

# PATENT ASSIGNMENT

Electronic Version v1.1

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| SUBMISSION TYPE:   | NEW ASSIGNMENT                 |
| NATURE OF CONVEYANCE:  | ASSIGNMENT                     |
| <b>CONVEYING PARTY DATA</b>  |                                |
| Name   | Execution Date                 |
| NCE Pharmaceuticals, Inc.  | 12/01/2008                     |
| <b>RECEIVING PARTY DATA</b>  |                                |
| Name:  | Reactive Surfaces, Ltd.        |
| Street Address:  | 300 West Ave #1316             |
| City:  | Austin                         |
| State/Country:   | TEXAS                          |
| Postal Code:   | 78701                          |
| <b>PROPERTY NUMBERS Total: 7</b>   |                                |
| Property Type  | Number                         |
| Patent Number:   | 5602097                        |
| Patent Number:   | 6020312                        |
| Patent Number:   | 5885782                        |
| Application Number:  | 10601207                       |
| PCT Number:  | US9511724                      |
| PCT Number:  | US9723182                      |
| PCT Number:  | US9812122                      |
| <b>CORRESPONDENCE DATA</b>   |                                |
| Fax Number:  | (512)472-8181                  |
| <i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i> |                                |
| Phone:   | 5124728282                     |
| Email:   | sarah@technologylitigators.com |
| Correspondent Name:  | C. Steven McDaniel             |
| Address Line 1:  | 300 West Ave. #1316            |
| Address Line 4:  | Austin, TEXAS 78701            |
| ATTORNEY DOCKET NUMBER:  | RSL                            |

**PATENT**

**500971460**

**REEL: 023273 FRAME: 0781**

CH \$280.00 5602097

NAME OF SUBMITTER:

C. Steven McDaniel

**Total Attachments: 17**

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## ASSIGNMENT AGREEMENT

This Assignment Agreement ("Agreement") is entered into as of the 1st day of December, 2008 (the "Effective Date"), by Reactive Surfaces, Ltd LLP, a Texas limited partnership corporation (hereinafter "RSL"), with offices at 300 West Avenue, Suite 1316 Austin, Texas and NCE Pharmaceuticals, Inc., a Texas corporation having its principal place of business at 3366 Valemont Street, San Diego, CA 92106 ("NCEP").

### RECITALS

NCEP has developed peptide technology and patent rights pertaining to such peptides. RSL has developed certain peptide additives for antibiological activity, such as spore type toxins (ska "ProteCote") which are deployable in coatings, aerosols, and other systems to act as an antibiological agent;

NCEP and RSL entered into that certain License Agreement dated the 19<sup>th</sup> day of October 2006 giving RSL certain rights under NCEP patent rights; and

NCEP now wishes to assign such patent rights to RSL.

NOW THEREFORE, NCEP agrees to sell to RSL, and RSL agrees to purchase from NCEP, all right, title, and interest in the Assigned Patent Rights, free and clear of any restrictions, liens, claims, and encumbrances, on and subject to the following terms and conditions:

### 1. DEFINITIONS

"Assigned Patent Rights" means the Patents and the additional rights set forth in paragraph 2 of this Assignment Agreement.

"Prior Assignment Agreements" means the agreements assigning ownership of the Assigned Patent Rights from the inventors and/or prior owners to NCEP.

"Executed Assignment" means the executed and notarized Assignment of Patent Rights in the form of Exhibit B, as signed by a duly authorized representative of NCEP.

"Covered Products" means a peptide, composition, device, artifact or system which would infringe at least one claim of the Patents.

"Covered Methods" means methods relating to methods of manufacture or use of a peptide, composition, device, artifact or system which would infringe at least one claim of the Patents.

