

Form PTO-1595 (Rev. 09/04)  
OMB No. 0651-0027 (exp. 6/30/2005)

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):

Noetix, Inc.

Execution Date(s): July 30, 1992

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

### 3. Nature of Conveyance:

- ☐ Assignment ☐ Merger  
☐ Security Agreement ☐ Change of Name  
☐ Government Interest Assignment  
☐ Executive Order 9424, Confirmatory License  
☒ Other Purchase Agreement

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

Name: Danek Medical, Inc.

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

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

3092 Directors Row

City: Memphis

State: Tennessee

Country: United States of America Zip: 38131

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

### 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)

5,403,276 5,669,876  
5,643,304 5,685,840

Additional numbers attached? ☐ Yes ☒ No

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

Name: Kristin L. Murphy  
RADER, FISHMAN & GRAUER PLLC

Internal Address: Atty. Dkt.: 65937-0027

Street Address: 39533 Woodward Avenue  
Suite 140

City: Bloomfield Hills

State: MI Zip: 48304

Phone Number: (248) 594-0633

Fax Number: (248) 594-0610

Email Address: klm@raderfishman.com

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

4

### 7. Total fee (37 CFR 1.21(h) & 3.41) \$ 160.00

- ☐ 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 18-0013  
Authorized User Name Kristin L. Murphy

### 9. Signature:



Signature

May 6, 2005

Date

Kristin L. Murphy - 41,212  
Name of Person Signing

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

11

### Recordation Form Cover Sheet

I hereby certify that this correspondence is being deposited with the U.S. Patent Office, via facsimile to (703) 306-5995, on the date shown below.

Dated: May 6, 2005

Signature: 

(Kathryn L. Nash)

CH \$160.00 180013 5403276

700177459

PATENT  
REEL: 016195 FRAME: 0558

**COPY****PURCHASE AGREEMENT**

This AGREEMENT, effective this 30th day of July, 1992, is by and between Danek Medical, Inc. (hereinafter referred to as "Danek"), a corporation organized and existing under the laws of the State of Tennessee and with its principal offices located at 3092 Directors Row, Memphis, Tennessee 38131, and Noetix, Inc., an Indiana corporation with offices located at 3301 Marna Avenue, Long Beach, California 90808 (hereinafter referred to as "Noetix.")

**W I T N E S S E T H**

WHEREAS, Danek is in the business of researching, designing, developing and marketing Medical Devices used in connection with orthopedic and spinal surgery;

WHEREAS, Noetix is developing a Medical Device (as hereinafter defined);

WHEREAS, Danek desires to purchase the Medical Device from Noetix; and

WHEREAS, Noetix desires to sell the Medical Device to Danek.

NOW THEREFORE, in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, Danek and Noetix agree as follows.

1. Definitions.

A. Danek. Danek shall mean Danek Medical, Inc. and all subsidiaries and affiliates of Danek Medical, Inc.

B. Medical Device. Medical Device shall mean a medical device and certain technology which is described in Schedule A.

C. Effective Date. Effective Date shall mean July 30th, 1992.

D. Gross Sales. Gross Sales shall mean the authorized selling price established by Danek from time to time for the Medical Device charged to

third parties, less (a) any refunds, credits or allowances actually given to customers for returns of the Medical Devices and (b) any discounts actually given or credited solely in consideration of the purchase of the Medical Device. For purposes of this definition, Medical Device shall be considered to have been sold only on the date that Danek receives payment for the Medical Device.

2. Ownership and Sale of the Medical Device: License to Noetix.

Noetix warrants and represents that (i) it is the owner of all right, title and interest in the Medical Device described in Schedule A, free and clear of any and all liens, encumbrances, pledges and claims of any third party, except those granted to Danek therein, (ii) all necessary shareholder and corporate approvals have been obtained by Noetix, (iii) that on the Effective Date, Noetix will transfer, sell and irrevocably assign to Danek all right, title and interest in and to the Medical Device to Danek, and (iv) that the purchase by Danek and the sale by Noetix pursuant to this Agreement will not violate any right of any third party or cause either Danek or Noetix to be obligated in any way to any third party other than as provided herein.

Concurrent herewith Danek and Noetix shall execute a license agreement under which Danek will grant to Noetix a license to the Medical Device in connection with any field of use other than neurological, orthopedic and spinal surgery.

3. Patents and Patent Applications.

Noetix warrants and represents (a) that it has applied for and has been granted a patent in connection with the Medical Device, and (b) that no third party owns or, to the best of their knowledge and belief claims any right or interest in or to the Medical Device.

