely that of grantor and grantee. Nothing herein shall be deemed to constitute or create between or among the parties hereto a partnership, joint venture, association, agency, employment, or servant and master relationship.

18. If any term or provision of this Agreement shall be held by a Court of competent jurisdiction to be invalid or unenforceable, it shall be replaced by a provision which comes as close as possible to the intended result of the invalid or unenforceable provision and the purpose thereof, and which is valid and enforceable. The invalidity or unenforceability of any provision of this Agreement shall in no way effect the validity or enforceability of any other provision.

19. No waiver of any provisions hereof shall be effective unless in a writing signed by both parties hereto and shall not be construed as a continuing waiver beyond the specific instance referred to therein. The failure by any party at any time to enforce any term or provision of this Agreement shall not be construed as a waiver of such term or provision or of the right to insist upon strict compliance therewith on any future occasion. No waiver of any breach of any term or provision hereof shall be deemed a continuing waiver or a waiver of, consent to, or acquiescence in any further or succeeding breach thereof.

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Medical Sterile Products, Inc.

Witness

[Signature]

By:

[Signature]

Title:

[Signature]

Witness

Mary Krawski

[Signature]  
Robert E. Kellan, M.D.