

## PATENT ASSIGNMENT

Electronic Version v1.1  
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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	SECURITY AGREEMENT
CONVEYING PARTY DATA	
Name	Execution Date
PeriOptix, Inc.	12/10/2012
RECEIVING PARTY DATA	
Name:	Den-Mat Holdings, LLC
Street Address:	2727 Skyway Drive
City:	Santa Maria
State/Country:	CALIFORNIA
Postal Code:	93455
PROPERTY NUMBERS Total: 3	
Property Type	Number
Patent Number:	7675768
Application Number:	12624376
Patent Number:	2629848
CORRESPONDENCE DATA	
Fax Number:	7036106200
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	7036106100
Email:	boxip@hoganlovells.com
Correspondent Name:	Valerie Brennan of Hogan Lovells US LLP
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ATTORNEY DOCKET NUMBER:	39759.04
NAME OF SUBMITTER:	Valerie Brennan
Total Attachments: 11 source=Den-Mat - Joinder Agreement (Executed Version) pdf#page1.tif	

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**JOINDER AND AMENDMENT NO. 1 TO CREDIT AND SECURITY AGREEMENT**

**THIS JOINDER AND AMENDMENT NO. 1 TO CREDIT AND SECURITY AGREEMENT** (this “**Agreement**”) is made as of this 10<sup>th</sup> day of December, 2012 (the “**Effective Date**”), by and among **DEN-MAT HOLDINGS, LLC**, a Delaware limited liability company (“**Den-Mat**”), **DMHP LLC**, a Delaware limited liability company (“**DMHP**” and, together with Den-Mat, the “**Existing Borrowers**”), **PERIOPTIX, INC.**, a California corporation (the “**New Borrower**” and, together with the Existing Borrowers, the “**Borrowers**”) and **MIDCAP FUNDING IV, LLC**, a Delaware limited liability company, as successor-by-assignment to MidCap Financial, LLC (as Agent for Lenders, “**Agent**”, and individually, as a Lender), and the other financial institutions or other entities from time to time parties to the Credit Agreement referenced below, each as a Lender.

**RECITALS**

**A.** Pursuant to that certain Credit and Security Agreement dated as of July 31, 2012 by and among Existing Borrowers, Agent and Lenders (as amended hereby and as it may be further amended, modified and restated from time to time, the “**Credit Agreement**”), Agent and Lenders agreed to make available to Borrowers a secured revolving credit facility in an amount up to \$5,000,000 (the “**Revolving Credit Facility**”). Capitalized terms used but not otherwise defined in this Agreement shall have the meanings set forth in the Credit Agreement.

**B.** Pursuant to that certain Stock Purchase Agreement, dated as of November 30, 2012 (the “**Stock Purchase Agreement**”), Den-Mat has agreed to acquire all of the currently issued and outstanding capital stock of New Borrower (the “**Acquisition**”) and, upon the consummation of the Acquisition, New Borrower shall be a wholly-owned direct Subsidiary of Den-Mat.

**C.** Pursuant to Section 4.11(c) of the Credit Agreement, subject to the conditions set forth therein, the Existing Borrowers are required, with respect to any newly formed or acquired Subsidiary of an Existing Borrower, to (i) cause such new Subsidiary to become a Borrower under the Credit Agreement immediately upon the formation, incorporation or acquisition of such Subsidiary; (ii) pledge to Agent all of the outstanding shares of equity interests or other equity interests of such new Subsidiary; and (iii) cause such new Subsidiary to take such other actions as are necessary or advisable in the reasonable opinion of Agent in order to grant to Agent, acting on behalf of the Lenders, a first priority Lien (subject to Permitted Liens) on all real and personal property of such Subsidiary in existence as of such date and in all after acquired property.

**D.** Agent and Lenders desire to join New Borrower as a Borrower in accordance with Section 4.11(c) of the Credit Agreement, and subject to and in accordance with the terms and conditions of this Agreement and the applicable requirements of the Credit Agreement, Agent and Lenders are willing to enter into this Agreement to join New Borrower as a Borrower under the Credit Agreement and the other Financing Documents.

**F.** In connection with the foregoing, Borrowers, Lenders and Agent desire to amend certain provisions of the Financing Documents as further provided herein, subject to the terms and conditions set forth herein.

