

## PATENT ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	Exclusive License Agreement
CONVEYING PARTY DATA	
Name	Execution Date
Argentum International, L.L.C.	03/28/2001
RECEIVING PARTY DATA	
Name:	Argentum Medical, L.L.C.
Street Address:	240 81st Street
City:	Clarendon Hills
State/Country:	ILLINOIS
Postal Code:	60514
PROPERTY NUMBERS Total: 1	
Property Type	Number
Application Number:	11929804
CORRESPONDENCE DATA	
Fax Number:	(404)879-2160
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	404-879-2150
Email:	candace@pabstpatent.com
Correspondent Name:	Pabst Patent Group LLP
Address Line 1:	1545 Peachtree Street NE
Address Line 4:	Atlanta, GEORGIA 30309
ATTORNEY DOCKET NUMBER:	ARG 0022 CON (5)
NAME OF SUBMITTER:	Charles Vorndran, Ph.D., J.D.
Total Attachments: 11 source=ARG 0022 CON (5) - Executive License Agreement#page1.tif source=ARG 0022 CON (5) - Executive License Agreement#page2.tif source=ARG 0022 CON (5) - Executive License Agreement#page3.tif source=ARG 0022 CON (5) - Executive License Agreement#page4.tif source=ARG 0022 CON (5) - Executive License Agreement#page5.tif	

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**ARGENTUM INTERNATIONAL, INC./ARGENTUM MEDICAL, L.L.C.**

**1997 PATENT LICENSE AGREEMENT**

This 1997 Patent License Agreement is made as of this 28<sup>th</sup> day of March, 2001 ("Effective Date"), by and between Argentum International, L.L.C., a Georgia limited liability company having its place of business at 36 Lake Rabun Road, Lakemont, Georgia 30552 ("Licensor") and Argentum Medical, L.L.C., an Illinois limited liability company having its place of business at 240 81<sup>st</sup> Street, Clarendon Hills, Illinois 60514 ("Licensee").

WHEREAS, Licensor owns certain rights in an invention in an improved Multilayer Laminate Wound Dressing, U.S. Patent Application No. 08/935,026 filed September 22, 1997; and

WHEREAS, Licensee is desirous of acquiring exclusive rights in and to the said invention.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereby agree as follows:

**1. Definitions.**

(a) The term "Application" shall mean U.S. Patent Application Serial No. 08/935,026 filed September 22, 1997, and any and all continuations, continuations-in-part and divisionals filed thereon or which claim priority therefrom.

(b) The term "Patent(s)" shall mean U.S. Patent No. 6,087,549 issued July 11, 2000 and shall include: (i) PCT No. PCT/US98/19689 filed September 22, 1998; (ii) Canadian Application No. CA 2307040; and (iii) all patents which issues from the Application, including all continuations, continuations-in-part, divisionals, reissues and reexaminations issuing therefrom.

(c) The term "Licensed Product(s)" shall mean any silver-plated products for mammalian wound care and for orthotics that are covered by one or more unexpired claims of the Patent, and manufactured in accordance with any process covered by one or more unexpired claims of the Patent.

(d) The term "Net Sales" shall mean gross revenues received by Licensee from the sales of the Licensed Products and sublicensing fees received from sub-licensees of the Licensee less all expenses, including, without limitation, depreciation, amortization and income taxes.

(e) Additional definitions are contained in the body of this Agreement.

**2. Patent Prosecution; Maintenance.**

(a) During the Term of this Agreement, Licensor shall perform all reasonable acts necessary to maintain all Patents, including the payment of maintenance and other fees as

required to keep the Patents in full force and effect. Licensee agrees to cooperate with Licensor, at Licensor's request at and Licensor's expense, in maintaining the Patents, including, without limitation, providing any materials or information and executing any documents. In the event that Licensor fails to take such acts, Licensee may do so at its expense and Licensor will, upon request, reimburse Licensee for such expenses.

(b) Licensee agrees that it shall not at any time, without the prior written consent of Licensor, apply for any protection of the Patents in its name nor take any other action which could affect or is inconsistent with Licensor's interest in the Patents, or aid or abet any third party in doing so.

### **3. Grant of License.**

(a) Licensor hereby grants to Licensee the exclusive world-wide right and license to make, have made, use, offer for sale and sell the Licensed Products (the "License").

