

10-19-1999



101172986

MAR 10-15-99

### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

#### Submission Type

- New
- Resubmission (Non-Recordation)  
Document ID #
- Correction of PTO Error  
Reel #  Frame #
- Corrective Document  
Reel #  Frame #

#### Conveyance Type

- Assignment
- License
- Security Agreement
- Nunc Pro Tunc Assignment
- Merger
- Change of Name
- Other

Effective Date  
Month Day Year  
10 1 99

#### Conveying Party

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name

Formerly

- Individual
- General Partnership
- Limited Partnership
- Corporation
- Association
- Other
- Citizenship/State of Incorporation/Organization

#### Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AK/A/T/A

Composed of

Address (line 1)

Address (line 2)

Address (line 3)     
City State/Country Zip Code

- Individual
- General Partnership
- Limited Partnership
- Corporation
- Association
- Other
- Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

10/18/1999 JSHRBAZZ 00000008 1450584

FOR OFFICE USE ONLY

01 FC:481 40.00 OP  
02 FC:482 100.00 OP

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments.

#

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)			Registration Number(s)		
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="1,450,584"/>	<input type="text" value="2,174,010"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="1,177,942"/>	<input type="text" value="2,186,396"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="1,350,496"/>	<input type="text"/>	<input type="text"/>

**Number of Properties**

Enter the total number of properties involved.

#

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed  Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes  No

**Statement and Signature**

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Trisha Neal

*Trisha Neal*

10-12-99

Name of Person Signing

Signature

Date Signed

**COPYRIGHT, PATENT, TRADEMARK AND LICENSE MORTGAGE  
(Denver Biomaterials Inc.)**

THIS COPYRIGHT, PATENT, TRADEMARK AND LICENSE MORTGAGE (this "Mortgage") made as of this 1 day of October, 1999, by DENVER BIOMATERIALS INC., a Texas corporation, having an office at 14998 W. 6th Avenue, Building E-700, Golden, Colorado 80401 ("Mortgagor") in favor of FLEET CAPITAL CORPORATION, a Rhode Island corporation, as a Lender and as Agent on behalf of itself and the Lenders, with an office at One South Wacker Drive, 14th Floor, Chicago, Illinois ("Mortgagee").

**WITNESSETH:**

WHEREAS, Lifestream International, Inc., a Texas corporation, Surgimedics GmbH, a German limited liability company, and HMT Medizintechnik GmbH, a German limited liability company (collectively, "Borrowers") and Mortgagee are parties to a certain Loan and Security Agreement of even date herewith (as from time to time amended or otherwise modified, the "Loan Agreement"), which Loan Agreement provides, among other things for Mortgagee and the Lenders (as defined in the Loan Agreement) to, from time to time, extend credit to or for the account of Borrowers;

WHEREAS, Mortgagor is a party to a certain Master Guaranty of even date herewith (the "Guaranty"), pursuant to which Mortgagor has guaranteed the Obligations;

WHEREAS, Mortgagor is also party to a Master Security Agreement of even date herewith (the "Security Agreement") which provides for, among other things, for the grant by Mortgagor to Mortgagee, on behalf of itself and Lenders, of a security interest in substantially all of Mortgagor's assets, including, without limitation, the copyrights, copyright agreements, copyright applications, patents, patent applications, trademarks, trademark applications, tradenames, service marks, service mark applications, goodwill and certain licenses of Mortgagor;

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, Mortgagor agrees as follows:

1. Capitalized Terms. All terms capitalized but not otherwise defined herein shall have the same meanings herein as in the Loan Agreement.

2. Mortgage of Copyrights, Patents, Trademarks and Licenses. To secure the complete and timely satisfaction of all of the Mortgagor's obligations under the Guaranty, Mortgagor hereby grants a continuing security interest in and, mortgages to Mortgagee, on behalf of itself and Lenders, as and by way of a mortgage and security interest having priority over all other security interests, all of Mortgagor's right, title and interest in and to all of its now existing and hereafter created or acquired:

(i) copyrights, rights and interests in copyrights, works protectable by copyrights, copyright registrations and copyright applications, including, without limitation, the copyright registrations and applications listed on Exhibit A attached hereto and hereby made a part hereof, and all renewals, extensions and continuations of any of the foregoing, all income, royalties, damages and payments now and hereafter due and/or payable under or with respect to any of the foregoing, including, without limitation, damages and payments for past, present or future infringements of any of the foregoing and the right to sue for past, present and future infringements of any of the foregoing (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Copyrights");