"Net Sales" means gross revenues received by RSL from the licensing of the Patents, the commercial practice of a Covered Method. or the commercial sale or lease of Covered Product as

separate articles of commerce, less any and all (i) taxes, duties and tariffs imposed on the manufacture, sale, transfer, importation, transportation or storage thereof; and (ii) credits, discounts, allowances and returns actually granted thereon;

“Patents” means (a) all patents listed in Exhibit A; (b) any patents or patent applications (i) to which the patents of Exhibit A directly or indirectly claims priority, (ii) for which the patents of Exhibit A directly or indirectly forms a basis for priority, and/or (iii) that were co-owned applications that directly or indirectly incorporate by reference, or directly or indirectly incorporated into the patents of Exhibit A and (c) any reissues, reexaminations, extensions, continuations, continuations in part, continuing prosecution applications, requests for continuing examinations, divisions, and registrations of any item in any of the foregoing categories (a) and (b).

“Primary Warranties” means, collectively, the representations and warranties of NCEP set forth in paragraph 5 hereof.

“Prosecution History Files” means all files, documents and tangible things, as those terms have been interpreted pursuant to rules and laws governing the production of documents and things, constituting, comprising or relating to the investigation, evaluation, preparation, prosecution, maintenance, defense, filing, issuance, registration, assertion or enforcement of the Patents.

## **2. ASSIGNMENT OF PATENTS.**

Subject to the provisions of Section 4, NCEP hereby irrevocably sells, assigns, transfers, and conveys to RSL all right, title, and interest in and to the Patents, as well as all right, title and interest in and to all:

- (a) inventions, invention disclosures, and discoveries described in any of the Patents;
- (b) rights to apply in any or all countries of the world for patents, certificates of invention, utility models, industrial design protections, design patent protections, or other governmental grants or issuances of any type related to any of the Patents and the inventions, invention disclosures, and discoveries therein;
- (c) causes of action (whether known or unknown or whether currently pending, filed, or otherwise) and other enforcement rights under, or on account of, any of the Patents and/or the rights described in subparagraph 2(b), including, without limitation, all causes of action and other enforcement rights for (i) damages, (ii) injunctive relief, and (iii) any other remedies of any kind for past, current and future infringement; and
- (d) rights to collect royalties or other payments under or on account of any of the Patents and/or any of the foregoing.

### 3. DELIVERABLES.

NCEP will execute and deliver to RSL the Executed Assignment in the form of Exhibit B on the Effective Date. Within twenty (20) calendar following the Effective Date, NCEP will send to RSL, or its legal counsel, the following items relating to the Patents (the "**Initial Deliverables**"): (a) original ribbon copy issued by the United States Patent and Trademark Office, (b) original Prior Assignment Agreements, and (c) original conception and reduction to practice materials. RSL may request, and NCEP agrees promptly to deliver to RSL or its legal counsel, additional documents based on RSL's review of the Initial Deliverables (such additional documents and the Initial Deliverables are, collectively, the "**Deliverables**"). If originals of the Deliverables are not available and delivered to RSL prior to twenty (20) calendar days following the Effective Date, NCEP agrees that (i) such originals of the Deliverables to be sent to RSL or its representative promptly if and after such originals are located and (ii) NCEP will deliver to RSL a declaration, executed under penalty of perjury, detailing NCEP's efforts to locate such unavailable original documents and details regarding how delivered copies were obtained.

### 4. CONSIDERATION.

4.1 RSL shall pay NCEP a running royalty based on a percentage of the Net Sales of Covered Product by or for RSL during the term of this Agreement according to the following schedule:

#### Running Royalty

| <u>Cumulative Net Sales</u> | <u>Percentage</u> |
|-----------------------------|-------------------|
| 0 - \$10,000,000            | 2%                |
| \$10,000,000 - \$15,000,000 | 1.5%              |
| \$15,000,000 - \$25,000,000 | 1%                |
| > \$25,000,000              | .5%               |

4.2 Milestones. RSL agrees to achieve the following milestones:

- |                                     |                |
|-------------------------------------|----------------|
| 1. First Commercial Sale            | December, 2011 |
| 2. \$3 million in revenue generated | December, 2013 |
| 3. \$5 million revenue generated    | December, 2014 |

4.3 Effect of failure to achieve Milestones of Sec. 4.2. In the event of any uncured failure to achieve any of the milestones on the date specified, NCEP shall have the option of: (a) terminating this Agreement; or (b) waiving the failure to achieve a milestone. Notice shall be made by NCEP within 60 days of any such failure. Should NCEP elect to waive any particular failure, such waiver shall not be deemed a continuing waiver and the other milestones shall remain in effect. RSL

shall have a 3-year cure period following notice by NCEP of a failure to achieve a milestone.

