

PATENT ASSIGNMENT

Electronic Version v1.1

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SUBMISSION TYPE:

NEW ASSIGNMENT

NATURE OF CONVEYANCE:

Statement of Claim filed in the Court of Queen's Bench of Alberta Judicial District of Edmonton

CONVEYING PARTY DATA

Name	Execution Date
LUNG-JI CHANG	02/22/2002
AMDL INC.	02/22/2002

RECEIVING PARTY DATA

Name:	ACUVECTOR GROUP INC.
Street Address:	11219 - 25 Avenue
City:	Edmonton, Alberta
State/Country:	CANADA
Postal Code:	T6J 4X5

PROPERTY NUMBERS Total: 8

Property Type	Number
Patent Number:	6730512
Patent Number:	6531123
Patent Number:	6248721
Patent Number:	6207455
Patent Number:	5981274
Patent Number:	5693508
Application Number:	11122456
Application Number:	10455080

CORRESPONDENCE DATA

Fax Number: (925)226-4995

*Correspondence will be sent via US Mail when the fax attempt is unsuccessful.*

Phone: 6108929942

Email: gerry@elman.com

Correspondent Name: Gerry J. Elman

PATENT

500156282

REEL: 018296 FRAME: 0942

CH \$320.00 6730512

Address Line 1: P.O. Box 209  
Address Line 4: Swarthmore, PENNSYLVANIA 19081

ATTORNEY DOCKET NUMBER: ACU1.001

NAME OF SUBMITTER: Gerry J. Elman

**Total Attachments: 10**

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IN THE COURT OF QUEEN'S BENCH OF ALBERTA  
JUDICIAL DISTRICT OF EDMONTON

BETWEEN:

ACUVECTOR GROUP INC.

Plaintiff

and

LUNG-JI CHANG, AMDL INC.,  
JOHN TKACHUK, JGT MANAGEMENT  
SERVICES LIMITED, BRIANA BIO-TECH INC.  
and AMDL CANADA INC.

Defendants

**STATEMENT OF CLAIM**

1. The Plaintiff, AcuVector Group Inc. ("AcuVector"), is an Alberta corporation with its principal place of business in Edmonton, Alberta.
2. The Defendant Lung-Ji Chang ("Chang") is a resident of Florida, United States of America. Chang was both a shareholder and director of AcuVector until July 16, 2001. Chang continues to be a shareholder of AcuVector.
3. The Defendant John Tkachuk ("Tkachuk") is a resident of Sherwood Park, Alberta and principal shareholder and director of the Defendant JGT Management Services Limited ("JGT"), an Alberta corporation with its principal place of business in Edmonton, Alberta.
4. The Defendant Briana Bio-Tech Inc. ("Briana"), insofar as it is known to the Plaintiff, is or was a Canadian corporation operating in Alberta and elsewhere in Canada. Insofar as it is known to the Plaintiff, Tkachuk was at all material times a senior manager, officer, or director of Briana or one or more of the other Corporate Defendants.

5. The Defendant AMDL Inc. ("AMDL") is a Delaware corporation, which, insofar as it is known to AcuVector, conducts business in Alberta and elsewhere in Canada.
6. The Defendant AMDL CANADA INC. ("AMDL Canada") is a Canadian corporation affiliated, insofar as it is known to AcuVector, with one or more of the other corporate Defendants.
7. One or both of the Defendants AMDL and AMDL Canada developed a product with the Cross Cancer Institute of Edmonton, Alberta and since 1991 have extensively conducted business in Alberta and elsewhere in Canada.
8. One or both of the Defendants AMDL and AMDL Canada entered into extensive marketing arrangements in Canada, conducted international marketing out of Canada, conducted clinical trials in Canada and filed regulatory applications in Canada.
9. While employed by the University of Alberta in Edmonton, Alberta, Chang invented and developed certain intellectual property, including technology utilizing gene therapy methodologies useful for the treatment and prevention of cancer and other diseases (collectively, "Technology").
10. As a result of Chang's employment with the University of Alberta while the Technology was being invented and developed, the University of Alberta acquired all rights in relation to the Technology and Chang had certain obligations insofar as the Technology was concerned. The University of Alberta's rights and Chang's obligations were only modified to the extent evidenced in writing between Chang and the University of Alberta, including under the University of Alberta's patent policy.
11. By way of an agreement involving the University of Alberta, AcuVector and Chang, dated September 21, 1998 ("U of A Agreement"), the University of Alberta became a shareholder of AcuVector. The U of A Agreement facilitated the development and eventual commercialization of the Technology and other intellectual property.

