

05-28-2003

Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings

5-27-03

RECOF TR



102458127

DEPARTMENT OF COMMERCE J.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): Advancis Pharmaceutical Corporation

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

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

2. Name and address of receiving party(ies) Name: HealthCare Ventures VI, L.P.

Internal Address:

Street Address: 44 Nassau Street

City: Princeton State: NJ Zip: 08542

Individual(s) citizenship

Association

General Partnership

Limited Partnership Delaware

Corporation-State

Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No N/A (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

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

Execution Date: March 28, 2003

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

A. Trademark Application No.(s) 76/077,941 76/322,756 76/389,919 76/291,066 76/389,918 76/484,147

B. Trademark Registration No.(s)

Additional number(s) attached Yes No

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

Name: Alexis Dillett Isztwan, Esquire

Internal Address: Pepper Hamilton LLP

3000 Two Logan Square

Street Address: Eighteenth and Arch Streets

City: Philadelphia State: PA Zip: 19103-2799

6. Total number of applications and registrations involved: 6

7. Total fee (37 CFR 3.41): \$ 165.00

- Enclosed Authorized to be charged to deposit account (if fees exceed check amount)

8. Deposit account number: 16-1322

(Attach duplicate copy of this page if paying by deposit account)

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.

Alexis Dillett Isztwan

Name of Person Signing

Signature

May 22, 2003

Date

Total number of pages including cover sheet, attachments, and document: 29

OFFICE OF PUBLIC RECORDS 103 MAY 27 PM 1:01 FINANCE SECTION

05/28/2003 ECDUPER 00000036 76077941

01 FC:0521 02 FC:0322

40.00 OP 125.00 BP

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

TRADEMARK REEL: 002740 FRAME: 0379

INTELLECTUAL PROPERTY SECURITY AGREEMENT

DATE: March 28, 2003

PARTIES: Debtor: **ADVANCIS PHARMACEUTICAL CORPORATION**
a Delaware corporation

Debtor's Address: 656 Quince Orchard Road
Suite 220
Gaithersburg, Maryland 20878
Attention: Edward M. Rudnic, Ph.D.

Secured Party: **HEALTHCARE VENTURES VI, L.P. on behalf of itself and as Collateral Agent for the other Lenders under that certain Note Issuance Agreement dated March 28, 2003**

Secured Party's Address: HealthCare Ventures VI, L.P.
44 Nassau Street
Princeton, New Jersey 08542
Attention: Jeff Steinberg

RECITALS

A. Advancis Pharmaceutical Corporation ("**Debtor**") has issued certain Convertible Secured Promissory Notes of even date herewith (as such may be amended, modified, extended, and renewed from time to time, the "**Notes**") to the Lenders (the "**Lenders**") under a certain Note Issuance Agreement dated March 28, 2003 (the "**Note Issuance Agreement**"), pursuant to which the Lenders are making loans to Debtor in the original principal amount of up to Five Million Dollars (\$5,000,00000) in the aggregate (the "**Loan**").

B. It is a condition precedent to finalizing the Notes that Debtor shall have entered into this Intellectual Property Security Agreement ("**IP Agreement**") granting HealthCare Ventures VI, L.P. ("**Secured Party**") a security interest in the collateral described in this Agreement as security for payment of the Notes.

C. Pursuant to the Note Issuance Agreement, the Lenders authorized and appointed Secured Party to act as Collateral Agent on their behalf to take such actions as are necessary or appropriate to protect the Lenders' interests in the collateral securing the Loan, including the entering into of this IP Agreement on the Lenders' behalves.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged and intending to be legally bound, as collateral security for the prompt and complete payment when due of Debtor's Obligations (as defined below) to Secured Party, Debtor hereby represents, warrants, covenants and agrees as follows:

1. Grant of Security Interest. As collateral security for the prompt and complete payment and performance of all of Debtor's Obligations, Debtor hereby grants to Secured Party a security interest in all of Debtor's right, title and interest in, to and under the Computer Hardware and Software Collateral, the Copyright Collateral, the Patent Collateral, the Trademark Collateral and the Trade Secrets Collateral, now or hereafter existing, created, acquired or held, if any (all of which shall collectively be called the "***Intellectual Property Collateral***"). As used herein

"Computer Hardware and Software Collateral" means:

(a) all of Debtor's: computer and other electronic data processing hardware, integrated computer systems, central processing units, memory units, display terminals, printers, features, computer elements, card readers, tape drives, hard and soft disk drives, cables, electrical supply hardware, generators, power equalizers, accessories and all peripheral devices and other related computer hardware;

(b) all software programs (including both source code, object code and all related applications and data files), whether now owned, licensed or leased or hereafter developed, designed or acquired by Debtor;

(c) all firmware associated with the property described in clauses (a) and (b) of this definition;

(d) all documentation (including flow charts, logic diagrams, manuals, guides and specifications) with respect to such hardware, software and firmware described in the preceding clauses (a) through (c) of this definition;

(e) the specific collateral set forth in Exhibit A attached hereto; and

(f) all rights with respect to all of the foregoing, including without limitation, any and all copyrights, licenses, options, warranties, service contracts, program services, test rights, maintenance rights, support rights, improvement rights, renewal rights and indemnifications and any substitutions, replacements, additions or model conversions of any of the foregoing.