(b) So long as Licensee is not in breach of this Agreement, Licensee shall have the exclusive right to grant sublicenses to any entity to make, have made, use and sell Licensed Products; provided, however, the terms of each sublicense, which shall be in writing, shall be no broader than the rights granted to Licensee under this Agreement, and each sublicense agreement shall terminate upon the termination of this Agreement, or earlier. Licensee shall be liable for the breach by each sublicensee of this Agreement. ~~Licensor shall be deemed a third party beneficiary of each sublicense agreement.~~ Licensee shall provide Licensor with a copy of each sublicense agreement, upon request. Any Licensed Products sold by sublicensees shall be included in the calculation of Royalties under Section 5.

(c) Licensor agrees that during the Term (as defined in Section 4(a)) of this Agreement, it shall not make, have made, use, sell or offer for sale any Licensed Product without the written consent of Licensee.

(d) Licensor shall notify Licensee of all technological advances and improvements covered by the Patents and the invention(s) disclosed therein, and agrees to and does hereby grant Licensee a license to use such advances and improvements and any patent rights relating thereto under the terms of this Agreement, for no additional consideration. Any and all advances and improvements related to the Patents developed by or on behalf of Licensee shall be and remain the property of Licensor.

### **4. Duration and Termination.**

(a) Term. This Agreement shall commence as of the Effective Date hereof and shall continue until the expiration date of the last to issue of said Patent(s) and of any other patents now or hereafter owned or controlled by Licensor which contain a claim covering the Licensed Products, unless sooner terminated under the provisions hereof (the "Term").

(b) **Termination by Licensee.** Licensee may terminate this Agreement any time upon ninety (90) days written notice to Licensors.

(c) **Termination for Breach.** Either party may terminate this Agreement upon 30 days' notice to the other party if the other party is in breach or default of any term or condition of this Agreement, unless such breach or default is cured within said 30-day period; provided, however, that if more than thirty (30) days is required to cure a default, then the default shall be deemed cured if the other party commences to cure the breach within thirty (30) days after such notice and diligently pursues the cure to completion; provided, however, the cure period shall not exceed ninety (90) days without the written consent of the party claiming breach. The cure period for the payment of money shall not be extended. The option to terminate, whether or not exercised, is in addition to any and all other rights and remedies that the non-breaching party may have against the breaching party, and all such rights will be cumulative and not exclusive.

(d) **Effect of Termination.**

- (1) Upon termination of this Agreement, Licensee and its sublicensees shall forever cease the use, manufacture, offer for sale and sale of the Licensed Products; provided, however, Licensee and its sublicensees may continue to sell the Licensed Products in transit, in their respective inventory and complete and sell work in process existing on the date of termination for a period of six (6) months after the date of termination (the "Use-up Period").
- (2) Within thirty (30) days after termination, each party shall deliver to the other all confidential information of the disclosing party in the possession of the receiving party.
- (3) Within thirty (30) days after termination, Licensee shall deliver to Licensors a list of all inventory and work in process existing on the date of termination (the "Inventory Report"), by item number, quantity and location, and on or before the 75<sup>th</sup> day after termination (the "Final Inventory Report"), an updated list of the Licensed Products as of the 60<sup>th</sup> day after termination. All Licensed Products in the possession or control of Licensee and its sublicensees upon the completion of the Use-up Period shall be destroyed by Licensee, and a certificate of such destruction shall be furnished to Licensors concurrently with the Final Inventory Report.
- (4) Termination of this Agreement shall not relieve Licensee of its obligations to timely pay to Licensors the Royalties due on and after the date of termination.

- (5) Termination of this Agreement and the License granted herein shall not impair or prejudice any cause of action or claim that one party may have against the other party for any breach of this Agreement.
- (6) The provisions of Sections 6 (according to its terms), 8, 11, 12, 13 and 20 shall survive termination of this Agreement for any reason.

5. Royalties.

Licensee shall pay Licensor a royalty of [REDACTED] of Net Sales of all Licensed Products sold directly or indirectly by Licensee and by each sublicensee (the "Royalty"). No Royalties shall be due on Licensed Products which are provided, at no charge, as samples. If any Licensed Products are given away without consideration other than as samples, the Net Sales price shall be deemed Licensee's direct cost of manufacture, excluding overhead, or if manufactured for Licensee, then Licensee's cost of the Licensed Product. A sale shall be deemed to have occurred upon the transfer of title to the Licensed Product to the purchaser, regardless of whether payment is made by the purchaser.