## AGREEMENT

**NOW, THEREFORE**, in consideration of the foregoing, the terms and conditions set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Agent, Lenders and Borrowers hereby agree as follows:

1. **Recitals.** This Agreement shall constitute a Financing Document and the Recitals set forth above shall be construed as part of this Agreement as if set forth fully in the body of this Agreement.

2. **Reserved.**

3. **Amendment to Credit Agreement.** Schedule 7.4 of the Credit Agreement is hereby amended by replacing paragraph 1 thereof in its entirety with the below and adding the following paragraphs 4 at the end thereof:

“1. The Borrowers shall, no later than January 15, 2012, deliver a Deposit Account Control Agreement with Union Bank, in form and substance reasonably acceptable to Agent, duly executed by the Borrowers and the applicable depository or financial institution, for each Deposit Account of New Borrower in existence as of December 10, 2012, which is not an Excluded Deposit Account.”

“4. Borrowers shall, no later than December 14, 2012, cause Agent to be named as an additional insured, assignee and lender loss payee on each insurance certificate listed on Schedule 4.4, pursuant to endorsements in form and substance acceptable to Agent.”

4. **Joinder.** Subject to the satisfaction of the conditions precedent set forth in Section 9 hereof:

(a) The New Borrower hereby joins in, assumes, adopts and becomes a Borrower under the Revolving Credit Facility and all Loans. New Borrower hereby becomes a party to the Credit Agreement, the Notes and the other Financing Documents applicable to it as a Borrower and all references to Borrower or Borrowers contained in the Financing Documents are hereby deemed for all purposes to also refer to and include the New Borrower as a Borrower, and the New Borrower hereby agrees to comply with all of the terms and conditions of the Financing Documents as if such New Borrower was an original signatory thereto.

(b) Without limiting the generality of the provisions of subparagraph (a) above, the New Borrower is thereby jointly and severally liable, along with all other Borrowers, for all existing and future Loans and other Obligations incurred at any time by any one or more Borrowers under the Financing Documents.

(c) Notwithstanding anything to the contrary set forth herein, each Borrower acknowledges and agrees that, as of the date hereof, Agent has not completed its due diligence of the New Borrower, and therefore, the Accounts of the New Borrower shall not be deemed to be Eligible Accounts, and consequently, such Accounts shall not be included in the Borrowing Base unless and until Agent has determined, in its sole and absolute discretion, to include the New Borrower's Accounts, or a portion thereof, in the Borrowing Base as Eligible Accounts. Furthermore, prior to a New Borrower's Accounts' inclusion in the Borrowing Base, Agent shall have received tax lien, judgment lien and Uniform Commercial Code searches from all jurisdictions reasonably required by Agent for such New Borrower, and such searches shall verify that Agent, for the benefit of the Lenders, will have a first priority security interest in the Collateral owned by such New Borrower, subject only to Permitted Liens. Borrowers agree to assist Agent in its completion of its due diligence of the New Borrower.

**5. Representations and Warranties; Covenants.** Each Borrower, including, without limitation, the New Borrower, represents and warrants to Agent and Lenders that, before and after giving effect to this Agreement:

(a) All representations and warranties of Borrowers contained in the Financing Documents were true and correct in all respects when made and, except to the extent that such representations and warranties relate expressly to an earlier date, continue to be true and correct in all respects on the date hereof;

(b) The execution and delivery by each Borrower of this Agreement and the performance by it of the transactions herein contemplated (i) are and will be within its powers, (ii) have been authorized by all necessary action (corporate or otherwise), and (iii) are not and will not be in contravention of any order of any court or other agency of government, of law or any other indenture, agreement or undertaking to which such Borrower is a party or by which the property of such Borrower is bound, or be in conflict with, result in a breach of, or constitute (with due notice and/or lapse of time) a default under any such indenture, agreement or undertaking or result in the imposition of any lien, charge or encumbrance of any nature on any of the properties of such Borrower;

(c) This Agreement and all allonges, assignments, instruments, documents, and agreements executed and delivered in connection herewith, are and will be valid, binding, and enforceable against each Borrower in accordance with their respective terms; and

(d) The Acquisition qualifies as a Permitted Acquisition under the terms of the Credit Agreement and Borrowers have complied with all requirements set forth in the Credit Agreement with respect to Permitted Acquisitions (it being understood and agreed that Borrowers' delivery of the pro forma financial statements of Borrowers and their Subsidiaries after giving effect to the consummation of the Acquisition prior to the date hereof shall be deemed to satisfy the requirement in clause (a)(ii)(x) of the definition of "Permitted Acquisition" in the Credit Agreement).