"Copyright Collateral" means all copyrights of Debtor in addition to the Computer Hardware and Software Collateral, and all semi-conductor chip product mask works of Debtor, whether statutory or common law, registered or unregistered, now or hereafter in force throughout the world, including, without limitation, all of Debtor's right, title and interest in and to all copyrights and mask works registered in the United States Copyright Office or anywhere else in the world and also including, without limitation, those set forth on Exhibit B attached hereto, and all applications for registration thereof, whether pending or in preparation, all copyright and mask work licenses, including each copyright and mask work license (whether as licensee or licensor) referred to in Exhibit B, the right to sue for past, present and future infringements of any thereof, all rights corresponding thereto throughout the world, all extensions and renewals of any

thereof and all proceeds of the foregoing, including, without limitation, licenses, royalties, income, payments, claims, damages and proceeds of suit.

“Patent Collateral” means:

(a) all of Debtor’s letters patent and applications for letters patent throughout the world, including all patent applications in preparation for filing anywhere in the world, whether now existing or hereafter acquired (current patents and patent applications are listed on Exhibit C);

(b) all patent licenses of Debtor (whether as licensee or licensor);

(c) all reissues, divisions, continuations, continuations-in-part, extensions, renewals and reexaminations of any of the items described in clauses (a) and (b) of this definition; and

(d) all proceeds of, and rights associated with, the foregoing (including license royalties and proceeds of infringement suits), the right to sue third parties for past, present or future infringements of any patent or patent application, including any patent or patent application referred to herein, and for breach or enforcement of any patent license, including any patent license referred to herein, and all rights corresponding thereto throughout the world.

“Trade Secrets Collateral” means all common law and statutory trade secrets and all other confidential or proprietary or useful information of Debtor and all know-how obtained by or used in or contemplated at any time for use in the business of Debtor (all of the foregoing being collectively called a **“Trade Secret”**), whether or not such Trade Secret has been reduced to a writing or other tangible form, including all documents and things embodying, incorporating or referring in any way to such Trade Secret, all Trade Secret licenses of Debtor (whether as licensee or licensor), including each Trade Secret license referred to herein, and including the right to sue for and to enjoin and to collect damages for the actual or threatened misappropriation of any Trade Secret and for the breach or enforcement of any such Trade Secret license.

“Trademark Collateral” means:

(a) all of Debtor’s: trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, certification marks, collective marks, logos, other source of business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of a like nature (all of the foregoing items in this clause (a) being collectively called a **“Trademark”**), now existing anywhere in the world or hereafter adopted or acquired, whether currently in use or not, all registrations and recordings thereof and all applications in connection therewith, whether pending or in preparation for filing, including registrations, recordings and applications in the United States Patent and Trademark Office or

in any office or agency of the United States of America or any State thereof or any foreign country (current trademarks are listed on Exhibit D);

(b) all Trademark licenses (whether as licensee or licensor);

(c) all reissues, extensions or renewals of any of the items described in clauses (a) and (b) of this definition;

(d) all of the goodwill of the business connected with the use of, and symbolized by the items described in, clauses (a) and (b); and

(e) all proceeds of, and rights associated with, the foregoing, including any claim by Debtor against third parties for past, present or future infringement or dilution of any Trademark, Trademark registration or Trademark license, including any Trademark, Trademark registration or Trademark license referred to herein, or for any injury to the goodwill associated with the use of any such Trademark or for breach or enforcement of any Trademark license.

2. Excluded Property. Notwithstanding anything herein to the contrary, the property of Debtor identified on Schedule 2 attached hereto shall not be considered Intellectual Property Collateral and the Collateral Agent shall have no lien on, security interest in, or other right to the Excluded Property.

3. Obligations Secured. The foregoing assignment and security interest is made for the purpose of securing (in such order as Secured Party may elect) the complete and timely payment of all obligations and liabilities under the Notes (collectively, the "***Obligations***").

4. Authorization and Request. Debtor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this IP Agreement.

5. Covenants and Warranties. Debtor represents, warrants, covenants and agrees as follows:

(a) Debtor is the sole and exclusive owner of the entire and unencumbered right, title and interest in the Intellectual Property Collateral, free and clear of any liens, charges and encumbrances except for (i) those created hereunder; (ii) licenses granted by Debtor to its customers in the ordinary course of business; and (iii) as otherwise indicated in any of Exhibits A, B, C and D hereto;

(b) Performance of this IP Agreement does not conflict with or result in a breach of any other agreement to which Debtor is bound, except to the extent that certain agreements may prohibit the transfer or assignment of the rights thereunder to a third party without the licensor's or the other party's consent, in which case such rights shall not be deemed Collateral hereunder;

(c) During the term of this IP Agreement, Debtor will not transfer, assign, sell, hypothecate, or otherwise encumber any interest in the Intellectual Property Collateral, except for licenses granted by Debtor in the ordinary course of business or as set forth in this IP Agreement and except for security interests in such Intellectual Property Collateral existing as of the date hereof;

(d) Debtor agrees that simultaneously with execution of this IP Agreement, and upon any amendment of Exhibit A, B, C, or D, Debtor shall execute the form of Notice appended hereto as Schedule 5(d) (each, a “*Notice*”) with respect to each Patent Collateral, Trademark Collateral or Copyright Collateral now owned or hereafter acquired, and shall deliver it to Secured Party for recording in the Patent and Trademark Office or Copyright Office so as to record formally this IP Agreement.