6. Accounting and Reporting.

(a) Reports. Licensee agrees to furnish Licensor, within thirty (30) days after the end of each calendar quarter, a written royalty report setting forth the quantity, item number and purchaser of Licensed Products which were sold, and the item number and quantity of Licensed Products given away (and their cost to Licensee) the Net Sales price to each purchaser, and the Royalties due to Licensor (the "Royalty Report") for and during such calendar quarter.

(b) Payment. Licensee shall remit with each Royalty Report the full amount of Royalties due.

(c) Records. Licensee agrees to keep complete and accurate records covering all royalty-bearing activities specified in this Agreement in sufficient detail to enable the Royalties payable hereunder to be accurately determined, including books of account of all Licensed Products manufactured, their location, costs, quantities of product manufactured, the name and address of the manufacturers, all sales made of Licensed Product, the name and address of the purchasers, date of purchase, sales price and terms of sales, orders received for Licensed Products, and Licensed Products in inventory (the "Records"). Licensee shall maintain the records during the Term and for two (2) years after termination of this Agreement, and will not to destroy any of such Records during such period.

(d) Audit Rights. During the Term and for two years thereafter, Licensor and its authorized agents shall be permitted, at Licensor's expense, to audit and make copies of the Records of Licensee. Licensor shall keep confidential all Licensee's information, provided that it may disclose to its advisors and attorneys or as necessary to enforce the terms of this Agreement, information which relates to Royalties due. Licensor will provide Licensee with not

less than fifteen (15) days advance notice of each audit. The audit will be conducted only during normal business hours in an office to be provided by Licensee on its premises. If the audit discloses that the Royalties were underpaid by five percent (5%) or more for any period, the costs of the audit will be paid by the Licensee.

**7. Warranties and Representations.**

Licensors represents and warrants (a) that it has no knowledge of any facts which give rise to impediments to Licensee's right to use and license the Application or the Patents, and (b) that the use by Licensee of the Application or the Patents under this Agreement will not infringe upon the rights of any third party.

**8. Confidentiality.**

Licensors and Licensee hereby acknowledge that in the course of activities under this Agreement each of them may have access to confidential and proprietary information which relates to the other party's past, present or future marketing, technology, research, development or business affairs which either party does not disclose to the public in the ordinary course of its business (the "Confidential Information"). Each party agrees to: (a) preserve and protect the confidentiality of the other party's Confidential Information, (b) refrain from using the other party's Confidential Information except as contemplated herein, and (c) not disclose such Confidential Information to any third party except on a need-to-know basis as reasonably required in connection with the exercise of its rights and obligations under this Agreement and provided that such third party is bound to use and disclosure restrictions at least as protective as those set forth in this Agreement. Notwithstanding the foregoing, either party may disclose Confidential Information of the other party which is: (i) which is or becomes, publicly available through no breach by it of this Agreement; (ii) discovered or created by the receiving party without reference to the Confidential Information of the disclosing party, as shown in records of the receiving party; (iii) otherwise known to the receiving party through no wrongful conduct of the receiving party. In addition, the receiving party may disclose Confidential Information of the other party pursuant to the order of a court, tribunal or government authority of competent jurisdiction provided that the other party is notified by the receiving party and has the opportunity to obtain an appropriate protective order.

**9. Patent Marking.**

Licensee agrees to place on the Licensed Products and/or the packaging of the Licensed Products manufactured and/or sold by it the phrase "Patent Pending" until such time that one or more Patents are issued. After each such Patent issues, Licensee agrees to place on the Licensed Products and/or the packaging manufactured and/or sold by it after such date, and which are not then in its inventory or in transit to it, the phrase "U.S. Patent" followed by the numbers of the Patent(s) applicable to such Licensed Products; provided, however, that if marking directly on the Licensed Products is not commercially feasible then Licensee shall give notice to Licensor of the reasons for not marking the Licensed Product and shall place such markings on the packaging in a manner required under applicable law.

**10. Infringement Claims.**

Licensee and Licensor shall promptly inform the other of each occurrence that, in its opinion, constitutes an infringement of a Patent by a third party or a third party alleges an infringement of a Patent by Licensor or Licensee. Licensee shall have the responsibility, at its expense, to prosecute, and, as appropriate, bring a cause of action against or defend, such infringement action. Licensee may take such actions in Licensor's name, if necessary. Licensor shall have the right, but not the obligation, to participate in, or to assume, such prosecution or cause of action or defense with counsel of its choice and at Licensee's expense. Under no circumstances shall Licensee settle any such claim in a manner that would adversely affect the rights of the Licensor in the Patent unless the Licensor consents in writing to such settlement. Licensee shall not withhold the payment of any Royalties due to Licensor hereunder.

