

PATENT ASSIGNMENT

Electronic Version v1.1
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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
Wall Cardiovascular Technologies, LLC	12/29/2010
RECEIVING PARTY DATA	
Name:	W. H. Wall Family Holdings, LLLP
Street Address:	1758 Colt Drive
City:	Atlanta
State/Country:	GEORGIA
Postal Code:	30341
PROPERTY NUMBERS Total: 7	
Property Type	Number
Patent Number:	5192307
Patent Number:	5266073
Patent Number:	5824038
Patent Number:	6015430
Patent Number:	6334866
Patent Number:	6793671
Patent Number:	6974475
CORRESPONDENCE DATA	
Fax Number:	(770)951-0933
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	770-933-9500
Email:	mary.kilgore@tkhr.com
Correspondent Name:	George M. Thomas
Address Line 1:	600 Galleria Parkway, SE
Address Line 2:	Suite 100
Address Line 4:	Atlanta, GEORGIA 30339

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ATTORNEY DOCKET NUMBER:	12310-9010
NAME OF SUBMITTER:	George M. Thomas
<p>Total Attachments: 11</p> <p>source=01318303#page1.tif</p> <p>source=01318303#page2.tif</p> <p>source=01318303#page3.tif</p> <p>source=01318303#page4.tif</p> <p>source=01318303#page5.tif</p> <p>source=01318303#page6.tif</p> <p>source=01318303#page7.tif</p> <p>source=01318303#page8.tif</p> <p>source=01318303#page9.tif</p> <p>source=01318303#page10.tif</p> <p>source=01318303#page11.tif</p>	

ASSIGNMENT AND RELEASE AGREEMENT

THIS ASSIGNMENT AND RELEASE AGREEMENT (this "Agreement"), dated as of December 29, 2010, is made by and among Wall Cardiovascular Technologies, LLC, a Texas limited liability company (the "Company"), Cardio Holdings LLC, a Delaware limited liability company ("Cardio Holdings"), W.H. Wall Family Holdings, LLLP, a Georgia limited liability company ("Wall Holdings"), Dr. William H. Wall, Jr. ("Wall") and, for the limited purposes of Sections 2 and 3, William Marino ("Marino") and Robert Neilson ("Neilson").

RECITALS:

The Company was formed on November 2, 2007, pursuant to the filing of a Certificate of Formation with the Secretary of State of the State of Texas and in connection therewith, Cardio Holdings and Wall Holdings entered into that certain Limited Liability Company Agreement dated November 2, 2007 (the "LLC Agreement") and became Members of the Company, each Member having acquired a fifty percent (50%) ownership interest in the Company.

Pursuant to the terms of an Assignment and Contribution Agreement dated November 2, 2007 among Wall Holdings, Wall and the Company (the "Contribution Agreement"), as well as a Patent Assignment dated November 2, 2007 among Wall Holdings, Wall and the Company (the "Patent Assignment"), Wall Holdings and Wall assigned and contributed to the Company certain Patent Assets (as defined therein), including the Patents identified on Schedule B to the Contribution Agreement in exchange for the consideration set forth in the Contribution Agreement.

The Company was established to acquire, hold, license and, if necessary, enforce the Patents. In connection therewith, the Company is in the process of entering into multiple agreements with various defendants and, as a result thereof, the Members have determined that the Company no longer has a need for the Patents. Accordingly, the Members have agreed to cause the Company to transfer and assign the Patents from the Company back to Wall Holdings.

The parties desire to enter into this Agreement to, among other things, effectuate the transfer and assignment of the Patent Assets from the Company to Wall Holdings, settle certain outstanding disputes concerning an alleged breach by Wall Holdings and Wall of certain representations and warranties made to the Company under the Contribution Agreement and to otherwise provide certain releases to various related parties hereto.

NOW THEREFORE, with intent to be legally bound hereby and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Assignment of Patent Assets.

