

PATENT ASSIGNMENT

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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
David Zahniser	03/03/2009
RECEIVING PARTY DATA	
Name:	Constitution Medical, Inc.
Street Address:	186 Lincoln Street, 3rd Floor
City:	Boston
State/Country:	MASSACHUSETTS
Postal Code:	02110
PROPERTY NUMBERS Total: 1	
Property Type	Number
Application Number:	12785314
CORRESPONDENCE DATA	
Fax Number:	(877)769-7945
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	6175425070
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Correspondent Name:	Todd E. Garcia
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ATTORNEY DOCKET NUMBER:	28441-0015001
NAME OF SUBMITTER:	Todd E. Garcia
Total Attachments: 11 source=zahniser015#page1.tif source=zahniser015#page2.tif source=zahniser015#page3.tif source=zahniser015#page4.tif	

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CONSULTING AGREEMENT

This Consulting Agreement (this "Agreement") is entered into this 3rd day of March, 2009 (the "Effective Date").

BY AND BETWEEN: Dr. David Zahniser, having an address at 33 Sheridan Road, Wellesley, MA

(hereinafter referred to as "Consultant");

and Constitution Medical, Inc., a Delaware corporation, having its principal office at Boston Independence Wharf, 470 Atlantic Avenue, 4th Floor, Boston, MA 02210

(hereinafter referred to as "CMI");

and Constitution Medical Investors, Inc., a Delaware corporation, having its principal office at Boston Independence Wharf, 470 Atlantic Avenue, 4th Floor, Boston, MA 02210

(hereinafter referred to as "CMII"),

(Consultant, CMI and CMII each referred to individually as a "Party" and together as "Parties");

WHEREAS, CMI is a medical research and development company focused on the identification, acquisition and commercialization of innovative, healthcare-related platform technologies;

WHEREAS, CMI is a wholly owned subsidiary of CMII;

WHEREAS, Consultant is a principal of CIS, and in connection with the Assignment and License Agreement, Consultant desires to provide Consulting

Services (as defined in **Article 3** hereunder) to CMI, and CMI desires to receive such Consulting Services;

WHEREAS, Consultant, in the course of providing the Consulting Services, will have access to confidential information of CMI or in CMI's possession, and it is of the utmost significance for the continuity and continued commercial and financial success of CMI that such confidential information remain confidential; and

WHEREAS, Consultant will be using the confidential information of CMI as well as intellectual property owned by or licensed to CMI in providing the Consulting Services, and as such confidential information and intellectual property is of utmost importance to the continuity and continued commercial and financial success of CMI, all rights resulting from the Consulting Services must be owned by, and/or assigned to, CMI.

NOW, THEREFORE, in consideration of the mutual premises and covenants above and below in this Agreement and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

Article 1 - APPOINTMENT OF CONSULTANT

CMI hereby appoints Consultant and Consultant hereby agrees to provide to CMI the consulting services described in **Article 3** in accordance with the terms and conditions of this Agreement.

Article 2 - REPRESENTATIONS, WARRANTIES AND COVENANTS OF CONSULTANT

Consultant hereby represents, warrants and covenants to CMI that:

- 2.1 he is free to enter into this Agreement;
- 2.2 he is not presently a party to any conflicting agreements with third parties or under any obligation to any third party that would interfere, limit, or otherwise restrict his right or ability to provide Consulting Services or to fulfill his obligations under this Agreement;
- 2.3 he will inform CMI of any conflict between his obligations in accordance with this Agreement and (a) any obligations he may have to preserve the confidentiality of another's proprietary information or

materials, (b) any rights a third party may claim to any inventions or ideas before using the same on CMI's behalf, or (c) any rights he may claim to inventions or ideas before using the same on CMI's behalf; otherwise, once Consulting Services are performed by Consultant, CMI may conclude that no such conflict exists and Consultant agrees thereafter to make no such claim against CMI;