Danek shall have the right to prepare, file and prosecute an application for one or more patents on the Medical Device in the United States of America or any other country considered appropriate by Danek. Each such application shall list, when appropriate, Alan M. Schechter and Noetix as the inventors. Any such patent application shall be made in the name of Danek. Danek shall be solely responsible for all costs and expenses (including, without limitation, attorneys', patent agents' or notarial fees) incurred in connection with the preparation, filing and prosecution of any patent application on the Medical Device. Upon the request of Danek, Noetix shall execute such documents and take such action as may be considered necessary and advisable by Danek in order to assist Danek to prepare, file, prosecute, obtain and maintain any such patent or patent application, including, without limitation, the giving of testimony in support thereof. Noetix shall reimburse for any cost or expense incurred by Noetix at Danek's request, but Noetix shall not receive any compensation in connection herewith.

4. Purchase Price.

- A. Purchase Price. Danek shall pay Noetix a purchase price for the Medical Device equal to One Hundred Fifty Thousand Dollars (\$150,000) (hereinafter referred to as "Initial Purchase Price") and three percent (3%) of the Gross Sales of the Medical Device or any product which incorporates the technology set forth in Schedule A (hereinafter referred to as the "Subsequent Purchase Price"). Danek shall continue to pay the Subsequent Purchase Price to Noetix so long as it, either directly or indirectly, sells the Medical Device.

B. Payment of Purchase Price. The Initial Purchase Price shall be paid as follows: (i) \$37,500 on the Effective Date of this Agreement, (ii) \$37,500 upon the delivery to the United States Food and Drug Administration (hereinafter referred to as the "FDA") of a Section 510(k) Submission covering the Medical Device but in no event later than ninety (90) calendar days after the Effective Date of this Agreement, and (iii) \$75,000 within ten working days after the FDA approves the Section 510(k) Submission but in no event later than two hundred forty (240) calendar days after the Effective Date of this Agreement. The Subsequent Purchase Price payable by Danek to Noetix shall be made quarterly no later than forty-five (45) calendar days following the end of the applicable quarter. Any payment required to be made pursuant to this Section 4 shall be made in United States Dollars.

#### Reports and Records.

Danek shall submit to Noetix a written report at the time that it makes any payment of the Subsequent Purchase Price to Noetix. The report shall set forth the following information with respect to the previous quarter: the number of Medical Devices sold, the total sales of the Medical Device, the Gross Sales, the amounts of the deductions and credits allowed in calculating the Gross Sales as provided for in Section 1(D), and the calculations of Subsequent Purchase Price.

Danek shall keep and maintain complete and accurate records relating to this Agreement and the reports required by this Section 5. Such records shall be maintained by Danek for a period of five (5) years from the dates of any transaction relating to this Agreement. Noetix shall have the right, upon reasonable notice and during normal business hours, to inspect, exam-

ine, audit and copy such records to verify Danek's compliance with the terms of this Agreement.

6. Government Filings.

Noetix shall assist Danek in the preparation of the Section 510(k) Submission and any other submissions made to or required by the FDA in connection with the Medical Device. Noetix shall also assist Danek in the preparation and filing of any submissions made to or required by the public health authorities in any other country in the world. Any and all expenses incurred in connection with such filings shall be borne entirely by Danek. Noetix shall not be entitled to receive any compensation for the assistance it provides under this Section 6. The Section 510(k) Submission and any other submission made to the FDA or to the public health authorities in any other country by Danek shall be made in the name of Danek. Any approval, clearance or permission relating to the Medical Device that is given by the FDA or the public health authorities in any other country by Danek shall be held and maintained in the name of Danek.

7. Infringement.

Danek shall defend or prosecute, at its sole cost and expense, any infringement that may be brought in connection with the Medical Device. If Danek chooses not to prosecute or defend any infringement brought in connection with the Medical Devices, Danek shall so notify Noetix and Noetix shall be entitled to so prosecute or defend at its sole cost and expense. Danek and Noetix shall immediately notify each other in writing of any activity, of any type or nature whatsoever, which either Danek or Noetix believes to be an infringement of Danek's intellectual property rights relating to the Medical Device. Danek and Noetix shall cooperate with each other (including, with-

PATENT

REEL: 016195 FRAME: 0563

out limitation, joining in any litigation but solely for the purpose to establish standing, if requested to do so) in all matters concerning any such infringement.

In the event that Noetix knew or should have known but without having conducted an investigation as of the Effective Date the Medical Device infringes a patent owned by or licensed to a third party, Danek shall have the right to enter into an agreement with that third party pursuant to which Danek may be required to make payments to that third party in order to continue to manufacture, have manufactured, promote, sell and have sold the Medical Device. Noetix agrees that any amounts which Danek may be required to pay to that third party and any expenses, (including without limitation reasonable attorneys fees, court costs and related expenses) which Danek actually incurs in connection with a third party claim that results in a settlement or judgment against Danek, shall reduce, on a dollar for dollar basis, the amount of the Subsequent Purchase Price Danek is required to make to Noetix pursuant to this Agreement; provided, however, that in no event shall the Subsequent Purchase Price be reduced by an amount greater than two percent (2%).

