

10-28-2002



102263059  
REGISTRATION FORM COVER SHEET  
TRADEMARKS ONLY

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

Form PTO-1594  
(Rev. 03/01)  
OMB No. 0651-0027 (exp. 5/31/2002)  
Tab settings ⇌ ⇌ ⇌

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

1. Name of conveying party(ies): 10-18-02  
Hemagen Diagnostics, Inc.

Individual(s)                       Association  
 General Partnership               Limited Partnership  
 Corporation-State  
 Other Delaware

Additional name(s) of conveying party(ies) attached?  Yes  No

2. Name and address of receiving party(ies)  
Name: Bay National Bank  
Internal  
Address: \_\_\_\_\_  
Street Address: 2328 W. Joppa Road  
City: Lutherville State: MD Zip: 2109

Individual(s) citizenship  
 Association a national bank association  
 General Partnership  
 Limited Partnership  
 Corporation-State  
 Other \_\_\_\_\_

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

OFFICE OF PATENT RECORDS  
FINANCE SECTION  
2002 OCT 18 PM 2:19

3. Nature of conveyance:  
 Assignment                               Merger  
 Security Agreement                       Change of Name  
 Other \_\_\_\_\_

Execution Date: 09/26/02

4. Application number(s) or registration number(s):  
A. Trademark Application No.(s) \_\_\_\_\_  
\_\_\_\_\_

Additional number(s) attached  Yes  No

B. Trademark Registration No.(s) 2020674,1510807  
1531582, 1484879, 1484981

5. Name and address of party to whom correspondence concerning document should be mailed:  
Name: Dana O. Lynch, Esquire  
Internal Address: \_\_\_\_\_  
Whiteford, Taylor & Preston L.L.P.  
Street Address: Seven Saint Paul Street  
City: Baltimore State: MD Zip: 21202

6. Total number of applications and registrations involved: ..... 5

7. Total fee (37 CFR 3.41).....\$ 140.00  
 Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number: \_\_\_\_\_

DO NOT USE THIS SPACE

9. Signature.  
Dana O. Lynch, Esquire                      Dana O. Lynch                      10/17/02  
Name of Person Signing                      Signature                      Date

Total number of pages including cover sheet, attachments, and document: 10

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

10/25/2002 11:11 AM 2020674  
40.00 DP  
140.00 DP  
01 FC:4521  
02 FC:4522

# INTELLECTUAL PROPERTY SECURITY AGREEMENT

THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT ("Security Agreement") entered into as of September 26, 2002 by and between BAY NATIONAL BANK, a national banking association (the "Bank") and HEMAGEN DIAGNOSTICS, INC., a Delaware corporation with a place of business at 9033 Red Branch Road, Columbia, Maryland 21045 (the "Grantor"), in connection with the Loan Agreement (as hereinafter defined).

## Recitals

A. The Bank and the Grantor have entered into a Loan and Security Agreement dated September 26, 2002 (the "Loan Agreement"), whereby the Bank has agreed to loan money or make financial accommodations to the Grantor, and the Grantor has agreed to grant a security interest in all of its business assets to the Bank to secure that loan or extension of credit; and

B. The Grantor represents that it now possesses the sole and complete ownership rights to the business assets to be secured by this Security Agreement and that it has not granted a security interest or otherwise pledged, mortgaged, transferred, assigned or licensed any part of its right in said business assets to any party other than the Bank.

NOW, THEREFORE, in consideration of the premises set forth in this Security Agreement, the aforementioned Loan Agreement and for other good and valuable consideration, receipt of which is hereby acknowledged, the Bank and the Grantor agrees as follows:

**Section 1. Grant of Security Interest.** In order to secure the complete and timely satisfaction of all of the duties and obligations owing from the Grantor to the Bank as set forth in the Loan Agreement, the Grantor hereby pledges, mortgages and grants a security interest to the Bank in and to the following:

(a) All patents, patent applications and patentable inventions of the Grantor, including but not limited to those set forth in Exhibit A, and (a) the invention and improvements described and claimed therein; (b) any continuation, division, renewal, extension, substitute or reissue thereof, improvements and enhancements made thereto, or any legal equivalent in a foreign country for the full term or terms for which the same may be granted; (c) all rights to income, royalties, profits, awards, damages or other rights relating to said patents, applications or inventions including, without limitation, payments under all licenses entered into in connection therewith and the right to sue for past, present or future infringement; and (d) any other rights and benefits relating to said patents, applications, or inventions throughout the world,

including license royalties and proceeds of infringement suits or claims (collectively, the "Patents").

