

## PATENT ASSIGNMENT

Electronic Version v1.1  
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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
Xanodyne Pharmaceuticals, Inc.	10/29/2009
RECEIVING PARTY DATA	
Name:	Protein Express, Inc.
Street Address:	9940 Reading Road
City:	Cincinnati
State/Country:	OHIO
Postal Code:	45241-7100
PROPERTY NUMBERS Total: 2	
Property Type	Number
Patent Number:	6099853
Patent Number:	7135191
CORRESPONDENCE DATA	
Fax Number:	(513)698-5149
Phone:	5136985148
Email:	erobbins@ulmer.com
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>	
Correspondent Name:	Eric M. Robbins
Address Line 1:	600 Vine Street
Address Line 2:	Suite 2800
Address Line 4:	Cincinnati, OHIO 45202-2409
ATTORNEY DOCKET NUMBER:	38524.0000
NAME OF SUBMITTER:	Eric M. Robbins
Total Attachments: 10 source=38524_0000_Assignment#page1.tif	

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**INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT**

This Intellectual Property Assignment Agreement ("Agreement") is made as of the 29th day of October, 2009 (the "Effective Date") between Xanodyne Pharmaceuticals, Inc., a Delaware company, with primary offices at One Riverfront Place, Newport, KY 41071-4563 ("Xanodyne") and Protein Express, Inc. an Ohio company, with offices at 9940 Reading Rd, Cincinnati, OH 45241-7100 ("Protein Express").

Whereas, Xanodyne acquired certain assets, including the patents listed on Exhibit A attached hereto, pursuant to the Agreement of Merger and Plan of Reorganization, dated as of December 3, 2004 ("Merger Agreement"), by and among Xanodyne, Protein Express (for the limited purposes set forth therein), the Shareholders, PXP and the Surviving Corporation (each as defined in the Merger Agreement);

Whereas, Xanodyne wishes to sell, transfer and assign to Protein Express those patents listed on Exhibit A attached hereto and incorporated herein by reference, and any right, title, or interest it may have in the patent applications listed on Exhibit B, (the patents and patent applications listed on Exhibit A and Exhibit B, collectively, the "Assigned Patent Rights") and the books and records listed on Exhibit C attached hereto and incorporated herein by reference (the "Books and Records" and, together with the Assigned Patent Rights, the "Assets") pursuant to the terms and conditions set forth in this Agreement; and

Whereas, Protein Express desires to purchase the Assets from Xanodyne pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises and the covenants and agreements hereinafter contained, the parties hereby agree as follows:

1. Xanodyne hereby assigns, transfers, and sells to Protein Express its entire right, title and interest in and to the Assets, provided, that Protein Express has obtained, as of the Effective Date, the consent of Voting Trustee (as defined in the Merger Agreement), in the form of Exhibit D attached hereto, to effect (a) the termination of Section 3.2 of the Merger Agreement and (b) the assignment of the Assigned Patent Rights to Protein Express hereunder.

2. (a) In consideration for the assignment, transfer and sale set forth in Section 1, Protein Express shall pay to Xanodyne a royalty of 2% (two percent) of Net Sales (hereafter defined) of Product (hereafter defined) by Protein Express or any licensee or assignee of the (i) Assigned Patent Rights, and (ii) inventions disclosed in the Assigned Patent Rights (together with the Assigned Patent Rights, the "Intellectual Property"). Protein Express shall use commercially reasonable efforts to develop, market, promote and sell Products. However, Protein Express also shall have the right to abandon any patent or patent application, foreign or domestic, that in its own discretion, it does not believe is commercially viable or worthy of continued prosecution. Notwithstanding anything in this Agreement or the Merger Agreement to the contrary, in the event that Xanodyne becomes obligated to pay any royalties or other amounts to Voting Trustee, Voting Trust or any other person or entity affiliated with the Voting Trust, with respect to any sales of Products by Protein Express, its affiliates, licensees or assignees, or

as a result of the assignment of the Assigned Patent Rights to Protein Express hereunder, Protein Express shall be solely responsible for payment of such royalties or other amounts to Voting Trustee, Voting Trust or any other person or entity affiliated with the Voting Trust, as the case may be.

(b) For purposes of this Agreement, "Net Sales" means, with respect to a pharmaceutical product used for human or animal use that utilizes, directly or indirectly, the Intellectual Property (each, a "Product"), the gross amount invoiced by Protein Express, its affiliates or a licensee or assignee of the Intellectual Property for such Product, less

- (i) trade, quantity and/or cash discounts actually allowed;
- (ii) discounts, refunds, rebates, chargebacks, retroactive price adjustments and any other allowances, credits or payments which effectively reduce the net selling price; and
- (iii) actual Product returns.

