

05-13-2004



102744114

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

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

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

1. Name of conveying party(ies):

5-11-04

Broncus Technologies, Inc.

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

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

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other _____
- Merger
- Change of Name

Execution Date: 4/8/04

2. Name and address of receiving party(ies)

Name: Venture Lending & Leasing III, Inc.

Internal

Address: _____

Street Address: 2010 North First Street

City: San Jose State: CA Zip: 95131

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State Maryland
- 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) 75/471,703;
78/114,972; 76/317,176; 75/779,186

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: Russell D. Pollock, Esq.

Internal Address: _____

Street Address: Greene Radovsky Maloney & Share LLP
Four Embarcadero Center, Suite 4000

City: San Francisco State: CA Zip: 94111

6. Total number of applications and registrations involved:

4

7. Total fee (37 CFR 3.41).....\$ 115.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Russell D. Pollock
Name of Person Signing

Russell D. Pollock
Signature

5/4/04

Date

Total number of pages including cover sheet, attachments, and document: 11

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

05/12/2004 MGETACHE 00000003 75471703

01 FC:8521
02 FC:8522

40.00 OP
75.00 OP

TRADEMARK
REEL: 002965 FRAME: 0911

INTELLECTUAL PROPERTY SECURITY AGREEMENT

This Intellectual Property Security Agreement (this "Agreement") is made as of April 8, 2004, by and between BRONCUS TECHNOLOGIES, INC., a California corporation ("Grantor"), and VENTURE LENDING & LEASING III, INC., a Maryland corporation ("Secured Party").

RECITALS

A. Pursuant to a Loan and Security Agreement, dated as of even date herewith (the "Loan Agreement") among Grantor, as borrower, and Secured Party, as lender, Secured Party has agreed to make certain advances of money and to extend certain financial accommodations to Grantor (the "Loans") in the amounts and manner set forth in the Loan Agreement. All capitalized terms used herein without definition shall have the meanings ascribed to them in the Loan Agreement.

B. Secured Party is willing to make the Loans to Grantor, but only upon the condition, among others, that Grantor shall grant to Secured Party a security interest in substantially all of Grantor's personal property whether presently existing or hereafter acquired. To that end, Grantor has executed in favor of Secured Party the Loan Agreement granting a security interest in all Collateral, and is executing this Agreement with respect to certain items of Intellectual Property, in particular.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Grant of Security Interest. As collateral security for the prompt and complete payment and performance of all of Grantor's present or future Obligations, Grantor hereby grants a security interest to Secured Party, as security, in and to Grantor's entire right, title and interest in, to and under the following Intellectual Property, now owned or hereafter acquired by Grantor or in which Grantor now holds or hereafter acquires any interest (all of which shall collectively be called the "Collateral" for purposes of this Agreement):

(a) Any and all copyrights, whether registered or unregistered, held pursuant to the laws of the United States, any State thereof or of any other country; all registrations, applications and recordings in the United States Copyright Office or in any similar office or agency of the United States, and State thereof or any other country; all continuations, renewals, or extensions thereof; and any registrations to be issued under any pending applications, including without limitation those set forth on Exhibit A attached hereto (collectively, the "Copyrights");

(b) All letters patent of, or rights corresponding thereto in, the United States or any other country, all registrations and recordings thereof, and all applications for letters patent of, or rights corresponding thereto in, the United States or any other country, including, without limitation, 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 thereof or any other country; all reissues, continuations, continuations-in-part or extensions thereof; all petty patents, divisionals, and patents of addition; and all patents to be issued under any such applications, including without limitation the patents and patent applications set forth on Exhibit B attached hereto (collectively, the "Patents");

(c) 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, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and any applications in connection therewith, including, without limitation, 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 thereof or any other country or any political subdivision thereof, and reissues, extensions or renewals thereof, and the entire goodwill of the business of Grantor connected with and symbolized by such trademarks, including without limitation those set forth on Exhibit C attached hereto (collectively, the "Trademarks");

