

# PATENT ASSIGNMENT

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SUBMISSION TYPE:	NEW ASSIGNMENT	
NATURE OF CONVEYANCE:	ASSIGNMENT	
CONVEYING PARTY DATA		
Name		Execution Date
Jerry M. Held M.D.		12/29/2007
RECEIVING PARTY DATA		
Name:	VIVUS, INC.	
Street Address:	1172 Castro Street	
City:	Mountain View	
State/Country:	CALIFORNIA	
Postal Code:	94040	
PROPERTY NUMBERS Total: 1		
Property Type	Number	
Application Number:	11542010	
CORRESPONDENCE DATA		
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<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
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Correspondent Name:	MINTZ LEVIN	
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ATTORNEY DOCKET NUMBER:	9050-0081	
NAME OF SUBMITTER:	Geraldine N. Rochino	
<p>Total Attachments: 9</p> <p>source=Assignment#page1.tif</p> <p>source=Assignment#page2.tif</p> <p>source=Assignment#page3.tif</p> <p>source=Assignment#page4.tif</p> <p>source=Assignment#page5.tif</p>		

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## ASSIGNMENT AGREEMENT

This Assignment Agreement (the "Agreement") is made this 2nd day of January 2008 (the "Effective Date"), by and between **Jerry M. Held, M.D.**, an individual with a principal place of business at P. O. Box 33140, Santa Fe, NM 87594 ("Assignor"), and **VIVUS, Inc.**, a company incorporated under the laws of Delaware, having its principal place of business at 1172 Castro Street, Mountain View, California 94040 ("Assignee"), collectively, the "Parties."

**Whereas**, Assignor is the owner of that certain Invention as defined below; and

**Whereas**, Assignee is desirous of acquiring all title, right, interest, benefits and privileges to the Invention, all inventive subject matter, and all materials embodying the Invention;

**Now, therefore**, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree and act as follows:

1. For purposes of this Agreement, "Invention" means, individually and collectively, a novel therapy for treating various neurodegenerative diseases, various disorders of the muco-cutaneous system and other applications using phosphodiesterase inhibitors in combination with other chemical compounds, and the compositions and methods therefor including, without limitation, those inventions described and/or embodied in the following: all notes, records, data, reports, and the patent applications described on Exhibit 1 (such patent applications, the "Patent Applications").
2. Assignor hereby, irrevocably and without reservation:
  - 2.1 Assigns, sells, transfers and conveys to Assignee all right, title and interest in and to:
    - (i) the Invention;
    - (ii) any and all U.S. patent applications filed that disclose or claim the Invention, including the Patent Applications filed in the U.S., any substitution, divisional, continuation and continuation-in-part applications thereof, any new U.S. patent applications related thereto, and any U.S. patents issuing on the foregoing applications, including reissued and re-examined versions confirmations, extensions, renewal or substitutions thereof;
    - (iii) any non-U.S. patent applications filed that disclose or claim the Invention, including the Patent Applications filed in non-

U.S. jurisdictions, divisional and other later-filed non-U.S. applications, whether or not claiming priority or otherwise related to the U.S. patent applications referenced in (ii) above; and any non-U.S. patents issuing on the foregoing non-U.S. patent applications, including reissued and re-examined versions confirmations, extensions, renewal or substitutions thereof.

- 2.2 In the event that Assignee decides in its sole discretion to abandon all commercial exploitation of any Invention embodied within the Patent Rights, Assignee agrees to take all reasonable steps necessary to assign its rights to the Invention back to Assignor, including all patents and patent applications within the Patent Rights. In such event, this Agreement shall terminate as of the date of such decision, and Assignee shall have no further obligations to Assignor except as set forth in this Section 2.2. "Patent Rights" shall mean the U.S. or foreign patents issued and pending described in Sections 2.1 (ii) and (iii) above.
- 2.3 Assignor hereby warrants and represents that (i) he has not entered into and will not enter into any assignment, contract or understanding in conflict herewith, (ii) the Patent Applications include all patents and pending patent applications claiming or disclosing the Invention, with the exception of Application No. 60/878,927 entitled "Method and composition for the treatment of restless leg syndrome utilizing combination serotonergic synaptic reuptake inhibitor and phosphodiesterase inhibitor"; (iii) he is the sole and exclusive owner of the Inventions and the Patent Applications, and (iv) that there are no threatened or pending actions, lawsuits, claims or arbitration proceedings in any way relating to the Invention or the Patent Applications or to Assignor's knowledge any basis for such actions, lawsuits, claims or arbitration proceedings. Assignor agrees that Assignee has provided to Assignor full and adequate consideration for the assignment of rights given herein.
- 2.4 The terms and covenants of this Agreement shall inure to the benefit of Assignee, its successors, assigns and other legal representatives, and shall be binding upon Assignor, his heirs, legal representatives and assigns.
3. Assignee shall use commercially reasonable efforts (1) to continue to prosecute the one pending non-provisional application within the Patent Applications, together with any amendments thereto to which the Parties mutually agree; (2) to timely file and prosecute non-provisional applications with respect to each of the three pending provisional applications within the

