

Form PTO-1595 (Rev. 03-09)  
OMB No. 0651-0027 (exp. 03/31/2009)

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)**

PHAGE BIOTECHNOLOGY CORPORATION

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

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

Execution Date(s) August 21, 2009

- ☐ 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: RICHARD RITTER, COLLATERAL AGENT

Internal Address: \_\_\_\_\_

Street Address: BAHNHOFSTRASSE 26

City: ZURICH

State: ZURICH

Country: SWITZERLAND Zip: CH-8022

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

**4. Application or patent number(s):**

A. Patent Application No.(s)

12/024889

☐ 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: Harry J. Proctor

Internal Address: Solomon Ward Seldenwurm & Smith, LLP

Street Address: 401 B Street, Suite 1200

City: San Diego

State: CA Zip: 92101

Phone Number: (619) 231-0303

Fax Number: (619) 231-4755

Email Address: hproctor@swsslaw.com

**6. Total number of applications and patents involved:** 1**7. Total fee (37 CFR 1.21(h) & 3.41) \$** 40.00

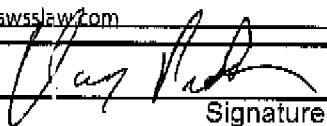
- ☐ Authorized to be charged to deposit account  
☒ Enclosed  
☐ None required (government interest not affecting title)

**8. Payment Information**

Deposit Account Number \_\_\_\_\_

Authorized User Name \_\_\_\_\_

**9. Signature:**

  
Signature

August 25, 2009  
Date

HARRY J. PROCTOR  
Name of Person Signing

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

15

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

700416300

**PATENT**  
**REEL: 023136 FRAME: 0034**

OP \$40.00 12024889

## AMENDMENT TO SECURITY AGREEMENT

This Amendment to Security Agreement (this "Amendment") is entered into as of August 21, 2009 (the "Effective Date"), by and between Phage Biotechnology Corporation, a corporation organized and existing under the laws of the State of Delaware (the "Company"), and Richard Ritter in his capacity as Agent (as defined in Lenders Rights Agreement as amended as of the Effective Date) for the benefit of Lenders (as defined in the Loan Agreement as amended as of the Effective Date) (collectively, the "Lenders") as secured party. The parties agree as follows:

### Recitals

A. The Company is the debtor in Case Number 08-09859-LA7, United States Bankruptcy Court, Southern District of California (the "Court"). The Company and Lenders are parties to a Loan Agreement, Security Agreement and Lenders Rights Agreement all dated November 19, 2008 (together with the Secured Convertible Promissory Notes delivered pursuant thereto (the "Notes", the "Loan Documents"). Capitalized terms not defined herein shall have the respective meanings ascribed to them in the Loan Documents, as applicable and as amended through the Effective Date.

B. The Company has requested the Maturity Date of the Notes be extended, and Lenders provide additional funding in an amount up to One Million dollars (\$1,000,000) to the Company for an aggregate loan amount of up to Two Million Five Hundred Thousand dollars \$2,500,000.

C. The parties desire to amend the Security Agreement to incorporate the additional indebtedness referred to in Section 1.2 and to amend Exhibit A to add additional Collateral.

D. Other than as expressly set forth herein, the parties intend that all the terms of the Security Agreement shall remain unchanged and in full force and effect.

NOW, THEREFORE, in consideration of the covenants and agreements herein contained, the parties hereto amend the Security Agreement, and covenant and agree, as follows:

1. Recitals Incorporated. The recitals set forth above are hereby incorporated by reference.

2. Amendments.

2.1 Definitions. The first paragraph of Section 2 is amended to read as follows:

"All capitalized terms not specifically defined in this Agreement have the meaning ascribed to them in the Loan Agreement, Notes, or Lenders Rights Agreement, as applicable, and as amended through the Effective Date, or if not defined in this Agreement, the Loan

Agreement, Notes, or Lenders Rights Agreement shall have the meanings set forth in the California Uniform Commercial Code (the "UCC"). In the event of any conflict between this Agreement and the Notes, Loan Agreement, or Lenders Rights Agreement, the Loan Agreement shall control. For purposes of this Agreement, the following definitions shall apply:"

2.2 Exhibit A is amended to add the following Application:

Application No. 12/024,889, Pub. No US 2008/0193992; Kluyveromyces Strains Metabolizing Cellulosic and Hemicellulosic Materials.