(ii) patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein, and those patents and patent applications listed on Exhibit B attached hereto and hereby made a part hereof, and all reissues, divisions, continuations, renewals, extensions and cotinuations of any of the foregoing, all income, royalties, damages and payments now and hereafter due and/or payable under or with respect to any of the foregoing, including, without limitation, damages and payments for past, present or future infringements of any of the foregoing and the right to sue for past, present and future infringements of any of the foregoing (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Patents");

(iii) trademarks, trademark registrations, trademark applications, tradenames, corporate names, company names, business names, fictitious business names, trade styles, service marks, other business identifiers, prints and labels on which any of the foregoing have appeared or appear, all registrations and recordings thereof, and all applications in connection therewith (other than "intent to use" applications until a verified statement of use is filed with respect to such applications), including, without limitation, the trademarks, tradenames, service marks, registrations and applications listed on Exhibit C attached hereto and hereby made a part hereof, and all renewals, extensions and cotinuations of any of the foregoing, all income, royalties, damages and payments now and hereafter due and/or payable under or with respect to any of the foregoing, including, without limitation, damages and payments for past, present or future infringements of any of the foregoing and the right to sue for past, present and future infringements of any of the foregoing (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Trademarks");

(iv) all license agreements with respect to any of the Copyrights or any of the Patents or any of the Trademarks or any other copyright, patent,

trademark, service mark or any registration or application for registration or any other tradename or tradestyle between Mortgagor and any other party, whether Mortgagor is a licensor or licensee under any such license agreement, including, without limitation, the licenses listed on Exhibit D attached hereto and hereby made a part hereof, other than license agreements which, according to their terms, may not be assigned without the prior consent of the other Person party thereto (unless such consent has been obtained) (all of the foregoing license agreements and Mortgagor's rights thereunder are referred to collectively as the "Licenses"); and

(v) all rights corresponding to any of the foregoing throughout the world and the goodwill of Mortgagor's business connected with and symbolized by the Trademarks.

Upon the occurrence and during the continuation of an Event of Default, Mortgagee, on behalf of itself and Lenders, shall have the power, to the extent permitted by law, to exercise the rights and remedies of a secured party provided under the Loan Agreement, including without limitation the right to sell the Copyrights, Patents, Trademarks and Licenses.

In addition to, and not by way of limitation of, all other rights granted to Mortgagee and Lenders under this Mortgage, effective upon the occurrence and during the continuation of any Event of Default, Mortgagor assigns, transfers and conveys to Mortgagee, on behalf of itself and Lenders, all of the Copyrights, Patents, Trademarks and Licenses, together with the rights and goodwill described in clause (v) above to the extent necessary to enable Mortgagee, to realize on such property and any successor or assign to enjoy the benefits thereof during the continuation of such Event of Default. This right and assignment shall inure to the benefit of Mortgagee and Lenders and their respective successors, assigns and transferees, whether by voluntary conveyance, operation of law, assignment, transfer, foreclosure, deed in lieu of foreclosure or otherwise. Such right and assignment is granted free of charge, without requirement that any monetary payment whatsoever (including, without limitation, any royalty or license fee) be made to Mortgagor or any other Person by Mortgagee (except that if Mortgagee shall receive proceeds from the disposition of any such property, such proceeds shall be applied to the Obligations).

3. Restrictions on Future Agreements. Mortgagor agrees that until the Obligations (other than unasserted contingent Obligations) shall have been satisfied in full and the Loan Agreement shall have been terminated (the "Loan Agreement Termination"), Mortgagor shall not abandon, sell or assign its interest in, or grant any exclusive license under, any Copyright, Patent, Trademark or License, or enter into any other agreement with respect to the Copyrights, Patents, Trademarks or Licenses which is materially inconsistent with the Obligations under this Mortgage, or which would reasonably be expected to have a Material Adverse Effect, and Mortgagor further agrees that it shall not take any action, or permit any action to be taken by others subject to its control, including licensees, or fail to

take any action, which would materially adversely affect the validity or enforcement of the rights transferred to Mortgagee under this Mortgage.