(b) All trademarks, trademark registrations, trademark applications, service marks, service mark registrations, service mark applications and the goodwill underlying those trademarks and service marks of the Grantor, including but not limited to those set forth in Exhibit B and (a) any similar marks or amendments, modifications and renewals thereof and the goodwill represented by those trademarks and service marks thereon and any legal equivalent in a foreign country for the full term or terms for which the same may be granted; (b) all rights to income, royalties, profits, damages, or other rights relating to said trademarks and service marks including, without limitation, payments under all licenses entered into in connection therewith and the right to sue for past, present or future infringement; and (c) any other rights and benefits relating to said trademarks including any rights as a licensor and the proceeds of any infringement suit or claim (collectively "Trademarks").

(c) Rights under or interest in any Patent or Trademark license agreements with any other party, whether the Grantor is a licensee or licensor under any such license agreement, and the right to use the foregoing in connection with the enforcement of the Bank's rights under the Loan Agreement, including without limitation, the right to prepare for sale and sell any and all Inventory now or hereafter owned by the Grantor and now or hereafter covered by such licenses (all of the foregoing are hereunder referred to collectively as the "Licenses"). Notwithstanding the foregoing, the Licenses shall not include any license agreement in effect as of the date hereof which by its terms prohibits the grant of the security contemplated by this Security Agreement; provided, however, that upon the termination of such prohibitions for any reason whatsoever, the provisions of this Section 1 shall be deemed to apply thereto automatically.

**Section 2. No Liens, etc.** The Grantor agrees that it will not, without the prior written consent of the Bank, assign or transfer, pledge, mortgage, license or allow a security interest or lien to be taken by anyone other than the Bank in said Patents and Trademarks or take any other acts which are contrary to or inconsistent with the rights granted to the Bank in this Security Agreement and will not cease the use of any Trademark or take any action or fail to take any action which will result in the cancellation or expiration of any of the Patents or Trademark registrations covered by this Security Agreement without the prior written agreement of the Bank.

**Section 3. Grantor's Obligation to Maintain and Enforce Rights.** The Grantor further agrees that it has the obligation, at its own cost, unless otherwise consented to in writing by the Bank:

(a) To take all actions necessary to properly maintain and renew all Patents and Trademarks which are or may become subject to the Security Agreement for the full term or terms allowed by law including but not limited to the appropriate

and timely payment of any required fees and the appropriate and timely filing of any documents or declarations necessary to maintain and renew said Patents and Trademarks (including the filing of a declaration of use under §8 and incontestability under §15 of the United States Trademark Act where possible) which may be necessary or appropriate under applicable law.

(b) To file new applications to register and protect under applicable law all patentable inventions or registerable marks acquired by the Grantor but for which applications have not previously been filed or to take all other actions necessary to cause Patents and Trademarks to be issued as a result of said applications; provided, however, until further written notice from the Bank, nothing herein shall obligate the Grantor to change or alter its customary practices of protecting the confidentiality and commercial exploitation of its know-how and other intellectual property acquired, obtained, developed or used in its ordinary course of business.

(c) To protect such Patents and Trademarks from infringement, unfair competition or dilution or damage by all appropriate actions including the commencement of legal action to prevent and recover damages for said infringement and to defend such Patents and Trademarks from claims of infringement, unfair competition or damage including the defense or any legal actions making such claims.

**Section 4. Reporting Requirements.** The Grantor agrees to provide written semiannual reports to the Bank informing it of: (a) the status of all Patents and Trademarks subject to this Security Agreement including any new patents, patent applications, trademarks, trademark registrations, trademark applications, service marks, service mark applications, service mark registrations, or related licenses; and (b) any actions taken by the Grantor pursuant to paragraph 3 of this Security Agreement.

**Section 5. After Acquired Property.** If the Grantor shall obtain rights to or become entitled to the benefit of any new patents, patentable applications, patentable inventions, trademarks, registered trademarks, trademark applications, service marks, service mark applications, service mark registrations, or licenses before its obligations to the Bank as set forth in this Security Agreement have been satisfied in full, the provisions of this Security Agreement shall automatically apply thereto and the Grantor hereby authorizes the Bank to modify or update this Security Agreement accordingly.

**Section 6. Events of Default.** The failure by the Grantor to perform any of the terms or conditions of this Security Agreement or if an "Event of Default" shall occur under the Loan Agreement shall constitute a material default under this Security Agreement. Upon the occurrence of such a default, the Grantor hereby authorizes and grants hereinbelow a power of attorney to the Bank to take any action as may be deemed necessary by the Bank with respect to said Patents and Trademarks or Licenses, including but not limited to the assignment of all said Patents and Trademarks, and Licenses from the Grantor to the Bank. This right may be exercised in addition to any other rights and remedies which may be available under applicable law.

