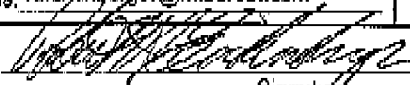


Form PTO-1595 (Rev. 07/05)  
OMB No. 0851-0027 (exp. 6/30/2008)

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 document(s) on the new address(es) below.

<b>1. Name of conveying party(ies)</b> Dennis M. Madigan		<b>2. Name and address of receiving party(ies)</b> Name: <u>Theken Surgical, LLC</u> Internal Address: _____ Street Address: <u>1100 Nola Avenue</u> City: <u>Barberton</u> State: <u>Ohio</u> Country: <u>U.S.A.</u> Zip: <u>44203</u>	
Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>3. Nature of conveyance/Execution Date(s):</b> Execution Date(s) <u>2/28/2000</u> <input checked="" type="checkbox"/> Assignment <input type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input type="checkbox"/> Joint Research Agreement <input type="checkbox"/> Government Interest Assignment <input type="checkbox"/> Executive Order 9424, Confirmatory License <input type="checkbox"/> Other _____		<b>4. Application or patent number(s):</b> <input type="checkbox"/> This document is being filed together with a new application. A. Patent Application No.(s) <u>11/142,854</u> B. Patent No.(s)	
Additional numbers attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No			
<b>5. Name and address to whom correspondence concerning document should be mailed:</b> Name: <u>Robert H. Eichenberger</u> Internal Address: <u>Middleton Reutlinger</u> Street Address: <u>2500 Brown &amp; Williamson Tower</u> City: <u>Louisville</u> State: <u>Kentucky</u> Zip: <u>40202</u> Phone Number: <u>502-564-1135</u> Fax Number: <u>502-561-0442</u> Email Address: <u>reichenberger@midreut.com</u>		<b>6. Total number of applications and patents involved:</b> <u>1</u> <b>7. Total fee (37 CFR 1.21(h) &amp; 3.41)</b> \$40.00 <input checked="" type="checkbox"/> Authorized to be charged by credit card <input type="checkbox"/> Authorized to be charged to deposit account <input type="checkbox"/> Enclosed <input type="checkbox"/> None required (government interest not affecting title)	
<b>9. Signature:</b>  _____ Robert H. Eichenberger Name of Person Signing		<b>8. Payment Information</b> a. Credit Card Last 4 Numbers <u>9560</u> Expiration Date <u>10/08</u> b. Deposit Account Number _____ Authorized User Name _____	
February 10, 2006 _____ Date		Total number of pages including cover sheet, attachments, and documents: <u>14</u>	

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:  
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1460, Alexandria, V.A. 22313-1460

OP \$40.00 11142054

***CONFIDENTIALITY, NON-DISCLOSURE, NON-SOLICITATION AND  
ANTI-PIRACY AGREEMENT***

THIS AGREEMENT made in the Township of Coventry, Summit County, Ohio, between  
**THEKEN SURGICAL, LLC**, hereinafter referred to as "The Employer" and **Dennis M.  
Madigan**, hereinafter referred to and known as "The Employee";

**WITNESSETH:**

**WHEREAS, THEKEN SURGICAL, LLC**, is firmly established in the field of medical  
device sales including but not limited to medical device research, design, product development,  
and mechanical testing of medical implants, head-quartered in Summit County, Ohio; and

**WHEREAS**, both the Employer and the Employee understand and appreciate that the  
Employee's completion of his duties with the Employer, will expose and/or has exposed the  
Employee to numerous facets of the Employer's business operation, including sensitive and  
confidential information not generally known in Employer's line of business, and to other valuable  
proprietary information, including trade secrets; and

**WHEREAS**, the personal client contacts, customer goodwill, customer lists and customer  
files of Employer, including any and all information, including customer addresses and customer  
contacts and company documents found within said files, serviced by the Employee, constitute  
valuable, tangible and intangible assets of the Employer, which are proprietary in nature, and are  
not readily ascertainable from independent outside sources, and;

**WHEREAS**, the services, processes, and products of the Employer, including but not  
limited to ideas, experiments, designs, devices, programs, research, development, manufacture,  
inventions, compilations of information, bidding, estimating, purchasing, accounting, selling,  
marketing, merchandising and engineering of such services, products or processes, constitute

valuable, tangible and intangible trade secrets and assets of the Employer, which are proprietary in nature, and are not readily ascertainable from independent outside sources, and;

WHEREAS, the parties recognize the value of client retention, confidentiality of the Employer's customer lists, services, processes, and products, and the development of a successful medical device business; and

WHEREAS, the parties hereto wish to protect the Employer from disclosure or use of the aforesaid confidential information and trade secrets in the event that the Employee is no longer employed by the Employer for any reason.

