

02-27-2002



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Form PTO-159 (Rev. 03/01) OMB No. 0651-0027 (Exp. 5/1/2002) Tab settings

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies): 2-20-02 Applied Laboratories, Inc. [ ] Individual(s) [ ] Association [ ] General Partnership [ ] Limited Partnership [X] Corporation-State Indiana [ ] Other Additional name(s) of conveying party(ies) attached? [ ] Yes [ ] No

2. Name and address of receiving party(ies) Name: First Indiana Bank, N.A., Internal as Agent Address: Street Address: 135 N. Pennsylvania St. City: Indianapolis State: IN Zip: 46204 [ ] Individual(s) citizenship [ ] Association [ ] General Partnership [ ] Limited Partnership [ ] Corporation-State [X] Other National Banking Association If assignee is not domiciled in the United States, a domestic representative designation is attached: [ ] Yes [ ] No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? [ ] Yes [ ] No

3. Nature of conveyance: [ ] Assignment [ ] Merger [X] Security Agreement [ ] Change of Name [ ] Other Execution Date: February 14, 2002

4. Application number(s) or registration number(s): A. Trademark Application No(s) See Schedule A attached hereto B. Trademark Registration No(s) See Schedule A attached hereto Additional number(s) attached [X] Yes [ ] No

5. Name and address of party to whom correspondence concerning document should be mailed: Name: Bradley S. Fuson Internal Address: Krieg DeVault LLP Street Address: One Indiana Square Suite 2800 City: Indianapolis State: IN Zip: 46204

6. Total number of applications and registrations involved: 3 7. Total fee (37 CFR 3.41) \$ 90.00 [X] Enclosed [ ] Authorized to be charged to deposit account 8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature: Bradley S. Fuson Name of Person Signing Signature: [Signature] Date: 2/19/02

Total number of pages including cover sheet, attachments, and document: 7

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

02/26/2002 6T0N11 00000126 74021072 01 FC:481 40.00 OP 02 FC:482 50.00 OP

TRADEMARK REEL: 002450 FRAME: 0094

APPLIED LABORATORIES  
 TRADEMARK INFORMATION  
 December 27, 2001

NAME OF TRADEMARK	DOCKET NUMBER	SERIAL NUMBER	STATUS
Applied Laboratories Service Mark	7421-0006	S/N 74/021,072 Reg. No.: 1,663,063 Reg. Date: 10/29/91	Section 8 & 9 Filed Renewal due 10/29/11
Pertussin Registered Marks:	7421-0012 or 7421-0016	S/N 75/237,584 Reg. No.: 2,130,520 Reg. Date: 1/20/98	Need to file 8 & 15 Affidavit between 1/20/03 & 1/20/04 Renewal due 1/20/2008
Pertussin (Stylized)	7421-0013	S/N 71/284,748 Reg. No.: 271,212 Reg. Date: 5/27/30	Renewal due 5/27/10
<b>Pertussin</b> <b>Non-Registered Marks:</b>			
Pertussin ES			
Pertussin CS			
Pertussin PM			
Pertussin AM			
Pertussin Laboratories			

## TRADEMARK COLLATERAL ASSIGNMENT

THIS TRADEMARK COLLATERAL ASSIGNMENT (the "Agreement") made effective as of the 14th day of February, 2002 by and between **APPLIED LABORATORIES, INC.** ("Assignor"), an Indiana corporation whose principal office is located at 1600 Brian Drive, Columbus, Indiana 47202, and **FIRST INDIANA BANK, N.A.** ("Lender"), a national banking association with a banking office located at 135 North Pennsylvania Street, Indianapolis, Indiana 46204.

### W I T N E S S E T H:

WHEREAS, Lender has extended or intends to extend certain credit facilities to Assignor in the aggregate original principal amount of Four Million One Hundred Thousand and No/100 Dollars (\$4,100,000.00) to be evidenced by the Notes (as such term is defined in the Credit Agreement) pursuant to the terms of a certain Credit Agreement dated as of even date ("Credit Agreement"); and

WHEREAS, in order to induce Lender to execute and deliver the Credit Agreement and extend the credit facilities to Assignor, Assignor has agreed to assign to Lender certain trademark rights.

