

01-16-2003

Form PTO-1594

(Rev. 10/02)

OMB No. 0651-0027 (exp. 6/30/2005)

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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):

Insight Pharmaceuticals Corporation

☐

Individual(s)

☐

Association

☐

General Partnership

☐

Limited Partnership

☒

Corporation-State DE

☐

Other

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

3. Nature of conveyance:

☐

Assignment

☐

Merger

☐

Security Agreement

☐

Change of Name

☐

Other Amended & Restated Security Agreement

Execution Date: December 23, 2002

2. Name and address of receiving party(ies)

Name: General Electric Capital Corporation

Internal

Address:

Street Address: 401 Merritt Seven

City: Norwalk State: CT Zip: 06851

☐

Individual(s) citizenship

☐

Association

☐

General Partnership

☐

Limited Partnership

☒

Corporation-State Delaware

☐

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

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

See attached list

B. Trademark Registration No.(s)

See attached list

Additional number(s) attached ☒ Yes ☐ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: George W. Tuttle

Internal Address: Holland & Knight LLP

Street Address: 10 St. James Avenue

City: Boston State: MA Zip: 02116

6. Total number of applications and

registrations involved: 40

7. Total fee (37 CFR 3.41).....\$ 1,015.00

☒

Enclosed

☐

Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

GEORGE W. TUTTLE

Name of Person Signing

Signature

January 6, 2003

Date

Total number of pages including cover sheet, attachments, and document: 25

01/15/2003 LNUELLER 00000232 76359164

01 FC:1521
02 FC:052240.00 OP
975.00 OPMail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231TRADEMARK
REEL: 002650 FRAME: 0241

RECORDATION FORM COVER SHEET
TRADEMARKS

Continuation of Item 4A

Trademark Application Nos.:

76/359164

Continuation of Item 4B

Trademark Registration Nos.:

| | | |
|---------|---------|---------|
| 2028228 | 1969808 | 2044640 |
| 2027737 | 2027731 | 2027728 |
| 2030924 | 2019831 | 0275459 |
| 1908111 | 1924860 | 2661393 |
| 1777611 | 1604296 | 1492869 |
| 1530495 | 1403729 | 1201750 |
| 1166052 | 1037225 | 0990492 |
| 0714075 | 0240417 | 0921019 |
| 0870753 | 0418496 | 0990673 |
| 0990672 | 2018329 | 0792115 |
| 0648836 | 0614242 | 0709543 |
| 2578043 | 2578044 | 2544673 |
| 2537840 | 2534078 | 2546937 |

AMENDED AND RESTATED
TRADEMARK SECURITY AGREEMENT

AMENDED AND RESTATED TRADEMARK SECURITY AGREEMENT (“Agreement”), dated as of December 23, 2002, between INSIGHT PHARMACEUTICALS CORPORATION, a Delaware corporation (“Grantor”), and GENERAL ELECTRIC CAPITAL CORPORATION, a Delaware corporation (“GE Capital”), as agent (in such capacity, “Agent”) for lenders (“Lenders”) from time to time party to the Credit Agreement (as hereinafter defined). All capitalized terms used but not otherwise defined herein have the meanings given to them in the Credit Agreement (as hereinafter defined) or in Annex A thereto.

W I T N E S S E T H:

WHEREAS, Grantor, Pharmaceuticals Holdings, Inc., a Delaware corporation (“Holdings”), and GE Capital, as agent (the “Original Agent”) and lender (the “Original Lender”), are parties to a Credit Agreement, dated as of April 5, 2002 (the “Original Credit Agreement”), pursuant to which a revolving credit facility and two term loan facilities were established in favor of Grantor;

WHEREAS, Grantor and Original Agent are parties to a Trademark Security Agreement dated as of April 5, 2002 (the “Original Trademark Security Agreement”) pursuant to which Grantor, to secure the “Obligations” (as defined in the Original Credit Agreement), granted to the Original Agent for its benefit and the benefit of the Original Lender, a security interest in, among other things, all trademarks owned by Grantor;

WHEREAS, Grantor has requested that the credit facilities under the Original Credit Agreement be increased to, among other things, refinance the outstanding loans under the Original Credit Agreement and to enable Grantor to acquire certain trademarks, goodwill associated therewith and related assets;

WHEREAS, the parties have agreed to amend and restate the Original Credit Agreement so as to increase the credit facilities on the terms and conditions set forth in a certain Amended and Restated Credit Agreement, dated as of the date hereof, by and among Grantor, Holdings, Agent and Lenders (including all annexes, exhibits and schedules thereto, as from time to time amended, restated, supplemented or otherwise modified, the “Credit Agreement”);