NOW, THEREFORE, IN CONSIDERATION of the mutual promises and covenants made by and between the parties, and regular yearly cost-of-living wage increases, and other good and valuable consideration, the parties do hereby covenant and agree as follows:

***1. OWNERSHIP OF CUSTOMER LISTS, CUSTOMER FILES, AND ACCOUNTS***

The Employee acknowledges and agrees that he neither owns nor has any property rights to any of the Employer's business, financial and/or customer accounts, customer lists and customer files, and all said accounts, customer lists, and customer files, obtained by or assigned to the Employee during the term of his employment, and including any business, financial and/or customer accounts, customer lists and customer files, which are obtained by the Employee incidental to or as a consequence of the Employee's employment with the Employer, shall be Employer accounts. In addition, all customer lists and customer files relating thereto are and shall remain the sole property of the Employer and further upon termination of the Employee's employment for any reason whatsoever, with or without cause, such customer lists, customer files, and accounts relating thereto shall continue solely as the property of the Employer and this

agreement shall serve to effectively evidence said ownership. The Employee acknowledges that Employer's business, financial and/or customer accounts, customer lists, and customer files constitute proprietary information and assets of the Employer and that confidentiality of same confers a benefit to the Employer's business enforceable in law and equity.

## II. COVENANTS OF EMPLOYEE

A. That except as same may be incidental to the proper performance of his employment duties and in furtherance of the Employer's interest, the Employee agrees that he will neither make nor cause to be made copies, photographs, notes, or any record or records of any business, financial and/or customer accounts, customer lists, client information, contracts, engineering drawings, and/or specifications contained therein, marketing information, operating procedures, drawings or specifications, any lists of prospects, products, prices or specifications, plans, drawings, accounts or sales records, sale brochures, samples, books, bids or bid documents, manuals or any information regarding or covering any Employer accounts whether or not the Employee handled, consulted, or worked on or with respect to such accounts either prior to or while employed by the Employer. The Employee further agrees he will neither make or give copies, photographs, or notes to anyone concerning said accounts and/or customer lists who are not employed by the Employer nor will he take from the Employer's place of business or office any records or copies of any information dealing with the foregoing, in whole or in part, except as same may be incidental to the proper performance of his employment duties with the Employer and in furtherance of the Employer's interest.

B. Non-Solicitation of Employer's Customers. During the term of this Agreement, and for a period of two (2) years immediately following the termination of his employment for any

reason with the Employer, the Employee shall not, either directly or indirectly, do any of the following:

1. Make known to any person, firm, or corporation the names and addresses of any of the customers of the Employer or any other information pertaining to them, including but not limited to engineering drawings, and/or specifications contained therein, marketing information, operating procedures, drawings or specifications, any lists of prospects, products, prices or specifications, plans, drawings, accounts or sales records, sale brochures, samples, books, bids or bid documents, manuals or any information regarding or covering any Employer accounts.

2. In the event of termination of the Employee's employment relationship with the Employer for any reason, use any method of solicitation or form of enticement, direct or indirect, as an owner, agent, employee, or otherwise, on behalf of the Employee or on behalf of any subsequent employer of the Employee, to encourage any of the Employer's accounts, customers, or clients, on whom the Employee called or with whom said Employee became acquainted during the course of his employment with the Employer, to leave the Employer or to diminish their level of business with the Employer for a period of two (2) years from the date of Employee's termination of employment with Employer.

C. Return of Records. Employee acknowledges and agrees that on termination of employment, Employee shall deliver to Employer all records, reports, data, notes, memoranda, models, and equipment of any nature that are in course of Employee's control and that are prepared or acquired in the course of Employee's employment relationship with Employer. Further, Employee agrees not to take with him information that relates to the business of

Employer or to parties in a contract relationship with Employer.