(a) The Company hereby agrees to transfer, assign, convey and deliver to Wall Holdings, and Wall Holdings agrees to acquire, accept and assume from the Company, all of the Company's right, title and interest in, to and under the Patents Assets (as defined below). In connection therewith, Wall Holdings agree to assume and accept those liabilities, debts, taxes, claims, civil penalties, options, obligations (whether matured or unmatured and whether

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absolute, accrued, contingent or otherwise) (collectively, "Patent Liabilities") relating to the Patent Assets that arise from and after the date of the transfer of the Patent Assets. Wall Holdings does not, however, assume or accept any Patent Liabilities existing as the date of this assignment with respect to the Patent Assets, all of which are retained by and are the sole liability and responsibility of the Company.

(b) For the avoidance of doubt, the only assets, properties, rights and claims that are being assigned, transferred, conveyed and delivered under this Section 1 are the Patent Assets, and the Company is not assigning, transferring, conveying or delivering, and Wall Holdings is not acquiring, accepting or assuming, any assets, properties, rights or claims under this Section 1 other than the Patent Assets (any and all such other assets, properties, rights claims, including, without limitation, the right to any and all payments received (or entitled to be received) by the Company in connection with the operation of the Company's business before or after the date hereof, whether in the form of a licensing payment, royalty payment or other similar payment, including to the extent deriving from the Patent Assets, the "Excluded Assets"), all of which Excluded Assets are being retained by the Company. Moreover, the parties acknowledge that (i) Wall Holdings continues as a member of the Company following the transfer of the Patent Assets hereunder and retains all its rights as a member of the Company pursuant to the terms of the LLC Agreement, (ii) the LLC Agreement remains in effect and (iii) except as expressly contemplated hereunder (including pursuant to Section 2), the rights of the parties with respect to the Company and its assets under the LLC Agreement, specifically including but not limited to rights as to distributions, are not modified or amended in any way by this Agreement or consummation of the transactions contemplated by this Agreement.

(c) In connection with the transfer and assignment of the Patent Assets pursuant to this Section 1, upon execution and delivery of this Agreement, the Company and Wall Holdings shall execute and deliver to one another counterpart signature pages to the Patent Assignment in the form attached as Annex A hereto. In addition, as promptly as possible following execution and delivery of this Agreement, the Company shall deliver the Patent Documentation to Wall Holdings.

(d) For purposes of this Section 1:

"Intellectual Property Rights" means any and all rights required to commercialize, enforce, license or otherwise exercise rights in respect of, or exploit, the Patents.

"Inventions" means all novel devices, processes, compositions of matter, methods, techniques, observations, discoveries, apparatuses, machines, designs, expressions, theories and ideas, whether or not patentable.

"Patents" means the patents identified on Annex B hereto, and any and all domestic and foreign patents (including certificates of invention and other patent equivalents), patent applications (including those set forth in Annex B hereto), provisional applications, continuation, continuation-in-part and divisional applications that claim priority thereto, and any patents issuing from any of the foregoing, and any extensions, reissues, re-examinations, certifications, revivals, renewals, or substitutions

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related to any of the foregoing and any and all foreign counterparts of any of the foregoing, all Inventions and subject matter related to such Patents, Inventions and any of the foregoing, and all documentation, media, notes, specifications, diagrams or other materials constituting, describing or relating to the foregoing (such documentation and media the "Patent Documentation").

"Patent Assets" means, collectively, the Patents and the Intellectual Property Rights.

(e) In addition to and without limiting anything contained in this Agreement to the contrary, immediately upon the assignment of the Patent Assets to Wall Holdings hereunder, Wall Holdings shall automatically be deemed to grant to the Company, and does hereby grant to the Company, a royalty-free non-exclusive license to all of the Patent Assets to the extent necessary to permit the Company to enforce any and all rights or remedies the Company may have against third parties that relate to or arise out of the Patent Assets, including, without limitation, any licensing agreements or other similar agreements entered into between the Company and one or more such third parties. In addition, Wall Holdings and Wall covenant and agree, jointly and severally, that they will not assign or transfer any of the Patent Assets to any other person entity unless (i) the license granted hereunder is assumed, in writing, by the assignee or transferee of such Patent Assets and (ii) such assignee or transferee agrees, in writing, to cause any and all future transferees or assignees of such Patents Assets to be bound by the same obligations as Wall Holding and Wall hereunder (any such person or entity to whom the Patent Assets are assigned or transferred from time to time, a "Patent Transferee"). In addition, Wall Holdings and Wall agree, and shall each Patent Transferee to agree, in writing, to take any further action and to execute any further documents or instruments as the Company may reasonably request to give full and complete effect to the provisions of this Section 1(e), including, without limitation, joining in any action, suit or proceeding brought by or against the Company relating to or arising out of the Patent Assets so licensed to the Company hereunder.

