

PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

EPAS ID: PAT7226935

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
OT ACCEPTANCE, LLC	03/03/2022
RECEIVING PARTY DATA	
Name:	PROLUNG INC.
Street Address:	350 W. 800 N.
Internal Address:	SUITE 214
City:	SALT LAKE CITY
State/Country:	UNITED STATES
Postal Code:	84103
PROPERTY NUMBERS Total: 3	
Property Type	Number
Patent Number:	7542796
Patent Number:	7536220
Patent Number:	7937139
CORRESPONDENCE DATA	
Fax Number:	(801)531-1929
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>	
Phone:	8019944646
Email:	hbabb@kba.law
Correspondent Name:	BRIAN KUNZLER
Address Line 1:	50 W. BROADWAY
Address Line 2:	10TH FLOOR
Address Line 4:	SALT LAKE CITY, UTAH 84101
ATTORNEY DOCKET NUMBER:	3637
NAME OF SUBMITTER:	BRIAN C. KUNZLER
SIGNATURE:	/Brian C. Kunzler/
DATE SIGNED:	03/16/2022
Total Attachments: 11	
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TERMINATION & INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

This TERMINATION & INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT (this “**Agreement**”), dated as of March 3, 2022 (“**Effective Date**”), is entered into by and between Orem TEK Development Corp. (“**Lender**”), as successor in interest in BioMeridian Corporation (“**BMI**”), a Utah Corporation, OT Acceptance, LLC, a Utah Limited Liability Company (“**OTA**”) and ProLung, Inc., doing business as Ioniq Sciences, as successor in interest to Hilltop Group Technologies Corp. a Delaware corporation which was doing business as Fresh Medical Laboratories (“**Assignee**”). Lender, OTA, and Assignee are each a “**Party**” and collectively referred to herein as the “**Parties**.”

RECITALS

WHEREAS, BMI and Assignee entered into an Amended and Restated License Agreement (the “**License Agreement**”) dated November 2, 2006, pursuant to which BMI, as record owner, granted to Assignee an exclusive license under BMI’s patents, technology, trade secrets, know-how and other intellectual property and improvements as set forth on **Exhibit A** (“**Assigned IP**”) to make, have made, use, import, manufacture, distribute products and devices including medical claims that address the diagnosis, screening, and curing of, cancer or other diseases.

WHEREAS, BMI, subject to Court Order entered into May 9, 2014 assigned all right, title and interest to the Assigned IP to Orem TEK Development Corp. (“**Lender**”) to satisfy the balance of certain defaulted promissory notes.

WHEREAS, as a result of the May 9, 2014 Court Order, BMI assigned all of its rights in the License Agreement to the Lender, as successor in interest to BMI, pursuant to Section 11.3 of the License Agreement.

WHEREAS, Lender assigned all right, title and interest in the Assigned IP to OTA via a confirmatory assignment, dated January 8, 2000;

WHEREAS, OTA assigned a 50% undivided interest in U.S. Patent Nos. 7542796, 7536220, and 7937139 to Vine Medical, LLC on January 22, 2021, which was recorded with the United States Patent and Trademark Office on February 28, 2022; and

WHEREAS, the Parties desire to mutually terminate the License Agreement and OTA has agreed to assign, transfer, convey and deliver all of its remaining right, title and interest in the Assigned IP to Assignee on the terms set forth herein.

AGREEMENT

NOW THEREFORE in consideration of the foregoing recitals and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Waiver. The Parties hereby irrevocably waive, in its entirety, the 60-day termination notice obligations set forth in Section 5.2 of the License Agreement.

2. Termination. The Parties mutually agree that upon the Effective Date, the License Agreement shall terminate in its entirety, such that it shall be of no further force or effect, none of the provisions of the License Agreement shall survive such termination and all rights and obligations of the parties thereunder (whether related to periods before or after the Effective Time) shall cease.

