

01-31-2003

FORM PTO-1595 (MODIFIED)

(Rev. 6-93)

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



U.S. DEPARTMENT OF COMMERCE

Patent and Trademark Office

102353118

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

1. Name of conveying party(ies):

Akses Acquisition Group LLC

4370 La Jolla Village Drive, Suite 960

San Diego, California 92122

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

Name:

Dura Pharmaceuticals, Inc.

Internal Address:

Address

7475 Lusk Boulevard

Additional name(s) of conveying party(ies) attached?

☐ Yes☒ No

City: San Diego

State: CA

Zip: 92121

3. Nature of conveyance:

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

Execution Date: May 7, 1999

Additional name(s) and address(es) attached?

☐ Yes☒ No

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)

See Attached List

B. Patent No.(s)

See Attached List

Additional numbers attached? ☒ Yes ☐ No

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

Name: Michael J. Bevilacqua, Esquire

Internal Address: Hale and Dorr LLP

Street Address: 60 State Street

City: Boston State: MA Zip: 02109

6. Total number of applications and patents involved:

17

7. Total Fee (37 CFR 3.41)..... \$680.00

☐

Enclosed

☒

Charge fees to Deposit Account

Charge any additional fees associated with this paper or during the pendency of this application, or credit any overpayment, to deposit account.

8. Deposit account number:

08-0219

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

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

Michael J. Bevilacqua, Esquire

Name of Person Signing

Signature

Jan. 23, 2003

Date

01/30/2003 EDOOPER 00000090 000219 5716625

01 FC:0021

680.00 CH

Total number of pages including cover sheet, attachments, and document: 13

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents & Trademarks, Box Assignments

Washington, D.C. 20231

477.11.360

Hale and Dorr LLP Docket Number

BOSTON 1580761v1

PATENT
REEL: 013705 FRAME: 0735

<u>Country</u>	<u>Filing Date</u>	<u>Number</u>	<u>Expiration</u>
UNITED STATES	21 Dec 1994	5,716,625	10 Feb 2015
UNITED STATES (CIP)	20 Jun 1996	5,804,203	10 Feb 2015
PCT/UNITED STATES	23 Jun 1997	6,139,850	10 Feb 2015
UNITED STATES	10 Feb 1998	09/021,194	Pending
UNITED STATES	8 Sep 1998	09/149,886	Pending
UNITED STATES	22 Dec 1999	09/470,161	Pending
UNITED STATES	2 Feb 2000	09/496,619	Pending
UNITED STATES	10 Aug 2000	09/636,420	Pending
UNITED STATES	10 May 2001	09/853,828	Pending
UNITED STATES	26 Mar 2001	09/820,209	Pending
UNITED STATES	11 Apr 2001	09/833,221	Pending
UNITED STATES	31 Oct 2001	10/003,478	Pending
UNITED STATES	24 Oct 2001	10/033,194	Pending
UNITED STATES	1 Nov 2001	10/001,935	Pending
UNITED STATES	21 Nov 2001	09/992,491	Pending
AMINO ACID FORMULATIONS AND METHODS FOR REDUCING SKIN IRRITATION (United States)	3 Feb 1995	08/384,263	Pending
FORMULATIONS AND METHODS FOR REDUCING SKIN IRRITATION (United States)	23 Jun 1997	08/860,206	Pending

COPY

SECURITY AGREEMENT

This Security Agreement (the "Agreement") is entered into effective as of May 7, 1999 by and between Akcess Acquisition Group LLC, a Delaware limited liability company (the "Company"), and Dura Pharmaceuticals, Inc., a Delaware corporation (the "Secured Party").

WHEREAS, pursuant to that certain Secured Promissory Note and Warrant Purchase Agreement of even date herewith (the "Purchase Agreement") by and among the Company and the Secured Party, the Company has agreed to purchase from the Secured Party two (2) Secured Promissory Notes (the "Notes") issued by Cosmederm Technologies, Inc., a Delaware corporation ("Cosmederm"), in the aggregate principal amount of One Million Thirty-Five Thousand Dollars (\$1,035,000.00).

WHEREAS, as security for the payment of the Notes, Cosmederm granted to the Secured Party a first priority security interest in and lien on all of Cosmederm's tangible and intangible assets (the "Liens"), which Liens the Company has also agreed to purchase from the Secured Party pursuant to the Purchase Agreement.

WHEREAS, as partial consideration for the sale of the Notes, the Company has agreed to issue a Secured Promissory Note to the Secured Party effective as of the date hereof in the principal amount of \$645,000.00 (the "Company Note").