2. Releases.

(a) Each of the Company, Wall Holdings, Wall and Neilson, and to the extent permitted by law, its and their respective past, present and future parent companies, subsidiaries, affiliates, representatives, directors, officers, partners, principals, members, managers, employees, agents, attorneys, advisors, representatives, heirs, executors, predecessors, successors and assigns and any and all persons or entities in privity or acting in concert with any of the foregoing parties (collectively, the "Releasing Parties"), do hereby fully, finally, completely, unconditionally and absolutely release, acquit, demise and forever discharge Marino and each of his past, present and future affiliates, representatives, employers, agents, attorneys, advisors, heirs, executors and legal representatives (collectively the "Marino Released Parties"), of and from any and all manner of actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, covenants, contracts, controversies, omissions, agreements, promises, variances, damages, liabilities, obligations, judgments, executions, claims and demands, costs (including, without limitation, attorney's fees and all costs of court or other proceedings), expenses, losses or other recourse of any kind or nature whatsoever, whether known or unknown, direct or indirect, accrued or unaccrued, matured or unmatured, past or present, asserted or unasserted, absolute or contingent, liquidated or unliquidated, at law, in equity or otherwise (regardless of the nature of the claim, whether arising in contract, statute, tort, fraud, negligence or otherwise), including, without limitation, claims for rescission, contribution or indemnification (collectively, "Claims") for any period prior to and including the date hereof, which any of the Releasing Parties has, owns or holds, or might have, own or hold, or which could have been brought or alleged against the Marino Released Parties or any of them, including in respect of Marino's role as a Director (as defined in the LLC Agreement) of the Company.

(b) The Company does hereby fully, finally, completely, unconditionally and absolutely release, acquit, demise and forever discharge Neilson and each of his heirs, executors and legal representatives (collectively the "Neilson Released Parties"), of and from any and all Claims for any period prior to and including the date hereof, which the Company has, owns or holds, or might have, own or hold, or which could have been brought or alleged against the Neilson Released Parties or any of them, including in respect of Neilson's role as the Special Director (as defined in the LLC Agreement).¹

(c) The Company does hereby fully, finally, completely, unconditionally and absolutely release, acquit, demise and forever discharge Wall and Wall Holdings and each of its and their past, present and future affiliates, representatives, employers, agents, attorneys, advisors, heirs, executors and legal representatives (collectively the "Wall Released Parties"), of and from any and all Claims for any period prior to and including the date hereof, which the Company has, owns or holds, or might have, own or hold, or which could have been brought or alleged against the Wall Released Parties arising out of or relating to a breach a breach of any representations or warranties made by the Wall Released Parties under the Contribution Agreement.

3. Miscellaneous.

(a) This Agreement, and any disputes arising hereunder or relating to the transactions contemplated hereby, shall be governed by, and construed in accordance with, the internal laws of the State of New York applicable to contracts executed and fully performed within the State of New York (without giving effect to any choice of law principles thereof which may direct the application of the laws of another jurisdiction).

(b) Each party hereto hereby irrevocably submits to the jurisdiction of any New York State or Federal Court sitting in the City and County of New York in respect of any suit, action or proceeding arising out of or relating to this Agreement, and irrevocably accepts for itself, generally and unconditionally, jurisdiction of the aforesaid courts. Each party hereto irrevocably waives, to the fullest extent such party may effectively do so under applicable law, trial by jury and any objection that such party may now or hereafter have to the laying of venue of any such suit, action or proceeding brought in any such court and any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum. Nothing herein shall affect the right of any party hereto to serve process in any manner permitted by law or to commence legal proceedings or otherwise proceed against any other party hereto in any other jurisdiction. In addition to any other form of service of process authorized by law, service of process in any action, suit, proceeding or claim hereunder shall be sufficient if mailed to each party hereto at the address specified in Section 3(d) hereof and such service shall constitute "personal service" for purposes of such action, suit, proceeding or claim.