Patent Applications; (3) to file and prosecute such additional applications for patents relating to the Invention as the Parties mutually agree; (4) to maintain, enforce and defend all patents and other intellectual property rights relating to the foregoing, and (5) to test, develop, manufacture and commercialize one or more Products. Consistent with applicable law, any amendments to the pending non-provisional patent application and any new patent applications filed and prosecuted in accordance with this Section 3 will name Jerry M. Held as inventor in such amendments and new applications. For clarity any of the patent applications filed and prosecuted pursuant to this Section 3 and all patents issuing therefrom shall be deemed Patent Rights for purposes of this Agreement.

4. Assignee agrees to pay Assignor, upon the specified event below, the following non-refundable payments:
  - 4.1 Fifteen Thousand United States Dollars (\$15,000.00) upon execution of this Agreement.
  - 4.2 Ten thousand United States Dollars (\$10,000.00) upon the issuance of **each** of the U.S. patents within the Patent Rights claiming substantially the subject matter claimed in the Patent Applications described in Exhibit 1 hereto which claims are reasonably satisfactory to Assignee, if any.
  - 4.3 One Hundred Thirty Thousand United States Dollars (\$130,000.00) upon completion of first double-blind, placebo-controlled clinical study by Assignee for **each** different Product with positive results that warrant, in Assignee's reasonable discretion, the initiation of one or more phase 3 studies.
  - 4.4 One Hundred Thousand United States Dollars (\$100,000.00) upon a New Drug Application ("**NDA**") filing with the United States Food and Drug Administration ("**FDA**") with respect to **each** different Product (as described below).
  - 4.5 Five Hundred Thousand United States Dollars (\$500,000.00) upon the approval of an NDA by the FDA with respect to **each** different Product.

A Product shall be deemed "different" for purposes of this Section 4 above if such Product (i) requires (or would reasonably require) a different NDA to be filed in order for the Product to be marketed in the United States, and (ii) is intended to be marketed in the United States for a different indication and under a different trade name than a Product for which the applicable payment under this Section 4 was already paid.

5. In addition, Assignee agrees to pay Assignor the following payments on annual Net Sales of each different Product as follows:

5.1 One percent (1.0%) of Net Sales up to \$500 million U.S. dollars;

5.2 One and one-half percent (1.5%) of that portion of Net Sales greater than \$500 million U.S. dollars.

"Net Sales" shall mean any amounts paid to Assignee, or an affiliate (i.e., 50% or greater ownership interest) or licensee of Assignee, in respect to the sale of Products, less the following amounts to the extent actually accrued, taken or allowed with respect to such sale:

- (a) cash, quantity and other discounts or rebates (standard and customary in the pharmaceutical industry);
- (b) refunds, credits, charge backs or allowances for recalls, rejections, returns, or the like;
- (c) freight charges, insurance and packing charges or the like; and
- (d) taxes (other than income tax, but including value added and sales taxes), duties, or other governmental charges levied on or measured by the disposition or the invoiced amount, whether absorbed by the billing or the billed party.

"Product" shall mean any pharmaceutical product utilizing a combination of phosphodiesterase inhibitors and other chemical compounds for the treatment of neurodegenerative diseases, skin disorders and other uses the manufacture, use, sale, offer for sale or importation is covered by a valid claim within the Patent Rights in the country of sale.

