

12-01-1998

FORM PTO- 595 (modified)

(Rev. 8-93)

OMB No. 0651-0011 (exp. 4/94)



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ER SHEET

U.S. DEPARTMENT OF COMMERCE

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Patent and Trademark Office

MRD
11/25/98

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

1. Name of conveying party(ies):

Monash University and Polychip Pharmaceuticals Pty. Ltd.Additional name(s) of conveying party(ies) attached? No

2. Name and address of receiving party(ies):

Name: Metabolic Pharmaceuticals Ltd.

Internal Address:

Street Address: 10 Wallace AvenueCity: Toorak, Victoria, State: Australia ZIP: 3142Additional name(s) & address(es) attached? No

3. Nature of conveyance:

☒ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☐ Other _____

Execution Date: August 17, 1998

4. Application number(s) or patent number(s):

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

A. Patent Application No.(s)

08/340,389

B. Patent No.(s)

Additional numbers attached? No

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

Name: Stephen A. BentInternal Address: FOLEY & LARDNERStreet Address: 3000 K Street, N.W., Suite 500City: Washington, State: D.C. ZIP: 20007-51096. Total number of applications and patents involved: 17. Total fee (37 C.F.R. § 3.41). \$40.00☒ Enclosed☐ Authorized to be charged to deposit account8. Deposit account number: 19-0741

(Attach duplicate copy of this page if paying by deposit account)

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FC:581

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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.*Stephen A. Bent

Name of Person Signing

Signature

November 25, 1998

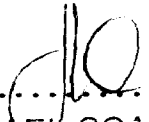
Date

Total number of pages including cover sheet, attachments, and document: 10

Mail documents to be recorded with required cover sheet information to:
 Commissioner of Patents & Trademarks, Box Assignments
 Washington, D.C. 20231

PATENT
 REEL: 9603 FRAME: 0142

I hereby certify that this is a true and correct
copy of the original Deed of Assignment
dated 17 August 1998.

.....


SHANE MICHAEL SCANLON

525 Collins St, Melbourne

MONASH UNIVERSITY

A General Practitioner within the
meaning of the Legal Practice Act 1996

POLYCHIP PHARMACEUTICALS PTY LTD
ACN 006 455 456

METABOLIC PHARMACEUTICALS LTD
ACN 083 866 862

DEED OF ASSIGNMENT

MINTER ELLISON

Lawyers
Rialto Towers
525 Collins Street
MELBOURNE VIC 3000

DX 204 Melbourne
Telephone (03) 9229 2000
Facsimile (03) 9229 2666
RKSJ BFO 1161399

DEED OF ASSIGNMENT

DEED dated

17 August

1998

BETWEEN **MONASH UNIVERSITY** of Wellington Road, Clayton, Victoria, Australia
(**'Monash'**)

AND **POLYCHIP PHARMACEUTICALS PTY LTD** ACN 006 455 456 of 10
Wallace Avenue, Toorak, Victoria, Australia (**'Polychip'**)

AND **METABOLIC PHARMACEUTICALS LTD** ACN 083 866 862 of 10
Wallace Avenue, Toorak, Victoria, Australia (**'Metabolic'**)

RECITALS

- A. Metabolic is a public company limited by shares incorporated in Victoria. Metabolic has on issue 10 fully paid ordinary shares of which 6 shares are held by Polychip and 4 shares are held by Monash.
- B. Monash is the applicant for various patent applications relating to the treatment of obesity (**'the Patents'**).
- C. Pursuant to a Research and Development Agreement and Assignment dated 5 March 1997 (**'the Monash and Polychip Agreement'**), Monash and Polychip agreed on a collaborative project in respect of further research into the treatment of obesity, as set out in patent application no. 77727/94 and corresponding overseas patent applications concerning a fragment of the human growth hormone, hGH177-191 and analogues thereof (the **'Obesity Project'**).
- D. In a private ruling dated 30 July 1998, the Commissioner of Taxation ruled that under the Monash and Polychip Agreement as then amended a partnership existed between Polychip and Monash within the meaning of section 995-1(1) of the *Income Tax Assessment Act* 1997 (Cth).
- E. Under the Monash and Polychip Agreement, Monash assigned to Polychip 40% of all right, title and interest in and to the Project Intellectual and Commercial Property as defined under the Monash and Polychip Agreement, including the Patents (and set out in the Schedule to this agreement) (**'the Project Intellectual and Commercial Property'**).
- F. By letters dated 18 and 19 February 1998, Monash and Polychip agreed to increase Polychip's interest in the Project Intellectual and Commercial Property to 55%, and by letter dated 10 July 1998, Monash agreed to increase Polychip's share of the Project Intellectual and Commercial Property to 60%, leaving Monash's share in the Project Intellectual and Commercial Property at 40%.
- G. Monash and Polychip have agreed to assign their respective interests in the Obesity Project, and in the Project Intellectual and Commercial Property including the Patents, to Metabolic on the terms and conditions of this Deed.

