

10-21-2003

FORM PTO-1595 (Rev. 6-93)

10/17/03



U.S. Department of Commerce

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

102579674

Patent and Trademark Office

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

1. Name of conveying party(ies):  
**ILEX Oncology Research S.A.**  
 Additional name(s) of conveying party(ies) attached?  Yes  No

3. Nature of conveyance:  
 Assignment  Merger  
 Security Agreement  Change of Name  
 Other  
 Execution Date: 7/31/02

2. Name and address of receiving party(ies):  
 Name: **ILEX Products, Inc.**  
 Street Address: **4545 Horizon Hill Blvd.**  
 City: **San Antonio** State: **TX** Zip: **78229**  
 Additional name(s) & address(es) attached?  Yes  No

4. Application number(s) or registration 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):  
09/963,900  
10/012,785


B. Patent No.(s):  
**6,303,784**  
 Additional numbers attached?  Yes  No

OFFICE OF PATENT RECORDS  
 2003 OCT 17 PM 3:20  
 FINANCE SECTION

5. Name and address of party to whom correspondence concerning document should be mailed:  
 Name: **Monica A. De La Paz**  
**FULBRIGHT & JAWORSKI, L.L.P.**  
**600 Congress Avenue, Suite 2400**  
 City: **Austin** State: **Texas** Zip: **78701**

6. Total number of applications and patents involved: \_\_\_\_\_  
 7. Total fee (37 C.F.R. 3.41) ----- \$ 120.00  
 Enclosed  
 Authorized to be charged to deposit account if check insufficient or inadvertently omitted  
 8. Deposit account number: 50-1212/ILEX:058US  
 (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.*  
**Monica A. De La Paz**  10/14/2003  
 Name of Person Signing, Reg. No. 54,662 Signature Date


Total number of pages including cover sheet, attachments and documents: 11

Mail documents to be recorded with required cover sheet information to:  
**Director of the U.S. Patent and Trademark, MS Assignment, P.O. Box 1450, Alexandria, VA 22313-1450**

CERTIFICATE OF MAILING  
37 C.F.R. 1.8

I hereby certify that this correspondence is being deposited with the U.S. Postal Service with sufficient postage as First Class Mail in an envelope addressed to: Director of the U.S. Patent and Trademark, MS Assignment, P.O. Box 1450, Alexandria, VA 22313-1450, on the date below:

October 14, 2003  
Date

  
Monica A. De La Paz

10/20/2003 LMJELLER 00000102 09963900

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120.00 DP

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**PATENT**  
**REEL: 014588 FRAME: 0575**



ASSIGNMENT

In consideration of the payment by Assignee or Assignor of the sum of one dollar (\$1.00), the receipt of which is hereby acknowledged, and for other good and valuable consideration:

Assignor: ILEX Oncology Research S.A.  
243 Route des Fayards  
1290 Versoix/Geneva  
Switzerland

Hereby sells, assigns and transfers to:

Assignee: ILEX Products, Inc.  
4545 Horizon Hill Blvd.  
San Antonio, Texas 78229

and the successors, assigns and legal representatives of the ASSIGNEE the entire right, title and interest for the United States and its territorial possessions and for all foreign countries, including all rights to claim priority in and to any and all patents and patent applications, and the inventions described therein which are listed in the attached; and in an to all letters patents to be obtained for said attached applications and inventions or any continuation, division, renewal, or substitute thereof; and, as to Letters Patents, any continuation, extension, reissue, or reexamination thereof, effective the 31<sup>st</sup> day of July, 2002.

ASSIGNOR hereby covenants that no assignment, sale, Agreement, or encumbrance has been or will be made or entered into which would conflict with this Assignment;

ASSIGNOR further covenants that Assignee will, upon its request, be provided promptly with all pertinent facts and documents relating to said invention and said Letters Patents and legal equivalents as may be known and accessible to ASSIGNOR and will testify as to the same in any interference, litigation, or proceeding related thereto and will promptly execute and deliver to assignee or its legal representatives any and all papers, instruments or affidavits required to apply for, obtain, maintain, issue and enforce any said application, invention and Letters Patents and said equivalents thereof which may be necessary or desirable to carry out the purposes thereof.

IN WITNESS WHEREOF, ASSIGNOR has caused this Assignment of Patents and Patent Applications to be duly executed this 31<sup>st</sup> day of July, 2002.