6. The Parties agree that Assignee may publish articles or make other publications regarding the Inventions assigned to it hereunder and where appropriate Assignor will be given the opportunity to be the first author on such publications, however, in all such publications Assignee will use reasonable efforts to recognize Assignor as the inventor of the Invention consistent with industry norms for the type of publication.
7. The remittance of amounts payable on Net Sales of Products will be payable to Assignor or his heirs, successors or assigns (as applicable) in United States Dollars. Any tax required to be withheld by Assignee or any affiliate of Assignee under the laws of any country for the account of Assignor shall be promptly paid by Assignee or said affiliate for and on behalf of Assignor to

the appropriate governmental authority. Assignee or said affiliate shall furnish Assignor with proof of payment of such tax together with official or other appropriate evidence issued by the appropriate governmental authority to enable Assignor to support a claim for income tax credit in respect of any sum so withheld. Any such tax required to be so withheld shall be an expense of and borne solely by Assignor.

8. Assignee shall keep complete and accurate records of Net Sales of Products with respect to which amounts are payable by Assignee pursuant to Section 5. Within sixty (60) days following each quarterly period of a calendar year after the date on which amounts are due under this Agreement, Assignee shall render to Assignor a true and accurate written report setting forth the Net Sales of Products, the method of their calculation, and the amounts due and payable. Assignee shall, upon rendering such report, remit to Assignor the amount of amounts shown thereby to be due. Upon Assignor's written request, but not more frequently than once per calendar year, Assignee shall permit representatives or agents of Assignor, at Assignor's expense, to examine its records during Assignee's normal business hours for the purpose of and to the extent necessary to verify any report required under this Section 8 with respect to Net Sales received not more than two (2) years prior to the date of Assignor's request. In the event that the amounts due to Assignor are determined to have been underpaid, Assignee shall pay to Assignor any amount due and unpaid, together with interest on such amount at the U.S. prime rate quoted in the "Money Rates" column of The Wall Street Journal (U.S., Eastern Edition) on the first business day after such unpaid amount is discovered, or at the maximum rate permitted by law, whichever is lower. Conversely, any amounts that are determined to have been overpaid shall be credited or repaid to Assignee, at its election.
9. If Assignee, its affiliate or licensee is required to pay a non-affiliate third party amounts with respect to a Product under agreements for patent rights or other technologies which assignee, its affiliate or licensee, in its reasonable judgment, determines are necessary or desirable to license or acquire with respect to such Product, Assignee may deduct such amount owing to such third parties (prior to any reductions) from the amounts owing to the Assignor with respect to Net Sales of such Product pursuant to Section 5. Notwithstanding the foregoing provisions of this Section 9, in no event shall the amounts due to the Assignor pursuant to Section 5 be so reduced to less than one percent (1%) of Net Sales.
10. In the event that a Product is sold in combination with another product, component or service which itself is not a Product, Net Sales from such combination sales for purposes of calculating the amounts due under Section 5 shall be calculated by multiplying the Net Sales of the combination product by the fraction  $A/(A + B)$ , where A is the average gross selling price during

the previous calendar quarter of the Product sold separately and B is the gross selling price during the previous calendar quarter of the combined product(s), component(s) and/or service(s). In the event that a substantial number of such separate sales were not made during the previous calendar quarter then the Net Sales shall be as reasonably allocated by Assignee between such Product and such other product(s), component(s) or service(s) based upon their relative importance and proprietary protection. Notwithstanding the foregoing provisions of this Section 10, in no event shall the amounts due to Assignor pursuant to Section 5 be so reduced to less than one percent (1%) of Net Sales.