4.4 RSL and its sublicensees participate with development partners and prospective customers in research and testing on noncommercial or pre-commercial basis. Such limited quantities of ProteCote or other Covered Product supplied to partners as part of development or testing shall be royalty free.

4.5 RSL will cause the forgiveness of the debt owed to the law firm McDaniel and Associates in the approximate amount of \$15,000. This does not include any debt owed to other parties, such as government patent offices or foreign associate counsel.

4.6 **Accounting and Records.** RSL shall keep accurate records of the Net Sales, date and sales price of all Covered Products sold or leased by or for RSL. RSL shall require its sublicensees to keep similar records of its own sale or lease of Covered Products.

4.7 **Payment Deadline.** RSL shall pay any running royalties due under Section 4.1 to NCEP within 60 days after the end of each calendar quarter

4.8 **Submission of Royalty Report.** RSL shall forward to NCEP within 60 days after the end of each calendar quarter during the term of this Agreement, a report specifying its Net Sales for the quarter and the amount of royalties being paid for such quarter.

4.9 **Payment Instruction.** Payment shall be made directly to:

*can  
miss-  
by direction  
can*  
\_\_\_\_\_ Bank  
Account Number To be determined

Or such other account as specified in writing by NCEP.

4.10 **Audit.** RSL's auditors shall annually in conjunction with the audit of RSL's books and account provide NCEP with a report verifying the reports due under this Agreement for the previous year. Additionally, NCEP shall have the right to have RSL's records bearing on their respective Net Sales of Covered Products inspected by an independent public accounting firm of national standing ("the Auditor"), on RSL's premises, not more often than once each year on reasonable notice and during regular business hours, to verify the accuracy of reports and payments for royalties accrued during the preceding calendar year of this Agreement. The entire cost for an audit shall be borne by NCEP unless the audit demonstrates that RSL underpaid royalties due for in any quarter in the year covered by the audit by five percent (5%) or more, in which case, RSL (in the case of a RSL underpayment) shall reimburse NCEP for the reasonable cost of the audit, and pay interest on the amount of royalties due at a rate of 1.0% per month from the actual due date and pay a penalty of \$5,000 within sixty days of such audit. RSL (in the case of a RSL underpayment) shall promptly pay any unpaid and overdue royalty payments, and NCEP shall promptly reimburse any overpayments, that are discovered from the audit. NCEP's services agreement shall obligate the Auditor to treat information learned in the course of the audit as Confidential Information (regardless of whether it is identified as such), and to refrain

from disclosing any Confidential Information to any third party or from using it for any purpose other than verifying the accuracy of RSL's royalty payments to NCEP.

## **5. REPRESENTATIONS AND WARRANTIES**

NCEP hereby represents and warrants to RSL as follows that, as of the Effective Date:

5.1. Patents Not Abandoned. None of the Patents have expired, lapsed, been abandoned, or deemed withdrawn.

5.2. Authority. NCEP has the full power and authority and has obtained all third party consents, approvals, and/or other authorizations required to enter into this Assignment Agreement and to carry out its obligations hereunder, including, without limitation, the assignment of the Assigned Patent Rights to RSL.

5.3. Title and Contest. NCEP owns all right, title, and interest to the Assigned Patent Rights, including, without limitation, all right, title, and interest to sue for infringement of the Patents. NCEP has obtained and properly recorded previously executed assignments for the Patents as necessary to fully perfect its rights and title therein in accordance with governing law and regulations in each respective jurisdiction. The Assigned Patent Rights are free and clear of all liens, claims, mortgages, security interests or other encumbrances, and restrictions. There are no actions, suits, investigations, claims, or proceedings threatened, pending, or in progress relating in any way to the Assigned Patent Rights. There are no existing contracts, agreements, options, commitments, proposals, bids, offers, or rights with, to, or in any person to acquire any of the Assigned Patent Rights.