(c) This Agreement, together with the Patent Assignment, constitutes the entire agreement and understanding among the party hereto with respect to the subject matter hereof and thereof and supersede all prior agreements, arrangements and understandings (written or oral) in respect thereof (other than the LLC Agreement of the Company which continues in full force and effect).

(d) Any notice, consent, request or other communication made or given in accordance with this Agreement shall be in writing and shall be deemed effectively given when actually received if delivered in person, sent by internationally recognized overnight courier service, or sent by facsimile transmission or, if mailed, five business days after mailing by registered or certified mail, return receipt requested to a party at such party's addresses or facsimile number set forth on its signature page hereto, or to such other address or addresses as a party hereto may from time to time designate as to itself, by notice as provided herein, provided ~~that any such notice shall be deemed effectively given only upon receipt.~~

(e) If any provision of this Agreement or the application of any such provision to any person or circumstance shall be held invalid, illegal or unenforceable in any respect by a court of competent jurisdiction, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and such court shall have the authority to modify such provision to the extent necessary to render it valid, legal and enforceable, preserving as closely as possible the intent of the Parties.

(f) No party hereto may assign this Agreement, including any rights or obligations hereunder, in whole or in part, without the prior written consent of the other parties and any purported assignment in breach of this Agreement shall be void and of no force and effect; provided that the foregoing notwithstanding, Cardio Holdings may assign any of its rights under Section 2 to any person without the consent of any other person so long as Cardio Holdings provides Wall Holdings with written notice of any such assignment. This Agreement is binding upon, and shall inure to the benefit of the party hereto and their respective heirs, executors, administrators, legal representatives, successors and permitted assigns.

(g) Except as provided under Sections 2 and 3(q), nothing in this Agreement shall confer any rights upon any person or entity that is not a party hereto to this Agreement or a successor or assignee of a party hereto to this Agreement.

(h) Each party hereto agrees, at its own expense, to take any further action and to execute any further documents or instruments as the other may reasonably request to give effect to the transactions contemplated hereby; provided that if the Company is required to incur any costs or expenses in connection with any action requested by Wall Holdings under Section 1, Wall Holdings shall be responsible for the reasonable costs or expenses so incurred by the Company.

(i) This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which, taken together, shall constitute one and the same document.

(j) The titles, captions or headings of the Sections herein are inserted for convenience of reference only and are not intended to be a part of or affect the meaning or interpretation of this Agreement.

(k) Each party hereto acknowledges that: (i) such party is entering into this Agreement fully and voluntarily from its own information and investigation and that each such party has had an opportunity to consult with such party's own legal counsel and other advisors regarding all legal and other effects of this Agreement; and (ii) no representations were made to induce execution of this Agreement that are not expressly contained herein. This Agreement shall be deemed to have been jointly drafted by the party hereto and, in construing and interpreting this Agreement, no provision shall be construed and/or interpreted for or against any of the party hereto because such provision, or any other provision, or the Agreement as a whole, ~~was purportedly prepared or requested by such party.~~

(l) The party hereto agree that the remedy at law for any breach of this Agreement may be inadequate and that such breach will cause the other parties hereto irreparable harm, and that, as among the parties hereto, any party hereto shall be entitled to specific performance or other injunctive relief, without being required to post a bond or provide security, in addition to any other appropriate relief or remedy. Such party may, in its sole discretion, apply to a court of competent jurisdiction for specific performance or injunctive or such other relief as such court may deem just and proper in order to enforce this Agreement as among the parties hereto, or prevent any violation hereof, and, to the extent permitted by applicable law, as among the parties hereto, each party hereto waives any objection to the imposition of such relief.

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(m) THE PATENT ASSETS ARE BEING ASSIGNED AND TRANSFERRED BY THE COMPANY TO WALL HOLDINGS ON AN "AS IS" AND "WHERE IS" BASIS AND ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR USE, ARE EXCLUDED FROM THE TRANSFER AND ASSIGNMENT OF THE PATENT ASSETS. NEITHER THE COMPANY NOR CARDIO HOLDINGS MAKES ANY REPRESENTATIONS OR WARRANTIES OF ANY NATURE WITH RESPECT TO THE PATENT ASSETS.