Accepted by:  
ILEX Products, Inc.  
Al A. Jecminek  
AL A. JECMINEK  
Name

ILEX Oncology Research S.A.  
Craig Bentzen  
CRAIG BENTZEN  
Name

VICE PRESIDENT, LICENSING & IP  
Title

MANAGING DIRECTOR  
Title

JULY 31, 2002  
Date

JULY 31, 2002  
Date

**PATENT RIGHTS**

**1. U.S. Patent 5,424,303 Patent Family**

Jurisdiction	Application No.	Publication/Patent No.
United States	24,731	5,424,303
Switzerland	CH 704/92	
European Patent	93/102934	559079 B1
Austria		
Belgium		
Switzerland		
Germany		
Denmark		
Spain		
France		
Great Britain		
Greece		
Ireland		
Italy		
Luxembourg		
Netherlands		
Portugal		
Sweden		

**2. U.S. Patent 6,060,464 Patent Family**

Jurisdiction	Application No.	Publication/Patent No.
United States	08/973,669	6,060,464
United States	09/541,217	
Switzerland	CH 1920/95	
PCT	PCT/EP96/02842	WO9702037
European Patent	96/923971	835116 A1
Australia	64185/96	05206 B2
A.R.I.P.O.		705206 B2
Brazil	PI9609653-5	9609653 A
Canada	2225391	2225391 AA
China	96196395.6	1193913 A
Columbia	96034449	
Czech Republic	PV4220-97	9704220 A3
Hong Kong	98111170.2	
Hungary	P9901684	9901684 AB
India	1441/DEL/96	
Israel		122717
Japan	504801/1997	11508576 T2
Malaysia	PI9602677	
Mexico	980189	
New Zealand	312696	312696
Norway	P976128	976128 A
Pakistan	411/96	
Poland	P324341	32434 A1
South Africa	96/5505	96/5505

Saudi Arabia	96170375	
Slovakia		178397
Taiwan	85107922	413681 B
Turkey	97/01700	
Venezuela	1195-96	

### 3. U.S. Patent 6,303,784 Patent Family

Jurisdiction	Application No.	Publication/Patent No.
* United States	09/331,385	6,303,784
United States	09/946,737	
Great Britain	GB 9626615	
PCT	PCT/EP97/07161	WO9828310
European Patent	97/954436	946572 A1
Algeria	970227	
Argentina	P970105997	
A.R.I.P.O.	AP/P/99/01546	
Australia	9858588/97	5858898 A1
Barbados	81/562	
Brazil		9714650
Bulgaria	103574	
Canada	2275696	2275696 A
China	9718072408	1240451 A
Columbia	97073902	
Ecuador	SP-97-2341	
Egypt	1347/97	
Egypt	1369/98	
Hungary	P0002171	2171 AB
India	3697/DEL/97	
Israel		130334
Japan	528364/1998	1506667 T2
Korea South	7005605	
Mexico	995911	
Morocco	995911	
New Zealand	335884	
Nigeria	335884	
Norway	P993001	
O.A.P.I.	9900136	
Pakistan	1030/97	
Poland	P334189	334189 A
South Africa	97/11431	97/11431
Saudi Arabia	99200309	
Singapore	9902333-5	
Slovakia		810993 A3
Sri Lanka	11748	
Taiwan	8619555	134136
Tangier	1521	
Thailand	041395	
Turkey	99/01423	
United Arab Emirates	P278/97	

**4. U.S. Application Serial No 10/012,785 Patent Family**

Jurisdiction	Application No.	Publication/Patent No.
* United States	10/012,785	
Great Britain	GB 258481	
PCT	PCT/US01/43019	

**5. U.S. Application Serial No 09/963,900 Patent Family**

Jurisdiction	Application No.	Publication/Patent No.
* United States	09/963,900	
Great Britain	GB 23705	
Great Britain	GB 25783	
PCT	PCT/US01/30231	

**6. PCT WO0211708 Patent Family**

Jurisdiction	Application No.	Publication/Patent No.
Great Britain	GB 019290	
PCT	PCT/EP01/08980	WO0211708

**7. U.S. Application Serial No. 60/355,864**

**8. U.S. Application Serial No. 60/355,864**

**9. U.S. Application Serial No. 60/358,118**

**10. U.S. Application Serial No. 60/358,130**

**11. U.S. Application Serial No. 60/379,900**

**12. U.S. Application Serial No. 60/379,835**

## PATENT AND TECHNOLOGY ASSIGNMENT AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into as of July 31, 2002 ("Effective Date") by and between ILEX Products, Inc. ("ILEX") and ILEX Oncology Research S.A. ("IORSА").

