

FORM PTO-1595
(Rev. 6-93)
OMB No. 0651-0011 (exp. 4/94)

ENT OF COMMERCE
ademark Office

Please record the attached original documents or copy thereof.

1. Name of conveying party(ies)
Ordway Research Institute, Inc.

1-28-03

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:

- ☐ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☒ Other: License and Assignment Agreement

Execution Date: September 17, 2002

2. Name and address of receiving party(ies)

Name: CLF Medical Technology Acceleration Program, Inc.
Internal Address:

Street Address: 747 Pierce Road
Clifton Park, New York, 12065

Additional name(s) & addresses(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. U.S. Patent Application No.(s)

60/331,841 filed 11/20/01

60/340,926 filed 12/07/01

(now U.S.A.N. 10/300,531, filed 11/20/02)

B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

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

Name: Ivor R. Elrifi, Esquire
Address: MINTZ, LEVIN, COHN, FERRIS
GLOVSKY and POPEO, P.C.
One Financial Center
Boston, MA 02111

6. Total number of applications and patents involved:

7. Total fee (37 CFR 3.41).....\$ 40.00

☒ Enclosed

☐ The Commissioner is authorized to charge
the undersigned's Deposit Account

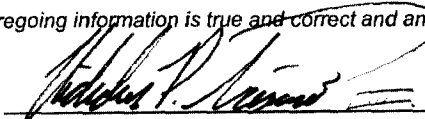
8. Deposit Account No: 50-0311, Ref. No. 19705-009C

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.

Nicholas P. Triano III, Reg. No. 36,397



January 28, 2003

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments, and document: [9]

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

Box Assignment
Commissioner of Patents and Trademarks
Washington, D.C. 20231

LICENSE AND ASSIGNMENT AGREEMENT

This License and Assignment Agreement is dated September 17, 2002, and is by and between CLF MEDICAL TECHNOLOGY ACCELERATION PROGRAM, INC., 747 Pierce Road, Clifton Park, New York 12065 ("Licensee") and ORDWAY RESEARCH INSTITUTE, INC., c/o 747 Pierce Road, Clifton Park, New York 12065 ("Licensor").

W I T N E S S E T H

WHEREAS, the Licensor is the owner of the Subject IP as defined below; and

WHEREAS, the Licensor is willing to grant a royalty bearing, exclusive license to Licensee, and assign the Subject IP to Licensee upon the terms and conditions set forth herein; and

WHEREAS, Licensee desires to obtain said exclusive license and assignment of the Subject IP.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Definitions.

1.1 The term "Subject IP" shall mean all technology, biological materials, compounds, know-how, methods, documents, materials, tests, improvements thereto, and all confidential information related to the items set forth on Schedule "A" hereto which has been researched or developed by Licensor, which is commonly known as AFP Peptide: A New Drug in the fight against Breast Cancer, including any U.S. Patent Application Serial Numbers identified on Schedule "A", together with all applications for patent, or like protection on the Subject IP and all patents or like protection that may in the future be granted on the Subject IP, and any and all substitutions, divisionals, continuations, continuations in part, renewals, reissues, extensions and the like on said applications and patents.

1.2 The term "Licensed Product(s)" shall mean all products or uses that incorporate, utilize or are made with the use of the Subject IP.

2. Grant of License and Assignment.

2.1 The Licensor hereby represents and warrants that it has the sole and exclusive rights to the Subject IP and assigns the Subject IP and grants to the Licensee an exclusive right and license of the Subject IP to research, develop, test, make, use, patent, protect, import, export, lease, market or sublicense the Subject IP or the Licensed Products.

2.2 Licensee shall have the sole and exclusive ownership rights to any product, device, process or method, whether patentable or unpatentable, arising out of the Subject IP, but which is not directly related to the Subject IP.

2.3 Licensee shall have the sole and exclusive right to determine the methods in which the Subject IP or Licensed Product(s) shall be researched, developed, tested, made, used, sublicensed, marketed, sold or offered for sublicense, including, but not limited to, the selection of which processes or methods shall be used, or the applications or products which will be pursued; provided, however, that Licensee agrees that it will diligently pursue the commercialization of the intellectual property, and that any transactions with respect to the development, testing, licensing, transfer or other realization with respect to such intellectual property shall be made for fair market value.

2.4 Licensor agrees to transfer to Licensee for use by Licensee any background or research material which Licensor presently has in its possession relating to the Subject IP.

2.5 This license constitutes an irrevocable assignment of Licensor's legal and beneficial rights to the

Subject IP and the Licensed Product(s), in accordance with the provisions of this Agreement.

3. Payment.

In order to accommodate the interest of both parties, and in furtherance of the charitable and scientific research purposes of Licensee, payment for the rights conveyed by Licensors under this Agreement to Licensee shall be structured as follows:

3.1 No payments will be due under this Agreement until any Licensed Product(s) arising from the Subject IP are fully developed and brought to market for use by the public.