(d) Any and all claims for damages by way of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

(e) All licenses or other rights to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use to the extent permitted by such license or rights other than that certain Cross License Agreement dated as of December 30, 2003 between Grantor and Asthmatx, Inc.;

(f) All amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents; and

(g) All proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

Notwithstanding the foregoing the term "Collateral" shall not include: (a) "intent-to-use" trademarks at all times prior to the first use thereof, whether by the actual use thereof in commerce, the recording of a statement of use with the United States Patent and Trademark Office or otherwise, but only to the extent the granting of a security interest in such "intent to use" trademarks would be contrary to applicable law or (b) any contract, license, instrument or chattel paper in which Grantor has any right, title or interest if and to the extent such contract, license, instrument or chattel paper includes a provision containing a restriction on assignment such that the creation of a security interest in the right, title or interest of Grantor therein would be prohibited and would, in and of itself, cause or result in a default thereunder enabling another person party to such contract, instrument or chattel paper to enforce any remedy with respect thereto; provided, however, that the foregoing exclusion shall not apply if (i) such prohibition has been waived or such other person has otherwise consented to the creation hereunder of a security interest in such contract, instrument or chattel paper, or (ii) such prohibition would be rendered ineffective pursuant to Sections 9-407(a) or 9-408(a) of the UCC, as applicable and as then in effect in any relevant jurisdiction, or any other applicable law (including the Bankruptcy Code) or principles of equity); provided further that immediately upon the ineffectiveness, lapse or termination of any such provision, the term "Collateral" shall include, and Grantor shall be deemed to have granted a security interest in, all its rights, title and interests in and to such contract, license, instrument or chattel paper as if such provision had never been in effect; and provided further that the foregoing exclusion shall in no way be construed so as to limit, impair or otherwise affect Secured Party's unconditional continuing security interest in and to all rights, title and interests of Grantor in or to any payment obligations or other rights to receive monies due or to become due under any such contract, instrument or chattel paper and in any such monies and other proceeds of such contract, instrument or chattel paper. The parties acknowledge and agree that the Collateral shall not include any asset or property that Grantor has assigned or transferred to Asthmatx, Inc. ("Asthmatx") prior to December 31, 2003 pursuant to that certain Corporate Formation Agreement dated effective as of December 26, 2003 between Grantor and Asthmatx (the "Formation Agreement") or any asset or future or contingent asset of Grantor (such as, without limitation insurance proceeds) to the extent that Asthmatx, Inc. ("Asthmatx") or its successors and assigns may have any rights with respect thereto pursuant to that certain Indemnification Agreement dated February 17, 2004 between Grantor and Asthmatx.

2. Covenants and Warranties. Grantor represents, warrants, covenants and agrees as follows:

(a) Grantor is now the sole owner of the Collateral, except for non-exclusive licenses granted by Grantor to its customers in the ordinary course of business and licenses or sublicenses granted by Grantor to Asthmatx pursuant to that certain Cross License Agreement dated effective as of December 30, 2003 between Grantor and Asthmatx (the "Cross License Agreement") and that certain Sublicense Agreement dated effective as of December 30, 2003 between Grantor and Asthmatx (the "Sublicense Agreement"), both as in effect as of December 31, 2003 and except as may be affirmatively indicated in the Schedule of Exceptions to Grantor's representations and warranties under the Loan Agreement;

(b) During the term of this Agreement, Grantor will not transfer or otherwise encumber any interest in the Collateral, except for non-exclusive licenses granted by Grantor in the ordinary course of business or

as set forth in this Agreement and except for any licenses or sublicenses granted (or to hereafter come into effect) pursuant to the Cross License Agreement or the Sublicense Agreement, both as in effect as of December 31, 2003;

(c) To its knowledge, each of the Patents is valid and enforceable, and no part of the Collateral has been judged invalid or unenforceable, in whole or in part, and, to Grantor's knowledge, no claim has been made that any part of the Collateral violates the rights of any third party;