5.4. Existing Licenses. There is no obligation imposed by a standards-setting organization to license any of the Patents on particular terms or conditions. No licenses under the Patents have been granted or retained by NCEP, any prior owners, or inventors. After the Effective Date, none of NCEP, any prior owner, or any inventor will retain any rights or interest in the Assigned Patent Rights.

5.5. Restrictions on Rights. RSL will not be subject to any covenant not to sue or similar restrictions on its enforcement or enjoyment of the Assigned Patent Rights as a result of any prior transaction related to the Assigned Patent Rights.

5.6. Validity and Enforceability. None of the Patents has ever been found invalid, unpatentable, or unenforceable for any reason in any administrative, arbitration, judicial or other proceeding, and NCEP does not know of and has not received any notice or information of any kind from any source suggesting that the Patents may be invalid, unpatentable, or unenforceable. If any of the Patents is terminally disclaimed to another patent or patent application, all patents and patent applications subject to such terminal disclaimer are included in this transaction. To the extent "small entity" fees were paid to the United States Patent and Trademark Office for any Patent, such reduced fees were then appropriate because the payor qualified to pay "small entity" fees at the time of such payment and specifically had not licensed rights in the any Patent to an entity that was not a "small entity."

5.7. Conduct. NCEP or its agents or representatives have not engaged in any conduct, or omitted to perform any necessary act, the result of which would invalidate any of the Patents or

hinder their enforcement, including, without limitation, misrepresenting NCEP's patent rights to a standard-setting organization. There is no obligation imposed by a standards-setting organization on RSL to license any of the Patents on particular terms or conditions.

5.8. Enforcement. NCEP has not put a third party on notice of actual or potential infringement of any of the Patents. NCEP has not invited any third party to enter into a license under any of the Patents. NCEP has not initiated any enforcement action with respect to any of the Patents.

5.9. Patent Office Proceedings. None of the Patents has been or is currently involved in any reexamination, reissue, interference proceeding, or any similar proceeding, and no such proceedings are pending or threatened.

5.10. Fees. All maintenance fees, annuities, and the like due or payable on the Patents have been timely paid. All fees owed, due or payable to foreign associate counsel have been timely paid. No fees related to the Patents are outstanding as of the Effective Date.

## **6. FURTHER OBLIGATIONS**

6.1. Further Cooperation. At the reasonable request of RSL, NCEP will execute and deliver such other instruments and do and perform such other acts and things as may be necessary or desirable for effecting completely the consummation of the transactions contemplated by the Assignment Agreement, including, without limitation, execution, acknowledgment, and recordation of other such papers, and using commercially reasonable efforts to obtain the same from the respective inventors, as necessary or desirable for fully perfecting and conveying unto RSL the benefit of the transactions contemplated thereby. To the extent any attorney-client privilege or the attorney work-product doctrine applies to any portion of the Prosecution History Files, NCEP will ensure that, if any such portion of the Prosecution History File remains under NCEP's possession or control after Closing, it is not disclosed to any third party unless (a) disclosure is ordered by a court of competent jurisdiction, after all appropriate appeals to prevent disclosure have been exhausted, and (b) NCEP gave RSL prompt notice upon learning that any third party sought or intended to seek a court order requiring the disclosure of any such portion of the Prosecution History File. In addition, NCEP will continue to prosecute, maintain, and defend the Patents at its sole expense until the Closing.

6.2. Foreign Assignments. To the extent the Patents include non-United States patents and patent applications, NCEP will deliver to RSL's representatives executed documents in a form as may be required in the non-U.S jurisdiction in order to perfect the assignment to RSL of the non-U.S. patents and patent applications.

## **7. LIMITATIONS**

7.1. Limitation of Liability. NCEP'S OR RSL'S TOTAL LIABILITY UNDER THIS ASSIGNMENT AGREEMENT WILL NOT EXCEED THE CONSIDERATION SET FORTH IN PARAGRAPH 4 OF THIS ASSIGNMENT AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS ON POTENTIAL LIABILITIES SET FORTH IN THIS PARAGRAPH 4 WERE AN ESSENTIAL ELEMENT IN SETTING CONSIDERATION UNDER THE ASSIGNMENT AGREEMENT.