3. Release.

(a) In consideration of the covenants, agreements, and undertakings of the Parties under this Agreement, Lender and OTA, each individually, on behalf of itself and its respective present and former parents, subsidiaries, affiliates, representatives, agents, officers, directors, shareholders, members, successors, and assigns (collectively, the “**Releasing Parties**”) hereby irrevocably, unconditionally, and fully releases, waives, and forever discharges Assignee and its present and former, direct and indirect, parents, subsidiaries, affiliates, employees, officers, directors, shareholders, members, agents, representatives, and successors and assigns (all of the persons being referred to collectively herein as the “**Released Parties**”), of and from any and all debts, demands, actions, causes of action, suits, claims, judgments, damages, costs, expenses, losses, attorneys’ fees, penalties and liabilities, of every kind, character, nature and description, whether now known or unknown, suspected or claimed, whether vested, fixed or contingent, whether accrued or hereafter maturing or whether at law or in equity under which any of the Releasing Parties ever had, now have, or may have in the future, for, upon or by reason of any agreement (written or oral), matter, cause, event, occurrence, or state of facts, occurring or taking place at any time on, prior to the Agreement.

(b) Lender and OTA expressly acknowledge and agree that this Agreement may be pled as a complete defense and will fully and finally bar any such known or unknown claim or claims based on any acts or omissions of the Released Parties during the term of the License Agreement and up to and including the date first written above.

(c) In consideration of the covenants, agreements, and undertakings of the Parties under this Agreement, Assignee, on behalf of itself and its respective present and former parents, subsidiaries, affiliates, representatives, agents, officers, directors, shareholders, members, successors, and assigns (collectively, the “**Assignee Releasing Parties**”) hereby irrevocably, unconditionally, and fully releases, waives, and forever discharges Lender and OTA and its present and former, direct and indirect, parents, subsidiaries, affiliates, employees, officers, directors, shareholders, members, agents, representatives, and successors and assigns, of and from any and all debts, demands, actions, causes of action, suits, claims, judgments, damages, costs, expenses, losses, attorneys’ fees, penalties and liabilities, of every kind, character, nature and description, whether now known or unknown, suspected or claimed, whether vested, fixed or contingent, whether accrued or hereafter maturing or whether at law or in equity under which any of the Assignee Releasing Parties ever had, now have, or may have in the future, for, upon or by reason of any agreement (written or oral), matter, cause, event, occurrence, or state of facts, occurring or taking place at any time on, prior to the Agreement.

4. Representation and Warranties.

(a) Lender and OTA hereby acknowledge and agree that there are no unpaid license fees, royalties or other amounts due and owing to Lender or OTA under the License Agreement.

(b) Each Party represents and warrants that it has the full power and authority and has obtained all third party consents, approvals and other authorizations to enter into this Agreement and perform its obligations hereunder, including, without limitation, the assignment of Assigned IP to Assignee. This Agreement has been executed and delivered by such Party and (assuming due authorization, execution, and delivery by the other Party hereto) constitutes the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms.

(c) OTA owns a 50% undivided interest in the Assigned IP, including without limitation, the right, title and interest to sue for infringement of the Assigned IP. OTA has obtained and properly recorded previously executed assignments for U.S. Patent Nos. 7542796, 7536220, and 7937139 as necessary to fully perfect its rights and title therein in accordance with governing law and regulations in each respective jurisdiction. The Assigned IP is 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 IP. 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 IP.

(d) To the best of OTA's knowledge, none of the Assigned IP has ever been found invalid or unenforceable for any reason in any administrative, judicial or other proceeding other than official notices from patent offices in the course of patent prosecution or from unpaid fees or annuities.

(e) To the best of OTA's knowledge, neither OTA nor its representatives have engaged in any conduct, or omitted to perform any necessary act, the result of which would invalidate any of the Assigned IP or hinder their enforcement, including without limitation, misrepresenting the Assigned IP to a standard-setting organization.

