Atty Docket Nos. CVBIO.008A
PHAGE.001A
PHAGE.001DV1
PHAGE.006A

02-18-2005

102944250

2/15/05

**RECORDATION FORM COVER SHEET**
**PATENTS ONLY**

To the Director, U.S. Patent and Trademark Office: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): (List using letters or numbers for multiple parties)

   Phage Biotechnology Corporation

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

   ( ) Yes (X) No

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

   **Name**: CardioVascular BioTherapeutics, Inc.
   **Street Address**: 101 Theory, Ste. 200
   **City**: Irvine **State**: CA **ZIP**: 92617

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

   ( ) Yes (X) No

3. Nature of conveyance:

   (X) Assignment ( ) Security Agreement
   ( ) Merger ( ) Change of Name
   ( ) Other:
   Execution Date: 1/7/05

4. US or PCT Application number(s) or US Patent number(s):

   (X) Patent No.: 6,642,026
   Issue Date: 11/4/03

   Patent No.: 6,268,178
   Issue Date: 07/31/01

   Patent No.: 6,794,162
   Issue Date: 09/21/04

   Patent No.: 6,773,899
   Issue Date: 08/10/04

   Additional numbers attached?

   ( ) Yes (X) No

5. Party to whom correspondence concerning document should be mailed:

   **Customer No**. 20,995

   **Address**: Knobbe, Martens, Olson & Bear, LLP
   2040 Main Street, 14th Floor
   Irvine, CA 92614

   **Return Fax**: (949) 760-9502

   **Attorney's Docket No.**: CVBIO.008A
   PHAGE.001A
   PHAGE.001DV1
   PHAGE.006A

6. Total number of applications and patents involved: 4

FEB 15 PM 2:53
OPR/FINANCE

7. Total fee (37 CFR 1.21(h)): $160

   (X) Enclosed

8. Deposit account number: 11-1410

   Please charge this account for any additional fees which may be required, or credit any overpayment to this account.

02/17/2005 ECOOPER 00000159 6642026
01 FC:8021 160.00 OP

Atty Docket Nos. CVBIO.008A
PHAGE.001A
PHAGE.001DV1
PHAGE.006A

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.

Che Swyden Chereskin, Ph.D.
Name of Person Signing

Che S. Chereskin Feb. 19 2005
Signature Date

41,466
Registration No.

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

Documents transmitted via Mail to be recorded with required cover sheet information to:

**Mail Stop Assignment Recordation Services**
Director, U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

H:\DOCS\CSC\CSC-8655.DOC
021005

## ASSIGNMENT

WHEREAS, Phage Biotechnology Corporation, a corporation having offices at 101 Theory, Suite 200, Irvine, CA 92617 (hereinafter "ASSIGNOR"), represents and warrants that it is the sole owner of the entire right, title, and interest to certain new and useful improvements for which ASSIGNOR has filed the following United States issued Letters Patents and Applications in the United States (hereinafter "the Patents and Applications"):

| Patent No. | Issue Date | Title |
|---|---|---|
| 6,642,026 | 11/4/03 | METHOD OF PRODUCING BIOLOGICALLY ACTIVE HUMAN ACIDIC FIBROBLAST GROWTH FACTOR AND ITS USE IN PROMOTING ANGIOGENESIS |
| 6,268,178 | 7/31/01 | PHAGE-DEPENDENT SUPER-PRODUCTION OF BIOLOGICALLY ACTIVE PROTEIN AND PEPTIDES |
| 6,794,162 | 9/21/04 | PHAGE-DEPENDENT SUPER PRODUCTION OF BIOLOGICALLY ACTIVE PROTEIN AND PEPTIDES |
| 6,773,899 | 8/10/04 | PHAGE-DEPENDENT SUPERPRODUCTION OF BIOLOGICALLY ACTIVE PROTEIN AND PEPTIDES |

WHEREAS, CardioVascular BioTherapeutics, Inc., a corporation having offices at 101 Theory, Suite 200, Irvine, CA 92617 (hereinafter "ASSIGNEE") desires to purchase a 50% undivided interest in the entire right, title, and interest in and to the inventions disclosed in the Patents and Applications;