(e) Debtor shall promptly advise Secured Party of any material adverse change in the composition of the Intellectual Property Collateral, including but not limited to any ownership right of the Debtor in or to any Intellectual Property Collateral specified in this IP Agreement and any abandonment, forfeiture or dedication to the public of any Intellectual Property Collateral specified in this IP Agreement;

(f) Debtor shall (i) protect, defend and maintain the validity and enforceability of the Intellectual Property Collateral to the extent it deems necessary or advisable in its reasonable business judgment, (ii) apply for registration of Intellectual Property Collateral to the extent it deems necessary or advisable in its reasonable business judgment as such Intellectual Property is created, adopted or used and diligently prosecute such applications, (iii) notify Secured Party in writing of any material infringement of the Intellectual Property Collateral that comes to Debtor’s attention, (iv) not forego any right to protect and enforce rights to Intellectual Property Collateral unless it deems it necessary in its reasonable business judgment, in consultation with Secured Party, to forego any right to protect and enforce such rights, and (v) not allow any Intellectual Property Collateral to be abandoned, forfeited or dedicated to the public without the written consent of Secured Party, which shall not be unreasonably withheld, unless Debtor determines that reasonable business practices suggest that abandonment is appropriate;

(g) Debtor shall promptly notify Secured Party of all after-acquired Intellectual Property Collateral, whether owned, developed or acquired by Debtor and shall notify Secured Party of any filed applications to register or patents issued after the execution hereof. Any expenses incurred in connection with such applications shall be borne by the Debtor.

(h) Debtor shall take such actions as Secured Party may reasonably request from time to time to perfect or continue the perfection of Secured Party’s interest in the Intellectual Property Collateral;

(i) This IP Agreement creates, and in the case of after acquired Intellectual Property Collateral, this IP Agreement will create at the time Debtor first has rights in such after acquired Intellectual Property Collateral, in favor of Secured Party a valid and perfected first priority security interest in the Intellectual Property Collateral in the United States securing the payment and performance of the obligations evidenced by the Notes upon making the filings referred to in clause (j) below;

(j) Except for, and upon, the filing with the United States Patent and Trademark Office with respect to the Patent Collateral and Trademark Collateral and the Register of Copyrights with respect to the Copyright Collateral necessary to perfect the security interests created hereunder and except as has been already made or obtained, no authorization, approval or other action by, and no notice to or filing with, any U.S. governmental authority or U.S. regulatory body is required either (i) for the grant by Debtor of the security interest granted hereby or for the execution, delivery or performance of this IP Agreement by Debtor in the United States or (ii) for the perfection in the United States or the exercise by Secured Party of its rights and remedies thereunder;

(k) All information heretofore, herein or hereafter supplied to Secured Party by or on behalf of Debtor with respect to the Intellectual Property Collateral is accurate and complete in all material respects;

(l) Debtor shall not enter into any agreement that would materially impair or conflict with Debtor's obligations hereunder without Secured Party's prior written consent, which consent shall not be unreasonably withheld. Debtor shall not permit the inclusion in any material contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a security interest in Debtor's rights and interest in any property included within the definition of the Intellectual Property Collateral acquired under such contracts, except that certain contracts may contain anti-assignment provisions that could in effect prohibit the creation of a security interest in such contracts;

(m) Debtor shall not take any action, nor enter into any license, royalty, assignment or other agreement which is inconsistent with Debtor's obligations under this IP Agreement, or which has the effect of reducing the value of the IP Collateral and shall give the Secured Party thirty (30) days' prior written notice of any proposed license, royalty, assignment or other agreement, except non-exclusive licenses granted by Debtor to its customers in the ordinary course of business; and

(n) Upon any executive officer of Debtor obtaining actual knowledge thereof, Debtor will promptly notify Secured Party in writing of any event that materially adversely affects the value of any material Intellectual Property Collateral, the ability of Debtor to dispose of any material Intellectual Property Collateral, and the rights and remedies of Secured Party in relation thereto,

including the levy of any legal process against any of the Intellectual Property Collateral.

6. Secured Party's Rights. Secured Party shall have the right, but not the obligation, to take, at Debtor's sole expense, any actions that Debtor is required under this IP Agreement to take but which Debtor fails to take, after ten (10) days' notice to Debtor. Debtor shall reimburse and indemnify Secured Party for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this Section 5.

7. Responsibility of Debtor. In furtherance and not limitation of the other provisions of this Section 7, Secured Party shall have no duty or responsibility with respect to the Intellectual Property Collateral or its preservation. Debtor acknowledges and agrees that it has reviewed the terms of this IP Agreement with counsel of its choosing and that Debtor has determined that neither execution, delivery nor performance of this Agreement by Debtor or Secured Party will in any way impair the Intellectual Property Collateral or Debtor's right, title and interest therein, subject to the purpose of this IP Agreement which is to impose a lien thereon in favor of Secured Party.

8. Conduct of Business; Inspection Rights. In order to preserve and protect the goodwill associated with the Intellectual Property Collateral, the Debtor covenants that it shall maintain the quality of the products and services sold under or in connection with the Intellectual Property Collateral and shall not at any time permit any impairment of the quality of said products and services, and will provide the Secured Party from time to time with a certificate to such effect signed by an officer of the Debtor upon request. The Debtor hereby grants to the Secured Party and its employees and agents the right to visit the Debtor's (or its affiliates') plants and facilities that manufacture, provide, inspect or store products or services sold under any of the Trademark Collateral, and to inspect the products and quality control records relating thereto, at reasonable times during regular business hours and following prior notice to Debtor. The Debtor shall do any and all acts reasonably required by the Secured Party to ensure the Debtor's compliance with this Section. Debtor hereby grants to Secured Party and its employees, representatives and agents the right to visit, at any reasonable time requested by the Secured Party, Debtor and any of Debtor's plants and facilities that manufacture, install or store products (or that have done so during the prior six-month period) that are sold utilizing any of the Intellectual Property Collateral, and to inspect the products and quality control records relating thereto upon reasonable written notice to Debtor and as often as may be reasonably requested; provided, however, nothing herein shall entitle Secured Party access to Debtor's Trade Secrets and other proprietary information. The foregoing provisions of this Section 8 shall become applicable to Debtor at such time as Debtor has developed products and services capable of being sold to the public and all confidential information obtained by Secured Party under this Section 8 shall be subject to Section 22 of this IP Agreement.