WHEREAS, in connection with the Credit Agreement, the parties have agreed to amend and restate the Original Trademark Security Agreement; and

WHEREAS, in order to induce Agent and Lenders to enter into the Credit Agreement and the other Loan Documents and to induce Lenders to make the Loans as provided for in the Credit Agreement, Grantor has agreed to grant the

assignment and security interest and make the pledge and assignment contemplated by this Agreement.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Grant of Security. Grantor hereby assigns and pledges to the Agent for its benefit and the benefit of the Lenders, and hereby grants to the Agent for its benefit and the benefit of the Lenders, a security interest in all of Grantor's right, title and interest in and to the following, whether now owned or hereafter acquired (collectively, the "Trademark Collateral"):

(a) all trademarks, service marks, trade names, domain names, trade dress or other indicia of trade origin, domain name registrations, trademark and service mark registrations, and applications for trademark or service mark registrations (except for "intent to use" applications for trademark or service mark registrations filed pursuant to Section 1(b) of the Lanham Act, unless and until an Amendment to Allege Use or a Statement of Use under Sections 1(c) and 1(d) of said Act has been filed), and any renewals thereof, including, without limitation, each registration and application identified in Schedule I and Schedule III attached hereto and made a part hereof, and including without limitation (i) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof, (ii) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past or future infringements thereof), and (iii) all rights corresponding thereto throughout the world and all other rights of any kind whatsoever of Grantor accruing thereunder or pertaining thereto, together in each case with the goodwill of the business connected with the use of, and symbolized by, each such trademark, service mark, trade name, trade dress or other indicia of trade origin (collectively, the "Trademarks"); and

(b) all license agreements with any other Person in connection with any of the Trademarks or such other Person's names or marks, whether Grantor is a licensor or licensee under any such license agreement, including, without limitation, the license agreements listed on Schedule II attached hereto and made a part hereof, subject, in each case, to the terms of such license agreements, including, without limitation, terms requiring consent to a grant of a security interest, and any right to prepare for sale, sell and advertise for sale, all Inventory now or hereafter owned by Grantor and now or hereafter covered by such licenses (each, a "License" and collectively, the "Licenses").

SECTION 2. Security for Obligations. The assignment and pledge of and grant of a security interest in the Trademark Collateral by Grantor pursuant to this Agreement secures the payment of all of the Obligations (the "Secured Obligations"). Without limiting the generality of the foregoing, this Agreement secures the payment of all amounts that constitute part of the Secured Obligations and would be owed by Grantor to the Agent or the Lenders under the Loan Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving the Grantor.

SECTION 3. Grantor Remains Liable. Anything herein to the contrary notwithstanding, (a) Grantor shall remain liable under the contracts and agreements included in the Trademark Collateral to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Agent of any of the rights hereunder shall not release Grantor from any of its duties or obligations under the contracts and agreements included in the Trademark Collateral, and (c) neither the Agent nor any Lender shall have any obligation or liability under the contracts and agreements included in the Trademark Collateral by reason of this Agreement, nor shall the Agent or any Lender be obligated to perform any of the obligations or duties of Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

SECTION 4. Representations and Warranties. Grantor represents and warrants as to itself and its Trademark Collateral as follows:

(a) Grantor is the sole, legal and beneficial owner of the entire right, title and interest in and to the trademark registrations and applications for registration set forth in Schedule I and Schedule III hereto as being the property of Grantor free and clear of any Lien, except for the security interest created by this Agreement and Permitted Encumbrances. No security agreement, effective financing statement or other instrument similar in effect covering all or any part of the Trademark Collateral, that has not been terminated or released, is on file in any recording office (including, without limitation, the United States Patent and Trademark Office), except such as may have been filed in favor of the Agent relating to this Agreement or any other Loan Document, and Grantor has not consented to the filing of a financing statement under the Code or any other recording office or the filing of any document or notice similar in effect, that has not been released or terminated, with the United States Patent and Trademark Office or any other recording office covering all or any part of the Trademark Collateral other than as contemplated hereby and thereby.

(b) Set forth in Schedule I and Schedule III opposite the name of Grantor is a complete and accurate list of the trademark, service mark, and

domain name registrations and applications for registration owned by Grantor. Grantor has made all necessary filings and recordations to protect and maintain its interest in the trademark, service mark, and domain name registrations and applications for registration set forth in Schedule I, including, without limitation, all necessary filings and recordings in the United States Patent and Trademark Office and other applicable recording offices. Set forth in Schedule II opposite the name of Grantor is a complete and accurate list of the Licenses owned by Grantor in which Grantor is (i) a licensor or (ii) a licensee, and Schedule II specifies whether Grantor is a licensee or licensor under each such License. Grantor has taken and shall take all reasonable and necessary steps to correct record title to the trademark registrations and applications set forth in Schedule III, so that record title to such applications and registrations shall reflect Grantor's ownership.

