

PATENT ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE:

NEW ASSIGNMENT

NATURE OF CONVEYANCE:

Patent Collateral Assignment

CONVEYING PARTY DATA

Name	Execution Date
Optiscan Biomedical Corporation	03/16/2005

RECEIVING PARTY DATA

Name:	Hercules Technology Growth Capital, Inc.
Street Address:	525 University Avenue, Suite 700
City:	Palo Alto
State/Country:	CALIFORNIA
Postal Code:	94301

PROPERTY NUMBERS Total: 44

Property Type	Number
Patent Number:	6862534
Patent Number:	6825044
Patent Number:	6771993
Patent Number:	6731961
Patent Number:	6678542
Patent Number:	6645142
Patent Number:	6636753
Patent Number:	6633771
Patent Number:	6631282
Patent Number:	6580934
Patent Number:	6577885
Patent Number:	6556850
Patent Number:	6198949
Patent Number:	6196046
Patent Number:	6161028

PATENT

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REEL: 016172 FRAME: 0354

CH \$1760.00 6862534

Patent Number:	6072180
Patent Number:	6049081
Patent Number:	6025597
Patent Number:	5900632
Patent Number:	5877500
Patent Number:	5615672
Patent Number:	5515847
Patent Number:	5313941
Application Number:	09971312
Application Number:	10055875
Application Number:	10189978
Application Number:	10200384
Application Number:	10213730
Application Number:	10219625
Application Number:	10219627
Application Number:	10268599
Application Number:	10283390
Application Number:	10291908
Application Number:	10302030
Application Number:	10302071
Application Number:	10319409
Application Number:	10337226
Application Number:	10338061
Application Number:	10338092
Application Number:	10338131
Application Number:	10374545
Application Number:	10456109
Application Number:	10826004
Application Number:	10826006

# CORRESPONDENCE DATA

Fax Number: (650)849-4800

*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*

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Correspondent Name: Antoinette F. Konski

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NAME OF SUBMITTER:	Antoinette F. Konski
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**Total Attachments: 8**

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## PATENT COLLATERAL ASSIGNMENT

This Agreement dated the 16th day of March, 2005, between Optiscan Biomedical Corporation, a Delaware corporation, with its chief executive office and principal place of business located at 1105 Atlantic Ave., Suite 101, Alameda, CA 94501 ("Assignor"), and Hercules Technology Growth Capital, Inc., a Maryland corporation, with its chief executive office and principal place of business located at 525 University Ave., Suite 700, Palo Alto, CA 94301 ("Assignee").

### RECITALS

A. Assignor owns the Patents and Patent applications and is a party to the Patent Licenses listed on and attached as Schedule 1 hereto;

B. Assignor and Assignee are parties to a Senior Loan and Security Agreement dated as of March 16, 2005 and all ancillary documents entered into in connection with such Senior Loan and Security Agreement, all as may be amended from time to time (hereinafter referred to collectively as the "Loan Agreement");

C. Pursuant to the terms of the Loan Agreement Assignor has granted to Assignee a first priority security interest in all of the tangible and intangible property of Assignor, including all right, title and interest of Assignor in, to and under all of Assignor's Patents, all of Assignor's Patent applications and all of Assignor's Patent Licenses, whether presently existing or hereafter arising or acquired, and all products and proceeds thereof, including, without limitation, any and all causes of action which may exist by reason of infringement thereof for the full term of the Patents, to secure the payment of the Secured Obligations;

D. All capitalized terms not defined herein shall have the meanings set forth in the Loan Agreement;

NOW, THEREFORE, in consideration of the premises contained herein, Assignor agrees with Assignee as follows:

1. To secure the complete and timely satisfaction of all Secured Obligations, Assignor hereby grants, assigns and conveys to Assignee a continuing security interest in and lien on all of Assignor's entire right, title and interest in and to the Patents, Patent applications and Patent Licenses listed on Schedule 1 hereto (as may be amended from time to time), including, without limitation, all proceeds thereof (such as, by way of example, license royalties and proceeds of infringements, all rights corresponding thereto throughout the world and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof) (collectively called the "Patents").

2. Assignor represents, warrants and covenants that:

a) Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Patents, free and clear of any liens, charges and encumbrances, including, without limitation, pledges, assignments, licenses, shop rights and covenants by Assignor not to sue third persons, except for any license disclosed in Schedule 1;

- b) The Patents are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;
- c) To the best of Assignor's knowledge, each of the Patents is valid and enforceable and Assignor has notified Assignee in writing of all prior art (including public uses and sales) of which it is aware; and
- d) Assignor has the unqualified right to enter into this Agreement and perform its terms.

3. Assignor agrees that, until all of the Secured Obligations shall have been satisfied in full, it will not enter into any agreement (for example, a license agreement) which is inconsistent with Assignor's obligations under this Agreement, without Assignee's prior written consent; provided, that so long as no Default or Event of Default shall have occurred and be continuing, Assignor may grant licenses to third parties to use the Patents in the ordinary course of business of both Assignor and such third party on arm's length and customary business terms.