**11. Indemnification by Licensee.**

Licensee hereby agrees to indemnify, defend and hold harmless Licensor, and its officers, directors, employees, shareholders, members, partners, agents, successors, representatives, and assigns, from and against any and all claims, judgments, liabilities, damages, penalties, losses, costs or expenses (including reasonable attorneys' fees) incurred by reason of, or arising out of, or in any way related to: (i) subject to and contingent upon the accuracy of Licensor's representations and warranties in Section 7 of this Agreement, use of the Patents and Application by Licensee of any Licensed Products manufactured or sold by or for Licensee and its sublicensees under this Agreement, and (ii) any breach of this Agreement by Licensee.

**12. Indemnification by Licensor.**

Licensor hereby agrees to indemnify, defend and hold harmless Licensee, and its respective sublicensees and their respective officers, directors, employees, shareholders, members, partners, agents, successors, representatives, and assigns from and against any and all claims, judgments, liabilities, damages, penalties, losses, costs or expenses (including reasonable attorney's fees) incurred by reason of, or arising out of, or in any way related to any breach of



this Agreement by Licensor, including, without limitation, a breach of Licensor's representations and warranties under Section 7 of this Agreement.

**13. Conditions on Indemnity.**

The foregoing indemnification by each party hereto shall be subject to the following:

(a) The indemnified party promptly notifies the other party in writing of the claim; provided that the failure to so notify the indemnifying party shall not relieve the indemnifying party of any liability it may have to the indemnified party hereunder except to the extent the indemnifying party has been materially prejudiced thereby;

(b) The indemnifying party has sole control of the defense and all related settlement negotiations with respect to the claim, provided, however, that the indemnified party has the right, but not the obligation, to participate at its expense in the defense of any such claim or action through counsel of its own choosing; and

(c) The indemnified party cooperates fully to the extent necessary, and executes all documents necessary for the defense of such claim.

**14. Insurance.**

Licensee shall during the term of the Agreement maintain in full force and effect a policy or policies of general liability insurance (with Broad Form General Liability and Product liability endorsements) with limits of not less than one million dollars (\$1,000,000) per person and two million dollars (\$2,000,000) per occurrence and three million dollars (\$3,000,000) product aggregate, with a deductible not to exceed \$25,000 per occurrence. Such coverage(s) shall be purchased from a carrier or carriers reasonably acceptable to Licensor. Licensee will furnish to Licensor certificates evidencing the insurance required under this Section and containing a waiver of subrogation in favor of Licensor within ten days from the date of this Agreement, and concurrently with the renewal of each policy. Each policy will name Licensor as an additional insured. Each policy will provide that the coverage will not be decreased or the deductible increased without the Licensor's prior written consent, and will specify that Licensor will be given no less than thirty (30) days prior written notice of any change in or cancellation of such coverage(s).

**15. Entire Agreement and Modifications.**

(a) This Agreement sets forth the entire agreement and understanding between the parties hereto relating to the subject matter hereof, and supercedes all prior written and oral understandings pertaining to the subject matter.

(b) Neither this Agreement nor any of its provisions shall be released, discharged, abandoned, waived, changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the parties hereto.

16. Severability.

Should any provision of this Agreement be determined by a court of competent jurisdiction to be unenforceable, such provision shall be deemed to be independent of all of the other provisions of this Agreement shall be deemed severed from this Agreement, and the balance of this Agreement shall remain in full force and effect.

17. Waiver.

(a) The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver of such provision.

(b) No waiver by either party of a breach by the other party of a provision of this Agreement shall constitute a continuing waiver of other breaches of the same provision or a waiver of a breach of any other provision of this Agreement. No waiver shall be effective unless in writing signed by the waiving party.

(c) A waiver by a party of its right to terminate this Agreement, shall not estop the non-breaching party from thereafter terminating this Agreement upon a subsequent breach of the same or any other provision of this Agreement.

