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F.O.

**FILED**  
LOS ANGELES SUPERIOR COURT  
AUG 27 2004  
JAMES M. GIBSON, CLERK  
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BY E. VERNER, DEPUTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES

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ORTHOTEC, LLC., a Delaware  
Limited Liability Company,  
  
Plaintiff,  
  
vs.  
  
EUROSURGICAL, S.A., a French  
Corporation, and DOES 1  
through 50,  
  
Defendant.  
  

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AND RELATED CROSS-ACTION  

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CASE NO. BC 276958  
~~PROPOSED~~ JUDGMENT

*Dep 37*

This action came on regularly for trial by jury commencing on March 17, 2004, with Plaintiff and Cross-Defendant Orthotec, LLC represented by its Manager, Patrick Bertranou, and by its attorneys Browne & Woods LLP by Peter W. Ross, and Defendant and Cross-Complainant Eurosururgical represented by its Managers, Mathieu Maassen and Guy Viart, and by its attorneys Daar & Newman, a Professional Law Corporation, by Michael R. Newman and Jeffrey J. Daar.

1 A jury of twelve persons was duly impaneled and sworn;  
2 witnesses testified; and after being duly instructed by the  
3 Court, the jury deliberated and thereon returned the following  
4 general and special verdicts:

5 "We, the jury in the above-entitled action, find the  
6 following on the questions submitted to us:

7 1. Do you find that OrthoTec is entitled to prevail on its  
8 claim for breach of the Assignment Agreement against Defendant  
9 Eurosurgical?

10 YES X NO \_\_\_\_\_

11 If YES, please state the amount of damages OrthoTec is  
12 entitled to collect from Eurosurgical for breach of the  
13 Assignment Agreement.

14 \$6,000,000.00

15 2. Do you find that OrthoTec is entitled to prevail on its  
16 claim of Breach of the Partnership Agreement against Defendant  
17 Eurosurgical?

18 YES \_\_\_\_\_ NO X

19 If YES, please state the amount of damages OrthoTec is  
20 entitled to collect from Defendant Eurosurgical.

21 \$ \_\_\_\_\_

22 3. Do you find that OrthoTec is entitled to prevail on its  
23 claim of Intentional Interference with Contract against Defendant  
24 Eurosurgical?

25 YES X NO \_\_\_\_\_

26 If YES, please state the amount of damages OrthoTec is  
27 entitled to collect for Intentional Interference with Contract.

28 \$500,000.00

1 If YES, state whether you find by clear and convincing  
2 evidence that Defendant EuroSurgical engaged in oppression, fraud  
or malice in the conduct on which you base your finding of  
liability.

3 YES  X  NO

4  
5 4. Do you find that Orthotec is entitled to prevail on its  
6 claim of Negligent Interference with Prospective Economic  
Relations against Defendant EuroSurgical?

7 YES  X  NO

8 If YES, please state the amount of damages OrthoTec is  
9 entitled to collect for Negligent Interference with Economic  
Relations.

10 \$2,500,000.00

11  
12 5. Do you find that EuroSurgical is entitled to prevail on  
its claim of Breach of the Assignment Agreement against Orthotec?

13 YES   NO  X

14  
15 If YES, state the amount of damages EuroSurgical is entitled  
16 to collect from OrthoTec for breach of the Assignment Agreement?

17 \$ \_\_\_\_\_

18  
19 6. Do you find that EuroSurgical is entitled to prevail on  
its claim of Breach of the Partnership Agreement against  
OrthoTec?

20 YES  X  NO

21 If YES, state the amount of damages EuroSurgical is  
22 entitled to collect from OrthoTec for breach of the Partnership  
23 Agreement.

24 \$ 70,000.00

25  
26 7. Do you find that EuroSurgical is entitled to prevail on  
its claim of Breach of the Loan Agreement?

27 YES   NO  X

1 If YES, state the amount of damages EuroSurgical is entitled  
2 to collect from OrthoTec for Breach of the Loan Agreement.

3 \$ \_\_\_\_\_

4 8. Do you find that EuroSurgical is entitled to prevail on  
5 its claim of Goods Sold and Delivered against OrthoTec?