(d) Grantor shall deliver to Secured Party within thirty (30) days of the last day of each fiscal quarter, a report signed by Grantor, in form reasonably acceptable to Secured Party, listing any applications or registrations that Grantor has made or filed in respect of any patents, copyrights or trademarks during such fiscal quarter and any material change in the status of any outstanding applications or registrations. Grantor shall promptly advise Secured Party of any material change in the composition of the Collateral, including but not limited to any subsequent ownership right of the Grantor in or to any Trademark, Patent or Copyright not specified in this Agreement;

(e) Grantor shall use reasonable commercial efforts to (i) protect, defend and maintain the validity and enforceability of the Trademarks, Patents and Copyrights (ii) detect infringements of the Trademarks, Patents and Copyrights and promptly advise Secured Party in writing of material infringements detected and (iii) not allow any material Trademarks, Patents or Copyrights to be abandoned, forfeited or dedicated to the public without the written consent of Secured Party, which consent shall not be unreasonably withheld;

(f) Grantor shall apply for registration (to the extent not already registered) with the United States Patent and Trademark Office or the United States Copyright Office, as applicable: (i) those intellectual property rights listed on Exhibits A, B and C hereto within thirty (30) days of the date of this Agreement; and (ii) those additional intellectual property rights developed or acquired by Grantor from time to time in connection with any product or service which are subject to a statutory registration scheme under U.S. law, prior to the sale or licensing of such product or the rendering of such service to any third party (including without limitation revisions or additions to the intellectual property rights listed on such Exhibits A, B and C), except with respect to such rights that Grantor determines in its sole but reasonable commercial judgment need not be registered to protect its own business interests or do not justify or merit the time, effort and/or expense associated with applying for such registration. Subject to the foregoing, Grantor shall, from time to time, execute and file such other instruments, and take such further actions as Secured Party may reasonably request from time to time to perfect or continue the perfection of Secured Party's interest in the Collateral. Grantor shall give Secured Party notice of all such applications or registrations; and

(g) Grantor shall not enter into any agreement that would materially impair or conflict with Grantor's obligations hereunder without Secured Party's prior written consent, which consent shall not be unreasonably withheld or delayed. Grantor 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 Grantor's rights and interests in any property included within the definition of the Collateral acquired under such contracts.

3. Further Assurances; Attorney in Fact.

(a) Subject to the provisions of Section 2(f), on a continuing basis, Grantor will 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 reasonably requested by Secured Party, to perfect Secured Party's security interest in all Copyrights, Patents and Trademarks and otherwise to carry out the intent and purposes of this Agreement, or for assuring and confirming to Secured Party the grant or perfection of a security interest in all Collateral.

(b) Grantor hereby irrevocably appoints Secured Party as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor, from time to time in Secured Party's

discretion, to take any action and to execute any instrument which Secured Party may reasonably deem necessary or advisable to accomplish the purposes of this Agreement, including (i) to modify, in its sole discretion, this Agreement without first obtaining Grantor's approval of or signature to such modification solely for the purpose of amending Exhibits A, B and C, hereof, as appropriate, to include reference to any right, title or interest in any Copyrights, Patents or Trademarks acquired by Grantor after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents or Trademarks in which Grantor no longer has or claims any right, title or interest, (ii) to file, in its reasonable discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of Grantor where permitted by law, and (iii) after the occurrence of an Event of Default, to transfer the Collateral into the name of Secured Party or a third party to the extent permitted under the UCC.

4. Events of Default. An Event of Default under the Loan Agreement shall constitute an Event of Default under this Agreement.