**6. Grant and Reaffirmation of Security Interest.**

(a) Consistent with the intent of the parties and in consideration of the accommodations set forth herein, as further security for the prompt payment in full of all Obligations, New Borrower hereby pledges, hypothecates and grants to Agent, for its benefit and for the benefit of the Lenders, a first priority continuing general lien upon, and security interest in, all of the now owned and hereafter acquired Collateral of the New Borrower (subject only to Permitted Liens). New Borrower further acknowledges and consents to the pledge by Den-Mat of all of its equity interests in New Borrower pursuant to the terms of the Pledge Agreement (as defined below), as amended hereby. New Borrower hereby authorizes Agent to file UCC-1 financing statements against such New Borrower covering the Collateral owned by such New Borrower in such jurisdictions as Agent shall deem necessary, prudent or desirable to perfect and protect the liens and security interests granted to Agent hereunder.

(b) Existing Borrowers confirm and agree that: (i) all security interests and liens granted to Agent continue in full force and effect, and (ii) all Collateral remains free and clear of any liens other than liens in favor of Agent and Permitted Liens. Nothing herein contained is intended to impair or limit the validity, priority and extent of Agent's security interest in and liens upon the Collateral.

7. **Schedules.** Each Borrower hereby agrees that the schedules attached hereto as Exhibit A, are true and correct having been revised to reflect the joinder of the New Borrower as a Borrower under the Financing Documents and shall be deemed to replace the corresponding schedules to the Credit Agreement to which they apply and shall be attached thereto and become a part thereof. Each Borrower hereby agrees that the schedules attached hereto as Exhibit B, are true and correct having been revised to reflect the joinder of the New Borrower as a Borrower under the Financing Documents and shall be deemed to replace the corresponding schedules to that certain Intellectual Property Security Agreement, dated as of July 31, 2012, entered into among Existing Borrowers and Agent (the "**IP Security Agreement**") to which they apply and shall be attached thereto and become a part thereof. Each Borrower hereby agrees that the schedules attached hereto as Exhibit C, are true and correct having been revised to reflect the joinder of the New Borrower as a Borrower under the Financing Documents and shall be deemed to replace the corresponding schedules to that certain Pledge Agreement, dated as of July 31, 2012, entered into among Existing Borrowers, as pledgors, and Agent (the "**Pledge Agreement**") to which they apply and shall be attached thereto and become a part thereof.

8. **Costs and Fees.** Borrowers shall be responsible for the payment of all reasonable and documented out-of-pocket costs and fees of Agent's counsel incurred in connection with the preparation of this Agreement and any related documents. If Agent or any Lender uses in-house counsel for any of these purposes, Borrowers further agree that the Obligations include reasonable charges for such work commensurate with the fees that would otherwise be charged by outside legal counsel selected by Agent or such Lender for the work performed. Borrowers hereby authorize Agent to deduct all of such fees set forth in this Section 8 from the proceeds of one or more Revolving Loans made under the Credit Agreement; provided, however, that in the event the Agent deducts all of such fees set forth in this Section 8 as opposed to requiring the Borrowers to pay such fees directly to the Agent in accordance with Section 9(g), Agent shall provide Borrowers with notice

of the total amount of all reasonable and documented out-of-pockets costs and fees of Agent's counsel incurred in connection with the preparation of this Agreement and any related documents.

9. **Conditions to Effectiveness.** This Agreement shall become effective as of the date on which each of the following conditions has been satisfied, each in form and substance satisfactory to Agent:

(a) Borrowers shall have delivered to Agent this Agreement, duly executed by an authorized officer of each Borrower;

(b) all representations and warranties of Borrowers contained herein shall be true and correct in all respects as of the Effective Date (and such parties' delivery of their respective signatures hereto shall be deemed to be its certification thereof);