9. Further Assurances; Attorney in Fact.

(a) On a continuing basis, and at Debtor's sole expense, Debtor shall, subject to any prior licenses, encumbrances and restrictions and prospective licenses, make, execute, acknowledge and deliver, and file and record in the proper filing and recording places in the United States, all such instruments,

including appropriate financing and continuation statements and collateral agreements and filings with the United States Patent and Trademark Office and the Register of Copyrights, and take all such action as may reasonably be deemed necessary or advisable, or as requested by Secured Party, to create, preserve, continue, charge, validate or perfect Secured Party's security interest in all of the Intellectual Property Collateral and otherwise to carry out the intent and purposes of this IP Agreement, or for assuring and confirming to Secured Party the grant or perfection of a security interest in all Intellectual Property Collateral.

(b) Debtor hereby irrevocably appoints Secured Party as Debtor's attorney-in-fact, with full authority in the place and stead of Debtor and in the name of Debtor, Secured Party or otherwise, from time to time in Secured Party's discretion, upon Debtor's failure or inability to do so, to take any action and to execute any instrument which Secured Party may deem necessary or advisable to accomplish the purposes of this IP Agreement, including:

(1) To modify, in its sole discretion, this IP Agreement without first obtaining Debtor's approval of or signature to such modification by amending any Exhibit hereof, as appropriate, to include reference to any right, title or interest in any Intellectual Property Collateral acquired by Debtor after the execution hereof or to delete any reference to any right, title or interest in any Intellectual Property Collateral in which Debtor no longer has or claims any right, title or interest, provided that Secured Party shall deliver to Debtor written notice of such modification within a reasonable time after such modification;

(2) To file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Intellectual Property Collateral without the signature of Debtor where permitted by law; and

(3) Upon the occurrence of an Event of Default as defined in Section 8, to endorse such Debtor's name on all applications, documents, papers and instruments necessary for the Secured Party to use the Intellectual Property Collateral, or to grant or issue any exclusive or non-exclusive license under the Intellectual Property Collateral to any third person, or necessary for the Secured Party to assign, pledge, convey or otherwise transfer title in or dispose of the Intellectual Property Collateral, including the goodwill and equipment associated therewith, to Secured Party or any third person.

(c) Debtor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney, being coupled with an interest, shall be irrevocable for the life of this IP Agreement.

10. Events of Default. The occurrence of any of the following shall constitute an Event of Default under this IP Agreement:

- (a) an Event of Default occurs under the Notes (as defined therein); or
- (b) Debtor breaches, in a material way, any representation or warranty in this IP Agreement; or
- (c) Debtor creates, permits, or suffers the creation of any liens, security interests, or any other encumbrances on any of its property, real or personal, except (A) those in favor of Secured Party as security for the Obligations, and (B) security interests permitted or excepted under Section 5(f)(i)-(v) of the Notes; or
- (d) Debtor breaches any other covenant or agreement made by Debtor in this IP Agreement, and such breach shall continue after the expiration of thirty (30) days following the earlier of (i) notice from Secured Party to Debtor of such failure, or (ii) the date on which the Debtor knew or should have known of such failure.

11. Remedies.

(a) Upon the occurrence and continuance of an Event of Default, Debtor's rights to use the Intellectual Property Collateral shall terminate forthwith and Secured Party shall have the right to exercise all the remedies of a secured party under the Uniform Commercial Code and any applicable federal law, including without limitation the right to require Debtor to assemble the Intellectual Property Collateral and any tangible property in which Secured Party has a security interest and to make it available to Secured Party at a place designated by Secured Party. Secured Party shall have a nonexclusive, royalty free license to use any of the Intellectual Property Collateral to the extent reasonably necessary to permit Secured Party to exercise its rights and remedies upon the occurrence of an Event of Default. Debtor will pay any expenses (including reasonable attorneys' fees) incurred by Secured Party in connection with the exercise of any of Secured Party's rights hereunder, including without limitation any expense incurred in disposing of the Intellectual Property Collateral. All of Secured Party's rights and remedies with respect to the Intellectual Property Collateral shall be cumulative.

(b) Upon the occurrence and continuance of an Event of Default, without limiting the generality of the foregoing, the Secured Party may immediately, without demand of performance and without advertisement, require Debtor to assign of record the Intellectual Property Collateral to Secured Party (or its assignees), and beneficially, sell at public or private sale or otherwise realize upon, the whole or from time to time any part of the Intellectual Property Collateral and the goodwill associated therewith, or any interest which the Debtor has therein, and after deducting from the proceeds of said sale or other disposition of the Intellectual Property Collateral all expenses (including all reasonable expenses for brokers' fees and legal services), shall apply the residue of such proceeds toward the payment of the obligations as set forth in the Notes and under

applicable law. Any remainder of the proceeds after payment in full of the Notes shall be paid over to the Debtor. Prior notice of any sale or other disposition of the Intellectual Property Collateral need not be given to Debtor unless otherwise required by law (and if notice is required by law, it shall be given ten (10) days before the time of any intended public or private sale or other disposition of the Intellectual Property Collateral is to be made, which the Debtor hereby agrees shall be reasonable notice of such sale or other disposition). At any such sale or other disposition, any holder of the Notes (including renewals and substitutions therefor) or the Secured Party may, to the extent permissible under applicable law, purchase the whole or any part of or interest in the Intellectual Property Collateral sold, free from any right of redemption on the part of the Debtor, which right is hereby waived and released.

