

PATENT ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
Prolepsis, LLC	02/26/2002
RECEIVING PARTY DATA	
Name:	Applied Medical Resources Corporation
Street Address:	22872 Avenida Empresa
City:	Rancho Santa Margarita
State/Country:	CALIFORNIA
Postal Code:	92688
PROPERTY NUMBERS Total: 1	
Property Type	Number
Patent Number:	6117150
CORRESPONDENCE DATA	
Fax Number:	(714)427-7799
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Email:	hscott@swlaw.com
Correspondent Name:	Sean D. Burdick
Address Line 1:	600 Anton Boulevard
Address Line 2:	Suite 1400
Address Line 4:	Costa Mesa, CALIFORNIA 92626
ATTORNEY DOCKET NUMBER:	53935-0001
NAME OF SUBMITTER:	Sean D. Burdick

Total Attachments: 9
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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (the "Agreement"), dated as of January 1, 2002, is entered into by and between **APPLIED MEDICAL RESOURCES CORPORATION**, a California corporation, ("Buyer") having a principal place of business at 22872 Avenida Empresa, Rancho Santa Margarita, California 92688 and, **PROLEPSIS, LLC** ("Seller") having a principal place of business at 14 Ridgemoor Drive, St. Louis, MO. 63105.

RECITALS

WHEREAS, Seller now owns all the rights to Pneumo-dissection system, (the "Products" or "Products");

WHEREAS, Seller never produced, manufactured or sold Products and Seller is not engaged in any developmental or other activities related to the Products;

WHEREAS, Seller possesses manufacturing know-how, design, certain prototypes and intellectual property related to the Products; and

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase, substantially all of the manufacturing know-how, design, prototypes, intellectual property, and documentation related to the Products.

NOW, THEREFORE, in consideration of the covenants and conditions contained herein, the parties hereby agree as follows:

1. **Assets Sold and Purchased.** Subject to the terms and conditions set forth in this Agreement, Seller and Buyer agree that at the Closing (as defined in Section 4), Seller will sell, convey, transfer, assign and deliver to Buyer, and Buyer will purchase from Seller, all of Seller's right, title and interest in and to, and only in and to, assets, properties, privileges, claims, contracts, and rights of Seller of every kind and description, wherever located, whether tangible or intangible, real, personal or mixed, free and clear of all liens, charges and encumbrances that are related to the Product and are in Seller's possession (collectively, the "Acquired Assets") as of the Closing, consisting of:

(a) All items of a tangible personal property nature (together "Personal Property") owned, held or leased by Seller and relating to the Products as of the Closing, including assemblies and prototypes ("Prototypes"); and

(b) All intangible assets of an intellectual property nature associated with the design, manufacture or sale of the Products, including all patents, patent applications, and know-how, including, without limitation those patents and patent applications listed on Schedule A (the "Intangibles");

(c) The right to receive mail and other communications addressed to Seller related to the Products after the Closing, including, without limitation, mail and communications from the Patent & Trademark Office;

(d) All documentation relating to Products.

2. **Assumption of Liabilities.** Buyer is not assuming any liabilities or obligations of Seller of any nature whatsoever, whether accrued, absolute, contingent or otherwise (including, without limitation, any tax liabilities, product liabilities, any liability or obligation on account of product returns after the Closing of products sold prior to the Closing, product discounts or allowances or any liabilities to any of Seller's employees, distributors or representatives) other than obligations under the contracts arising after the Closing, and liabilities caused or created by Buyer after the Closing.

3. **Purchase Price.** The purchase price ("Purchase Price") to be paid by Buyer for the Acquired Assets shall be [REDACTED] allocated as detailed under this section 3. Buyer and Seller agree that all tax returns and reports (including IRS form 8594) shall be prepared in a manner consistent with (and the parties shall not otherwise take a position inconsistent with) the allocation of the Purchase Price set forth hereunder. The allocation is intended to comply with Section 1060 of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

(a) **Intellectual Property** (as defined in Sections 1(b)): [REDACTED]

(b) **Design, Documentation and Materials** (as defined in Sections 1(a), 1(c), and 1(d)) [REDACTED]

4. **Closing.** The consummation of the transaction contemplated by this Agreement shall take place when this Agreement is executed by both parties.

5. **Royalty.**

(a) **Royalty Bearing Product.** "Royalty Bearing Product" is any single instrument (or component thereof) or the use of such instrument (or component thereof) which, but for the purchase of the patents under this Agreement, would infringe at least one valid claim of any of the patents, or resulting from the patent applications, listed in Exhibit A, ("Patents"), in the country in which any Royalty Bearing Product is made, used or sold.