WHEREAS, as provided in the Purchase Agreement, in connection with the purchase of the Notes by the Company, the Company has agreed to grant to the Secured Party a first priority security interest in and lien on all of the tangible and intangible assets of the Company, whether now existing or hereafter acquired, as security for the timely payment and performance of all obligations of the Company contained in the Company Note and this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Creation of Security Interest. The Company hereby gives, grants and assigns to the Secured Party, its successors and assigns forever, a first priority security interest in and lien on all of the tangible and intangible assets of the Company, whether now existing or hereafter arising, including, without limitation, the following personal property of the Company (collectively, the "Collateral"):

(a) Accounts. All presently existing and hereafter arising accounts, contract rights and all other forms of obligations owing to the Company arising out of the sale or lease of goods or the rendition of services by the Company, whether or not earned by performance, and any and all credit insurance, guaranties and other security therefor, as well as all merchandise returned to or reclaimed by the Company.

(b) Books. All of the Company's books and records relating to the Collateral, including: ledgers, records indicating, summarizing or evidencing the Company's assets or

liabilities, or the Collateral; all information relating to the Company's business operations or financial condition; and all computer programs, disc or tape files, printouts, runs or other computer prepared information, and the equipment containing such information.

(c) Equipment. All of the Company's present and hereafter acquired machinery, machine tools, motors, equipment, furniture, furnishings, fixtures, motor vehicles, tools, parts, dies, jigs, goods (other than consumer goods or farm products), and any interest in any of the foregoing, and all attachments, accessories, accessions, replacements, substitutions, additions and improvements to any of the foregoing, wherever located.

(d) General Intangibles. All of the Company's present and future general intangibles and other personal property (including any choses or things in action, goodwill, patents, trade names, trademarks, service marks, blueprints, drawings, purchase orders, customer lists, monies due or recoverable from pension funds, route lists, infringement claims, computer programs, computer discs, computer tapes, literature, reports, catalogs, deposit accounts, tax refunds and tax refund claims) other than goods and accounts.

(e) Intellectual Property Collateral. The following properties and assets owned or held by the Company or in which the Company otherwise has any interest, now existing or hereafter acquired or arising:

(i) all patents and patent applications, domestic or foreign, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses, all rights to sue for past present or future infringement thereof, all rights arising therefrom and pertaining thereto and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof;

(ii) all copyrights and applications for copyright, domestic or foreign, together with the underlying works of authorship (including titles), whether or not the underlying works of authorship have been published and whether said copyrights are statutory or arise under the common law, and all other rights and works of authorship, all rights, claims and demands in any way relating to any such copyrights or works, including royalties and rights to sue for past, present or future infringement, and all rights of renewal and extension of copyright;

(iii) all state (including common law), federal and foreign trademarks, service marks and trade names, and applications for registration of such trademarks, service marks and trade names, all licenses relating to any of the foregoing and all income and royalties with respect to any licenses, whether registered or unregistered and wherever registered, all rights to sue for past, present or future infringement or unconsented use thereof, all rights arising therefrom and pertaining thereto and all reissues, extensions and renewals thereof;

(iv) all trade secrets, confidential information, customer lists, license rights, advertising materials, operating manuals, methods, processes, know-how, sales literature, drawings, specifications, blue prints, descriptions, inventions, name plates and catalogs; and

(v) the entire goodwill of or associated with the business now or hereafter conducted by the Company connected with and symbolized by any of the aforementioned properties and assets.

(f) Inventory. All present and future inventory in which the Company has any interest, including goods held for sale or lease or to be furnished under a contract of service and all of the Company's present and future raw materials, work in process, finished goods and packing and shipping materials, wherever located, and any documents of title representing any of the above.

(g) Negotiable Collateral. All of the Company's present and future letters of credit, notes, drafts, instruments, documents, leases and chattel paper.

(h) Other Collateral. Any money, deposit accounts, notes, drafts, instruments, chattel paper, or other assets of the Company which hereafter come into the possession, custody or control of the Secured Party.

(i) Proceeds. Any and all proceeds whether receivable or received from or upon the sale, lease, license, collection, use, exchange or other disposition, whether voluntary or involuntary, of any Collateral including "proceeds" as defined in Section 9306 of the California Uniform Commercial Code, any and all proceeds of any insurance, indemnify, warranty or guaranty payable to or for the account of the Company from time to time with respect to any of the Collateral, any and all other amounts from time to time paid or payable under or in connection with any of the Collateral, and all proceeds of such proceeds. Proceeds pursuant to this Agreement include (i) whatever is now or subsequently received by the Company upon the sale, exchange, collection or other disposition of any item of Collateral, whether such proceeds constitute inventory, accounts, accounts receivable, general intangibles, instruments, securities, credits, documents, letters of credit, chattel paper, documents of title, warehouse receipts, leases, deposit accounts, money, contract rights, goods or equipment and (ii) any such items which are now or subsequently acquired by the Company with any proceeds of the Collateral.