7.2. Limitation on Consequential Damages. EXCEPT IN THE EVENT OF NCEP'S INTENTIONAL MISREPRESENTATION, NEITHER PARTY WILL HAVE ANY OBLIGATION OR LIABILITY (WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE)) OR OTHERWISE, AND NOTWITHSTANDING ANY FAULT, NEGLIGENCE (WHETHER ACTIVE, PASSIVE OR IMPUTED), REPRESENTATION, STRICT LIABILITY OR PRODUCT LIABILITY, FOR COVER OR FOR ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL, MULTIPLIED, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES OR LOSS OF REVENUE, PROFIT, SAVINGS OR BUSINESS ARISING FROM OR OTHERWISE RELATED TO THIS ASSIGNMENT AGREEMENT, EVEN IF A PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES ACKNOWLEDGE THAT THESE EXCLUSIONS OF POTENTIAL DAMAGES WERE AN ESSENTIAL ELEMENT IN SETTING CONSIDERATION UNDER THIS ASSIGNMENT AGREEMENT.

## **8. GENERAL**

8.1. Compliance With Laws. Notwithstanding anything contained in the Assignment Agreement to the contrary, the obligations of the parties with respect to the consummation of the transactions contemplated by the Assignment Agreement shall be subject to all laws, present and future, of any government having jurisdiction over the parties and this transaction, and to orders, regulations, directions or requests of any such government.

8.2. Confidentiality of Terms. The parties hereto will keep the terms and existence of the Assignment Agreement and the identities of the parties thereto and their affiliates confidential and will not now or hereafter divulge any of this information to any third party except (a) with the prior written consent of the other party; (b) as otherwise may be required by law or legal process, including, without limitation, in confidence to legal and financial advisors in their capacity of advising a party in such matters; (c) during the course of litigation, so long as the disclosure of such terms and conditions is restricted in the same manner as is the confidential information of other litigating parties; (d) in confidence to its legal counsel, accountants, banks and financing sources and their advisors solely in connection with administering or complying with its obligations with respect to the Assignment Agreement; (e) by RSL, in order to perfect RSL's interest in the Assigned Patent Rights with any governmental patent office (including, without limitation, recording the executed Assignment of Patent Rights in any governmental patent office); or (f) to enforce RSL's right, title, and interest in and to the Assigned Patent Rights; provided that, in (b) and (c) above, (i) to the extent permitted by law, the disclosing party will use all legitimate and legal means available to minimize the disclosure to third parties, including, without limitation, seeking a confidential treatment request or protective order whenever appropriate or available; and (ii) the disclosing party will provide the other party with at least ten (10) days' prior written notice of such disclosure. Without limiting the foregoing, NCEP will cause its agents involved in this transaction to abide by the terms of this paragraph, including, without limitation, ensuring that such agents do not disclose or otherwise publicize the existence of this transaction with actual or potential clients in marketing materials, or industry conferences.

8.3. Governing Law; Venue/Jurisdiction. This Agreement will be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Delaware, without reference to its choice of law principles to the contrary. NCEP will not commence or prosecute any action,

suit, proceeding or claim arising under or by reason of the Assignment Agreement other than in the state or federal courts located in Delaware. NCEP irrevocably consents to the jurisdiction and venue of the courts identified in the preceding sentence in connection with any action, suit, proceeding, or claim arising under or by reason of the Assignment Agreement.

8.4. Notices. All notices given hereunder will be given in writing (in English or with an English translation), will refer to RSL and to the Assignment Agreement and will be delivered to the address set forth in the body of the Assignment Agreement by (a) personal delivery, or (b) delivery postage prepaid by an internationally-recognized express courier service. Notices are deemed given on (i) the date of receipt if delivered personally or by express courier or (ii) if delivery refused, the date of refusal. Notice given in any other manner will be deemed to have been given only if and when received at the address of the person to be notified. Either party may from time to time change its address for notices under the Assignment Agreement by giving the other party written notice of such change in accordance with this paragraph.

