

Form PTO-1595 (Rev. 06/04)  
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U.S. DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office

### RECORDATION FORM COVER SHEET PATENTS ONLY

To the Director of the U.S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

**1. Name of conveying party(ies)/Execution Date(s):**

George Freedman

Execution Date(s) 7/10/2003

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

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

Name: Apneon, Inc.

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

Street Address: 23070 Town Center Lane

Suite B254

City: Cupertino

State: California

Country: US

Zip: 95014-3213

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

**3. Nature of conveyance:**

- Assignment  Merger
- Security Agreement  Change of Name
- Government Interest Assignment
- Executive Order 9424, Confirmatory License
- Other \_\_\_\_\_

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

This document is being filed together with a new application.

A. Patent Application No.(s)

B. Patent No.(s)

5,176,618

Additional numbers attached?  Yes  No

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

Name: Daniel D. Ryan

Internal Address: Ryan Kromholz & Manion, S.C.

Street Address: P.O. Box 26618

City: Milwaukee

State: Wisconsin

Zip: 53226-0618

Phone Number: (262) 783-1300

Fax Number: (262) 783-1211

Email Address: \_\_\_\_\_

**6. Total number of applications and patents involved:**

1

**7. Total fee (37 CFR 1.21(h) & 3.41) \$ 40.00**

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed
- None required (government interest not affecting title)

**8. Payment Information**

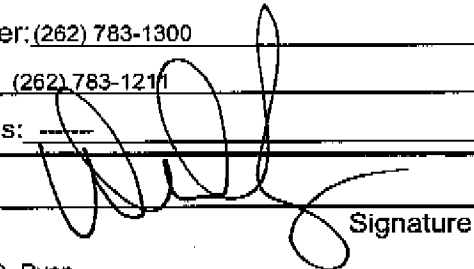
a. Credit Card Last 4 Numbers \_\_\_\_\_

Expiration Date \_\_\_\_\_

b. Deposit Account Number 06-2360

Authorized User Name Daniel D. Ryan

**9. Signature:**



Signature

10/14/2004

Date

Daniel D. Ryan

Name of Person Signing

Total number of pages including cover sheet, attachments, and documents: 7

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:  
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O.Box 1450, Alexandria, V.A. 22313-1450

CH \$40.00 062360 5176618

**TECHNOLOGY ASSIGNMENT AGREEMENT**

This Technology Assignment Agreement (the "Agreement") is entered as of May 22, 2003 (the "Effective Date") between Apneon, Inc., a Delaware corporation (the "Company"), George Freedman, an individual ("Freedman"), and Eric Doelling ("Doelling"), an individual. The assignment and opportunity to purchase shares of Apneon, Inc. pursuant to that certain stock purchase agreement by and between Freedman and the Company, dated as of May 22, 2003 (the "Stock Purchase Agreement"), is intended to qualify for tax-free treatment under Internal Revenue Code Section 351.

WHEREAS, Doelling together with Lionel M. Nelson and Ronald G. Lax intended to form a business entity to be known as "Swan Medical", and to each assign certain intellectual property rights to Swan Medical;

WHEREAS, Swan Medical was never formed and none of Doelling, Lionel M. Nelson or Ronald G. Lax desire to form such a business entity;

WHEREAS, Freedman and Swan Medical entered into a Consulting Agreement with an effective date of January 1, 2003, (the "Consulting Agreement") pursuant to which Freedman was to perform certain services on behalf of Swan Medical;

WHEREAS, the parties now desire to assign to the Company intellectual property relating to work performed by Freedman, and to release Doelling, Lionel M. Nelson, Ronald G. Lax and the Company (collectively, the "Released Parties") from any and all liabilities and obligations under the Consulting Agreement;

WHEREAS, Freedman and Doelling entered into an Assignment effective January 1, 2003 (the "Assignment") under which Freedman agreed to assign to Doelling all right, title and interest in U.S. Patent No. 4,978,323 (which expired December 20, 1998 by nonpayment of the maintenance fee) and U.S. Patent No. 5,176,618 (collectively and together with any and all foreign applications and patents thereon, and all rights of priority thereto, the "Patent Rights");