The foregoing security interest is given to secure the timely payment and performance of all obligations of the Company pursuant to the Company Note.

2. Perfection: UCC Filings. To perfect the security interest granted hereby, concurrently with the execution hereof, the Company shall execute and deliver to the Secured Party a UCC-1 financing statement describing the Collateral. The Secured Party shall file such financing statement on its own behalf to perfect the security interests granted hereby. Additionally, at any time and from time to time upon request of the Secured Party, the Company will execute and deliver such other instruments as are reasonably necessary to preserve, perfect, evidence or validate the security interest granted hereby.

3. Remedies. In case one or more of the Events of Default (as defined in the Company Note) shall have occurred, then, and in every such case, the Secured Party shall have the power to pursue all rights and remedies available to the Secured Party in law or in equity,

including, without limitation, all rights under the California Uniform Commercial Code and all the rights specified in this Agreement and the Company Note.

4. Covenants of the Company. The Company covenants and agrees that:

(a) Maintenance of Collateral. The Company will properly maintain, preserve, protect and care for the Collateral.

(b) Sale or Other Disposition of Collateral. The Company will not sell, transfer, license, trade or otherwise dispose of the Notes or the Liens or any other assets or property the Company obtains as a result of the foreclosure of the Liens without the prior written consent of the Secured Party, which consent may be withheld for any reason or for no reason in the Secured Party's sole discretion. Except in the ordinary course of business, the Company will not sell, transfer, license, trade or otherwise dispose of any of the remaining Collateral without the Secured Party's prior written consent, which shall not be unreasonably withheld.

(c) Change in Company. The Company will provide Secured Party with at least thirty (30) days prior written notice of any change of the Company's name, identity or corporate structure.

(d) Payment of Taxes. The Company will pay, prior to delinquency, all taxes, liens and assessments which are levied or assessed against the Collateral.

(e) Liens. The Company will keep the Collateral free of all liens, claims and encumbrances other than the liens, claims and encumbrances in favor of the Secured Party created by this Agreement.

5. Company's Representations and Warranties. The Company represents and warrants to the Secured Party that: (i) except as specifically set forth in this Agreement, there are no security interests, financing statements, liens, encumbrances, possessory interests or adverse claims of title to the Collateral, or any portion of it; (ii) the Company will not at any time after the date of this Agreement take any action to further encumber the Collateral; and (iii) to the knowledge of the Company, neither the execution and delivery of this Agreement by the Company nor the consummation of the transactions herein contemplated nor the fulfillment of the terms hereof will result in a breach of any of the terms or provisions of, constitute a default under or constitute an event which with notice or lapse of time or both will result in a breach of or constitute a default under, any agreement, indenture, mortgage, deed of trust, equipment lease, instrument or other document to which the Company is a party, or conflict with any law, order, rule or regulation applicable to the Company of any court or any federal or state government, regulatory body or administrative agency, or any other governmental body having jurisdiction over the Company or its properties.

6. General Provisions.

(a) Incorporation By Reference. The recitals contained herein are incorporated herein by reference as if set forth in full herein.

(b) Notices. All notices, requests, demands, directions and other communications provided for hereunder (a "Notice") must be in writing and must be sent via certified mail (return receipt requested), personally delivered or sent by overnight courier to the appropriate party at its, his or her respective address set forth below or, as to any party, at any other address as may be designated by it in a written notice sent to the other parties in accordance with this paragraph. If any Notice is given by mail it will be effective three (3) calendar days after being deposited in the mails with postage prepaid; if given by overnight mail, when delivered as evidenced by a receipt or if given by personal delivery, when delivered.

If to the Company: Akcess Acquisition Group LLC
Attention: Joseph D. Pike
4370 La Jolla Village Drive, Suite 960
San Diego, California 92122
Telephone: (619) 642-7515
Facsimile: (619) 642-0322

with a required copy to: Zevnik Horton Guibord McGovern Palmer & Fognani, L.L.P.
Attention: Kenneth D. Polin, Esq.
101 West Broadway, 17th Floor
San Diego, California 92101
Telephone: (619) 515-9600
Facsimile: (619) 515-9628

If to the Secured Party: Dura Pharmaceuticals, Inc.
Attention: Vice President, Finance
7475 Lusk Boulevard
San Diego, California 92121
Telephone: (858) 457-2553
Facsimile: (858) 457-2555

with a required copy to: Dura Pharmaceuticals, Inc.
Attention: General Counsel
7475 Lusk Boulevard
San Diego, California 92121
Telephone: (858) 457-2553
Facsimile: (858) 457-2555

(c) Headings. The captions and section headings used in this Agreement are inserted for convenience of reference only and are not intended to define, limit or affect the interpretation or construction of any term or provision hereof.