4. If, before the Secured Obligations shall have been satisfied in full, Assignor shall obtain rights to any new patentable inventions, or become entitled to the benefit of any Patent application or Patent for any reissue, division, continuation, renewal, extension, or continuation-in-part of any Patent or any improvement on any Patent, the provisions of paragraph 1 shall automatically apply thereto and Assignor shall give to Assignee prompt notice thereof in writing.

5. Assignor authorizes Assignee to unilaterally modify this Agreement by amending Schedule 1 to include any future Patents and Patent applications which are Patents under paragraph 1 or paragraph 4 hereof.

6. If any Event of Default shall have occurred and be continuing, Assignee shall have, in addition to all other rights and remedies given it by this Agreement or the Loan Agreement, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Patents may be located and, without limiting the generality of the foregoing, Assignee may immediately, without demand of performance and without other notice (except as set forth below) or demand whatsoever to Assignor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon, the whole or from time to time any part of the Patents, or any interest which the Assignor may have therein, and after deducting from the proceeds of sale or other disposition of the Patents all expenses (including reasonable expenses for brokers' fees and legal services), shall apply the residue of such proceeds toward the payment of the Secured Obligations. Any remainder of the proceeds after payment in full of the Secured Obligations shall be paid over to Assignor. Notice of any sale or other disposition of the Patents shall be given to Assignor at least five (5) days before the time of any intended public or private sale or other disposition of the Patents is to be made, which Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition Assignee may, to the extent permissible under applicable law, purchase the whole or any part of the Patents sold, free from any right of redemption on the part of Assignor, which right is hereby waived and released.

7. Assignor hereby authorizes and empowers Assignee to make, constitute and appoint any officer or agent of Assignee, as Assignee may select in its exclusive discretion, as Assignor's true and lawful attorney-in-fact, with the power, after and during the continuance of an Event of Default, to endorse Assignor's name on all applications, documents, papers and instruments necessary for Assignee to use the Patents, or to grant or issue any exclusive or nonexclusive license under the Patents to any third person, or necessary for Assignee to assign, pledge, convey or otherwise transfer title in or dispose of the Patents to any third person as a part of Assignee's realization on such collateral upon acceleration of the Secured Obligations following an Event of Default. Assignor hereby ratifies all that such attorney shall lawfully

do or cause to be done by virtue hereof. This power of attorney being coupled with an interest shall be irrevocable for the life of this Agreement.

8. At such time as Assignor shall completely satisfy all of the Secured Obligations, this Agreement shall terminate and Assignee shall execute and deliver to Assignor all assignments, reconveyances or other instruments as may be necessary or proper to re-vest in Assignor full title to the Patents, subject to any disposition thereof which may have been made by Assignee pursuant hereto.

9. Any and all fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by Assignee in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving the Patents, or in defending or prosecuting any actions or proceedings arising out of or related to the Patents, shall be borne and paid by Assignor on demand by Assignee and until so paid shall be added to the principal amount of the Secured Obligations and shall bear interest at the highest applicable Default Rate.

10. Assignor shall have the duty, through counsel reasonably acceptable to Assignee, to prosecute diligently any Patent applications pending as of the date of this Agreement or thereafter until the Secured Obligations shall have been paid in full, to make application on unpatented but patentable inventions and to preserve and maintain all rights in Patent applications and Patents, including, without limitation, the payment of all maintenance fees. Any expenses incurred in connection with such an application shall be borne by Assignor. The Assignor shall only abandon a right to file a Patent application, or any pending Patent application or Patent if, while exercising good faith and reasonable business judgment, Assignor determines it is prudent.

11. Assignor shall have the right to bring suit in its own name if, while exercising good faith and reasonable business judgment, Assignor determines it is prudent, and to join Assignee, if necessary, as a party to such suit so long as Assignee is satisfied that such joinder will not subject it to any risk of liability, to enforce the Patents. Assignor shall promptly, upon demand, reimburse and indemnify Assignee for all damages, costs and expenses, including reasonable attorneys' fees incurred by Assignee, in accordance with the Loan Agreement.

12. No course of dealing between Assignor and Assignee, nor any failure to exercise, nor any delay in exercising, on the part of Assignee, any right, power or privilege hereunder or under the Loan Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

13. All of Assignee's rights and remedies with respect to the Patents, whether established hereby or by the Loan Agreement or any other agreements or by law shall be cumulative and may be exercised singularly or concurrently.

14. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any clause or provision of this Agreement in any jurisdiction.


15. This Agreement is subject to modification only by a writing signed by both parties, except as provided in paragraph 5.

16. This Agreement shall be binding upon Assignor and Assignee and their respective permitted successors and assigns, and shall inure to the benefit of Assignor, Assignee and the respective permitted successors and assigns of Assignor and Assignee.

17. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the laws of the State of California.

WITNESS the execution hereof under seal as of the day and year first above written.

OPTISCAN BIOMEDICAL CORPORATION

By:   
Name: Peter Ruiz  
Title: CEO

HERCULES TECHNOLOGY GROWTH CAPITAL INC.

