

05-01-2003

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



102435701

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): Reliant Pharmaceuticals, LLC

4-30-03

- Individual(s) Association General Partnership Limited Partnership Corporation-State Other limited liability company, Delaware

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: March 11, 2003

2. Name and address of receiving party(ies)

Name: Bay City Capital Fund III, L.P.

Internal Address: Suite 600

Street Address: 750 Battery

City: San Francisco State: CA Zip: 94111

- Individual(s) citizenship Association General Partnership Limited Partnership California 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 PTO RECORDS 203 APR 30 AM 10:51 FINANCE SECTION

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s) see attached list

Additional number(s) attached Yes No

1413953

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

Name: Matthew W. Walch

Internal Address: Latham & Watkins

5800 Sears Tower

Street Address: 233 South Wacker Drive

City: Chicago State: IL Zip: 60606

6. Total number of applications and registrations involved: 8

7. Total fee (37 CFR 3.41): \$ 215.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

50-1125, for any under-/over-payment

DO NOT USE THIS SPACE

9. Signature.

Matthew W. Walch Name of Person Signing

Handwritten signature of Matthew W. Walch

Signature

April 24, 2003

Date

Total number of pages including cover sheet, attachments, and document: 9

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

04/30/2003 ECCOPER 00000238 1413953

01 FC:8521 02 FC:8522

40.00 OP 175.00 OP

TRADEMARK REEL: 002722 FRAME: 0323

4. B. Trademark Registration No.(s)

1413953

1480436

1504573

1687539

1415563

2481169

2028868

2030167

SUPPLEMENTAL TRADEMARK SECURITY AGREEMENT

This SUPPLEMENTAL TRADEMARK SECURITY AGREEMENT (this "Agreement"), is made and entered into as of March 11, 2003, by and between **RELIANT PHARMACEUTICALS, LLC**, a Delaware limited liability company ("Grantor"), and **BAY CITY CAPITAL FUND III, L.P.**, a Delaware limited partnership ("Collateral Agent"), in its capacity as collateral agent, for itself and for the benefit of each of the Lenders (as defined below).

WITNESSETH:

WHEREAS, Grantor and the Collateral Agent are parties to an Amended and Restated Security Agreement, dated as of November 13, 2002 (including all annexes, exhibits or schedules thereto, as from time to time amended, restated, supplemented or otherwise modified, the "Security Agreement"), pursuant to which Grantor has granted and reaffirmed a continuing security interest in certain collateral to secure amounts owed by Grantor under that certain Credit Agreement, dated as of November 13, 2002 (the "Credit Agreement"), among Grantor, PharmBay Investors, L.L.C., a Delaware limited liability company ("PharmBay"), Bay City Capital Fund III, L.P., a Delaware limited partnership (in its capacity as a lender, "BCC Fund III"), and Biovail Pharmaceuticals, Inc., a Delaware corporation ("Biovail" and, together with BCC Fund III and PharmBay, each a "Lender" and, collectively, the "Lenders");

WHEREAS, the parties desire to enter into this Agreement to provide further evidence of Collateral Agent's security interests in certain additional Trademarks (as defined below) acquired by Grantor; and

WHEREAS, in connection with the execution of the Credit Agreement and the other Credit Documents (as defined in the Credit Agreement), the Grantor and the Lenders have entered into the Intercreditor Agreement, dated as of November 13, 2002 (as amended from time to time, the "Intercreditor 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, Grantor hereby agrees as follows:

1. **DEFINED TERMS.** All capitalized terms used but not otherwise defined herein have the meanings given to them in the Security Agreement. As used herein, the following terms shall have the following meanings:

"Trademarks" means all of the following now owned or hereafter existing or adopted or acquired by Grantor: (a) all trademarks, trade names, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including registrations, recordings and applications in the

United States Patent and Trademark Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof; (b) all reissues, extensions or renewals thereof; and (c) all goodwill associated with or symbolized by any of the foregoing.

“Trademark License” means rights under any written agreement now owned or hereafter acquired by Grantor or any of its subsidiaries granting any right to use any Trademark.

2. **GRANT OF SECURITY INTEREST IN TRADEMARK**

COLLATERAL. Grantor hereby grants to Collateral Agent a continuing first priority security interest in all of Grantor’s right, title and interest in, to and under the following, whether presently existing or hereafter created or acquired (collectively, the “Trademark Collateral”):

- (a) all of the Trademarks referred to on Schedule I hereto;
- (b) all Trademark Licenses related thereto to which it is a party;
- (c) all reissues, continuations or extensions of the foregoing;
- (d) all goodwill of the business connected with the use of, and symbolized by, each Trademark and each Trademark License; and
- (e) all products and proceeds of the foregoing, including, without limitation, any claim by Grantor against third parties for past, present or future (i) infringement or dilution of any Trademark or Trademark licensed under any Trademark License or (ii) injury to the goodwill associated with any Trademark or any Trademark licensed under any Trademark License;

provided, however, that Trademark Collateral (i) shall only include Trademark and Trademark Licenses that constitute Collateral under the Security Agreement, and (ii) shall not include any such property where the grant of a security interest therein by Grantor is prohibited by applicable law or by the terms of any contract, agreement, instrument or indenture granting and/or governing such Trademark Collateral (“Applicable Agreement”) without the consent of any other party thereto or would give any other party to any such Applicable Agreement the right to terminate its obligations or Grantor’s rights thereunder unless, in any such case, all necessary consents to such grant of a security interest have been obtained from the other parties thereto; *provided further*, that the foregoing limitation shall not affect, limit, restrict or impair the grant by such Grantor of a security interest in any account or any money or other amounts due or to become due under any such Applicable Agreement; *provided, further*, that nothing in this Agreement will relate to or affect any of Grantor’s Trademark applications based on intent-to-use marks until such time as an Amendment to Allege Use or Statement of Use is filed and accepted by the U.S. Patent and Trademark Office.