6 YES \_\_\_ NO X

7 If YES, state the amount of damages EuroSurgical is entitled  
8 to collect from OrthoTec for goods sold and delivered.

9 \$ \_\_\_\_\_

10  
11 9. Do you find that EuroSurgical is entitled to prevail on  
12 its claim of Intentional Misrepresentation against OrthoTec?

13  
14 YES \_\_\_ NO X

15 If YES, state the amount of damages EuroSurgical is  
16 entitled to collect from OrthoTec for Intentional  
17 Misrepresentation.

18 \$ \_\_\_\_\_

19  
20 10. Do you find that EuroSurgical is entitled to prevail on  
21 its claim of Negligent Misrepresentation against Orthotec?

22 YES \_\_\_ NO X

23  
24 If YES, state the amount of damages EuroSurgical is  
25 entitled to collect from OrthoTec for Negligent  
Misrepresentation.

26 \$ \_\_\_\_\_

1 11. Do you find that EuroSurgical is entitled to prevail on  
2 its claim of Suppression of Facts against Orthotec?

3 YES \_\_\_ NO X

4 If YES, state the amount of damages EuroSurgical is entitled  
5 to collect from OrthoTec for Suppression of  
6 Facts.

7 \$ \_\_\_\_\_

8 Please date, sign and return this form.

9 Dated: April 22, 2004

Signed: Steven Abramian "  
Foreperson

10 "We answer the question submitted to us as follows:

11 What amount of punitive damages, if any, do you award  
12 Orthotec on its claim that EuroSurgical intentionally interfered  
13 with Orthotec's contract with REO SpineLine?

14 \$ 0.00

15 Signed: Steven Abramian  
16 Presiding Juror

17 Dated: 04/23/04

18 When signed/after all verdict forms have been signed, this  
19 verdict form must be delivered to the bailiff."

20 Following the return of the general and special verdicts by  
21 the jury on the questions submitted to it, the Court heard the  
22 arguments of counsel regarding the remaining equitable issues and  
23 on June 23, 2004 entered a ruling resolving those issues. A copy  
24 of the Court's ruling is attached hereto.

25 It appearing by reason of the general and special verdicts  
26 set forth above and the Court's June 23, 2004 ruling that entry  
27 of judgment is now appropriate,  
28

1 NOW, THEREFORE, IT IS ADJUDGED, ORDERED AND DECREED that  
2 Plaintiff Orthotec recover from Defendant Eurosururgical the sum of  
3 \$8,930,000 in damages and costs of \$\_\_\_\_\_.

4 IT IS FURTHER ADJUDGED, ORDERED AND DECREED that

5 1. Orthotec owns all the "Rights" transferred to it by  
6 Eurosururgical under the terms of the Assignment Agreement  
7 "Assignment Agreement") dated September 16, 1998, which remains  
8 in full force and effect;

9 2. Eurosururgical's purported reacquisition of the Rights  
10 pursuant to Paragraph 12 of the Assignment Agreement was and is  
11 invalid;

12 3. Eurosururgical, and its officers, agents, employees,  
13 representatives, and all persons acting in concert or  
14 participating with it shall refrain from claiming or exercising  
15 any intellectual property rights or other property rights in the  
16 Products and/or any improvements, alterations, modifications or  
17 replacements thereof (whether created by or for Eurosururgical or  
18 Orthotec) in the Territory, including without limitation patents,  
19 copyrights, FDA 510k's, and trademarks, and Eurosururgical hereby  
20 assigns all such rights to OrthoTec;

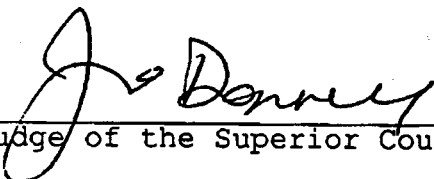
21 4. Eurosururgical, and its officers, agents, employees,  
22 representatives, and all persons acting in concert or  
23 participating with it, are enjoined and restrained from directly  
24 or indirectly selling, distributing, licensing to others, and/or  
25 marketing any of the Products and/or any improvements,  
26 alterations, modifications or replacements thereof (whether  
27 created by or for Eurosururgical or OrthoTec) to anyone in the  
28