12. Conduct of Business After Default. The parties understand and agree that the collateral assignment with respect to the Intellectual Property Collateral as provided for in this Agreement will and is intended to permit the Secured Party and its successors and assigns, upon the occurrence and continuance of an Event of Default as provided herein, to take title to and make use of all rights to the Intellectual Property Collateral and to carry on the business of the Debtor.

13. Deficiency. If proceeds referred to in Section 11(b) above are insufficient to pay the Notes in full, Debtor shall continue to be liable for the entire deficiency.

14. Indemnity.

(a) Debtor agrees to defend, indemnify and hold harmless Secured Party and its directors, officers, employees, and agents from and against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this IP Agreement, including, without limitation, the assignment of the Intellectual Property Collateral, the use of the Intellectual Property Collateral, the alleged infringement by the Secured Party of the intellectual property rights of others, any infringement action or other claim relating to the Intellectual Property Collateral, or enforcement of the terms hereof (all of which shall collectively be called the "*Transactions*") and (b) all losses or expenses in any way suffered, incurred, or paid by Secured Party as a result of or in any way arising out of, following or consequential to the Transactions under this IP Agreement or otherwise under the transactions contemplated by this IP Agreement or the Notes (including without limitation, reasonable attorneys' fees and reasonable expenses), except for losses arising from or out of Secured Party's gross negligence or willful misconduct.

(b) Debtor also agrees to defend, indemnify and hold harmless Secured Party and each of its directors, officers, employees and agents, on demand, from and against any and all losses, claims, obligations, damages, fees, costs, liabilities, expenses or disbursements of any kind and nature whatsoever (including but not limited to reasonable fees and disbursements of counsel, interest, penalties, and amounts paid in settlement) incurred by the Secured Party

in connection with the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining, preserving the Intellectual Property Collateral, or in defending or prosecuting any actions or proceedings arising out of or related to the Intellectual Property Collateral.

15. Reassignment.

(a) At such time as Debtor shall completely and finally satisfy all of the obligations secured hereunder, and there shall exist no continuing liability of Debtor with respect to the obligations secured hereunder, Secured Party shall execute and deliver to Debtor all deed, assignments, and other instruments as may be necessary or proper to reinvest in Debtor full title to the property assigned hereunder, subject to any disposition thereof which may have been made by Secured Party pursuant hereto.

(b) Notwithstanding subsection (a), if a claim is made upon Secured Party for repayment or recovery of any amount or amounts received which had the effect of reducing the liability of Debtor or impairing the liens granted hereunder, and such party repays all or part of such amount or amounts, then and in such event, Debtor agrees that any such repayment shall be binding upon Debtor, whether or not this IP Agreement otherwise shall have been terminated or canceled, and Debtor shall be and continue to remain liable hereunder to the same extent as if such amount had never originally been received by such party, and the liens granted hereby shall remain in full force and effect without interruption, lapse, reduction or other impairment.

16. Course of Dealing. No course of dealing, nor any failure to exercise, nor any delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

17. Attorneys' Fees. If any action relating to this IP Agreement is brought by either party hereto against the other party, the prevailing party shall be entitled to recover reasonable attorneys fees, costs and disbursements.

18. Assigns. This Agreement shall be binding upon Debtor and its successors and permitted assigns, but shall not be assignable by Debtor, and shall inure to the benefit of Secured Party.

19. Amendments. This IP Agreement may be amended only by a written instrument signed by both parties hereto.

20. Counterparts. This IP Agreement may be executed in two or more counterparts, each party may sign on a separate counterpart, each of which shall be deemed an original but all of which together shall constitute the same instrument.

21. Law and Jurisdiction. This IP Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without regard for choice of law provisions.

22. Confidentiality. In handling any confidential information, Secured Party shall exercise the same degree of care that it exercises with respect to its own proprietary information of the same types to maintain the confidentiality of any non-public information thereby received or received pursuant to this IP Agreement except that the disclosure of this information may be made (a) as required by law, regulation, rule or order, subpoena, judicial order or similar order and (b) provided that the recipient has entered into a comparable confidentiality agreement in favor of Debtor and has delivered a copy to Debtor, (i) to the affiliates of the Secured Party, (ii) to prospective transferee or purchasers of an interest in the obligations secured hereby, and (iii) as may be required in connection with the examination, audit or similar investigation of Secured Party.

23. Severability. The provisions of this IP 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 of provision in any other jurisdiction, or any other clause or provision of this IP Agreement in any jurisdiction.

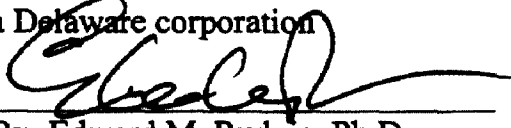
24. Termination. This IP Agreement and all rights and obligations of the parties hereunder shall terminate immediately upon Debtor's payment in full of the Notes.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this IP Agreement on the day and year first above written.

Debtor:

ADVANCIS PHARMACEUTICAL CORPORATION
a Delaware corporation


By: Edward M. Rudnic, Ph.D.
Its: President

Secured Party:

HEALTHCARE VENTURES VI, L.P.

By: Jeffrey Steinberg
Its: _____

IN WITNESS WHEREOF, the parties hereto have executed this IP Agreement on the day and year first above written.