5. Termination. Upon the payment in full of the Obligations and satisfaction of all Grantor's obligations under the Loan Agreement and the other Loan Documents (except for any Warrants), and if Lender has no further obligations under its Commitment, the security interest granted hereby, the power of attorney granted by Grantor pursuant to Section 3(b) and all Grantor's other obligations under this Agreement shall terminate. Upon any such termination, the Lender shall, at Grantor's expense, execute and deliver to Grantor such documents as Grantor shall reasonably request to evidence such termination

6. Amendments. This Agreement may be amended only by a written instrument signed by both parties hereto, except for amendments permitted under Section 3 hereof to be made by Secured Party alone.

7. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.

[Signature Page Follows.]

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

GRANTOR:

Address of Grantor:

1400 North Shoreline Boulevard, Suite A8
Mountain View, CA 94043
Attn: Chief Financial Officer

BRONCUS TECHNOLOGIES, INC.

By: 

Name: CARY COLE

Its: PRESIDENT

SECURED PARTY:

Address of Secured Party:

2010 North First Street, Suite 310
San Jose, CA 95131
Attn: President

VENTURE LENDING & LEASING III, INC.

By: _____

Name: _____

Its: _____

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

GRANTOR:

Address of Grantor:

1400 North Shoreline Boulevard, Suite A8
Mountain View, CA 94043
Attn: Chief Financial Officer

BRONCUS TECHNOLOGIES, INC.

By: _____

Name: _____

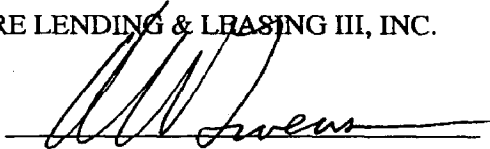
Its: _____

SECURED PARTY:

Address of Secured Party:

2010 North First Street, Suite 310
San Jose, CA 95131
Attn: President

VENTURE LENDING & LEASING III, INC.

By:  _____

Name: Ronald W. Swenson

Its: Chief Executive Officer

EXHIBIT A

Copyrights

Description

Registration Number

Registration Date

NONE

EXHIBIT B

[see the attached]