1 Territory other than Orthotec;

2 5. EuroSurgical shall specifically perform Paragraph 4(a)  
3 (ii) of the Assignment Agreement, which requires EuroSurgical to  
4 turn over to Orthotec copies of all plans and specifications for  
5 all products, the rights to which were assigned to Orthotec by  
6 EuroSurgical pursuant to the Assignment Agreement, including  
7 existing Products and future Products covered by the Assignment  
8 Agreement; and

9 6. EuroSurgical has the exclusive right to manufacture the  
10 Products for Orthotec, for a period of thirty-six (36) months  
11 ending on April 23, 2005, provided that OrthoTec and EuroSurgical  
12 can agree through good faith negotiation on mutually acceptable  
13 prices.

14  
15 Dated: AUG 27 2004

  
Judge of the Superior Court

16  
17 Submitted by:

Joanne O'Donnell

18 BROWNE & WOODS LLP

19 Law Offices of Michael J. Perry

20 By   
21 Michael J. Perry

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 06/23/04

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE H. A. SMITH

DEPUTY CLERK

HONORABLE  
6.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

N. AVALOS, C.A.

Deputy Sheriff

NONE

Reporter

BC276958

Plaintiff  
Counsel

ORTHOTEC LLC  
VS  
EUROSURGICAL SA

NO APPEARANCES

Defendant  
Counsel

**NATURE OF PROCEEDINGS:**

RULING ON SUBMITTED MATTER

TENTATIVE DECISION: COURT TRIAL OF EQUITABLE ISSUES

**Preliminary rulings:**

Eurosurgical's request that the court not consider the post-hearing letter of plaintiff's counsel dated June 7, 2004 is granted. The court has not considered it.

Orthotec has dismissed its fourth cause of action for an accounting.

Orthotec is not entitled to any relief under its tenth cause of action for violation of Business and Professions Code Sections 17200 et seq. The terms "unlawful," "unfair" and "fraudulent" are terms of art under Section 17200 and the evidence at trial does not justify a finding of any conduct to which those terms apply.

Orthotec's Equitable Remedies

Declaratory Relief

The Court makes the following findings:

Orthotec owns all the rights in the products subject to the Assignment Agreement (Exh. 44). "All rights"

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| <p align="center"><b>MINUTES ENTERED</b><br/>06/23/04<br/><b>COUNTY CLERK</b></p> |
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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

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HONORABLE JOANNE O'DONNELL

JUDGE

H. A. SMITH

DEPUTY CLERK

HONORABLE  
6.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

N. AVALOS, C.A.

Deputy Sheriff

NONE

Reporter

BC276958

Plaintiff

Counsel

ORTHOTEC LLC

NO APPEARANCES

VS

Defendant

EUROSURGICAL SA

Counsel

**NATURE OF PROCEEDINGS:**

includes patent rights. Assignment Agreement Paragraph C. The court declines EuroSurgical's invitation to make a more detailed finding of what rights conveyed by the Assignment Agreement Orthotec is entitled to and which it is not. The Assignment Agreement speaks for itself.

The jury found that EuroSurgical wrongfully terminated the Assignment Agreement by improperly exercising its option to reacquire the rights under Paragraph 12 of the Assignment Agreement. Orthotec's remedy at law, the damages awarded by the jury, is not adequate. Although the jury awarded Orthotec damages for the breach as of a certain date, those damages did not compensate Orthotec for the loss of the rights. Although EuroSurgical urges the court to make a contrary finding, the court cannot do so without speculation, in the absence of any instruction or even argument to the jury that their award should compensate Orthotec for its loss of the rights. The evidence, including without limitation the testimony of plaintiff's expert Robert Wunderlich, does not support such a finding. For this reason, awarding Orthotec the rights in addition to the damages awarded by the jury does not result in an inequitable double recovery.

EuroSurgical's reacquisition of the rights pursuant to Paragraph 12 of the Assignment Agreement was invalid.