(c) Each trademark, service mark, and domain name registration and application for registration of Grantor set forth in Schedule I is subsisting and has not been adjudged invalid, unregistrable or unenforceable, in whole or in part, and, to the best of Grantor's knowledge, is valid, registrable and enforceable. Each License of Grantor identified in Schedule II is validly subsisting and has not been adjudged invalid or unenforceable, in whole or in part, and, to the best of Grantor's knowledge, is valid and enforceable. Grantor has notified the Agent in writing of all uses of any item of Trademark Collateral of which Grantor is aware which could reasonably be expected to lead to such item becoming invalid or unenforceable, including unauthorized uses by third parties and uses which were not supported by the goodwill of the business connected with such Trademark Collateral, other than any such uses that would not have a Material Adverse Effect.

(d) Grantor has not made a previous assignment, sale, transfer or agreement constituting a present or future assignment, sale, transfer or encumbrance of any of the Trademark Collateral that has not been terminated or released. Grantor has not granted any license (other than those listed on Schedule II hereto and those that are immaterial and incidental to the primary purpose of the agreement to which they relate (e.g. a grant of the right to list the Grantor's name and logo on the other party's list of customers)), release, covenant not to sue, or non-assertion assurance to any Person with respect to any part of the Trademark Collateral.

(e) No consent of any other Person and no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body or other third party in the United States, Canada or Puerto Rico is required either (A) for the grant by Grantor of the assignment and security interest granted hereby or for the execution, delivery or performance of this Agreement by Grantor, (B) for the perfection or

maintenance of the pledge, assignment and security interest created hereby (including the first priority nature of such pledge, assignment or security interest), except for the filing of financing and continuation statements under the Code and filings with the United States Patent and Trademark Office and Canadian and Puerto Rican recording offices, which financing statements and filings have been duly filed, or (C) for the exercise by the Agent of its rights provided for in this Agreement or the remedies in respect of the Trademark Collateral pursuant to this Agreement.

(f) Except for the licenses listed on Schedule II hereto, Grantor has no knowledge of the existence of any right or any claim that is likely to be made under any item of Trademark Collateral contained on Schedule I.

(g) No claim has been made and is continuing or threatened that the use by Grantor of any item of Trademark Collateral is invalid or unenforceable or that the use by Grantor of any Trademark Collateral does or may violate the rights of any Person, other than any such claim which would not have a Material Adverse Effect. To the best of Grantor's knowledge, there is currently no infringement or unauthorized use of any item of Trademark Collateral contained on Schedule I.

(h) Grantor uses (or causes to be used) consistent standards of quality in all material respects in the manufacture, distribution and sale of all products sold and provision of all services provided under or in connection with any item of Trademark Collateral contained on Schedule I and has taken all steps necessary to ensure that all licensed users of any item of Trademark Collateral contained on Schedule I use such consistent standards of quality.

(i) Grantor has no knowledge of the existence of any trademark or license agreement held or claimed by any other Person that would preclude Grantor (or Grantor's authorized manufacturers and distributors) from distributing, marketing, selling or providing any product or service currently distributed, marketed, sold or provided by it, (or Grantor's authorized manufacturers and distributors) as the case may be, under or in connection with any of the Trademark Collateral, or that would interfere with the ability of Grantor to carry on its business as currently carried on, and Grantor has no knowledge of any claim that is likely to be made that if upheld would preclude or interfere with the business of Grantor as currently carried on under any of the Trademark Collateral, other than any such trademark, license agreement or claim that would not have a Material Adverse Effect.

SECTION 5. Further Assurances.

(a) Grantor agrees that from time to time, at the expense of Grantor, Grantor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or proper, or that the Agent may reasonably request, in order to perfect and protect any pledge, assignment or security interest granted or purported to be granted hereby or to enable the Agent to exercise and enforce its rights and remedies hereunder with respect to any part of the Trademark Collateral. Without limiting the generality of the foregoing, Grantor authorizes the Agent to, or will, execute and file such financing or continuation statements, or amendments thereto, and such other instruments or notices, as may be necessary or proper, or as the Agent may reasonably request, in order to perfect and preserve the pledge, assignment and security interest granted or purported to be granted hereby.