12. By way of a technology transfer agreement also dated September 21, 1998 ("TTA Agreement"), Chang granted to AcuVector the sole and exclusive right and license to exercise all rights in relation to the Technology and, as a result of the U of A Agreement, certain other intellectual property. The rights granted to AcuVector were sole and exclusive rights.

13. Pursuant to the terms of the TTA Agreement, the technology rights granted to AcuVector included rights to technical information, discoveries, inventions, subject matter of patents, trade secrets, know-how and other intellectual property. Also pursuant to the terms of the TTA Agreement, the rights granted to AcuVector included existing rights and future improvements or other changes, all relating to, among other things, technology relating to Retroviral Expression Vectors, Recombinant Hepatitis Virus Vectors, Combination Immunogene Therapy, Animal Models for Evaluation of Vaccines and Lentiviral Vectors (all technology which is the subject matter of and defined in the TTA Agreement, and whether provided by Chang or the University of Alberta, and with such changes, collectively "Licensed Technology").

14. The U of A Agreement permitted the assignment of rights to the Technology and other intellectual property to AcuVector, but provided for the termination of many of these rights and the reinstatement of the University of Alberta's original rights should the TTA Agreement be terminated.

15. At all material times, the Defendant Chang was in a fiduciary relationship with AcuVector and owed fiduciary duties and obligations to AcuVector, including the following:

- (a) to at all times act honestly with loyalty and utmost good faith;
- (b) to at all times act in the best interests of AcuVector and to place the interests of AcuVector ahead of his own self-interest and that of others;
- (c) to refrain from acting against the best interests of AcuVector and, in particular, from being in a position of conflict of interest;
- (d) to diligently and properly perform his obligations in his capacity as director and a party to the TTA Agreement;

- (e) to keep technology, business plans and other business information of AcuVector confidential;
- (f) to refrain from using for his own benefit or for the benefit of others the technology and business information of AcuVector;
- (g) to refrain from interfering with or conspiring against the best interests of AcuVector; and
- (h) to devote the necessary time, attention and skill in the best interest of AcuVector's rights in the Licensed Technology.

16. By way of express and implied confidentiality agreements with AcuVecotor, the Defendants Tkachuk, JGT and Briana agreed to keep confidential certain business plans and technical information of AcuVector and AcuVector's affiliate company Acugene Inc.

17. The Defendants Tkachuk, JGT and Briana breached their obligations of confidentiality by disclosing confidential information to one or both of the Defendants AMDL and AMDL Canada. As a result, AcuVector has suffered losses and damages.

18. Some time in 2000 or early 2001, the exact date which is solely within the knowledge of the Defendants, Chang and AMDL conspired to harm the economic interests of AcuVector. These Defendants' conspiracy became apparent to AcuVector in December of 2001 when it became aware of a purported agreement between these Defendants dated July 30, 2001, which called for the transfer of some of the Licensed Technology to AMDL for the consideration of, among other things, U.S. \$2,000,000 and a royalty.

19. AcuVector has continuously and diligently asserted its rights in the Licensed Technology pursuant to the TTA Agreement. AcuVector provided numerous notices to Chang and AMDL. Despite such express assertions and notices of rights in the Licensed Technology, these Defendants have misrepresented to third parties that they own the Licensed Technology and know of no competing interests in the Licensed Technology. These misrepresentations have been the subject of press releases, news articles and also, insofar as it is known to AcuVector, have been made to securities authorities in the United States and potential investors in AMDL.

20. Insofar as it is known to AcuVector, the exact particulars of which are solely within the knowledge of one or more of the Defendants, Chang has deliberately caused incorrect and unauthorized patent filings to occur in the United States relating to some of the Licensed Technology. Insofar as it is known to the Plaintiff, these incorrect and unauthorized filings include misrepresentations as to the ownership of rights in the Licensed Technology.

21. Further, one or more of the Defendants Chang and AMDL have deliberately or negligently caused patent filings to occur when they knew or ought to have known that the filings did not accurately reflect AcuVector's plans for patent filings and prosecutions. As a result, AcuVector has suffered and continues to suffer damages in relation to making the appropriate patent filings, accessing certain records and dealing freely with the relevant patent offices. AcuVector will continue to suffer such damages and other damages and losses arising from correcting the improper patent filings, pursuing proper patent protection and obtaining financial benefits from the Licensed Technology.

