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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

TODD E. SHATKIN, DDS	)	Case No.: 07-CV-0332A(M)
SAMUEL SHATKIN, DDS, MD	)	
	)	
	)	AFFIDAVIT
Plaintiffs	)	OF MATTHEW J. BECK
v.	)	(1) IN SUPPORT OF
	)	PLAINTIFFS' MOTION
ANDREW JAKSON	)	TO COMPEL; (2) IN
IMTEC CORPORATION	)	RESPONSE TO DENTAL
DENTAL TECH LABORATORIES, LLC	)	TECH'S MOTION FOR A
and	)	PROTECTIVE ORDER;
F.I.R.S.T. LABORATORIES, LLC	)	AND (3) IN OPPOSITION
	)	TO FOUNDATION
Defendants	)	MILLINGS' MOTION
	)	TO QUASH

[illegible]

MATTHEW J. BECK, being duly sworn deposes and says:

1. I am an attorney at law and a partner at the firm Duke, Holzman, Yaeger & Photiadis, LLP, attorneys for plaintiffs. I submit this Affidavit in further support of the motion to compel/quash filed by plaintiffs and in specific response to the responsive motion papers filed by counsel for Foundation Milling and counsel for Dental Tech and Andrew Jakson. This Affidavit is also submitted in opposition to defendant Jakson and Dental Tech's motion seeking discovery protections.

A. Jakson, Dental Tech, Lighthouse Models and Their Banks – Production Should Be Compelled Without The Requested Restrictions

2. In addition to the subpoenas served by plaintiffs which are attached to the original moving papers of plaintiff Todd Shatkin, DDS, plaintiffs also served narrowly tailored document demands and interrogatories on defendants Jakson and Dental Tech. Attached hereto as **Exhibit A** are copies of those document demands and interrogatories.

Those document demands, interrogatories and plaintiffs' subpoenas are the subject of Jakson and Dental Tech's motion seeking protections.

3. With respect to the documents and information requested of Jakson, Dental Tech and Lighthouse Models in the subpoenas, interrogatories and document demands, I believe that the defendants have now agreed that such information will be produced in this litigation. (Jakson Subpoena Opp. MOL, pg. 1; Jakson Protective Order MOL, pg. 4).

4. The issue then with respect to these defendants is the extent to which that discovery can be shared with plaintiffs for purposes of litigation.

5. Shortly after plaintiffs' discovery demands were served, counsel for Dental Tech (Gregory Zini, Esq.) and myself agreed to extend our respective response times to September 26, 2007. Mr. Zini expressed that he had confidentiality concerns and/or issues with the documents that plaintiffs requested. It was suggested that he propose a confidentiality agreement to be entered into by the parties. There was no discussion of any "for attorneys' eyes only" production at this time.

6. In response, Mr. Zini issued a draft Confidentiality Stipulation and Order. This proposed Order contained extensive "for attorneys' eyes only" language. (Zini Aff. Ex. A).

7. I reviewed the same and asked Mr. Zini what information defendants intended to designate as "for attorneys' eyes only." More specifically, the following email messages were exchanged with Mr. Zini on or about September 12, 2007:

Greg,

In order to decide whether to agree to your proposed Confidentiality Stipulation, *I need to confirm that you do not intend to designate any information concerning the dentists identified on the list at Exhibit A to my document demands as "For Attorney's Eyes Only."* As to other customers, I understand your point. Please advise.

[Mr. Zini responded]

There's no reason why the doctors should need to see the billing information--you, Greg, and accountants can put together the picture without their input. We cannot make Dental Tech's customer records available to Sam, for example, when he's running XL Dent (a direct competitor), etc. If you cannot agree, please let me know and I will move for a protective order.

Greg,

What is the issue as to services provided to known dentists in the past (i.e. pre-termination)?

[Mr. Zini responded]

The document requests seek not only information related to Dental Tech's MDI work, but also information related to Dental Tech's other work. Inasmuch as that information will include identity of customers, nature of work, volume, pricing, etc., it's protected as trade secrets.

Not that we're conceding that ANY of that is relevant--the Shatkins' have no right to be concerned about Dental Tech's other product lines. But we are trying to fully respond to your requests.

On the flip side, why do Todd and Sam need to see this stuff? Isn't that what attorneys and experts are for?

(Emphasis added).

8. Via this email and in conversations thereafter, I conveyed to counsel that we will not agree to any “for attorneys’ eyes only” designation *as relates to any work performed for or solicited from the identified list of dentists/customers*.

9. It is defendant Jakson and Dental Tech’s alleged competition for business from these specific customers that precipitated and caused Todd Shatkin, DDS to terminate the Licensing Agreement. For them to now try to limit plaintiffs’ audit with respect to these customers on the basis of competition fears is absurd!

10. Documentation and testimony before the Court demonstrates that Jakson and Dental Tech actively solicited work from the identified FIRST Lab customers. The extensive solicitation package issued by Dental Tech is before the Court and demonstrates, among other things, that: (1) Dental Tech issued blank lab scripts, mailing labels and coupons for submission of work directly to Dental Tech; (2) undercut the

prices of FIRST Lab; and (3) represented certain representatives of Dental Tech who are not licensed (upon information and belief) to be treatment planner(s) and implant specialist(s). (T. Shatkin, 9/24/07 Dec., Ex. D). Surely, plaintiffs are entitled to investigate the full extent of Jakson and Dental Tech's efforts to divert business for their own account. Such investigation will not only include a review of all of the documents produced by defendants as relates to these identified customers, but will also include contacting some or all of the identified dentists to determine the full extent of all work solicited and performed by Dental Tech, Foundation Milling and/or Lighthouse Models for these customers.

11. Per the Shatkins, these are customers that Todd Shatkin, DDS and/or Samuel Shatkin, DDS, MD had direct personal contact with and consulted with. Moreover, both Todd Shatkin, DDS and Samuel Shatkin, DDS, MD are fully familiar with this sophisticated business and are in a better position to review the accuracy and extent of the technical services Dental Tech provided for its own account to these specific FIRST Lab customers.

12. As I have repeatedly conveyed, in an effort to move the case forward that plaintiffs are agreeable to designating information produced by Dental Tech and Jakson as confidential. However, we will not agree to any designation of documents, testimony or other information relating to identified FIRST Lab customers as "for attorneys' eyes only." Our office and our clients are allowed to fully investigate and question the extent and accuracy of the alleged diversion.

13. Defendants' concern with the production of this information to plaintiffs and now their sudden request for protection are telling.

14. Plaintiffs already have knowledge of the work Dental Tech performed for the account of FIRST Lab through the date of termination (i.e. they were the consulting/reviewing dentists and performed accounting functions for FIRST Lab). If Jakson and Dental Tech did not divert business from the identified customers as alleged, there would be no cause for concern (i.e. Dental Tech and Jakson would simply be turning over information already known to the plaintiffs personally - - work performed for the account of FIRST Lab).

15. To the contrary, Dental Tech and Jakson have fought for months to avoid turning over this information and now seek to do so only if the parties who have personal knowledge of the work performed for the account of FIRST Lab and personal relationships with the identified customers are precluded from reviewing the same or otherwise participating in a full investigation and audit of the circumstances.

16. Defendants' request is unwarranted and is merely another attempt to hinder and avoid the complete audit plaintiffs' have been requesting for approximately eight (8) or more months (pre-termination and post-termination).

17. Moreover, as demonstrated in the October 15, 2007 Declaration of Todd Shatkin, DDS concerning defendants' request for protection of the identified list of names and work performed for them is not a protected trade secret.

18. Among other things, per other evidence and testimony before the Court:

- a. Many of the dentist/customer names and relationships with the dentists contained on the list were obtained through Todd Shatkin, DDS and Samuel Shatkin, DDS, MD (T. Shatkin Dec. ¶ 11-12);
- b. The dentist/customer names are available through sources available to the public, including the internet; online and

hard copy telephone directories; and State licensing records (T. Shatkin Dec. ¶ 6-8);

- c. Imtec has posted the names of thousands of dentists nationwide on its website and made the same available to the general public (T. Shatkin Dec. ¶ 10 & Ex. A); and
- d. Foundation Milling (a company admittedly owned in part by Jakson) has filed a copy of the customer list with this Federal Court and made it a part of the docket available to members of the general public. (J. Oppenhiemer Aff. Ex. 1; Docket # 21).

19. Thus, the dentist/customer identities and information which Jakson seeks to preclude plaintiffs from seeing or having, is not even entitled to trade secret protection in the first place. Nor have the defendants proved that they are entitled to any proprietary right in this information as of the date of the termination of the Licensing Agreement. Per the terms of the parties' agreements, FIRST Lab was to wind up its affairs upon the termination of the Licensing Agreement. In default of the agreements, the defendants have failed and refused to do so to date. That does not, however, automatically afford them a proprietary right in the alleged customer list. The defendants have not established that they have any right to continue using the information contained in this list post-termination.

20. Finally, as stated above counsel for Dental Tech and I exchanged emails and at least one telephone conversation concerning discovery issues between the parties. I also had 2-3 separate telephone conversations with counsel for Foundation Milling. Each attorney indicated that they would not be producing the documentation requested by plaintiffs unless the confidentiality issues now addressed in the various motions were resolved as concerns their respective clients. Foundation Milling's counsel also indicated that he intended to file a motion to quash.

21. Thereafter, I was repeatedly out of the office moving my personal residence. Upon my return, I received a call from Judge McCarthy's Law Clerk indicating that Mr. Zini had requested a telephone conference. During that call I immediately agreed to participate in a telephone conference that Friday. I did not ignore the Court's messages as Mr. Zini states "upon information and belief."

22. Given the multitude of discovery issues concerning documents and information requested from parties and non-parties, and the time limits imposed by the Fed. R. Civ. Proc., I also filed a motion to compel and quash prepared by our office. That same day Foundation Milling filed a motion to quash the subpoenas served upon it and its bank by plaintiffs.

23. Thereafter, I received a message indicating that the telephone conference with the Court had been cancelled.

24. It is undisputed that in advance of filing plaintiffs' motion to compel, Dental Tech's counsel and I discussed the outstanding confidentiality issues in a good faith effort to resolve the same. Likewise, Foundation Milling's counsel and I eventually "agreed to disagree" as to whether the records of Foundation Milling are relevant and discoverable. Finally, contrary to Mr. Zini's statement Fed. R. Civ. Proc. 45(c)(3)(A) does not state that a certification is required in advance of filing a motion to quash an unduly burdensome and harassing subpoena requesting confidential bank account records. Likewise, Local Rule 37 does not apply to motions to quash filed under Fed. R. Civ. Proc. 45.

25. In any event, the central discovery/confidentiality issues in this case were discussed among counsel with an eye towards resolution. Only after a retaliatory

subpoena was issued concerning the bank records of entities wholly unrelated to this dispute (which did not come up whatsoever until after I issued subpoenas to Foundation Milling, Lighthouse Models and their banks) did it become necessary to file a motion to quash.

26. I requested a copy of Dental Tech's subpoena from Mr. Zini (several days after service) and he indicated that he was waiting to receive an affidavit of service before sending me a copy. During that conversation we briefly discussed the subpoena. Mr. Zini expressed that the subpoena was issued "because they believed that the Shatkins had been diverting business to their other companies." I responded stating "that's a new one" (meaning that this was now the defendants' third or fourth after-the-fact position, which is not asserted in the pleadings) and that I thought that the subpoena was harassing, among other things. At the conclusion of this brief conversation, I again requested a copy of the subpoena. Given Mr. Zini's October 9, 2007 certification, this conversation was obviously forgotten. I note that he did send me a copy of the subpoena pursuant to my request shortly after this conversation.

27. Nevertheless, to the extent that the same is not already set forth and/or is required, I hereby certify that good faith efforts were made to resolve the parties' outstanding discovery disputes, which efforts were not fruitful.

28. Attached hereto as **Exhibit B** is a copy of a revised Confidentiality Stipulation and Order to which the plaintiffs are agreeable to provided that any and all documents, information and testimony concerning or relating to the identified customers of FIRST Lab is excluded therefrom under the terms set forth and not subject to any "for attorneys' eyes only" designation.

B. Foundation Milling and Its Bank – Production Of The Requested Documents Should Be Compelled

29. Like Dental Tech, Jakson's company (1/3 owner) Foundation Milling has gone to great lengths to avoid allowing an audit of their records.

30. Foundation Milling does not dispute that it performed work for the dentists identified on the list of FIRST Lab customers provided. The issue, however, is whether that work was performed for the account of FIRST Lab, or whether it was done for the account of Dental Tech and/or Foundation Milling. Note that Foundation Milling completely glosses over whether it performed work for the identified dentists indirectly for the account of Dental Tech (as opposed to FIRST Lab).

31. Foundation Millings' records are extremely relevant to this issue as their milling services would be needed for a significant portion of the work Shatkin alleges Dental Tech diverted.

32. Again, plaintiffs are agreeable to designating the information produced as confidential. In addition, plaintiffs would be agreeable to a "for attorneys' eyes only" designation as to confidential information provided that any and all documents, information and testimony concerning the identified customers of FIRST Lab is excluded therefrom under the terms set forth and not subject to any "for attorneys' eyes only" designation. (Exhibit B).

33. This adequately protects the concerns of Foundation Milling.

34. As to Jacob Oppenheimer's allegation that Peter Wanat's Affidavit contains a false allegation (§ 11), I submit to the Court that I personally sat down with Wanat and drafted his Affidavit in his presence based on what he told me during that conversation. I reviewed it with him 3-4 times and repeatedly told him that everything

stated must be truthful because this will be submitted to the Court and stated that he must look it over closely. I also asked him to review the document himself and left the room briefly so that he could do so.

35. Jacob Oppenhiemer states that with respect to paragraph 11, Wanat told him at a later date that “I never said that. I told the lawyer to take that out.”

36. The substance of Oppenhiemer’s statement is untrue.

37. First, Wanat did not tell me to take that statement out. The process of preparing the Affidavit involved putting in what Wanat recollected and said, not the other way around.

38. Second, after Oppenhiemer made his improper early morning telephone call to Wanat, Wanat called me to inform me that Jacob had called him. Wanat indicated that Jacob was screaming at and threatening him and accused Wanat of making a false statement in paragraph 11.

39. I specifically asked Wanat again if his statement in paragraph 11 (and all other paragraphs) were true and accurate. He again affirmed that the statements were accurate and again stated that he recalled seeing payments from FIRST Lab customers as described. He also again stated that he recalled being told to and personally issuing Foundation Milling and Dental Tech solicitations in cases being returned to FIRST Lab customers.

40. Plaintiffs are simply seeking to conduct a full audit to determine the level of alleged diversion by Jakson.

41. Again, nowhere in their first or second set of Affidavits do Foundation

Millings' representatives deny that they performed work for FIRST Lab dentists. What remains to be seen is whether all such work was performed for the account of FIRST Lab, or the account of Dental Tech and/or Foundation Milling.

42. The documents requested are extremely relevant and production should be compelled.

WHEREFORE, plaintiffs request that the Court compel complete responses to the outstanding subpoenas issued by plaintiff; compel complete responses to the outstanding document demands plaintiffs issued to Jakson and Dental Tech; quash the subpoena issued to M&T Bank by defendant Jakson and/or Dental Tech; deny Foundation Millings' motion to quash the subpoenas issued to it and its bank by plaintiffs; and deny Jakson and Dental Tech's motion for protections.