4. New Copyrights, Patents, Trademarks, and Licenses. Mortgagor represents and warrants that the Copyrights, Patents, Trademarks and Licenses listed on Exhibits A, B, C and D, respectively, constitute all of the registered Copyrights, registered Patents and registered Trademarks now owned by, and material Licenses granted by or to, Mortgagor. If, before the Loan Agreement Termination, Mortgagor shall (i) obtain rights to any new Copyrights, patentable inventions, Patents, Trademarks or Licenses, or (ii) become entitled to the benefit of any Copyrights, Patents, Trademarks or Licenses or any improvement on any Patent, the provisions of this Mortgage above shall automatically apply thereto. Mortgagor shall give to Mortgagee prompt written notice of any such new intellectual property rights that it registers with any governmental authority. Mortgagor hereby authorizes Mortgagee to modify this Mortgage by amending Exhibits A, B, C and D, as applicable, to include any such (registered or unregistered) Copyrights, Patents, Trademarks and Licenses.

5. Royalties; Term. The term of the security interests/mortgages granted herein shall extend until the earlier of (i) the expiration of each of the respective Copyrights, Patents, Trademarks and Licenses encumbered hereunder, and (ii) the Loan Agreement Termination. Upon the occurrence and during the continuation of an Event of Default, Mortgagor agrees that the use by Mortgagee of all Copyrights, Patents, Trademarks and Licenses shall be worldwide and without any liability for royalties or other related charges from Mortgagee to Mortgagor.

6. Release of Mortgage. This Mortgage is made for collateral purposes only and is not intended to constitute a present assignment of Mortgagor's ownership interest in the Copyrights, Patents, Trademarks and Licenses. Upon the Loan Agreement Termination, Mortgagee shall execute and deliver to Mortgagor all releases and other instruments, and shall take such other actions, as may be necessary or proper to release its security interest in the Copyrights, Patents, Trademarks, and Licenses, subject to any disposition thereof which may have been made by Mortgagee pursuant hereto or pursuant to the Loan Agreement.

7. Expenses. All reasonable (provided that all fees, costs and expenses relating to enforcement of this Mortgage shall not be subject to such "reasonable" standard) fees, costs and expenses, including attorneys' and paralegals' fees and legal expenses, incurred in connection with the performance of any of the agreements set forth herein shall be borne by Mortgagor. All reasonable fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' and paralegals' fees and legal expenses, incurred by Mortgagee in connection with the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise in protecting, maintaining or preserving the Copyrights, Patents, Trademarks and Licenses, or in defending or prosecuting any actions or

proceedings arising out of or related to the Copyrights, Patents, Trademarks and Licenses, shall be borne by and paid by Mortgagor on written demand by Mortgagee and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the then applicable rate as set forth in the Loan Agreement.

8. Duties of Mortgagor. Mortgagor shall have the duty (i) to file and prosecute diligently any copyright, patent, trademark or service mark applications pending as of the date hereof or thereafter until the Loan Agreement Termination, (ii) to make application on material uncopyrighted but copyrightable works (unless Agent consents otherwise in writing), on material unpatented but patentable inventions and on trademarks and service marks, as appropriate, (iii) to preserve and maintain all material rights in the Copyrights, Patents, Trademarks and Licenses and (iv) to ensure that the material Copyrights, Patents, Trademarks and Licenses are and remain enforceable. Any expenses incurred in connection with Mortgagor's obligations under this Section 9 shall be borne by Mortgagor. Mortgagor shall not abandon any right to file a material copyright, material patent, material trademark or service mark application, or abandon any such material Copyright, material Patent, material Trademark or material License without the written consent of Mortgagee. If Mortgagor fails to comply with any of the foregoing duties, Mortgagee may perform said duties in Mortgagor's name, to the extent permitted by law, at Mortgagor's expense, and Mortgagor hereby agrees to reimburse Mortgagee in full for all expenses incurred in connection with Mortgagee's performance of such duties, including attorneys' fees and expenses so incurred by Mortgagee. Mortgagor agrees (i) to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with the quality of said products as of the date hereof and (ii) to provide Mortgagee, upon Mortgagee's request from time to time, with a certificate of an officer of Mortgagor certifying Mortgagor's compliance with the foregoing. Upon the occurrence and during the continuation of an Event of Default, Mortgagor agrees that Mortgagee, or a conservator appointed by Mortgagee, shall have the right to establish such additional product quality controls as Mortgagee, or said conservator, in its sole judgment, may deem necessary to assure maintenance of the quality of products sold by Mortgagor under the Trademarks.