22. The Defendant Chang breached his fiduciary duties and his obligations pursuant to the TTA Agreement. Exact particulars of Chang's breaches are within his knowledge and include:

- (a) disclosing AcuVector's Licensed Technology and business plans and other business information to AMDL;
- (b) conspiring with AMDL to cause harm to AcuVector's business plans and rights to the Licensed Technology;
- (c) using for his own personal benefit and AMDL's benefit AcuVector's business plans, other business information and Licensed Technology;
- (d) deliberately interfering with AcuVector's business plans, including making representations regarding ownership of some or all of the Licensed Technology to other parties and entering into a purported agreement with AMDL;
- (e) deliberately interfering with AcuVector's business relationships with other parties, including potential investors;
- (f) failing to keep AcuVector advised of any proposed improvements or other changes to the Technology, as he was obligated to do pursuant to his fiduciary duties and Section 2.2 of the TTA Agreement,

- (g) failing to report financing and other arrangements, as he was obligated to do pursuant to the University of Alberta agreement;
- (h) failing to make arrangements for AcuVector to negotiate with relevant parties, including funding agencies or collaborators, as he was obligated to do pursuant to his fiduciary duties and Section 2.2 of the TTA Agreement;
- (i) attempting to convey, pledge, charge or otherwise dispose of any interest in the Licensed Technology, particulars of which include his purported agreement with AMDL, contrary to his fiduciary duties and Section 4.1 of the TTA Agreement;
- (j) disclosing confidential information to AMDL, in contravention of his fiduciary duties and Section 5.1 of the TTA Agreement;
- (k) failing to assist AcuVector and its advisors in the filing, prosecution and maintenance of patents, some particulars of which are set forth above, in contravention of his fiduciary duties and Section 5.4 of the TTA Agreement.

23. At all material times the Defendant AMDL knew or ought to have known of the TTA Agreement and AcuVector's rights to the Licensed Technology. Further, AMDL knew or ought to have known AcuVector could be prejudiced and economically harmed by AMDL's interference with AcuVector's rights to the Licensed Technology.

24. The Defendant AMDL intentionally and wrongfully, or in the alternative negligently, interfered with AcuVector's fiduciary and contractual relationship with Chang. Exact particulars are within AMDL's knowledge and include:

- (a) inducing Chang to breach his fiduciary duties and his obligations pursuant to the TTA Agreement;
- (b) making misrepresentations about AcuVector's rights to the Licensed Technology;
- (c) making misrepresentations about AMDL's knowledge of AcuVector's express claim to the Licensed Technology and whether there had been any claim to the Licensed Technology.

25. The Defendants Chang, AMDL and AMDL Canada have infringed AcuVector's intellectual property rights to the Licensed Technology by using, selling or otherwise dealing with the Licensed Technology, some particulars of which include misrepresentations as to who had or has relevant rights, misrepresentations of the intended use and regulatory status of



Combination Immunogene Therapy vaccines, and the incorrect and unauthorized patent filings. Further particulars are within the sole knowledge of one or more of these Defendants and will be disclosed during the discovery process of this Action.

26. Further, or in the alternative, the Defendants Chang, AMDL and AMDL Canada have wrongfully converted AcuVector's rights to the Licensed Technology and related economic benefits, some particulars of which are set forth above.

27. The Defendants' interference with AcuVector's economic interests has been intentional and with knowledge that the conduct would bring about harm to AcuVector.

28. AcuVector has and will continue to suffer irreparable harm as a result of the Defendants' interference with AcuVector's rights to the Licensed Technology, interference with economic interests, Chang's breaches of fiduciary obligations and duties, and Chang's breaches of the TTA Agreement.

29. Further, AcuVector has and will continue to suffer losses and damages as a result of the misrepresentations as to who had or has rights to the Licensed Technology.

30. The Plaintiff proposes that the trial of this action be held at the Law Courts Building, Edmonton, Alberta and in the opinion of the Plaintiff this matter will take less than 25 days to try.

WHEREFORE THE PLAINTIFF CLAIMS AGAINST THE DEFENDANTS AND EACH OF THEM:

- (a) A declaration that the Plaintiff is the sole and exclusive owner of the Licensed Technology;
- (b) An order compelling the Defendant Chang to execute any and all applications, assignments or other instruments required to comply with the terms and intent of the TTA Agreement;
- (c) An order compelling the Defendant AMDL to execute any and all applications, assignments or other instruments required to confirm AcuVector's sole and exclusive right, title and interest in and to the Licensed Technology;