NOW, THEREFORE, in consideration of good and valuable consideration, the receipt of which is hereby acknowledged, ASSIGNOR hereby further acknowledges that it has sold, assigned, and transferred, and by these presents does hereby sell, assign, and transfer, unto ASSIGNEE, its successors, legal representatives, and assigns, 50% undivided interest in the entire right, title, and interest throughout the world in, to, and under the said improvements, and the said Patents and Applications and all Patents that may be granted thereon, and all provisional applications relating thereto, and all divisions, continuations, reissues, reexaminations, renewals, and extensions thereof, and all rights of priority under International Conventions and applications for Letters Patent that may hereafter be filed for said improvements or for the said Patents and Applications in any country or countries foreign to the United States; and ASSIGNOR hereby authorizes and requests the Commissioner of Patents of the United States, and any Official of any country foreign to the United States, whose duty it is to issue patents on applications as aforesaid, to issue all Letters Patent for said improvements and all Letters Patents resulting from the Patents and Applications to ASSIGNEE, its successors, legal representatives, and assigns, in accordance with the terms of this Agreement.

ASSIGNOR does hereby sell, assign, transfer, and convey to ASSIGNEE, its successors, legal representatives, and assigns a 50% undivided interest in all claims for damages and all remedies arising out of any violation of the rights assigned hereby that may have accrued prior to the date of assignment to ASSIGNEE, or may accrue hereafter, including, but not limited to, the right to sue for, collect, and retain damages for past infringements of the said Patents and Applications before or after issuance;

ASSIGNOR hereby covenants and agrees that it will communicate to ASSIGNEE, its successors, legal representatives, and assigns any facts known to ASSIGNOR respecting the Patents immediately upon becoming aware of those facts, and that it will testify in any legal proceeding involving any of the Patents and Applications, will sign all lawful papers, execute all divisional, continuing, and reissue applications, make all rightful oaths, and will generally do everything possible to aid ASSIGNEE, its successors, legal representatives, and assigns to obtain and enforce the Patents and Applications in all countries.

IN TESTIMONY WHEREOF, I hereunto set my hand and seal this 7th day of January, 2005.

Phage Biotechnology Corporation

By: John W Jacobs

Name Printed: John W Jacobs

Title: VP & COO

Date: 1/7/05

STATE OF CALIFORNIA }
} ss.
COUNTY OF ORANGE }

On JAN. 7, 2005, before me, JUDITH S. PELTON, personally appeared Jack Jacobs, Chief Operating Officer of Phage Biotechnology Corporation personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument, and acknowledged to me that he executed the same in his authorized capacity(ies), and that by his signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[SEAL]

Judith S Pelton
Notary Signature

H:\DOCS\CSC\CSC-8326.DOC
120804

JUDITH S. PELTON
Commission # 1484536
Notary Public - California
Orange County
My Comm. Expires Apr 20, 2008

# JOINT PATENT OWNERSHIP AND LICENSE AGREEMENT

This written Agreement (the "Agreement") memorializes the oral agreement entered into and made effective the 16th day of August 2004 (the "Effective Date") between CardioVascular BioTherapeutics, Inc. ("CARDIO"), whose principal place of business is at 1700 West Horizon Parkway, Suite 100, Henderson, Nevada 89102, and Phage Biotechnology, Inc. ("PHAGE"), whose principal place of business is at 1700 West Horizon Parkway, Suite 100, Henderson, Nevada 89102.

WHEREAS, CARDIO plans to develop and commercialize therapeutic methods related to the induction of angiogenesis or wound healing by administration of Fibroblast Growth Factor ("FGF"); and,

WHEREAS, PHAGE plans to develop and commercialize recombinant DNA methods for producing peptides/proteins, and owns patents and patent applications covering angiogenic or wound healing peptides/proteins, including FGF, and methods for producing these peptides/proteins; and

WHEREAS, CARDIO and PHAGE wish to jointly own all patents related to FGF and the methods for producing and using FGF, whether such patents are developed jointly or individually by either party; and

WHEREAS, CARDIO and PHAGE wish to license from one another exclusive rights to practice under the jointly owned patents in accordance with their respective plans for development and commercialization; and

WHEREAS, CARDIO and PHAGE entered into a manufacturing license agreement dated March 1, 2000 (the "Manufacturing Agreement); and

WHEREAS, CARDIO and PHAGE wish to terminate the Manufacturing Agreement and cancel all future obligations and liabilities that may exist under the Manufacturing Agreement;

NOW THEREFORE, in consideration of the cancellation of the Manufacturing Agreement and the patent assignments and licenses granted herein and other valuable considerations, the parties agree as follows:

1. Termination of Manufacturing Agreement. As of the Effective Date the Manufacturing Agreement is hereby terminated. The parties agree to cancel any further liabilities or obligations set forth in the Manufacturing Agreement.