(b) **Revenues.** Revenues from the sales of the Royalty Bearing Product that are used to calculate royalties due under Paragraph 5(c) ("Royalty Bearing Product Revenues") shall be the aggregate net revenues from sales of the Royalty Bearing Product and shall accrue when Buyer receives payment from its customers for the Royalty Bearing Product sold. Aggregate net revenues from sales of the Royalty Bearing Product means the amount equal to the gross revenues from the sale of said products, less credits and allowances for defective and returned Licensed Products, trade discounts, duties, taxes applicable to sales or use, and reasonable

transportation charges paid or allowed. When the Royalty Bearing Product is sold as part of a kit that includes other components that are not royalty-bearing under this Agreement, the Royalty Bearing Product Revenue for that kit shall be the percentage of the revenue from the sale of the kit that is attributable to the Royalty Bearing Product, based on the relative list price of each of the individual components of the kit.

Example: Revenue from the sale of a kit containing components A, B and C is [REDACTED]. Only component A is Royalty Bearing Product. The list price for component A sold separately is [REDACTED]. The list price for component B sold separately is \$50. And, the list price for component C sold separately is [REDACTED]. Thus, the list price of component A (\$50) is one-third (.33) of the combined list prices of components A, B and C (\$150). The Royalty Bearing Product Revenue from the [REDACTED] kit containing components A, B and C for purposes of calculating royalties due under Paragraph 5(c) is [REDACTED].

(c) Royalty. During the term of the Agreement, Buyer shall pay Seller a royalty equal to three percent (3.0%) of the Royalty Bearing Product Revenues made during each calendar quarter. Royalties will be paid within thirty (30) days after the end of the calendar quarter to which the royalties relate.

6. Allocation of Licensing Fees. Seller and Buyer agree that proceeds derived from licensing Patents by Buyer to third parties, including royalties, lump sum payments, and/or cash equivalents, during the term of this Agreement, shall be shared equally between Buyer and Seller, provided however that such proceeds were not obtained as a result of litigation brought by Buyer against such third party. Proceeds resulting from such litigation shall be used first to reimburse Buyer for legal fees and documented direct costs incurred, then, one-third of the remaining proceeds shall go to Seller and two-thirds to Buyer.

7. Representations and Warranties of Seller. Seller represents and warrants to Buyer that the following provisions are true and correct:

(a) Seller has good and marketable title to the Acquired Assets, free and clear of liens, claims or encumbrances of any nature whatsoever, including liens for taxes and landlord's, workman's, mechanic's and similar statutory liens and encumbrances for obligations not yet due and payable.

(b) Except as set forth in Schedule B, no claims, actions, suits are pending or, to Seller's knowledge threatened at law or in equity before any federal, state, municipal or other governmental department, commission, board, bureau, agency, or instrumentality, wherever located, against the Seller relating to the development, manufacture and assembly of the Products or affecting the Acquired Assets.

(c) To Seller's knowledge, the Products and the methods and means employed in the manufacture and assembly of the Products by Seller have not and do not infringe upon any patents, patent rights of any person or entity. No claims have been asserted, nor has Seller received any notice of any claim of infringement by seller of the patents or patent rights of others in connection with the manufacture or sale of the Products.

8. **Certain Actions After the Closing.** From and after the Closing, upon the reasonable request of Buyer and at Buyer's expense, Seller shall execute, acknowledge and deliver all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be required to convey and transfer to and vest in Buyer and protect its right, title and interest in the Acquired Assets and as may be appropriate otherwise to carry out the transactions contemplated by this Agreement.

9. **Indemnification.**

(a) Seller shall indemnify, defend and hold Buyer harmless from and against any and all losses, liabilities and expenses, including reasonable attorneys' fees and other costs, arising out of:

(i) any misrepresentation or breach of warranty made by Seller in this Agreement ("Seller's Warranty Breaches");

(ii) the nonperformance or breach of any covenant or agreement made or undertaken by Seller in this Agreement;

(iii) Seller's non-compliance with applicable bulk sales law; or

(iv) any claim arising by reason of the development, manufacture or sale of the products, or ownership of the Acquired Assets, by Seller prior to the Closing.

The representations, warranties and covenants made by Seller herein shall survive the Closing, subject, however, to the time period for asserting any Seller's Warranty Breaches set forth in Section 9(c).

(b) Buyer shall indemnify, defend and hold Seller harmless from and against any and all losses, liabilities and expenses, including reasonable attorneys' fees and other costs, arising out of:

(i) the nonperformance or breach of any covenant or agreement made or undertaken by Buyer in this Agreement; or

(ii) any claim arising by reason of the development, manufacture or sale of the Products, or ownership of the Acquired Assets, by Buyer after the Closing.

(c) The obligation of Seller to indemnify the Buyer under the provisions hereof on account of any Seller's Warranty Breaches shall apply only to claims first asserted on or before the two year anniversary of the Closing, and thereafter no claim for indemnification on account of any Seller's Warranty Breaches may be asserted hereunder; provided, however, Seller's warranties in Section 7(a) hereof shall survive indefinitely.

(d) Except for bad faith, willful misconduct, gross negligence or fraud, the provisions of this Section 9 shall be the sole remedy for any claims described in Section 9(a).