Injunctive relief:

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H. A. SMITH

DEPUTY CLERK

HONORABLE  
6.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

N. AVALOS, C.A.

Deputy Sheriff

NONE

Reporter

BC276958

Plaintiff

Counsel

ORTHOTEC LLC

NO APPEARANCES

VS

Defendant

EUROSURGICAL SA

Counsel

**NATURE OF PROCEEDINGS:**

- (1) Eurosurgical is ordered to assign to Orthotec all intellectual property rights in the products and their replacements in the territory, including without limitation patents.
- (2) Eurosurgical is prohibited from selling or marketing any of the products in the territory to anyone other than Orthotec.

Orthotec is entitled to specific performance of Paragraph 4(a)(ii) of the Assignment Agreement, which requires Eurosurgical to turn over to Orthotec all product plans and specifications.

The court rejects Eurosurgical's argument that Eurosurgical and Orthotec cannot possibly do business together in the future. There was considerable evidence of Eurosurgical's strong interest in marketing the products in the United States. It would thus behoove Eurosurgical to develop ways of working with Orthotec. In any event, any difficulty in doing business together should not deprive Orthotec of the rights under the Assignment Agreement, in light of the court's finding that Orthotec's remedy at law is inadequate.

Similarly, Orthotec should not be denied equitable relief based on an unclean hands theory. The evidence supports a finding that Orthotec's violation of the Partnership Agreement, for which the jury awarded

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| <p align="center"><b>MINUTES ENTERED</b><br/>06/23/04<br/><b>COUNTY CLERK</b></p> |
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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 06/23/04

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HONORABLE JOANNE O'DONNELL

JUDGE H. A. SMITH

DEPUTY CLERK

HONORABLE  
6.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

N. AVALOS, C.A.

Deputy Sheriff NONE

Reporter

BC276958

Plaintiff  
Counsel

ORTHOTEC LLC  
VS  
EUROSURGICAL SA

Defendant  
Counsel

NO APPEARANCES

**NATURE OF PROCEEDINGS:**

Eurosurgical \$70,000 in damages, does not justify a finding that Orthotec had unclean hands.

**Eurosurgical's Equitable Remedies**

For the reasons stated above, the equitable relief sought by Eurosurgical in the fourth, fifth, seventh, twelfth and fourteenth causes of action of its first amended cross-complaint is denied. Eurosurgical's motions (1) to amend the seventh cause of action to conform to proof and (2) for directed verdict as to the tenth cause of action are denied.

The declaratory relief sought by Eurosurgical in its fifteenth cause of action is denied in part and granted in part:

- (1) The Assignment Agreement is not void ab initio for lack of consideration. The evidence established that Eurosurgical never accepted the ownership interest in Orthotec to which it was entitled under the Assignment Agreement. (For the same reason, Eurosurgical is not entitled to the accounting it requests in the seventh cause of action of its cross-complaint.)
- (2) Having found that Eurosurgical did not properly exercise its right to reacquire the rights under Paragraph 12 of the Assignment Agreement, the court cannot grant Eurosurgical's request

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| MINUTES ENTERED<br>06/23/04<br>COUNTY CLERK |
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**SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES**

DATE: 06/23/04

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HONORABLE JOANNE O'DONNELL

JUDGE H. A. SMITH

DEPUTY CLERK

HONORABLE  
6.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

N. AVALOS, C.A.

Deputy Sheriff

NONE

Reporter

BC276958

Plaintiff  
Counsel

NO APPEARANCES

ORTHOTEC LLC  
VS  
EUROSURGICAL SA

Defendant  
Counsel

**NATURE OF PROCEEDINGS:**

for a declaration to the contrary.

- (3) Eurosurgical has the exclusive right to manufacture the products for 36 months after Orthotec's termination of the Partnership Agreement.

Plaintiff's counsel is ordered to prepare a proposed statement of decision consistent with this tentative decision and a proposed judgment that includes the jury's verdict.

Clerk to give notice of the Court's ruling.

**CLERK'S CERTIFICATE OF MAILING/  
NOTICE OF ENTRY OF ORDER**

I, the below named Executive Officer/Clerk of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that this date I served Notice of Entry of the above minute order of 06-22-04 upon each party or counsel named below by depositing in the United States mail at the courthouse in Los Angeles, California, one copy of the original entered herein in a separate sealed envelope for each, addressed as shown below with the postage thereon fully prepaid.