2.4 that Consultant shall perform the Consulting Services on a Best Efforts basis. For the purposes of this Agreement, the term "**Best Efforts**" shall mean to take all necessary actions to perform or satisfy an obligation or duty or otherwise act in a manner reasonably calculated to obtain the intended result by action or expenditure not disproportionate or unduly burdensome. Consultant agrees to perform the Consulting Services required in accordance with generally accepted consulting and ethical business practices; and

2.5 CMI and Consultant each acknowledge the obligations of Consultant set forth on Schedule 2.5 hereto. Consultant represents that these obligations do not present a conflict with Consultant's obligations under this Agreement. CMI covenants that it expects, and will permit, Consultant to comply with such obligations, and will not require Consultant to take any action in violation of such obligations (other than with respect to the matter disclosed in Section 1.D of Schedule 2.5).

Article 3 - CONSULTING SERVICES

In accordance with the terms and conditions of this Agreement, Consultant agrees to provide CMI with assistance in the research, development and commercialization of products relating to the CMI Business, as reasonably requested by CMI or as otherwise agreed to by the Parties (the "**Consulting Services**"). Consultant shall receive all specific requests for services from any representative of CMI identified from time to time in writing by CMI. Consultant agrees not to make use of any CMI facilities, space, materials or other resources (inclusive of the CMI Confidential Information and Consultant Intellectual Property) outside of performing the Consulting Services, and shall not knowingly make use of any intellectual property, confidential information or other proprietary information or materials of any third party in performance of the Consulting Services, except upon CMI's prior written consent and subject to a written license agreement granting CMI appropriate rights therein.

7.3

7.4

Article 8 - INTELLECTUAL PROPERTY

8.1 **Assignment.** Consultant agrees, without limiting the reach of the following, that all materials, information, results, proceeds, formulas, techniques, processes, procedures, compounds, equipment, products, ideas, trade secrets, know-how, discoveries, inventions, improvements, manufacturing secrets, and other work product, whether or not patentable, that result from the Consulting Services, regardless of the

time or place performed, whether related to the CMI Business, and whether arising by his own deed or from the collaboration with others ("**Consultant's Intellectual Property**"), shall belong to and become the exclusive and absolute property of CMI. Consultant agrees that all of Consultant's Intellectual Property and any copyrights, patents, trademarks, trade names, moral rights or similar rights ("**Intellectual Property Rights**") therein shall be the sole and exclusive property of CMI. Consultant agrees that any and all portions of the Consultant's Intellectual Property that are works of authorship shall be deemed to be "works made for hire" within the meaning of the United States copyright law and, as such, all rights therein, including copyrights, shall belong solely and exclusively to CMI from the time of their making. To the extent any such work of authorship may not be deemed to be a work made for hire and with respect to all other aspects of Consultant's Intellectual Property, Consultant agrees to, and hereby, irrevocably assigns to CMI all Consultant's rights, title and interest in and to all such Consultant's Intellectual Property and Intellectual Property Rights therein. CMI shall be the sole owner of all domestic and foreign rights pertaining to Consultant's Intellectual Property and the Intellectual Property Rights therein (notwithstanding CMI's right at any time to sell, assign or otherwise transfer any of its rights). Notwithstanding the foregoing, CMI shall not obtain any rights or interest under this Agreement in any of Consultant's intellectual property which was conceived outside of the performance of rendering the Consulting Services under this Agreement. Without limiting any other provision of this Agreement, Consultant hereby waives, and agrees not to assert, any Moral Rights that he may have with respect to the Consultant's Intellectual Property. For the purposes of this Agreement, "**Moral Rights**" means any right to claim authorship of a work, any rights to object to any distortion or other modification of a work, and any similar right, existing under the laws of any country in the world or under any treaty whether as of the Effective Date or thereafter.

In addition, notwithstanding the foregoing paragraphs, in the event that the Assignment and License Agreement is terminated in accordance with its terms pursuant to Section 9.1(b) or 9.1(c) thereof, all obligations of Consultant, and all assignments made by Consultant to CIS, made under this Section 8.1 shall become null and void and all Consultant's Intellectual Property within the CBC Field and all

Intellectual Property Rights within the CBC Field shall thereafter become the sole and exclusive property of Consultant.