3. No Other Change. Except as modified by this Amendment, the parties intend that all the terms of the Security Agreement shall remain unchanged and in full force and effect.

*[Signatures on Following Page]*

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

**The Company:**

PHAGE BIOTECHNOLOGY  
CORPORATION

By: Prof. Dr. med. Th. Stegmann

Name: Dr. Thomas J. Stegmann

Title: MD, PhD

CEO + President,  
Phage Biotech. Corp.

**Agent:**

By: [Signature]

Richard Ritter

**EXHIBIT A**  
**INTELLECTUAL PROPERTY**

	<b>Patent No.</b>	<b>Issue Date</b>	<b>Title</b>
1	7,435,804	October 14, 2008	Method for obtaining single chain antibodies to human interferon .alpha.2b
2	7,344,876	March 18, 2008	Kluyveromyces strains metabolizing cellulosic and hemicellulosic materials
3	6,794,162	September 21, 2004	Phage- dependent super-production of biologically active protein and peptides
4	6,773,899	August 10, 2004	Phage-dependent superproduction of biologically active protein and peptides
5	6,642,026	November 4, 2003	Method of producing biologically active human acidic fibroblast growth factor and its use in promoting angiogenesis
6	6,268,178	July 31, 2001	Phage- dependent super-production of biologically active protein and peptides
7	7,252,818	August 7, 2007	Method of producing biologically active human acidic fibroblast growth factor and its use in promoting angiogenesis

	<b>Application No.</b>	<b>Publication No.</b>	<b>Title</b>
1	10/947513	20050059129	Biologically active material conjugated with biocompatible polymer with 1:1 complex, preparation method thereof and pharmaceutical composition comprising the same
2	11/187,522	20050281778	Human growth hormone conjugated with biocompatible polymer
3	11/314926	20060134736	Human growth hormone conjugated with biocompatible polymer
4	12/024,889	20080193992	Kluyveromyces Strains Metabolizing Cellulosic and Hemicellulosic Materials

## SECURITY AGREEMENT

This Security Agreement (this "Agreement") is entered into as of November 19, 2008 (the "Effective Date"), by and between Phage Biotechnology Corporation, a corporation organized and existing under the laws of the State of Delaware (the "Company"), and Richard Ritter in his capacity as Agent (as defined in Lenders Rights Agreement) for the benefit of Lenders (as defined in the Loan Agreement) (collectively, the "Lenders") as secured party. The parties agree as follows:

### 1. Recitals.

1.1. The Company and Lenders are executing the following agreements, which shall collectively be referred to, together with this Agreement, as the "Loan Documents": (a) the Loan Agreement, (b) the Secured Convertible Promissory Note(s), in the aggregate amount of up to \$1,500,000.00 (the "Notes"), and (c) the Lenders Rights Agreement.

1.2. Pursuant to the Lenders Rights Agreement, each Lender has appointed and authorized the Agent to act as collateral agent under this Agreement. The Lenders Rights Agreement establishes a mechanism for the appointment of Agent and attorney-in-fact for the Lenders to enforce their rights under this Agreement. It is acknowledged that with respect to all matters set forth in this Agreement requiring the action or consent of the Lenders, Lenders are acting pursuant to the terms of, and through Agent.

1.3. The Company has agreed to grant a security interest (the "Security Interest") in the Collateral (as defined below) to secure payment and other obligations arising under the Loan Documents.