Country	Application Number	Application Date	Patent Number	Grant Date	Title
United States	08/887,206	07/02/97	5,957,919	9/28/99	BLEB REDUCER
Australia	8287198	07/02/98	7300113	6/7/01	BLEB REDUCER
Japan	11507425	07/02/98	998233		BLEB REDUCER
European Patent Convention	989331392	07/02/98			MINIMALLY INVASIVE LUNG VOLUME REDUCTION ASSEMBLY AND METHOD
1 United States	09/590,790	06/08/00		02/04/03	LUNG ELASTIC RECOIL RESTORING OR TISSUE COMPRESSING DEVICE AND METHOD
2 United States	09/680,645	10/06/00	6,514,290 B1	01/16/01	METHOD AND ASSEMBLY FOR LUNG VOLUME REDUCTION
3 United States	09/092,727	06/05/98	6,174,323 B1	07/29/03	METHOD AND ASSEMBLY FOR LUNG VOLUME REDUCTION
4 United States	09/576,786	05/23/00	6,599,311	02/17/04	METHODS AND DEVICES FOR CREATING COLLATERAL CHANNELS IN THE LUNGS
5 United States	09/633,651	08/07/00	6,692,494 B1		DEVICES FOR CREATING COLLATERAL CHANNELS IN THE LUNGS
6 United States	09/908,087	07/18/01		10/07/03	DEVICES FOR CREATING COLLATERAL CHANNELS IN THE LUNGS
7 United States	09/908,008	07/18/01	6,629,951		CONDUITS FOR MAINTAINING OPENINGS IN TISSUE
8 United States	09/908,177	07/18/01	11438664	02/04/04	CONDUITS FOR MAINTAINING OPENINGS IN TISSUE
European Patent Convention	9526492	08/07/00			METHODS AND DEVICES FOR CREATING COLLATERAL CHANNELS IN THE LUNGS
European Patent Convention	11137361	08/07/00			METHODS AND DEVICES FOR CREATING COLLATERAL CHANNELS IN THE LUNGS
Australia	6530800	08/07/00			METHODS AND DEVICES FOR CREATING COLLATERAL CHANNELS IN THE LUNGS
Canada	2393898	08/07/00			METHODS AND DEVICES FOR CREATING COLLATERAL CHANNELS IN THE LUNGS
Japan	2001514843	08/07/00			METHODS AND DEVICES FOR CREATING COLLATERAL CHANNELS IN THE LUNGS
Patent Cooperation Treaty	PCT/US03/12323	04/21/03			METHODS AND DEVICES FOR CREATING COLLATERAL CHANNELS IN THE LUNGS
Patent Cooperation Treaty	PCT/US03/15609	05/16/03			METHODS AND DEVICES FOR CREATING COLLATERAL CHANNELS IN THE LUNGS
9 United States	09/947,144	09/04/01			METHODS AND DEVICES FOR CREATING COLLATERAL CHANNELS IN THE LUNGS
Australia	2002248443	02/14/02			DEVICES AND METHODS FOR MAINTAINING OPENINGS IN TISSUE
10 United States	10/235,240	09/04/02			CONDUITS FOR MAINTAINING OPENINGS IN TISSUE
Patent Cooperation Treaty	PCT/US02/28237	09/04/02			DEVICES AND METHODS FOR MAINTAINING COLLATERAL CHANNELS IN TISSUE
11 United States	09/946,706	09/04/01			DEVICES FOR CREATING COLLATERAL CHANNELS
12 United States	10/080,344	02/21/02			CONDUITS HAVING DISTAL CAGE STRUCTURE FOR MAINTAINING COLLATERAL CHANNELS IN TI
13 United States	10/079,605	02/21/02			CONDUITS HAVING DISTAL CAGE STRUCTURE FOR MAINTAINING COLLATERAL CHANNELS IN TI
14 United States	10/280,851	10/25/02			DEVICES FOR CREATING COLLATERAL CHANNELS
Patent Cooperation Treaty	PCT/US03/04970	02/21/03			DEVICES FOR APPLYING ENERGY TO TISSUE
Patent Cooperation Treaty	PCT/US03/04971	02/21/03			DEVICES FOR APPLYING ENERGY TO TISSUE
15 United States	09/947,126	09/04/01			DEVICES FOR APPLYING ENERGY TO TISSUE
16 United States	10/615,491	07/07/03			DEVICES FOR APPLYING ENERGY TO TISSUE
17 United States	10/458,085	06/09/03			DEVICES FOR APPLYING ENERGY TO TISSUE
Patent Cooperation Treaty	PCT/US03/18182	06/09/03			DEVICES FOR APPLYING ENERGY TO TISSUE
18 United States	10/633,902	08/04/03			DEVICES FOR APPLYING ENERGY TO TISSUE
19 United States	60/488,332	07/18/03			EXTRAPLEURAL AIRWAY DEVICE AND METHOD
20 United States	10/628,971	07/28/03			METHODS AND DEVICES FOR MAINTAINING PATENCY OF SURGICALLY CREATED CHANNELS IN TI
21 United States	10/679,065	10/03/03			METHODS AND DEVICES FOR MAINTAINING PATENCY OF SURGICALLY CREATED CHANNELS IN TI
					METHODS FOR TREATING CHRONIC OBSTRUCTIVE PULMONARY DISEASE
					DEVICES FOR MAINTAINING PATENCY OF SURGICALLY CREATED CHANNELS IN TISSUE
					METHOD FOR LUNG VOLUME REDUCTION
					MINIMALLY INVASIVE LUNG VOLUME REDUCTION ASSEMBLY AND METHOD

EXHIBIT C

Trademarks

<u>Description</u>	<u>Registration/Application Number</u>	<u>Registration/Application Date</u>
BRONCUS	75-471703	4/21/1998
“B” logo	78-114972	3/14/2002
DXTX	76-317 176	9/25/2001
EXHALE	75-779186	8/18/1999