WHEREAS, Freedman and Doelling never consummated the Assignment and now desire to terminate all obligations relating to the Assignment;

WHEREAS, the parties now desire that the Patent Rights be assigned to the Company, and that the Released Parties be released of any and all liabilities and obligations under the Assignment;

NOW, THEREFORE, in consideration of the opportunity to purchase shares of the Company pursuant to the terms of the Stock Purchase Agreement, and other good and valuable consideration, the receipt of which is hereby acknowledged, the undersigned hereto hereby agree as follows:

1. Termination; Release.

1.1 The Consulting Agreement and the Assignment, together with all rights and obligations thereunder, are hereby terminated, and shall be considered void and of no further effect.

1.2 Freedman hereby releases and forever discharges the Released Parties, their predecessors, successors, subsidiary, affiliate and parent corporations, and all of their respective, present and former officers, directors, employees, agents, attorneys, advisors and assignees from any and all claims, causes of action, demands and/or liability, known or unknown, suspected or unsuspected, regardless of whether in law or equity, and irrespective of fault, negligence or willful misconduct, and regardless of whether under local, state, federal or foreign law, from the beginning of time, in any manner or to any extent arising from or related to the Consulting Agreement or the Assignment.

To ensure that the foregoing releases are fully enforceable in accordance with its terms, Freedman hereby waives any and all rights or benefits under, or any protection it may have by virtue of, Section 1542 of the California Civil Code (to the extent applicable), which provides in full:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

In addition, to ensure that the release is fully enforceable in accordance with its terms, Freedman hereby waives any protection that may exist under any comparable or similar statute or code, and/or under any principle of common law, of any and all states of the United States or of the United States or any foreign country.

2. Assignments.

2.1 Freedman hereby irrevocably and exclusively assigns, transfers and conveys to the Company all interest throughout the world in and to the Patents Rights, and further, all rights and privileges pertaining to the Patent Rights including without limitation the right, if any, to sue or bring other actions for past, present and future infringement thereof.

2.2 Freedman hereby irrevocably and exclusively assigns, transfers and conveys all right, title and interest (including patent rights, copyrights, trade secret rights, trademark rights, *sui generis* database rights and all other intellectual and industrial property rights of any sort throughout the world) relating to any and all inventions (whether or not patentable), works of authorship, designations, designs, know-how, ideas and information made or conceived or reduced to practice, in whole or in part, by Consultant from the period beginning January 1, 2003 and ending on the Effective Date that relate to the subject matter of, or arise out of, the services performed for the Company or any Proprietary Information (as defined below), or which are improvements on, extensions of or otherwise developed from Proprietary Information (collectively, "Intellectual Property"). Freedman agrees to promptly disclose and provide all Intellectual Property to the Company.

2.3 Doelling hereby consents to the foregoing assignments, and does hereby assign, transfer and convey to the Company any and all interest which Doelling may have throughout the world in and to the Intellectual Property and Patents Rights (collectively, the "Assigned Intellectual Property") including without limitation the right, if any, to sue or bring other actions for past, present and future infringement thereof.

3. Further Assurances; Moral Rights

3.1 Freedman agrees to assist the Company in every proper way to evidence, record and perfect the Section 1 assignment and to apply for and obtain recordation of and from time to time secure, enforce, maintain and defend the assigned rights. If the Company is unable for any reason whatsoever to secure Freedman's signature to any document requested by the Company under this Section 3.1, Freedman hereby irrevocably designates and appoints the Company and its duly authorized officers and agents as Freedman's agents and attorneys-in-fact, coupled with an interest and with full power of substitution, to act for and on Freedman's behalf and instead of Freedman, to execute and file any such document or documents and to do all other lawfully permitted acts to further the purposes of the foregoing with the same legal force and effect as if executed by Freedman.