2. Definitions. All capitalized terms not specifically defined in this Agreement have the meaning ascribed to them in the Loan Agreement, Notes, or Lenders Rights Agreement, as applicable, or if not defined in this Agreement, the Loan Agreement, Notes, or Lenders Rights Agreement shall have the meanings set forth in the California Uniform Commercial Code (the "UCC"). In the event of any conflict between this Agreement and the Notes, Loan Agreement, or Lenders Rights Agreement, the Loan Agreement shall control. For purposes of this Agreement, the following definitions shall apply:

2.1. "Accounts" shall mean all "accounts" as defined in the UCC now owned or hereafter acquired by the Company, including without limitation all accounts receivable, contract rights, notes, drafts and other obligations or indebtedness owing to the Company and arising from whatever source (including bank deposits and accounts) (including without limitation any such obligation which might be characterized as an account, contract right or general intangible under the UCC in effect in any jurisdiction) and all of the rights of the Company in, to and under all purchase orders for goods, services or other property, and all of the rights of the Company to any goods, services or other property represented by any of the foregoing (including returned or repossessed goods and unpaid sellers' rights of

rescission, replevin, reclamation and rights to stoppage in transit) and all monies due to or to become due to the Company under all contracts for the sale, lease or exchange of goods or other property and/or the performance of services by it (whether or not yet earned by performance on the part of the Company), in each case whether now in existence or hereafter arising or acquired including, without limitation, the right to receive the proceeds of said purchase orders and contracts and all collateral security and guarantees of any kind given by any Person with respect to any of the foregoing.

2.2. "Collateral" means all; Accounts; Documents; Equipment; General Intangibles; Instruments; Inventory; all assets of the Company, including all other personal property of the Company; all books and records (including, without limitation, customer lists, supplier lists, credit files, computer programs, printouts and other computer materials and records) of the Company pertaining to any of the Collateral; all Proceeds of any of the Collateral described in this subsection 2.2; and all intellectual property, including all patents, patent applications, tradenames, trademarks, domain names and other commercial identifiers including those listed on attached Exhibit A.

2.3. "Documents" shall mean all "documents" as defined in the UCC or other receipts covering, evidencing or representing goods, now owned or hereafter acquired by the Company.

2.4. "Equipment" shall mean all "equipment" as defined in the UCC, now or hereafter used or acquired for use in the business or otherwise of the Company (together with all accessions thereto and all substitutions and replacements thereof and parts therefor), whether or not the same shall be deemed affixed to real property, and all rights under or arising out of present or future contracts relating to the acquisition or use of the above.

2.5. "General Intangibles" shall mean all "general intangibles" as defined in the UCC now owned or hereafter acquired by the Company, including without limitation (a) all obligations or indebtedness owing to the Company (other than Accounts) from whatever source arising, (b) all patent licenses, patents, trademark licenses, trademarks, rights in intellectual property, goodwill, trade names, service marks, trade secrets, copyrights, permits and licenses, (c) all rights or claims in respect of refunds for taxes paid, and (d) all rights in respect of any pension plan or similar arrangement maintained for employees of the Company or any of its subsidiaries.

2.6. "Instruments" shall mean (a) all "instruments," "chattel paper," or "letters of credit" each as defined in the UCC, evidencing, representing, arising from or existing in respect of, relating to, securing or otherwise supporting the payment of, any of the Accounts, including without limitation promissory notes, drafts, bills of exchange and trade acceptances, and (b) notes or other obligations or indebtedness owing to the Company from whatever source arising, in each case now owned or hereafter acquired by the Company.

2.7. "Inventory" shall mean all "inventory" as defined in the UCC, now owned or hereafter acquired by the Company, wherever located, including without limitation

all raw materials and other materials and supplies, work-in-process and finished goods and any products made or processed therefrom and all substances, if any, commingled therewith or added thereto.

2.8. "Proceeds" shall mean all proceeds of, and all other profits, rentals or receipts, in whatever form, arising from the collection, sale, lease, exchange, assignment, licensing or other disposition of, or realization upon, any item or portion of the Collateral, including without limitation all claims of the Company against third parties for loss of, damage to, destruction of, or for proceeds payable under, or unearned premiums with respect to, policies of insurance in respect of, any Collateral and any condemnation or requisition payments with respect to any Collateral, in each case whether now existing or hereafter arising.