Debtor:

ADVANCIS PHARMACEUTICAL CORPORATION
a Delaware corporation

By: Edward M. Rudnic, Ph.D.
Its: President

Secured Party:

HEALTHCARE VENTURES VI, L.P.


By: Jeffrey Steinberg
Its: _____

STATE/Commonwealth of MARYLAND)

:ss.

COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me this 28th day of March, 2003, by Edward M. Rudnic, Ph.D., President of ADVANCIS PHARMACEUTICAL CORPORATION, a Delaware corporation, on behalf of the corporation.


NOTARY PUBLIC

[seal]

STATE/Commonwealth of _____)

:ss.

COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of March, 2003, by Jeffrey Steinberg, a _____ of HealthCare Ventures VI, LP.

[seal]

NOTARY PUBLIC

Exhibit "A" attached to that certain Intellectual Property Security Agreement dated March __, 2003.

EXHIBIT "A"

HARDWARE AND SOFTWARE

DESCRIPTION OF HARDWARE AND SOFTWARE COLLATERAL

All versions of the Borrower's software (the "Software")

Exhibit "B" attached to that certain Intellectual Property Security Agreement dated March __, 2003.

EXHIBIT "B"

COPYRIGHTS

COPYRIGHT DESCRIPTION	DATE OF CREATION	FIRST DATE OF DISTRIBUTION	ORIGINAL AUTHOR OR OWNER OR COPYRIGHT (IF DIFFERENT FROM DEBTOR)	DATE AND RECORDATION NUMBER OF IP AGREEMENT TO OWNER OF DEBTOR (IF ORIGINAL AUTHOR OR OWNER OF COPYRIGHT IS DIFFERENT FROM DEBTOR)
Pulsys Drug Delivery Animation	2002			U.S. Registration No. _____, filed on October 11, 2002. Awaiting receipt of registration certificate from the U.S. Copyright Office

EXHIBIT "C"

PATENTS

PATENT DESCRIPTION	APPLICATION NUMBER	PATENT APPLICATION	COUNTRY OR REGION	FILING DATE	STATUS
Pulsatile Antibiotic Delivery					
Antibiotic Composition	60/184,546	Pulsatile Antibiotic Delivery	US	02/24/00	
Antibiotic Product, Use and Formulation Thereof	09/687,229		US	10/13/00	
Antibiotic Product, Use and Formulation Thereof	09/792,092	3 Pulses	US	02/22/01	Notice of Allowance
Antibiotic Product, Use and Formulation Thereof		CIP	US	12/20/02	
Antibiotic Product, Use and Formulation Thereof	10/211,039	All Delayed release	US	08/02/02	
Antibiotic Product, Use and Formulation Thereof	10/325,780		US	12/20/02	
Antibiotic Product, Use and Formulation Thereof			PCT	12/20/02	
Therapeutic Product, Use and Formulation Thereof	PCT/US01/05758	3 Pulses, Covers antibiotic, antiviral, antifungal and antineoplastic agents	PCT	02/23/01	
Therapeutic Product, Use and Formulation Thereof	2001239838		AU	2/22/01	
Therapeutic Product, Use and Formulation Thereof	24400784		CA	2/22/01	
Therapeutic Product, Use and Formulation Thereof	019144492		EP	2/22/01	
Therapeutic Product, Use and Formulation Thereof	2001561296		JP	2/22/01	
Delayed Release Antibiotic Product, Use and Formulation Thereof		All delayed release	US	TBD	
Antibiotic Product, Use and Formulation Thereof	10/027,609	Beta Lactam (Amoxicillin, Dicloxacillin, Cefuroxime, Cefpodoxime) Pulsatile Composition	US	12/20/01	
Erythromycin Antibiotic Product, Use and Formulation Thereof	10/028,595	Erythromycin (Clarithromycin) Pulsatile	US	12/20/01	

		Composition			
Metronidazole Antibiotic Product, Use and Formulation Thereof	10/027,866	Metronidazole Pulsatile Composition	US	12/20/01	
Tetracycline Antibiotic Product, Use and Formulation Thereof	10/028,590	Tetracycline (Doxycycline) Pulsatile Composition	US	12/20/01	
Methods of Disease Treatment using Metal-Complexed Tetracycline Antibiotics	60/355,560		US	2/7/02	
Methods of Disease Treatment using Metal-Complexed Tetracycline Antibiotics	10/359,388		US	2/5/03	
Methods of Disease Treatment using Metal-Complexed Tetracycline Antibiotics	US03/03588		PCT	2/6/03	
Fluroquinolone Antibiotic Product, Use and Formulation Thereof	10/027,837	Fluroquinolone (Ciprofloxacin) Pulsatile Composition	US	12/20/01	
Levofloxacin Antibiotic Product, Use and Formulation Thereof	US02/40809		PCT	12/20/02	
Levofloxacin Antibiotic Product, Use and Formulation Thereof	10/027,366	Levofloxacin Pulsatile Composition	US	12/20/01	
Pulsatile Antibiotic Combination					
Antibiotic Composition	60/184,545	Pulsatile Antibiotic Combination	US	02/24/00	
Antibiotic Composition	09/791,983	3 Pulses	US	02/23/01	☐
Antibiotic and Antifungal Compositions	PCT/US01/05856	3 Pulses	PCT	02/23/01	☐
Antibiotic Compositions	2001239841		AU	2/23/01	
Antibiotic Compositions	2400818		CA	2/23/01	
Antibiotic Composition	2001561265		JP	2/23/01	
Antibiotic Composition	EP 01914454.2	EU publication number 1 267 765	EP	2/23/01	
Amoxicillin & Clarithromycin Antibiotic Composition	10/093,321	Amoxicillin and Clarithromycin Combination Pulsatile Composition	US	3/7/02	
Amoxicillin & Dicloxacillin Antibiotic Composition	10/092,854	Amoxicillin & Dicloxacillin Combination Pulsatile Composition	US	3/7/02	