(c) Protein Express shall pay to Xanodyne the royalty attributable to Net Sales of Product made during a calendar quarter (a "Royalty Payment") within 30 days of the end of the applicable calendar quarter. Protein Express shall also provide within such time frame a written report that provides in reasonable detail the Net Sales of Product and the calculation of the applicable Royalty Payment. Protein Express will pay the Royalty Payment in immediately available funds by wire transfer into an account designated by Xanodyne. A Net Sale of Product shall be deemed to have been made as of the recorded sale date according to U.S. GAAP.

(d) Protein Express's obligation to make Royalty Payments with respect to a Product that utilizes a patent included in the Intellectual Property or a patent that issues from a patent application included in the Intellectual Property shall expire upon the expiration of the last of such patents utilized by such Product.

(e) Upon written notice and at mutually agreeable times, Xanodyne shall have the right to inspect Protein Express's records related to Net Sales of Product no more than 1 time during any calendar year for the purposes of auditing the Net Sales of Product and the calculation of the Royalty Payments. If, upon inspection of the books of account and records of Protein Express, Xanodyne discovers that it did not receive the correct Royalty Payments, Xanodyne shall notify Protein Express of such discovery. Within 30 days of receipt of such notice, Protein Express shall pay to Xanodyne the difference between what was paid and what should have been paid. If the difference of the underpayment exceeds 5% of the Royalty Payment owed, then Protein Express shall bear Xanodyne's reasonable costs in connection with such inspection, including all reasonable legal and auditor fees. If Xanodyne's inspection of the books of account and records reveals that Protein Express overpaid a Royalty Payment, Xanodyne shall pay to Protein Express such overpayment within 30 days of the discovery of such overpayment. Protein Express shall ensure that Xanodyne shall have the rights set forth in this Section 2(e) to inspect the records of an affiliate, assignee or licensee of the Intellectual Property.

(f) In the event Protein Express fails to make a Royalty Payment when due and such failure continues for 10 days after Protein Express's receipt of written notice from Xanodyne, all right, title and interest in and to the Assigned Patent Rights shall revert back to Xanodyne, and Protein Express shall have no further rights with respect to the Assigned Patent Rights. Protein Express shall, at its expense, do all reasonable acts and execute all documents as Xanodyne may reasonably request to transfer to and vest in Xanodyne the ownership and registration of the Assigned Patent Rights. The remedies set forth in this Section 2(f) and elsewhere in this Agreement shall be in addition to, and shall not be to the exclusion of, any other remedies available to Xanodyne at law, in equity or under this Agreement.

3. XANODYNE IS ASSIGNING, TRANSFERRING AND SELLING THE ASSETS "AS IS, WHERE IS." XANODYNE MAKES NO REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE INTELLECTUAL PROPERTY, AND XANODYNE SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, VALIDITY OR NON-INFRINGEMENT.

4. Protein Express shall indemnify, defend and hold Xanodyne and its affiliates harmless from and against any and all costs, losses, damages, claims, suits, judgments, demands, liabilities, fines, penalties, expenses, court costs, and reasonable fees and disbursements of counsel, consultants and expert witnesses (collectively, "Damages") incurred or suffered by Xanodyne or its affiliates (including interest which may be imposed in connection therewith) to the extent caused by or arising out of or in connection with the Intellectual Property or the Books and Records (including without limitation the assignment of any Assigned Patent Rights to Protein Express hereunder), or manufacturing, using, selling, distributing, promoting, marketing, importing or exporting Product.

5. Protein Express, on behalf of itself and its licensees, assigns and successors in interest, knowingly and voluntarily releases, remises and forever discharges Xanodyne and its successors, assigns, former, current or future officers, directors, employees, agents and representatives, whether in their individual or official capacities, from any and all actions, causes of action or Damages, in law or equity, known or unknown, past, present or future, to the extent caused by or arising out of or in connection with the Intellectual Property or the Books and Records, or manufacturing, using, selling, distributing, promoting, marketing, importing or exporting Product.

6. Miscellaneous Provisions.

(a) This Agreement will be binding upon and will inure to the benefit of the parties hereto and their respective successors and assigns. No assignment of this Agreement or of any rights or obligations hereunder by Protein Express will relieve Protein Express from being primarily liable for any of the obligations or liabilities hereunder it would have had if it had not assigned this Agreement.

(b) Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient upon receipt when delivered personally, on the next business day when delivered by a nationally or (where relevant) internationally-recognized

overnight courier, or on the date sent if sent by facsimile (as evidenced by the fax confirmation sheet), and in each case if such notice is addressed to the party to be notified at such party's address as set forth below or as subsequently modified by written notice.