11. If at any time a third party in any country shall, under the right of a compulsory license be granted or ordered to be granted by a competent governmental authority, any right to manufacture, use, sell, offer for sale or import any Product with respect to which amounts would be payable pursuant to Section 5, then Assignee shall be entitled to reduce the payment obligation under Section 5 in such country to an amount equal to the royalty payable by such third party under such compulsory license for so long as such compulsory license is in place. In the event that Assignee reduces the amounts payable pursuant to Section 5 due to such compulsory licenses, then the Assignee shall provide copies of all such compulsory licenses to Assignor. Notwithstanding the foregoing provisions of this Section 11, in no event shall the amounts due to Assignor pursuant to Section 5 be so reduced to less than one percent (1%) of Net Sales.
12. The obligation to pay royalties to Assignor pursuant to Section 5 will terminate on a country-by-country basis upon the expiration of the last to expire valid claim within the Patent Rights in such country. Assignee's obligation to pay royalties pursuant to Section 5 above is imposed only once with respect to each unit of Product sold. No more than one payment shall be due with respect to the sale of a particular Product.
13. Assignor agrees to assist Assignee, or its designee, at the Assignee's expense, in every proper way to secure or enforce the Assignee's rights in the Invention and the Patent Rights, or other intellectual property rights relating thereto in any and all countries, including the disclosure to the Assignee of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments which the Assignee shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Assignee, its successors, assigns and nominees the sole and exclusive rights, title and interest in and to such Inventions and the Patent Rights, or other intellectual property rights relating thereto.




14. Coincident herewith, the Parties are entering into a certain consulting agreement (the "Consulting Agreement") pursuant to which Assignor will provide certain consulting services to Assignee and Assignee will compensate Assignor with respect thereto, all as set forth in more detail therein.
15. This Agreement shall be governed by the laws of the State of Delaware, without reference to conflict of laws principles. The Parties to this Agreement expressly agree to submit to the jurisdiction and venue of either the Federal or state courts in Santa Clara County, California, as appropriate, as to any legal action brought to enforce, interpret or receive damages for breach of this Agreement and further agree that any such action shall be filed with said court. This Agreement (together with the Consulting Agreement) contains the entire understanding and agreement between the Parties with respect to the subject matter hereof. Any failure to enforce any provision of the Agreement shall not constitute a waiver thereof or of any other provision. This Agreement may not be amended, nor any obligation waived, except by a writing signed by both Parties. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, then such provision shall be eliminated or limited to the extent required by applicable law and this Agreement, as so modified, shall remain enforceable in accordance with its terms.
16. Except as required by law, neither Party shall make any public announcement, statement, response to questions or other disclosure concerning this Agreement nor the terms nor the subject matter hereof without the prior written consent of the other Party.
17. This Agreement has been prepared jointly and shall NOT be strictly construed against either Party.
18. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

19. Any and all payments to Assignor under Sections 4 or 5 above shall be payable to Held Holdings, LLC, Tax ID No. 26-1523906.

**IN WITNESS WHEREOF**, each of the Parties has caused this Agreement to be executed in the manner appropriate to each, to be effective on the Effective Date.

**VIVUS, Inc., Assignee**

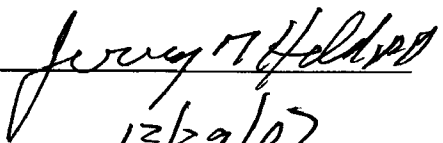


By:

**Peter Tam**  
Sr. VP, Product & Corporate Development

Title:

**Jerry M. Held, M.D., Assignor**

  
12/29/07

## EXHIBIT 1

### Patent Applications

- U.S. Serial No. 11/542,010 filed with the United States Patent & Trademark Office on October 2, 2006 as a non-provisional application for "Treatment for Parkinson's Disease – Combination of high dose serotonergic synaptic reuptake inhibitor with phosphodiesterase inhibitor."
- U.S. Serial No. 60/902,394 filed with the United States Patent & Trademark Office on February 21, 2007 as a provisional application for "*Method and Composition for the Treatment of Neuro-Degenerative Dementia Utilizing a Combination of Serotonergic Synaptic Reuptake Inhibitor, Cholinesterase Inhibitor and Phosphodiesterase Inhibitor.*"
- U.S. Serial No. 60/930,673 filed with the United States Patent & Trademark Office on May 18, 2007 as a provisional application for "*Method and Composition for the Facilitation and Acceleration of Wound, Burn and Scar Healing and for the Maintenance and Improvement of Skin and Mucous Membrane Health Utilizing a Combination of Serotonergic Synaptic Reuptake Inhibitor, Cholinesterase Inhibitor and Phosphodiesterase Inhibitor.*"
- U.S. Serial No. 60/962,094 filed with the United States Patent & Trademark Office on July 27, 2007 as a provisional application for "*Method and Composition for the Treatment of Neurodegenerative Diseases by Combining a Phosphodiesterase-5 Inhibitor with Various Relevant Medications to Increase Target Neurotransmitters.*"