/s/ Matthew J. Beck
Matthew J. Beck

Sworn to before me this
12th day of October 2007

/s/ Barbara E. Meyer
Notary Public, State of New York
Qualified in Erie County
My Commission Expires January 20, 2010

EXHIBIT A

DUKE, HOLZMAN, YAEGER & PHOTIADIS LLP
Gregory P. Photiadis, Esq. and
Matthew J. Beck, Esq.
1800 Main Place Tower
Buffalo, New York 14202
(716) 855-1111

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

TODD E. SHATKIN, DDS	)	
SAMUEL SHATKIN, DDS, MD	)	
	)	
Plaintiffs	)	
v.	)	
	)	
ANDREW JAKSON	)	
IMTEC CORPORATION	)	Case No.: 07-CV-0332A(Sr)
DENTAL TECH LABORATORIES, LLC	)	
and	)	
F.I.R.S.T. LABORATORIES, LLC	)	
	)	
Defendants	)	
	)	

**PLAINTIFFS' FIRST SET OF REQUESTS FOR THE PRODUCTION
OF DOCUMENTS AND THINGS TO DEFENDANTS
ANDREW JAKSON AND DENTAL TECH LABORATORIES, LLC**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure ("FRCP"), plaintiffs request defendants Andrew Jakson and Dental Tech Laboratories, LLC to serve a written response and to produce and permit these plaintiffs to inspect and copy each of the documents and things requested below, in accordance with the definitions and instructions that follow. These plaintiffs further request that the production of documents take place at the offices of DUKE, HOLZMAN, YAEGER & PHOTIADIS, LLP, 1800 Main Place Tower, Buffalo, New

York 14202, or such other agreed upon location, within thirty (30) days of the date of service of these requests.

DEFINITIONS

1. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise), and encompasses every medium of information transmittal, including but not limited to oral, written, graphic, and electronic communication.

2. "Discussion" means any assembly, congregation, encounter, meeting or conversation between or among two or more individuals for any purpose, whether or not planned, arranged, or scheduled in advance. "Discussion" includes, without limitation, all oral communications, whether or not in person, by telephone (including voicemails and similar recordings), or otherwise, and electronic communications (including emails) between two or more individuals.

3. "Employee" means any director, trustee, officer, employee, servant or partner of a designated entity, whether active or retired, full-time or part-time, current or former, and compensated or not.

4. "Representative" means any agent, consultant, expert, attorney, contractor or other individual or entity engaged by the designated entity to perform some task or assignment for the entity.

5. "Entity" means any corporation, company, partnership, proprietorship, joint venture, trust, association or business, as well as any governmental unit.

6. "Individual" means a human being unless plaintiff cannot identify such individual by name. In such case, "individual" shall mean the entity with which such individual was or is

employed, engaged or associated. "Individual" includes, without limitation, employees and representatives.

7. "Person" means any natural person or entity, including but not limited to a group of natural persons or entities.

8. The terms "document" or "documents" shall have the broadest meaning ascribed to them by Federal Rule of Civil Procedure 34(a). This shall include, without limitation, the following items, whether printed or reproduced by any process, or written or produced by hand or stored in computer memory, magnetic or hard disk or other data storage medium, and whether or not claimed to be privileged, confidential or otherwise excludable from discovery, namely, notes, letters, correspondence, communications, e-mails, telegrams, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or meetings, diaries, reports, laboratory and research reports and notebooks, recorded experiments, charts, plans, drawings, diagrams, schematic diagrams, illustrations, product descriptions, product analyses, requests for proposal, documents related to proposed or actual product improvements or changes, users manuals or guides installation guides or manuals, technical descriptions or specifications, product repair manuals or guides, photographs, video images, software flow charts or descriptions or specifications, product functions descriptions or specifications, minutes or records of meetings, summaries of interviews, reports or investigations, opinions or reports of consultants, reports of patent searches, patent appraisals, opinions of counsel, agreements, reports or summaries of negotiation, brochures, pamphlets, advertisements, circulars, trade letters, press releases, drafts of documents and all other material fixed in a tangible or electronic medium of whatever kind known to you or in your possession or control. A draft of nonidentical copy is a separate document within the meaning of this term.

9. "Referring to," "relating to," "referring or relating to," "related to" and "pertaining to" include the following: making reference to, concerning, comprising, evidencing, alluding to, responding to, connected with, commenting on, with respect to, about, regarding, resulting from, embodying, explaining, supporting, discussing, showing, describing, reflecting, analyzing, constituting, setting forth, in respect of or having any logical or factual connection with the subject matter in question.

10. "Refer to" and "relate to" include the following: pertain to, make reference to, concern, comprise, evidence, allude to, respond to, connect with, comment on, respect, are about, regard, result from, embody, explain, support, discuss, show, describe, reflect, analyze, constitute, set forth, or have any logical or factual connection with the subject matter in question.

11. The singular includes the plural and vice versa, any use of gender includes both genders, and a verb tense includes all other verb tenses where the clear meaning is not distorted by addition of another tense or tenses.

12. The term "any" or "each" should be understood to include and encompass "all."

13. Whenever the conjunctive is used, it shall also be taken in the disjunctive, and vice versa.

14. "Jakson" means defendant Andrew Jakson.

15. "Dental Tech" means defendant Dental Tech Laboratories, LLC, any agents, employees, members, officers or representatives thereof and any other person or entity who purported or purports to act on behalf of Dental Tech.

16. "FIRST" means F.I.R.S.T. Laboratories, LLC.

17. "Lighthouse" means Lighthouse Models, LLC, any agents, employees,

members, officers or representatives thereof and any other person or entity who purported or purports to act on behalf of Lighthouse.

18. “Foundation Milling” means Foundation Milling Centre, LLC, any agents, employees, members, officers or representatives thereof and any other person or entity who purported or purports to act on behalf of Foundation Milling.

19. “Bison Dental Lab” means Bison Dental Lab, any agents, employees, members, officers or representatives thereof and any other person or entity who purported or purports to act on behalf of Bison Dental Lab.

INSTRUCTIONS

1. Documents to be produced include documents in your possession, custody, or control wherever located.

2. To the extent defendants are aware of any document that would be responsive to any of these Requests, but that is no longer in existence, identify such document and the circumstances surrounding its destruction or loss.

3. To the extent defendants object to a Request because documents not yet in its possession, custody or control would or might also be responsive to a particular Request (had they been in defendants’ possession, custody or control), such Request should be construed as calling for the *current* production of documents *currently* in defendants’ possession, custody or control as well as the production of such additional documents once they come into defendants’ possession, custody or control.

4. To the extent two or more Requests may be construed as calling for the production of the same identical document, or to the extent defendants would otherwise object to

any Request as being "repetitive, overlapping or duplicative," or the like, defendants need only produce a given (identical) document once.

5. Pursuant to Rule 34(b), Federal Rules of Civil Procedure, you must produce entire documents including attachments, enclosures, cover letters, memoranda, and appendices and the documents requested herein must be produced as they are kept in the usual course of business including with all staples and clips attached and with all associated file folders, dividers and file labels, or must be organized and labeled to correspond to the document requests by number.

6. Pursuant to FRCP Rule 34(a), you must produce any data compilations from which information can be obtained, including but not limited to deleted electronic mail messages that can be recovered.

7. Pursuant to FRCP Rule 26(b)(5), if any document is withheld from production on the basis of privilege, immunity or any similar claim, you must identify each such document by specifying: (i) the name and title of the document's author(s); (ii) the name and title of the person(s) to whom copies of the document were addressed; (iii) the name and title of the person(s) to whom copies of the document were sent; (iv) the dates on which the document was written or otherwise produced, and the date on which it was mailed, sent, or otherwise delivered to its addressee(s); (v) the number of pages; (vi) a brief description of the document's nature and subject matter; (vii) all grounds on which the document, or portion of the document, is being withheld or redacted; and (viii) the present location of the document and all copies thereof. All such documents and/or things shall be listed on a privilege log and the log shall be supplied at a time and place to be agreed upon by counsel.

8. Any document bearing any marks that are not a part of the original text, or any reproduction thereof, is to be considered a separate document for purposes of responding to the

following document requests. Moreover, if the documents are produced as they are kept in the usual course of business, identical documents maintained in separate files must be produced.

9. Discovery requests are continuous in nature, and pursuant to FRCP 26(e), defendants are under a duty to timely amend a prior response to a request for production if it turns out that the response is in some material respect incomplete or incorrect, or if any information or documents are hereafter acquired.

10. To the extent defendants object to any of the definitions or instructions set forth herein as being inconsistent with any Federal Rule of Civil Procedure or the Local Rules of the Court, state with specificity how defendants contend any such definition or instruction is inconsistent with any such rule.

REQUESTS FOR PRODUCTION

REQUEST NO. 1:

Produce all documents concerning, evidencing or relating to Jakson, Dental Tech, FIRST Lab, and/or Imtec's use of or sale of goods or services relating to the use of the technology and/or procedure(s) described at United States Patent No. 7,108,511 from May 22, 2007 through the present.

REQUEST NO. 2:

Produce all documents concerning, evidencing or relating to Jakson and/or Dental Tech's use of or sale of goods or services relating to the use of the technology and/or procedure(s) described at United States Patent No. 7,108,511 from January 1, 2006 through May 22, 2007.

REQUEST NO. 3:

Produce all documents concerning, evidencing or relating to Jakson, Dental Tech, FIRST Lab, and/or Imtec's use of the service mark F.I.R.S.T. from May 22, 2007 through the present.

REQUEST NO. 4:

Produce all documents, including but not limited to lab slips, invoices, purchase orders, Worldwide Express shipping records and all other shipping records, billing records, scripts, copies of checks, receipts, credit card authorizations, accounting records and records of accounts

receivable, relating to or evidencing all goods and services Dental Tech and/or Jakson provided between January 1, 2006 and May 22, 2007.

REQUEST NO. 5:

Produce all correspondence, communications, emails, and other documents, including attachments and enclosures, between: (1) any of the dentists identified at **Exhibit A**; and (2) Dental Tech or Jakson, from January 1, 2006 through May 22, 2007

REQUEST NO. 6:

Attached hereto as **Exhibit B** is a copy of a solicitation or communication, with enclosures, issued by Dental Tech and/or Jakson. Produce all lists, spreadsheets and other documents identifying who Dental Tech and/or Jakson issued such solicitations or communications to.

REQUEST NO. 7:

Produce copies of any and all mailings, brochures, price lists, shipping labels, lab slips, coupons and solicitations (including correspondence and emails) Jakson and/or Dental Tech issued to any of the dentists identified at **Exhibit A** between January 2001 and May 22, 2007, along with all lists and other documents identifying which dentists were issued such mailings, brochures, price lists, shipping labels, lab slips, coupons and solicitations (including correspondence and emails).

REQUEST NO. 8:

Produce copies of all documents evidencing Jakson and/or Dental Tech's provision of goods or services to the dentists identified at **Exhibit A** prior to September 2003.

REQUEST NO. 9:

Produce copies of all documents evidencing or relating to goods or services Lighthouse, Foundation Milling and/or Bison Dental Lab provided to the dentists identified at **Exhibit A** between September 2003 and the present.

REQUEST NO. 10:

Produce copies of all correspondence, emails, agreements and communications between: (1) Intec Corporation and Jakson and/or Dental Tech; and (2) Ronald Bulard and Jakson and/or Dental Tech from October 2006 to the present.

REQUEST NO. 11:

Produce a copy of the March 7, 2007 letter agreement between Intec Corporation and Jakson d/b/a Dental Tech Laboratories, LLC.

REQUEST NO. 12:

Produce all documents identifying funds received by Dental Tech and/or Jakson from any of the dentists identified at **Exhibit A** (or entities they perform work for) between January 1, 2006 and May 22, 2007, including but not limited to the dates and amounts of all such payments.

REQUEST NO. 13:

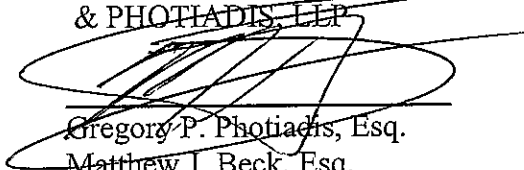
Produce all documents establishing that F.I.R.S.T. Laboratories, LLC is or was a legal division of Dental Tech Laboratories, LLC.

REQUEST NO. 14:

Produce all documents referenced in responding to plaintiffs' First Set of Interrogatories.

Dated: July 31, 2007

DUKE, HOLMAN, YAEGER
& PHOTIADIS, LLP



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Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

TODD E. SHATKIN, DDS	)	
SAMUEL SHATKIN, DDS, MD	)	
	)	
Plaintiffs	)	
v.	)	
	)	
ANDREW JAKSON	)	
IMTEC CORPORATION	)	Case No.: 07-CV-0332A(Sr)
DENTAL TECH LABORATORIES, LLC	)	
and	)	
F.I.R.S.T. LABORATORIES, LLC	)	
	)	
Defendants	)	
	)	

**PLAINTIFFS' FIRST SET OF INTERROGATORIES TO DEFENDANTS
ANDREW JAKSON AND DENTAL TECH LABORATORIES, LLC**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure ("FRCP"), plaintiffs request defendants Andrew Jakson and Dental Tech Laboratories, LLC to serve written responses to each of the plaintiffs' Interrogatories under oath, in accordance with the definitions and instructions that follow and within thirty (30) days of the date of service of these Interrogatories.

DEFINITIONS

1. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise), and encompasses every medium of information transmittal, including but not limited to oral, written, graphic, and electronic communication.

2. "Discussion" means any assembly, congregation, encounter, meeting or conversation between or among two or more individuals for any purpose, whether or not planned, arranged, or scheduled in advance. "Discussion" includes, without limitation, all oral communications, whether or not in person, by telephone (including voicemails and similar recordings), or otherwise, and electronic communications (including emails) between two or more individuals.

3. "Employee" means any director, trustee, officer, employee, servant or partner of a designated entity, whether active or retired, full-time or part-time, current or former, and compensated or not.

4. "Representative" means any agent, consultant, expert, attorney, contractor or other individual or entity engaged by the designated entity to perform some task or assignment for the entity.

5. "Entity" means any corporation, company, partnership, proprietorship, joint venture, trust, association or business, as well as any governmental unit.

6. "Individual" means a human being unless plaintiff cannot identify such individual by name. In such case, "individual" shall mean the entity with which such individual was or is employed, engaged or associated. "Individual" includes, without limitation, employees and representatives.

7. "Person" means any natural person or entity, including but not limited to a group of natural persons or entities.

8. The terms "document" or "documents" shall have the broadest meaning ascribed to them by Federal Rule of Civil Procedure 34(a). This shall include, without limitation, the following items, whether printed or reproduced by any process, or written or produced by hand or stored in computer memory, magnetic or hard disk or other data storage medium, and whether or not claimed to be privileged, confidential or otherwise excludable from discovery, namely, notes, letters, correspondence, communications, e-mails, telegrams, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or meetings, diaries, reports, laboratory and research reports and notebooks, recorded experiments, charts, plans, drawings, diagrams, schematic diagrams, illustrations, product descriptions, product analyses, requests for proposal, documents related to proposed or actual product improvements or changes, users manuals or guides installation guides or manuals, technical descriptions or specifications, product repair manuals or guides, photographs, video images, software flow charts or descriptions or specifications, product functions descriptions or specifications, minutes or records of meetings, summaries of interviews, reports or investigations, opinions or reports of consultants, reports of patent searches, patent appraisals, opinions of counsel, agreements, reports or summaries of negotiation, brochures, pamphlets, advertisements, circulars, trade letters, press releases, drafts of documents and all other material fixed in a tangible or electronic medium of whatever kind known to you or in your possession or control. A draft of nonidentical copy is a separate document within the meaning of this term.

9. "Referring to," "relating to," "referring or relating to," "related to" and "pertaining to" include the following: making reference to, concerning, comprising, evidencing, alluding to,

responding to, connected with, commenting on, with respect to, about, regarding, resulting from, embodying, explaining, supporting, discussing, showing, describing, reflecting, analyzing, constituting, setting forth, in respect of or having any logical or factual connection with the subject matter in question.

10. "Refer to" and "relate to" include the following: pertain to, make reference to, concern, comprise, evidence, allude to, respond to, connect with, comment on, respect, are about, regard, result from, embody, explain, support, discuss, show, describe, reflect, analyze, constitute, set forth, or have any logical or factual connection with the subject matter in question.