If to Protein Express, as follows:

Protein Express, Inc.  
9940 Reading Rd  
Cincinnati, OH 45241-7100

Attention:

If to Xanodyne, as follows:

Xanodyne Pharmaceuticals, Inc.  
One Riverfront Place  
Newport, Kentucky 41071-4563  
Facsimile: 859-371-7692  
Attention: General Counsel

(c) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements or understandings of the parties relating hereto. This Agreement may be modified or amended only by written agreement of the parties hereto signed by authorized representatives of the parties.

(d) This Agreement will be governed and construed in accordance with the laws of the State of Kentucky excluding any choice of law rules that may direct the application of the law of another state.

(e) Nothing contained herein will be deemed to create any joint venture or partnership between the parties hereto, and, except as is expressly set forth herein, neither party will have any right by virtue of this Agreement to bind the other party in any manner whatsoever.

(f) If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws effective while this Agreement remains in effect, the legality, validity and enforceability of the remaining provisions will not be affected thereby. In the event a part or provisions of this Agreement is held to be illegal, invalid or unenforceable, the parties agree to negotiate in good faith an amendment of such part or provision in a manner consistent with the intent of the parties.

*(Remainder of page intentionally left blank)*

EXECUTION COPY

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first above written.

**Xanodyne Pharmaceuticals, Inc.**

By: Thomas Jennings  
Name: Thomas P. Jennings  
Title: General Counsel  
Date: 29 OCT 09

**Protein Express, Inc.**

By: Michael Howell  
Name: Michael Howell  
Title: President  
Date: 29 OCT 09

EXHIBIT A

Patents

1. US 6,099,853 Vaginal Suppository Vaccine for Urogenital Infections.
2. US 7,135,191 Urogenital or Anorectal Transmucosal Vaccine Delivery System.



EXHIBIT B

Patent Applications

1. US Patent application 12/583,219 which is a continuation of 11/580,258 which was published as US 20070082010, which is a continuation of 09/516,078 - Urogenital or Anorectal Transmucosal Vaccine Delivery System.
2. Canadian Patent Application No. 2,302,505.
3. Chinese Patent Application No. 98810890.9 granted as Patent No. 222452 on 4/6/2005.
4. Japanese Patent Application No. 2000-508388.
5. Mexican Patent Application No. PA/a/2000/002262 granted as Patent No. 262541 on 11/26/2008.

EXHIBIT C

1. Withdrawn U.S. Investigational New Drug Application number BB IND 3557
2. BB IND 3557
  - a. FDA Correspondences
  - b. Annual Reports
  - c. IND Safety Reports
3. Investigator's Brochure et al, provided to FDA in advance of the 16 DEC 06 meeting
4. Minutes from a 16 DEC 06 Type B IND meeting

EXHIBIT D

CONSENT

Reference is hereby made to the Agreement of Merger and Plan of Reorganization, dated as of December 3, 2004 ("Merger Agreement"), by and among Xanodyne Pharmaceuticals, Inc. ("Xanodyne"), Protein Express, Inc. ("Protein Express") (for the limited purposes set forth therein), PX Pharmaceuticals, Inc., Ruti Acquisition, Inc. and the Shareholders, pursuant to which, among other things, the PX Pharmaceuticals, Inc., Voting Trust (the "Voting Trust") acquired certain rights to receive royalties on sales of certain Products covered by the Patents. Capitalized terms not otherwise defined herein shall have the meaning given to them in the Merger Agreement.

WHEREAS, Xanodyne desires to assign to Protein Express, and Protein Express desires to assume, all of Xanodyne's right, title and interest in and to certain assets, including without limitation the Patents; and

WHEREAS, the Voting Trustee believes that such assignment is in the best interests of the Voting Trust and has the authority to approve the matters contemplated hereunder on behalf of the Voting Trust.

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Voting Trustee hereby consents, on behalf of the Voting Trust, to the following:

1. Section 3.2 of the Merger Agreement, and the royalty payment and buyout provisions set forth therein, are hereby terminated in their entirety, with no further force or effect, and Xanodyne is hereby released from any and all liabilities or obligations thereunder.
2. Notwithstanding anything in Section 13.6 of the Merger Agreement to the contrary, Xanodyne or any of its affiliates shall have the right to assign the Patents, and all related intellectual property rights, to Protein Express or any of its affiliates.

On behalf of the PX Pharmaceuticals Inc.,  
Voting Trust

By: 

Name: Joseph Thomas

Title: Voting Trustee

Date: 11/6/09

*(Remainder of page intentionally left blank)*

EXECUTION COPY

Acknowledged and agreed to by:

XANODYNE PHARMACEUTICALS, INC.

By: Thomas P. Jennings  
Name: Thomas P. Jennings  
Title: General Counsel

Date: 29 OCT 09

PROTEIN EXPRESS, INC.

By: Michael Howell  
Name:  
Title:

Date: 30 OCT 09

*Acknowledgement page to Exhibit D - Consent*