2. Definitions.

2.1 "Field" shall encompass any angiogenic or wound healing compositions, (including in particular, but without limitation, all FGF species, fragments, derivatives, and analogs thereof, nucleic acid sequences encoding angiogenic or wound healing proteins/peptides), vectors and host cells comprising said DNA sequences, methods of making

the angiogenic or wound healing compositions, and methods of inducing angiogenesis or wound healing employing the said compositions. CARDIO-developed devices and methods of use thereof for delivery of angiogenic or wound healing compositions are NOT included within the Field, and are NOT subject to joint ownership or any other terms of this Agreement.

2.2 "Territory" shall mean worldwide, subject to CARDIO's exclusive license to Korea Biotechnology Development Co., Ltd. ("KBDC License") for the territories of Korea, China and Taiwan as detailed in Section 5.

2.3 "Patent Rights" shall mean the rights to make, use, practice, sell, offer to sell, and import the Products and/or Processes claimed in any Issued Patents listed below and any patents that issue directly from the Pending Patent Applications listed below or from any Future Patent Applications, including any continuations, divisionals, re-exams, reissues and continuations-in-part that claim priority to any of the Issued Patents, Pending Patent Applications and/or Future Patent Applications, and any foreign counterparts thereof:

*Issued Patents:*

1. U.S. 6,268,178 entitled "Phage-Dependent Super-Production of Biologically Active Protein and Peptides;" and

2. U.S. 6,642,026 entitled "Method of Producing Biologically Active Human Acidic Fibroblast Growth Factor and its Use in Promoting Angiogenesis."

3. U.S. 6,774,889 entitled "Phage-Dependent Super-Production of Biologically Active Protein and Peptides";

*Pending Patent Applications:*

1. U.S. 09/859,651 (Allowed) entitled "Phage-Dependent Super-Production of Biologically Active Protein and Peptides;"

2. U.S. 10/280,864 entitled "Method of Producing Biologically Active Human Acidic Fibroblast Growth Factor and its Use in Promoting Angiogenesis;"

3. U.S. 10/649,480 entitled "Method of Producing Biologically Active Human Acidic Fibroblast Growth Factor and its Use in Promoting Angiogenesis;" and

4. All foreign patent applications related to the above-referenced U.S. patents and applications.

*Future Patent Applications:*

All U.S. and foreign patent applications, developed jointly or independently by either party, which may or may not be related to the above-listed Issued Patents and Pending Patent Applications, but which disclose subject matter encompassed within the Field.

2.4 "Product" shall mean any product which:

(a) is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the Patent Rights; or

(b) is manufactured by using a process which is covered in whole or in part by an issued, unexpired claim or a pending claim contained in the Patent Rights.

2.5 "Process" shall mean any process which is covered in whole or in part by an issued, unexpired claim or pending claim contained in the Patent Rights.

3. Patent Assignments.

3.1 PHAGE hereby agrees to assign and hereby does assign to CARDIO a 50% ownership interest in the itemized patents and patent applications (Patent Rights).

(a) A separate Assignment for these patents and applications for recordation with the U.S. Patent and Trademark Office will accompany this Agreement.

(b) Future Patent Applications within the Field will be assigned by the respective inventors to PHAGE and CARDIO jointly, with each party having a 50% ownership interest.

4. License Grants.

4.1 PHAGE hereby grants to CARDIO a non-revocable, royalty-bearing (subject to Section 7.1), exclusive license within the Territory to the Patent Rights in the Field, including the right to sublicense to third parties within the Field, provided that any third party sublicensee shall be subject to all of CARDIO's obligations under Sections 10, 11, 13 and 14.

4.2 CARDIO hereby grants to PHAGE a non-revocable, royalty-free, exclusive license within the Territory to the Patent Rights in all other fields outside of the Field, including the right to sublicense to third parties outside of the Field.