(b) Grantor hereby authorizes the Agent to file one or more financing or continuation statements, and amendments thereto, relating to all or any part of the Trademark Collateral without the signature of Grantor where permitted by law. A photocopy or other reproduction of this Agreement or any financing statement covering the Trademark Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.

(c) Grantor will furnish to the Agent from time to time statements and schedules further identifying and describing the Trademark Collateral and such other reports in connection with the Trademark Collateral as the Agent may reasonably request, all in reasonable detail.

(d) Grantor agrees that, should it obtain an ownership interest in any trademark, service mark, trade name, domain name, trade dress, other indicia of trade origin, trademark, domain name, or service mark registration, or application for trademark or service mark registration, or license, which is not now a part of the Trademark Collateral, (i) the provisions of Section 1 shall automatically apply thereto, (ii) any such trademark, service mark, trade name, trade dress, indicia of trade origin, trademark, domain name, or service mark registration or application for trademark or service mark registration, together with the goodwill of the business connected with the use of same and symbolized by same, or license, shall automatically become part of the Trademark Collateral, and (iii) with respect to any ownership interest in any trademark, domain name, or service mark registration, or application for trademark or service mark registration that Grantor should obtain, it shall give prompt written notice thereof to the Agent in accordance with Section 13 hereof. Grantor authorizes the Agent to modify this Agreement by amending Schedules I and II (and will cooperate reasonably with the Agent in effecting any such amendment) to include any trademark, domain name, or service mark registration or application for

trademark or service mark registration, or license, which becomes part of the Trademark Collateral under this Section.

(e) With respect to each trademark, domain name, or service mark registration, application, for trademark or service mark registration, and License, Grantor agrees, subject to the last sentence of this subsection, to take all necessary steps, including, without limitation, in the United States Patent and Trademark Office, in any other applicable recording office, or in any court, to (i) maintain each such trademark or service mark registration, application for trademark or service mark registration, and License, and (ii) pursue each such application for trademark, domain name, or service mark registration, now or hereafter included in the Trademark Collateral, including, without limitation, the filing of responses to office actions issued by the United States Patent and Trademark Office, the filing of applications for renewal, the filing of affidavits under Sections 8 and 15 of the United States Trademark Act, and the participation in opposition, cancellation and infringement and misappropriation proceedings. Grantor agrees to take corresponding steps with respect to each new or acquired trademark, domain name, or service mark registration, application for trademark or service mark registration, or License to which it is now or later becomes entitled. Any expenses incurred in connection with such activities shall be borne by Grantor. Grantor shall not discontinue use of or otherwise abandon any trademark, domain name, or service mark, or abandon any right to file an application for registration thereof, or abandon any pending application for registration or registration of any trademark or service mark, without the written consent of the Agent, unless Grantor shall have previously determined that such use or the pursuit or maintenance of such application or registration is no longer desirable in the conduct of Grantor's business and that the loss thereof will not have a Material Adverse Effect, in which case, Grantor will give notice of any such abandonment to the Agent pursuant to the terms of Section 13 hereof.

(f) Grantor agrees to notify the Agent promptly and in writing if it learns (i) that any item of the Trademark Collateral contained on Schedule I may be determined to have become abandoned or (ii) of any adverse determination or the institution of any proceeding (including, without limitation, the institution of any proceeding in the United States Patent and Trademark Office, in any other applicable recording office, or in any court) regarding any item of the Trademark Collateral that would have a Material Adverse Effect.

(g) In the event that Grantor becomes aware that any item of the Trademark Collateral is infringed or misappropriated by a third party, Grantor shall promptly notify the Agent and shall take such actions as Grantor or the Agent deems appropriate under the circumstances to protect

such Trademark Collateral, including, without limitation, suing for infringement or misappropriation and for an injunction against such infringement or misappropriation, unless an such infringement or misappropriation would not have a Material Adverse Effect. Any expense incurred in connection with such activities shall be borne by Grantor.

(h) Grantor shall to the extent it deems reasonable in its best business judgment use proper statutory notice in connection with its use of each of its registered trademarks and service marks contained in Schedule I, and use the notice designation "TM" (of "SM" as the case may be) in connection with its use of its adopted trademarks and service marks that are not registered but for which application for registration has been made or for which common law rights are claimed.

(i) Grantor shall take all steps which it or the Agent deems appropriate under the circumstances to preserve and protect its Trademark Collateral, including, without limitation, maintaining the quality of any and all products or services used or provided in connection with the Trademark Collateral, consistent with the quality and services as of the date hereof, and taking all steps necessary to ensure that all licensees of any of said Trademark Collateral employ such quality standards in their manufacture, distributions, provisions, and marketing of products or services under the Trademark Collateral.