3.2 To the extent allowed by law, Section 2 includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights," "artist's rights," "droit moral," or the like (collectively "Moral Rights"). To the extent Freedman retains any such Moral Rights under applicable law, Freedman hereby ratifies and consents to, and provides all necessary ratifications of and consents to, any action that may be taken with respect to such Moral Rights by, or authorized by, the Company; Freedman agrees not to assert any Moral Rights with respect thereto. Freedman will confirm any such ratifications, consents and agreements from time to time as requested by the Company.

4. Confidential Information

Freedman will not use or disclose anything assigned to the Company hereunder or any other technical or business information or plans of the Company, except to the extent Freedman can document that it is generally known and available (through no fault of Freedman) for use and disclosure by the public without any charge, license or restriction. Freedman recognizes and agrees that there is no adequate remedy at law for a breach of this Section 4, that such a breach would irreparably harm the Company and that the Company is entitled to equitable relief (including, without limitation, injunctive relief) with respect to any such breach or potential breach in addition to any other remedies and without any requirement to post bond.

5. Warranty

Freedman represents and warrants to the Company that Freedman (i) was the sole owner (other than the Company and as set forth in the Consulting Agreement and Assignment) of all rights, title and interest in the Assigned Intellectual Property, (ii) has not assigned, transferred, licensed, pledged or otherwise encumbered any Assigned Intellectual Property or agreed to do so (except as set forth in the Consulting Agreement and Assignment), (iii) has full power and authority to enter into this Agreement, (iv) is not aware of any violation, infringement

or misappropriation of any third party's rights (or any claim thereof) by the Assigned Intellectual Property, (v) was not acting within the scope of employment by any third party when conceiving, creating or otherwise performing any activity with respect to anything purportedly assigned in Section 2 and (iv) is not aware of any questions or challenges with respect to the patentability or validity of any claims of any existing patents or patent applications relating to the Assigned Intellectual Property.

6. Miscellaneous

This Agreement is not assignable or transferable by Freedman or Doelling without the prior written consent of the Company; any attempt to do so shall be void. Any notice, report, approval or consent required or permitted hereunder shall be in writing and will be deemed to have been duly given if delivered personally or mailed by first-class, registered or certified U.S. mail, postage prepaid to the respective addresses of the parties as set forth below (or such other address as a party may designate by ten (10) days notice). No failure to exercise, and no delay in exercising, on the part of any party, any privilege, any power or any rights hereunder will operate as a waiver thereof, nor will any single or partial exercise of any right or power hereunder preclude further exercise of any other right hereunder. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of California and the United States without regard to conflicts of laws provisions thereof. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. The terms of this Agreement are confidential to the Company and no press release or other written or oral disclosure of any nature regarding the compensation terms of this Agreement shall be made by Freedman without the Company's prior written approval; however, approval for such disclosure shall be deemed given to the extent such disclosure is required to comply with governmental rules. Any waivers or amendments shall be effective only if made in writing and signed by a representative of the respective parties authorized to bind the parties. All parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first indicated above.

APNEON, INC.

Eric Doelling

Signed: Eric Doelling

Signed: Eric Doelling

Name: Eric Doelling

Address: 718 Jura Way

Title: CEO

Sunnyvale CA 94087

Address: 718 Jura Way

Sunnyvale CA 94087

George Freedman

Signed: \_\_\_\_\_

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

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss.

On this \_\_\_\_\_ day of \_\_\_\_\_, 2003, before me, a Notary Public, personally appeared George Freedman, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Notary Public in and for \_\_\_\_\_

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year first indicated above.

APNEON, INC.

Eric Doelling

Signed: \_\_\_\_\_

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

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

Title: \_\_\_\_\_

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

George Freedman

Signed: George Freedman

Address: 5 Brook Trail Rd  
Wayland, MA 01778

STATE OF Massachusetts )  
COUNTY OF Middlesex ) ss.

On this 10<sup>th</sup> day of July, 2003, before me, a Notary Public, personally appeared George Freedman, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

Sutha Karikal  
Notary Public in and for \_\_\_\_\_

Sutha Karikal  
Notary Public  
My Commission Expires  
April 9, 2010