

10-13-1998

Docket No.: NEX60

FORM PTO-1595 (Modified)
(Rev. 6-93)
OMB No. 0651-0011 (exp. 4/94)
Copyright 1994-97 LegalStar
P08/REV02



100848657

HEET

U.S. DEPARTMENT OF COMMERCE

Patent and Trademark Office

Tab settings

1998 OCT

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

md 10-6-98

1. Name of conveying party(ies):
Steve Creighton

2. Name and address of receiving party(ies)

Name: NeXstar Pharmaceuticals, Inc.

Internal Address: _____

Additional names(s) of conveying party(ies) Yes No

3. Nature of conveyance:

- Assignment Merger
- Security Agreement Change of Name
- Other _____

Street Address: 2860 Wilderness Place, Suite 200

City: Boulder State: CO ZIP: 80301

Execution Date: 08/15/94

Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration numbers(s):

If this document is being filed together with a new application, the execution date of the application is: _____

A. Patent Application No.(s)

B. Patent No.(s)

09/027,107
08/990,436

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Barry J. Swanson

Internal Address: _____

Street Address: SWANSON & BRATSCHUN, L.L.C.

8400 E. Prentice Avenue, Suite 200

City: Englewood State: CO ZIP: 80111

6. Total number of applications and patents involved: 2

7. Total fee (37 CFR 3.41):.....\$ 80.00

- Enclosed - Any excess or insufficiency should be credited or debited to deposit account
- Authorized to be charged to deposit account

8. Deposit account number:

22-0277

all ok

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Margaret M. Wall

Margaret M. Wall

Sept. 28, 1998

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments, and document: 7

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10/13/1998
01 FC:561
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PATENT
REEL: 9495 FRAME: 0880

ATTESTATION

I, Cheryl L. Hayes, hereby certify that I made the attached photocopy of a letter to Dr. Steven Creighton regarding CONFIDENTIALITY, INTELLECTUAL PROPERTY AND NONCOMPETITION signed by Patrick J. Mahaffey of NeXstar Pharmaceuticals, Inc. and accepted by Steven Creighton, Ph.D., from the original copy of said letter and that the attached photocopy is a true copy of the original.

Cheryl L. Hayes

STATE OF COLORADO)
COUNTY OF Boulder)ss.

This attestation was acknowledged before me this 8th day of September 1998, by Cheryl L. Hayes.

Witness my hand and official seal.

My Commission Expires: 4/7/2002



By: Cathryn A. Nelson
Notary Public

NEXAGEN

2860 Wilderness Place, Suite 200, Boulder, Colorado 80301
Phone: 303-444-5893 Fax: 303-444-0672

10 August, 1994

Dr. Steven Creighton
9799 E. Jewell Avenue, #204
Denver, CO 80231

RE: CONFIDENTIALITY, INTELLECTUAL PROPERTY, AND
NONCOMPETITION

Dear Steven:

This letter sets forth certain terms of the agreement between NeXagen, Inc. (the "Company") and you in connection with your employment by the Company. If you are in agreement with these terms, please sign and date the last page of one copy of this letter and return it to the Company, whereupon this letter shall represent a legally binding agreement between the Company and you. Please keep the other copy of this letter for your files.

A. Consideration.

As consideration for your employment by the Company and as a condition of your employment by the Company, you hereby agree to the following:

1. Confidentiality. You recognize and acknowledge that the Company's trade secrets, know-how, and proprietary processes as they exist from time to time (including, but not limited to, developments relating to commercial application of RNA, peptide, and/or DNA-based ligands generated utilizing technology similar to systematic evolution of ligands by exponential enrichment ("SELEX") or systematic evolution of polypeptides by reverse translation ("SPERT"), including mimetics of such molecules (the "Company's Initial Business")), as well as the Company's confidential business plans and financial data are valuable, special and unique assets (collectively, the "Proprietary Assets") of the Company's business, access to and knowledge of which are essential to the performance of your duties as an employee of the Company. In addition, you acknowledge that, as an employee of the Company, you may be given access to confidential information regarding the research of certain consultants or advisors to the Company and other scientists

who may enter into discussions with the Company ("Third Party Research"). You shall not, during or after your employment by the Company, in whole or in part, disclose such Proprietary Assets or Third Party Research to any person, firm, corporation, association, or other entity (except the Company, its officers, directors, employees, and consultants) for any reason or purposes whatsoever, nor shall you make use of any such Proprietary Assets or of any Third Party Research for your own purposes or for the benefit of any third party (except the Company) under any circumstances during or after the term of your employment. These restrictions shall not apply to such Proprietary Assets of the Company or Third Party Research which you can establish by competent proof:

(a) Were known to you, other than under a confidentiality obligation, prior to your employment by the Company.

(b) Have passed into the public domain prior to or after their development by or for the Company, or their disclosure to the Company, other than through acts or omissions attributable to you; or

(c) Were subsequently obtained, other than under a confidentiality obligation, from a third party rightfully in possession of the information.

