

Form PTO-1595 (Rev. 08/05)
OMB No. 0651-0027 (exp. 6/30/2008)

U.S. DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

RECORDATION FORM COVER SHEET PATENTS ONLY

To the Director of the U.S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies)

NATIONAL TROPICAL BOTANICAL GARDEN
3530 Papalina Road
Kalaheo, Kauai, HI 96741

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

3. Nature of conveyance/Execution Date(s):

Execution Date(s) 11/18/05 and 11/23/05

- ☐ Assignment ☐ Merger
☒ Security Agreement ☐ Change of Name
☐ Joint Research Agreement
☐ Government Interest Assignment
☐ Executive Order 9424, Confirmatory License
☐ Other _____

2. Name and address of receiving party(ies)

Name: THE INSTITUTE FOR ETHNOMEDICINE

Internal Address: _____

Street Address: 3214 N. University Ave., #316

City: Provo

State: Utah

Country: USA Zip: 84604

Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application or patent number(s):

A. Patent Application No.(s)
10/731,411

☐ This document is being filed together with a new application.
B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

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

Name: PILLSBURY WINTHROP SHAW PITTMAN LLP

Internal Address: 12255 El Camino Real
Suite 300

Street Address: 12255 El Camino Real, Suite 300

City: San Diego

State: CA Zip: 92130-2006

Phone Number: (619) 234-5000

Fax Number: (858) 509-4010

Email Address: donna.perdue@pillsburylaw.com

6. Total number of applications and patents involved: 1

7. Total fee (37 CFR 1.21(h) & 3.41) \$ 40.00

- ☐ Authorized to be charged by credit card
☒ Authorized to be charged to deposit account
☐ Enclosed
☐ None required (government interest not affecting title)

8. Payment Information

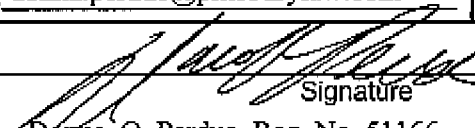
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a. Credit Card Last 4 Numbers _____
Expiration Date _____

b. Deposit Account Number 033975

Authorized User Name _____

9. Signature:


Signature

June 6, 2007

Date

Donna O. Perdue, Reg. No. 51166

Name of Person Signing

Total number of pages including cover sheet, attachments, and documents: 7

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O.Box 1450, Alexandria, V.A. 22313-1450

CH \$40.00 033975 10731411

AGREEMENT BETWEEN THE INSTITUTE FOR ETHNOMEDICINE AND THE NATIONAL TROPICAL BOTANICAL GARDEN

Whereas The Institute for EthnoMedicine ("IEM") is an organization incorporated under the laws of the state of Wyoming, and IEM has been granted 501(c)(3) publicly supported, not-for-profit status by the U.S. Internal Revenue Service;

Whereas the National Tropical Botanical Garden ("NTBG") is a corporation chartered by the United States Congress in 1964 and is recognized by the U.S. Internal Revenue Service as a 501(c)(3) publicly supported, not-for-profit organization;

Whereas the IEM is organized to operate as an independent, self-funded organization and commenced operations in early 2005 with Dr. Paul Cox as its Director;

Whereas both the NTBG and IEM include among their purposes botanical research on plants and the use of plants in medicine and for treatment of disease;

Whereas the NTBG incurred significant expenditures in recent years to fund the research work of Dr. Paul Cox, Dr. Susan Murch and Dr. Sandra Banack related to neurological diseases that resulted in the BMAA discoveries;

Whereas the NTBG engaged, at its expense, the San Diego, California office of the Pillsbury Winthrop law firm to pursue obtaining a patent from the United States Patent and Trademark Office with respect to the BMAA discoveries. Such application

was filed December 8, 2003, its title being NEUROTOXIC AMINO ACID OR NEUROTOXIC DERIVATIVE THEREOF ASSOCIATED WITH NEUROLOGICAL DISORDERS;

Whereas Drs. Cox, Murch and Banack assigned to NTBG all their right, title and interest with respect to the BMAA discoveries in two Assignment Documents, dated September 27, 2003.