### RECITALS

WHEREAS, IORSА, through on-going, in-house research activities in the Cardiovascular area has acquired and may continue to acquire ownership of a body of technology and patent rights relating to (a) certain monophosphonate derivatives which are useful in the lowering of lipoprotein(a) and (b) various diphosphonate, phosphonophosphate and monophosphate derivatives useful as modulators of apolipoprotein E (collectively the "Cardiovascular Intellectual Property").

WHEREAS, ILEX is desirous of acquiring from IORSА, all rights and ownership of the Cardiovascular Intellectual Property for the financial and other consideration, as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the Parties agree as follows:

#### 1. Definitions

- 1.1 "ILEX Field of Use" shall mean the treatment and/or prevention of any cardiovascular disease or condition, including atherosclerosis, thrombosis, restenosis and related conditions through the lowering and/or modulation of lipoprotein(a) and/or apolipoprotein E.
- 1.2 "ILEX Product(s)" shall mean any product or composition which is covered by one or more patent rights claims within the Cardiovascular Intellectual Property from a composition of matter, method of use, pharmaceutical formulation and/or process of manufacture standpoint and any product or composition which is otherwise embodied in any aspect of Technology and/or is manufactured using any process or method included within Technology.
- 1.3 "Technology" shall mean any and all technical information, data, know-how, trade secrets, tangible technical materials and related items which are owned and/or possessed by IORSА on the Effective Date hereof and which relate to, or are useful in, the ILEX Field of Use.
- 1.4 "Patent Rights" shall mean United States and foreign patents and patent applications, including any division, continuation, and/or continuation in-part directed to the same subject matter or reissue thereof or substitute therefore in each case, in existence on the Effective Date hereof (including inventions conceived and reduced to practice prior to the Effective Date) and which are owned by, IORSА and which claim an invention within the ILEX Field of Use. For avoidance of doubt, the "Patent Rights" consist of the patent applications listed in Appendix A hereto.
- 1.5 "Cardiovascular Intellectual Property" shall mean technology or patent rights or any combination of technology and patent rights.

- 1.6 The phrases "covered by . . . Patent Rights" or "embodied in . . . Technology" shall mean that the product or process in question when sold, leased, operated or serviced (a) in the case of Patent Rights would constitute an infringement of any claim or claims of any patent or patent application in Patent Rights if such Patent Rights were not owned and licensed as set forth herein, or (b) in the case of Technology (excluding Patent Rights) would constitute a misappropriation of such Technology, if the Technology was not owned as set forth herein.
- 1.7 An "Affiliate" of ILEX shall mean, with respect to any corporation, company, partnership, joint venture and/or firm (other than IORSA) which controls, is under common control with, or is controlled by ILEX. For purposes of this definition, "control" shall mean:
- (i) direct or indirect ownership of at least fifty percent (50%) of the equity interest which has the power to direct the management and policies of such non-corporate entities; or
  - (ii) the power, by contract or otherwise, to direct the management and policies of such non-corporate entities. For purposes of this definition, ILEX's ownership of stock, participating shares, or other equity interest in a corporate or non-corporate entity and ILEX's power to direct, by contract or otherwise, the management and policies of any such entity shall include, as applicable:
    - a. the ownership of stock, participating shares of other equity interest in such entity; and/or
    - b. the power, by contract or otherwise, to elect at least half of the directors in office or direct the management and policies of such entity, to the extent that, in either case, such power is held by any officer or director, or any equity controlled by such officer, director or Affiliate, of ILEX (other than IORSA), or by any person or entity, who without regard to this sentence, is an Affiliate of ILEX (other than IORSA).
- 1.8 "Party" shall mean either ILEX or IORSA, depending on the context in which the term appears, and when used in the plural form shall mean ILEX and IORSA.

## 2. Cardiovascular Intellectual Property Assignment and Transfer

- 2.1 Subject to the terms and conditions set forth in this Agreement, IORSA does hereby sell, assign, transfer, convey and deliver unto ILEX, its successors and assigns, IORSA's entire right, title and interest in the Cardiovascular Intellectual Property. At ILEX's written request IORSA will promptly execute an "Assignment of Patents and Patent Applications" of the form provided in Appendix B to this Agreement for each patent and patent application written for the Cardiovascular Intellectual Property for the purpose of allowing ILEX to record the assignment of patent rights in the U.S. Patent and Trademark Office and corresponding foreign Patent Offices.
- 2.2 If it has not already done so, IORSA will promptly transfer and deliver to ILEX (a) all ribbon copies of patents (Letters Patents) and originals of all patent applications within Patent Rights, including all file wrappers recording the

prosecution history of each patent and/or patent application; (b) copies of all technical reports issued by IORSA relating to the ILEX Field of Use, including all available R&D reports, spreadsheets, notebook pages, raw data, experimental data, and correspondence with third parties regarding the ILEX Field of Use; and (c) test quantities of all compounds available in transferable amounts in IORSA's experimental Compound library which are included within the ILEX Field of Use, it being understood that in all cases, IORSA shall transfer at least one half of the sample Compound amounts actually available in properly labeled sealed containers pursuant to ILEX's written instructions as to shipment timing and destination.