3. Grant of Security Interest.

3.1. As security for the payment and performance of the Company's obligations and covenants under the Loan Documents, the Company hereby grants to Agent for the benefit of Lenders a continuing first priority Security Interest in the Collateral (as defined above), whether now owned or existing or hereafter acquired or arising and regardless of where located. In order to perfect the Security Interest, concurrently with the Effective Date (i) a form UCC-1 financing statement in favor of Agent for the benefit of Lenders listing the Collateral shall be filed in the manner prescribed by the UCC; and (ii) to the extent necessary, the applicable form(s) prescribed by the United States Patent and Trademark Office (the "PTO") in favor of Agent for the benefit of Lenders listing all the patents, patent applications, registered names, marks and commercial identifiers included among the Collateral shall be filed in the manner prescribed by the PTO, which form(s) the Company will duly execute, acknowledge and deliver to Lenders on or before the Effective Date.

4. The Company's Covenants. The Company warrants and agrees that as long as this Agreement remains in effect:

4.1. The Company shall take all commercially reasonable necessary steps to defend the Collateral against claims and demands of others, but not including continued use to preserve any rights to any tradename, trademark, or patent or any actions required to register or prosecute any tradename, trademark, or patent that is/are not already so registered with the PTO as of the date of this Agreement;

4.2. The Company shall promptly notify Agent for the benefit of Lenders in writing of any event which does or which may materially and adversely affect the value of the Collateral;

4.3. The Company shall maintain the Security Interest granted hereunder as a valid and enforceable first priority lien on and security interest in the Collateral;



4.4. The Company shall pay, on demand, all costs and expenses (including attorney's fees) reasonably incurred or paid by Agent of behalf of Lenders in exercising any right, power or remedy under this Agreement, or in any way relating to the enforcement of Lenders' rights under this Agreement;

4.5. Except for the Security Interest herein granted, the Company shall maintain the Collateral without any further encumbrance, except with the prior written consent of Agent for the benefit of Lenders, which may be withheld or granted in Agent's sole and absolute discretion;

4.6. The Company hereby appoints Agent as its agent in fact to do all acts required of the Company after Default (as defined below), it being acknowledged by the Company that such appointment is coupled with an interest and is irrevocable;

4.7. At Agent's request, the Company shall:

4.7.1. file any financing statements, assignments, instruments of transfer or notices that may be required in order to give notice of, reflect the grant of or perfect the Security Interest granted hereunder and after Default notify any persons designated by Agent of Lenders' interest in the Collateral;

4.7.2. after Default, upon Agent's request, segregate all collections of money and other property under or in respect of the Collateral and deliver promptly upon receipt such collections to Agent in kind; and

4.8. The Company shall pay prior to delinquency all taxes, charges, liens and assessments against the Collateral, subject to the Company's right to contest the foregoing in good faith.

## 5. Remedies on Default.

5.1. In addition to any and all rights Lenders shall have under the Loan Documents or otherwise by law for a default or breach of the obligations of the Company under the Loan Documents (any such event being herein called a "Default"), Agent on behalf of Lenders shall have the rights and remedies of a secured party under the UCC.

5.2. Subject to applicable law, Agent's notice of the time and place of public sale of the Collateral, or the time on or after which a private sale or other disposition of the Collateral will be made, is reasonable if sent to the Company in the manner for giving notice at least ten (10) business days before the public or private sale.

5.3. The Company must accurately and regularly account for the Collateral and reflect it in all records and make all records relating to it available to Agent on behalf of Lenders and their agents and representatives.

5.4. Any assignment, sale, foreclosure, or levy made under this Section 5 shall divest the Company of all right, title, and claim it may have in and to the Collateral.

6. No Encumbrance. While the Loan Documents are in effect, the Company shall not transfer, sell, or otherwise dispose of the Collateral or take any action that may, in any way, adversely effect the rights of Lenders with respect to the Collateral without the Agent's prior written consent, which consent shall may be granted or withheld in Agent's sole discretion.

7. No Waiver by Lender. No failure by Agent on behalf of Lenders to exercise, and no delay in exercising, any right, remedy or power under this Agreement shall operate as a waiver, nor shall any single or partial exercise by Agent on behalf of Lenders of any right, remedy or power hereunder preclude any other or future exercise. Each right, remedy, or power granted to Agent on behalf Lenders or allowed them by law or other agreement shall be cumulative and not exclusive of any other, and may be exercised from time to time.