(f) OTA, and to the best of OTA's knowledge, any prior owner has not put a third party on notice of actual or potential infringement or initiated any enforcement action with respect to any of the Assigned IP.

(g) All maintenance fees, annuities, and the like due or payable on the Assigned IP have been paid as of the Effective Date.

(h) EXCEPT FOR THE EXPRESS REPRESENTATIONS AND WARRANTIES SET FORTH IN THIS SECTION 4 THE AGREEMENT, (A) NEITHER PARTY HERETO NOR ANY PERSON ON SUCH PARTY'S BEHALF HAS MADE OR MAKES ANY EXPRESS OR IMPLIED REPRESENTATION OR WARRANTY WHATSOEVER, EITHER ORAL OR WRITTEN, WHETHER ARISING BY LAW, COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OF TRADE OR OTHERWISE, ALL OF WHICH ARE EXPRESSLY DISCLAIMED, AND (B) EACH PARTY HERETO ACKNOWLEDGES THAT, IN ENTERING INTO THIS AGREEMENT, IT HAS NOT RELIED UPON ANY REPRESENTATION OR WARRANTY MADE BY ANY OTHER PARTY, OR ANY OTHER

PERSON ON ANY OTHER PARTY'S BEHALF, EXCEPT AS SPECIFICALLY PROVIDED IN THIS SECTION 4.

5. Assignment. OTA hereby irrevocably quitclaims, sells, assigns, transfers, conveys and delivers to Assignee, and Assignee hereby purchases, acquires and assumes from OTA, all right, title and interest to, in and under the Assigned IP, including all patents and patent applications relating to the Assigned IP and, reissues, renewals and extensions of the foregoing, for Assignee's own use and enjoyment, and for the use and enjoyment of Assignee's successors and assigns, all patentable inventions and disclosures described in the Assigned IP, together with all causes of action and other enforcement rights for damages, injunctive relief and any other remedies for claims of past, present or future infringement or other unauthorized use of the Assigned IP, and rights to collect royalties or other payments on account of any of the Assigned IP, and collect the same for Assignee's own use and enjoyment and for the use and enjoyment of Assignee's successors and assigns (the "Assignment"). OTA acknowledges and agrees that, if any of the Assigned IP are assigned to OTA's affiliates or subsidiaries, OTA may be required prior to Closing to perform certain actions to establish that OTA is the assignee and to record such assignments. On or before Closing, OTA will execute and deliver to Assignee the Assignment of Patent Rights in the form set forth on **Exhibit B** (as may be updated based on Assignee's review of the Assigned IP).

6. Payment. As consideration for the promises and covenants made by Lender and OTA, Assignee shall pay to OTA as follows:

(i) On the Effective Date, by wire transfer in accordance with OTA's wiring instructions, an amount equal to Seventy-Five Thousand Dollars (\$75,000 USD); and

(ii) On the Effective Date, the Assignee will issue to OTA One Hundred Thousand Dollars (\$100,000 USD) worth of common stock, which is equal to 6,436 shares of ProLung, Inc. common stock at an agreed upon value of \$15.54 per share as of the Effective Date.

7. Third Party License. The Parties understand, agree, and acknowledge that there is a third party license dated March 20, 2015 from OTA to Jacliff Investments, Inc., d/b/a International Health Technologies, a Utah corporation ("**Jacliff**"), of the Assigned IP in the field of Allopathic Medicine. To the extent there are any royalties or payments that are due and owed by Jacliff under the March 20, 2015 license, the Parties agree that such royalties or payments owed or made by Jacliff will be owed or paid to OTA.

8. Further Assurances. Without further consideration, OTA agrees to execute such further documentation and perform such further actions, including without limitation, any actions or documents necessary, or requested by Assignee, to document, record, or perfect the transactions contemplated by this Agreement or as may be necessary to protect, secure and vest good, valid and marketable title to the Assigned IP in Assignee.