(a) The Grantor hereby irrevocably designates, constitutes and appoints the Bank (and all officers and agents of the Bank designated by the Bank in its sole and absolute discretion) as the Grantor's true and lawful attorney-in-fact, and authorizes the Bank and any of the Bank's designees, in the Grantor's or the Bank's name, upon the occurrence and during the continuation of a default to take any action and execute any instrument necessary or reasonably advisable to accomplish the purposes of this Security Agreement, including, without limitation, to (i) endorse the Grantor's name on all applications, documents, papers and instruments necessary or desirable for the Bank in the use of the Trademarks, Patents or Licenses, (ii) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks, Patents or Licenses to any Person, (iii) grant or issue any exclusive or nonexclusive license under the Trademarks, Patents or Licenses to any Person, and (iv) take any other actions with respect to the Trademarks, Patents or Licenses as the Bank deems in its best interest for the payment of the Obligations. The Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until this Security Agreement is terminated. The Grantor acknowledges and agrees that this Security Agreement is not intended to limit or restrict in any way the rights and remedies of the Bank under the Loan Agreement or any other Loan Document, but rather is intended to facilitate the exercise of such rights and remedies.

(b) The Bank shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks, Patents or Licenses may be located or deemed located. Upon the occurrence and continuance of an Event of Default and the election by the Bank to exercise any of its remedies under Section 9-610, Section 9-620 or other equivalent provisions of revised Article 9 of the Uniform Commercial Code, as in effect in any jurisdiction, with respect to the Trademarks, Patents or Licenses, the Grantor agrees to assign, convey and otherwise transfer title in and to the Trademarks, Patents and Licenses, to the Bank or any transferee of the Bank and to execute and deliver to the Bank or any such transferee all such agreements, documents and instruments as may be necessary, in the Bank's sole discretion, to effect such assignment, conveyance and transfer. All of the Bank's rights and remedies with respect to the Trademarks, Patents and Licenses, whether established hereby, by the Loan Agreement or by any other agreements or by law, shall be cumulative and may be exercised separately or concurrently. Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence and continuance of an Event of Default, the Bank may exercise any of the rights and remedies provided in this Agreement, the Loan Agreement or any of the other Loan Documents. To the extent permitted by applicable law, the Grantor agrees that any notification of intended disposition of any of the Trademarks, Patents or Licenses required by law shall be deemed reasonably and properly given if given at least ten (10) days before such

disposition; provided, however, that the Bank may give any shorter notice that is commercially reasonable under the circumstances.

**Section 7. Interpretation.** This Security Agreement is subject to the terms and conditions of a Loan Agreement. Where any term in this Security Agreement may be inconsistent with any term in the Loan Agreement, the terms of the Loan Agreement shall control. All capitalized terms used herein which are not defined shall have the meanings ascribed to those terms in the Loan Agreement.

**Section 8. Indemnification by the Grantor.** The Grantor hereby agrees to indemnify and hold harmless the Bank for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (including, without limitation, reasonable attorneys' fees) of any kind whatsoever which may be imposed on, incurred by or asserted against the Bank in connection with or in any way rising out of any suits, proceedings or other actions, relating to any or all of the Trademarks, Patents or Licenses (including, without limitation, whether brought by the Grantor or any other Person, suits, proceedings or other actions in which an allegation of liability, strict or otherwise, is or may be made by any Person who alleges or may allege having suffered damages as a consequence of alleged improper, imprudent, reckless, negligent, willful, faulty, defective or substandard design, testing, specification, manufacturing supervision, manufacturing defect, manufacturing deficiency, publicity or advertisement or improper use, howsoever arising or by whomsoever caused, of any inventions disclosed and claimed in the Patents or any of them); unless with respect to any of the above, such Person to be indemnified is judicially determined to have acted or failed to act with gross negligence or willful misconduct. The indemnification in this section shall survive the termination of this Security Agreement.

**Section 9. No Waiver.** The failure by the Bank to exercise any right under this Security Agreement shall not operate as a waiver thereof and shall not bar the Bank from continuing to exercise said rights in the future.

**Section 10. Governing Law.** The Security Agreement is to be governed by the law of the State of Maryland, exclusive of its conflict of laws rules, and is binding on the parties and their successors and assigns. The Grantor may not assign nor transfer any part of its obligations under this Security Agreement either expressly or by operation of law without the written consent of the Bank.