3.2 Payments to Licensors shall be paid out of the "Net Royalties" from the development of the Subject IP and the Licensed Product(s). "Net Royalties" shall be calculated up to and including the date of any sublicense and shall be defined as the gross royalties which Licensee receives as a result of any sublicense agreements which it enters into for the development, marketing or sale of the Licensed Product(s) or the Subject IP, less the expenses of Licensee incurred in connection with the use, research or development of the Subject IP and the Licensed Product(s), and any intellectual property incentive payments required to be made by Licensee to researchers (which intellectual property incentive payments shall be approved by Licensors). Licensee shall not be responsible for making intellectual property incentive payments for the Anderson matters included in Subject IP and such payments shall not be included in the calculation of Net Royalties. For purposes of calculating Net Royalties, expenses will be allocated to the researchers or programs to which such receipts relate and shall not be pooled or aggregated.

3.3 Licensors shall be entitled to compensation in the amount equal to sixty (60%) percent of the Net Royalties received by Licensee for each Licensed Product or other application of the Subject IP.

3.4 Licensee agrees to keep accurate records and books, in accordance with good accounting practice, with respect to the Subject IP and Licensed Product(s), including an account of cost and expenses incurred in obtaining and maintaining patent protection for the Subject IP and the Licensed Product(s), and all costs and expenses incurred in researching, testing and developing the Subject IP and Licensed Product(s); and, all monies or other consideration received by Licensee from the Subject IP or the Licensed Product(s), and all other information necessary for the accurate determination of charges and payments hereunder. Licensee agrees to deliver to Licensors within thirty (30) days following each calendar quarter a report setting forth such details as may be necessary for the accurate determination of charges and payments hereunder and, in the case of payments, to accompany each such report with the payment show to be due by it. Licensee agrees to permit a representative of Licensors, during normal business hours and upon reasonable prior notice, to inspect any records kept by Licensee which are reasonably relevant to a determination of the accuracy of any report required to be rendered to Licensors.

4. Materials.

4.1 Licensee shall be responsible for payment for all reasonable personnel, facilities, and resources as are required to research, test, develop, protect or market the Subject IP and Licensed Product(s), including, but not limited to, persons who have been involved in the research and development of the Subject IP prior to the date of this Agreement.

4.2 After the date of this Agreement, Licensee agrees to pay all costs, incident to United States and foreign applications, patents and like protection, including all costs incurred for filing, prosecution, issuance and maintenance fees as well as any costs incurred in filing continuations, continuations in part, divisionals or related applications and any reexamination or reissue proceedings.

5. Sublicenses and Assignment.

5.1 In connection with the rights conveyed to Licensee hereunder, the parties understand and agree that Licensee is authorized to enter into sublicense or assignment agreements for the development, marketing and distribution of the Subject IP and the Licensed Product(s).

5.2 All sublicenses or assignments granted by Licensee of its rights hereunder shall be subject to the terms of this License and Assignment Agreement, and, except as provided below, Licensee shall obtain the prior written approval from the Licensor, which shall not be unreasonably delayed or withheld, prior to entering into any sublicensing or assignment agreement. Licensee shall be responsible for its sublicenses and assignments and shall not grant any rights which are inconsistent with the rights granted to, and obligations of, Licensee hereunder.

5.3 The parties agree that Licensee may sublicense or assign its rights hereunder to an affiliated or subsidiary organization; provided, however, that such organization must be owned or controlled by Licensee and/or its Trustee and Licensee's responsibilities under this License and Assignment Agreement shall not be extinguished or diminished by virtue of any such sublicense or assignment.

6. Use of Licensor's Name/Public Statements.

6.1 Licensee shall have the right, at its discretion, to publish freely, either in writing or orally, any results of any of the research or testing of the Subject IP.

6.2 Licensee shall furnish the Licensor with a copy of any proposed publication of material described above which has Licensor's name, at least thirty (30) days in advance of the proposed publication or presentation date. Within said thirty (30) day period, Licensor shall review such publication and provide any comments, or its approval, thereof, provided, however, that such comments or approval shall not be unreasonably delayed or withheld.

6.3 Licensee agrees that it will not at any time during this Agreement use the name of Licensor without the prior written consent of Licensor, which consent shall not be unreasonably delayed or withheld.

7. Term and Termination.

7.1 Unless earlier terminated as hereinafter provided, this Agreement shall extend for the life of the last to expire patent issued on the Subject IP or Licensed Product(s) (including any continuations or renewals thereof) and then shall expire automatically.

7.2 In the event of default or failure by Licensee to perform any of the terms, covenants or provisions of this Agreement, Licensor shall provide Licensee with written notice of such default, and provide Licensee with a period of sixty (60) days to correct such default. If such default is not corrected within the said sixty (60) day period, (or, if the default cannot reasonably be cured within said sixty (60) day period, then within such additional time as is reasonable provided that the defaulting party is diligently pursuing and will likely effectuate corrective action and the temporary continued existence of the default does not pose an imminent and material risk of harm to the business, operations or finances of any non-defaulting party), the Licensor shall have the right, at its option, to cancel and terminate this Agreement.