Upon termination of your employment, you shall promptly return to the Company all originals and copies which you may have relating to any of the Company's Proprietary Assets or any Third Party Research. You will not disclose to the Company any confidential information, proprietary material, or trade secrets belonging to any current or former employer or any third party.

2. Intellectual Property. In partial consideration of the compensation paid by the Company for your services as an employee, you hereby sell, transfer, and assign to the Company, or to such other person or entity designated by the Company in writing, your entire right, title, and interest in and to all inventions, ideas, discoveries, and improvements (including, but not limited to, those related to the Company's Initial Business), whether patented or unpatented, and all materials subject to copyright, made or conceived by you, solely or jointly, during the course of your employment by the Company, whether or not conducted in the Company's

facilities, which relate to methods, apparatus, designs, products, processes, or devices sold, leased, used, or under consideration or development by the Company. You acknowledge that all copyrightable materials developed or produced by you within the scope of your employment constitute works made for hire. You shall communicate promptly and disclose to the Company, in such form as the Company may reasonably request, all information, details, and data pertaining to any such inventions, ideas, discoveries and improvements; and you shall execute and deliver to the Company such formal transfers and assignments and such other papers and documents and shall give such testimony as may be necessary or required to permit the Company to file and prosecute patent applications and, as to materials subject to copyright, to obtain copyright registration thereof.

3. Technical Records. Immediately upon the Company's request and promptly upon termination of your employment, you shall deliver to the Company all memoranda, notes, records, reports, photographs, drawings, plans, papers, or other documents made or compiled or made available during the course of your employment, and any copies or abstracts thereof, whether or not of a secret or confidential nature, and all of such memoranda and other documents shall, during and after the termination of your employment, be the exclusive property of the Company.

4. Noncompetition. For the term of your employment and for a period of two years thereafter, you shall not interfere with, disrupt, or attempt to disrupt the relationship (contractual or otherwise) between the Company and any of its customers, suppliers, lessors, lessees, employees, consultants, research partners, creditors, or investors. You further agree that, so long as you are an employee of the Company and for a period of two years thereafter, you shall not participate in any business (whether as an officer, director, owner, employee, partner, consultant, advisor, or other direct or indirect participant) engaged in the commercial exploitation of the Company's Initial Business, any similar technology, or any other business which competes with the business of the Company. You acknowledge and agree that this noncompetition covenant is necessary for the protection of the Company's trade secrets. It is the intent of the Company and you that the provisions of this paragraph be enforced to the fullest extent permissible under the laws and public policies of each jurisdiction in which enforcement is sought.

Accordingly, if any portion of this paragraph shall be adjudicated to be invalid or unenforceable, such portion shall be deleted only with respect to the operation of this paragraph in the particular jurisdiction in which such adjudication is made, and all remaining portions of this Agreement shall continue in full force and effect.

5. Enforcement. The Company and you agree that the Company would suffer irreparable harm from, and that the Company has no adequate remedy at law for, a breach of any of the covenants contained in this Agreement. Therefore, in the event of your actual or threatened breach of any of the provisions of this Agreement, the Company shall have the right to obtain specific performance or injunctive relief, in addition to any claim for damages, and to seek any other remedies available to the Company. In the event of any dispute arising in connection with this Agreement, the prevailing party shall be entitled to recover its expenses incurred in connection with such dispute, including reasonable attorney's fees, in addition to any other damages.

B. Rights Conferred.

Nothing contained in this Agreement shall be construed as giving you any legal or equitable rights against the Company or any subsidiary corporation or any director, officer, employee, or agent thereof, except for such rights as are expressly provided herein. Under no circumstances shall this Agreement be construed as a contract of continuing employment of you, nor shall this Agreement obligate the Company to continue your employment.

C. Miscellaneous Provisions.

1. The rights and obligations of you and the Company under this Agreement shall inure to the benefit of, and shall be binding upon, our respective successors and assigns; provided, however, that you may not assign this Agreement or any rights or obligations under this Agreement without the prior written consent of the Company.

2. This Agreement may be modified and any provisions may be waived only by a writing executed by both parties.

3. Any notice given under this Agreement shall be deemed delivered when delivered by hand or given by registered or certified mail addressed to the parties at their respective

Steven Creighton, Ph.D.

addresses set forth on the initial page of this Agreement or at such other address as you or the Company may provide to the other in writing from time to time.

4. This Agreement embodies the entire agreement between you and the Company and supersedes any prior or contemporaneous understandings between the parties.

5. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado, and any dispute arising in connection with this Agreement shall be submitted to the District Court of the 20th Judicial District, Boulder County, Colorado.

Please indicate your acceptance and approval of this Agreement in the space provided below.

NEXAGEN, INC.

By: Patrick J. Mahaffy
Patrick J. Mahaffy
President

ACCEPTED AND APPROVED this 15 day of August, 1994.

Steven Creighton
Steven Creighton, Ph.D.