9. Indemnification. Lender and OTA (each, jointly and severally, "**Indemnifying Party**") shall defend, indemnify and hold harmless Assignee, and its officers, directors, employees, agents, affiliates, permitted successors and permitted assigns (collectively, "**Indemnified Party**"), against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including

attorneys' fees, fees and costs of enforcing any right to indemnification under this Agreement, and the cost of pursuing any insurance providers, incurred by an Indemnified Party (collectively, "**Losses**"), arising out or resulting from any claim of a third party or Party alleging: (i) material breach by Indemnifying Party or its employees, consultants or other personnel of any representation, warranty, covenant, or other obligations set forth in this Agreement; (ii) gross negligence or more culpable act or omission of an Indemnifying Party or its employees, consultants or other personnel (including any recklessness or willful misconduct) in connection with the performance of its obligations under this Agreement; or (iii) any third party claims of ownership of the Assigned IP.

10. Miscellaneous.

(a) Governing Law. All issues concerning this Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of Utah or any other jurisdiction) that would cause the application of the law of any jurisdiction other than Utah.

(b) Compliance with Laws. Notwithstanding anything contained in this Agreement to the contrary, the obligations of the parties with respect to the consummation of the transactions contemplated by this 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.

(c) Relationship of Parties. The Parties hereto are independent contractors. Nothing in this 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.

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

(e) Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, each of which shall remain in full force and effect and the invalidity and unenforceability of this Agreement shall not affect the validity or enforceability in any jurisdiction in which such determination had not been made except to the extent such invalidity or unenforceability causes such agreements to no longer contain all of the material provisions reasonably expected by the Parties to be contained. The Parties, however, agree to substitute any invalid or unenforceable provision by a valid and enforceable provision which maintains, to the fullest extent possible, the respective interests of the Parties as established by the present terms and conditions of the Agreement

(f) Counterparts. This Agreement may be executed in separate counterparts (including by means of electronic signature pages in portable document format), each of which will be deemed to be an original and all of which taken together will constitute one and the same Agreement.

(g) Entire Agreement. This Agreement and all Exhibits (which are incorporated herein) constitute the entire understanding and agreement among the Parties with respect to the matters herein and supersedes any previous agreements, understandings, or statement of intent in each case, written or oral, of every nature between the Parties with respect to those matters.

(h) Construction. This Agreement represents the wording selected by the Parties to define their agreement and no rule of strict construction shall apply against either Party. Whenever the context reasonably permits, the singular shall include the plural, the plural shall include the singular, and the whole shall include any part thereof. The section and other headings in this Agreement are for convenience of reference only and shall not affect the interpretation of this Agreement.


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

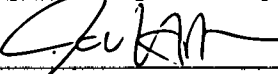
LENDER:

ASSIGNEE:

OREM TEK DEVELOPMENT CORP.

FRESH MEDICAL LABORATORIES

By: 

By: 

Name: William A. Fresh

Name: Jared B Bauer


Title: CEO

Title: CEO - IONIQ Sciences (formerly called Fresh Medical Laboratories)

Date: March 3, 2022

Date: 3-3-2022

OT ACCEPTANCE, LLC

By: 

Name: William A. Fresh

Title: CEO

Date: March 3, 2022

Exhibit A
Assigned IP

<u>Patent or Application No.</u>	<u>Jurisdiction</u>	<u>Filing Date</u>	<u>Title and First Named Inventor</u>
7542796	United States	07/16/2003	Methods for obtaining quick, repeatable and non- invasive bioelectrical signals in living organisms Douglas S. Horne
7536220	United States	11/26/2007	Methods for obtaining quick, repeatable and non- invasive bioelectrical signals in living organisms Douglas S. Horne
7937139	United States	07/20/2004	System and methos of utilizing electrical readings in the determination of treatment Douglas S. Horne