2.3 During the six (6) month time frame following the Effective Date, IORSA will make available at times and places agreed upon by the parties, its technical experts to assist in the technology transfer and to answer any questions ILEX or its designee may have respecting the technology.

2.4 In the event additional technical consulting by IORSA beyond that contemplated by Section 2.3 above is deemed desirable, the parties agree to promptly negotiate and enter into a longer term services Agreement under which, for appropriate consideration, IORSA will provide technical consulting and additional R&D work, particularly in the compound synthesis area.

### 3. Consideration

3.1 As full consideration for the transfer and assignment of the Cardiovascular Intellectual Property, ILEX shall pay IORSA a fee of Seven Million US Dollars (US\$7,000,000) due and payable within five (5) days after the Effective Date hereof by bank transfer to IORSA's designated bank account.

### 4. Confidentiality

4.1 IORSA agrees that all information contained in documents marked "confidential" which are forwarded to ILEX or received from ILEX shall be held in strict confidence, used only for the purpose of this Agreement, and not disclosed by IORSA (except as required by law or court order), its agents or employees without the prior written consent of ILEX, unless such information (a) was in public domain at the time of disclosure; (b) later became part of the public domain through no act or omission of IORSA, its employees, agents, successors and assigns; (c) was lawfully disclosed to IORSA by a third party having the right to disclose it, as evidenced by documentary records in possession of the recipient at the time of disclosure; (d) was independently developed; or (e) is required by law or regulation or court order to be disclosed.

4.2 IORSA's obligation of confidentiality hereunder shall be fulfilled by using at least the same degree of care as it uses to protect its own confidential information. This obligation shall exist while this Agreement is in force and for a period of three (3) years thereafter.

### 5. Warranties

5.1 IORSA represents and warrants that it has full good and unencumbered title to the Technology, and that any experimental procedures and data contained therein are accurately recorded and, to the best of IORSA's knowledge, valid



and reproducible. Further, IORSA represents and warrants that it has the right to make the grants set forth in article 2 hereof and that Appendix A hereto is a complete list of all patents currently owned by IORSA with respect to the Cardiovascular Intellectual Property as herein defined, but IORSA MAKES NO REPRESENTATIONS, EXTENDS NO WARRANTIES, EITHER EXPRESS OR IMPLIED, AND ASSUMES NO RESPONSIBILITIES WHATSOEVER WITH RESPECT TO:

- (a) the reproducibility of any procedure or data contained in the Technology;
- (b) the applicability of the Technology to the development or promotion of products, compositions, processes, or methods having commercial or practical viability;
- (c) the performance, merchantability, or fitness for a particular purpose of the Technology to ILEX, its vendees, or other transferees;
- (d) the filing of any patent application, the securing of any patent, or the maintaining of any patent in force;
- (e) the scope of validity of any patent included within Patent Rights;
- (f) any manufacture, sales, lease, use or importation of any product, composition, process, or method claimed in or covered by Patent Rights being free from infringement or patents other than those which are assigned hereunder; or
- (g) any Agreement or implication to bring or prosecute actions or suits against third parties for infringement of any patent included within Patent Rights or to be financially responsible for such action or suit.

## **6. Liability - Indemnity**

- 6.1 ILEX represents that it is skilled in the handling of the Cardiovascular Intellectual Property and that it has the requisite technical expertise and facilities to develop and commercialize ILEX Products using Cardiovascular Intellectual Property, under conditions which comply with all applicable laws and regulations.
- 6.2 ILEX agrees to indemnify, hold harmless and defend IORSA, its officers, employees and agents, against any and all claims, suits, losses, damages, costs, fees and expenses resulting from, or arising out of ILEX's use, sublicensing and/or sales of any ILEX Product, except; however, ILEX's forgoing indemnity Agreement does not extend to claims, suits, losses, damages, costs, fees and expenses resulting from or caused by the sole negligence of IORSA or its employees or agents.

