

FORM PTO-1594
6/93

RECORDATION FORM COVER SHEET

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

TRADEMARKS ONLY

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

1. Name of conveying party(ies):

IVC Industries, Inc.

☐ Individual(s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☒ Corporation - State NJ
☐ Other _____

Add'l name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:

☒ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☐ Other _____

Execution Date: July 9, 2003

2. Name and address of receiving party(ies):

Name: Pharmavite LLC

Internal Address: _____

Street Address: P. O. Box 9606City: Mission Hills State: CA ZIP: 91346☐ Individual(s) citizenship _____☐ Association _____☐ Limited Partnership _____☐ Corporation - State _____☒ Other: Limited Liability Company - CaliforniaIf 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) 76/381,810

B. Trademark Registration No.(s) _____

Additional numbers attached? ☐ Yes ☒ No

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

Name: Dax Alvarez

Internal Address: _____

BLAKELY, SOKOLOFF, TAYLOR & ZAFMANStreet Address: 12400 Wilshire BoulevardSeventh FloorCity: Los Angeles State: CA ZIP: 900256. Total number of applications and registrations involved: 17. Total fee (37 CFR 3.41)\$ 40.00☐ Enclosed☒ Authorized to be charged to deposit account

8. Deposit account number:

02-2666

DO NOT USE THIS SPACE

9. Statement and signature.

*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*Dax Alvarez

Name of Person Signing



Signature

August 4, 2003

Date

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

CH \$40.00 022666 76381810

AGREEMENT AND ASSIGNMENT

This Agreement and Assignment ("Agreement"), effective as of the latest date set forth below, is by and between IVC Industries, Inc., a New Jersey corporation with an address at 500 Halls Mill Road, Freehold, New Jersey 077728 ("IVC") and Pharmavite Corporation, a California corporation with an address at P.O. Box 9606 Mission Hills, California 91346 ("Pharmavite").

FACTUAL BACKGROUND

IVC uses the mark SOY BALANCE in connection with vitamins and food supplements. IVC is the owner of U.S. Application Serial No. 76/381810 for registration of SOY BALANCE (STYLIZED) in connection with "vitamins, food supplements" in International Class 5, filed on March 13, 2002. This application is currently the subject of a Petition to Revoke pending before the U.S. Patent and Trademark Office (the "PTO").

B. Pharmavite uses the mark SOYBALANCE in connection with nutritional, dietary and herbal supplements. Pharmavite is the owner of U.S. Application Serial No. 76/395310 for registration of SOYBALANCE in connection with "nutritional, dietary and herbal supplements" in International Class 5, filed on April 15, 2002.

C. Whereas, a dispute has arisen over which party owns the mark SOY BALANCE and the parties wish to resolve their differences and settle all disputes and potential claims arising in this matter.

D. Whereas, in order to resolve this dispute, Pharmavite is interested in acquiring all of IVC's right, title and interest in and to the mark SOY BALANCE as well as IVC's aforementioned U.S. Application, Serial No. 76/381810; and IVC is willing to convey such rights to Pharmavite pursuant to the terms and conditions set forth in this Agreement..

TERMS AND CONDITIONS

1. In consideration of the sum of U.S. [REDACTED] to be paid to IVC by Pharmavite, in the manner hereinafter set forth, IVC hereby transfers and assigns to Pharmavite all of its right, title and interest in and to the mark SOY BALANCE, together with the goodwill associated therewith, as well as IVC's rights in U.S. Application Serial No. 76/381810 for registration of SOY BALANCE (STYLIZED).

2. Within seven (7) days of its receipt of a fully-executed counterpart of this Agreement, Pharmavite shall pay IVC the sum of U.S. [REDACTED] in consideration of the aforesaid assignment.

3. IVC shall have a period of 6 months from the effective date of this Agreement in which to phase out its current stock of products, packaging, advertising and other materials bearing the mark SOY BALANCE (hereinafter referred to as "the Phase-Out Period"). By the end of the Phase-Out Period, IVC shall no longer sell or distribute any products, packaging, advertising or other materials bearing the mark SOY BALANCE.