11. The singular includes the plural and vice versa, any use of gender includes both genders, and a verb tense includes all other verb tenses where the clear meaning is not distorted by addition of another tense or tenses.

12. The term "any" or "each" should be understood to include and encompass "all."

13. Whenever the conjunctive is used, it shall also be taken in the disjunctive, and vice versa.

14. "Jakson" means defendant Andrew Jakson.

15. "Dental Tech" means defendant Dental Tech Laboratories, LLC, any agents, employees, members, officers or representatives thereof and any other person or entity who purported or purports to act on behalf of Dental Tech.

16. "FIRST" means F.I.R.S.T. Laboratories, LLC.

17. "Lighthouse" means Lighthouse Models, LLC, any agents, employees, members, officers or representatives thereof and any other person or entity who purported or purports to act on behalf of Lighthouse.

18. "Foundation Milling" means Foundation Milling Centre, LLC, any

agents, employees, members, officers or representatives thereof and any other person or entity who purported or purports to act on behalf of Foundation Milling.

19. "Bison Dental Lab" means Bison Dental Lab, any agents, employees, members, officers or representatives thereof and any other person or entity who purported or purports to act on behalf of Bison Dental Lab.

INSTRUCTIONS

1. References to the singular shall include the plural and references to the plural shall include the singular, as the context requires.

2. The words "and" and "or" shall be construed either disjunctively or conjunctively as necessary to make the request inclusive rather than exclusive.

3. In responding to these Interrogatories, you are requested to furnish all information in your possession, custody or control including all information in the possession, custody or control of any person acting on your behalf.

4. Discovery requests are continuous in nature, and pursuant to FRCP 26(e), defendants are under a duty to timely amend a prior response to a request for production if it teams that the response is in some material respect incomplete or incorrect, or if any information or documents are hereafter acquired.

5. To the extent defendants object to any of the definitions or instructions set forth herein as being inconsistent with any Federal Rule of Civil Procedure or the Local Rules of the Court, state with specificity how defendants contend any such definition or instruction is inconsistent with any such rule.

INTERROGATORIES

INTERROGATORY NO. 1:

State whether Jakson, Dental Tech, FIRST Lab, or Imtec have made use of or sold goods or services relating to or utilizing the technology and/or procedure described at United States Patent No. 7,108,511 from May 22, 2007 through the present and identify all such cases by customer and dentist name.

Response:

INTERROGATORY NO. 2:

Identify all cases by customer and dentist name from January 1, 2006 through the present wherein Jakson or Dental Tech made use of or sold goods or services relating to or utilizing the technology and/or procedure described at United States Patent No. 7,108,511.

Response:

INTERROGATORY NO. 3:

Identify any and all goods and services Dental Tech and/or Jakson provided to the dentists identified at **Exhibit A** between January 1, 2006 and the present, including but not limited to the dates thereof and the specific goods and services provided.

Response:

INTERROGATORY NO. 4:

Identify all documents referenced in responding to, supporting your responses to or relating to your responses to Interrogatory Nos. 1-3.

Response:

INTERROGATORY NO. 5:

Attached hereto as **Exhibit B** is a copy of a solicitation or communication, with enclosures, issued by Dental Tech and/or Jakson. Identify all persons and entities who Dental Tech and/or Jakson issued such solicitations or communications to.

Response:

INTERROGATORY NO. 6:

Identify all goods or services Lighthouse, Foundation Milling and/or Bison Dental Lab provided to the dentists identified at **Exhibit A** from January 1, 2006 to the present.

Response:

INTERROGATORY NO. 7:

Identify all funds received by Dental Tech and/or Jakson from the dentists identified at **Exhibit A** (or entities they perform work for) between January 1, 2006 and May 22, 2007, including but not limited to the dates and amounts of all such payments.

Response:

INTERROGATORY NO. 8:

Identify all documents referenced in responding to, supporting your response to or relating to your response to Interrogatory No. 7.

Response:

INTERROGATORY NO. 9:

Identify all funds received by Lighthouse, Foundation Milling and Bison Dental Lab (and all other entities which Dental Tech and/or Jakson hold an interest in) from the dentists identified at **Exhibit A** (or entities they perform work for) between January 1, 2006 and May 22, 2007, including but not limited to the dates and amounts of all such payments.

Response:

INTERROGATORY NO. 10:

Identify all documents referenced in responding to, supporting your responses to or relating to your responses to Interrogatory No. 9.

Response:

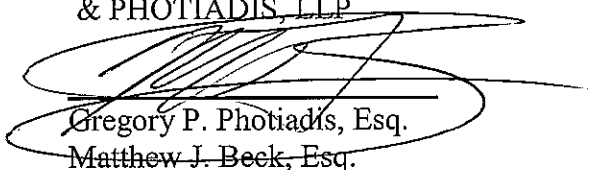
INTERROGATORY NO. 11:

Identify all documents establishing that F.I.R.S.T. Laboratories, LLC is or was a legal division of Dental Tech Laboratories, LLC.

Response:

Dated: July 31, 2007

DUKE, HOLMAN, YAEGER
& PHOTIADIS, LLP



Gregory P. Photiadis, Esq.

Matthew J. Beck, Esq.

Attorneys for Plaintiffs

1800 Main Place Tower

Buffalo, New York 14202

Tel.: (716) 855-1111

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TO: Gregory Zini, Esq.
Damon & Morey
1000 Cathedral Place
298 Main Street
Buffalo New York 14202

CC: Jeffrey C. Stravino, Esq.
Hodgson Russ LLP
140 Pearl St., Suite 100
Buffalo, New York 14203

EXHIBIT B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

Marked

TODD E. SHATKIN, et al.,

Plaintiffs,

v.

Case No. 07-CV-0332(A)(M)

ANDREW JAKSON, et al.,

Defendants.

CONFIDENTIALITY STIPULATION AND ORDER

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court enters this Confidentiality Stipulation and Order upon the request of all of the parties hereto for the purpose of assuring the confidentiality and protection of certain confidential and proprietary information that may be disclosed by any party or by a third party to any party in the course of discovery in this action.

1. As used in this Confidentiality Stipulation and Order, the term "Confidential Information" includes any material or information that is disclosed by any party, or by a third party to any party, in the course of discovery in this action that is deemed in good faith by the disclosing party (or a party to this action if the disclosing party is a third party) to be confidential or proprietary, and that has been designated as "Confidential" or "Attorney's Eyes Only" in one or more of the following ways:

(a) information set forth in an answer to a request for documents, a subpoena, an interrogatory or request for admission may be so designated by including a clear statement in the answer that the answer is "Confidential" or "Attorney's Eyes Only";

(b) information contained in any document, summary or part thereof may be so designated by making the word "Confidential" or "Attorney's Eyes Only" on the document and all copies of it delivered to counsel for the receiving party, or by giving written

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notice to counsel for the receiving party, describing the document or part thereof either specifically or by category; and

(c) information contained in an answer to any question asked during an oral deposition may be designated "Confidential" or "Attorney's Eyes Only" by a statement made on the record during the course of the deposition on the same day that the answer is given or by a writing served by first class mail or overnight delivery within ten (10) business days after the designating party receives the deposition transcript.

(d) information contained in documents produced in response to a subpoena duces tecum served upon a non-party to this action may be designated "Confidential" or "Attorney's Eyes Only" by a party to this action upon written notice to counsel for the receiving party.

2. Confidential Information designated as "Confidential" that is disclosed by either party or by a third party to any party during the course of discovery in this action:

(a) shall only be used by the parties to this action, their counsel, any independent expert witnesses and advisors and consulting firms retained by a party to this action in connection with the prosecution and defense of this action and for no other purpose;

(b) shall not be published to the general public in any form by any party to this action, their counsel, or any independent expert witnesses, advisors and consulting firms retained a party to this action, nor used by any party to this action, their counsel, or any independent expert witnesses, advisors and consulting firms retained by the receiving party for any business or commercial purpose; and

(c) may be disclosed by counsel to the parties to this action only to the following persons insofar as it is reasonably necessary to the prosecution or defense of this action:

(i) attorneys of record for the parties to this action, including any

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attorneys employed by a law firm of record that represents a party;

(ii) secretarial, clerical and paralegal or student personnel

employed full-time or part-time by attorneys or a law firm that represents a party;

(iii) the receiving party or independent expert witnesses, advisors

and consulting firms retained by a party in connection with this action;

(iv) technical, secretarial, clerical or other personnel employed full-

time or part-time by independent expert witnesses, advisors and consulting firms of a party;

(v) court reporters or stenographers engaged to record deposition

testimony, and their employees;

(vi) the identified dentists/customers named on the list attached

hereto; and

(vii) such other persons as may be authorized by agreement of the

parties or by the Court upon motion of any party pursuant to the provisions of Paragraph 6, below.

3. Confidential Information designated as "Attorney's Eyes Only" that is disclosed by either party or by a third party to any party during the course of discovery in this action:

(a) shall be used only by counsel for the parties to this action, and any independent expert witnesses, advisors and consulting firms retained by a party only for purposes of this action;

(b) shall not be disclosed to the parties to this action themselves or to their employees, officers or directors; and

(c) shall not be published to the general public in any form or used for any business or commercial purposes by the any party to this action.

(d) shall be disclosed by counsel for a party to this action only to the following persons insofar as it is reasonably necessary to the defense of this action:

(i) attorneys of record for a party to this action, including any

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attorneys employed by a law firm of record that represents a party;

(ii) secretarial, clerical and paralegal or student personnel

employed full-time or part-time by attorneys or a law firm that represents a party;

(iii) independent expert witnesses, advisors and consulting

firms retained by a party in connection with this action;

(iv) technical, secretarial, clerical or other personnel

employed full-time or part-time by independent expert witnesses, advisors and consulting firms of a party;

(v) court reporters or stenographers engaged to record

deposition testimony, and their employees; and

(vi) such other persons as may be authorized by agreement of the

parties or by the Court upon motion of any party pursuant to the provisions of Paragraph 6 below.

4. The use of the designation "Attorney's Eyes Only" shall be made only upon a good-faith assessment that the material covered by such designation represents confidential commercial information of such a sensitive nature that its dissemination cannot adequately be covered by the protections set forth in paragraph 2 above. The parties expressly agree that no documents, information, testimony, records, and/or discovery responses (or portions thereof) concerning or relating to any of the dentists/customers of FIRST Laboratories, LLC specifically identified on the list attached hereto, including but not limited to documents, information, testimony, records, and/or discovery responses concerning or relating to work solicited from and/or performed (directly or indirectly) for such identified dentists/customers will be designated "Attorney's Eyes Only" and hereby further agree that the same will be subject to full disclosure.

5. ~~Nothing in this Confidentiality Stipulation and Order shall preclude a disclosure of~~ information to any person who offered, prepared, previously had legal access to, was an addressee

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of received a copy of such information prior to the date of entry of this Stipulation and Order, or participated in the creation, compilation or production of such information.

6. In the event that any party desires that information designated as "Confidential" or "Attorney's Eyes Only" be disclosed, communicated, discussed, or made available to any person not otherwise authorized by this Confidentiality Stipulation and Order, the party wishing to disclose, communicate, discuss, or make available such information must submit to counsel for the designating party a written notice specifically identifying the information to be disclosed, and the name, title, and business relationship of the persons to whom counsel wishes to make such disclosure. Counsel for the designating party shall have 15 days from the date of receipt of the notification to object to the disclosure to any person identified therein. If counsel for the designating party does not respond in writing to the written notice of disclosure within 15 days after receipt thereof the persons named in the notice, subject to the terms and conditions of this Confidentiality Stipulation and Order, shall be entitled to receive the information specified in the notice, but no other materials subject to this Confidentiality Stipulation and Order. If any counsel for the designating party responds and objects to the disclosure request, and the parties subsequently are unable to agree on the terms and conditions of the requested disclosure, the party seeking disclosure may file a motion or letter with the Court, served on counsel for all other parties, setting forth the basis for seeking such disclosure, in which case, the requested disclosure shall only be made upon such terms as the Court shall provide.

7. A copy of this Confidentiality Stipulation and Order, together with the Acknowledgment agreeing to be bound by its terms in the form annexed hereto as Exhibit A, shall be delivered to each person within category 3 of paragraphs 2(c) and 3(d) above to whom disclosure of Confidential Information will be made. The provisions of this Confidentiality Stipulation and Order shall be binding upon each such person to whom disclosure is made.

Counsel for the non-disclosing party shall obtain and retain a signed copy of said

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Acknowledgment before any such person receives any Confidential Information.

8. Secondary documents, including but not limited to, notes, memoranda, analyses and briefs that are prepared from any materials described herein that contain Confidential Information shall be treated in the same fashion as the underlying materials.

9. If any party disputes the designation of information as "Confidential" or "Attorney's Eyes Only," the party disputing the designation shall serve counsel for the designating party a written notice specifically identifying the challenged designated and the factual and legal basis for the challenge. Counsel for the designating party shall have 15 days from the date of receipt of the notification to respond to the challenge. If counsel for the designating party does not respond in writing to the written notice of challenge of designation, then the party seeking to remove the designation may request relief from the Court upon notice to counsel for all parties. Until the Court resolves the dispute, all materials designated as "Confidential" or "Attorney's Eyes Only" shall be treated according to their designation. The party in whose favor such application or motion is resolved by the Court may, in the Court's discretion, be entitled to recover attorneys' fees and costs incurred in connection with such application or motion.

10. The provisions of this Confidentiality Stipulation and Order shall not be construed as preventing:

- (a) any disclosure of Confidential Information by the parties designating the information as such in any such other action; or
- (b) any disclosure of Confidential Information to any judge, law clerk or employee of this Court for purposes of this action.

11. Before filing with the Court *any* pleading, motion, application, memorandum of law, or other paper that in any manner quotes, paraphrases, attaches as an exhibit or otherwise discloses information that has been designated by another party as Confidential Information, the

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party that intends to file such pleading, motion, application, memorandum of law or other paper, shall do so under seal or provide counsel for the designating party 15 days prior written notice specifically identifying the Confidential Information intended to be disclosed so that the designating party may make a sealing application to the Court pursuant to Local Rule 5.4 if the designating party deems that one is necessary. By way of this Order, the Court authorizes all parties to file documents and other information designated as confidential and/or "Attorney's Eyes Only" pursuant hereto under seal.

12. The inadvertent production of information or documents by either party or by a third party to any party for inspection and copying shall not itself be deemed to waive any claim of attorney-client privilege, or attorney work product protection that might exist with respect to such document or other documents or communication, written or oral, including with limitation, other communications referred to in the documents or information produced.

13. In the event any Confidential Information of a party or a third party is the subject a subpoena or court order requiring its disclosure, the recipient of the subpoena or court order will provide immediate notice to the disclosing party through its counsel. The recipient of the subpoena or court order shall not object to the disclosing party's appearance to protect its interest in maintaining the information as confidential. The recipient of the subpoena or court order will not respond to any such subpoena or court order until the disclosing party has a reasonable opportunity to seek appropriate relief from the Court, including but not limited to, a motion for a protective order.

14. Nothing in this Confidentiality Stipulation and Order shall preclude a party from offering Confidential Information and/or "Attorney's Eyes Only" information into evidence at the trial of this action.

15. Information received from persons or entities not a party to this action may be designated as "Confidential" or "Attorney's Eyes Only" by a party to this action. Inadvertent

disclosure of any document or information shall not operate as a waiver of confidentiality, and any party inadvertently disclosing such information without first designating the information as "Confidential" or "Attorney's Eyes Only" may do so upon learning of the disclosure. However, any dissemination or disclosure of such later-designated information shall not be deemed a violation of this Confidentiality Stipulation and Order until the information is designated as "Confidential" or "Attorney's Eyes Only."

16. Nothing in this Confidentiality Stipulation and Order shall be deemed to limit or constitute a waiver of any Party's right to object to the production of any information on the basis of privilege or for any other reason provided under applicable federal or state law.

