

PATENT ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	IP Assignment Deed (Transfer Agreement)
CONVEYING PARTY DATA	
Name	Execution Date
The Macfarlane Burnet Institute for Medical Research and Public Health Ltd	12/31/2008
RECEIVING PARTY DATA	
Name:	PX Biosolutions Pty Ltd
Street Address:	139 Ramsden St
City:	Clifton Hill, Victoria
State/Country:	AUSTRALIA
Postal Code:	3068
PROPERTY NUMBERS Total: 1	
Property Type	Number
Application Number:	13283294
CORRESPONDENCE DATA	
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ATTORNEY DOCKET NUMBER:	4717.1000-031
NAME OF SUBMITTER:	Jane Morgan
Total Attachments: 14 source=47171000031IPAsg#page1.tif source=47171000031IPAsg#page2.tif source=47171000031IPAsg#page3.tif	

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IP Assignment Deed (Transfer Agreement)

**The Macfarlane Burnet Institute for Medical Research and Public Health
Ltd ABN 49 007 349 984 of 85 Commercial Road, Melbourne, Victoria, 3004**

And

PX Biosolutions Pty Ltd of 139 Ramsden St, Clifton Hill, Victoria 3068

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IP Assignment Deed

Parties

1. The Macfarlane Burnet Institute for Medical Research and Public Health Ltd ACN 49 007 349 984 of 85 Commercial Road, Melbourne, Victoria, 3004 (Assignor)
2. PX Biosolutions Pty Ltd ACN 121 064 524 of 139 Ramsden St, Clifton Hill, Victoria 3068 (Assignee)

Introduction

- A. The Assignor has developed the Technology defined below and owns all interests in the relevant intellectual property rights.
- C. The Assignor wishes to transfer to the Assignee all the Assignor's right, title and interest in and to the Technology on the terms and conditions of this Deed.

Operative clauses

1. Definitions

In this Deed, unless the context otherwise requires:

Assignment means full and unrestricted transfer of ownership

Commercialise / Commercialisation in relation to the Technology, means to make, sell, hire, license, sub-license or assign the Technology for the purpose of generating financial or other commercial gain, excluding the generation of funds raised for direct research and development purposes such as Grants from government and charitable and philanthropic bodies.

Commercialisation Income means all pecuniary and non-pecuniary benefits, payments or credits actually received by the Assignee from third parties, on an arm's length commercial basis, which are received in consideration of Commercialisation of any part of the Technology and only to the extent that such receipts are in consideration of Commercialisation of the Technology (as opposed to other technology), including but not limited to, amounts received in connection with;

- (a) granting a third party a licence of any rights in relation to any part of the Technology
- (b) selling or providing, or assigning rights in, any part of the Technology
- (c) any other Commercialisation relating to any part of the Technology

and includes all option fees, licence fees, milestone fees, royalties and similar payments, and shares or units received as such consideration.

For the avoidance of doubt monies received by the Assignee for Research and Development Expenditure in the form of government or foundation grants, research funding contributions from third parties or collaborators or philanthropic donations and monies received for bona fide consulting activities does not constitute Commercialisation Income.

Confidential Information means any information, in any form or media relating to or representing the Technology, and any intellectual property therein, or other confidential information including know-how, financial and business information of any other party other than information which :

- (a) was in the public domain at the time of its disclosure or subsequently comes into the public domain other than through breach by the receiving party;
- (b) came into the knowledge of the receiving party by lawful means and without breach of any obligation of confidentiality by any third party;
- (c) was in fact known to the receiving party, without breach of any obligation of confidentiality by any third party, prior to its disclosure to the receiving party; or
- (d) was created by the receiving party or their employees, contractors, agents and advisors independently of any Confidential Information of the other party.

Founder's means: Professor Magdalena Plebanski and Dr Sue Xiang

Founder Investment means:

- (a) any personal investment made by the Founder's to provide capital to the Assignee plus interest payable at the average bank rate on 30 June of each year; and
- (b) any borrowings made by the Assignee for which the Founders are personally liable plus any interest paid or owing on such borrowings.