NOW, THEREFORE, in consideration of the premises, Assignor hereby agrees with Lender as follows:

1. To secure and complete and timely satisfaction of all Indebtedness (as defined in the Credit Agreement) and Assignor's obligations arising under the Credit Agreement, Assignor hereby grants, assigns, and conveys to Lender the entire right, title and interest in and to the trademark applications and trademarks listed in Schedule A hereto, including without limitation all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements, all rights corresponding thereto throughout the world and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof (collectively, the "Trademarks").

2. Assignor covenants and warrants that:

(a) The Trademarks are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;

(b) Each of the Trademarks is valid and enforceable and Assignor has notified Lender in writing of all prior art (including public uses and sales) of which it is aware;

(c) Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, free and clear of any liens, charges and encumbrances, including without limitation pledges, assignments, licenses and covenants by Assignor not to sue third persons; and

(d) Assignor has the unqualified right to enter into this Agreement and perform its terms and, upon Lender's request, will use its best efforts to enter into written agreements with each of its present and future employees, agents and consultants which will enable it to comply with the covenants herein contained.

3. Assignor agrees that, until all of the Indebtedness shall have been satisfied in full, it will not enter into any agreement (for example, a license agreement) which is inconsistent with Assignor's obligations under this Agreement, without Lender's prior written consent.

4. If, before the Indebtedness shall have been satisfied in full, Assignor shall obtain rights to any new trademarks, or become entitled to the benefit of any trademark application or trademark for any reissue, division, continuation, renewal, extension, or continuation-in-part of any Trademark or any improvement or modification on any Trademark, the provisions of Section 1 shall automatically apply thereto and Assignor shall give to Lender prompt notice thereof in writing hereof.

5. Assignor authorizes Lender to modify this Agreement by amending Schedule A to include any future trademarks and trademark applications which are Trademarks under Section 1 or Section 4 hereof.

6. Unless and until there shall have occurred and be continuing an Event of Default (as defined in the Credit Agreement), Lender hereby grants to Assignor the exclusive, nontransferable right and license under the Trademarks to utilize the Trademarks for Assignor's own benefit and account and for none other. Assignor agrees not to sell or assign its interest in, or grant any sublicense under, the license granted to Assignor in this Section 6, without the prior written consent of Lender.

7. If any Event of Default shall have occurred and be continuing, Assignor's license under the Trademarks as set forth in Section 6 shall terminate forthwith, and Lender shall have, in addition to all other rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks may be located and, without limiting the generality of the foregoing, Lender may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to Assignor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon, in Indianapolis, Indiana, or elsewhere, the whole or from time to time any part of the Trademarks, or any interest which Assignor may have therein, and after deducting from the proceeds of sale or other disposition of the Trademarks all expenses (including all reasonable expenses for brokers' fees and legal services), shall apply the residue of such proceeds toward the payment of the Indebtedness. Any remainder of the proceeds after payment in full of the Indebtedness shall be paid over to Assignor. Notice of any sale or other disposition of the Trademarks shall be given to Assignor at least five (5) business days before the time of any intended public or private sale or other disposition of the Trademarks is to be made, which Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, any holder of any Note or Lender may, to the extent permissible under applicable law, purchase the whole or any part of the Trademarks sold, free from any right of redemption on the part of Assignor, which right is hereby waived and released.

8. If any Event of Default shall have occurred and be continuing, Assignor hereby authorizes and empowers Lender to make, constitute and appoint any officer or agent of Lender, as Lender may select in its exclusive discretion, as Assignor's true and lawful attorney-in-fact, with the power to endorse Assignor's name on all applications, documents, papers and instruments necessary for Lender to use the Trademarks, or to grant or issue any exclusive or nonexclusive license under the Trademarks to any third person, or as necessary for Lender to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to any third person. Assignor hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable for the duration of this Agreement.

9. At such time as Assignor shall completely satisfy all of the Indebtedness, this Agreement shall terminate and Lender shall execute and deliver to Assignor all deeds, assignments and other instruments as may be necessary or proper to re-vest in Assignor full title to the Trademarks, subject to any disposition thereof which may have been made by Lender pursuant hereto.

10. Any and all reasonable fees, costs and expenses, of whatever kind or nature, including the reasonable attorney's fees and legal expenses incurred by Lender in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, shall be borne and paid by Assignor on demand by Lender and until so paid shall be added to the principal amount of the Indebtedness and shall bear interest at the highest rate prescribed in the Credit Agreement or the Notes.