SECTION 6. Transfers and Other Liens. Grantor shall not (a) sell, assign (by operation of law or otherwise) or otherwise dispose of, or grant any option with respect to, any item of the Trademark Collateral, except in accordance with Section 6.8 of the Credit Agreement, or (b) create or suffer to exist any Lien upon or with respect to any of the Trademark Collateral except for the pledge, assignment, and security interest created by this Agreement or Permitted Encumbrances.

SECTION 7. Agent Appointed Attorney-in-Fact. Grantor hereby irrevocably appoints the Agent Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor or otherwise, from time to time in the Agent's discretion after the occurrence and during the continuance of any Event of Default, to take any action and to execute any instrument that the Agent may deem necessary or proper to accomplish the purposes of this Agreement, including, without limitation:

(a) to ask for, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Trademark Collateral,

(b) to receive, indorse, and collect any drafts or other instruments, documents and chattel paper, in connection with clause (a) above, and

(c) to file any claims or take any action or institute any proceedings that the Agent may deem necessary or desirable for the collection of any payments relating to any of the Trademark Collateral or otherwise to enforce the rights of the Agent with respect to any of the Trademark Collateral.

To the extent permitted by law, Grantor hereby ratifies all that the Agent shall lawfully do or cause to be done as attorney-in-fact for Grantor. This power of attorney is a power coupled with an interest and is irrevocable.

SECTION 8. The Agent May Perform. If Grantor fails to perform any agreement contained herein, the Agent may itself perform, or cause performance of, such agreement after reasonable notice to Grantor to the extent practicable, and the expenses of the Agent incurred in connection therewith shall be payable by Grantor.

SECTION 9. The Agent's Duties. The powers conferred on the Agent hereunder are solely to protect its interest in the Trademark Collateral and shall not impose any duty upon the Agent to exercise any such powers. Except for the safe custody of any Trademark Collateral in its possession and the accounting for any moneys actually received by it hereunder, the Agent shall have no duty as to any Trademark Collateral or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to any Trademark Collateral. The Agent shall be deemed to have exercised reasonable care in the custody and preservation of any Trademark Collateral in its possession if such Trademark Collateral is accorded treatment substantially equal to that which the Agent accords its own property.

SECTION 10. Remedies. If any Event of Default shall have occurred and be continuing:

(a) The Agent may exercise in respect of the Trademark Collateral, in addition to other rights and remedies provided for herein or otherwise available to it (including, without limitation, under any other Loan Documents or under applicable law) and to the fullest extent permitted by law, all the rights and remedies of a secured party upon default under the Code or other applicable law and also may (i) require Grantor to, and Grantor hereby agrees that it will, at its expense and upon request of the Agent forthwith, assemble all or part of the documents and things embodying the Trademark Collateral as directed by the Agent and make them available to the Agent at a place to be designated by the Agent that is reasonably convenient to both parties, (ii) occupy any premises owned or leased by Grantor where documents and things embodying the Trademark Collateral

or any part thereof are assembled for a reasonable period in order to effectuate the Agent's rights and remedies hereunder or under law, without obligation to Grantor in respect of such occupation, and (iii) without notice except as specified below, sell the Trademark Collateral or any part thereof in one or more parcels at public or private sale, at any of the Agent's offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Agent may deem commercially reasonable. In the event of any sale, assignment, or other disposition of any of the Trademark Collateral, the goodwill of the business connected with and symbolized by any Trademark Collateral subject to such disposition shall be included, and Grantor shall supply to the Agent or its designee Grantor's know-how and expertise, and documents and things embodying the same, relating to the manufacture, distribution, advertising and sale of products or the provision of services relating to any Trademark Collateral subject to such disposition, and Grantor's customer lists and other records and documents relating to such Trademark Collateral and to the manufacture, distribution, advertising and sale of such products and services. Grantor agrees that, to the extent notice of sale shall be required by law, at least ten days' notice to Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Agent shall not be obligated to make any sale of Trademark Collateral regardless of notice of sale having been given. The Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(b) All cash proceeds received by the Agent in respect of any sale of, collection from, or other realization upon all or any part of the Trademark Collateral may, in the discretion of the Agent, be held by the Agent as collateral for, and/or then or at any time thereafter applied in whole or in part by the Agent for the ratable benefit of the Lenders against, all or any part of the Secured Obligations in such order as the Agent shall elect. Any surplus of such cash or cash proceeds held by the Agent and remaining after payment in full of all the Secured Obligations shall be paid over to Grantor or to whomsoever may be lawfully entitled to receive such surplus.

