

PATENT ASSIGNMENT

Electronic Version v1.1  
Stylesheet Version v1.1

SUBMISSION TYPE:

NEW ASSIGNMENT

NATURE OF CONVEYANCE:

ASSIGNMENT

CONVEYING PARTY DATA

Name	Execution Date
Encore Medical Asset Corporation	10/30/2009

RECEIVING PARTY DATA

Name:	Wenzel Spine, Inc.
Street Address:	2720 Bee Caves Road
City:	Austin
State/Country:	TEXAS
Postal Code:	78746

PROPERTY NUMBERS Total: 9

Property Type	Number
Patent Number:	6110173
Patent Number:	5776134
Patent Number:	5601554
Patent Number:	5653708
Patent Number:	5030220
Patent Number:	5034011
Patent Number:	5380323
Patent Number:	5545164
Patent Number:	5545166

CORRESPONDENCE DATA

Fax Number: (202)662-2739

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

Email: seanwooden@andrewskurth.com

Correspondent Name: Sean Wooden

Address Line 1: 1350 I Street, N.W.

Address Line 2: Suite 1100

501074683

PATENT  
REEL: 023839 FRAME: 0407

CH \$360.00 6110173

Address Line 4: Washington, DISTRICT OF COLUMBIA 20005

ATTORNEY DOCKET NUMBER:

WENZEL 2

NAME OF SUBMITTER:

Sean Wooden

Total Attachments: 5

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## PATENT ASSIGNMENT

THIS PATENT ASSIGNMENT (this "*Assignment*") is made as of the 30th day of October, 2009, from Encore Medical Asset Corporation, a Nevada corporation ("*Assignor*"), to Wenzel Spine, Inc., a Texas corporation ("*Assignee*").

WHEREAS, Assignor, with its principal place of business at 1430 Decision Street, Vista, California 92081, is the owner of the inventions, patent applications and patents set forth on Exhibit A hereto (collectively, the "*Patents*");

WHEREAS, Assignee, with a principal place of business at 2720 Bee Caves Road, Austin, Texas 78746, desires to acquire the entire right, title and interest of Assignor in and to the Patents in accordance with the terms of that certain Asset Purchase Agreement by and between Encore Medical, L.P. (d/b/a DJO Surgical), a Delaware limited partnership, and Assignee dated on or about the date hereof (the "*Purchase Agreement*").

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and the consideration set forth in the Purchase Agreement, Assignor and Assignee, intending to be legally bound, hereby agree as follows:

1. Assignment.

(a) Assignment of Patents. Assignor does hereby sell, assign, transfer, convey, deliver and set over to Assignee any and all interest that Assignor may own or claim to own in the inventions, patent applications and patents aforesaid described in, covered by, included in, or otherwise comprising the Patents, for the United States and all foreign countries, and any reexamination and reissue or reissues of said Patents already granted and which may be granted on said applications, and any divisional, continuation and continuation-in-part applications claiming priority from the aforesaid applications, together with all additions thereto, substitutions therefor and modifications thereof, or foreign equivalents thereof, and including the subject matter of all claims which may be obtained therefrom, the same to be held and enjoyed by Assignee for its own use and enjoyment, and for the use and enjoyment of its successors, assigns or other legal representatives, to the end of the term or terms for which said Patents are or may be granted or reissued as fully and entirely as the same would have been enjoyed by Assignor if this assignment, sale and transfer had not been made; together with all claims for damages by reason of past infringement of said Patents, with the right to sue for, and collect the same for its own use and enjoyment, and for the use and enjoyment of its successors, assigns or other legal representatives.

(b) Further Actions. Assignor further hereby authorizes and requests the Commissioner of Patents and Trademarks of the United States and any official of any foreign jurisdiction whose duty it is to issue patents on applications as described above, to issue any and all letters patents of the United States or such foreign jurisdiction on said inventions or resulting

from said applications or any divisional, continuation, continuation-in-part, reexamination and reissue applications thereof to Assignee of the entire interest therein, and hereby covenants that it has full right to convey its entire interest as herein assigned, and that it has not executed any agreement inconsistent herewith and will not execute any agreement inconsistent herewith without Assignee's consent; and Assignor hereby further covenants and agrees that it shall, without any additional consideration, communicate with Assignee and its successors and assigns, any facts known to it respecting the inventions, and testify, or have inventors testify, in any legal proceeding, sign all lawful papers when called upon to do so, execute and deliver any and all papers that may be necessary or desirable to perfect the title of the aforesaid inventions, patent applications and patents described in, covered by, included in, or otherwise comprising the Patents in Assignee, its successors and assigns, throughout the World, execute, or have inventors execute, all divisional, continuation, continuation-in-part, reexamination and reissue applications, make all rightful oaths and generally do everything reasonably necessary to aid Assignee, its successors and assigns, to prosecute, obtain and enforce proper patent protection for the Patents and related inventions in the United States and any foreign jurisdiction, it being understood that any expense incident to the execution of such papers shall be borne by the Assignee, its successors and assigns.