17. All discovery materials, including, but not limited to, discovery material designated as "Confidential" and/or "Attorney's Eyes Only" , and all copies thereof shall be either destroyed or returned to the disclosing party or its counsel , per the disclosing party's instructions within, thirty (30) days of the conclusion of this litigation including any appeals. Counsel for the receiving party discovery materials shall certify in writing to counsel for the disclosing party that said discovery materials have been destroyed or returned per the disclosing party's instructions, or otherwise disposed of as ordered by the Court, within thirty (30) days of the conclusion of this litigation including any appeals.

Dated: Buffalo, New York
October , 2007

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Attorneys for Defendants
ANDREW JAKSON and
DENTAL TECH LABORATORIES, INC.

Dated: Buffalo, New York
October , 2007

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Attorneys for Plaintiff
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SAMUEL SHATKIN

Dated: Buffalo, New York
October 2007

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Attorneys for Defendants
F.I. R.S.T. LABORATORIES, LLC

Dated: Oklahoma City, Oklahoma
October , 2007

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Attorneys for Defendants

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SO ORDERED:

Hon. Jeremiah J. McCarthy, U.S.M.J.

Dated: October 2007
Buffalo, New York

IMTEC CORPORATION

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

TODD E. SHATKIN, et al,

Plaintiffs,

v.

Case No. 07-CV-0332(A)(Sr)

ANDREW JAKSON, et al,

Defendants.

AGREEMENT TO BE BOUND BY
CONFIDENTIALITY STIPULATION AND PROPOSED ORDER

I, _____ declare:

1. I am over the age of 18 years and have personal knowledge of the hereafter-stated facts.

2. My address is _____

3. My present employer is _____

and the address of my present employer is _____

4. My present occupation or job description is _____

5. I have received a copy of the Confidentiality Stipulation and Proposed Order ("Order") in this action.

6. I have carefully read and understand the provisions of the Order.

7. I hereby agree to be bound by the terms and conditions of this Order.

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8. During the pendency and after final termination of this action and any related proceedings, I will hold in confidence and not disclose to anyone not qualified under the Order any "Confidential Information" (*as* such terms are defined in the Order) disclosed to me. I also agree to be subject to the personal jurisdiction of the United States District Court for the Western District of New York with regard to any proceedings relating to the enforcement of the Order.

9. I understand that any breach of this agreement may subject me to an action for civil damages and other relief arising therefrom.

I declare under penalty of perjury under the laws of the United States that the foregoing *is* true and correct and that this Declaration was executed on _____ 200__ at _____

[Print Name]

[Signature]

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PRETERMINATION LIST OF FIRST LABORATORIES, LLC
DENTISTS/CUSTOMERS TO BY SUPPLIED BY PLAINTIFFS AND ATTACHED
UPON APPROVAL OF ORDER BY COURT (NOTE – THIS WILL BE THE SAME
LIST ATTACHED AS AN EXHIBIT TO PLAINTIFFS' OUTSTANDING
DISCOVERY DEMANDS TO DEFENDANTS JAKSON AND DENTAL TECH)

Final
Clean

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

TODD E. SHATKIN, et al.,

Plaintiffs,

v.

Case No. 07-CV-0332(A)(M)

ANDREW JAKSON, et al.,

Defendants.

CONFIDENTIALITY STIPULATION AND ORDER

Pursuant to Rule 26(c) of the Federal Rules of Civil Procedure, the Court enters this Confidentiality Stipulation and Order upon the request of all of the parties hereto for the purpose of assuring the confidentiality and protection of certain confidential and proprietary information that may be disclosed by any party or by a third party to any party in the course of discovery in this action.

1. As used in this Confidentiality Stipulation and Order, the term "Confidential Information" includes any material or information that is disclosed by any party, or by a third party to any party, in the course of discovery in this action that is deemed in good faith by the disclosing party (or a party to this action if the disclosing party is a third party) to be confidential or proprietary, and that has been designated as "Confidential" or "Attorney's Eyes Only" in one or more of the following ways:

(a) information set forth in an answer to a request for documents, a subpoena, an interrogatory or request for admission may be so designated by including a clear statement in the answer that the answer is "Confidential" or "Attorney's Eyes Only";

(b) information contained in any document, summary or part thereof may be so designated by making the word "Confidential" or "Attorney's Eyes Only" on the document and all copies of it delivered to counsel for the receiving party, or by giving written

notice to counsel for the receiving party, describing the document or part thereof either specifically or by category; and

(c) information contained in an answer to any question asked during an oral deposition may be designated "Confidential" or "Attorney's Eyes Only" by a statement made on the record during the course of the deposition on the same day that the answer is given or by a writing served by first class mail or overnight delivery within ten (10) business days after the designating party receives the deposition transcript.

(d) information contained in documents produced in response to a subpoena duces tecum served upon a non-party to this action may be designated "Confidential" or "Attorney's Eyes Only" by a party to this action upon written notice to counsel for the receiving party.

2. Confidential Information designated as "Confidential" that is disclosed by either party or by a third party to any party during the course of discovery in this action:

(a) shall only be used by the parties to this action, their counsel, any independent expert witnesses and advisors and consulting firms retained by a party to this action in connection with the prosecution and defense of this action and for no other purpose;

(b) shall not be published to the general public in any form by any party to this action, their counsel, or any independent expert witnesses, advisors and consulting firms retained a party to this action, nor used by any party to this action, their counsel, or any independent expert witnesses, advisors and consulting firms retained by the receiving party for any business or commercial purpose; and

(c) may be disclosed by counsel to the parties to this action only to the following persons insofar as it is reasonably necessary to the prosecution or defense of this action:

(i) attorneys of record for the parties to this action, including any

attorneys employed by a law firm of record that represents a party;

(ii) secretarial, clerical and paralegal or student personnel

employed full-time or part-time by attorneys or a law firm that represents a party;

(iii) the receiving party or independent expert witnesses, advisors

and consulting firms retained by a party in connection with this action;

(iv) technical, secretarial, clerical or other personnel employed full-

time or part-time by independent expert witnesses, advisors and consulting firms of a party;

(v) court reporters or stenographers engaged to record deposition

testimony, and their employees;

(vi) the identified dentists/customers named on the list attached

hereto; and

(vii) such other persons as may be authorized by agreement of the

parties or by the Court upon motion of any party pursuant to the provisions of Paragraph 6, below.

3. Confidential Information designated as "Attorney's Eyes Only" that is disclosed by either party or by a third party to any party during the course of discovery in this action:

(a) shall be used only by counsel for the parties to this action, and any

independent expert witnesses, advisors and consulting firms retained by a party only for purposes of this action;

(b) shall not be disclosed to the parties to this action themselves or to

their employees, officers or directors; and

(c) shall not be published to the general public in any form or used for any

business or commercial purposes by the any party to this action.

(d) shall be disclosed by counsel for a party to this action only to the

following persons insofar as it is reasonably necessary to the defense of this action:

(i) attorneys of record for a party to this action, including any

attorneys employed by a law firm of record that represents a party;

(ii) secretarial, clerical and paralegal or student personnel

employed full-time or part-time by attorneys or a law firm that represents a party;

(iii) independent expert witnesses, advisors and consulting

firms retained by a party in connection with this action;

(iv) technical, secretarial, clerical or other personnel

employed full-time or part-time by independent expert witnesses, advisors and consulting

firms of a party;

(v) court reporters or stenographers engaged to record

deposition testimony, and their employees; and

(vi) such other persons as may be authorized by agreement of the

parties or by the Court upon motion of any party pursuant to the provisions of Paragraph 6 below.

4. The use of the designation "Attorney's Eyes Only" shall be made only upon a good-faith assessment that the material covered by such designation represents confidential commercial information of such a sensitive nature that its dissemination cannot adequately be covered by the protections set forth in paragraph 2 above. The parties expressly agree that no documents, information, testimony, records, and/or discovery responses (or portions thereof) concerning or relating to any of the dentists/customers of FIRST Laboratories, LLC specifically identified on the list attached hereto, including but not limited to documents, information, testimony, records, and/or discovery responses concerning or relating to work solicited from and/or performed (directly or indirectly) for such identified dentists/customers will be designated "Attorney's Eyes Only" and hereby further agree that the same will be subject to full disclosure.

5. Nothing in this Confidentiality Stipulation and Order shall preclude a disclosure of information to any person who offered, prepared, previously had legal access to, was an addressee

of , received a copy of such information prior to the date of entry of this Stipulation and Order, or participated in the creation, compilation or production of such information.

6. In the event that any party desires that information designated as "Confidential" or "Attorney's Eyes Only" be disclosed, communicated, discussed, or made available to any person not otherwise authorized by this Confidentiality Stipulation and Order, the party wishing to disclose, communicate, discuss, or make available such information must submit to counsel for the designating party a written notice specifically identifying the information to be disclosed, and the name, title, and business relationship of the persons to whom counsel wishes to make such disclosure. Counsel for the designating party shall have 15 days from the date of receipt of the notification to object to the disclosure to any person identified therein. If counsel for the designating party does not respond in writing to the written notice of disclosure within 15 days after receipt thereof the persons named in the notice, subject to the terms and conditions of this Confidentiality Stipulation and Order, shall be entitled to receive the information specified in the notice, but no other materials subject to this Confidentiality Stipulation and Order. If any counsel for the designating party responds and objects to the disclosure request, and the parties subsequently are unable to agree on the terms and conditions of the requested disclosure, the party seeking disclosure may file a motion or letter with the Court, served on counsel for all other parties, setting forth the basis for seeking such disclosure, in which case, the requested disclosure shall only be made upon such terms as the Court shall provide.

7. A copy of this Confidentiality Stipulation and Order, together with the Acknowledgment agreeing to be bound by its terms in the form annexed hereto as Exhibit A, shall be delivered to each person within category 3 of paragraphs 2(c) and 3(d) above to whom disclosure of Confidential Information will be made. The provisions of this Confidentiality Stipulation and Order shall be binding upon each such person to whom disclosure is made. Counsel for the non-disclosing party shall obtain and retain a signed copy of said

Acknowledgment before any such person receives any Confidential Information.

8. Secondary documents, including but not limited to, notes, memoranda, analyses and briefs that are prepared from any materials described herein that contain Confidential Information shall be treated in the same fashion as the underlying materials.

9. If any party disputes the designation of information as "Confidential" or "Attorney's Eyes Only," the party disputing the designation shall serve counsel for the designating party a written notice specifically identifying the challenged designated and the factual and legal basis for the challenge. Counsel for the designating party shall have 15 days from the date of receipt of the notification to respond to the challenge. If counsel for the designating party does not respond in writing to the written notice of challenge of designation, then the party seeking to remove the designation may request relief from the Court upon notice to counsel for all parties. Until the Court resolves the dispute, all materials designated as "Confidential" or "Attorney's Eyes Only" shall be treated according to their designation. The party in whose favor such application or motion is resolved by the Court may, in the Court's discretion, be entitled to recover attorneys' fees and costs incurred in connection with such application or motion.

10. The provisions of this Confidentiality Stipulation and Order shall not be construed as preventing:

(a) any disclosure of Confidential Information by the parties designating the information as such in any such other action; or

(b) any disclosure of Confidential Information to any judge, law clerk or employee of this Court for purposes of this action.

11. Before filing with the Court any pleading, motion, application, memorandum of law, or other paper that in any manner quotes, paraphrases, attaches as an exhibit or otherwise discloses information that has been designated by another party as Confidential Information, the

party that intends to file such pleading, motion, application, memorandum of law or other paper, shall do so under seal or provide counsel for the designating party 15 days prior written notice specifically identifying the Confidential Information intended to be disclosed so that the designating party may make a sealing application to the Court pursuant to Local Rule 5.4 if the designating party deems that one is necessary. By way of this Order, the Court authorizes all parties to file documents and other information designated as confidential and/or "Attorney's Eyes Only" pursuant hereto under seal.

12. The inadvertent production of information or documents by either party or by a third party to any party for inspection and copying shall not itself be deemed to waive any claim of attorney-client privilege, or attorney work product protection that might exist with respect to such document or other documents or communication, written or oral, including with limitation, other communications referred to in the documents or information produced.

13. In the event any Confidential Information of a party or a third party is the subject a subpoena or court order requiring its disclosure, the recipient of the subpoena or court order will provide immediate notice to the disclosing party through its counsel. The recipient of the subpoena or court order shall not object to the disclosing party's appearance to protect its interest in maintaining the information as confidential. The recipient of the subpoena or court order will not respond to any such subpoena or court order until the disclosing party has a reasonable opportunity to seek appropriate relief from the Court, including but not limited to, a motion for a protective order.

14. Nothing in this Confidentiality Stipulation and Order shall preclude a party from offering Confidential Information and/or "Attorney's Eyes Only" information into evidence at the trial of this action.

15. Information received from persons or entities not a party to this action may be designated as "Confidential" or "Attorney's Eyes Only" by a party to this action. Inadvertent

disclosure of any document or information shall not operate as a waiver of confidentiality, and any party inadvertently disclosing such information without first designating the information as "Confidential" or "Attorney's Eyes Only" may do so upon learning of the disclosure. However, any dissemination or disclosure of such later-designated information shall not be deemed a violation of this Confidentiality Stipulation and Order until the information is designated as "Confidential" or "Attorney's Eyes Only."

16. Nothing in this Confidentiality Stipulation and Order shall be deemed to limit or constitute a waiver of any Party's right to object to the production of any information on the basis of privilege or for any other reason provided under applicable federal or state law.

17. All discovery materials, including, but not limited to, discovery material designated as "Confidential" and/or "Attorney's Eyes Only" , and all copies thereof shall be either destroyed or returned to the disclosing party or its counsel , per the disclosing party's instructions within, thirty (30) days of the conclusion of this litigation including any appeals. Counsel for the receiving party discovery materials shall certify in writing to counsel for the disclosing party that said discovery materials have been destroyed or returned per the disclosing party's instructions, or otherwise disposed of as ordered by the Court, within thirty (30) days of the conclusion of this litigation including any appeals.

Dated: Buffalo, New York
October , 2007

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DENTAL TECH LABORATORIES, INC.

Dated: Buffalo, New York
October , 2007

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Dated: Buffalo, New York
October , 2007

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Dated: Oklahoma City, Oklahoma
October , 2007

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Attorneys for Defendants

SO ORDERED:

Hon. Jeremiah J. McCarthy, U.S.M.J.

Dated: October , 2007
Buffalo, New York

IMTEC CORPORATION

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

TODD E. SHATKIN, et al,

Plaintiffs,

v.

Case No. 07-CV-0332(A)(Str)

ANDREW JAKSON, et al.,

Defendants.

AGREEMENT TO BE BOUND BY
CONFIDENTIALITY STIPULATION AND PROPOSED ORDER

I, _____ declare:

1. I am over the age of 18 years and have personal knowledge of the hereafter-stated facts.

2. My address is _____

3. My present employer is _____

and the address of my present employer is _____

4. My present occupation or job description is _____

5. I have received a copy of the Confidentiality Stipulation and Proposed Order ("Order") in this action.

6. I have carefully read and understand the provisions of the Order.

7. I hereby agree to be bound by the terms and conditions of this Order.

8. During the pendency and after final termination of this action and any related proceedings, I will hold in confidence and not disclose to anyone not qualified under the Order any "Confidential Information" (as such terms are defined in the Order) disclosed to me. I also agree to be subject to the personal jurisdiction of the United States District Court for the Western District of New York with regard to any proceedings relating to the enforcement of the Order.

