

07-10-2003

54

FORM PTO-1595

RECORD



102492912

S. DEPARTMENT OF COMMERCE
Patent and Trademark Office
Attorney Reference No.:
MBHB00-910-A(245/253)

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

1. Name of conveying parties:

Innovir Laboratories, Inc., a DE Corporation
2751 Centerville Road, Suite 210
Little Falls II
Wilmington, Delaware 19808

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

☐ Yes ☒ No

3. Nature of conveyance:

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

Execution Date(s): December 20, 2002

2. Name and address of receiving party(ies)

Name: Nexell Therapeutics Inc., a DE Corporation

Internal Address:

Street Address: 9 Parker
City: Country: Zip: Irvine, California 92618

Additional name(s) & 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)

B. Patent No.(s) 5,741,679

Additional numbers attached? ☐ Yes ☒ No

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

Name: Anita J. Terpstra

Company Name:

McDonnell Boehnen Hulbert & Berghoff

Street Address: 300 South Wacker Drive, Suite 3200

City: Chicago State: IL ZIP: 60606

6. Total number of applications and patents involved: 1

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

☒ Enclosed

☐ Authorized to be charged to deposit account

8. Deposit account number: 13-2490

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.

Anita J. Terpstra

Printed Name of Person Signing

Signature

Date: June 30, 2003

Total number of pages including cover sheet, attachments, and document: 5

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

Mail Stop Assignment Recordation Services

Director of the U.S. Patent and Trademark Office

P.O. Box 1450

Alexandria, VA 22313-1450

07/09/2003 ECOOPER 00000090 5741679

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PATENT
REEL: 014242 FRAME: 0173

ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement ("Agreement"), made effective as of December 20, 2002, is by and between RIBOZYME PHARMACEUTICALS, INC., a Delaware corporation (hereinafter referred to as "RPI"), and NEXELL THERAPEUTICS INC., a Delaware corporation (hereinafter referred to as "NEXELL").

WHEREAS, INNOVIR LABORATORIES, INC., a dissolved Delaware corporation (hereinafter referred to as "INNOVIR") was a wholly owned subsidiary of NEXELL;

WHEREAS, prior to dissolution of INNOVIR, all of the assets of INNOVIR were transferred to NEXELL;

WHEREAS, INNOVIR and AMGEN INC., a Delaware corporation (hereinafter referred to as "AMGEN") are parties to a BINDING TERM SHEET dated May 6, 1999, and are parties to an AMENDMENT TO BINDING TERM SHEET dated January 14, 2000 (hereinafter collectively referred to as the "AMGEN AGREEMENT");

WHEREAS, INNOVIR, NEXELL and RPI are parties to an ASSET PURCHASE AGREEMENT dated August 13, 1999 (hereinafter referred to as the "ASSET PURCHASE AGREEMENT").

WHEREAS, NEXELL (through the transfer from INNOVIR) and RPI co-own U.S. Patent No. 5,741,679, U.S. Patent No. 5,834,186, European Patent Application No. 94903456, and Japanese Patent Application No. JP 94514284, (as well as and including all patents that issue therefrom, all corresponding applications and patents including all continuation applications, continued prosecution applications, requests for continuing examination applications, divisional applications, reissues, reexamination certificates, extensions, substitutes of the aforesaid applications or patents) under the ASSET PURCHASE AGREEMENT (collectively referred to herein as the "Patent Rights"), subject to certain licenses to the Patent Rights granted to AMGEN as set forth in the AMGEN AGREEMENT;

WHEREAS, NEXELL desires to transfer to RPI, and RPI desires to obtain, ownership of the entirety of the Patent Rights subject to the licenses to the Patent Rights set forth in the AMGEN AGREEMENT;

WHEREAS, NEXELL desires to assign to RPI and RPI desires to assume from NEXELL all rights, interests, responsibilities, obligations, benefits, and liability under the AMGEN AGREEMENT;

NOW THEREFORE, in consideration of One Dollar (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, RPI and NEXELL hereby agree as follows:

1. NEXELL hereby sells, assigns and transfers to RPI, its successors and assigns all of NEXELL's right, title and interest in and to the Patent Rights, together with all accrued rights of action, royalties and damages from any past or existing infringement of any such rights of action, throughout the world, subject to the licenses of the Patent Rights to AMGEN as set forth in the AMGEN AGREEMENT.

2. NEXELL hereby assigns and transfers to RPI all of NEXELL's rights, interests, and benefits under the AMGEN AGREEMENT.

3. RPI hereby assumes from NEXELL all of NEXELL's obligations, responsibilities, and liabilities under the AMGEN AGREEMENT, and agrees to perform all of the duties, obligations, covenants, conditions and stipulations contained therein.