8.5. Relationship of Parties. The parties hereto are independent contractors. Nothing in the Assignment Agreement will be construed to create a partnership, joint venture, franchise, fiduciary, employment or agency relationship between the parties. Neither party has any express or implied authority to assume or create any obligations on behalf of the other or to bind the other to any contract, agreement or undertaking with any third party.

8.6. Equitable Relief. NCEP acknowledges and agrees that damages alone would be insufficient to compensate RSL for a breach by NCEP of the Assignment Agreement and that irreparable harm would result from a breach of the Assignment Agreement. NCEP hereby consents to the entering of an order for injunctive relief to prevent a breach or further breach, and the entering of an order for specific performance to compel performance of any obligations under the Assignment Agreement.

8.7. Severability. If any provision of the Assignment Agreement is found to be invalid or unenforceable, then the remainder of the Assignment Agreement will have full force and effect, and the invalid provision will be modified, or partially enforced, to the maximum extent permitted to effectuate the original objective.

8.8. Waiver. Failure by either party to enforce any term of the Assignment Agreement will not be deemed a waiver of future enforcement of that or any other term in the Assignment Agreement or any other agreement that may be in place between the parties.

8.9. Miscellaneous. The Assignment Agreement, including its exhibits, constitutes the entire agreement between the parties with respect to the subject matter hereof and merges and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions, and specifically supersedes the License Agreement dated 19 October 2006. Neither of the parties will be bound by any conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof other than as expressly provided herein. The section headings contained in the Assignment Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of the Assignment Agreement. The Assignment Agreement is not intended to confer any right or benefit on any third party (including, but not limited to, any employee or beneficiary of any party), and no action may be commenced or prosecuted against a party by any third party claiming as a third-party beneficiary of the Assignment Agreement or any of the transactions contemplated by the Assignment Agreement. No oral explanation or oral information by either party hereto will alter the meaning or interpretation of the Assignment Agreement. No amendments or modifications will be effective unless in a writing signed by authorized representatives of both parties. The terms and

conditions of the Assignment Agreement will prevail notwithstanding any different, conflicting or additional terms and conditions that may appear on any Assignment, email or other communication or other writing not expressly incorporated into the Assignment Agreement.

**9. EXECUTION**

NCEP

By: Anita I. Busquets

Name: Anita I. Busquets

Title: President and COO

Date: 12/1/2008

RSL

By: [Signature]

Name: STEVE McDaniel

Title: MANAGING PARTNER

Date: 3.10.09

**Exhibit A****NCE PHARMACEUTICALS PATENT APPLICATIONS**

US PATENT APPLICATIONS:  
August 7, 2008

| <i>Docket<br/>#</i> | <i>Filing<br/>Date</i> | <i>APP NO.</i> | <i>TITLE</i>   |  |
|---------------------|------------------------|----------------|--|--|
| NCEP-00100          | 9/13/94                | 08/305,768     | Synthetic Antibiotics  | Patent #5,<br>2/11/97<br><br>Maintenan |
| NCEP-<br>00102      | 12/17/96               | 08/767,903     | Synthetic Antibiotics  | Patent #6,<br>2/01/00<br><br>Maintenan |
| NCEP-<br>00103      | 6/09/97                | 08/871,163     | Synthetic Antibiotics  | Patent #5,<br>3/23/99<br><br>Maintenan |
| NCEP-<br>00500      | 6/20/03                | 10/601,207     | Inhibition of<br>Appressorium Formation by<br>Bioactive Peptides | Final rejec<br>6/26/08                 |

FOREIGN PATENT APPLICATIONS:

| <i>Docket<br/>#</i>       | <i>Filing<br/>Date</i> | <i>APP NO.</i> | <i>Title</i>                                       |         |
|---------------------------|------------------------|----------------|--|---------|
| NCEP-<br>00101<br><br>PCT | 09/13/95               | PCT/US95/11724 | Antifungal and<br>Antibiotic Synthetic<br>Peptides | Granted |
| NCEP-<br>00104<br><br>CA  | 03/13/97               | 2,199,941      | Antifungal and<br>Antibiotic Synthetic<br>Peptides | Granted |
| NCEP-<br>00105<br><br>EP  | 09/13/95               | 95933120.8     | Antifungal and<br>Antibiotic Synthetic<br>Peptides | Granted |
| NCEP-<br>00106<br><br>PCT | 12/16/97               | PCT/US97/23182 | Synthetic<br>Antibiotics                           | Granted |