8.2

Disclosure and Assistance. Consultant agrees to promptly disclose to CMI all the facts known to him regarding Consultant's Intellectual Property; to sign all the documents, to make all rightful oaths and, generally, to do everything in his power to assist CMI or any party designated by CMI, to obtain proper protection for and to enforce such Consultant's Intellectual Property and the Intellectual Property Rights therein in all countries and to vest in CMI the entire right, title and interest in and to Consultant's Intellectual Property and Intellectual Property Rights therein worldwide at the sole cost and expense of CMI. Without limiting the foregoing, upon the request of CMI and at CMI's expense, Consultant shall execute such further assignments, documents and other instruments as may be necessary or desirable to fully and completely assign all Consultant's Intellectual Property and Intellectual Property Rights therein to CMI, and appoints any officer of CMI as his duly authorized attorney to execute and file the same before any government agency, court or authority in the name of Consultant.

WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first indicated above.

CONSTITUTION MEDICAL, INC.

By: *Daniel J. Levangle*
Name: Daniel J. Levangle
Title: President and Chief Executive Officer
Fax: (617) 262-0494

CONSTITUTION MEDICAL INVESTORS, INC.

By: *Daniel J. Levangle*
Name: Daniel J. Levangle
Title: President and Chief Executive Officer
Fax: (617) 262-0494

DR. DAVID ZAHNISER
Fax:

WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first indicated above.

CONSTITUTION MEDICAL, INC.

By: _____
Name:
Title :
Fax:

CONSTITUTION MEDICAL
INVESTORS, INC.

By: _____
Name:
Title :
Fax:



DR. DAVID ZAHNISER
Fax:



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United States Patent and Trademark Office
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APPLICATION NUMBER	FILING or 371(c) DATE	GRP ART UNIT	FIL FEE REC'D	ATTY.DOCKET.NO	TOT CLAIMS	IND CLAIMS
12/785,314	05/21/2010	1797	1430	32817-0005CON2	53	4

CONFIRMATION NO. 1650

24633
HOGAN LOVELLS US LLP
IP GROUP, COLUMBIA SQUARE
555 THIRTEENTH STREET, N.W.
WASHINGTON, DC 20004

FILING RECEIPT



Date Mailed: 06/04/2010

Receipt is acknowledged of this non-provisional patent application. The application will be taken up for examination in due course. Applicant will be notified as to the results of the examination. Any correspondence concerning the application must include the following identification information: the U.S. APPLICATION NUMBER, FILING DATE, NAME OF APPLICANT, and TITLE OF INVENTION. Fees transmitted by check or draft are subject to collection. Please verify the accuracy of the data presented on this receipt. **If an error is noted on this Filing Receipt, please submit a written request for a Filing Receipt Correction. Please provide a copy of this Filing Receipt with the changes noted thereon. If you received a "Notice to File Missing Parts" for this application, please submit any corrections to this Filing Receipt with your reply to the Notice. When the USPTO processes the reply to the Notice, the USPTO will generate another Filing Receipt incorporating the requested corrections**

Applicant(s)

James WINKELMAN, Chestnut Hill, MA;
Milenko TANASIJEVIC, West Newton, MA;
David ZAHNISER, Wellesley, MA;

Assignment For Published Patent Application

Constitution Medical Investors, Inc., Washington, DC

Power of Attorney: None

Domestic Priority data as claimed by applicant

This application is a CON of 12/430,885 04/27/2009
which claims benefit of 61/047,920 04/25/2008
and claims benefit of 61/173,186 04/27/2009

Foreign Applications

If Required, Foreign Filing License Granted: 06/01/2010

The country code and number of your priority application, to be used for filing abroad under the Paris Convention, is **US 12/785,314**

Projected Publication Date: To Be Determined - pending completion of Missing Parts