D. Assignment and Discoveries. Employee acknowledges and agrees that he will promptly disclose and assign to Employer or other designated by Employer free from any obligation to the Employee, every work of authorship, invention, product, process, apparatus, whether conceived, created or invented individually or jointly during the period of employment by Employer hereunder, which employee may make, invent, discover, conceive or originate. Employee warrants that he has no obligation to assign the property described in this Paragraph (D) to any other party. Employee will execute any documents deemed necessary by Employer to secure or enforce Employer's rights to all forgoins. Employee will further provide reasonable cooperation with Employer to assist Employer in enforcing such rights against third parties. In the event of Employee's separation or termination of employment to Employer, Employee will be provided reasonable compensation for such cooperation.

E. Information and Testimony. Employee acknowledges and agrees that he will, without expense to Employee, give such true information and testimony under oath if requested, as may be required by Employer or it's designees relative to any discoveries or other property that was executed during the period of employment by Employee.

F. Assignments and Copyrights. Employee acknowledges and agrees to convey all rights to copyrightable works, including the right to register any such work, and to assent to, and assist in the registration or renewal or extension of copyrightable material produced or composed by Employee during the period of employment by Employer.

G. Furthermore, the Employee agrees that while he is employed by the Employer and prior to any separation or termination of employment with the Employer, he will refrain from any

activities which might entice or encourage the Employer's clients to either leave the Employer or decrease their level or nature of business with the Employer.

### III. ANTI-PIRACY PROVISION

The parties further recognize that even without any enticement or encouragement from the Employee, a particular client or account may be desirous of or insistent upon terminating or diminishing its business relationship with the Employer in favor of the Employee to an economic detriment of the Employer in the event of the Employee's departure of service with the Employer.

A. Accordingly, if any Employer, client, account, or customer insists upon doing business with the severed Employee or with any other entity with which the Employee may become associated or employed following termination of his employment relationship with the Employer, the within anti-piracy agreement is intended to and shall set forth the manner in which the Employer's financial compensation for the loss of said account shall be computed provided, however, any disagreement shall not be deemed to otherwise alter, waive, change, diminish, or effect any other legal rights or remedies which the respective parties may possess.

B. That in the event any client or account insists upon naming the Employee or placing portions of its business with the Employee then, in such event, the Employee shall offer to purchase from the Employer, and the Employer will offer to sell and give up its rights to any such clients or accounts which the parties agree will leave the Employer in favor of the Employee and that at the time of any such client or account transfer, the Employee will pay and Employer will accept a sum of equal to 50% of the total net profit received on such account for a two (2) year period after the Employee's termination or separation from employment.

C. The parties understand and specifically agree the compensation formula as set forth

above is designed to discourage Employees from attempting to encourage, entice, or induce a client or account to leave the Employer unless and until the fair value of the future commissions shall have been paid to the Employer for its loss of said client or account.

D. If the Employee's employment status with the Employer shall terminate for any reason, the Employee will not attempt to hire or entice away any Employee of the Employer nor will he or she attempt to induce any such Employee or otherwise to terminate his or her employment with the Employer.

**IV. *NON-DISCLOSURE OF CONFIDENTIAL, PROPRIETARY INFORMATION AND TRADE SECRETS***

The Employee further covenants and agrees he will never, directly or indirectly, disclose, publish, use, or otherwise make known to any other party, either during or following his employment with the Employer, any confidential information concerning the Employer, its clients, customers, financial status, organization structure, trade secrets, or similar confidential and proprietary information to or about which he may become exposed, knowledgeable, or privy as an Employee, agent, officer, or board member of the Employer. Furthermore, the Employee covenants he will not utilize or take advantage of any such confidential or proprietary information to the detriment of the Employer in any fashion.