Exhibit B

ASSIGNMENT OF PATENT RIGHTS

For good and valuable consideration, the receipt of which is hereby acknowledged, Orem TEK Development Corp. (“**Lender**”), as successor in interest in BioMeridian Corporation (“**BMI**”), a Utah Corporation, OT Acceptance, LLC, a Utah Limited Liability Company (“**OTA**”) having offices at 176 Emerald Drive St. George, Utah 84770 (“**Assignor**”), does hereby quitclaim, sell, assign, transfer, and convey unto ProLung Inc., a Delaware corporation, having an address at 350 W. 800 N. Suite 214, Salt Lake City Utah 84103 (“**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 provisional patent applications, patent applications and patents listed in the table below (the “**Patents**”);

<u>Patent or Application No.</u>	<u>Country</u>	<u>Filing Date</u>	<u>Title and First Named Inventor</u>
7542796	United States	07/16/2003	Methods for obtaining quick, repeatable and non-invasive bioelectrical signals in living organisms Douglas S. Horne
7536220	United States	11/26/2007	Methods for obtaining quick, repeatable and non-invasive bioelectrical signals in living organisms Douglas S. Horne
7937139	United States	07/20/2004	System and methos of utilizing electrical readings in the determination of treatment Douglas S. Horne

(b) all patents and patent applications (i) to which any of the Patents directly or indirectly claims priority, and/or (ii) for which any of the Patents directly or indirectly forms a basis for priority;

(c) all reissues, reexaminations, extensions, continuations, ~~continuations in part~~

PATENT

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continuing prosecution applications, requests for continuing examinations, divisions, registrations of any item in any of the foregoing categories (a) and (b);

(d) all foreign patents, patent applications, and counterparts relating to any item in any of the foregoing categories (a) through (c), including, without limitation, certificates of invention, utility models, industrial design protection, design patent protection, and other governmental grants or issuances;

(e) all items in any of the foregoing in categories (b) through (d), whether or not expressly listed as Patents above and whether or not claims in any of the foregoing have been rejected, withdrawn, cancelled, or the like;

(f) inventions, invention disclosures, and discoveries described in any of the Patents and/or any item in the foregoing categories (b) through (e) that (i) are included in any claim in the Patents and/or any item in the foregoing categories (b) through (e), (ii) are subject matter capable of being reduced to a patent claim in a reissue or reexamination proceeding brought on any of the Patents and/or any item in the foregoing categories (b) through (e), and/or (iii) could have been included as a claim in any of the Patents and/or any item in the foregoing categories (b) through (e);

(g) 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 (f), 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;

(h) all 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 any item in any of the foregoing categories (b) through (g), including, without limitation, all causes of action and other enforcement rights for

- (1) damages,
- (2) injunctive relief, and
- (3) any other remedies of any kind

for past, current, and future infringement; and

(i) all rights to collect royalties and other payments under or on account of any of the Patents and/or any item in any of the foregoing categories (b) through (h).

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, 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.

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.

IN WITNESS WHEREOF this Assignment of Patent Rights is executed at Anthem, AZ
on March 3, 2022

ASSIGNOR:

[Name of Seller]

By: 
Name: William A. Fresh
Title: CEO
(Signature MUST be attested)

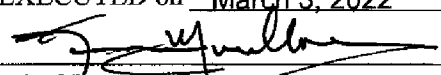
ATTESTATION OF SIGNATURE PURSUANT TO 28 U.S.C. § 1746

The undersigned witnessed the signature of William A. Fresh to the above Assignment of Patent Rights on behalf of [Seller] and makes the following statements:

1. I am over the age of 18 and competent to testify as to the facts in this Attestation block if called upon to do so.
2. William A. Fresh is personally known to me (or proved to me on the basis of satisfactory evidence) and appeared before me on March 3, 2022 to execute the above Assignment of Patent Rights on behalf of [Seller].
3. William A. Fresh subscribed to the above Assignment of Patent Rights on behalf of [Seller].

I declare under penalty of perjury under the laws of the United States of America that the statements made in the three (3) numbered paragraphs immediately above are true and correct.

EXECUTED on March 3, 2022 (date)


Print Name: Kim A. Moulton