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

15. This Agreement is subject to modification only by a writing signed by both parties, except as provided in paragraph 5.

16. This Agreement shall be binding upon Assignor and Assignee and their respective permitted successors and assigns, and shall inure to the benefit of Assignor, Assignee and the respective permitted successors and assigns of Assignor and Assignee.

17. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the laws of the State of California.

WITNESS the execution hereof under seal as of the day and year first above written.

OPTISCAN BIOMEDICAL CORPORATION

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

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

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

HERCULES TECHNOLOGY GROWTH CAPITAL INC.

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

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

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



SCHEDULE 1 TO  
PATENT COLLATERAL ASSIGNMENT

A. PATENTS AND PATENT APPLICATIONS:

Application or Patent No.	Issue or Filing Date	Expiration Date	Title
6,862,534	3/1/2005		Method of determining an analyte concentration in a sample from an absorption spectrum
6,825,044	11/30/2004		Method for adjusting a blood analyte measurement
6,771,993	8/3/2004		Sample adapter
6,731,961	5/4/2004		Method for transforming phase spectra to absorption spectra
6,678,542	1/13/2004		Calibrator configured for use with non-invasive analyte concentration monitor and employing traditional measurements
6,645,142	11/11/2003		Glucose monitoring instrument having network connectivity
6,636,753	10/21/2003		Solid-state non-invasive infrared absorption spectrometer for the generation and capture of thermal gradient spectra from living tissue
6,633,771	10/14/2003		Solid-state non-invasive thermal cycling spectrometer
6,631,282	10/7/2003		Device for isolating regions of living tissue
6,580,934	6/17/2003		Method and Apparatus for determining analyte concentration using phase and magnitude detection of a radiation transfer function
6,577,885	6/10/2003		Method for determining analyte concentration using periodic temperature modulation and phase detection
6,556,850	4/29/2003		Method for determining analyte concentration using periodic temperature modulation and phase detection
6,198,949	3/6/2001		Solid-state non-invasive infrared absorption spectrometer for the generation and capture of thermal gradient spectra from living tissue
6,196,046	3/6/2001		Devices and methods for calibration of a thermal gradient spectrometer
6,161,028	12/12/2000		Method for determining analyte concentration using periodic temperature modulation and phase detection
6,072,180	6/6/2000		Non-invasive infrared absorption spectrometer for the generation and capture of thermal gradient spectra from living tissue
6,049,081	4/11/2000		Subsurface thermal gradient spectrometry
6,025,597	2/15/2000		Non-invasive infrared absorption spectrometer for measuring glucose or other constituents in a human or other body

<b>Application or Patent No.</b>	<b>Issue or Filing Date</b>	<b>Expiration Date</b>	<b>Title</b>
5,900,632	5/4/1999		Subsurface thermal gradient spectrometry
5,877,500	3/2/1999		Multichannel infrared detector with optical concentrators for each channel
5,615,672	4/1/1997		Self-emission noninvasive infrared spectrophotometer with body temperature compensation
5,515,847	5/14/1996		Self-emission noninvasive infrared spectrophotometer
5,313,941	05/24/1994		Noninvasive pulsed infrared spectrophotometer
09/971,312	10/03/2001		Blanking standard for non-invasive optical measurement
10/055,875	01/21/2002		Reagent-less whole-blood glucose meter
10/189,978	07/03/2002		Site selection for determining analyte concentration in living tissue
10/200,384	07/19/2002		Reagent-less whole-blood glucose meter
10/213,730	08/06/2002		Device for capturing thermal spectra from tissue
10/219,625	08/14/2002		Device and method for in vitro determination of analyte concentrations with bodily fluids
10/219,627	08/14/2002		Device and method for in vitro determination of analyte concentrations with bodily fluids
10/268,599	10/09/2002		Method and apparatus for improving clinical accuracy of analyte measurements
10/283,390	10/29/2002		Window assembly
10/291,908	11/08/2002		Analyte detection system with software download capabilities
10/302,030	11/21/2002		Method and apparatus for adjusting signal variation of an electronically controlled infrared transmissive window
10/302,071	11/21/2002		Method and apparatus for improving the accuracy of alternative site analyte concentration measurements
10/319,409	12/12/2002		Pathlength-independent methods for optically determining material composition
10/337,226	01/06/2003		Layered spectroscopic sample element with microporous membrane
10/338,061	01/06/2003		Cartridge lance
10/338,092	01/06/2003		Wearable device for measuring analyte concentration
10/338,131	01/06/2003		Sample element for reagentless whole blood glucose meter
10/374,545	02/24/2003		Active sample collection system for analyte detection apparatus
10/456,109	06/06/2003		Method and apparatus for determining analyte concentration using phase and magnitude detection of a radiation transfer function
10/826,004	04/15/2004		System and method for managing a chronic medical condition
10/826,006	04/15/2004		Dual measurement analyte detection system

B.PATENT LICENSES:

Corresponding	Date License		Termination
<u>Patent No.</u>	<u>Granted</u>	<u>Licensee</u>	<u>Date</u>

None