4. IVC hereby consents to, and shall not oppose, seek to cancel, challenge or otherwise interfere with Pharmavite's use and registration of the mark SOY BALANCE,

whether as one word or two words, and shall, upon request, provide Pharmavite with further written consents to the registration of the aforesaid mark.

5. IVC represents that it has no registrations or applications for registration (whether U.S. or foreign) of marks consisting of or containing the term SOY BALANCE other than the aforementioned U.S. Application Serial No. 76/381,810.

6. Except for and subject to the terms, covenants and obligations contained in this Agreement, IVC, on the one hand, and Pharmavite, on the other hand, hereby release and discharge each other, their respective affiliates, partners, officers, directors, stockholders, agents, privies, employees, managers, attorneys, accountants, heirs, executors, administrators, personal representatives, successors and assigns from any claim, cause or right of action, liability or obligation of any kind, type, or nature, whether currently known or unknown, which each or any of them now has or may have against the other arising out of or in connection with their respective uses of the marks specified in this Agreement. This mutual release does not serve to release any party from any of the terms, covenants and obligations contained in this Agreement.

7. This Agreement, and all terms, covenants and obligations thereof, shall be binding upon and shall inure to the benefit of the parties to this Agreement and their respective officers, directors, stockholders, agents, employees, servants, predecessors, successors, assigns, affiliates, heirs, personal representatives, and all other persons, firms, companies, associates, or partnerships claiming through any of them.

8. All parties shall bear their own legal expenses and costs with respect to their fulfillment of the covenants and obligations contained in this Agreement.

9. This Agreement is a fully integrated document, containing the entire understanding between the parties, and supersedes and integrates any prior understandings or written or oral agreements between the parties respecting the subject matter hereof. The parties to this Agreement are not relying on any representations other than those contained herein. The parties to this Agreement, and each of them, agree and warrant that this Agreement is the result of negotiations between parties experienced in business and financial affairs who have equal access to information concerning this transaction. The parties to this Agreement, and each of them, agree and warrant that the terms and conditions of this Agreement are fair and enforceable. The parties further agree and warrant that they have obtained legal advice concerning the meaning and effect of this Agreement and that that they have had sufficient time to consider the meaning and effect of this Agreement.

10. There shall be no amendments or modifications to this Agreement unless any such amendments or modification are in writing and signed by both parties to this Agreement. Any alleged or purported amendment or modification shall be void and unenforceable unless it is in writing and signed by both parties to this Agreement. This provision concerning amendments or modifications cannot be waived or otherwise rendered unenforceable except by a written document signed by both parties to this Agreement.

11. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any party whose signature appears below and all of which shall together constitute one and the same instrument. This Agreement shall

become binding when one or more counterparts hereof, individually, or taken together, shall bear the signatures of both the parties reflected hereon as the signatories.

12. This Agreement shall be effective worldwide.

13. All notices, payments and other written communications relating to this Agreement shall be in writing and shall be deemed to be fully given and received if sent by Federal Express or registered mail, postage prepaid, to the respective parties' attorneys at the following addresses:

to IVC:

Charles E. Weinstein, Esq.
FOLEY HOAG LLP
155 Seaport Boulevard
Boston, MA 02210
TELEPHONE: (617) 832-1238
FACSIMILE: (617) 832-7000

to Pharmavite:

Dax Alvarez, Esq.
BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN LLP
12400 Wilshire Boulevard, 7th Floor
Los Angeles, CA 90025
TELEPHONE: (301) 207-3800
FACSIMILE: (301) 820-5988

If sent by registered mail, the notice shall also be sent by facsimile. Either party hereto may change its address for the purposes of this Agreement by giving the other party written notice of its new address.

WHEREFORE, the parties hereto have caused this Agreement to be executed as a document under seal.

IVC INDUSTRIES, INC.

By: 

PHARMAVITE CORPORATION

By: 

Name: Thomas Bacchino
Title: Chief Financial Officer
Date: July 1, 2003

Name: Paul Baker
Title: VP Regulatory & Legal Affairs
Date: July 9, 2003