9. I understand that any breach of this agreement may subject me to an action for civil damages and other relief arising therefrom.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this Declaration was executed on _____ 200__ at _____

[Print Name]

[Signature]

41152045

PRETERMINATION LIST OF FIRST LABORATORIES, LLC
DENTISTS/CUSTOMERS TO BY SUPPLIED BY PLAINTIFFS AND ATTACHED
UPON APPROVAL OF ORDER BY COURT (NOTE -- THIS WILL BE THE SAME
LIST ATTACHED AS AN EXHIBIT TO PLAINTIFFS' OUTSTANDING
DISCOVERY DEMANDS TO DEFENDANTS JAKSON AND DENTAL TECH)

DUKE, HOLZMAN, YAEGER & PHOTIADIS LLP
Gregory P. Photiadis, Esq. and
Matthew J. Beck, Esq.
1800 Main Place Tower
Buffalo, New York 14202
(716) 855-1111

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK**

TODD E. SHATKIN, DDS	)	
SAMUEL SHATKIN, DDS, MD	)	
	)	
Plaintiffs	)	
v.	)	
	)	
ANDREW JAKSON	)	
IMTEC CORPORATION	)	Case No.: 07-CV-0332A(M)
DENTAL TECH LABORATORIES, LLC	)	
and	)	
F.I.R.S.T. LABORATORIES, LLC	)	
	)	
Defendants	)	
	)	

**PLAINTIFFS' MEMORANDUM OF LAW: (1) IN FURTHER SUPPORT OF
PLAINTIFFS' MOTION TO COMPEL/QUASH; AND (2) IN OPPOSITION TO
DEFENDANT JAKSON AND DENTAL TECH'S MOTION FOR PROTECTIONS**

The central issue in this case concerns Todd Shatkin, DDS's termination of the Licensing Agreement principally as a result of alleged diversion and unauthorized practice of dentistry by defendant Jakson and Dental Tech, along with defendant Imtec's direction to ignore and condone the same. In connection with their discovery demands and subpoenas, plaintiffs listed known pre-termination dentists/customers of FIRST Lab and asked for specific documents and information relating to those customers in an effort to investigate and audit the full extent of the alleged wrongful conduct.

The defendants have now agreed that the information requested in the document demands, interrogatories and subpoenas to Jakson, Dental Tech and Lighthouse Models

will be produced in this litigation. (Jakson Subpoena Opp. MOL, pg. 1; Jakson Protective Order MOL, pg. 4). However, the defendants seek to limit substantially all of that production to “attorney’s eyes only” and have refused to exclude from that designation any and all documents, testimony and other information concerning or relating to work solicited from and/or performed for the identified FIRST Lab customers. In other words the defendants refuse to allow the plaintiffs to participate in the investigation of the alleged diversion and seek to limit their ability to confront their accusers.

Ironically, Jakson and Dental Tech state competition fears as the basis for their refusal. This basis is ironic because it was Jakson and Dental Tech’s competition and alleged diversion using this information that led to the termination of the Licensing Agreement and this litigation in the first place.

Moreover, such fears are unfounded because these identified customers are already known to plaintiffs and had repeated personal contact with the Shatkins. Plaintiffs are fully familiar with the type of work needed by these customers (which they personally worked with for several years) and the prices charged by Dental Tech (which are expressly stated on the Dental Tech solicitation package sent to FIRST Lab customers and generally standard in the industry). If Jakson and Dental Tech did not divert work for their own account as alleged (as they contend), the records and information requested without an “attorney’s eyes only” designation should simply reflect solicitations for and work performed for the identified dentists under the account of FIRST Lab, which work plaintiffs would already have knowledge of given that they were the reviewing/consulting dentists and accounting personnel for FIRST Lab up to the date of termination.

In reality, Jakson and Dental Tech have refused to allow production of this information without an “attorney’s eyes only” designation because they want to prevent the persons with personal knowledge of work performed for the account of FIRST Lab from participating in a full comparative investigation of their conduct and prevent them from discussing the full extent of the services solicited and provided by Jakson and Dental Tech with identified customers whom the Shatkins have a personal relationship with. The relief requested by defendants attempts to severely handicap plaintiffs’ investigation of the circumstances (*which is the sole reason defendants are requesting such relief*).

I. The Standard Which Must Be Met By Defendants

The standard pursuant to Fed. R. Civ. Proc. 26(c) in seeking a protective order states that: “the moving party is required to establish good cause by a ‘particular and specific demonstration of fact, as distinguished from stereotyped and conclusory statements.’” The Bank of New York v. Meridien Biao Bank Tanzania Limited, 171 F.R.D. 135, 143 (S.D.N.Y. 1997) (internal citations omitted). Although certain information may traditionally fall into categories warranting protection, whether it actually merits protection in the particular case depends upon four factors:

1. the extent to which information is known outside the business;
2. the extent to which information is known to those inside the business;
3. the measures taken to guard the secrecy of the information; and
4. the value of the information to the business and its competitors.

Id. (citing Sullivan Marketing, Inc. v. Valassis Communications, Inc., 1994 U.S. Dist. LEXIS 5824 at *4 (S.D.N.Y. 1994)).

“[C]ustomer lists are generally not considered confidential information.” Iron Mountain Information Management, Inc. v. Taddeo, 455 F. Supp. 2d 124, 138 (E.D.N.Y. 2006) (quoting H. Meer Dental Supply Co. v. Commisso, 269 A.D.2d 662, 664, 702 N.Y.S.2d 463, 465 (3rd Dept. 2000)). However, when it is claimed that customer information is confidential information qualifying as a trade secret then the customer information must be considered in light of the following six factors which track those required to obtain a protective order:

1. the extent to which the information is known outside of the business;
2. the extent to which it is known by employees and others involved in the business;
3. the extent of measures taken to guard the secrecy of the information;
4. the value of the information to the business and its competitors;
5. the amount of effort or money expended by the business in developing the information; and
6. the ease or difficulty with which the information could be properly acquired or duplicated by others.

Ashland Management Inc. v. Janien, 82 N.Y.2d 395, 407 (1993).

The common thread uniting the six factors of a trade secret is the element of secrecy. “[A] trade secret must first of all be a secret.” Id. “[A] substantial element of secrecy must exist, so that, except by the use of improper means, there would be difficulty in acquiring the information” Defiance Button Machine Co. v. C & C Metal Products Corp., 759 F.2d 1053, 1063 (2nd Cir. 1985); H. Meer Dental Supply Co., 269 A.D.2d at 664, 702 N.Y.S.2d at 465 (moving party must demonstrate that customers are not known in trade and information is only discoverable by extraordinary efforts). Something which first qualifies as a trade secret is entitled to protection as such only as long as it is maintained as a secret. “Accordingly, ‘the courts require that the possessor of a trade secret take reasonable measures to protect its secrecy.’” Defiance Button

Machine Co., 759 F.2d at 1063. “[U]pon disclosure, even if inadvertent or accidental, the information ceases to be a trade secret and will no longer be protected.” Id. (emphasis added).

In applying the trade secret factors, the factors are not necessarily given equal weight. “[T]he last factor [- ease of acquisition or duplication -] will, in almost all instances, be the most significant of the six.” Consolidated Brands Inc. v. Mondy, 638 F. Supp. 152, 156 (E.D.N.Y. 1986).

II. Defendants Cannot Meet The Standard – Full Production Should Be Compelled

In this case, the customer names and information defendants seek to designate as “for attorney’s eyes only” is not a “secret,” is already known to plaintiffs and is easily acquired by persons in the industry and the general public.

The names of these dentists are available to the public via basic internet research. The names of these dentists are also available to the general public via online and hard copy telephone books. The names of these dentists are also available via State licensing agencies and membership lists for various dental trade organizations.

In addition, defendant Imtec itself (a 1/3 member of FIRST Lab) has purposefully made the names of these dentists (and thousands more) available to the general public and competitors worldwide via its website. More specifically, Imtec has posted on its website a “locate a doctor” list containing thousands of dentists who are alleged to utilize mini-dental implants. Anyone can go on that website and view an alphabetical list of such dentists worldwide. (T. Shatkin Dec., Ex. A). The website contains thousands of names A-Z. There is no password protection or other security codes needed to obtain access to this website or the list.

Likewise, Jakson's company (1/3 owner) Foundation Milling made the list of FIRST Lab customers publicly available when it openly and purposefully published the same on this Court's docket (Docket # 21; J. Oppenheimer Aff., Ex. 1), which docket is available to the public at large and competitors.

It should also be noted that a significant portion of the customer names and information that the defendants now seek to protect as their own were derived by the Shatkins personally through their dental implant work in advance of FIRST Lab's creation and through educational programs that they participated in. Todd Shatkin, DDS has been placing implants and/or speaking on the subject for approximately 18 years. Samuel Shatkin, DDS, MD has been placing implants and/or performing other oral surgeries for more than 50 years. In addition, he has served as a lecturer at the University of Buffalo and as an officer and/or active member of numerous medical and dental trade organizations during his career. Todd Shatkin, DDS also started a website entitled minidentalimplants.com in advance of the creation of FIRST Lab for purposes of educating patients on dental implants and putting them in contact with dentists who perform these services. The point is that plaintiffs have personal relationships with many of the customers identified on the FIRST Lab list which caused them to become customers of FIRST Lab in the first place and it is disingenuous for defendants to assert that this customer base was a result of their efforts and/or is confidential or proprietary to them.

The alleged information of dentists/customers defendants now suddenly seek to protect over four (4) months after Samuel Shatkin FIRST, LLC began operation is not entitled to trade secret status and/or protections. As demonstrated, the information is

and has purposefully been made public and has not been guarded for secrecy. In addition, plaintiffs already have personal knowledge of these identified customers needs as they personally serviced them for years. Likewise, defendants' pricing information is contained in the solicitation package sent to the customers at issue (which plaintiffs' have a copy of) and are already generally known to plaintiffs (i.e. Samuel Shatkin, DDS, MD was the FIRST Lab Treasurer and paid hundreds of Dental Tech invoices during that time period).

Moreover, per the terms of the parties' agreements, FIRST Lab was to wind up its affairs upon the termination of the Licensing Agreement. In default of the agreements, the defendants have failed and refused to do so to date. That does not, however, automatically afford them a proprietary right in the alleged customer information of FIRST Lab's former customers. The defendants have not established that they have any right (let alone an exclusive right) to continue using the customer information post-termination. Likewise, the defendants have not established any right to continue using the name F.I.R.S.T., which trade name Todd Shatkin, DDS personally developed in advance of the creation of FIRST Lab when he first invented the patented procedure (i.e. *Fabricated Implant Restoration Surgical Techniques*). This trade name was licensed to FIRST Lab as part of the Licensing Agreement which was terminated by reason of defendants' material breach.

After the termination of the Licensing Agreement Samuel Shatkin, DDS, MD and Todd Shatkin, DDS had every right to contact the dentists/customers formerly served by FIRST Lab. To the extent that this customer information is alleged to be

confidential/proprietary (which plaintiffs dispute), per the terms of the Licensing Agreement such confidentiality would expire upon the termination of the Licensing Agreement (i.e. May 22, 2007). (Jakson Dec., Ex. B ¶ 11). FIRST Lab was to dissolve upon the termination of the Licensing Agreement, but the defendants have simply refused to do so. Their default and refusal does not eliminate plaintiffs ability to use such information.

In an effort to move this case forward, plaintiffs have included a revised Confidentiality Stipulation and Order with their papers which the plaintiffs are agreeable to executing provided that any and all documents, information and testimony concerning or relating to the identified customers of FIRST Lab are excluded therefrom under the terms set forth and not subject to any “for attorneys’ eyes only” designation. (Beck Aff., Ex. B). Defendants’ request for a protective order should be denied and they should be compelled to fully respond to plaintiffs’ discovery demands and subpoenas.

Dated: October 12, 2007
Buffalo, New York

DUKE, HOLZMAN, YAEGER
& PHOTIADIS LLP

By: /s/ Matthew J. Beck
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

TODD E. SHATKIN, DDS	)	Case No.: 07-CV-0332A(M)
SAMUEL SHATKIN, DDS, MD	)	
	)	
Plaintiffs	)	DECLARATION OF
v.	)	TODD SHATKIN, DDS
	)	IN (1) SUPPORT OF
	)	PLAINTIFFS' MOTION
ANDREW JAKSON	)	TO COMPEL/QUASH;
IMTEC CORPORATION	)	AND (2) RESPONSE TO
DENTAL TECH LABORATORIES, LLC	)	DENTAL TECH'S
and	)	MOTION FOR A
F.I.R.S.T. LABORATORIES, LLC	)	PROTECTIVE ORDER
	)	
Defendants	)	
	)	

[illegible]

TODD SHATKIN, DDS, under penalty of perjury, declares the following:

1. I am a named plaintiff in this action and a licensed dentist in the State of New York. I submit this declaration in further support of the motion to compel and quash filed by plaintiffs and in specific response to the responsive motion papers filed by counsel for Foundation Milling and counsel for Dental Tech and Andrew Jakson. This declaration is also submitted in opposition to defendant Jakson and Dental Tech's motion seeking discovery protections. Plaintiffs hereby incorporate by reference their motion to compel/quash, filed September 25, 2007, and the supporting declaration of Todd E. Shatkin, DDS, the declaration of Peter Wanat and plaintiffs' memorandum of law (Docket # 20).

A. Jakson and Dental Tech's Request For Protections Should Be Denied

2. The crux of Jakson and Dental Tech's motions and responses are that plaintiffs should be denied access to the names and information of dentists/customers

which FIRST Lab serviced prior to my termination of the Licensing Agreement and that the plaintiffs themselves should not be allowed access to any of Dental Tech's records and information as concerns work solicited from and/or performed (directly or indirectly) for dentists/customers identified on the list of FIRST Lab customers.

3. Defendants' motion is flawed on many levels.

(i) *The List Is Not A Protected Trade Secret*

4. First, it is preposterous for Jakson and Dental Tech to request that the Court preclude plaintiffs knowledge of, possession of and/or use of an alleged customer list and information based on competition fears. It was Jakson and Dental Tech's unlawful competition using this information that precipitated the termination in the first place. FIRST Lab, Dental Tech, Jakson and Intec have established no proprietary right in this information as of the date of the termination of the Licensing Agreement. Per the terms of the parties' agreements, FIRST Lab was to wind up its affairs upon the termination of the Licensing Agreement. In default of the agreements, the defendants have failed and refused to do so to date. That does not, however, automatically afford them a proprietary right in the alleged customer list. The defendants have not established that they have any right (let alone an exclusive right) to continue using the customer information post-termination. Likewise, the defendants have not established any right to continue using the name F.I.R.S.T., which trade name I personally developed in advance of the creation of FIRST Lab when I first invented the patented procedure (i.e. *Fabricated Implant Restoration Surgical Techniques*). This trade name was licensed to FIRST Lab as part of the Licensing Agreement which was terminated by reason of defendants' material breach.

5. Second, after the termination of the Licensing Agreement Samuel Shatkin,

DDS, MD and I had every right to contact the dentists/customers on that list. After internet research, the letters attached to Jakson's declaration were issued to those dentists and approximately 2,000 others. To the extent that these 1,100+/- names are alleged to be confidential/proprietary (which I do not believe they are), per the terms of the Licensing Agreement such confidentiality would expire upon the termination of the Licensing Agreement (i.e. May 22, 2007). (Jakson Dec., Ex. B ¶ 11). Moreover, FIRST Lab was to dissolve upon the termination of the Licensing Agreement, but the defendants have simply refused to do so. Their default and refusal does not eliminate our ability to use such information.

6. The names of these dentists are available to the public via basic internet research and via online and hard copy telephone books.

7. The names of these dentists are also available via State licensing agencies.

8. Likewise, the names of such dentists are available via numerous trade association membership lists, including but not limited to the American Dental Association, the Academy of General Dentistry, the American Academy of Cosmetic Dentistry, etc.

9. In addition, defendant Intec itself has purposefully made the names of most, if not all, of these 1,100+/- dentists (and thousands more) available to the general public and competitors worldwide via its website. Intec has posted on its website a list containing thousands of dentists worldwide who are alleged to utilize mini-dental implants. Anyone can go on that website and view an alphabetical list of such dentists worldwide. Attached hereto as **Exhibit A** is a copy of nationwide dentists listed on that website with last names beginning with the letter A. The website contains thousands of names A-Z. There is no password protection or other security codes needed to obtain

access to this website or the list. This example "A" list was printed by a law clerk associated with my attorneys' firm solely to establish to the Court that such information has been made publicly available.

