

PATENT ASSIGNMENT

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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH ORGANISATION	01/14/2000
RECEIVING PARTY DATA	
Name:	CIBA VISION CORPORATION
Street Address:	11460 Johns Creek Parkway
City:	Duluth
State/Country:	GEORGIA
Postal Code:	07901
PROPERTY NUMBERS Total: 1	
Property Type	Number
Application Number:	12794333
CORRESPONDENCE DATA	
Fax Number:	2028243000
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	202-824-3000
Email:	BWPTOPAT@bannerwitcoff.com, lsims@bannerwitcoff.com
Correspondent Name:	Banner & Witcoff, Ltd.
Address Line 1:	1100 13th Street, NW
Address Line 2:	12th Floor
Address Line 4:	Washington, DISTRICT OF COLUMBIA 20005
ATTORNEY DOCKET NUMBER:	003707
NAME OF SUBMITTER:	Benjamin C. Spehlmann
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**ASSIGNMENT AND LICENCE AGREEMENT
BETWEEN
CIBA VISION CORPORATION**

AND

NOVARTIS AG

AND

**COMMONWEALTH SCIENTIFIC AND INDUSTRIAL
RESEARCH ORGANISATION**

AND

UNIVERSITY OF NEW SOUTH WALES

AND

OPTOMETRIC VISION RESEARCH FOUNDATION

AND

QUEENSLAND UNIVERSITY OF TECHNOLOGY

AND

UNIVERSITY OF WESTERN SYDNEY

AND

VICTORIAN COLLEGE OF OPTOMETRY

PARTIES, EFFECTIVE DATE AND PREAMBLE

This AGREEMENT is entered into by and between the following parties, and is effective as of the last date signed by the signatories hereto (the "Effective Date").

NOVARTIS, AG, incorporated under the laws of Switzerland, and having a principal place of business in Basle, Switzerland ("NOVARTIS") (formerly Ciba-Geigy Limited),

CIBA VISION CORPORATION, incorporated under the laws of the State of Delaware, and having a principal place of business located at 11460 Johns Creek Parkway, Duluth Georgia 30097-1556 ("CIBA"), an Affiliate of Novartis, AG,

And

UNIVERSITY OF NEW SOUTH WALES, an educational and research organization established pursuant to the University of New South Wales Act of 1989, of Sydney in the State of New South Wales ("UNSW"),

COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH ORGANISATION, a corporate body established by the Science and Industry Research Act of 1949, and having its principal office at Limestone Avenue, Campbell, in the Australian Capital Territory ("CSIRO"),

OPTOMETRIC VISION RESEARCH FOUNDATION, a non-profit charitable organization established pursuant to the NSW Charitable Collections Act of 1937, and having its registered office at 73 King Street, Randwick, in the State of New South Wales ("OVRF"),

QUEENSLAND UNIVERSITY OF TECHNOLOGY, an educational and research organization established pursuant to the Queensland University of Technology Act of 1988-1990, and having its registered office at 2 George Street, Brisbane, in the State of Queensland ("QUT"),

UNIVERSITY OF WESTERN SYDNEY, an educational and research organization established pursuant to the University of Western Sydney Act of 1988, as amended in 1989, having its registered office at Frogmore House, Werrington Park, Great Western Highway, Werrington, in the State of New South Wales ("UWS"),

VICTORIAN COLLEGE OF OPTOMETRY, a company limited by guarantee in Victoria, A.C.N. 004 235 250, having its registered office at 386 Cardigan Street, Carlton, in the State of Victoria, through the **NATIONAL Vision RESEARCH INSTITUTE**, a non-profit charitable organization established in November 1972, with a constitution adopted as a bylaw of the Victorian College of Optometry ("NVR"),

UNSW, CSIRO, OVRH, QUT, UWS, and NVRI, collectively referred to herein as "CRCERT".

WHEREFORE, in consideration of the sum of Ten and 00/100 Dollars (\$10.00) and further good and valuable consideration, the sufficiency of which is hereby acknowledged, the parties hereto respectfully agree as follows:

1. BACKGROUND OF AGREEMENT

1.1. CRCERT and NOVARTIS (as successor to Ciba-Geigy Limited) are parties to a 1992 Research & Development Agreement (the "PRIOR AGREEMENT", a copy in Appendix A).

1.2. The PRIOR AGREEMENT established a collaborative Research Project among CRCERT and Ciba-Geigy. One objective of the Research Project was to develop materials that would be especially suited for extended wear contact lenses, but that also would have other applications outside the field of ophthalmics.

1.3. Under the PRIOR AGREEMENT, NOVARTIS is obligated to pay royalties to CRCERT, based on the level NOVARTIS commercially Exploits technology developed under the Research Project, in consideration for the work and funding of CRCERT under the Research Project.

1.4. Pursuant to the PRIOR AGREEMENT, NOVARTIS (through its predecessor Ciba-Geigy) filed several patent applications for technology developed under the Research Project, including the applications that ripened into U.S. Patent Nos. 5,849,811, 5,760,100, 5,776,999, and 5,789,461 (collectively the "PATENTS"). NOVARTIS has since assigned all of its rights and interests in the PATENTS to CIBA.