Whereas Drs. Cox, Murch and Banack agree to NTBG transferring and conveying to IEM all NTBG's right, title and interest in the BMAA discoveries; and

Whereas NTBG rendered significant support to and expended considerable resources during the period 1998 through 2004 to further Dr. Cox's work in connection with his prostratin (derived from a tree growing in Western Samoa) discovery, and IEM plans to pursue opportunities in order to benefit AID's patients through the use of prostratin;

Whereas NTBG is agreeable to conveying to IEM all NTBG's right, title and interest in the BMAA discoveries in consideration of:

- (1) IEM's agreement to pay to NTBG timely a share of twenty-five percent (25%) of all "net income" of IEM from the BMAA inventions; a share of twenty-five percent (25%) of all "net income" from other plant medicine discoveries of IEM; and a share of twenty-five percent (25%) of all net income of IEM from prostratin. ("Net income" is defined for

purposes of this Agreement as gross royalties and other compensation to IEM from the respective inventions (respectively either BMAA, other plant medicine discovery of IEM, or prostratin) less (i) the costs of IEM's patent estate management for the respective discovery and (ii) the share of net income paid with respect to the respective discovery by IEM to indigenous peoples; and

(2) IEM's agreement to assume and perform all obligations to NTBG of IEM set forth in the paragraphs numbered 2 to 8 below.

NOW, therefore, IEM and NTBG, for consideration, the receipt and sufficiency of which are hereby mutually acknowledged and confirmed, agree as follows:

1. NTBG hereby conveys, by its signature below, to IEM all its right, title and interest in the BMAA discoveries, which discoveries were previously assigned to NTBG by the Assignment Documents executed by Drs. Cox, Murch and Banack, a copy of which are attached hereto as Appendices A and B. Such conveyance by NTBG to IEM shall be effective at the time this Agreement becomes effective.

2. IEM agrees to pay and shall pay in a timely manner to NTBG a share of twenty-five percent (25%) of all "net income" of IEM from both (i) BMAA inventions and (ii) any other plant medicine discoveries of IEM. IEM also agrees to pay and shall pay in a timely manner to NTBG a share of twenty-five percent (25%) of all "net income" of IEM from prostratin. "Net income" is defined for purposes of this Agreement as gross royalties and other compensation to IEM from the respective

inventions (respectively either BMAA, other plant medicine discovery of IEM, or prostratin) less (i) the costs of IEM for patent estate management for the respective discovery (either BMAA, other plant medicine discovery, or prostratin) and (ii) the share of net income paid with respect to the respective discovery by IEM to indigenous peoples.

3. IEM shall not sell or otherwise transfer any ownership interest in the BMAA discoveries without the prior written consent of NTBG to any proposed sale or transfer, and NTBG shall receive from IEM a share of twenty-five percent (25%) of all consideration to IEM in connection with any such sale or transfer.

4. NTBG shall arrange with Pillsbury Winthrop for NTBG to withdraw as a client, and IEM shall arrange to become the client of the law firm, in NTBG's place, with respect to the pending BMAA Patent Application, with such substitution to take place as promptly as possible following this Agreement becoming effective.

5. During the first year of operation of IEM, IEM and NTBG shall have a "no cost" shared services relationship based on an equitable exchange of professional services. IEM shall provide to NTBG continued teaching, Fairchild Medal services by Dr. Cox, and named affiliation with the NTBG for scientific publications. NTBG, in exchange, shall provide twelve months of exclusive access for IEM to the current plant medicine laboratory/equipment and shall provide reasonable access to NTBG's libraries and gardens, subject to the policies and procedures of the NTBG.

6. Article XI Dissolution of the Articles of Incorporation of IEM states:

"This corporation is one which does not contemplate pecuniary gain or profit to the Trustees thereof, and it is organized solely for nonprofit purposes. Upon the winding up and dissolution of this corporation, after paying or adequately provided for the debts and obligations of the corporation, the remaining assets shall be distributed to the National Tropical Botanical Garden, a nonprofit corporation, which is organized and operated exclusively for charitable, educational, and/or scientific purposes and which has established its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986. If this corporation holds any assets in trust, such assets shall be disposed of in such manner as may be directed by decree of the district court of the county in which this corporation's principal office is located, upon petition therefor by the Attorney General or by any person concerned in its liquidation."

IEM shall not amend this Article XI of its Articles of Incorporation without the prior written consent of the NTBG.

7. A condition precedent to this Agreement is that Drs. Cox, Murch and Banack and NTBG shall have executed an Agreement for Mutual Releases and an executed copy of such Agreements for Mutual Release is attached hereto as Appendices C, D and E.

8. This Agreement, upon being executed by both parties (by a person authorized by each party to execute this document), shall be effective retroactively, as of 12:01 AM, January 1, 2005. This Agreement may be executed by use of counterpart copies.

In witness whereof, each party hereto executes this Agreement.

THE INSTITUTE OF ETHNOMEDICINE

by William C. Spencer

11/23/05
Date of Execution by IEM

NATIONAL TROPICAL BOTANICAL GARDEN

by Dagmar W. Hues

11/15/05
Date of Execution by NTBG

Appendices A, B, C, D and E