4. As of the effective date of this Agreement, NEXELL shall no longer be responsible for and RPI shall assume all responsibilities, obligations and costs, expenses and fees related to, arising out of or associated with the Patent Rights and the prosecution, maintenance, and defense of the Patent Rights including, but not limited to, all costs, expenses and fee arising from Section. 4.7(c) of the ASSET PURCHASE AGREEMENT, all subject to the rights and obligations of AMGEN for the Patent Rights set forth in the AMGEN AGREEMENT. NEXELL will promptly inform the attorney responsible for prosecution and maintenance of the Patent Rights of

this Agreement and direct them to inform RPI promptly of all pending deadlines and to obey all instructions from RPI relating thereto.

5. UNDER THIS AGREEMENT, NEXELL MAKES NO EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES REGARDING THE PATENT RIGHTS, THE VALIDITY OR SCOPE OF THE PATENT RIGHTS, OR THAT ANY PRACTICE OR USE OF THE PATENT RIGHTS WILL NOT INFRINGE A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS. UNDER THIS AGREEMENT, RPI TAKES THE PATENT RIGHTS "AS IS" "WITH ALL FAULTS" AND "WITH ALL DEFECTS" AND EXPRESSLY WAIVES ALL RIGHTS TO MAKE ANY CLAIM WHATSOEVER AGAINST NEXELL UNDER THIS AGREEMENT FOR MISREPRESENTATION OR FOR BREACH OF PROMISE, GUARANTEE, OR WARRANTY OF ANY KIND RELATING TO THE PATENT RIGHTS.

6. In consideration for the assignment of the AMGEN AGREEMENT, RPI for themselves, their successors and assigns, do hereby release, and forever discharge NEXELL, its employees, agents, shareholders, directors, officers and servants, their successors and assigns from any and all claims, demands, cause or causes of action, reckoning, debts, indemnities, liabilities and/or obligations of any nature whatsoever, known or unknown, relating to or arising from the AMGEN AGREEMENT.

7. In consideration for the transfer of the Patent Rights, RPI hereby releases and forever discharges any and all rights, claims, demands, actions, cause of action, suits, whether known or unknown, which RPI may now have or ever had against NEXELL, its employees, agents, shareholders, directors, officers and servants, their successors and assigns arising from or relating to the PATENT RIGHTS.

8. In further consideration for the transfer of the Patent Rights, RPI shall at all times during and after the term of this Agreement be responsible for, and shall defend, indemnify, and hold NEXELL, its employees, agents, shareholders, directors, officers and servants, their successors and assigns harmless from and against any and all losses, claims, suits, proceedings, expenses, recoveries, and damages, including reasonable legal expenses and costs, including attorneys' fees, arising out of any claim by a third party relating to the PATENT RIGHTS, or any aspect of the performance of this Agreement, to the extent such liability results from a patent infringement claim, from a product liability claim or from the negligence or willful misconduct of RPI, or any breach of representation or warranty given herein by RPI; provided that NEXELL shall give RPI prompt notice of any such claim or lawsuit and that NEXELL cooperates with RPI or its insurance carrier.

9. Each party hereto makes the following representations and warranties to the other party: The party is a corporation duly organized, validly existing in good standing. NEXELL represents that it has filed Certificates of Dissolution with the Delaware Secretary of State and to NEXELL's knowledge, NEXELL has sufficient assets to satisfy its obligations to its creditors. The party has all necessary power and authority to make, execute and deliver this Agreement and to consummate the transactions contemplated hereby. This Agreement has been duly executed and delivered by the party and constitutes a valid and binding agreement of the party, enforceable in accordance with its terms, subject to the enforcement of remedies, to general equitable principles and to bankruptcy, insolvency and similar laws affecting creditors' rights generally. Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby will constitute a violation of, or default under (i) the party's Articles of Incorporation or Bylaws, or (ii) any contract, agreement, lease or other commitment which obligates the party.

10. If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby. The failure of any party hereto to insist upon strict performance of any provision of this Agreement or to exercise any right hereunder will not constitute a waiver of that provision or right. No amendment, alteration, or modification of this Agreement or any exhibits attached hereto shall be valid unless executed in writing by authorized signatories of both parties. This Agreement shall be interpreted according to the laws of the State of Delaware, excluding its conflict of law rules. This Agreement may be executed in counterparts and by facsimile.

11. To the extent required to give effect to this Agreement, the ASSET PURCHASE AGREEMENT shall be deemed amended by and to be part of this Agreement.

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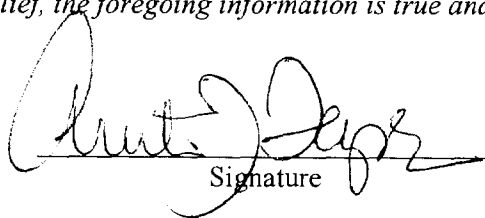
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Anita J. Terpstra

Printed Name of Person Signing



Signature

Date: June 30, 2003

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