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

Intellectual Property means all intellectual property and includes all intellectual property rights of any form that subsist in inventions, discoveries, innovations, technical information and data, prototypes, processes, improvements, and patent rights, trade secrets, circuitry, computer programs, drawings, plans, specifications, copyright, trade mark rights, design rights, plant variety rights and Confidential Information.

Licence Deed means the Technology Licence Deed dated 28 March 2002 between Ilexus Pty Ltd ACN 064 772 103, the Austin Research Institute ACN 007 418 224, Panvax Limited ACN 100 033 583 and Prima Biomed Limited ACN 009 237 889, as amended by Deed of Variation dated 24 August 2005, and terminated by Deed of Termination, dated on or about the date of this Deed.

Net Commercialisation Income means the amount of Commercialisation Income received by the Assignee for the Commercialisation of the Technology or a portion thereof, after deducting:

- (a) any reasonable and verifiable expenses incurred in Commercialising the Technology including but not limited to legal fees, business development consulting fees, business development travel expenses; and
- (b) the Founder Investment

Related Body Corporate has the meaning given to it in the *Corporations Act 2001* (Commonwealth).

Technology means the Background Technology as described in the Licence Deed in addition to the technology described in the Schedule to this Deed.

2. Interpretation

In this Deed, unless the context otherwise requires:

- (a) words importing a gender include any gender;
- (b) words importing the singular include the plural and vice versa;
- (c) headings are for convenience only and do not affect the Interpretation of this Deed;
- (d) a reference to a party includes that party's personal representatives, successors and permitted assigns;
- (e) a reference to legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (f) a reference to a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (g) all references to clauses and schedules are to clauses and schedules of this Deed and includes such clause or schedule as amended or replaced from time to time pursuant to this Deed;
- (h) where any word or phrase has been given a defined meaning, any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning; and
- (i) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency.

3. Obligations of Assignor:

- (a) Assignor, must, on signing this Deed, disclose to the Assignee all information, including, but not limited to, all laboratory notebooks, data, and other documents in relating to the work on the Technology and any associated work that are in its possession at the time of signing this Deed.
- (b) After IP transfer, Assignor will have no right to continue to use the Research Results or Technology for research or teaching purposes. If the Assignor and Assignee want to collaborate, a new MTA agreement would be set up as an arm's length transaction.

4. Assignment of Technology

- (a) With effect from the date of this Deed, the Assignor assigns to the Assignee, free of all encumbrances, and the Assignee accepts the assignment from the Assignor, of:
 - (1) all the Assignor's rights, title and interest in and to the Technology, including all inventions disclosed in the Technology, at the date of this Deed;
 - (2) the right to sue for damages and other remedies in respect of any infringement of the Technology which may have occurred before the date of this Deed;
 - (3) rights to claim priority under any applicable International convention for patent applications relating to inventions disclosed in the Technology;
 - (4) all Intellectual Property rights and other forms of protection which may subsist anywhere in the world relating to or in the Technology.
- (b) This document takes effect such that the Assignee will own the whole right, title and interest in and to the Technology.
- (c) This assignment is subject to any rights of third parties granted prior to the date of this Deed.
- (d) The Assignor will deliver to the Assignee:
 - (1) on execution, all items set out in the definition of Technology and not already in possession of the Assignee; and
 - (2) on request, all other certificates, title documents, plans, designs, technical information and records relating to the Technology.

5. Commercialisation of the Technology

- (a) The Assignee will be solely responsible for further development and Commercialisation of the Technology, and Intellectual Property protection, at its own cost and expense. The Assignee will provide to the Assignor written reports on its Commercialisation of the Technology each year on the anniversary of the date of this Deed whilst there is a valid patent.