(d) Entire Agreement. This Agreement, together with all exhibits attached hereto and other agreements expressly referred to herein, constitutes the entire agreement between the parties regarding the subject matter hereof. All prior or contemporaneous agreements, understandings, representations, warranties and statements, oral or written, relating to the subject matter hereof are superseded.

(e) Modification; No Waiver. No modification, amendment, waiver or discharge of any term of this Agreement shall be valid unless the same is in writing and signed by both the Company and the Secured Party. No failure of the Company or the Secured Party to enforce its rights, remedies or options shall be deemed to be a waiver of any of its rights, remedies or options hereunder or at law, nor shall any single or partial exercise of any right, remedy or option by the Company or the Secured Party preclude, waive or otherwise affect any other or future exercise thereof or the exercise of any other right, remedy or option, and the Company and the Secured Party may at any time that a default or breach exists or continues to exist, enforce any or all of its rights, remedies and options arising by reason of such or any other default.

(f) Severability. If any term, provision, covenant or condition of this Agreement is held to be invalid, void or otherwise unenforceable, to any extent, by any court of competent jurisdiction, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(g) Arm's Length Agreement. This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each party has been represented by experienced and knowledgeable legal counsel. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to effect the purpose of the parties and this Agreement.

(h) Governing Law. This Agreement shall be governed, construed and enforced in accordance with the laws of the State of California as applicable to contracts made wholly between residents of California, regardless of the laws that otherwise may be applicable under principles of conflicts of law.

(i) Successors and Assignment. The Company may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the Secured Party, which consent may be withheld for any reason or for no reason in the Secured Party's sole discretion. Subject to the foregoing, all terms of this Agreement shall be binding upon, inure to the benefit of, and be enforceable by the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

(j) Further Assurances. The parties agree to take such further action and execute such documents and instruments as may reasonably be required in order to more effectively carry out the terms of this Agreement and the intentions of the parties.

(k) Attorney's Fees. In the event any action is brought for enforcement or interpretation of this Agreement, the prevailing party shall be entitled to recover reasonable attorney's fees and costs incurred in said action, including enforcement and collection of any judgment or award rendered therein. Said costs and attorney's fees shall be included as part of the judgment in any such action.

(l) Counterparts; Facsimile. This Agreement may be executed in one or more identical counterparts, all of which shall together constitute one and the same instrument when each party has signed one counterpart. To the maximum extent permitted by applicable law, this Agreement may be executed by facsimile, with original signature pages to follow by overnight courier.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

Company

AKCESS ACQUISITION GROUP LLC,
a Delaware limited liability company

By: Akcess Pacific Group, LLC,
a California limited liability company

By: 
Joseph D. Pike, Manager

Secured Party

DURA PHARMACEUTICALS, INC.,
a Delaware corporation

By: _____
Erle T. Mast, Vice President, Finance

[Signature Page to Security Agreement]

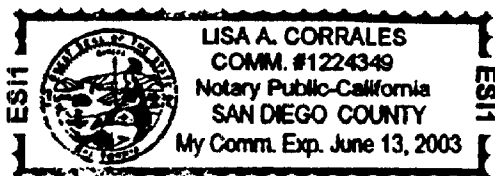
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ACKNOWLEDGMENT FOR SIGNATURE OF COMPANY

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

On Sept. 27 1999, before me, LISA CORRALES, Notary Public, personally appeared Joseph D. Pike, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.



[SEAL]

Joseph D. Pike
Signature

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first above written.

Company

AKCESS ACQUISITION GROUP LLC,
a Delaware limited liability company

By: Akcess Pacific Group, LLC,
a California limited liability company

By: _____
Joseph D. Pike, Manager

Secured Party

DURA PHARMACEUTICALS, INC.,
a Delaware corporation



By: _____
Erle T. Mast, Vice President, Finance

[Signature Page to Security Agreement]

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ACKNOWLEDGMENT FOR SIGNATURE OF SECURED PARTY

STATE OF CALIFORNIA)
) SS
COUNTY OF SAN DIEGO)

On Oct 2, 1999, before me, Bonnie B. Nelson Notary Public, personally appeared Erle T. Mast, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/~~she~~ executed the same in his/~~her~~ authorized capacity, and that by his/~~her~~ signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Bonnie B. Nelson
Signature

[SEAL]