5. KBDC License. CARDIO's rights and obligations under this agreement are subject to a pre-existing agreement between CARDIO and Korea Biotechnology Development Co., Ltd. ("KBDC") granting exclusive rights to manufacture and market certain Products within the Field in the territories of Korea, China and Taiwan. A formal license agreement between CARDIO and KBDC is in preparation.

6. Technical Development Services/FGF Manufacturing. PHAGE agrees to provide technical development services to CARDIO for the development and regulatory approvals of FGF, including, but not limited to, lab work, testing, and production of FGF for clinical trials, all as directed by CARDIO. If CARDIO so requests, PHAGE will produce FGF in commercial quantities for CARDIO as well as PRODUCTS.

7. Compensation and Royalties.

7.1 In consideration for PHAGE's assignment of a 50% ownership interest in all existing Patent Rights within the Field and its agreement to jointly hold all future Patent Rights within the Field, CARDIO agrees to either (at CARDIO's sole discretion):

(a) purchase FGF from PHAGE for 10% of CARDIO's net sales price of finished Product to end customer or distributor; or

(b) pay PHAGE a 6% royalty on the net sales price of finished Product to end customer or distributor, when said finished Product is produced by CARDIO or a third party under the jointly held Patent Rights.

7.2 CARDIO agrees to pay PHAGE for any Technical Development Services (Section 6) performed by PHAGE at CARDIO's direction. Payment for such services will be limited to PHAGE's actual cost of service including direct, indirect and overhead costs, but no profit component. Any such amounts will be billed to CARDIO on a monthly basis. Payments for Technical Development Services are in addition to compensation/royalties set forth in Section 6.1.

8. Term. The rights and obligations set forth in this Agreement shall commence as of the effective date of this Agreement and end upon expiration of the last to expire patents in the Patent Rights, including Future Patent Applications.

9. Patent Prosecution and Maintenance.

9.1 During the Term of this Agreement, CARDIO and PHAGE will be jointly responsible for the filing, payment, prosecution and maintenance of all patents and applications within the Field, whether developed jointly or individually by either party. A party can, at its sole discretion, assign its entire right, title and interest in a particular patent or application within the Field to the other party, in which case, it shall bear no further responsibility for the filing, payment, prosecution and maintenance of such patent or application, and it shall lose its rights in such patent or application.

9.2 The parties shall jointly agree on patent counsel.

9.3 The parties agree that patent counsel shall implement instructions from both parties to the extent that such instructions are not inconsistent.

9.4 In the event that the parties cannot agree on instructions for the filing, payment, prosecution and/or maintenance of a patent or application:

(a) for a patent or application covering an invention developed by one party, that party shall control the prosecution and/or maintenance of such patent or application;

(b) for a patent or application covering an invention jointly developed by both parties, Cardio shall control the prosecution and/or maintenance of such patent or application.

10. Patent Infringement. Upon learning of any infringement of Patent Rights by third parties in any country, CARDIO and PHAGE will promptly inform each other, as the case may be, in writing of that fact and will supply the other with any available evidence pertaining to the infringement. In the event that CARDIO and PHAGE mutually agree to bring suit, costs and expenses shall be shared equally and any recovery in excess of expenses shall be shared equally. In such event, no settlement, consent, judgment or other voluntary final disposition of the suit may be entered into without the consent of both parties, which shall not be unreasonably withheld. In the event that one party does not agree to take steps to stop the infringement, the other party shall have the right to bring suit at its own expense, wherein any recovery shall be solely owned by the party bringing suit, and that party shall have the right to enter into settlement, consent, judgment or other voluntary final disposition without the consent of the other party.

11. Indemnification.

11.1 PHAGE agrees to release, indemnify and hold harmless CARDIO, their Directors, officers, and employees against any and all losses, expenses, claims, actions, lawsuits and judgments thereon (including attorney's fees through the appellate levels) which may be brought against CARDIO as a result of or arising out of any negligent act or omission of PHAGE in its manufacture and supply of FGF or other angiogenic peptides/proteins to CARDIO. CARDIO agrees to release, indemnify and hold harmless PHAGE, their Directors, officers, and employees against any and all losses, expenses, claims, actions, lawsuits and judgments thereon (including attorney's fees through the appellate levels) which may be brought against PHAGE as a result of or arising out of any negligent act or omission of CARDIO in its use of the FGF or other angiogenic peptides/proteins.