(c) the secretary of the New Borrower shall have delivered to Agent a duly executed secretary's certificate certifying as to (i) the names and signatures of each officer of New Borrower authorized to execute and deliver any Financing Document, (ii) the Organizational Documents of the New Borrower attached to such certificate are complete and correct copies of such Organizational Documents as in effect on the date of such certification, (iii) the resolutions of the New Borrower's board of directors or other appropriate governing body approving and authorizing the execution, delivery and performance of each of this Agreement and the Financing Documents to which the New Borrower is a party, and (iv) certificates attesting to the good standing of New Borrower in its applicable jurisdiction, together with, if applicable, related tax certificates;

(d) Agent shall have received a duly executed favorable opinion of counsel to Borrowers, addressed to Agent and Lenders, addressing, among other things, (i) the power and authority of New Borrower to enter into and perform its obligations under this Agreement, the Credit Agreement and the other Financing Documents, (ii) the due execution and delivery of this Agreement and any other documents being executed and delivered in connection herewith, (iii) the perfection of the security interest granted by New Borrower under the Financing Documents and (iv) such other matters as Agent may reasonably request;

(e) there are no Defaults or Events of Default that have not been waived or cured (and Borrowers' delivery of their respective signatures hereto shall be deemed to be its certification that no Defaults or Events of Default currently exist);

(f) Agent shall have received the pro forma financial statements of the Borrowers and their Subsidiaries after giving effect to the consummation of the Acquisition;

(g) Agent shall have received (i) a fully executed and delivered copy of the Stock Purchase Agreement and all other documents related to the Acquisition, and (ii) copies of all material required regulatory and third party approvals necessary for the consummation of the Acquisition;

(h) Agent shall have received from Borrowers of all of the fees owing pursuant to this Agreement and Agent's reasonable out-of-pocket legal fees and expenses (unless otherwise deducted from Revolving Loans as permitted in Section 8); and

(i) the Borrowers shall have delivered such further documents, information, certificates, records and filings (including those related to the Acquisition) as Agent may reasonably request.

**10. Post-Closing Covenant.** Borrowers shall use commercially reasonable efforts to, by January 15, 2013, deliver a landlord's agreement to Agent in respect of Borrower's facility located at 600 South Andreasen Drive, Suite C/D Escondido, CA 92029 (the "**Andreasen Drive Facility**"), in form and substance reasonably acceptable to Agent, duly executed by the landlord and the applicable Loan Parties (a "**Landlord Waiver Agreement**"). If Borrowers are unable to deliver such a Landlord Waiver Agreement, after the use of commercially reasonable efforts to do so, then all inventory held at the Andreasen Location shall be excluded for purposes of calculating the Borrowing Base until such time as a Landlord Waiver Agreement is delivered to Agent.

**11. Release.** Each Borrower, voluntarily, knowingly, unconditionally and irrevocably, with specific and express intent, for and on behalf of itself and all of its respective parents, subsidiaries, affiliates, members, managers, predecessors, successors, and assigns, and each of their respective current and former directors, officers, shareholders, agents, and employees (collectively, "**Releasing Parties**"), does hereby fully and completely release, acquit and forever discharge each Indemnitee of and from any and all actions, causes of action, suits, debts, disputes, damages, claims, obligations, liabilities, costs, expenses and demands of any kind whatsoever, at law or in equity, whether matured or unmatured, liquidated or unliquidated, vested or contingent, choate or inchoate, known or unknown that the Releasing Parties (or any of them) has against the Indemnitees (or any of them), whether directly or indirectly. Each Borrower acknowledges that the foregoing release is a material inducement to Agent's and Lender's decision to enter into this Agreement and to agree to the modifications contemplated hereunder.

**12. No Waiver or Novation.** The execution, delivery and effectiveness of this Agreement shall not operate as a waiver of any right, power or remedy of Agent, nor constitute a waiver of any provision of the Credit Agreement, the Financing Documents or any other documents, instruments and agreements executed or delivered in connection with any of the foregoing. Nothing herein is intended or shall be construed as a waiver of any existing Defaults or Events of Default under the Credit Agreement or other Financing Documents or any of Agent's rights and remedies in respect of such Defaults or Events of Default. This Agreement (together with any other document executed in connection herewith) is not intended to be, nor shall it be construed as, a novation of the Credit Agreement.