(c) The Agent may exercise any and all rights and remedies of Grantor under or otherwise in respect of the Trademark Collateral.

(d) All payments received by Grantor under or in connection with any of the Trademark Collateral shall be received in trust for the benefit of the Agent, shall be segregated from other funds of Grantor and shall be forthwith paid over to the Agent in the same form as so received (with any necessary endorsement).

SECTION 11. Intentionally Omitted.

SECTION 12. Amendments, Waivers, Etc. No amendment or waiver of any provision of this Agreement, and no consent to any departure by Grantor herefrom, shall in any event be effective unless the same shall be in writing and signed by the Agent and, in the case of an amendment, by Grantor and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of the Agent to exercise, and no delay in exercising any right hereunder, shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right.

SECTION 13. Notices. Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any party by any other party, or whenever any party desires to give and serve upon any other party any communication with respect to this Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be given in the manner, and deemed received, as provided for in the Credit Agreement.

SECTION 14. Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against Grantor for liquidation or reorganization, should Grantor become insolvent or make an assignment for the benefit of any creditor or creditors or should a receiver or trustee be appointed for all or any significant part of Grantor's assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the general Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the general Obligations, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the general Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

SECTION 15. Termination of this Agreement. Subject to Section 14 hereof, this Agreement shall terminate upon the Termination Date.

SECTION 16. Successors and Assigns. This Agreement and all obligations of Grantor hereunder shall be binding upon the successors and assigns of Grantor (including any debtor-in-possession on behalf of Grantor) and shall, together with the rights and remedies of Agent, for the benefit of Agent and Lenders, hereunder, inure to the benefit of Agent and Lenders, all future holders of any instrument evidencing any of the general Obligations and their respective

successors and assigns. No sales of participations, other sales, assignments, transfers or other dispositions of any agreement governing or instrument evidencing the general Obligations or any portion thereof or interest therein shall in any manner impair the Lien granted to Agent, for the benefit of Agent and Lenders, hereunder. Grantor may not assign, sell, hypothecate or otherwise transfer any interest in or obligation under this Agreement.


SECTION 17. Counterparts. This Agreement may be authenticated in any number of separate counterparts, each of which shall collectively and separately constitute one and the same agreement. This Agreement may be authenticated by manual signature, facsimile or, if approved in writing by Agent, electronic means, all of which shall be equally valid.

SECTION 18. Amendment and Restatement. This Agreement amends and restates that Original Trademark Security Agreement.

[signature page follows]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

**INSIGHT PHARMACEUTICALS
CORPORATION**

By: 
Name: Donald C. Stanners
Title: Chief Financial Officer

**GENERAL ELECTRIC CAPITAL
CORPORATION, as Agent**

By: _____
Name: _____
Its: Duly Authorized Signatory

AGREEMENT

The undersigned hereby agrees and consents to the amendment and restatement of the Original Trademark Security Agreement as set forth herein.

**GENERAL ELECTRIC CAPITAL
CORPORATION, as Original Agent and Original
Lender**

By: _____
Name: _____
Its: Duly Authorized Signatory

[AMENDED AND RESTATED TRADEMARK SECURITY AGREEMENT]

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

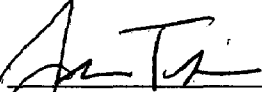
**INSIGHT PHARMACEUTICALS
CORPORATION**

By: _____

Name:

Title:

**GENERAL ELECTRIC CAPITAL
CORPORATION, as Agent**

By:  _____

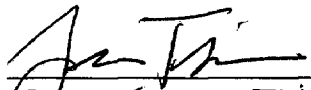
Name: Susan Timmerman

Its: Duly Authorized Signatory

AGREEMENT

The undersigned hereby agrees and consents to the amendment and restatement of the Original Trademark Security Agreement as set forth herein.

**GENERAL ELECTRIC CAPITAL
CORPORATION, as Original Agent and Original
Lender**

By:  _____

Name: Susan Timmerman

Its: Duly Authorized Signatory

[AMENDED AND RESTATED TRADEMARK SECURITY AGREEMENT]

STATE OF California)
) ss.:
COUNTY OF San Francisco)

On the 18 day of December, 2002, before me personally came Donald C. Stanners to me known, who, being by me duly sworn, did depose and say s/he resides at 3748 Happy Valley Rd., Lafayette, CA 94549 and that s/he is the Chief Financial Officer of INSIGHT PHARMACEUTICALS CORPORATION, the corporation described in and which executed the above instrument; that s/he has been authorized to execute said instrument on behalf of said corporation; and that s/he signed said instrument on behalf of said corporation pursuant to said authority.