|                           |          |                |  |   |
|---------------------------|----------|----------------|--|---|
| NCEP-<br>00107<br><br>PCT | 06/09/98 | PCT/US98/12122 | Synthetic<br>Antibiotics                           | Withdraw                                |
| NCEP-<br>00108<br><br>EP  | 12/16/97 | 97952463.4     | Antifungal and<br>Antibiotic Synthetic<br>Peptides | Granted                                 |
| NCEP-<br>00109<br><br>AU  | 07/16/99 | 56059/98       | Antifungal and<br>Antibiotic Synthetic<br>Peptides | Granted                                 |
| NCEP-<br>00110<br><br>NZ  | 07/13/99 | 336742         | Antifungal and<br>Antibiotic Synthetic<br>Peptides | Granted                                 |
| NCEP-<br>00111<br><br>CA  | 07/09/99 | 2,277,486      | Antifungal and<br>Antibiotic Synthetic<br>Peptides | Office A<br>5/16/08. Respon<br>11/16/08 |
| NCEP-<br>00112<br><br>AU  | 12/22/99 | 78362/98       | Synthetic<br>Antibiotics                           | Granted                                 |
| NCEP-<br>00113            | 12/08/99 | 2,293,736      | Synthetic<br>Antibiotics                           | Respon<br>report mailed 1               |

|                              |          |            |  |         |
|------------------------------|----------|------------|--|---------|
| CA                           |          |            |  |         |
| NCEP-<br>00114<br><br>EP     | 06/09/98 | 98926549.1 | Synthetic<br>Antibiotics                           | Withdra |
| NCEP-<br>00114 DIV<br><br>EP | 06/09/98 | 06009295.4 | Synthetic<br>Antibiotics                           | Withdra |
| NCEP-<br>00115<br><br>NZ     | 12/14/99 | 501768     | Antifungal and<br>Antibiotic Synthetic<br>Peptides | Granted |
| NCEP-<br>00116<br><br>HK     | 02/05/07 | 07101365.8 | Synthetic<br>Antibiotics                           | Withdra |

# ASSIGNMENT OF PATENT RIGHTS

For good and valuable consideration, the receipt of which is hereby acknowledged, NCE Pharmaceuticals, Inc., a Texas corporation having its principal place of business at 3366 Valemont St, San Diego, CA 92106 ("*Assignor*"), does hereby sell, assign, transfer, and convey unto Reactive Surfaces, Ltd. a Texas limited partnership corporation (hereinafter "RSL"), with offices at 300 West Avenue, Suite 1316 Austin, Texas ("*Assignee*"), or its designees, all right, title, and interest that exist today and may exist in the future in and to any and all of the following (collectively, the "*Patent Rights*"):

(a) the patent applications and patent listed in the table below (the "*Patent*");

| Application Number | Country | Filing Date | Title of Patent and First Named Inventor                                       |
|--------------------|---------|-------------|--|
| 08/305,768         | US      | 9/13/94     | Synthetic Antibiotics<br>Edwards, David L.                                     |
| 08/767,903         | US      | 12/17/96    | Synthetic Antibiotics<br>Edwards, David L.                                     |
| 08/871,163         | US      | 6/09/97     | Synthetic Antibiotics<br>Edwards, David L.                                     |
| 10/601,207         | US      | 6/20/03     | Inhibition of Appressorium Formation by Bioactive Peptides<br>Gonzalez, Carlos |
| PCT/US95/11724     | PCT     | 09/13/95    | Antifungal and Antibiotic Synthetic Peptides<br>Edwards, David L.              |
| 2,199,941          | CA      | 03/13/97    | Antifungal and Antibiotic Synthetic Peptides<br>Edwards, David L.              |
| 95933120.8         | EP      | 09/13/95    | Antifungal and Antibiotic Synthetic Peptides<br>Edwards, David L.              |
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(b) all patents and patent applications (i) to which the Patent directly or indirectly claims priority, (ii) for which the Patent directly or indirectly forms a basis for priority, and/or (iii) that were co-owned applications that directly or indirectly incorporate by reference, or were incorporated by reference into, the Patents;