3. **SECURITY AGREEMENT**. The security interests granted pursuant to this Agreement are granted in furtherance of the security interests granted in favor of Collateral Agent pursuant to the Security Agreement. Grantor hereby acknowledges and affirms that the rights and remedies of Collateral Agent and/or Lenders with respect to the security interest in the Trademark Collateral made and granted hereby are more fully set forth in the Security

Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

4. **BENEFIT OF LENDERS.** All proceeds or payments realized from Trademark Collateral in accordance herewith shall be applied to the Obligations in accordance with the terms of the Credit Agreement and that certain Amended and Restated Collateral Agency Agreement, dated as of November 13, 2002, as amended from time to time among Collateral Agent and Lenders. Each of the Lenders is and shall be deemed a third party beneficiary of the agreements, covenants, representations and warranties contained herein, and shall be entitled to rely upon the same.

5. **GOVERNING LAW.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO THE PRINCIPLES OF CONFLICTS OF LAW OF SUCH STATE (OTHER THAN SECTIONS 5-1401 AND 5-1402 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK).

6. **JURISDICTION AND VENUE.** THE PARTIES HEREBY CONSENT AND AGREE THAT THE STATE OR FEDERAL COURTS LOCATED IN THE BOROUGH OF MANHATTAN, CITY OF NEW YORK, NEW YORK SHALL HAVE NON-EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THE PARTIES PERTAINING TO THIS AGREEMENT OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT; PROVIDED, HOWEVER, THE PARTIES ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF THE BOROUGH OF MANHATTAN, CITY OF NEW YORK, NEW YORK. THE PARTIES EXPRESSLY SUBMIT AND CONSENT IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND EACH PARTY HEREBY WAIVES ANY OBJECTION WHICH IT MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. EACH PARTY HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINTS AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO SUCH PARTY AT THE ADDRESS SET FORTH HEREIN AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF ACTUAL RECEIPT THEREOF OR FIVE (5) DAYS AFTER DEPOSIT IN THE U.S. MAIL, PROPER POSTAGE PREPAID.


7. **WAIVER OF JURY TRIAL.** EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO ENFORCE OR DEFEND ANY RIGHT, POWER, OR REMEDY UNDER OR IN CONNECTION WITH THIS AGREEMENT OR UNDER OR IN CONNECTION WITH ANY AMENDMENT, INSTRUMENT, DOCUMENT, OR AGREEMENT DELIVERED OR FROM ANY RELATIONSHIP EXISTING ARISING OUT OF THIS AGREEMENT, AND AGREE THAT ANY SUCH ACTION SHALL BE TRIED BEFORE A

COURT AND NOT BEFORE A JURY. THE TERMS AND PROVISIONS OF THIS SECTION CONSTITUTE A MATERIAL INDUCEMENT FOR THE PARTIES ENTERING INTO THIS AGREEMENT.

Signature page follows.

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

RELIANT PHARMACEUTICALS, LLC

By: 
Name: Michael J. Lerner
Title: Vice President + General Counsel

**BAY CITY CAPITAL FUND III, L.P., as
Collateral Agent**


By: Bay City Capital Management III, LLC
Its: General Partner

By: _____
Name:
Title:

ACKNOWLEDGMENT OF GRANTOR

STATE OF NEW JERSEY)
) ss.
COUNTY OF SOMERSET)

On this 20th day of March, 2003 before me personally appeared MICHAEL J. LERNER proved to me on the basis of satisfactory evidence to be the person who executed the foregoing instrument on behalf of RELIANT PHARMACEUTICALS, LLC, who being by me duly sworn did depose and say that he is an authorized officer of said limited liability company, that the said instrument was signed on behalf of said limited liability company as authorized by its Board of Managers and that he acknowledged said instrument to be the free act and deed of said limited liability company.


Notary Public

BRENDA CARRANO
NOTARY PUBLIC OF NEW JERSEY
My Commission Exp. Mar. 22, 2006

[Signature Page to the Trademark Security Agreement]

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

RELIANT PHARMACEUTICALS, LLC

By: _____
Name:
Title:

**BAY CITY CAPITAL FUND III, L.P., as
Collateral Agent**

By: Bay City Capital Management III, LLC
Its: General Partner

By: *Freel Cooper*
Name:
Title:

ACKNOWLEDGMENT OF GRANTOR

STATE OF NEW JERSEY)
) ss.
COUNTY OF SOMERSET)

On this ___ day of March, 2003 before me personally appeared _____, proved to me on the basis of satisfactory evidence to be the person who executed the foregoing instrument on behalf of RELIANT PHARMACEUTICALS, LLC, who being by me duly sworn did depose and say that he is an authorized officer of said limited liability company, that the said instrument was signed on behalf of said limited liability company as authorized by its Board of Managers and that he acknowledged said instrument to be the free act and deed of said limited liability company.

Notary Public

[Signature Page to the Trademark Security Agreement]

**SCHEDULE I
TO
TRADEMARK SECURITY AGREEMENT**

TRADEMARKS

<u>Mark</u>	<u>Registration Number</u>	<u>Filing Date</u>
DYNACIRC	1413953	10/21/1986
DYNACIRC DEVICE	1480436	3/15/1988
DynaCirc	1504573	9/20/1988
DYNACIRC CR	1687539	5/19/1992
AXID	1415563	11/4/1986
AXID Trade Dress	2481169	8/28/2001
LIVING WITH GERD	2028868	1/7/1997
LIVING WITH GERD with Logo	2030167	1/14/1997