- H. Pursuant to the valuation by Acquity Technology Management Pty Ltd dated 17 August 1998 set out in the Annexure, the directors of Metabolic have adopted a value of the Project Intellectual and Commercial Property including the Patents of \$1,500,000.

AGREEMENT

1. ASSIGNMENT

- 1.1 Monash and Polychip agree to assign and dispose of to Metabolic and Metabolic agrees to acquire their respective right, title and interest in and to the Obesity Project and the Project Intellectual and Commercial Property, including without limitation, all of their respective right, title and interest in and to the Patents and to the inventions which are the subject of the Patents, including all rights of action whether past, present or future against any third party in respect of the Patents (collectively, '**Partnership Assets**').
- 1.2 Monash and Polychip acknowledge and agree that under the assignment in clause 1.1 each is disposing of its interest in all of the assets of the business carried on by the partnership between them constituted by the Monash and Polychip Agreement as amended.

2. CONSIDERATION

- 2.1 The sole consideration of the assignment in clause 1.1 is 194,999,990 fully paid ordinary shares in Metabolic, such shares to be issued as provided in clause 2.2.
- 2.2 Metabolic agrees to issue, and Polychip and Monash respectively agree to accept, the 194, 999,990 shares as follows:
- (a) to Polychip 116,999,994 shares (being 60% of those shares); and
 - (b) to Monash 77,999,996 shares (being 40% of those shares).
- ('**Consideration Shares**').

3. MUTUAL RELEASE BY POLYCHIP AND MONASH

- 3.1 Subject to clause 3.2, with effect on and from settlement, each of Monash and Polychip releases the other from all debts, obligations and liabilities (whether joint or several, whether actual, prospective or contingent and whether liquidated or sounding only in damages) whatever costs and expenses (including but not limited to legal expenses on a full indemnity basis) incurred by the other or to which the other is subject under the Monash and Polychip Agreement, as amended as described in recital F, including but not limited to any further commitment by Polychip to provide funding in respect of the Obesity Project.
- 3.2 Nothing in this Agreement affects the respective obligations of the parties under this deed.

4. SETTLEMENT

- 4.1 Settlement of the assignment in clause 1.1 will take place on 17 August 1998 at the offices of Minter Ellison, Level 23, Rialto Towers, 525 Collins Street, Melbourne, Victoria.
- 4.2 At settlement:
- (a) the assignment in clause 1.1 will take effect;
 - (b) Metabolic must issue to Polychip and Monash the Consideration Shares;
 - (c) Metabolic must issue to or as directed by Polychip and Monash share certificates for the Consideration Shares complying with the Corporations Law and enter Polychip and Monash in Metabolic's register of members as the respective holders of 116,999,994 and 77,999,996 of the Consideration Shares respectively;
 - (d) Metabolic's undertaking in clause 3.1 will take effect and Metabolic must discharge the relevant liabilities as and when they fall due; and
 - (e) Monash must deliver to Polychip a notice under Section 122-125 of the *Income Tax Assessment Act* 1997 (Cth) under which Monash chooses to obtain a rollover in respect of the assignment in clause 1.1.
- 4.3 The entry of Polychip and Monash in Metabolic's register of members in respect of the Consideration Shares as provided in clause 4.2(c) will be conclusive proof that settlement has occurred.