7.3 In the event of an uncured breach by Licensee, and subject to the rights of other parties under any licenses or sublicenses validly entered into by Licensee before notice of such breach is received by Licensee: (a) Licensee shall immediately cease using any of the Subject IP or Licensed Product(s) and return all materials related to same to Licensor; (b) all items of intellectual property transferred or shared pursuant to the terms of the transfer agreement will be returned to Licensor; and (c) Licensee shall immediately cease using any of the Subject IP or Licensed Product(s) and return all materials related to same to Licensor.

8. Governmental Compliance.

Licensee shall at all times during the term of this Agreement comply and cause its sublicensees to comply with all laws that may control the research, testing, development, distribution, marketing or any other activity undertaken pursuant to this Agreement.

9. Confidentiality.

Licensee and Licensor agree to maintain the Subject IP in confidence, and to use the same only in accordance with this Agreement. Such obligation of confidentiality shall not apply to information which the parties can demonstrate:

- 9.1 was at the time of disclosure in the public domain;
- 9.2 has come into the public domain after disclosure through no fault of the parties;
- 9.3 was known to the parties prior to disclosure thereof;
- 9.4 was lawfully disclosed to the parties by a third party which was not under an obligation of confidence to the parties;
- 9.5 which the parties can reasonably demonstrate was independently developed by a party without the use of the Subject IP; or
- 9.6 which the parties shall be compelled to disclose by law or legal process.

The foregoing obligation of confidentiality shall survive termination of this Agreement.

10. Indemnification.

10.1 Each party shall notify the other party of any claim, lawsuit or other proceeding related to the Subject IP of the Licensed Product(s).

10.2 Licensee agrees that it will defend, indemnify and hold harmless the Licensor from and against any and all other claims, causes of action or proceedings filed or otherwise instituted against any of the parties, related directly to or arising out, of the design, process, research, development, testing, manufacture or use by any person or party of the Subject IP or the Licensed Product(s); provided, however, that Licensor shall be solely responsible for resolving any claims, causes of action or proceedings filed or otherwise instituted related directly or arising out of the design, process, research, development, testing, manufacture or use of the Subject IP prior to the date of this Agreement.

11. Notices.

Any notices required or permitted to be given under this Agreement shall be sufficient if in writing, and if sent by certified mail, return receipt requested, to the addresses of parties as stated herein.

12. Entire Agreement.

This Agreement contains the entire agreement of the parties. It may not be changed orally but only by an agreement in writing signed by the party or parties against whom enforcement of any waiver, change, modification, extension or discharge is sought. This Agreement is binding upon the parties, their heirs, representatives, successors or assigns.

13. Binding Effect.

This Agreement shall be binding upon and inure to the benefit of the successors and assigns of parties.

14. Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the State of New York, without reference to principles of conflict of laws thereof. No provision of this Agreement shall be applied or construed in a manner inconsistent with applicable federal laws and regulations. Any legal actions commenced to enforce any rights or obligations hereunder shall be venued in the County of Albany, State of New York.

15. Headings.

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this document the day and year first above written.

LICENSOR:
ORDWAY RESEARCH INSTITUTE, INC.

By: 
Paul J. Davis, M.D., Director

LICENSEE:
**CLF MEDICAL TECHNOLOGY ACCELERATION
PROGRAM, INC.**

By: 
Richard C. Liebich, Chief Executive Officer

SCHEDULE "A"

Intellectual Property Descriptions

AFP-related peptides (Dr. Anderson)

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SCHEDULE A

AFP-related peptides (Dr. Anderson)

| Country | Title | Named Inventor(s) | Application Number | Patent No. | Filing Date | Issue Date |
|---------|---|-------------------|--------------------|---------------|-------------|------------|
| US | Screening and Imaging Breast Cancer with Alpha-Fetoprotein Peptides | Anderson, et al | -- | Not yet filed | -- | -- |
| US | Breast Cancer Imaging Agents | Anderson, et al | -- | Not yet filed | -- | -- |
| US | Alpha-Fetoproteins and Uses Thereof | Anderson, et al | 60/208,614 | Completed | 6/1/00 | -- |
| US | Alpha-Fetoproteins and Uses Thereof | Anderson, et al | 09/872,623 | pending | 6/1/01 | -- |
| WO | Alpha-Fetoproteins and Uses Thereof | Anderson, et al | PCT/US01/17748 | pending | 6/1/01 | -- |
| | Alpha-Fetoproteins and Uses Thereof | Anderson, et al | 60/331,841 | pending | 11/20/01 | -- |
| US | Alpha-Fetoproteins and Uses Thereof | Anderson, et al | 60/340,926 | pending | 12/7/01 | -- |