1.5. The PATENTS relate exclusively to extended wear contact lenses, which constitutes a "Product" that is exclusively licensed to NOVARTIS under paragraph 9.1 of the PRIOR AGREEMENT.

1.6. Thus, under the PRIOR AGREEMENT, CRCERT's right to practice or license the inventions defined by the PATENTS is limited to a nonexclusive right to use the inventions in a "non-Exploitative" manner as the term "Exploit" is defined by the PRIOR AGREEMENT, such as in internal noncommercial research and development.

1.7. Because the PATENTS relate exclusively to extended wear contact lenses, CRCERT has no right or ability to compel NOVARTIS to grant licences of the PATENTS under paragraph 9.3(a) of the PRIOR AGREEMENT. Because the PATENTS do not relate to rigid gas-permeable contact lenses, CRCERT also has no right or ability to compel NOVARTIS to grant licenses of the PATENTS under paragraph 11.2 of the PRIOR AGREEMENT. To the extent the terms of the PRIOR AGREEMENT could be construed otherwise, CRCERT hereby relinquishes and disclaims any such right.

1.8. Under paragraph 9.3(b) of the PRIOR AGREEMENT, CRCERT had the ability to Exploit the PATENTS, under the conditions set forth in paragraph 9.3, if Ciba-Geigy had not taken steps to Exploit Project Technology that had been embodied in a Product within twelve months from the end of the Research Project. NOVARTIS' commercialization and sale of extended wear contact lenses that embody Project Technology has eliminated any potential right or ability of CRCERT to Exploit the PATENTS under paragraph 9.3(b). To the extent the terms of the PRIOR AGREEMENT could be construed otherwise, CRCERT hereby relinquishes and disclaims any such right.

1.9. CIBA and CSIRO are the registered co-owners of the PATENTS, by virtue of assignments recorded in the United States Patent Office (copies in Appendices B, C, and D).

1.10. UNSW, OVRF, QUT, UWS, and NVRI also have rights in the PATENTS by virtue of the PRIOR AGREEMENT.

1.11. In the PRIOR AGREEMENT, Ciba-Geigy Limited and CRCERT intended that if Ciba-Geigy or CIBA sought to enforce certain patents in the United States, the rights of any and all CRCERT entities to proceed with their own enforcement action would be extinguished.

1.12. In the suit captioned Ciba Vision Corporation v. Bausch & Lomb Incorporated, CIV 2:99-CV-34-WCO, now pending in the United States District Court for the Northern District of Georgia, Gainesville Division, (hereafter called LITIGATION) the PRIOR AGREEMENT was deemed insufficient to exclude CSIRO as a necessary party as that concept is defined by the Federal Rules of Civil Procedure.

1.13. The parties hereto intend to effect a valid and enforceable assignment of all rights associated with the PATENTS to CIBA, including:

1.13.1. The exclusive and unfettered right to manage and prosecute the LITIGATION, and any future litigation that might arise from infringement of the PATENTS by third parties either in the past or future, and to allow CIBA to manage and prosecute such LITIGATION or future litigation as the sole plaintiff, without the compulsory joinder of CSIRO;

1.13.2. The exclusive and unfettered right to practice the inventions defined by the PATENTS, including without limitation the rights to make, use, sell, offer for sale, or import; and

1.13.3. The exclusive and unfettered right to grant licenses and sublicenses of the inventions defined by the PATENTS.

1.14. The parties desire that this AGREEMENT not extend to or affect contractual obligations under the PRIOR AGREEMENT, for which there is adequate consideration in the absence of CRCERT's co-ownership of the PATENTS, including without limitation:

1.14.1. NOVARTIS' obligation to pay royalties under the PRIOR AGREEMENT;

1.14.2. NOVARTIS' obligation to grant sublicenses of technology not covered by the PATENTS under paragraph 9.3 of the PRIOR AGREEMENT.

1.15. The parties also wish to preserve CRCERT's limited right to practice the inventions defined by the PATENTS, for non-Exploitative purposes.

1.16. The parties do not waive any right that they might have against one another as a result of a breach of the PRIOR AGREEMENT by any other party.

1.17. BioCure, Inc. is a licensee of Project Technology outside the field of extended wear contact lenses by licenses dated September 20, 1999. Because the licenses are outside the field of extended wear contact lenses, BioCure, Inc. is not licensed to practice the technology defined by the PATENTS.

1.18. Therefore, the parties hereto do not intend to alter or affect in any manner the rights or obligations of BioCure, Inc. under the September 20, 1999, license agreements.

2. ASSIGNMENT

2.1. CRCERT, and each of its constituent entities, hereby irreversibly transfers, grants, conveys, assigns, and relinquishes exclusively to CIBA, all of CRCERT's right, title, and interest in and to the PATENTS and the inventions claimed therein.

2.1.1 CRCERT represents and warrants that no consents of any other parties are necessary or appropriate under any agreements concerning any of the PATENTS in order for the transfer and assignment of the PATENTS under this AGREEMENT to be legally effective.