Date: 06-22-04

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| MINUTES ENTERED<br>06/23/04<br>COUNTY CLERK |
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SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

DATE: 06/23/04

DEPT. 37

HONORABLE JOANNE O'DONNELL

JUDGE H. A. SMITH

DEPUTY CLERK

HONORABLE  
6.

JUDGE PRO TEM

ELECTRONIC RECORDING MONITOR

N. AVALOS, C.A.

Deputy Sheriff

NONE

Reporter

BC276958

Plaintiff  
Counsel

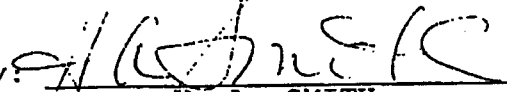
ORTHOTEC LLC  
VS  
EUROSURGICAL SA

NO APPEARANCES

Defendant  
Counsel

NATURE OF PROCEEDINGS:

John A. Clarke, Executive Officer/Clerk

By:   
H. A. SMITH

Peter W. Ross  
BROWNE & WOODS  
450 N. Roxbury Dr., 7th Floor  
Beverly Hills, CA 90210

Michael J. Perry, Esq.  
330 Washington Blvd., Suite 400  
Marina del Rey, CA 90292

Michael R. Newman  
Jeffery J. Daar  
DAAR & NEWMAN  
865 S. Figueroa St., Suite 2300  
Los Angeles, CA 90017-2565

MINUTES ENTERED  
06/23/04  
COUNTY CLERK

**ORIGINAL FILED**

JUN 23 2004

**LOS ANGELES SUPERIOR COURT**  
**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF LOS ANGELES**

ORTHOTEC, LLC

CASE NUMBER

BC276958

Plaintiff(s)

vs.

CERTIFICATE  
OF  
MAILING

EUROSURGICAL, S.A.

Defendant(s)

I, JOHN A. CLARKE, Executive Officer/Clerk of the Superior Court of the State of California for the County of Los Angeles, and not a party to the action, hereby certify that on June 23, 2004, I mailed copies of the court's tentative decision in the within action to all parties who appeared at the trial by depositing

- true copies of the minute order of June 23, 2004, Department 37 of the Superior Court of the State of California, County of Los Angeles,
- true copies of the written statement of tentative decision filed herein \_\_\_\_\_ 19\_\_
- true copies of the memorandum of decision filed by the court on \_\_\_\_\_ 19\_\_

enclosed in a sealed envelope with postage thereon fully prepaid in the United States Post Office Mail Box at 111 North Hill Street, Los Angeles California, addressed as follows:

Peter W. Ross  
BROWNE & WOODS  
450 N. Roxbury Dr., 7<sup>th</sup> Floor  
Beverly Hills, CA 90210

Michael J. Perry  
330 Washington Blvd., Suite 400  
Marina del Rey, CA 90292

Michael R. Newman  
Jeffery J. Daar  
DAAR & NEWMAN  
865 S. Figueroa St., Suite 2300  
Los Angeles, CA 90017-2565

JOHN A. CLARKE,  
Executive Officer/Clerk  
of the Superior Court

Dated: JUN 23 2004

By H.A. SMITH Deputy

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**PROOF OF SERVICE**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to this action; my business address is 1511 West Beverly Blvd., Los Angeles, CA 90026.

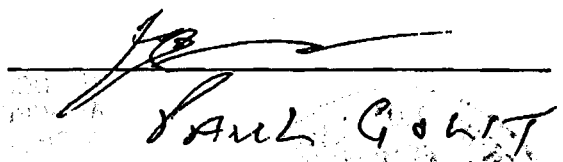
On August 2, 2004, I personally served the foregoing documents described as: PROPOSED JUDGMENT on interested party in this action by hand delivery of said documents in sealed envelopes to:

Michael R. Newman, Esq.  
Daar & Newman  
865 S. Figueroa Street, Suite 2300  
Los Angeles, CA 90017 2565

Curtis A. Cole, Esq.  
THELIN REID & PRIEST LLP  
333 South Hope Street, 29<sup>th</sup> Floor  
Los Angeles, California 90071

Executed on August 2, 2004, at Los Angeles, CA.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

  
Saul G. Witt