8. No Obligations or Duties of Lenders. Agent shall be under no duty or obligation to make or give any presentments, demands for performance, notices of nonperformance, protests, notices of protest or notices of dishonor in connection with Collateral, except as required under the UCC.

9. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California (without regard to conflict of laws principles). Each of the parties hereto agrees that any action or proceeding against it arising out of or in connection with this Agreement may be commenced and maintained in any state or federal court within San Diego, California and that the state and federal courts of the State of California shall have exclusive jurisdiction with respect to the subject matter hereof and the parties hereto.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which taken together shall constitute one instrument. Any of the parties hereto may execute this Agreement by signing any such counterpart.

11. Successors and Assigns. This Agreement shall bind and inure to the benefit of the parties and their respective successors and assigns.

12. Notices. Each notice and other communication required or permitted to be given under this Agreement ("Notice") must be in writing. Notice is duly given to another party upon: (a) hand delivery to the other party, (b) receipt by the other party when sent by facsimile to the address and number for such party set forth at the end of this Agreement (provided, however, that the Notice is not effective unless a duplicate copy of the facsimile Notice is promptly given by one of the other methods permitted under this Section), (c) three (3) business days after the Notice has been deposited with the United States postal service as first class certified mail, return receipt requested, postage prepaid, and addressed to the party

at the address for such party set forth at the end of this Agreement, or (d) the next business day after the Notice has been deposited with a reputable overnight delivery service, postage prepaid, addressed to the party at the address for such party set forth at the end of this Agreement with next-business-day delivery guaranteed, provided that the sending party receives a confirmation of delivery from the delivery-service-provider. Each party shall make a reasonable, good faith effort to ensure that it will accept or receive Notices to it that are given in accordance with this Section. A party may change its address for purposes of this Section by giving the other party written notice of a new address in the manner set forth above.

13. Severability. If any provision of this Agreement is declared void by a judicial or quasi judicial tribunal, such provision shall be deemed severed from this Agreement, which shall otherwise remain in full force and effect.

14. Interpretation. This Agreement shall be interpreted in a reasonable manner to effect the purposes of the parties and this Agreement. Each party has been afforded the right to be represented by independent counsel and hereby waives any rule of law or legal decision that would require interpretation of any ambiguities in this Agreement against the party drafting it.

15. Attorney's Fees. The prevailing party(ies) in any litigation, arbitration, mediation, bankruptcy, insolvency or other proceeding ("Proceeding") relating to the enforcement or interpretation of this Agreement may recover from the unsuccessful party(ies) all costs, expenses, and actual attorney's fees (including expert witness and other consultants' fees and costs) relating to or arising out of (a) the Proceeding (whether or not the Proceeding proceeds to judgment), and (b) any post-judgment or post-award proceeding including, without limitation, one to enforce or collect any judgment or award resulting from the Proceeding. All such judgments and awards shall contain a specific provision for the recovery of all such subsequently incurred costs, expenses, and actual attorney's fees.


16. Entire Agreement. The Loan Documents, and any other agreements and instruments referred to herein, contain the entire agreement of the parties with respect to the subject matter hereof, and may be amended only by an agreement in writing signed by the parties.

*[Signatures on Following Page]*

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

**The Company:****Agent:**

PHAGE BIOTECHNOLOGY CORPORATION

By:  Prof. Dr. med. Dr. Stegmann

Name: Dr. Thomas J.

Stegmann

Title: CEO, Phage Biotechnology

Corporation

By: \_\_\_\_\_

Richard Ritter

P:00448816.3:60375.002

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

The Company:

PHAGE BIOTECHNOLOGY  
CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Agent:

By:  \_\_\_\_\_  
Richard Ritter

**EXHIBIT A**  
**INTELLECTUAL PROPERTY**

	<b>Patent No.</b>	<b>Issue Date</b>	<b>Title</b>
1	7,435,804	October 14, 2008	Method for obtaining single chain antibodies to human interferon .alpha.2b
2	7,344,876	March 18, 2008	Kluyveromyces strains metabolizing cellulosic and hemicellulosic materials
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