9. Mortgagee's Right to Sue. After the occurrence and during the continuation of an Event of Default, Mortgagee shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Copyrights, Patents, Trademarks and Licenses, and, if Mortgagee shall commence any such suit, Mortgagor shall, at the request of Mortgagee, do any and all lawful acts and execute any and all proper documents required by Mortgagee in aid of such enforcement and Mortgagor shall promptly, upon demand, reimburse and indemnify Mortgagee for all costs and expenses incurred by Mortgagee, including attorneys' fees and expenses so incurred by Mortgagee, in the exercise of its rights under this Section 10.

10. Waivers. No course of dealing among Mortgagor, Mortgagee and the Lenders, nor any failure to exercise, nor any delay in exercising, on the part of Mortgagee or

Lenders, any right, power or privilege hereunder or under the Loan Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

11. Severability. The provisions of this Mortgage are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Mortgage in any jurisdiction.

12. Modification. This Mortgage cannot be altered, amended or modified in any way, except as specifically provided in Section 5 hereof or by a writing signed by the parties hereto.

13. Cumulative Remedies; Power of Attorney; Effect on Loan Agreement. All of Mortgagee's rights and remedies with respect to the Copyrights, Patents, Trademarks and Licenses, whether established hereby or by the Loan Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Upon the occurrence and during the continuation of an Event of Default, Mortgagor hereby authorizes Mortgagee to make, constitute and appoint any officer or agent of Mortgagee as Mortgagee may select, in its sole discretion, as Mortgagor's true and lawful attorney-in-fact, with power to (i) endorse Mortgagor's name on all applications, documents, papers and instruments necessary or desirable for Mortgagee in the use of any or all of the Copyrights, Patents, Trademarks and Licenses, or (ii) take any other actions with respect to any or all of the Copyrights, Patents, Trademarks and Licenses as Mortgagee deems to be in its best interest, or (iii) grant or issue any exclusive or non-exclusive license under any or all of the Copyrights, Patents, Trademarks or Licenses to any Person, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of any or all of the Copyrights, Patents, Trademarks or Licenses to any Person, or (v) take any other actions with respect to any or all of the Copyrights, Patents, Trademarks and Licenses as Mortgagee deems to be in its best interests. Mortgagor hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney, being coupled with an interest, shall be irrevocable until the Loan Agreement Termination. Mortgagor acknowledges and agrees that this Mortgage is not intended to limit or restrict in any way the rights and remedies of Mortgagee or Lenders or their respective successors transferees and assigns under the Loan Agreement but rather is intended to facilitate the exercise of such rights and remedies. Mortgagee and such other parties shall have, in addition to all other rights and remedies given it or them by the terms of this Mortgage and the Loan Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code (or such other applicable law) as enacted in any jurisdiction in which the Copyrights, Patents, Trademarks or Licenses may be located.



14. Binding Effect; Benefits. This Mortgage shall be binding upon Mortgagor and its respective successors and permitted assigns, and shall inure to the benefit of Mortgagee and Lenders, their successors, nominees and assigns.

15. GOVERNING LAW. THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS.

16. CONSENT TO FORUM AND WAIVERS. TO INDUCE MORTGAGEE AND LENDERS TO MAKE THE LOANS, AS EVIDENCED BY THE LOAN AGREEMENT AND THIS AGREEMENT, MORTGAGOR IRREVOCABLY AGREES THAT, SUBJECT TO MORTGAGEE'S SOLE AND ABSOLUTE ELECTION, ALL SUITS, ACTIONS OR OTHER PROCEEDINGS IN ANY WAY, MANNER OR RESPECT ARISING OUT OF OR FROM OR RELATED TO THIS AGREEMENT OR ANY DOCUMENTS EXECUTED IN CONNECTION HEREWITH, SHALL BE SUBJECT TO LITIGATION IN COURTS HAVING SITUS WITHIN CHICAGO, ILLINOIS. MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN CHICAGO, ILLINOIS. MORTGAGOR HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT AGAINST MORTGAGOR BY MORTGAGEE IN ACCORDANCE WITH THIS SECTION. MORTGAGOR AND MORTGAGEE HEREBY WAIVE, TO THE EXTENT PERMITTED BY LAW, TRIAL BY JURY. MORTGAGOR FURTHER WAIVES ANY BOND OR SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF MORTGAGEE.