2.2. CRCERT, and each of its constituent entities, hereby irreversibly transfers and assigns to CIBA all causes of action, rights, and remedies that have arisen, or which may arise, under the PATENTS prior to or after the Effective Date of this AGREEMENT, including any rights that CRCERT and any of its constituent entities have or have had against Bausch & Lomb Incorporated for the actions alleged in the LITIGATION.

2.3. As a result of this AGREEMENT, CIBA shall have the sole right and ability to institute and prosecute all suits and proceedings and recover all damages as a result thereof, and take all actions that CIBA, in its sole discretion, may deem necessary or proper to collect, assert, or enforce any claim, right, or title of any kind under any and all of the PATENTS, whether arising before or after the Effective Date, defend and compromise any and all such actions, suits, or proceedings relating to such transferred and assigned rights, title, interest, and benefits, and do all other such acts and things in relation thereto as CIBA, in its sole discretion, deems advisable.

2.4. This AGREEMENT shall inure to the benefit of, and be binding on, the parties hereto together with their respective legal representatives, successors, and assigns.

2.5. Except as otherwise noted herein, this AGREEMENT shall not extend to or affect contractual obligations under the PRIOR AGREEMENT, for which there is adequate consideration in the absence of CRCERT's co-ownership of the PATENTS. For the avoidance of doubt, this Agreement shall not extend to or affect

the obligations of CIBA to pay royalties under the PRIOR AGREEMENT. Because the royalty obligation is supported by consideration under the PRIOR AGREEMENT other than a licence under the PATENTS, it is intended by the parties that the obligations of CIBA to pay royalties, or an amount equivalent to royalties, continues as if the assignment of the PATENTS under this AGREEMENT has not occurred. Furthermore, CIBA acknowledges and warrants that any transfer, sale or other transaction involving the PATENTS shall not in any way affect the payment of royalties or an amount equivalent to the royalties to the other parties.

2.6. This AGREEMENT also shall in no manner impair or affect the rights or obligations of BioCure, Inc. under the license of Project Technology to BioCure, Inc. by agreements dated September 20, 1999.

2.7. This AGREEMENT shall supercede paragraph 20.2 of the PRIOR AGREEMENT with respect to the PATENTS.

2.8. This AGREEMENT shall supercede paragraph 8.1 of the PRIOR AGREEMENT with respect to the PATENTS.

3. LICENSE

3.1. CIBA hereby grants to CRCERT, and each of its constituent entities, a royalty-free, irrevocable, nonexclusive and nontransferrable license of the PATENTS, for internal research and development in a non-Exploitive manner, as the term "Exploit" is defined in the PRIOR AGREEMENT. Said license shall be effective until the last of the several PATENTS expire.

3.2. CIBA represents and warrants that no consents of any other parties are necessary or appropriate under any agreements concerning any of the PATENTS in order for the license of the PATENTS provided by paragraph 3.1 to be legally effective.

4. SEVERABILITY

4.1. The parties agree that if any part, term, or provision of this AGREEMENT shall be found illegal or in conflict with any valid controlling law, the validity of the remaining provisions shall not be affected thereby.

4.2. In the event the legality of any provision of this AGREEMENT is brought into question because of a decision by a court of competent jurisdiction, CRCERT, CIBA, and NOVARTIS may agree to revise the provision in question or may delete it entirely so as to comply with the decision of said court. The parties may also agree that such changes are retroactive.

5. CONSTRUCTION

5.1. This AGREEMENT shall be construed as if jointly drafted by CRCERT, CIBA, and NOVARTIS.

5.2. This AGREEMENT shall be governed by the law in force in the State of New South Wales, Australia, and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of that State and courts of appeal from them for determining any dispute concerning this agreement.

5.3. The paragraph numbering and subsection titles denoted by Roman numerals are for clarity only, and do not themselves form any part of this AGREEMENT.

5.4. This AGREEMENT may be executed in any number of counterparts, as originals or by facsimile, which will collectively constitute the same instrument.

5.5. The parties shall attempt to resolve any disputes between them resulting from this AGREEMENT through amicable consultation, based on the principles of mutual benefit, equality, cooperation and trust.

IN WITNESS WHEREOF, the parties hereto have executed this
AGREEMENT the date indicated below.

CIBA VISION CORPORATION

By: R. Meece
Date: 1-20-00

NOVARTIS AG

By: Jörg DIETZ
Date: 24.01.2000

By: Bernd LIPHARDT
Date: 24.01.2000

UNIVERSITY OF NEW SOUTH WALES

By: for and on behalf of University of New South Wales
Date: 17/3/00

COMMONWEALTH SCIENTIFIC AND INDUSTRIAL
RESEARCH ORGANISATION

By: Terry Healy
Date: 17 JAN 2000

Terry Healy
General Counsel
CSIRO

OPTOMETRIC VISION RESEARCH FOUNDATION

By: [Signature]
Date: [Blank]

QUEENSLAND UNIVERSITY OF TECHNOLOGY

By: John B. Corleary
Date: 26 April 2000

SA LEGAL

Date:

By:

Date: _____

REEL: 029986 FRAME: 0324