(n) Each party hereto agrees to keep the terms of this Agreement confidential, and not to disclose any of the terms of this Agreement to any person or entity which is not a party hereto except for the parties' respective employees, attorneys and accountants who have a "need to know" such information for purposes of the transactions contemplated hereby, and except where a party hereto determines it is obligated by applicable law or legal or regulatory process or court order to disclose the terms of this Agreement. In the event any party hereto intends to disclose any terms of this Agreement to a third party consistent with this Section 4(n), the disclosing party agrees to endeavor to provide reasonable advance notice, in writing, to the non-disclosing parties and, if practicable in the circumstances, to cooperate with the non-disclosing parties at their sole cost in any reasonable efforts to keep the terms of this Agreement confidential.

(o) THE PARTIES HERETO IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING WITHOUT LIMITATION ANY COUNTERACTION OR COUNTERCLAIM, WHETHER IN CONTRACT, STATUTE, TORT, (INCLUDING WITHOUT LIMITATION NEGLIGENCE) OR OTHERWISE.

(p) Each party hereto shall bear and pay all fees, costs and expenses that have been incurred or that are in the future incurred by, on behalf of, such party in connection with the negotiation, preparation and review of this Agreement and other instruments and documents delivered or to be delivered in connection with the consummation and performance of the transactions contemplated hereby.

(q) Wall and Wall Holdings, jointly and severally, shall indemnify and defend Cardio Holdings, its affiliates and its and their respective shareholders, partners, members, ~~managers, directors, officers, employees, consultants, agents and representatives, in their~~ capacities as such, and the successors, heirs, personal representatives and affiliates of any of them (collectively, the "Indemnified Parties"), against and hold them harmless from any and all damages, claims, losses, liabilities and expenses (including, without limitation, reasonable attorneys' fees and expenses but such fees and expenses only in connection with any lawsuit or other proceeding) incurred or suffered by any Indemnified Party arising out of or relating to any breach of any representation, warranty, covenant or other agreement of Wall or Wall Holdings hereunder.

[Signature page follows]

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

W.H. WALL FAMILY HOLDINGS L.L.P.

By: William H. Wall, Jr.,
Its Managing Partner

By: William H. Wall, Jr.
Name: William H. Wall, Jr.
Title: Managing Partner

Dr. William H. Wall
Dr. William H. Wall

Address:

1758 Colt Dr.
Atlanta, Georgia 30341
Attn: William H. Wall, Jr.

William Marino
William Marino

Address:

[•] 6213 Arkendale Rd.
Alexandria, VA 22307

**WALL CARDIOVASCULAR
TECHNOLOGIES, LLC**

By: Cardio Holdings LLC,
Its Managing Member

By: William C. Marino
Name: William C. Marino
Title: Director

Address:

485 Madison Ave, 23rd flr.
New York, NY 10021
Attn: Warren Hurwitz

Robert Neilson

Address:

[•]

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Signature Page to Assignment and Release Agreement

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first above written.

W.H. WALL FAMILY HOLDINGS LLLP

By: William H. Wall, Jr.,
Its Managing Partner

By: _____
Name: _____
Title: _____

Dr. William H. Wall

Address:

1758 Colt Dr.
Atlanta, Georgia 30341
Attn: William H. Wall, Jr.

William Marino

Address:

[•]

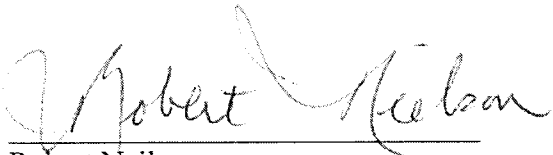
**WALL CARDIOVASCULAR
TECHNOLOGIES, LLC**

By: Cardio Holdings LLC,
Its Managing Member

By: _____
Name: _____
Title: _____

Address:

485 Madison Ave, 23rd flr.
New York, NY 10021
Attn: Warren Hurwitz



Robert Neilson

Address:

7089 Aviara Dr.
Carlsbad, California 92011

Annex A
Patent Assignment

[Attached]

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Annex B

Patents

(Abstracts of which are attached hereto)

5,192,307

5,266,073

5,824,038

6,015,430

6,334,866

6,793,671

6,974,475

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RECORDED: 03/07/2011

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