(e) Any party which may be entitled to indemnification under this Agreement shall give prompt notice to the indemnifying party. The indemnifying party shall have the right, at its expense, to assume and direct the investigation and defense of any claim, action or proceeding, including the selection of counsel, provided any counsel selected by the indemnifying party is reasonably satisfactory to the indemnified party. No settlement for monetary payment which is the subject of indemnity under this Agreement shall be made without the consent of the indemnifying party and the indemnifying party shall have the right to direct proceedings with respect to such settlement.

10. **Further Assurances.** At and after the Closing, the parties hereto will, without further consideration, execute and deliver such further documents and instruments, and take such other actions, as may be necessary or desirable to consummate and perfect the transactions contemplated hereby.

11. **Bulk Sales Laws.** Subject to Seller's indemnification obligations hereunder, Buyer and Seller mutually agree to waive compliance with any uniform commercial code Bulk Sales law which may be applicable to the transactions contemplated herein; provided that Seller shall indemnify and hold Buyer harmless from and against any liability or obligation that may be asserted against Buyer relating to such bulk sales laws.

12. **Disclaimer of Additional Warranties.** Seller disclaims any warranty, express or implied, concerning the commercial acceptability of the Products, as manufactured and sold by Buyer, or their safety or efficacy.

13. **Notices.** Any notice, consent, waiver, or other communication that is required or permitted hereunder shall be sufficient if it is in writing, signed by or on behalf of the party giving such notice, consent, waiver or other communication, and delivered personally, by overnight courier or by prepaid registered mail, to the addressee set forth below, or to such other addressee or address as shall be set forth in a notice given in the same manner:

If to Seller: Ralph Clayman, M.D.
 Proleptis, LLC
 16 Murasaki
 Irvine, CA 92612

If to Buyer: Applied Medical Resources Corporation
 22872 Avenida Empresa
 Rancho Santa Margarita, CA 92688
 Attention: Nabil Hilal

Such notice shall be deemed to have been given upon delivery if delivered personally, or five (5) days after it has been deposited in the mails, or one (1) business day after it has been given to any overnight courier.

14. **Governing Law.** This Agreement shall be covered by, construed and enforced in accordance with the laws of the State of California.

15. **Attorney's Fees.** In the event of any controversy, claim or dispute between the parties hereto arising out of or relating to this Agreement or any of the documents provided for herein, or the breach thereof, the prevailing party shall be entitled to recover from the losing party reasonable attorneys' fees, expenses and costs.

16. **Successors and Assigns.** The rights of Seller, on the one hand, and Buyer, on the other hand, under this Agreement shall not be assignable without the written consent of the other party, which consent will not be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and permitted assigns.

17. **Scope of Agreement.** This Agreement and the other documents and instruments referred to herein embody the entire agreement and understanding of the parties hereto relating to the subject matter of this Agreement.

18. **Amendment.** No alteration, modification or change in this Agreement shall be valid unless executed in writing by all of the parties hereto.

19. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same instrument.

20. **Section Headings.** The Section headings herein have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.

21. **Transfer Taxes.** Seller shall be responsible for all liabilities for Federal, state, county, local and foreign sales, use, property, excise and transfer taxes or assessments, if any, arising upon the sale, transfer or delivery of the Acquired Assets pursuant to this Agreement. Seller will file all necessary forms with respect thereto and timely remit such taxes to appropriate governmental units.

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

BUYER:

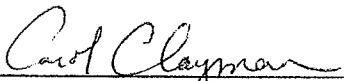
APPLIED MEDICAL RESOURCES CORPORATION

By: 
Nabil Hilal, Senior Vice President

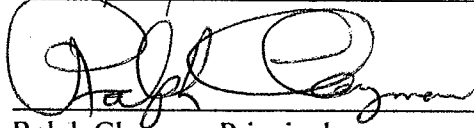
Date: 2/20/02

SELLER:

PROLEPSIS, LLC

By: 
Carol Clayman, Principal

Date: 2/25/02

By: 
Ralph Clayman, Principal

Date: 2/26/02

SCHEDULE A

INTANGIBLES

U.S. and Foreign Patents and Patent Application Nos.:

STATUS	TITLE	DATE FILED	COUNTRY	APPLICATION NUMBER	PATENT NUMBER	ISSUE DATE
Pending	Pneumatic Tissue Dissector with Exhaust System	01/05/2000	Australia	84020/98	N/A	N/A
Pending	Pneumatic Tissue Dissector with Exhaust System	01/14/2000	Canada	2,296,305	N/A	N/A
Pending	Pneumatic Tissue Dissector with Exhaust System	01/06/2000	EPO	08 934,517.8	N/A	N/A
Pending	Pneumatic Tissue Dissector with Exhaust System	01/13/2000	Japan	2000-501693	N/A	NA
Pending	Pneumatic Tissue Dissector with Exhaust System	01/11/2000	Korea	2000-7000276	N/A	N/A
Issued	Pneumatic Tissue Dissector with Exhaust System	07/14/1998	United States	09/115,008	6,117,150	09/12/2000

SCHEDULE B

CLAIMS

None