**13. Affirmation.** Except as specifically amended pursuant to the terms hereof, the Credit Agreement and all other Financing Documents (and all covenants, terms, conditions and agreements therein) shall remain in full force and effect, and are hereby ratified and confirmed in all respects by Borrowers. Each Borrower covenants and agrees to comply with all of the terms, covenants and conditions of the Credit Agreement (as amended hereby) and the Financing Documents,



notwithstanding any prior course of conduct, waivers, releases or other actions or inactions on Agent's or any Lender's part which might otherwise constitute or be construed as a waiver of or amendment to such terms, covenants and conditions.

**14. Confidentiality.** No Borrower will disclose the contents of this Agreement, the Credit Agreement or any of the other Financing Documents to any third party (including, without limitation, any financial institution or intermediary) without Agent's prior written consent, other than to Borrowers' officers and advisors on a need-to-know basis. Each Borrower agrees to inform all such persons who receive information concerning this Agreement, the Credit Agreement and the other Financing Documents that such information is confidential and may not be disclosed to any other person.

**15. Miscellaneous.**

(a) Reference to the Effect on the Credit Agreement. Upon the effectiveness of this Agreement, each reference in the Credit Agreement to "this Agreement," "hereunder," "hereof," "herein," or words of similar import shall mean and be a reference to the Credit Agreement, as amended by this Agreement. Except as specifically amended above, the Credit Agreement, and all other Financing Documents (and all covenants, terms, conditions and agreements therein), shall remain in full force and effect, and are hereby ratified and confirmed in all respects by Borrowers.

(b) Incorporation of Credit Agreement Provisions. The provisions contained in Section 11.6 (Indemnification), Section 12.8 (Governing Law; Submission to Jurisdiction) and Section 12.9 (Waiver of Jury Trial) of the Credit Agreement are incorporated herein by reference to the same extent as if reproduced herein in their entirety.

(c) Headings. Section headings in this Agreement are included for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

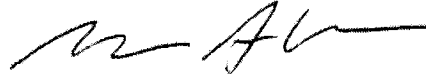
(d) Counterparts. This Agreement may be signed in any number of counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were upon the same instrument. Signatures by facsimile or by electronic mail delivery of an electronic version (e.g., .pdf or .tif file) of an executed signature page shall be treated as delivery of an original and shall bind the parties hereto. This Agreement constitutes the entire agreement and understanding among the parties hereto and supersedes any and all prior agreements and understandings, oral or written, relating to the subject matter hereof.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

**IN WITNESS WHEREOF**, intending to be legally bound, and intending that this document constitute an agreement executed under seal, the undersigned have executed this Agreement under seal as of the day and year first hereinabove set forth.


**AGENT:**

**MIDCAP FUNDING IV, LLC,**  
as Agent

By:   
Name: Maurice Anselmi  
Title: Managing Director

**LENDER:**


**MIDCAP FUNDING IV, LLC,**  
as a Lender

By:   
Name: Maurice Anselmi  
Title: Managing Director


[Signature Page to Den-Mat Joinder Agreement]

**BORROWERS:**


**DEN-MAT HOLDINGS, LLC**

By:   
Name: TODD J. TIBERTI  
Title: CAO

**DMHP LLC**

By:   
Name: TODD J. TIBERTI  
Title: Secretary and CAO

**PERIOPTIX, INC.**

By:   
Name: TODD J. TIBERTI  
Title: Secretary

[Signature Page to Den-Mat Joinder Agreement]

**Exhibit B**

**Intellectual Property Security Agreement Schedules**

*[See Attached]*

## EXHIBIT B

### Patents

PERIOPTIX, INC.:

#### Patents:

1. Issued Patent number US 7,675,768 B2, Locking Inter-pupillary Distance and Convergence Adjustment Mechanism, issued March 9, 2010. The patent describes a design of a mechanism for connecting loupe barrels to loupe cross arm to lock the convergence alignment of the two barrels, specifically, the use of 2 couplings to connect each barrel to its arm – one pivotable, one slidable.
2. Continuation of application for 7,675,768, Number US 12/624,376, Locking Inter-pupillary Distance and Convergence Adjustment Mechanism, Application date November 23, 2009. The patent relates to the design of a mechanism for locking inter-pupillary distance of two loupe barrels.
3. Continuation in part of patent 7,675,768, number US 2/629,848, Convergence Adjustment Mechanism, filing date December 2, 2009. The parent relates to a convergence locking mechanism that uses a pin for the pivotable coupling.

#### Domain Names

[www.perioptix.com](http://www.perioptix.com)

Please also see attached.