**2. Representations and Warranties of Assignor.**

(a) Organization, Good Standing, Qualification and Power. Assignor is a corporation duly organized, validly existing and in good standing under the laws of the State of Nevada. Assignor has the power and authority to execute, deliver and perform its obligations under this Assignment.

(b) Authorization. All action on the part of Assignor, its officers and partners necessary for the authorization, execution and delivery of this Assignment, the performance of all obligations of Assignor hereunder, and the sale and assignment of the Patents to Assignee has been taken or will be taken prior to such sale and assignment. This Assignment constitutes a valid and legally binding obligation of Assignor, enforceable against Assignor in accordance with its terms, except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium and other laws of general application affecting enforcement of creditors' rights generally and (ii) as limited by laws relating to the availability of specific performance, injunctive relief or other equitable remedies.

(c) Title to Patents. Except as set forth in the Purchase Agreement, Assignor represents and warrants to Assignee that it has good and marketable title to the Patents and, upon the sale and assignment of the Patents to Assignee, Assignee will acquire good and marketable title to the Patents, free and clear of all liens, encumbrances, security interests, restrictions and claims of any kind.

3. Miscellaneous.

(a) Modifications; Headings. No modification to this Assignment shall be binding unless made in writing and signed by the parties hereto. The headings herein have been inserted for convenience of reference only and do not define or limit the provisions hereof.

(b) Severability. To the extent that any provision, portion or extent of this Assignment is found invalid, illegal or unenforceable, then that provision, portion or extent shall be severed or deleted therefrom or limited so as to give effect to the intent of the parties hereto insofar as possible and that the remainder of this Assignment shall remain binding upon the Assignor and the Assignee. The invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of any other provisions.

(c) Survival of Representations. The representations, warranties and covenants of Assignor contained in or made pursuant to this Assignment shall survive the execution and delivery of this Assignment.

(d) Governing Law. This Assignment and all claims arising out of this Assignment shall be governed by and construed under the laws of the State of Texas, without regard to conflicts of laws principles.

(e) Counterparts. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

*[Signature page follows]*

IN WITNESS WHEREOF, each party has caused this Assignment to be signed by a duly authorized representative as of the date first written above.

**ASSIGNOR:**

**ENCORE MEDICAL ASSET CORPORATION**

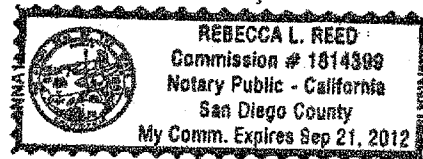
By: Tom Capizzi  
Tom Capizzi  
Executive Vice President

State of California  
County of San Diego

On this 30<sup>th</sup> day of October, in the year 2009, before me Rebecca L. Reed, a notary public, personally appeared Tom Capizzi, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument above, and acknowledged that they executed the same. Witness my hand and official seal.

Rebecca L. Reed  
Notary Public

My commission expires: Sep. 21, 2012



**ASSIGNEE:**

**WENZEL SPINE, INC.**

By: \_\_\_\_\_  
Chad Neely  
President

State of Texas  
County of Travis

On this 30<sup>th</sup> day of October, in the year 2009, before me \_\_\_\_\_, a notary public, personally appeared Chad Neely, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument above, and acknowledged that they executed the same. Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

IN WITNESS WHEREOF, each party has caused this Assignment to be signed by a duly authorized representative as of the date first written above:

**ASSIGNOR:**

**ENCORE MEDICAL ASSET CORPORATION**

By: \_\_\_\_\_  
Donald M. Roberts  
Executive Vice President, General Counsel

State of California  
County of San Diego

On this 30<sup>th</sup> day of October, in the year 2009, before me \_\_\_\_\_,  
a notary public, personally appeared Donald M. Roberts, proved on the basis of satisfactory  
evidence to be the person whose name is subscribed to this instrument above, and acknowledged  
that they executed the same. Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

**ASSIGNEE:**

**WENZEL SPINE, INC.**

By: \_\_\_\_\_  
Chad Neely  
President

State of Texas  
County of Travis

On this 30<sup>th</sup> day of October, in the year 2009, before me Angela M. Spencer,  
a notary public, personally appeared Chad Neely, proved on the basis of satisfactory evidence to  
be the person whose name is subscribed to this instrument above, and acknowledged that they  
executed the same. Witness my hand and official seal.

Angela M. Spencer  
Notary Public

My commission expires: 9/21/11