Martha T. Vargas
Notary Public

[Notarial Seal]

STATE OF _____)
) ss.:
COUNTY OF _____)

On the ____ day of December, 2002, before me personally came _____ to me known, who, being by me duly sworn, did depose and say s/he resides at _____ and that s/he is the _____ of GENERAL ELECTRIC CAPITAL CORPORATION, the corporation described in and which executed the above instrument; that s/he has been authorized to execute said instrument on behalf of said corporation; and that s/he signed said instrument on behalf of said corporation pursuant to said authority.

Notary Public

[Notarial Seal]

[AMENDED AND RESTATED TRADEMARK SECURITY AGREEMENT]

STATE OF _____)
) ss.:
COUNTY OF _____)

On the ____ day of December, 2002, before me personally came _____ to me known, who, being by me duly sworn, did depose and say s/he resides at _____ and that s/he is the _____ of INSIGHT PHARMACEUTICALS CORPORATION, the corporation described in and which executed the above instrument; that s/he has been authorized to execute said instrument on behalf of said corporation; and that s/he signed said instrument on behalf of said corporation pursuant to said authority.

Notary Public

[Notarial Seal]

STATE OF Connecticut)
) ss.:
COUNTY OF Fairfield)

On the 18 day of December, 2002, before me personally came Susan Timmerman to me known, who, being by me duly sworn, did depose and say s/he resides at Norwalk, Connecticut and that s/he is the Senior Risk Manager of GENERAL ELECTRIC CAPITAL CORPORATION, the corporation described in and which executed the above instrument; that s/he has been authorized to execute said instrument on behalf of said corporation; and that s/he signed said instrument on behalf of said corporation pursuant to said authority.

Elizabeth R. Hardins
Notary Public 5-31-2007

[Notarial Seal]

[AMENDED AND RESTATED TRADEMARK SECURITY AGREEMENT]

SCHEDULE I

Trademarks/Service Marks/Domain Names

Trademark Applications and Registrations - Canada

| Mark | Application No. | Registration No. | Status |
|---|-----------------|------------------|------------|
| ASPERGUM | 018635200 | UCA020819 | Registered |
| CHOOZ | 017790700 | UCA14334 | Registered |
| MADE STRONGER TO LAST LONGER | 822946 | | Pending |
| N'ICE | 452232 | TMA269334 | Registered |
| PLUS PUISSANT POUR DURER PLUS LONGTEMPS | 830962 | | Pending |
| S Design | 802714 | TMA468079 | Registered |
| SUCRETS | 169744 | UCA7528 | Registered |
| SUCRETS VAPOUR ACTION | 537289 | TMA319393 | Registered |

Trademark Registrations – Puerto Rico

| Mark | Registration No. | Status |
|---|-------------------------|---------------|
| CEPASTAT | 21196 | Registered |
| CEPASTAT | 21647 | Registered |
| Design of a Penguin | 37199 | Registered |
| Design of a Penguin & Mountain | 37198 | Registered |
| N'ICE Design | 38251 | Registered |
| N'ICE Design (Black and White) | 37197 | Registered |
| N'ICE Design (Color) | 37196 | Registered |
| N'ICE 'N CLEAR & Design (Black and White) | 38125 | Registered |
| SUCRETS | 18350 | Registered |

Trademark Applications and Registrations – United States

| Mark | Application No. | Registration No. | Status |
|--|------------------------|-------------------------|---------------|
| ALLEREST | 72/098027 | 0709543 | Registered |
| AMERICAINE | 76/221161 | 2544673 | Registered |
| ASPERGUM | 72/205129 | 0792115 | Registered |
| ASPERGUM & Design | 71/258732 | 0240417 | Registered |
| BACID (Stylized) | 72/094528 | 0714075 | Registered |
| CALDECORT | 76/060960 | 2537840 | Registered |
| CALDECORT LIGHT | 73/672858 | 1492869 | Registered |
| CALDESENE | 73/002357 | 0990492 | Registered |
| CALDESENE | 72/024472 | 0648836 | Registered |
| CEPASTAT | 76/060961 | 2661393 | Registered |
| CHOOZ (Stylized) | 71/676074 | 0614242 | Registered |
| Design of a Penguin | 74/645818 | 2030924 | Registered |
| Design of a Penguin on a Mountain | 74/645820 | 2027728 | Registered |
| EUCALYPTAMINT | 76/221158 | 2578043 | Registered |
| EUCALYPTAMINT & Design | 76/221159 | 2578044 | Registered |
| EUCALYPTAMINT (Stylized) | 74/057820 | 1777611 | Registered |
| FIBERALL | 73/566998 | 1403729 | Registered |
| KONDREMUL (Stylized) | 71/301762 | 0275459 | Registered |
| MADE STRONGER TO LAST LONGER...GUARANTEED! | 74/562740 | 1924860 | Registered |
| MADE STRONGER TO LAST LONGER...GUARANTEED! | 76/359164 | | Pending |