**Section 11. Severability.** The terms of this Security Agreement are severable. If any term shall be found to be invalid or unenforceable, it shall not affect the validity of the remaining terms.

**Section 12. Further Actions.** The Grantor agrees to execute any other documents and take any further action upon the request of the Bank as may be deemed necessary to effectuate the terms of this Security Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Security Agreement as of the 26<sup>th</sup> day of September, 2002.

Attest: *Witness*

*Debra K*

HEMAGEN DIAGNOSTICS, INC.

By: *WPH*

William P. Hales  
President & CEO

*Witness:*  
Attest:

*James C Holman*

BAY NATIONAL BANK

By: *Warren F. Boutilier*

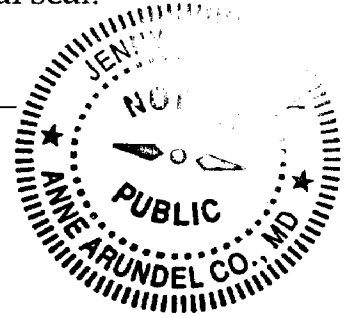
Warren F. Boutilier  
Senior Director, Client Services

STATE OF MARYLAND, CITY/COUNTY OF Anne Arundel, to wit:

I HEREBY CERTIFY, that on this 20<sup>th</sup> day of September, 2002, before me, the undersigned Notary Public, personally appeared Warren F. Boutilier, who acknowledged himself to be the Senior Director, Client Services of Bay National Bank, a national banking association, known to me (or satisfactorily proved) to be the person who executed the foregoing Intellectual Property Security Agreement, and acknowledged that he, being authorized so to do, executed the same for the purposes therein contained as the duly authorized Senior Director, Client Services of Bay National Bank, by signing the name of Bay National Bank by himself as Senior Director, Client Services.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Jenny Sue Selby  
Notary Public



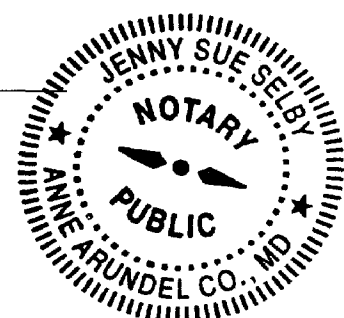
My Commission Expires:  
3/18/06

STATE OF MARYLAND, CITY/COUNTY OF Anne Arundel, to wit:

I HEREBY CERTIFY, that on this 20<sup>th</sup> day of September, 2002, before me, the undersigned Notary Public, personally appeared William P. Hales who acknowledged himself to be the President & CEO of HEMAGEN DIAGNOSTICS, INC., a Delaware corporation, known to me (or satisfactorily proved) to be the person who executed the foregoing Intellectual Property Security Agreement, and acknowledged that he, being authorized so to do, executed the same for the purposes therein contained as the duly authorized President & CEO of Hemagen Diagnostics, Inc. by signing the name of Hemagen Diagnostics, Inc., by himself as President & CEO.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Jenny Sue Selby  
Notary Public



My Commission Expires:  
3/18/06



**EXHIBIT A**

**PATENTS**

<b>Patent Title</b>	<b>Reg. #</b>	<b>Issue Date</b>	<b>Owner</b>	<b>Status</b>
"Immunological Switch For Controlling The Reporting of Test Results"	5,478,747	12/26/95	Hemagen Diagnostics, Inc.	Registered
"Production of HBLV Virus In The HSB-2 Cell Line"	4,994,386	02/19/91	Hemagen Diagnostics, Inc.	Registered

**EXHIBIT B****TRADEMARKS, TRADEMARK REGISTRATIONS,  
AND TRADEMARK APPLICATIONS  
AND ASSOCIATED GOODWILL**

<b>Trademark</b>	<b>Ser. # / Reg. #</b>	<b>Filing Date</b>	<b>Owner</b>	<b>Status</b>
RAICHEM	2,020,674	11/16/95	Hemagen Diagnostics, Inc.	Registered
ANALYST	1,510,807	03/21/88	Hemagen Diagnostics, Inc.	Registered
HEMAGEN	1,531,582	02/19/88	Hemagen Diagnostics, Inc.	Registered
SERATEST	73/712,010	02/19/88	Hemagen Diagnostics, Inc.	Abandoned
VIRGO	1,477,473	05/18/87	Hemagen Diagnostics, Inc.	Cancelled
VIRGO	1,484,879	05/18/87	Hemagen Diagnostics, Inc.	Registered
VIRGO	1,484,981	05/18/87	Hemagen Diagnostics, Inc.	Registered

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