Non-Publication Request: No

Early Publication Request: No

** SMALL ENTITY **

Title

METHOD FOR DETERMINING A COMPLETE BLOOD COUNT ON A WHITE BLOOD CELL DIFFERENTIAL COUNT

Preliminary Class

436

PROTECTING YOUR INVENTION OUTSIDE THE UNITED STATES

Since the rights granted by a U.S. patent extend only throughout the territory of the United States and have no effect in a foreign country, an inventor who wishes patent protection in another country must apply for a patent in a specific country or in regional patent offices. Applicants may wish to consider the filing of an international application under the Patent Cooperation Treaty (PCT). An international (PCT) application generally has the same effect as a regular national patent application in each PCT-member country. The PCT process **simplifies** the filing of patent applications on the same invention in member countries, but **does not result** in a grant of "an international patent" and does not eliminate the need of applicants to file additional documents and fees in countries where patent protection is desired.

Almost every country has its own patent law, and a person desiring a patent in a particular country must make an application for patent in that country in accordance with its particular laws. Since the laws of many countries differ in various respects from the patent law of the United States, applicants are advised to seek guidance from specific foreign countries to ensure that patent rights are not lost prematurely.

Applicants also are advised that in the case of inventions made in the United States, the Director of the USPTO must issue a license before applicants can apply for a patent in a foreign country. The filing of a U.S. patent application serves as a request for a foreign filing license. The application's filing receipt contains further information and guidance as to the status of applicant's license for foreign filing.

Applicants may wish to consult the USPTO booklet, "General Information Concerning Patents" (specifically, the section entitled "Treaties and Foreign Patents") for more information on timeframes and deadlines for filing foreign patent applications. The guide is available either by contacting the USPTO Contact Center at 800-786-9199, or it can be viewed on the USPTO website at <http://www.uspto.gov/web/offices/pac/doc/general/index.html>.

For information on preventing theft of your intellectual property (patents, trademarks and copyrights), you may wish to consult the U.S. Government website, <http://www.stopfakes.gov>. Part of a Department of Commerce initiative, this website includes self-help "toolkits" giving innovators guidance on how to protect intellectual property in specific countries such as China, Korea and Mexico. For questions regarding patent enforcement issues, applicants may call the U.S. Government hotline at 1-866-999-HALT (1-866-999-4158).

LICENSE FOR FOREIGN FILING UNDER

Title 35, United States Code, Section 184

Title 37, Code of Federal Regulations, 5.11 & 5.15

GRANTED

The applicant has been granted a license under 35 U.S.C. 184, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" followed by a date appears on this form. Such licenses are issued in all applications where

the conditions for issuance of a license have been met, regardless of whether or not a license may be required as set forth in 37 CFR 5.15. The scope and limitations of this license are set forth in 37 CFR 5.15(a) unless an earlier license has been issued under 37 CFR 5.15(b). The license is subject to revocation upon written notification. The date indicated is the effective date of the license, unless an earlier license of similar scope has been granted under 37 CFR 5.13 or 5.14.

This license is to be retained by the licensee and may be used at any time on or after the effective date thereof unless it is revoked. This license is automatically transferred to any related applications(s) filed under 37 CFR 1.53(d). This license is not retroactive.

The grant of a license does not in any way lessen the responsibility of a licensee for the security of the subject matter as imposed by any Government contract or the provisions of existing laws relating to espionage and the national security or the export of technical data. Licensees should apprise themselves of current regulations especially with respect to certain countries, of other agencies, particularly the Office of Defense Trade Controls, Department of State (with respect to Arms, Munitions and Implements of War (22 CFR 121-128)); the Bureau of Industry and Security, Department of Commerce (15 CFR parts 730-774); the Office of Foreign Assets Control, Department of Treasury (31 CFR Parts 500+) and the Department of Energy.

NOT GRANTED

No license under 35 U.S.C. 184 has been granted at this time, if the phrase "IF REQUIRED, FOREIGN FILING LICENSE GRANTED" DOES NOT appear on this form. Applicant may still petition for a license under 37 CFR 5.12, if a license is desired before the expiration of 6 months from the filing date of the application. If 6 months has lapsed from the filing date of this application and the licensee has not received any indication of a secrecy order under 35 U.S.C. 181, the licensee may foreign file the application pursuant to 37 CFR 5.15(b).