18. Assignment or Transfer.

(a) This Agreement, or any interest of Licensor herein, is assignable and transferable by Licensor, provided, however, that any such assignee must agree in writing to assume all obligations of Licensor under this Agreement, and Licensee must be provided with a copy of such writing reasonably promptly after the execution of such writing. This Agreement shall inure to the benefit of Licensor, its successors and assigns.

(b) This Agreement, or any interest of Licensee herein, is assignable and transferable by Licensee, upon the prior written consent of Licensor, which consent will not be unreasonably withheld, provided, however, that no such assignment or transfer shall in any way relieve Licensee of its obligations under this Agreement and any such assignee must agree in writing to assume all obligations of Licensee under this Agreement, and Licensor must be provided with a copy of such writing reasonably promptly after the execution of such writing. This Agreement shall inure to the benefit of Licensee, its permitted successors and assigns.

**19. Notices.**

Any notice or other communication to be given hereunder must be in writing and given by facsimile, if delivery is confirmed by senders' facsimile machine, or reputable messenger courier, or postpaid registered or certified mail, return receipt requested, or electronic mail (with a copy concurrently mailed as set forth herein). Delivery shall be on the first to occur of actual receipt or three (3) business days after mailing. Notice hereunder will be addressed to a party at the following address for such party. Either party may change its address for notice purposes by written notice to the other party in accordance with this Section.

**If to Licensee:**

Argentum Medical, L.L.C.  
c/o Thomas Miller  
240 81<sup>st</sup> Street  
Clarendon Hills, Illinois 60514  
Telephone: (708) 927-9398  
Fax: (630) 986-4401  
Email: [TEMILLER@aol.com](mailto:TEMILLER@aol.com)

**With a copy to:**

Freeborn & Peters  
311 South Wacker Drive  
Suite 3000  
Chicago, Illinois 60606  
Attn: John Stiefel  
Telephone: (312) 360-6274  
Fax: (312) 360-6573  
Email: [jstiefel@freebornpeters.com](mailto:jstiefel@freebornpeters.com)

**If to Licensors:**

Argentum International, L.L.C.  
Arthur B. Flick, M.D., President  
36 Lake Rabun Road  
Lakemont, Georgia 30552  
Telephone: (706) 782-6700  
Fax: (706) 782-3903  
Email: [argentum@alltel.net](mailto:argentum@alltel.net)

With a copy to:  
Freeborn & Peters  
311 South Wacker Drive  
Suite 3000  
Chicago, Illinois 60606  
Attn: John Stiefel  
Telephone: (312) 360-6274  
Fax: (312) 360-6573  
Email: [jstiefel@freebornpeters.com](mailto:jstiefel@freebornpeters.com)

20. **Miscellaneous.**

(a) The parties agree to execute, acknowledge and deliver all further instruments, and to do all such other acts, as may be necessary or appropriate in order to carry out the intent and purposes of this Agreement.

(b) This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois without giving effect to choice of law principles. Any and all court proceedings arising from or relating in any manner to any dispute between the parties shall be brought in, and only in, a United States federal or Illinois State court sitting in Chicago, Illinois. Each party hereby consents to the exclusive jurisdiction of such courts, submits to the jurisdiction of such courts, and irrevocably waives any objection that such party may now or hereafter have to venue, lack of subject matter or *in personam* jurisdiction or *forum non conveniens* with respect to any action initiated in such court. The prevailing party in any litigation shall be reimbursed its court costs and reasonable attorneys' fees, and such amount shall be included in the award or judgment entered in such case.

(c) Nothing contained in this Agreement shall be construed to imply a joint venture, partnership, or principal-agent relationship between the parties; and, neither party by virtue of this Agreement shall have any right, power or authority, express or implied, to act on behalf of or enter into any undertaking binding the other party.

(d) This Agreement shall not be construed to create rights, expressed or implied, on behalf of, or for the use of, any parties, aside from Licensor and Licensee; and, Licensor and Licensee shall not be obligated, separately or jointly, to any third parties or any third party beneficiaries by virtue of this Agreement.

(e) This Agreement may be executed in any number of counterparts, each of which shall be an original.

*(Remainder of page intentionally left blank.)*

*Signatures appear on following page.*

IN WITNESS WHEREOF, the parties hereto have executed this 1997 Patent License Agreement as of the date first above written.

LICENSOR

ARGENTUM INTERNATIONAL, L.L.C.

By: AB Smith  
Title: Board of Managers

LICENSEE

ARGENTUM MEDICAL, L.L.C.

By: [Signature]  
Title: CEO