FEDERAL TRADE COMMISSION

[[File No. 951 0015]

Wright Medical Technology, Inc., et al.; Proposed Consent Agreement with Analysis to Aid Public Comment

AGENCY: Federal Trade Commission. **ACTION:** Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Tennessee-based research and development corporation to transfer to the Mayo Foundation, the licensor of the implant technology to Orthomet, Inc., a complete copy of all assets relating to Orthomet's business of researching and developing orthopaedic implants for use in human hands, and would also require Wright Medical Technology to obtain Commission approval before acquiring any interest in any firm that has received, or has applied for, Food and Drug Administration approval to market orthopaedic hand implants in the United States.

DATES: Comments must be received on or before March 6, 1995.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., N.W., Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Richard Dagen or Benjamin Tahyar, FTC/S-2627, Washington, D.C. 20580. (202) 326-2628 or 326-2889.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

In the Matter of Wright Medical Technology, Inc., a corporation, Kidd, Kamm Equity Partners, L.P., a limited partnership, Kidd, Kamm Investments, L.P., a limited partnership, and Kidd, Kamm Investments, Inc., a corporation.

The Federal Trade Commission ("Commission"), having initiated an investigation of the acquisition of all the outstanding shares of common and convertible preferred stock of Orthomet, Inc. ("Orthomet") by Wright Medical Technology, Inc. ("WMTI"), a subsidiary of Kidd, Kamm Equity Partners, Inc. ("KKEP"), KKEP's general partner, Kidd, Kamm Investments, L.P. . (''KKI''), and KKI's general partner, Kidd, Kamm Investments, Inc. ("KKI Inc."), and it now appearing that WMTI, KKEP, KKI, and KKI, Inc., hereinafter sometimes referred to as "Proposed Respondents," are willing to enter into an Agreement Containing Consent Order ("Agreement") to (i) divest and license certain assets, (ii) cease and desist from certain acts, and (iii) provide for certain other relief:

It is hereby agreed by and between Proposed Respondents, by their duly authorized officers and their attorneys, and counsel for the Commission that:

- 1. Proposed Respondent WMTI is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at 5677 Airline Road, Arlington, Tennessee 38002.
- 2. Proposed Respondent KKEP is a limited partnership organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at Three Pickwick Plaza, Greenwich, Connecticut 06830.
- 3. Proposed Respondent KKI is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located c/o Kidd, Kamm & Company, 9454 Wilshire Boulevard, Suite 920, Beverly Hills, California 90212.
- 4. Proposed Respondent KKI, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of Delaware, with its principal place of business located at Kidd, Kamm & Company, 9454 Wilshire Boulevard, Suite 920, Beverly Hills, California 90212.
- 5. Proposed Respondents admit all the jurisdictional facts set forth in the draft of complaint.
 - 6. Proposed Respondents waive:
 - (a) any further procedural steps;
- (b) the requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
- (c) all rights to seek judicial review or otherwise to challenge or contest the validity of the order pursuant to this Agreement; and

- (d) any claims under the Equal Access to Justice Act.
- 7. This Agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this Agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this Agreement and so notify the Proposed Respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

8. This Agreement is for settlement purposes only and does not constitute an admission by the Proposed Respondents that the law has been violated as alleged in the draft of complaint, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

- 9. This Agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of Section 2.34 of the Commission's Rules, the Commission may, without further notice to Proposed Respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint and its decision containing the following Order to divest and license and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the United States Postal Service of the complaint and decision containing the agreed-to Order to Proposed Respondents' addresses as stated in this Agreement shall constitute service. Proposed Respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the Agreement may be used to vary or contradict the terms of the Order.
- 10. Proposed Respondents have read the proposed complaint and Order contemplated hereby. Proposed Respondents understand that once the