- (b) Subject to clause 5(c), the Assignee shall be entitled to receive and retain all Commercialisation Income without obligation to the Assignor.
- (c) The Assignee will pay or procure payment to the Assignor of an amount equal to 5% of any:
 - (1) Net Commercialisation Income received by the Assignee in a financial year, whilst there is a valid patent claiming the Technology or a portion thereof; and
 - (2) consideration received by the Assignee under any settlement, lost profits or damages award (after deduction of the Assignee's associated legal costs) in relation to any infringement of the Intellectual Property rights in the Technology, whilst there is a valid patent.

Such payment must be made by the Assignee within sixty (60) days of the end of each financial year or the final resolution of any relevant dispute, whichever is later.

- (d) The Assignee must keep complete and accurate records and accounts in relation to its Commercialisation of the Technology any Commercialisation Income and expenses. The Assignor will be entitled to review those records and accounts once each financial year upon written request within 60 days from the acknowledgement of the request.
- (e) After the date of this Deed, Assignor will have no right to continue use the Research Results or Technology for research, teaching purposes or commercialisation. If Assignor and assignee want to collaborate on this technology, a new MTA agreement will be sought.
- (f) The Assignee will notify the Assignor if the Assignee elects to fully discontinue patent protection. The Assignee will not be bound to assign relevant Intellectual Property back to the Assignor. However, the assignor will then be entitled to offer reasonable terms for consideration by the assignee for potential re-assignment back to the assignor from the assignee.
- (g) The provisions of this clause shall not merge on completion of the assignment in clause 4.

6. Assignor Improvements

After IP transfer, Assignor has no right to continue use the Research Results for research or teaching purposes. If Assignor and Assignee wish to collaborate on this technology, a new MTA agreement will be put in place which will directly determine the outcome of potential improvements. In the absence of this MTA, any improvements to the Research Results or Technology made by the Assignor, all rights, title and interest, including, but not limited to, any and all Intellectual Property rights, in and to such improvements shall belong to the Assignee.

7. Third Party Assignment

- (a) The Assignee must seek the prior written prior approval from the Assignor for any assignment, licence, issue of option or transfer of rights to the Technology from the Assignee to a third party where the transaction is not at arms length, involves a Related Body Corporate or the Founders.
 - (b) The Assignee does not require prior approval for the assignment, licence, issue of option or transfer of rights to the Technology from the Assignee in a transaction that is at arms length.
 - (c) The Assignee must provide the Assignor with a copy of any arms length Commercialisation agreement (upon its execution) arising from the Commercialisation of the Technology for the purposes of allowing the Assignor to determine Net Commercialisation Income entitlements.
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8. Confidentiality and publication

- (a) From completion of the assignment in clause 4, the Assignor must not disclose or use Confidential Information concerning the Technology unless specifically required by law or with the prior written consent of the Assignee (which must not be unreasonably be withheld).
- (b) Should the Assignor wish to make a publication or presentation regarding the Technology it must, at least 45 days prior to each presentation or submission for publication (including revised submissions), provide to the Assignee any proposed abstracts, manuscripts, materials or presentations (including information to be presented orally). The Assignor must not proceed with such publication or presentation:
 - (1) for such reasonable period at the request of the Assignee to enable the Assignee to secure any patent protection it deems desirable; or
 - (2) to the extent that the Assignee reasonably believes that the Confidential Information to be disclosed could not be protected by patent.
- (d) Any dispute or difference concerning the operation of this clause shall be dealt with in accordance with clause 12.

9. GST

- (a) If GST is imposed on a Supply made under or in connection with this Deed, then:

- (1) the consideration for the assignment of the rights under clauses 2 is agreed to be \$10;
 - (2) the Supplier of the Supply may increase the consideration by the applicable amount of GST and the Recipient must pay that increased amount at the same time and in the same manner as any part of the consideration is payable to the Supplier in respect of the Supply.
- (b) Where any expenses incurred by a Supplier are to be reimbursed by the Recipient under this Deed, the reimbursable amount shall be determined as follows:
- (1) first, any amount which the Supplier is entitled to claim as an Input Tax Credit shall be deducted from the cost to the Supplier of the expense item to arrive at an "Actual Cost"; and
 - (2) second, the Actual Cost shall be increased by and to the extent of the amount of GST payable by the Supplier in respect of the Supply to the Recipient for which the expense item is consideration.
- (c) If the GST payable by the Supplier on a Taxable Supply is varied pursuant to any change in legislation, the consideration payable under this Deed must be increased or decreased to reflect that variation of the GST.
- (d) The Recipient is not required to pay any amount of GST to the Supplier unless the Supplier has provided a Tax Invoice to the Recipient.
- (e) For the purposes of this clause 8, Input Tax Credit, Recipient, Supplier, Supply, Tax Invoice and Taxable Supply have the meanings attributed to those terms in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

10. Warranties and Indemnities

- (a) The Technology is provided on an 'as is' basis. Subject to the warranties in clause 9(c), the Assignor has not made any and excludes all warranties, terms, conditions or undertakings whether express or implied, written or oral, statutory or otherwise including any implied warranty of merchantability or of fitness for a particular purpose in respect of the inventions the subject of the Technology and in respect of any process or product related to or reliant upon the inventions the subject of the Technology. To the full extent lawfully permitted, any conditions or warranties imposed by such legislation are excluded.
- (b) To the full extent lawfully permitted, the Assignor will not be liable for any special, indirect or consequential damages arising under or pursuant to this Deed or any other deed concerning the Technology.
- (c) The Assignor warrants to the best of its actual knowledge and belief at the date of this Deed that it is:
 - (1) the owner of the Technology being assigned to the Assignee pursuant to this Deed; and
 - (2) entitled to assign the Technology in the manner provided in this Deed.

- (d) The Assignor has not made and does not by entering into this Deed make any representation or warranty, express or implied, that the Technology does not infringe any third party's intellectual property rights or that any patents comprising the Technology are validly registered.
- (e) The Assignee is responsible for making its own inquiries to determine that use of the Technology will not infringe any third party's intellectual property or other rights.
- (f) The Assignor makes no representation or warranty (express or implied):
 - (1) as to the utility of the Technology; or
 - (2) as to the prospects of the successful commercial exploitation of the Technology.
- (g) The Assignee is solely responsible for use of the Technology and acknowledges that it is solely responsible for obtaining any approvals, authorisations and accreditations necessary or desirable to enable use of the Technology.
- (h) The Assignee is responsible for all patent costs from the date of assignment (including filing, prosecuting, defending an opposition and maintaining registrations).
- (i) The Assignee must ensure that any products or processes made or used employing the Technology, for purposes of sale or otherwise, comply with all applicable laws.
- (j) Each party undertakes to the other not to make any representations in relation to the Technology to any third party which are inconsistent with the terms of this assignment or are otherwise false or misleading and not to make any statement or representation purporting to be on behalf of another party or to state or represent the other party's position on any matter.
- (k) The Assignee acknowledges that any use or exploitation of the Technology is solely at the Assignee's own risk. The Assignee indemnifies the Assignor against any loss, claim, liability or expense arising out of or in connection with the Assignee's use or exploitation of the Technology (excluding any loss, claim, liability or expense caused or contributed to by the negligence or default of the Assignor or its employees or agents).

11. Further Assurance

Each party must execute any documents and do any other things, and must ensure that its employees and agents execute any documents and do any other things, that any other party reasonably requests to give effect to the terms of this Deed.

12. General

- (a) Any provision of this Deed which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or

unenforceability. That does not invalidate the remaining provisions of this Deed nor affect the validity or enforceability of that provision in any other jurisdiction.

- (b) This Deed is governed by the laws of the State of Victoria and the parties submit to the non-exclusive jurisdiction of the courts of that State and all courts which may hear appeals there from.
- (c) This Deed contains the entire agreement of the parties with respect to its subject matter. It sets out the only conduct relied on by the parties and supersedes all earlier conduct by the parties with respect to its subject matter.
- (d) Subject to any provision to the contrary in this Deed, all stamp duty (including fines, penalties and interest) which may be payable on this Deed or any instrument executed under this Deed and in respect of a transaction evidenced by this Deed shall be borne by the Assignee.
- (e) A variation of the terms of this Deed must be in writing and signed by the parties.