## **7. Term and Termination**

- 7.1 This Agreement shall come into being on its Effective Date and continue in effect until the last date on which Patent Rights expire, unless otherwise terminated by operation of law or by actions of the Parties in accordance with this Agreement.

- 7.2 If either Party hereto shall be in default for sixty (60) days in any material obligation including, on the part of IORSA, its obligation to exchange the Cardiovascular Intellectual Property under this Agreement, the other party hereto may give written notice to the defaulting Party calling attention to the default, and if the Party in potential default shall not remedy the default within sixty (60) days after such notice, the Party giving written notice of default shall have the right thereafter to terminate this Agreement.
- 7.3 Any termination pursuant to Section 7.2 above shall not relieve either Party of any obligation or liability accrued hereunder prior to such termination, or rescind or give rise to any right to rescind anything done by either Party prior to the time such termination shall not affect in any manner any rights of either Party arising under this Agreement prior to such termination.

## **8. Arbitration**

- 8.1 All disputes arising out of or relating to this Agreement, including its interpretation performance or termination, will, at the written request of ILEX or IORSA be delivered to the other Party not less than fifteen (15) days in advance of submittal to arbitration, be submitted to and finally resolved by arbitration. Notification of arbitration will serve to toll the affected time periods or rights of the other Party with respect to the disputed claim.
- 8.2 Commercial, contractual and technical disputes will be submitted to the American Arbitration Association and will be conducted in San Antonio, Texas, in accordance with the Association's commercial arbitration rules in effect at the time arbitration is initiated, by a panel of three (3) arbitrators. ILEX and IORSA will each select an arbitrator and the two arbitrators will select a third arbitrator who is a recognized expert in commercial contract law. The award and determination entered by the arbitration panel will be binding on the Parties without right of appeal.
- 8.3 Expenses of the arbitration will be shared equally by ILEX and IORSA. Judgment on the award may be entered in any court of competent jurisdiction and enforced in accordance with its terms.

9. **Waiver.** It is agreed that no waiver by either Party hereto of any breach or default of any of the covenants or agreements herein set forth shall be deemed a waiver as to any subsequent and/or similar breach or default.

10. **Force Majeure.** In the event of acts of God, action of the elements, war, invasion, civil commotion, insurrection, labor disturbance, fire, flood or government restriction, which render performance under this Agreement impossible, failure on that account during each period shall be excused and any obligation called for shall not be required during such period or periods of inability to perform.

11. **Assignability.** This Agreement shall be personal to the Parties and assignable by a Party hereto only with the written consent of the other Party, which consent shall not be unreasonably withheld, provided both ILEX and IORSA may assign this Agreement without consent of the other party as a result of a sale, consolidation, reorganization, or other transfer involving substantially all of their respective business or assets relating to the Technology, upon prior written notice to the other Party of such assignment.

12. **Notices.** Any payment, notice or other communication required or permitted to be given to either Party hereto shall be deemed to have been properly given and to be effective on the date of delivery if delivered in person or by first class, certified mail, postage prepaid, to the respective address given below, or to such other address as it shall designate by written notice given to the other Party, as follows:

In the case of ILEX:

ILEX Products, Inc.  
4545 Horizon Hill Blvd.  
San Antonio, Texas 78229  
Attn: Al A. Jecminek, VP Licensing & Intellectual Property

In the case of IORSA:

ILEX Oncology Research S.A.  
243 Route des Fayards  
1290 Versoix/Geneva  
Switzerland  
Attn: Craig Bentzen, Managing Director

13. **Governing Law.** This Agreement shall be construed, interpreted, and applied in accordance with the laws of the State of Texas.

14. **Miscellaneous.**

- 14.1 The headings of several sections are inserted for convenience of reference only and are not intended to be a party of, or to affect the meaning of interpretation of this Agreement.
- 14.2 This Agreement will not be binding upon the Parties until it has been signed below by or on behalf of each Party, in which event, it shall be effective as of the date of first written above.
- 14.3 No amendment or modification hereof shall be valid or binding upon the Parties unless made in writing and signed as aforesaid.
- 14.4 This Agreement embodies the entire understanding of the Parties and, except as noted herein, shall supersede all previous communications, representations, or understandings, either oral or written, between the Parties relating to the subject matter hereof.

IN WITNESS WHEREOF, both ILEX and IORSA have executed this Agreement (in duplicate originals) by their respective duly authorized representatives, to be effective as of the date first written above.

ILEX Products, Inc.



Name: Ze'ev Shaked

Title: President

Date: July 31, 2002

ILEX Oncology Research S.A.



Name: Craig Bentzen

Title: Managing Director

Date: 31 July 2002