11.2 This Agreement to reimburse and indemnify under the circumstances set forth above shall continue after the termination of this Agreement.

12. Warranties. CARDIO and PHAGE make NO warranties, express or implied, and hereby disclaim all such warranties, as to any matter whatsoever, including, without limitation, the condition of any Product or Process, whether tangible or intangible, assigned and/or licensed under this Agreement; or the merchantability, or fitness for a particular purpose of the Product or Process; or that the use of the Product or Process will not infringe any patent, copyrights, trademarks, or other rights. CARDIO and PHAGE shall not be liable for any direct, consequential, or other damages suffered by the other party or any third parties resulting from the use, production, manufacture, sale, lease, consumption, or advertisement of the Product or Process. The provisions of this Section shall continue beyond the termination of this Agreement.

13. Reports and Records.

13.1 Commencing one year after the first sale, CARDIO shall furnish to PHAGE a report in writing specifying during the preceding calendar quarter:

(a) the amount of Product sold hereunder by CARDIO;

(b) the total billings for all Products sold;

(c) the total royalties due; and

(d) the names and addresses of all sublicensees.

Such reports shall be due within 45 days following the last day of each calendar quarter in each year during the term of this Agreement. Each such report shall be accompanied by payment in full of the amount due PHAGE in United States dollars.

13.2 For a period of three years from the date of each report pursuant to Section 13.1, CARDIO shall keep records adequate to verify each such report and accompanying payment made to PHAGE under this Agreement, and an independent Certified Public Accountant or Accounting Firm selected by PHAGE and acceptable to CARDIO may have access, on reasonable notice during regular business hours, not to exceed once per year, to such records to verify such reports and payments. Such Accountant or Accounting Firm shall not disclose to PHAGE any information other than that information relating solely to the accuracy of, or necessity for, the reports and payments made hereunder. The fees and expense of the Certified Public Accountant or Accounting Firm performing such verification shall be borne by PHAGE unless in the event that the audit reveals an underpayment of royalty by more than ten (10%) percent, the cost of the audit shall be paid by CARDIO.

14. Marking and Standards.

14.1 Prior to the issuance of any patents within the Patent Rights, CARDIO agrees to mark Products (or their containers or labels) made, sold, or otherwise disposed of by it under the license granted in this Agreement with a proper patent notice as specified under the patent laws of the United States.

14.2 If CARDIO elects to make FGF or have FGF made for its use under the terms of this Agreement, CARDIO further agrees to maintain satisfactory standards in respect to the nature of the Product manufactured and/or sold by CARDIO. CARDIO agrees that all Products manufactured and/or sold by it shall be of a quality which is appropriate to products of the type here involved. CARDIO agrees that similar provisions shall be included by sublicenses of all tiers.

15. Assignability. Neither party shall assign its ownership interest in the Patent Rights to a third party without the written consent of the other party. If either party desires to transfer its ownership interest in the Patent Rights, the non-transferring party shall have first right of refusal of such ownership interest. Notwithstanding the foregoing, this Agreement is not assignable by either party or by operation of law, including by acquisition of all assets of either party, without the prior written consent of the other party at its sole discretion.

16. Assignability. This Agreement is not assignable by either party or by operation of law, including by acquisition of all assets of either party, without the prior written consent of the other party at its sole discretion.

17. Binding. This Agreement shall extend to and be binding upon the successors and legal representatives and permitted assigns of CARDIO and PHAGE.

18. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original copy of the Agreement.

19. Governing Law. This Agreement shall be construed without regard to any conflict of laws principles, and interpreted in accordance with the laws of the State of California.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CARDIOVASCULAR BIOTHERAPEUTICS, INC.

By_____
Name_____
Title_____

PHAGE BIOTECHNOLOGY, INC.

By John W. Jacobs
Name JOHN W. JACOBS
Title COO

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

CARDIOVASCULAR BIOTHERAPEUTICS, INC.

By Michael A Flynn
Name Michael A Flynn
Title CEO

PHAGE BIOTECHNOLOGY, INC.

By_____
Name_____
Title_____



RECORDED: 02/15/2005

PATENT
REEL: 016263 FRAME: 0519