5. WARRANTIES

- 5.1 Monash and Polychip warrant to Metabolic as follows:
- (a) they are the owners of all right, title and interest in and to the Obesity Project and the Project Intellectual & Commercial Property, including without limitation, the Patents, and are entitled to transfer their said right, title and interest to Metabolic absolutely and free of all encumbrances;
 - (b) Monash and Polychip have not granted any option or right of pre-emption to any person in relation to the Obesity Project and the Project Intellectual & Commercial Property, including without limitation the Patents;
 - (c) until settlement Monash and Polychip will deal with their right title and interest in the Obesity Project and the Project Intellectual & Commercial Property, including the Patents in the ordinary and usual course and will all things necessary or desirable to preserve the value thereof;
 - (d) Monash and Polychip:
 - (i) do not require the consent of any person to make the assignment in clause 1.1 of this Deed;

- (ii) are not aware of any infringement of their right title and interest in the Obesity Project and in the Project Intellectual & Commercial Property, including the Patents;
- (iii) have not granted any licence or permission to exploit their right, title and interest in the Obesity Project and the Project Intellectual & Commercial Property, including the Patents;
- (e) no proceedings have been instituted of which Monash or Polychip are aware which challenge the validity of their right, title and interest in the Obesity Project and the Project Intellectual & Commercial Property, including the Patents;
- (f) the execution, delivery and performance of this Deed by Monash and Polychip has been duly and validly authorised by all necessary corporate action on their part and this Deed is a valid and binding agreement enforceable in accordance with its terms.

6. FURTHER ASSURANCES

- 6.1 Monash and Polychip must execute, at the request and expense of Metabolic, all documents and forms reasonably necessary to obtain Metabolic's registration as owner of the Patents, and any other assets included in the Partnership Assets where ownership or title is or can be signified by registration.

7. OTHER

- 7.1 This Deed may be executed in any number of counterparts.

- 7.2 This Deed is governed by the laws of the State of Victoria, Australia.

- 7.3 The parties acknowledge and agree that:

- (a) the Consideration Shares are non-redeemable;
- (b) the market value of the Consideration Shares that each of Polychip and Monash receives is substantially the same as the market value of its respective interest in the Partnership Assets, less any liabilities Metabolic undertakes to discharge in respect of that interest in the Partnership Assets.

SCHEDULE**PATENTS**

COUNTRY	APPLICATION NO/FILING DATE	STATUS
Australia	77727/94 - 10 November 1994	Accepted - grant pending
United States	08/340389 - 15 November 1994	Allowed - grant pending
Japan	307790/94 - 12 December 1994	Pending - awaiting examination
New Zealand	264912 - 14 November 1994	Granted
Canada	2135813 - 15 November 1994	Pending - awaiting examination
Australia	PO 9001/97 - 8 September 1997	Pending provisional application
Australia	PP 0398/97 - 13 November 1997	Pending provisional application

EXECUTED as a deed.

THE COMMON SEAL of MONASH)
UNIVERSITY is affixed in accordance with)
a resolution of the Council in the presence of)
)

✓ *[Signature]*
Acting Vice Chancellor and President

Peter L.P. Darvall
Name of signatory (print)

[Signature]
General Manager

Peter Brian Wade
Name of signatory (print)

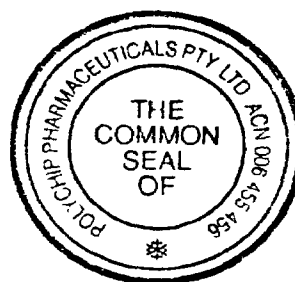
THE COMMON SEAL of POLYCHIP)
PHARMACEUTICALS PTY LTD is)
affixed in accordance with its articles of)
association in the presence of)

[Signature]
Secretary

LEON SERRY
Name of secretary (print)

[Signature]
Director

IAN R. DAVIS
Name of director (print)



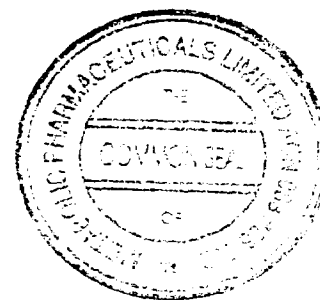
THE COMMON SEAL of METABOLIC)
PHARMACEUTICALS LTD is affixed in)
accordance with its constitution in the)
presence of)

[Signature]
Secretary

D. KENLEY
Name of secretary (print)

[Signature]
Director

C. BELYEA
Name of director (print)



ANNEXURE

VALUATION BY ACQUITY TECHNOLOGY MANAGEMENT PTY LTD