Ciprofloxacin & Metronidazole Antibiotic Composition	10/092,858	Metronidazole Ciprofloxacin Combination Pulsatile Composition	& US	3/7/02	
Cephalosporin & Metronidazole Antibiotic Composition	10/092,811	Cephalosporin and Metronidazole Combination Pulsatile Composition	US	3/7/02	
Tetracycline & Doxycycline Antibiotic Composition	10/093,214	Tetracycline and Doxycycline Combination Pulsatile Composition	US	3/7/02	
Pulsatile Antibiotic with Beta-Lactamase Inhibitor					
Antibiotic Composition with Inhibitor	60/184,582	Pulsatile Antibiotic with <input type="checkbox"/> -Lactamase Inhibitor	US	02/24/00	
Antibiotic Composition with Inhibitor	09/791,536		US	02/23/01	Notice of Allowance
Antibiotic Composition with Inhibitor	PCT/US01/05984		PCT	02/23/01	<input type="checkbox"/>
Antibiotic Composition with Inhibitor	2399856		CA	2/23/01	
Antibiotic Composition with Inhibitor	2001561298		JP	2/23/01	
Antibiotic Composition with Inhibitor	2001239869		AU	2/23/01	
Antibiotic Composition with Inhibitor	EP01914484.9	Publication Number 1 265 599	EP	2/23/01	
Pulsatile Antiviral Delivery					
Antiviral Product, Use and Formulation Thereof	09/687,237	Pulsatile Antiviral Delivery	US	10/13/00	
Antiviral Product, Use and Formulation Thereof	09/791,906	3 Pulses	US	02/22/01	Notice of Allowance
Antiviral Product, Use and Formulation Thereof	10/288,000		US	11/05/02	
Pulsatile Antiviral plus immunomodulator Combination				TBD	
Pulsatile Antiviral plus adjuvant Combination				TBD	
Delayed Release Antiviral Product, Use and Formulation Thereof	10/211,729	All delayed release	US	08/02/02	
Pulsatile Antifungal Delivery					
Antifungal Product, Use and Formulation Thereof	09/687,236	Pulsatile Antifungal Delivery	US	10/13/00	<input type="checkbox"/>
Antifungal Product, Use and Formulation Thereof	09/792,189	3 Pulses	US	02/22/01	<input type="checkbox"/>

Antifungal Product, Use and Formulation Thereof	10,292,617		US	11/12/02	
Delayed Release Antifungal product, Use and Formulation Thereof	10/211,682	All delayed release	US	08/02/02	
Pulsatile Antifungal Combination					
Antifungal Composition	09/791,284	Pulsatile Antifungal Combination	US	02/23/01	<input type="checkbox"/>
Antifungal Composition	10/320,113	CIP of 09/791,284	US	12/16/02	
Antifungal Composition	US01/05856		PCT	2/23/01	
Pulsatile Oncology Agent Delivery					
Antineoplastic Product, Use and Formulation Thereof	09/687,235	Pulsatile Oncology Agent Delivery	US	10/13/00	<input type="checkbox"/>
Antineoplastic Product, Use and Formulation Thereof	09/791,905	3 Pulses	US	02/22/01	Abandoned 12/18/02
Delayed Release Antineoplastic Product, Use and Formulation Thereof	10/211,035	All delayed release	US	08/02/02	
Antineoplastic Product, Use and Formulation Thereof	10/274,931		US	10/21/02	
Pulsatile Parenteral Delivery					
Therapeutic Agent Delivery	09/788,965	Pulsatile Parenteral Delivery	US	02/20/01	<input type="checkbox"/>
Clarithromycin Extended Release Tablet Formulation					
Extended Release Erythromycin Derivatives	09/689,988	Clarithromycin Extended Release Tablet Formulation	US	10/13/00	<input type="checkbox"/>
Extended Release Erythromycin Derivatives	PCT/US01/32055		PCT	10/12/01	
Pulsatile Immunogenic for Improved Resistance					
Pulsatile Immunogenic for improved resistance			US	TBD	
Pulsatile Immunogenic and immunomodulator for improved resistance				TBD	

Exhibit "D" attached to that certain Intellectual Property Security Agreement dated March __, 2003.

EXHIBIT "D"

TRADEMARKS

<u>TRADEMARK DESCRIPTION</u>	<u>COUNTRY</u>	<u>SERIAL NO.</u>	<u>REG. NO.</u>	<u>STATUS</u>
ADVANCIS	U.S.	76/291,066, filed on July 27, 2001		Application Opposition Pending
ADVANCIS PHARMACEU TICAL CORP. (and the Sun Design)	U.S.	76/322,756, filed on October 9, 2001		Application was published for opposition on February 18, 2003
MAPS	U.S.	76/389,919, filed on March 29, 2002		Application was published for opposition on December 31, 2002
MULTIPULSE ABSORPTION PREDICTION SYSTEM	U.S.	76/389,918, filed on March 29, 2002		Application remains pending
PULSYS	U.S.	76/077,941, filed on August 7, 2001		Application was published for opposition on January 7, 2003. A request for an extension of time to file a Notice of Opposition has been filed by Baxter International Inc.
REDEFINING THE PARADIGM	Common law trademark			No application has been filed for this mark at