10. Likewise, Jakson's company (1/3 owner) Foundation Milling made this list publicly available when it openly and purposefully published the same on this Court's docket (Docket # 21, J. Oppenheimer Aff., Ex. 1), which docket is available to the public at large and competitors.

11. Finally, it should also be noted that a significant portion of the customer names and information that the defendants now seek to protect as their own were derived by me and my father personally through our dental work in advance of FIRST Lab's creation and through educational programs that we participated in.

12. I have been placing implants for approximately 18 years and began speaking on the subject of implants at conferences and seminars in advance of FIRST Lab's existence and continue to do so. My father has been placing implants and performing other oral surgeries for more than 50 years. In addition, he has served as a lecturer and associate professor of surgery at the University of Buffalo and as an officer of several dental and medical trade organizations. I also started a website entitled minidentalimplants.com in advance of the creation of FIRST Lab for purposes of educating patients on dental implants and putting them in contact with dentists who perform these services throughout the nation. My father and I have personal relationships with many of the customers identified on the FIRST Lab list which caused them to become customers of FIRST Lab (and Imtec) in the first place. Defendants' knowledge of this fact is evidenced by the terms of the Licensing Agreement which called for me to provide referrals and customer names to Imtec. (Jakson Dec., Ex. B ¶ 10).

13. The alleged list of dentists/customer names and information defendants now seek to protect over four (4) months after my father started Samuel Shatkin FIRST, LLC is not entitled to trade secret protections.

14. No protections should be granted.

15. Defendants actions are a contrived attempt to avoid my termination of the Licensing Agreement principally as a result of Jakson and Dental Tech's diversion of business to their own account. Evidencing the same, now for the first time many years after I developed the patented technology, defendant Jakson now generically claims via a proposed Amended Answer that he actually invented the patented technology. Jakson played no role whatsoever in inventing the technology and procedure and this new after-the-fact position is clearly another desperate attempt to avoid the consequences of his wrongful diversion. Contrary to defendants' current position, the Licensing Agreement (which was signed by Jakson) expressly states that "Shatkin has conceived an idea and concept for fabricated implant restoration of teeth. . ." and refers to it as "his [Shatkin's] invention and intellectual property." (Jakson Dec., Ex. B).

(ii) No Information Concerning Or Relating To Work Solicited From Or Performed For The Identified Dentists/Customers Should Be Subject To A Protective Order

16. Defendants Jakson and Dental Tech also seek a Protective Order attempting to avoid the disclosure of information and documents to plaintiffs personally (i.e. "For Attorney's Eyes Only").

17. Surely my father and I are entitled to fully confront our accusers.

18. Documentation and testimony before the Court demonstrates that Jakson and Dental Tech actively solicited work from the identified FIRST Lab customers. The extensive solicitation package issued by Dental Tech is before the Court and demonstrates, among other things, that Dental Tech: (1) represented FIRST Lab as a "division of Dental Tech;" (2) issued blank lab scripts, mailing labels and coupons for submission of cases directly to Dental Tech; (3) undercut the prices of FIRST Lab; and (4) represented certain representatives of Dental Tech who are not licensed to be treatment planner(s) and implant specialist(s). (T. Shatkin, 9/24/07 Dec., Ex. D). Peter Wanat testified that he was specifically ordered by Jakson to send this Dental Tech solicitation package, among other things, to FIRST Lab customers. (Wanat Aff.).

19. Likewise, Dental Tech, Imtec and FIRST Lab issued misleading solicitations concerning my father and I to customers after the Licensing Agreement was terminated. Attached hereto as **Exhibit B** is a copy of a solicitation issued by defendants post-termination.

20. Plaintiffs are entitled to investigate the full extent of Jakson and Dental Tech's efforts to divert business for their own account. Such investigation will not only include a review of all of the documents produced by defendants as relates to these identified customers, but will also include contacting some or all of the identified dentists to determine the full extent of all work solicited and performed by Dental Tech, Foundation Milling and/or Lighthouse Models for these customers. Not being able to review documents or discuss these issues with counsel would severely handicap our ability to fully investigate the extent of Jakson's conduct and confront our accusers

(which is exactly why and the only reason defendants are seeking the requested protections).

21. These are customers that Samuel Shatkin, DDS, MD and/or I had personal contact and consultation with. Both Samuel Shatkin, DDS, MD and I are fully familiar with this sophisticated business and are in a better position to review the accuracy and extent of the technical services Dental Tech provided for its own account to these specific FIRST Lab customers.

22. As plaintiffs have repeatedly conveyed, in order to move things forward we are agreeable to designating information produced by Dental Tech and Jakson as confidential under the terms provided by my attorneys. However, we will not agree to any designation of documents, testimony or other information relating to identified FIRST Lab customers as “for attorneys’ eyes only.”

23. Defendants’ concern with the production of this information to plaintiffs and now their request for protections are telling.

24. Plaintiffs already have knowledge of the work Dental Tech performed for the account of FIRST Lab through the date of termination (i.e. Samuel Shatkin, DDS, MD was the consulting/reviewing dentist and performed accounting functions for FIRST Lab).

25. If Jakson and Dental Tech did not divert business from the identified customers as alleged, there would be no cause for concern (i.e. Dental Tech and Jakson would simply be turning over information already known to us personally - - work performed for the account of FIRST Lab).

26. To the contrary, Dental Tech and Jakson have fought for months to avoid turning over this information and now seek to do so only if the parties who have personal

knowledge of the work performed for the account of FIRST Lab and personal relationships with the identified customers are precluded from reviewing the same or otherwise participating in a full investigation and audit of the circumstances.

27. Defendants' request is unwarranted and is merely another attempt to hinder and avoid the complete audit plaintiffs' have been requesting for approximately eight (8) or more months (pre-termination and post-termination).

28. As indicated in the Affidavit of Matthew J. Beck, in order to move the case forward we will agree to a limited Confidentiality Stipulation and Order provided that any and all documents, information and testimony concerning or relating to the identified customers of FIRST Lab is excluded therefrom under the terms set forth and not subject to any "for attorneys' eyes only" designation. A copy of a revised Order is attached to the Affidavit of Matthew J. Beck at Exhibit B. Placing an "attorney's eyes only" designation on information pertaining to specifically identified dentists/customers serves no purpose as such customers and the services they need are already known. Defendants insist on such designation with respect to these known dentists/customers simply to hinder and handicap a fully informed audit by plaintiffs.

B. Plaintiffs' Motion to Quash Jakson And Dental Tech's Subpoena On M&T Bank Should Be Granted

29. Finally, defendant Jakson and Dental Tech's retaliatory subpoena served on M&T Bank should be quashed. In a harassing response to plaintiffs' efforts to conduct the requested audit, defendants Jakson and Dental Tech immediately served an extremely generic subpoena duces tecum upon M&T Bank seeking all open and closed account records of Aesthetic Associates Centre; MDI Center of America; XL Dent

knowledge of the work performed for the account of FIRST Lab and personal relationships with the identified customers are precluded from reviewing the same or otherwise participating in a full investigation and audit of the circumstances.

27. Defendants' request is unwarranted and is merely another attempt to hinder and avoid the complete audit plaintiffs' have been requesting for approximately eight (8) or more months (pre-termination and post-termination).

28. As indicated in the Affidavit of Matthew J. Beck, in order to move the case forward we will agree to a limited Confidentiality Stipulation and Order provided that any and all documents, information and testimony concerning or relating to the identified customers of FIRST Lab is excluded therefrom under the terms set forth and not subject to any "for attorneys' eyes only" designation. A copy of a revised Order is attached to the Affidavit of Matthew J. Beck at Exhibit B. Placing an "attorney's eyes only" designation on information pertaining to specifically identified dentists/customers serves no purpose as such customers and the services they need are already known. Defendants insist on such designation with respect to these known dentists/customers simply to hinder and handicap a fully informed audit by plaintiffs.

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Laboratories, LLC; International Academy of Mini Dental Implants; Samuel Shatkin, DDS, MD, PC and Samuel Shatkin FIRST, LLC.

30. This subpoena is technically defective as it does not contain the language required by Fed. R. Civ. Proc. 45(C) & (D). Moreover, entities named the International Academy of Mini Dental Implants and MDI Training Center do not exist and/or do not hold accounts at M&T Bank.

31. In addition, this subpoena is addressed to the accounts of entities that have no relationship to the issues at hand whatsoever.

32. Nowhere in their pleadings or supporting motion papers do the defendants affirmatively demonstrate how these various non-party entities or their bank records bear any relevance or relationship to this case whatsoever.

33. Defendants generically state that:

The counterclaims of Jakson and Dental Tech allege, inter alia, that Todd Shatkin and Samuel Shatkin diverted FIRST business away from FIRST and Dental Tech, that Todd Shatkin and Samuel Shatkin converted FIRST's monies and assets to their own use, that Todd and Samuel Shatkin engaged in acts of unfair competition, and that Samuel Shatkin overpaid himself as a FIRST consultant while he was the treasurer of FIRST.

(Jakson Opp. MOL, pg. 5-6).

34. Nowhere is any mention whatsoever made of Aesthetic Associates Centre; MDI Center of America; International Academy of Mini Dental Implants; and Samuel Shatkin, DDS, MD, PC. Nowhere is any demonstrative evidence put forth to support the basis for defendants' subpoenas as relates to these non-party entities. Moreover, Samuel Shatkin FIRST LLC did not even begin operation until after the termination of the Licensing Agreement and the institution of this litigation by plaintiffs. Also, neither Todd

Shatkin, DDS nor Samuel Shatkin, DDS, MD hold an interest in XL Dent Laboratories, LLC.

35. In addition, by way of recent responses to Dental Tech and Jakson's document demands and interrogatories, plaintiffs agreed to produce the records identifying all the funds paid to Todd Shatkin, DDS and Samuel Shatkin, DDS, MD via FIRST Lab. Likewise, plaintiffs are agreeable to producing copies of all pre-termination accounting records from FIRST Lab in their possession.

36. However, plaintiffs are not agreeable to producing the confidential bank records of other non-party entities which are wholly unrelated to this dispute.

37. Samuel Shatkin, DDS, MD, P.C. d/b/a Aesthetic Associates Centre is an entity that has been owned exclusively by and operated by my father Samuel Shatkin, DDS, MD since 1971. There are no specific allegations asserted in Dental Tech's counterclaims or motion papers concerning that entity whatsoever. That business includes medical services as well as dental services. Moreover, that company services and receives payment directly from patients (who are entitled to confidentiality) as opposed to other dentists and entities. The financial records requested in Jakson's generic subpoena request private/confidential commercial and financial information. Samuel Shatkin, DDS, MD, P.C. is entitled to privacy in its banking records as they bear no relevance to the present dispute and are confidential.

38. As to Samuel Shatkin FIRST, LLC, only if the defendants first establish that the termination was invalid should they be entitled to obtain any private financial information concerning Samuel Shatkin FIRST, LLC. This entity only began operation after the termination of the Licensing Agreement. Its financial records post-date the main issue in this case and only become relevant if their claim of wrongful termination first

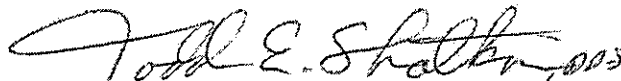
succeeds. This Court should therefore quash Jakson and Dental Tech's subpoena on this basis as well.

39. Finally, defendants' motion with respect to the Mini-Dental Implant Centers of America (i.e. the only other identified entity either plaintiff owns an interest in which does banking at M&T Bank) is also unfounded, speculative and completely unsupported on the present motion by any affirmative proof. That entity bears no relationship whatsoever to the dispute at hand. There is no mention of that entity whatsoever in Jakson and Dental Tech's counterclaims. Defendants served a subpoena requesting its bank records solely to annoy and harass plaintiffs. Thus, on this additional basis, defendant Jakson and Dental Tech's subpoena should be quashed.

WHEREFORE, plaintiffs request that the Court compel complete responses to the outstanding subpoenas issued by plaintiff; compel complete responses to the outstanding document demands plaintiffs issued to Jakson and Dental Tech; quash the subpoena issued to M&T Bank by defendant Jakson and/or Dental Tech; deny Foundation Millings' motion to quash the subpoenas issued to it and its bank by plaintiffs; and deny Jakson and Dental Tech's motion for protections.

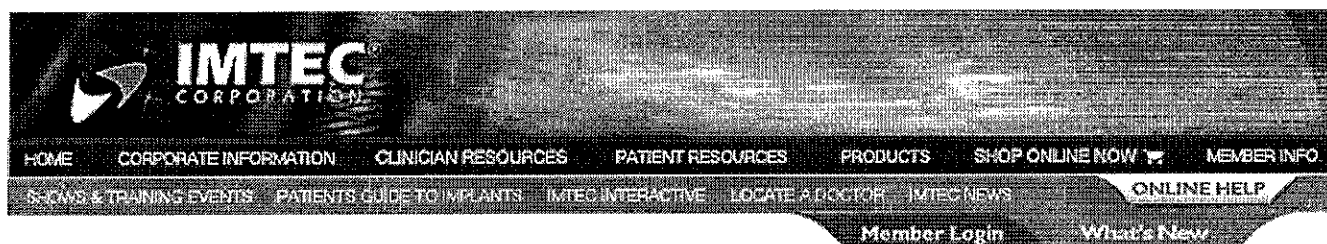
I declare under penalty of perjury that the foregoing is true and correct

Dated: October 15, 2007



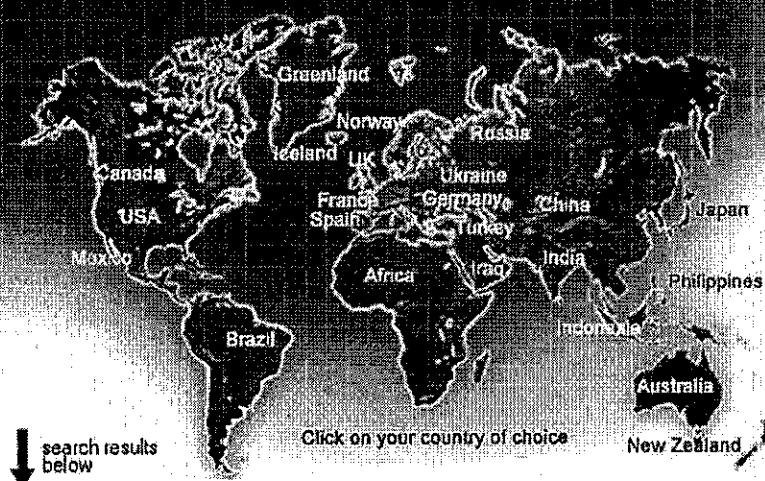
/s/ Todd E. Shatkin, DDS
Todd E. Shatkin, DDS