8. Legal Requirements.

If the laws of any country require that this Agreement or any document relating to the subject matter hereof to be legalized and/or notarized, or submitted, filed or registered with any government agency or ministry, Noetix agrees to assist in complying with those requirements. Any such submission, filing or registration shall be made in the name and for the benefit of Danek.

9. Confidentiality.

Except as contemplated by this Agreement or required by law, Danek and Noetix agree to maintain and hold in strict confidence any and all information relating to this Agreement and not to disclose to any third party any of that information. The terms of that November 20, 1991, confidentiality agreement by and between Danek and Noetix is hereby incorporated herein by reference and made a part hereof as though fully set out herein; provided, however, that the obligations of confidentiality in that confidentiality agreement running from Danek to Noetix shall, for purposes of this Agreement, also be considered to run from Noetix to Danek.

10. Entire Agreement; Modifications; Assignment; Counterparts.

This Agreement contains the entire understanding between the parties and supersedes any prior agreements, understandings and arrangements (whether written or oral, express or implied) between the parties relating to the subject matter hereof. No amendment, modification or change in or to the terms and conditions hereof shall be binding upon Danek or Noetix unless in writing and signed by a duly authorized officer of Danek and of Noetix.

Neither this Agreement nor any of the rights and obligations contained herein may be assigned, transferred or otherwise disposed of by a party hereto without the prior written consent of the other party, except that upon written notice to Noetix, Danek may assign this Agreement to a subsidiary or affiliate. Upon notice to Danek, Noetix shall have the right to assign the Initial Purchase Price or the Subsequent Purchase Price to a third party. This Agreement shall be binding upon any successor of Danek or of Noetix by way of merger, acquisition, consolidation, reorganization or sale of all or substantially all of the assets of Danek or of Noetix, and Danek or Noetix (as the case

may be) shall include any such merger, acquisition, consolidation, reorganization or sale agreement the specific acceptance of this Agreement by the successor.

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but which together shall constitute but one and the same instrument.

11. Public Notices.

No notice, statement or release, which in any way relates to this Agreement or any other agreement between the parties that relates to the Medical Device, shall be made unless approved in advance by Danek and Noetix, which approval shall not be unreasonable withheld.

12. Indemnification.

A. Indemnification by Danek. Danek shall indemnify and hold Noetix harmless from and against any and all liabilities, claims, demands, judgments, costs and expenses (including court costs and reasonable attorneys' fees) arising in any way out of the manufacture, promotion and sale of the Medical Device.

B. Indemnification by Noetix. Noetix shall indemnify and hold Danek harmless from and against any and all liabilities, claims, demands, judgments, costs and expenses (including court costs and reasonable attorneys' fees) arising in any way out of a breach by Noetix of its warranties, representations and obligations contained in Sections 2, 3, 6, 7, 8, 9, and 11 of this Agreement.

13. Applicable Law: Interpretation.

This Agreement shall be construed and interpreted for all purposes according to the laws of the State of Tennessee, United States of America, without regard to the laws of any other state, jurisdiction or country.

14. Notice.

Any report, notice, disclosure, correspondence or payment required or permitted by to given hereunder shall be in writing and given personally or by telex, telefax, certified mail (return receipt requested), or expedited delivery or courier service, addressed to the parties at their respective addresses as set forth in this Agreement or at such other address as a party hereto may designate in writing to the other party hereto.

15. Headings.

The headings used in this Agreement are used solely for ease of reference and are not deemed to be or form a substantive part or in any way modify or define the text or the meaning of any provision of this Agreement.

IN WITNESS WHEREOF, Danek and Noetix have executed this Agreement as of the Effective Date.

DANEK MEDICAL, INC.



Title

NOETIX, INC.



Alan M. Schechter  
Chairman and Chief Executive Officer

## SCHEDULE A

### Medical Device Description

"The term "Medical Device" shall mean certain irrigation, aspiration and tissue cutting and removal system technologies for the purpose of surgical excising human and animal tissue covered by or relating to U.S. Patent No. 4,911,161, and all improvements, accessions and enhancements thereof, including, without limitation, any and all additional or improvement patents and patent applications relating to said technologies wherever registered, filed or granted, any and all reissues, continuations, divisions or extensions thereof, and (ii) any product which incorporates the aforementioned technology, including, without limitation, the tissue cutting device to be developed by Danek and Noetix pursuant to that certain Development Agreement of even date herewith, which shall consist of the following items:

- Console unit which drives the handpiece and various disposal tissue cutting and removal banks.
- Handpiece which attaches to the console unit via a cord and drives the various disposable tissue cutting and removal blades.
- Various tissue cutting and removal blade designs which attach to the handpiece and are used to cut and remove various tissues and bone pathology."