(c) all reissues, reexaminations, extensions, continuations, continuations in part, continuing prosecution applications, requests for continuing examinations, divisions, registrations of any item in any of the foregoing categories (a) and (b);

(d) all inventions, invention disclosures, and discoveries described in any item in any of the foregoing categories (a) through (c) and all other rights arising out of such inventions, invention disclosures, and discoveries;

(e) all rights to apply in any or all countries of the world for patents, certificates of invention, utility models, industrial design protections, design patent protections, or other governmental grants or issuances of any type related to any item in any of the foregoing categories (a) through (d), including, without limitation, under the Paris Convention for the Protection of Industrial Property, the International Patent Cooperation Treaty, or any other convention, treaty, agreement, or understanding;

(f) all causes of action (whether known or unknown or whether currently pending, filed, or otherwise) and other enforcement rights under, or on account of, the Patent and/or any item in any of the foregoing categories (b) through (e), including, without limitation, all causes of action and other enforcement rights for

- (i) damages,
- (ii) injunctive relief, and
- (iii) any other remedies of any kind

for past, current, and future infringement; and

(g) all rights to collect royalties and other payments under or on account of the Patent and/or any item in any of the foregoing categories (a) through (f).

Assignor represents, warrants and covenants that:

- (1) Assignor has the full power and authority, and has obtained all third party consents, approvals and/or other authorizations required to enter into the Assignment Agreement and to carry out its obligations hereunder, including the assignment of the Patent Rights to Assignee; and
- (2) Assignor owns, and by this document assigns to Assignee, all right, title, and interest to the Patent Rights, including, without limitation, all right, title, and interest to sue for infringement of the Patent Rights. Assignor has obtained and properly recorded previously executed assignments for the Patent Rights as necessary to fully perfect its rights and title therein in accordance with governing law and regulations in each respective jurisdiction. The Patent Rights are free and clear of all liens, claims, mortgages, security interests or other encumbrances, and restrictions. There are no actions, suits, investigations, claims or proceedings threatened, pending or in progress relating in any way to the Patent Rights. There are no existing contracts, agreements, options, commitments, proposals, bids, offers, or rights with, to, or in any person to acquire any of the Patent Rights.

Assignor hereby authorizes the respective patent office or governmental agency in each jurisdiction to issue any and all patents, certificates of invention, utility models or other governmental grants or issuances that may be granted upon any of the Patent Rights in the name of Assignee, as the assignee to the entire interest therein.

Assignor will, at the reasonable request of Assignee and without demanding any further consideration therefore, do all things necessary, proper, or advisable, including without limitation, the execution, acknowledgment, and recordation of specific assignments, oaths, declarations, and other documents on a country-by-country basis, to assist Assignee in obtaining, perfecting, sustaining, and/or enforcing the Patent Rights. Such assistance will include providing, and obtaining from the respective inventors, prompt production of pertinent facts and documents, giving of testimony, execution of petitions, oaths, powers of attorney, specifications, declarations or other papers, and other assistance reasonably necessary for filing patent applications, complying with any duty of disclosure, and conducting prosecution, reexamination, reissue, interference or other priority proceedings, opposition proceedings, cancellation proceedings, public use proceedings, infringement or other court actions and the like with respect to the Patent Rights.

The terms and conditions of this Assignment of Patent Rights will inure to the benefit of Assignee, its successors, assigns, and other legal representatives and will be binding upon Assignor, its successors, assigns, and other legal representatives.

ASSIGNOR: Amitha Busquets

TITLE: President of COO

IN WITNESS WHEREOF this Assignment of Patent Rights is executed at San Diego on Dec 22, 2008.

State of CA  
County of San Diego

On Dec. 22, 2008, before me, ERIKA K. BALUZ

, Notary Public in and for said State, personally appeared Amitha I. Busquets personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that ~~he/she~~ executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal

Notary Public's Signature

(Seal)