EXHIBIT A



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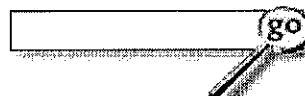
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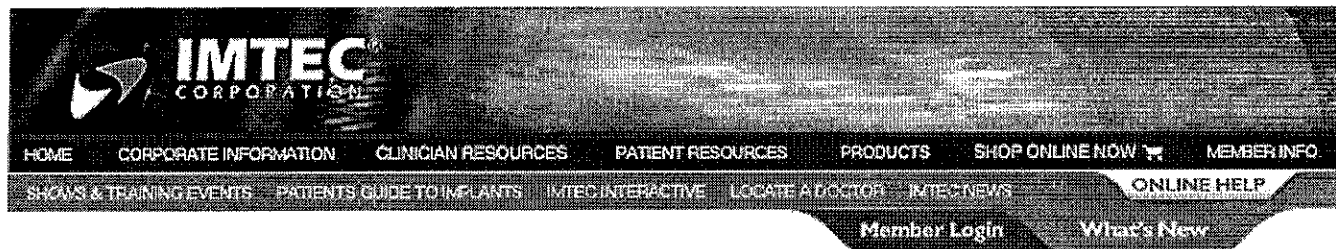
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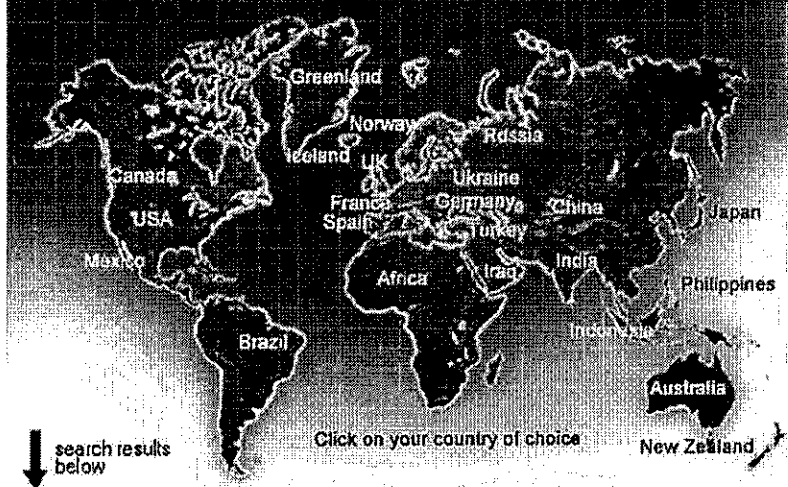


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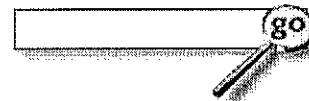
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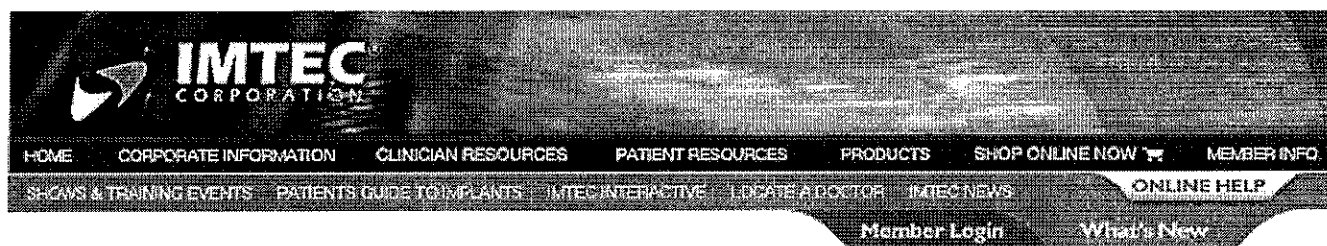
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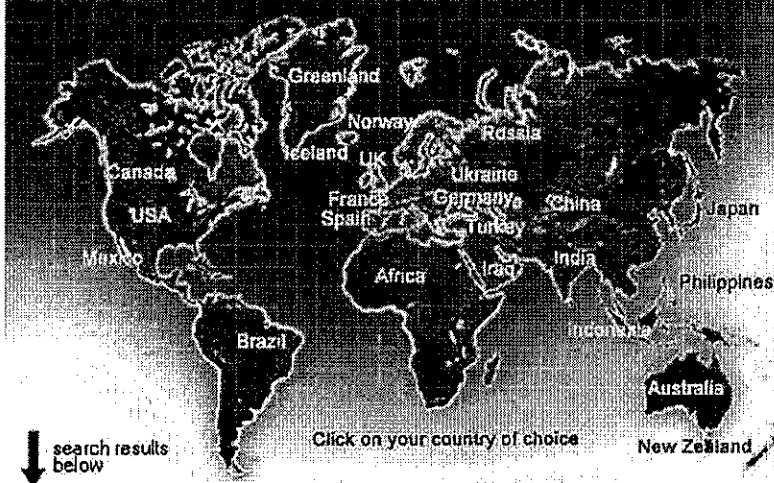


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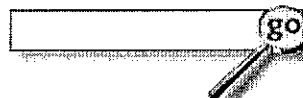
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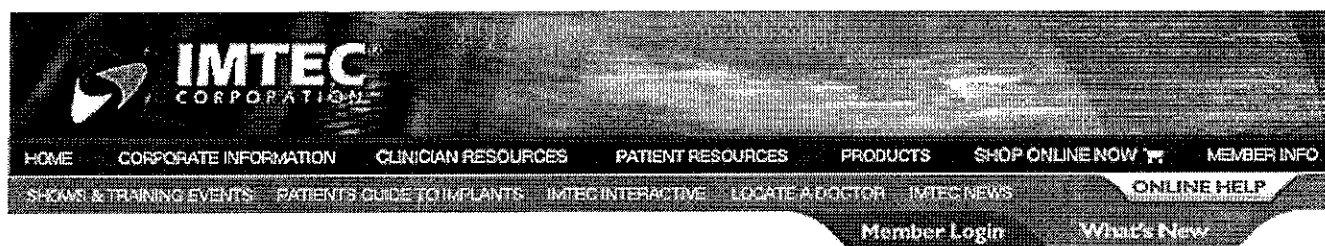
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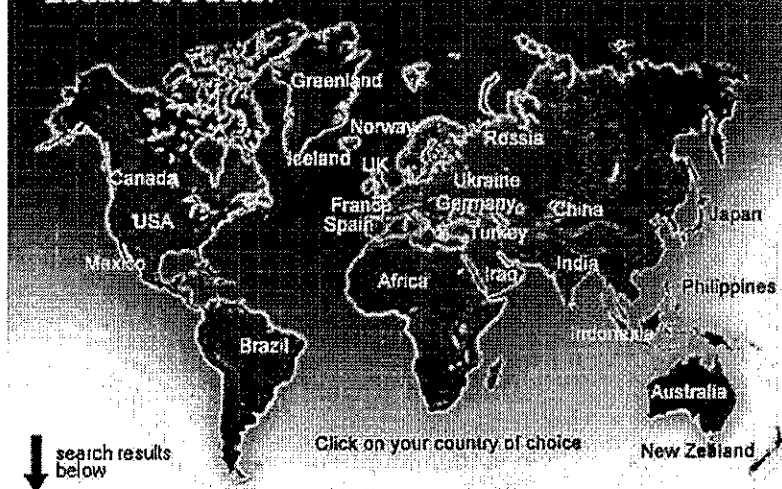


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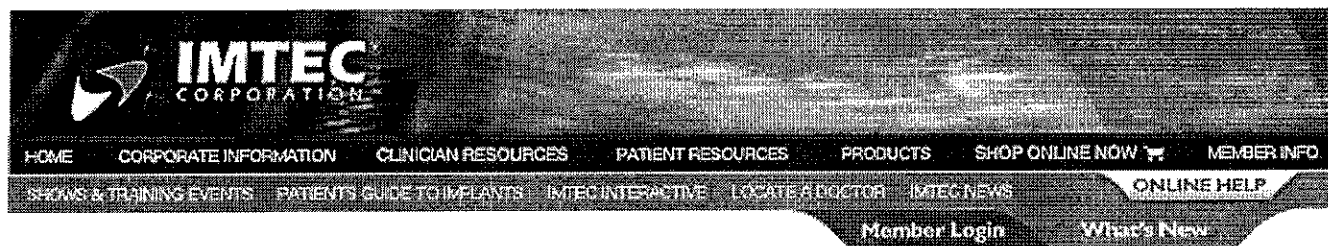
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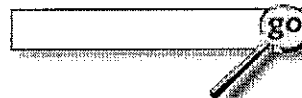
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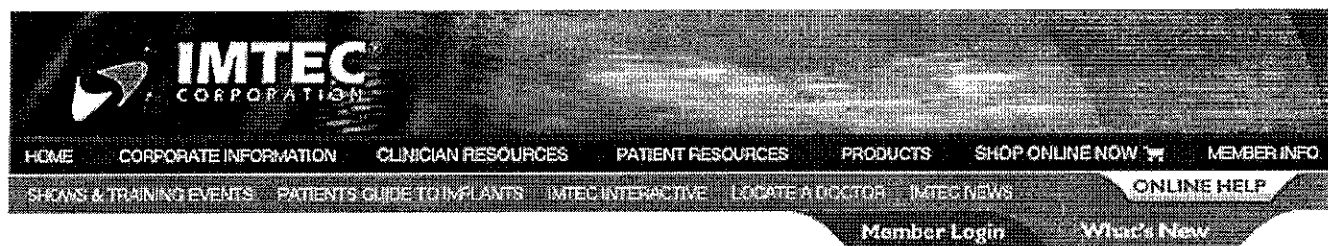
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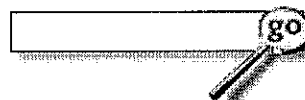
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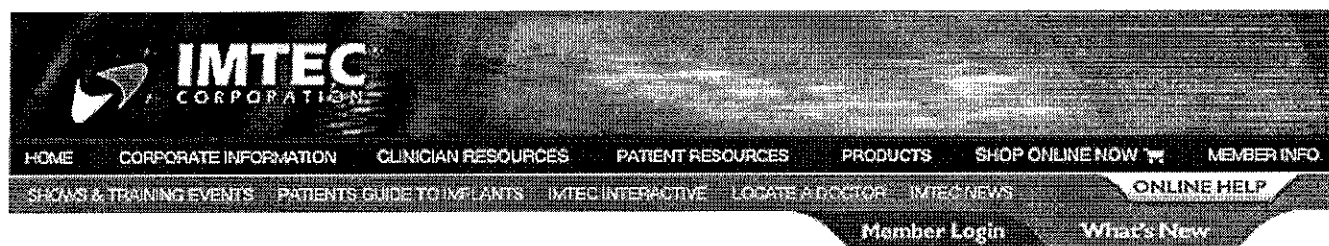
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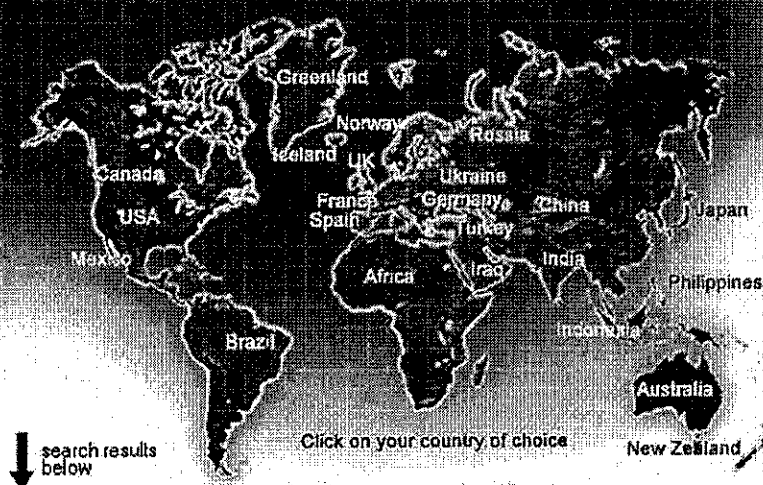


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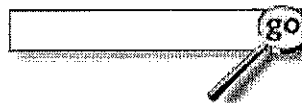
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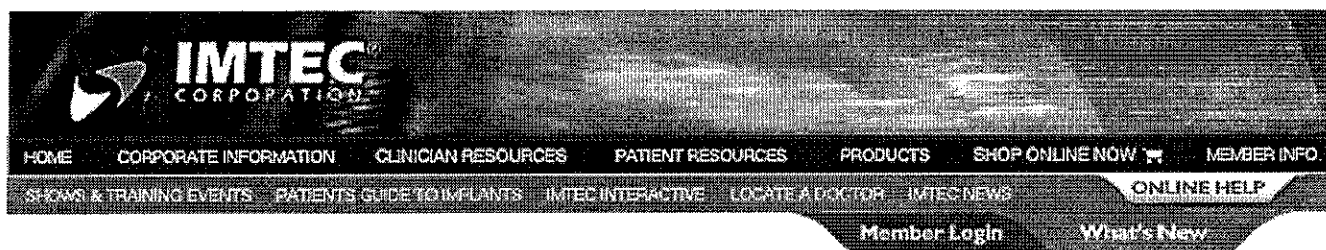
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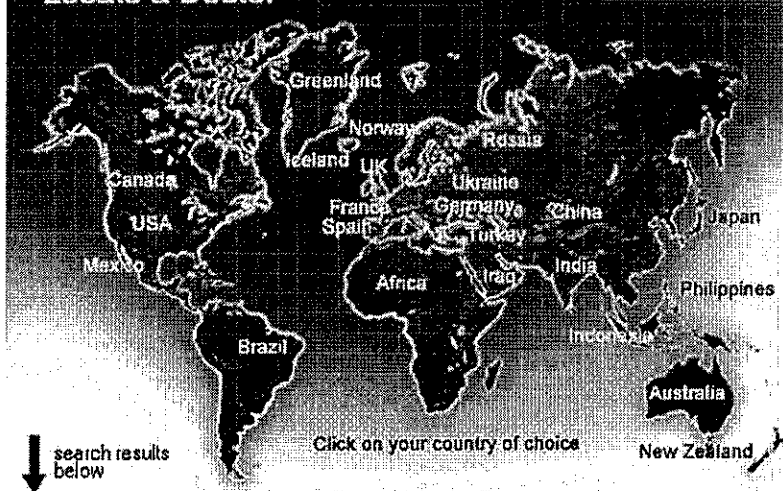


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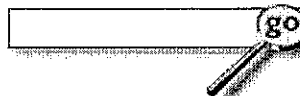
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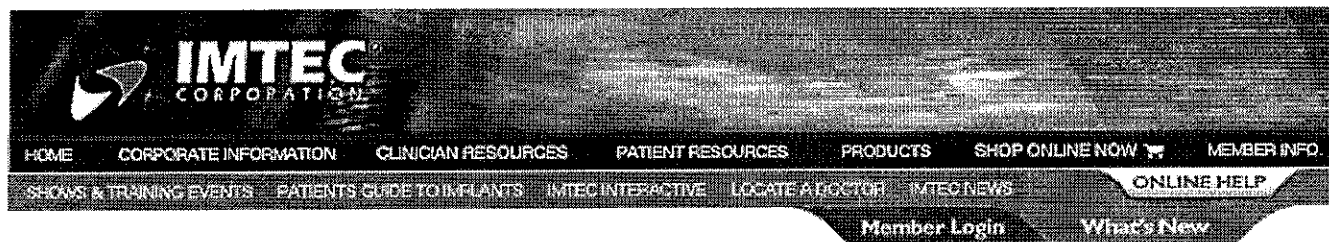
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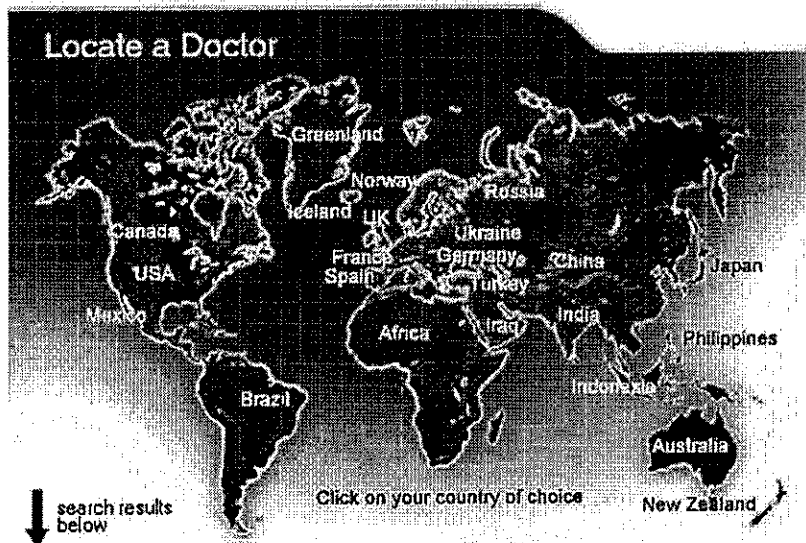