11. Except as otherwise consented to by Lender, which consent shall not be unreasonably withheld, Assignor shall have the duty, through counsel acceptable to Lender, to prosecute diligently any trademark applications of the Trademarks pending as of the date of this Agreement or thereafter until the Indebtedness shall have been paid in full and to preserve and maintain all rights in trademark applications and Trademarks, including without limitation the payment of all maintenance fees. Any reasonable expenses incurred in connection with such an application shall be borne by Assignor. Assignor shall not abandon any right to file a trademark application, or any pending trademark application or trademark without the consent of Lender, which consent shall not be unreasonably withheld.

12. Assignor shall have the right, with the consent of Lender, which shall not be unreasonably withheld, to bring suit to its own name, and to join Lender, if necessary, as a party to such suit so long as Lender is satisfied that such joinder will not subject it to any risk of liability, to enforce the Trademarks and any licenses thereunder. Assignor shall promptly, upon demand, reimburse and indemnify Lender for all damages, costs and expenses, including legal fees, incurred by Lender pursuant to this Section 12.

13. No course of dealing between Assignor and Lender, nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or privilege hereunder or under the Credit Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

14. All of Lender's rights and remedies with respect to the Trademarks, whether established hereby or by the Credit Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently.

15. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any clause or provision of this Agreement in any jurisdiction.

16. This Agreement is subject to modification only by a writing signed by the parties, except as provided in Section 5.

17. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

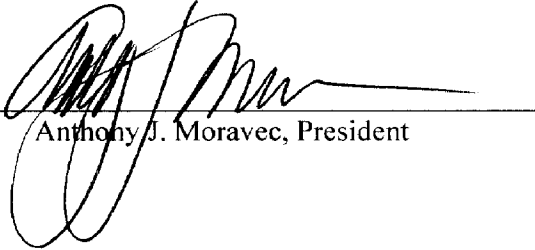
18. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Indiana.

UNDER, GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF INDIANA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW. ASSIGNOR AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT SHALL BE TRIED AND LITIGATED ONLY IN THE STATE COURTS LOCATED IN THE COUNTY OF MARION, STATE OF INDIANA, OR THE FEDERAL COURTS WHOSE VENUE INCLUDES THE COUNTY OF MARION, STATE OF INDIANA. **ASSIGNOR WAIVES, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, THE RIGHT TO A TRIAL BY JURY AND ANY RIGHT THE COMPANY MAY HAVE TO ASSERT THE DOCTRINE OF "FORUM NON CONVENIENS" OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION.**

WITNESS the execution hereof under seal as of the day and year first above written.

**APPLIED LABORATORIES, INC.**

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read 'Anthony J. Moravec', is written over a horizontal line. The signature is stylized and cursive.

Anthony J. Moravec, President

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Anthony J. Moravec, the President of Applied Laboratories, Inc., an Indiana corporation, who acknowledged the execution of the foregoing Trademark Collateral Assignment on behalf of said corporation.

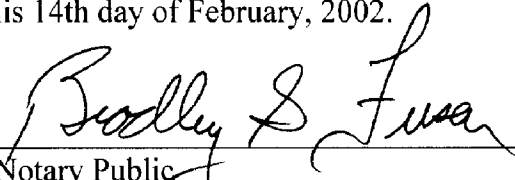
WITNESS, my hand and Notarial Seal this 14th day of February, 2002.

My Commission Expires:

\_\_\_\_\_

My County of Residence:

\_\_\_\_\_

  
\_\_\_\_\_  
Notary Public

\_\_\_\_\_  
Printed



**BRADLEY S FUSOM, Notary Public**  
My Commission Expires August 28, 2006  
Residing in Hamilton County

## TRADEMARK COLLATERAL ASSIGNMENT

THIS TRADEMARK COLLATERAL ASSIGNMENT (the "Agreement") made effective as of the 14th day of February, 2002 by and between **APPLIED LABORATORIES, INC.** ("Assignor"), an Indiana corporation whose principal office is located at 1600 Brian Drive, Columbus, Indiana 47202, and **FIRST INDIANA BANK, N.A.** ("Lender"), a national banking association with a banking office located at 135 North Pennsylvania Street, Indianapolis, Indiana 46204.