- (d) An interlocutory injunction restraining the Defendants and each of their respective officers, employees, agents, representatives and any person acting under or pursuant to their instructions or on their behalf, from making misrepresentations regarding the rights to the Licensed Technology, including filings with security authorities and patent offices, until judgement is entered in the trial of this action;
- (e) An interlocutory injunction restraining the Defendants and each of their respective officers, employees, agents, representatives and any person acting under or pursuant to their instructions or on their behalf, from selling, making, using, disclosing or distributing in Canada or elsewhere, any information, technology or process which is directly or indirectly related to the Licensed Technology until judgment is entered in the trial of this action;
- (f) A permanent injunction restraining the Defendants and each of their respective officers, employees, agents, representatives and any person acting under or pursuant to their instructions or on their behalf, from making misrepresentations regarding the ownership of the Licensed Technology, including filings with security authorities and patent offices;
- (g) A permanent injunction restraining the Defendants and each of their respective officers, employees, agents, representatives and any person acting under or pursuant to their instructions or on their behalf, from selling, making, using, disclosing or distributing in Canada or elsewhere, any information, technology or process which is directly or indirectly related to the Licensed Technology;
- (h) Damages in the amount of \$20,000,000;
- (i) An accounting of all revenue acquired relating to the Licensed Technology;
- (j) Costs of this action;
- (k) Interest pursuant to the *Judgment Interest Act*, R.S.A. 2000, c.J-1; and
- (l) Such further and other relief as this Honourable Court deems fit to grant.

DATED at Edmonton, Alberta, this 22 day of February, 2002 AND DELIVERED by Fraser Milner Casgrain LLP, Barristers and Solicitors, 2900 Manulife Place, 10180 – 101 Street, Edmonton, Alberta, T5J 3V5, Lawyers for the Plaintiff whose address for service is in care of Fraser Milner Casgrain LLP.

ISSUED out of the office of the Clerk of the Court of Queen's Bench of Alberta, Judicial District of Edmonton, this 22 day of February, 2002.

  
CLERK OF THE COURT OF QUEEN'S  
BENCH OF ALBERTA

R. B.



**NOTICE**

**TO: LUNG-JI CHANG, AMDL INC., JOHN TKACHUK, JGT MANAGEMENT SERVICES LIMITED, BRIANA BIO-TECH INC. and AMDL CANADA INC.**

You have been sued. You are the Defendants. You have only 15 days to file and serve a Statement of Defence or Demand of Notice. You or your lawyer must file your Statement of Defence or Demand of Notice in the office of the Clerk of the Court of Queen's Bench in Edmonton, Alberta.

You or your lawyer must also leave a copy of your Statement of Defence or Demand of Notice at the address for service for the Plaintiff named in this Statement of Claim.

**WARNING:** If you do not do both things within 15 days, you may automatically lose the lawsuit. The Plaintiff may get a Court judgment against you if you do not file, or do not give a copy to the Plaintiff, or do either thing late.

This Statement of Claim is issued by FRASER MILNER CASGRAIN LLP, Lawyers for the Plaintiff, and whose address for service is:

FRASER MILNER CASGRAIN LLP  
2900, 10180 – 101 Street  
Manulife Place  
Edmonton, Alberta  
T5J 3V5

The Lawyer to contact at FRASER MILNER CASGRAIN LLP is Joseph Rosselli, telephone (780) 423.7142

at which address service of subsequent proceedings in this action may be served as effectively as if served upon the Plaintiff personally.

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Action No. 2002

**IN THE COURT OF QUEEN'S BENCH OF  
ALBERTA  
JUDICIAL DISTRICT OF EDMONTON**

**BETWEEN:**

ACUVECTOR GROUP INC.

Plaintiff

-and-

LUNG-JI CHANG, AMDL INC., JOHN TKACHUK,  
JGT MANAGEMENT SERVICES LIMITED, BRIANA  
BIO-TECH INC. and AMDL CANADA INC.

Defendants

**STATEMENT OF CLAIM**

This Statement of Claim is issued by FRASER MILNER CASGRAIN LLP, Lawyers for the Plaintiff which resides at:

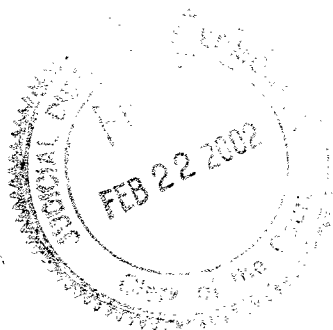
Edmonton, Alberta

and whose address for service is

Fraser Milner Casgrain LLP  
2900, 10180 – 101 Street  
Manulife Place  
Edmonton, Alberta  
T5J 3V5

and is addressed to the Defendants whose residence as far as known to the Plaintiff are Alberta, Canada, Delaware and Florida, United States of America.

Lawyer: Joseph Rosselli  
Telephone: (780) 423.7142  
Facsimile: (780) 423.7276  
File: 174870-11/JR



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**RECORDED: 09/26/2006**

**PATENT  
REEL: 018296 FRAME: 0953**