| Mark | Application No. | Registration No. | Status |
|--------------------------------------|------------------------|-------------------------|---------------|
| MAXIMUM STRENGTH 12 HOUR ALLEREST | 73/669230 | 1530495 | Registered |
| N'ICE | 73/192160 | 1166052 | Registered |
| N'ICE & Design | 74/641752 | 2019831 | Registered |
| N'ICE & Design | 73/285177 | 1201750 | Registered |
| N'ICE & Design | 74/641450 | 2018329 | Registered |
| N'ICE & Design | 74/647639 | 2027737 | Registered |
| N'ICE 'N CLEAR and Design | 74/646790 | 2027731 | Registered |
| N'ICE 'N CLEAR and Design | 74/657105 | 2044640 | Registered |
| NOSTRILLA | 73/790621 | 1604296 | Registered |
| POWERFUL N'ICE | 76/199688 | 2534078 | Registered |
| PRIVINE | 76/221160 | 2546937 | Registered |
| PRIVINE | 71/457000 | 0418496 | Registered |
| S Design | 74/668226 | 2028228 | Registered |
| SINAREST | 72/366055 | 0921019 | Registered |
| SUCRETS | 73/062771 | 1037225 | Registered |
| SUCRETS | 72/285036 | 870753 | Registered |
| SUCRETS & Design | 74/563000 | 1908111 | Registered |
| SUCRETS S & Design | 74/660112 | 1969808 | Registered |
| VITRON-C | 72/457984 | 0990672 | Registered |
| VITRON-C-PLUS | 72/458001 | 0990673 | Registered |

Domain Names

| Domain Name | Owner | URL |
|--------------------|-------------------------------------|-----------------------|
| insightpharma.org | Insight Pharmaceuticals Corporation | www.insightpharma.org |
| sucrets.com | Insight Pharmaceuticals Corporation | www.sucrets.com |
| sucrets.net | Insight Pharmaceuticals Corporation | www.sucrets.net |
| sucrets.org | Insight Pharmaceuticals Corporation | www.sucrets.org |
| sucrets-cough.com | Insight Pharmaceuticals Corporation | www.sucrets-cough.com |

SCHEDULE II

Licenses

License Agreements*
Owner: Fisons B.V.

| Mark | Application No. | Registration No. | Status |
|-----------------|------------------------|-------------------------|---------------|
| TING | 72/438641 | 0993663 | Registered |
| TING (Stylized) | 71/387797 | 0347300 | Registered |
| TING (Stylized) | 74/082485 | 1746287 | Registered |

* Insight Pharmaceuticals Corporation does NOT have any ownership rights in these marks; pursuant to (1) the License Agreement dated January 7, 1993 between Fisons BV and Ciba-Geigy Corporation (which changed its name to Novartis Corporation on December 26, 1996, and subsequently assigned the rights to Novartis Consumer Health, Inc. on January 1, 1997), and (2) the Amendment No. 1 to License Agreement dated August 14, 1997 between Fisons BV and Novartis Consumer Health, Inc. On July 15, 1997, Heritage Consumer Products purchased certain rights to various trademarks from Novartis Consumer Health, Inc.

Insight Pharmaceuticals Corporation purchased certain of the assets of Heritage Consumer Products, LLC through Fleet National Bank, f/k/a BankBoston, N.A. on December 29, 2000. Therefore, Insight acquired the sole and exclusive right to formulate and package for distribution and sale in the United States, using the processes, technical information, licensed know-how and licensed trademark, namely TING.

SCHEDULE III

Trademarks Owned By Grantor, Record Title
For Which Shall Be Corrected By Grantor

| Mark | Registration Number | Country |
|-------------|----------------------------|----------------|
| ASPERGUM | UCA020819 | Canada |
| CHOOZ | UCA14334 | Canada |
| CEPASTAT | 21196 | Puerto Rico |
| CEPASTAT | 21647 | Puerto Rico |