### WITNESSETH:

WHEREAS, Lender has extended or intends to extend certain credit facilities to Assignor in the aggregate original principal amount of Four Million One Hundred Thousand and No/100 Dollars (\$4,100,000.00) to be evidenced by the Notes (as such term is defined in the Credit Agreement) pursuant to the terms of a certain Credit Agreement dated as of even date ("Credit Agreement"); and

WHEREAS, in order to induce Lender to execute and deliver the Credit Agreement and extend the credit facilities to Assignor, Assignor has agreed to assign to Lender certain trademark rights.

NOW, THEREFORE, in consideration of the premises, Assignor hereby agrees with Lender as follows:

1. To secure and complete and timely satisfaction of all Indebtedness (as defined in the Credit Agreement) and Assignor's obligations arising under the Credit Agreement, Assignor hereby grants, assigns, and conveys to Lender the entire right, title and interest in and to the trademark applications and trademarks listed in Schedule A hereto, including without limitation all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements, all rights corresponding thereto throughout the world and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof (collectively, the "Trademarks").

2. Assignor covenants and warrants that:

(a) The Trademarks are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;

(b) Each of the Trademarks is valid and enforceable and Assignor has notified Lender in writing of all prior art (including public uses and sales) of which it is aware;

(c) Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, free and clear of any liens, charges and encumbrances, including without limitation pledges, assignments, licenses and covenants by Assignor not to sue third persons; and

(d) Assignor has the unqualified right to enter into this Agreement and perform its terms and, upon Lender's request, will use its best efforts to enter into written agreements with each of its present and future employees, agents and consultants which will enable it to comply with the covenants herein contained.

3. Assignor agrees that, until all of the Indebtedness shall have been satisfied in full, it will not enter into any agreement (for example, a license agreement) which is inconsistent with Assignor's obligations under this Agreement, without Lender's prior written consent.



4. If, before the Indebtedness shall have been satisfied in full, Assignor shall obtain rights to any new trademarks, or become entitled to the benefit of any trademark application or trademark for any reissue, division, continuation, renewal, extension, or continuation-in-part of any Trademark or any improvement or modification on any Trademark, the provisions of Section 1 shall automatically apply thereto and Assignor shall give to Lender prompt notice thereof in writing hereof.

5. Assignor authorizes Lender to modify this Agreement by amending Schedule A to include any future trademarks and trademark applications which are Trademarks under Section 1 or Section 4 hereof.

6. Unless and until there shall have occurred and be continuing an Event of Default (as defined in the Credit Agreement), Lender hereby grants to Assignor the exclusive, nontransferable right and license under the Trademarks to utilize the Trademarks for Assignor's own benefit and account and for none other. Assignor agrees not to sell or assign its interest in, or grant any sublicense under, the license granted to Assignor in this Section 6, without the prior written consent of Lender.

7. If any Event of Default shall have occurred and be continuing, Assignor's license under the Trademarks as set forth in Section 6 shall terminate forthwith, and Lender shall have, in addition to all other rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks may be located and, without limiting the generality of the foregoing, Lender may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to Assignor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon, in Indianapolis, Indiana, or elsewhere, the whole or from time to time any part of the Trademarks, or any interest which Assignor may have therein, and after deducting from the proceeds of sale or other disposition of the Trademarks all expenses (including all reasonable expenses for brokers' fees and legal services), shall apply the residue of such proceeds toward the payment of the Indebtedness. Any remainder of the proceeds after payment in full of the Indebtedness shall be paid over to Assignor. Notice of any sale or other disposition of the Trademarks shall be given to Assignor at least five (5) business days before the time of any intended public or private sale or other disposition of the Trademarks is to be made, which Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, any holder of any Note or Lender may, to the extent permissible under applicable law, purchase the whole or any part of the Trademarks sold, free from any right of redemption on the part of Assignor, which right is hereby waived and released.

8. If any Event of Default shall have occurred and be continuing, Assignor hereby authorizes and empowers Lender to make, constitute and appoint any officer or agent of Lender, as Lender may select in its exclusive discretion, as Assignor's true and lawful attorney-in-fact, with the power to endorse Assignor's name on all applications, documents, papers and instruments necessary for Lender to use the Trademarks, or to grant or issue any exclusive or nonexclusive license under the Trademarks to any third person, or as necessary for Lender to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to any third person. Assignor hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable for the duration of this Agreement.