13. Dispute Resolution

13.1 Subject to each party's right to seek urgent interlocutory relief from a Court, any dispute or difference arising between the Assignor and the Assignee under this Deed (Dispute) will be dealt with in accordance with this clause:

- (a) The parties will co-operate with each other and use their best endeavours to resolve by mutual deed any differences between them and all other difficulties which may arise from time to time in relation to this Deed.
- (b) The party claiming that a Dispute exists will give the other party formal written notice of such Dispute together with details of that Dispute (Notification).
- (c) Upon receipt of Notification the parties must request the chief executive officer or their nominees to resolve the Dispute.
- (d) If the Dispute is not resolved by the parties within 30 days after service of the Notification, the parties must refer the dispute to the Australian Commercial Disputes Centre Limited (ACDC) for mediation in accordance with the Mediation Guidelines of ACDC.

13.2 If the Dispute is not resolved by mediation, the parties may commence litigation to resolve the Dispute.

14. Notices

Any notice approval, consent, request, demand or other communication to be given to or served upon the Assignor or Assignee shall be deemed to have been duly given or served if in writing signed for and on behalf of the party giving or serving the notice, and either delivered by hand or sent by facsimile or similar electronic device or prepaid post to each other party at their respective addresses set out above (or otherwise as directed by written notice).

SCHEDULE 1

	Details
Technology	<p>PCT Application "Composition comprising immunogenic micro particles" Application No: PCT/AU01/01160 Date of Filing: PCT Application – 14 September 2001 Priority: PR0117 – 14th September 2000 PR4888 – 10th May 2001 PR4962 – 14th May 2001 Inventors: Magdalena Plebanski Applicant: Burnet Institute</p>

The Technology includes all related data and results as captured in relevant lab books from the time of Magdalena's employment at The Austin Research Institute ACN 007418224 (ARI) (date) until the 28 March 2002. On this date Ilexus Pty Ltd CAN 064 772 103 as licensors of the technology entered into a Technology License Deed with Panvax Pty Ltd and Prima.

SCHEDULE 2

Transfer of documents and research results related to Technology from The Macfarlane Burnet Institute for Medical Research and Public Health Ltd to PX Biosolutions

1. Subject to paragraph 3, transfer to PX Biosolutions all Patent related documentation available at Burnet related to the Technology and Panvax, in both paper and electronic forms, including but not restricted to: original provisional patent filing documents for the Technology and original granted Patent Certificates for the Technology within 30 days of signing the Assignment from Burnet to PX Biosolutions.
2. Subject to paragraph 3, transfer to PX Biosolutions any documentation, research results and legal documents related to the Technology and/or the commercial operation of PX Biosolutions available at Burnet which is essential for progressing the research, development and commercialisation of its nanoparticle technologies. The latter to be provided to PX Biosolutions upon written request within a term of 30 days, or provided by Burnet upon becoming aware of the existence of these remaining documents in its files.
3. Transfer of data and documentation that may be related to Technology to be restricted to those developed by Prof. Plebanski or members of her laboratory or Panvax staff.

Execution

Executed as a deed on 2008 executed by The Macfarlane Burnet Institute for
Medical Research and Public Health Ltd:



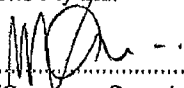
.....
Director / Company Secretary
Brendan Crabb

.....
Name (please print) Name (please print)




.....
COMMERCIAL DEV. MANAGER
witnessed

Executed by PX
Biosolutions Pty Ltd:



.....
Director / Company Secretary
Magdalena Pabanski

.....
Name (please print) Name (please print)



.....
Sue Xiang, Co-director
witnessed.

or

.....
Sole Director and Sole Company Secretary

.....
Name (please print)