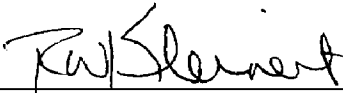
17. Headings. Paragraph headings used herein are for convenience only and shall not modify the provisions which they precede.

18. Further Assurances. Mortgagor agrees to execute and deliver such further agreements, instruments and documents, and to perform such further acts, as Mortgagee shall reasonably request from time to time in order to carry out the purpose of this Mortgage and agreements set forth herein.

19. Survival of Representations. All representations and warranties of Mortgagor contained in this Mortgage shall survive the execution and delivery of this Mortgage and shall be remade on the date of each borrowing under the Loan Agreement.

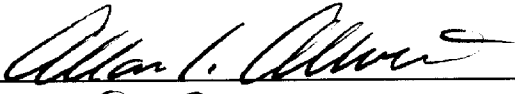
IN WITNESS WHEREOF, Mortgagor has duly executed this Mortgage in favor of Mortgagee as of the date first written above.

DENVER BIOMATERIALS INC.

By   
Its \_\_\_\_\_

AGREED AND ACCEPTED <sup>as of</sup> THIS  
1 day of October, 1999.

FLEET CAPITAL CORPORATION,  
as Agent

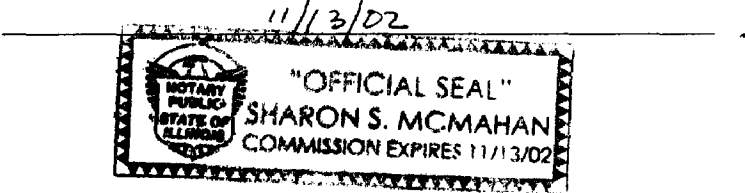
By   
Its SVF

STATE OF ILLINOIS        )  
                                  ) SS  
COUNTY OF COOK         )

The foregoing Copyright, Patent, Trademark and License Mortgage was executed and acknowledged before me this 6 day of October, 1999 by Robert W. Kleinart, personally known to me to be the President of Denver Biomaterials Inc., a Texas corporation, on behalf of such corporation.

Sharon A. McMahon  
Notary Public

My Commission expires:

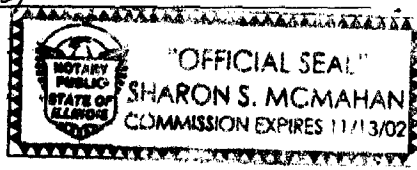


STATE OF ILLINOIS     )  
  ) SS  
COUNTY OF COOK     )

The foregoing Copyright, Patent, Trademark and License Mortgage was executed and acknowledged before me this 6 day of October, 1999, by ~~Allen Allweiss Robert W. Klimant~~, personally known to me to be the SVP of Fleet Capital Corporation, as Agent, a Rhode Island corporation, on behalf of such corporation.

Sharon S. McMahon  
Notary Public

My Commission expires:  
11/13/02



AFTER FILING RETURN THIS INSTRUMENT TO:  
Jonathan M. Cooper, Esq.  
Goldberg, Kohn, Bell, Black,  
Rosenbloom & Moritz, Ltd.  
Suite 3700  
55 East Monroe  
Chicago, Illinois 60603

**Exhibit A**

**Copyrights**

None.

**Exhibit B****Patents**

<b>Title</b>	<b>Registration Number</b>	<b>Registered</b>
Body Fluid Transfer Device	4,850,955	07/25/89
Peritoneo-Venous Shunt	4,240,434	03/27/90
Treatment Method for Pleural Effusion	5,484,401	01/16/96
Device for Paracentesis and Thoracentesis	5,725,506	03/10/98
Biopsy Needle	09/069,782	04/29/98
Device for Paracentesis and Thoracentesis	09/066,236	04/24/98

**Exhibit C**

**Trademarks**

**US Trademarks**

<b>Mark</b>	<b>Registration Number</b>	<b>Registered</b>
Denver	1,450,584	08/04/87
Denver	1,177,942	11/17/81
William Harvey	1,350,496	07/23/85
Pleurx	2,174,010	07/14/98
Parapro	2,186,396	09/01/98

**Foreign Trademarks**

<b>Country</b>	<b>Mark</b>	<b>Registration Number</b>
Benelux	Denver	815433875

<b>Country</b>	<b>Mark</b>	<b>Application Number</b>
* Japan	Denver	52363
* Japan	Denver	52364

**Exhibit D**

**Licenses**

None.