9. At such time as Assignor shall completely satisfy all of the Indebtedness, this Agreement shall terminate and Lender shall execute and deliver to Assignor all deeds, assignments and other instruments as may be necessary or proper to re-vest in Assignor full title to the Trademarks, subject to any disposition thereof which may have been made by Lender pursuant hereto.

10. Any and all reasonable fees, costs and expenses, of whatever kind or nature, including the reasonable attorney's fees and legal expenses incurred by Lender in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, shall be borne and paid by Assignor on demand by Lender and until so paid shall be added to the principal amount of the Indebtedness and shall bear interest at the highest rate prescribed in the Credit Agreement or the Notes.

11. Except as otherwise consented to by Lender, which consent shall not be unreasonably withheld, Assignor shall have the duty, through counsel acceptable to Lender, to prosecute diligently any trademark applications of the Trademarks pending as of the date of this Agreement or thereafter until the Indebtedness shall have been paid in full and to preserve and maintain all rights in trademark applications and Trademarks, including without limitation the payment of all maintenance fees. Any reasonable expenses incurred in connection with such an application shall be borne by Assignor. Assignor shall not abandon any right to file a trademark application, or any pending trademark application or trademark without the consent of Lender, which consent shall not be unreasonably withheld.

12. Assignor shall have the right, with the consent of Lender, which shall not be unreasonably withheld, to bring suit to its own name, and to join Lender, if necessary, as a party to such suit so long as Lender is satisfied that such joinder will not subject it to any risk of liability, to enforce the Trademarks and any licenses thereunder. Assignor shall promptly, upon demand, reimburse and indemnify Lender for all damages, costs and expenses, including legal fees, incurred by Lender pursuant to this Section 12.

13. No course of dealing between Assignor and Lender, nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or privilege hereunder or under the Credit Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

14. All of Lender's rights and remedies with respect to the Trademarks, whether established hereby or by the Credit Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently.

15. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any clause or provision of this Agreement in any jurisdiction.

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17. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

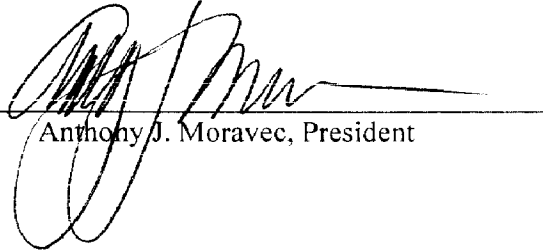
18. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Indiana.

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WITNESS the execution hereof under seal as of the day and year first above written.

**APPLIED LABORATORIES, INC.**

By:



Anthony J. Moravec, President

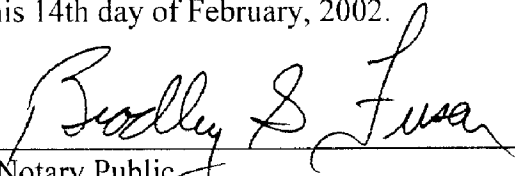
STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me the undersigned, a Notary Public in and for said County and State, personally appeared Anthony J. Moravec, the President of Applied Laboratories, Inc., an Indiana corporation, who acknowledged the execution of the foregoing Trademark Collateral Assignment on behalf of said corporation.

WITNESS, my hand and Notarial Seal this 14th day of February, 2002.

My Commission Expires:

\_\_\_\_\_

  
\_\_\_\_\_  
Notary Public

My County of Residence:

\_\_\_\_\_

\_\_\_\_\_  
Printed



**BRADLEY S. FUSON, Notary Public**  
My Commission Expires: August 3, 2006  
Residing in Hamilton, Indiana

APPLIED LABORATORIES  
 TRADEMARK INFORMATION  
 December 27, 2001

ALI Trademark

NAME OF TRADEMARK	DOCKET NUMBER	SERIAL NUMBER	STATUS
Applied Laboratories Service Mark	7421-0006	S/N 74/021,072 Reg. No.: 1,663,063 Reg. Date: 10/29/91	Section 8 & 9 Filed Renewal due 10/29/11
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Pertussin (Stylized)	7421-0013	S/N 71/284,748 Reg. No.: 271,212 Reg. Date: 5/27/30	Renewal due 5/27/10
<b>Pertussin Non-Registered Marks:</b>			
Pertussin ES			
Pertussin CS			
Pertussin PM			
Pertussin AM			
Pertussin Laboratories			