A. Furthermore, in accordance with the terms and provisions of this Agreement, the Employee and the Employer hereby agree and acknowledge that all information in any way relating or pertaining to the Employer's business which is disclosed to the Employee as an incident to his employment with the Employer and which is information not generally known by the general public and/or within the Employer's line of business, shall be deemed to be confidential information of the Employer and constitute business secrets of the Employer, which shall include,



but not be limited to, the following, which the Employee herein acknowledges and accepts as being confidential information:

1. The name, address, location or other pertinent information relating to any present or past customer of Employer or any customer lists, including written customer lists and customer lists on Rolodex type files or magnetic disks, customer files, including information, drawings, and/or specifications contained therein, marketing information, operating procedures, business financial and/or customer accounts; any lists of prospects, products, prices or specifications, plans, drawings, accounts or sales records, sale brochures, samples, books, bids or bid documents, and manuals;

2. Information, not generally known to the public or to the industry about the services, processes and products of the Employer, which constitute trade secrets of the Employer, including but not limited to ideas, experiments, designs, devices, programs, research, development, manufacture, inventions, compilations of information, bidding, estimating, purchasing, accounting, selling, marketing, merchandising and engineering of such services, products or processes.

B. Employee furthermore acknowledges that in the course of Employee's employment with Employer, Employee will be engaged in work involving Employer's confidential information. Employee covenants he will not disclose, directly or indirectly, or use in any manner, either during the term of this Agreement or at any later time, any of the aforementioned confidential information, except as required in the course of his employment by the Employer, or except when expressly authorized to do so by the Employer in writing.

C. Employee acknowledges that any and all material, furnished by Employer in the course of employment hereunder which contains confidential information is and shall remain property of the Employer and must be returned upon termination of employment, together with all other property belonging to the Employer. Material containing confidential information shall be subject to limitation as set forth herein.

D. Employee acknowledges and agrees that any disclosure or use of Employer's confidential information by Employee, not explicitly authorized by the Employer, will constitute a breach of the above-referenced Non-Disclosure of Confidential Proprietary Information and Trade Secrets covenant, thereby entitling Employer to pursue legal and/or equitable relief, including, but not limited to, misappropriation, injunctive relief, monetary damages, and unjust enrichment. Nothing herein shall be construed as prohibiting the Employer from pursuing any other remedies available to it for such breach.

#### ***V. CLAIMS OF EMPLOYEES***

The existence of any and all claims or causes of action which the Employee may have or assert against the Employer whether predicated upon this agreement or otherwise shall not constitute a defense to the enforcement by the Employer of these or other covenants by the Employer as contained in this agreement or elsewhere.

#### ***VI. TERMS OF AGREEMENT***

If any of the terms or provisions of this Agreement or its application under a set of circumstances is held invalid or unenforceable, the remainder of this Agreement or the application of such terms or provisions to circumstances other than those for which it is held invalid or unenforceable shall continue unabated and be enforceable to the fullest extent permitted by law.

The invalidity or unenforceability of any provision or clause hereof shall in no way affect the validity or enforceability of any other clause or provision hereof. The provisions of this Agreement shall survive the termination or cessation of the Employee's employment relationship with Employer.

**VII. *EMPLOYMENT-AT-WILL***

Nothing contained in this Agreement shall be construed by the parties hereto as requiring any specific term of employment, as an agreement of employment between the Employer and Employee, nor shall anything contained herein otherwise affect the Employer's right to terminate the Employee at any time for any reason, with or without cause. The Employee shall at all times remain an employee-at-will of the Employer

**VIII. *APPLICABLE LAW***

This agreement shall be construed and governed in accordance with the laws of the State of Ohio.

**IX. *SELECTION OF VENUE***

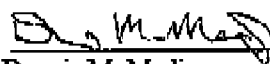
Employee herein agrees and assents to venue for any and all legal proceedings commenced regarding the within Agreement in the Court of Common Pleas of Summit County, Ohio, and/or the United States District Court for the Northern District of Ohio.

**X. *EMPLOYER ASSIGNABILITY***

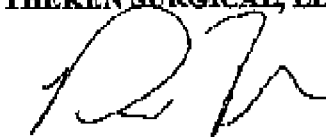
Enforcement of the Employee's duties set forth in this Agreement is assignable by the Employer to any and all future Employers, and said Employee covenants herein shall continue unabated and be enforced to the fullest extent permitted by law, by any successive Employer hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement on this 28th day  
of February, 2000.

**EMPLOYEE**

  
Dennis M. Madigan

**THEKEN SURGICAL, LLC.**

  
Randy R. Theken  
President