<u>TRADEMARK DESCRIPTION</u>	<u>COUNTRY</u>	<u>SERIAL NO.</u>	<u>REG. NO.</u>	<u>STATUS</u>
[IN INFECTIOUS DISEASES]				the U.S. Patent and Trademark Office
CLARAMOX	U.S.	76/484,147, filed on January 22, 2003		Application is awaiting examination by the USPTO

SCHEDULE 2

EXCLUDED PROPERTY

1. All Debtor property pledged in favor of General Electric Capital Corporation (assignee of Oxford Venture Finance, LLC) pursuant to that certain Master Loan and Security Agreement dated January 23, 2001, covering certain scheduled equipment and all additions and attachments thereto, and any licenses, trademarks, other tangible or intangible property ancillary to such scheduled equipment, and as to all products, proceeds, rents and profits from such scheduled equipment including insurance proceeds.

2. All Debtor property pledged in favor of General Electric Capital Corporation pursuant to that certain Master Security Agreement dated February 12, 2002 (covering certain scheduled equipment and all additions, attachments, accessories and accession thereto and all substitutions, replacements or exchange therefor and all insurance and/or other proceeds thereof).

3. All Debtor property pledged in favor of Allfirst Bank pursuant to that certain Revolving Credit Facility Loan Agreement dated March 15, 2002 (covering certain scheduled equipment and all interests of Debtor in the securities maintained with Allfirst Bank).

4. All Debtor property that may be pledged to Allfirst Bank pursuant to a loan facility that may be entered into between the Debtor and Allfirst Ban for up to \$5,500,000. It is anticipated that any such facility would be secured by the equipment to be purchased with the proceeds of the loan and a cash collateral deposit of \$500,000.

5. All Debtor property pledged in favor of Seneca Meadows Corporate Center II LLC, in the form of a Letter of Credit for the benefit of landlord, pursuant to that certain Lease Agreement dated August 1, 2002.

6. Debtor's leasehold interest arising from and created pursuant to that certain Lease Agreement with Seneca Meadows Corporate Center II, LLC dated August 1, 2002.

7. Debtor's leasehold interest arising from and created pursuant to that certain Lease Agreement with ARE-940 Clopper Road, LLC dated August 7, 2000.

8. Debtor's leasehold interest arising from and created pursuant to that certain Lease Agreement with Federal Realty Investment Trust dated March 1, 2003.

9. Debtor's leasehold interest arising from and created pursuant to that certain Sublease Agreement with ACS Government Services, Inc. dated November 7, 2001.

10. Debtor's leasehold interest in certain office equipment leased pursuant to those certain Office Equipment Lease Agreements with IOS Capital, Inc., dated January 1, 2001 and October 1, 2001, respectively.

11. All Debtor equipment that may be purchased in the future and pledged to a lender as collateral for the loans used to finance such equipment purchases.

SCHEDULE 5(d)

NOTICE OF INTELLECTUAL PROPERTY SECURITY AGREEMENT

NOTICE dated as of the 28 day of March, 2003, by ADVANCIS PHARMACEUTICAL CORPORATION, a Delaware corporation ("**Debtor**"), having an address at 656 Quince Orchard Road, Suite 220, Gaithersburg, Maryland 20878 to and in favor of HEALTHCARE VENTURES VI, L.P. on behalf of itself and the other Lenders as the Collateral Agent under that certain Note Issuance Agreement dated March 28, 2003, having offices at 44 Nassau Street, Princeton, New Jersey 08542 ("**Secured Party**") under certain Convertible Secured Promissory Notes of even date herewith issued by Debtor to the Lenders (the "**Notes**").

WHEREAS, Debtor is the owner of certain Intellectual Property Collateral as listed in Exhibits A, B, C and D hereto; and

WHEREAS, the Lenders have agreed to extend certain credit to Debtor under the Notes on condition that the Debtor pledge and grant to Secured Party as collateral for the obligations under the Notes a security interest and lien in and to such Intellectual Property Collateral and application therefor described above, including the registrations thereof, the goodwill associated therewith and all other related claims and rights as more fully described in that certain Intellectual Property Security Agreement dated March 28 2003 in favor of Secured Party (the "**IP**");

NOW THEREFORE, for good and valuable consideration, as security for the due and timely payment and performance of the obligations, Debtor hereby pledges and grants and collaterally assigns to Secured Party a security interest and lien in and to all rights, title and


interest in and to the aforesaid IP, and gives notice of such security interest and the existence of such Intellectual Property Security Agreement providing therefor.


[Signature page follows.]

Executed as of the date first above written.

ATTEST:

ADVANCIS PHARMACEUTICAL
CORPORATION

By: 
Name: STEVEN A. SHALLCROSS
Title: CFO

By: 
Name: EDWARD M. RUDNIK
Title: CEO

STATE/Commonwealth of MARYLAND :

: SS.

COUNTY OF MONTGOMERY :

Before me, the undersigned, a Notary Public in and for the state and county aforesaid, on this 28th day of March, 2003, personally appeared EDWARD BUDNIK to me known personally, and who, being first by me duly sworn, depose and say that he is the PRESIDENT & CEO of Advancis Pharmaceutical Corporation, a Delaware corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and that they acknowledged said instrument to be the free act and deed of said corporation.


Notary Public

My commission expires: 02/01/2007

(Notarial Seal)

S-2

GV: #245517 v2 (59FX021.DOC)

RECORDED: 05/27/2003

TRADEMARK
REEL: 002740 FRAME: 0407