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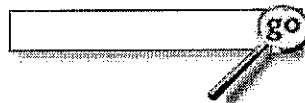
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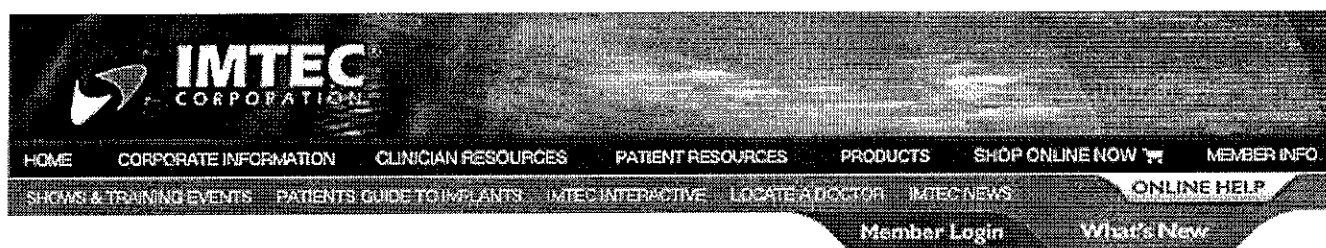
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Fax Number: 8585385463

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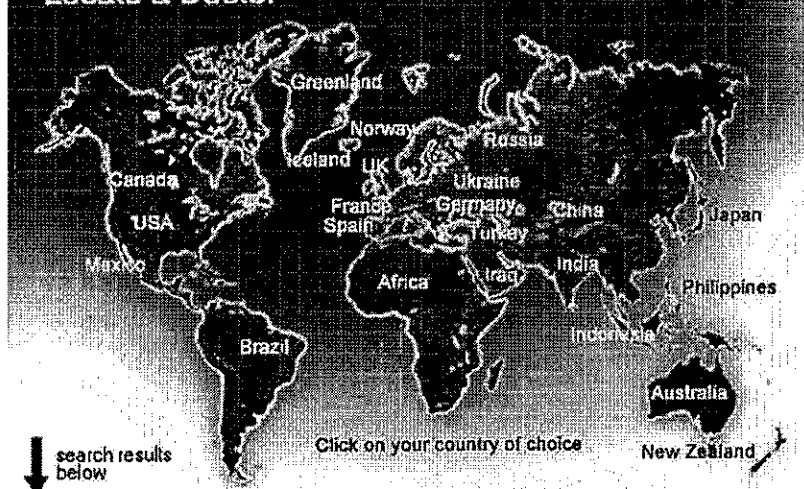


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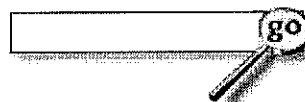
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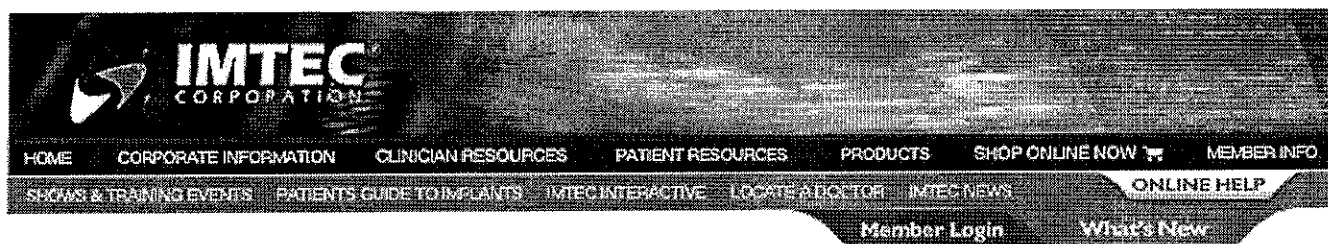
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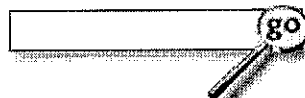
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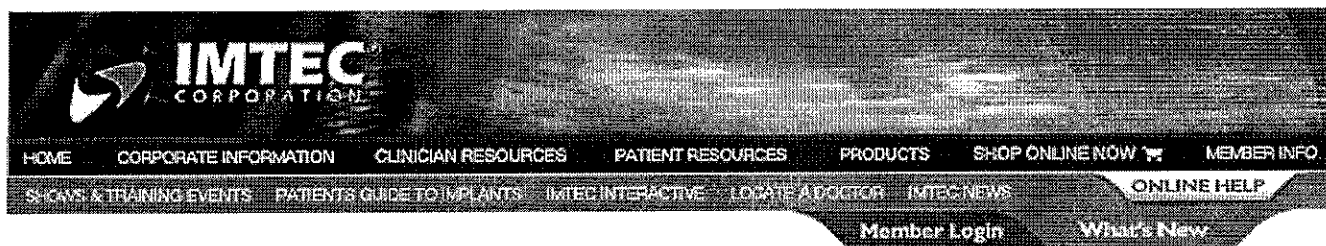
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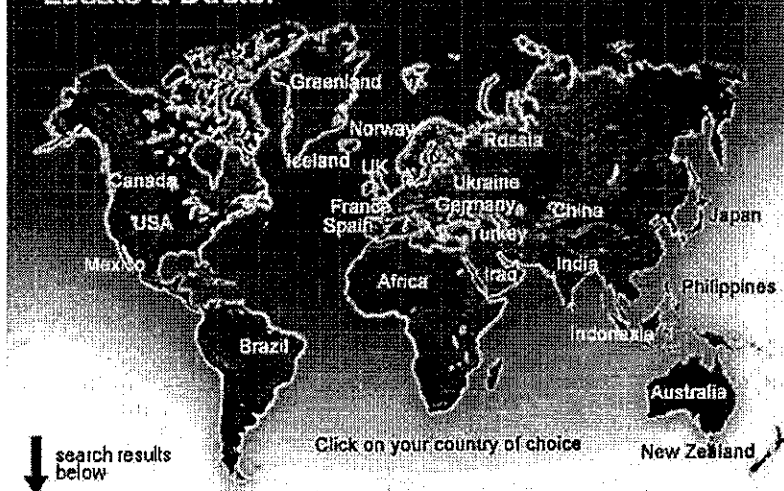


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(This doctor has attended an IMTEC Seminar)

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Ardmore, Oklahoma 73401
United States of America

Tel: 580-226-0410

New York
30 Central Park South, Suite 6B
New York, New York 10019
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Tel: 212-371-3488

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IMTEC Instructor
(This doctor has attended an IMTEC Seminar)

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New York, New York 10019
United States of America

Tel: 212-753-2775

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Stanley Asensio, Dr.
(This doctor has attended an IMTEC Seminar)

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Orlando, Florida 32837

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Telephone Number: 4074387177
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5801 telegraph RD,suite 1
toledo, Ohio 43612
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Telephone Number: 4194784440

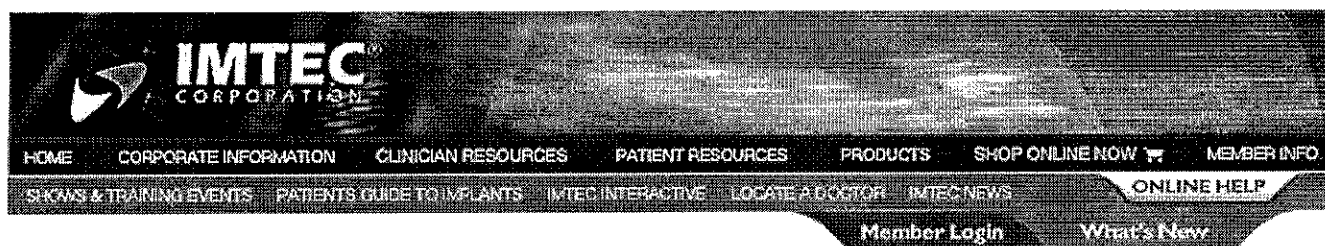
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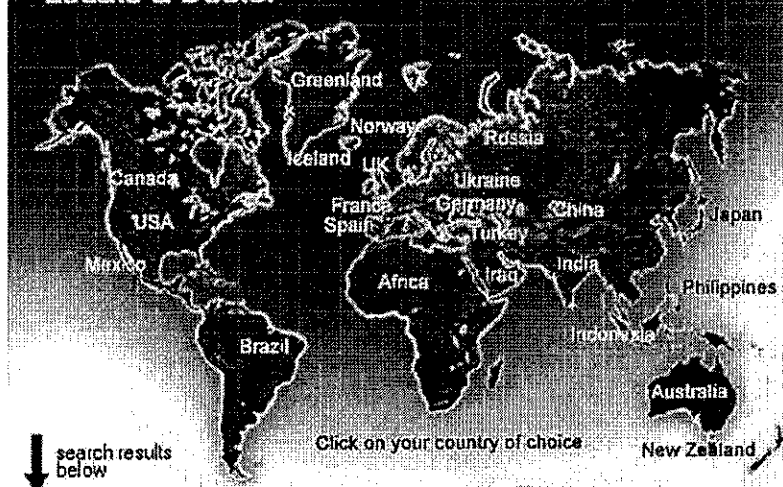


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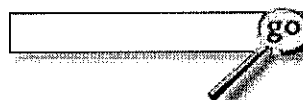
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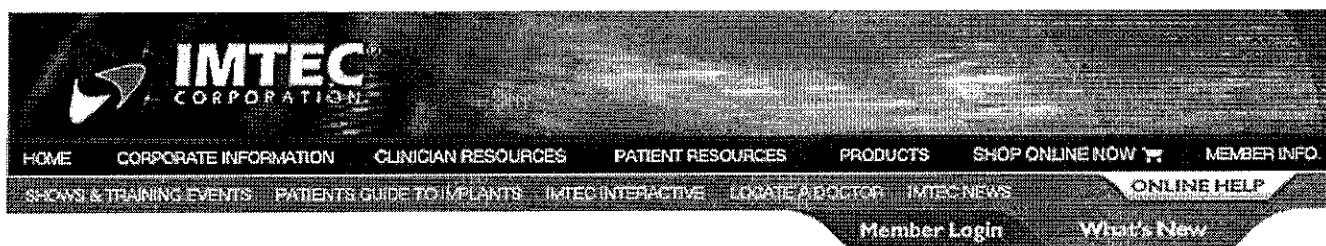
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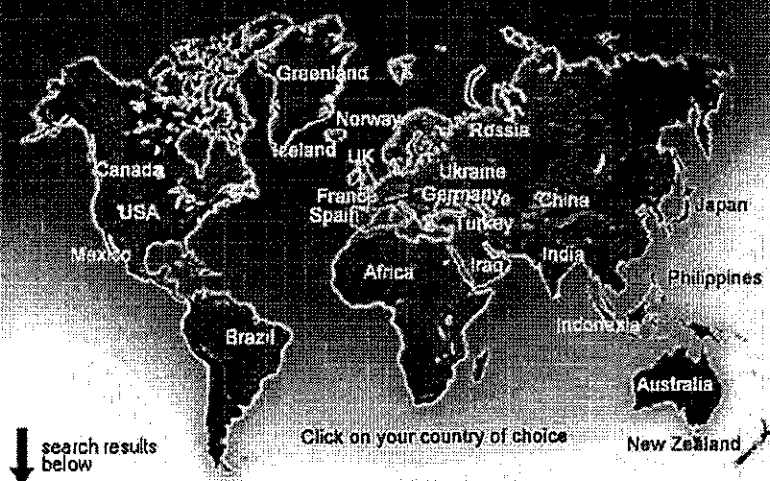


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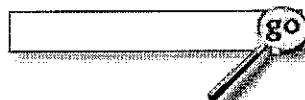
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Tel: 212-753-2775

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Fax Number: 7279430940

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Fax Number: 5862937350

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Telephone Number: 610-923-8340
Fax Number: 610-923-8342

EXHIBIT B

AN IMPORTANT UPDATE FROM F.I.R.S.T. LABORATORIES



"The original F.I.R.S.T. Labs works exclusively with long-term MDI implants."

Please allow us to clear up the confusion. Drs. Todd and Samuel Shatkin are no longer affiliated with F.I.R.S.T. Laboratories, LLC. They have formed a competing company, Samuel Shatkin FIRST, LLC, and now recommend transitional mini-implants instead of long-term IMTEC Sendax MDI implants. **Please read the following information carefully to ensure you are not unknowingly influenced to place an implant that may put you at risk of liability.**

The Intra-Lock "MDI" implant Shatkin FIRST now recommends is only accepted by the FDA as a transitional implant. That means under FDA guidelines, the Intra-Lock "MDI" implant can only be used for a maximum of one year after placement (see FDA 510K K021915 attached). Shatkin FIRST is also promoting the Intra-Lock "MILO" implant, which is only accepted by the FDA to stabilize dentures and replace central and lateral incisors (FDA 510K number K050970). These are critical details of which you as the treating clinician should be aware.

The IMTEC Sendax MDI implant is accepted by the FDA for long-term use. That means MDI implant treatment plans have no time restrictions (see FDA Sincerely, 510K K031106 attached). That is why the original F.I.R.S.T. Laboratories has always offered and will continue to offer services using IMTEC Sendax MDI implants.

We at IMTEC and F.I.R.S.T. Laboratories understand one of the most valuable services F.I.R.S.T. Labs provides is credible consultation. That's why Dr. Victor I. Sendax, developer of the IMTEC Sendax MDI implant, and Dr. Ronald Bulard, Chairman of the Board of IMTEC Corporation, are now ready to assist you as F.I.R.S.T. Laboratories case consultants.

Dr. Sendax and Dr. Bulard look forward to helping you find the same success with the IMTEC Sendax MDI system they have enjoyed for many years. We hope you enjoy the confidence that comes from knowing F.I.R.S.T. Labs technicians are guided by the knowledgeable and skilled Andrew Jakson, F.I.R.S.T. Labs Co-owner and Lab Director, and that as always, the original F.I.R.S.T. Labs works exclusively with long-term MDI implants.

Please place your F.I.R.S.T. Labs order today by calling 1-877-EASYMDI (327-9634) or by faxing your order to 716-839-8004.

CERTIFICATION OF SERVICE

I hereby certify that on October 15th, I electronically filed the foregoing Affidavit of Matthew J. Beck (1) In Support of Plaintiff's Motion to Compel; (2) In Response to Dental Tech's Motion for a Protective Order; and (3) in Opposition to Foundation Millings' Motion to Quash; Plaintiff's Memorandum of Law (1) In Further Support of Plaintiff's Motion to Compel/Quash; and (2) In Opposition to Defendant Jakson and Dental Tech's Motion for Protections; and Declaration of Todd Shatkin, DDS in (1) Support of Plaintiff's Motion to Compel/Quash; and (2) Response to Dental Tech's Motion for a Protective Order with the Clerk of the Western District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participants on this case:

Gregory Zini, Esq.
Damon & Morey
Attorneys for Defendants Jakson and Dental Tech
1000 Cathedral Place
298 Main Street
Buffalo New York 14202

Jeffrey C. Stravino, Esq.
Hodgson Russ LLP
Attorneys for Defendants Imtec and F.I.R.S.T. Laboratories, LLC
140 Pearl St., Suite 100
Buffalo, New York 14203

Randolph C. Oppenhiemer, Esq.
Attorney for Foundation Milling Centre, LLC
Oppenheimer Law Office
70 Niagara Street, Suite 108
Buffalo, NY 14222

I also certify that copies of the foregoing were served upon the following by Fed-Ex overnight delivery service:

HSBC Bank
Attn: Legal Processing
One HSBC Center
9th Floor
Buffalo, New York 14203

M&T Bank
Legal Document Processing
PO Box 844
Buffalo, NY 14240

/s/ Matthew J. Beck, Esq.

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