

09-21-2004

Form PTO-1594 (Rev. 06/04)
OMB Collection 0651-0027 (exp. 6/30/2005)



J.S. DEPARTMENT OF COMMERCE
States Patent and Trademark Office

REC
102840338

9-17-04

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies)/Execution Date(s):

DermaVive Skincare Co.

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

Citizenship (see guidelines) USA

Execution Date(s) 8/28/03

Additional names of conveying parties attached? Yes No

3. Nature of conveyance:

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

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? Yes No

Name: DermaVive Inc.

Internal Address: P.O. Box 2341

Street Address: _____

City: Lake Oswego

State: OR

Country: USA Zip: 97035

- Association
- General Partnership
- Limited Partnership
- Corporation
- Other

Citizenship _____
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)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

78267147

B. Trademark Registration No.(s)

Additional sheet(s) attached? Yes No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

DERMAVIVE

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

Name: DermaVive Inc.

Internal Address: do Marilyn Strube
P.O. Box 2341

Street Address: _____

City: Lake Oswego

State: OR Zip: 97035

Phone Number: 360-546-5891

Fax Number: 360-546-2727

Email Address: MarilynS@dermavive.com

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers 2282
Expiration Date 03/07

b. Deposit Account Number _____

Authorized User Name Marilyn E. Strube

9. Signature:

Marilyn Strube
Signature

9/13/04
Date

Marilyn Strube
Name of Person Signing

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

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

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TRADEMARK
REEL: 003051 FRAME: 0443

INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

This Intellectual Property Assignment Agreement ("Agreement") is entered into and effective this 28th day of August 2003, among Dermavive Skincare Co., a Washington corporation ("Dermavive Washington"), Dermavive, Inc., an Oregon corporation ("Dermavive Oregon"), and Marilyn E. Strube ("Strube").

RECITALS

A. Strube is the inventor of, and patent holder on, a topical skin treatment used to treat itching that arises from a wide variety of causes. Strube's invention is protected under U.S. Patent Number is 5,789,399 (the "Patent").

B. Strube and Dermavive Washington have been marketing products using her patented formulation under the common law trademark "Dermavive" (the "Trademark").

C. Strube and Dermavive Washington have developed certain technologies, marketing research, business plans and business contacts associated with the marketing of products using her patented formulation, which Strube and Dermavive Washington have treated as their trade secrets (the "Trade Secrets").

D. Strube and Dermavive Washington have developed certain graphic designs and text used in connection with the marketing of products using her patented formulation (the "Copyrights").

E. Subject to the terms and conditions below, Strube and Dermavive Washington each wish to assign all of their rights, title and interest in the Patent, Trademarks, Trade Secrets and Copyrights to Dermavive Oregon.

F. Under an agreement between Strube and Dermavive Washington, all compensation for the above assignment shall be paid to Strube, and such payment shall be considered legal consideration for the assignment by both assigning parties.

TERMS

In consideration of the terms, representations, warranties, covenants and conditions below, the parties agree as follows:

1. Assignment of Rights. Strube and Dermavive Washington each hereby irrevocably and fully convey and assign to Dermavive Oregon all of their respective right, title and interest in the Patent, the Trademark, the Trade Secrets and the Copyrights to Dermavive Oregon. This

assignment shall include all common law and statutory rights for additional development, the creation of derivative works, and for the pursuit of protection in foreign jurisdictions.

2. Right to Record Assignments. Strube and Dermavive Washington shall fully cooperate with Dermavive Oregon in every respect to execute and file whatever documents Dermavive Oregon reasonably requests to fully and properly complete the above assignments and make them of public record, including, without limitation, the filing of appropriate assignment documents with the United States Patent and Trademark Office.

3. Compensation for Assignments.

a. Royalty Amount. In full and complete compensation for the assignments made under this Agreement, Dermavive Oregon shall pay to Strube a royalty of three percent (3%) of the gross revenues received by Dermavive Oregon from the sale of any product utilizing the formulation under the Patent. For the purposes of this Agreement, the term "gross revenues" shall include all value received, whether in the form of cash, services, discounts, or other forms of compensation.

b. Payment of Royalties. Royalties shall be paid on a monthly basis within 10 days from the end of each calendar month. Royalty payments shall be accompanied by a royalty statement specifying the sales upon which the royalties were calculated.

c. Audit Rights. Upon 10 days prior written notice, Strube and Dermavive Washington (or their designated agents) shall have the right to audit, at their own expense, records of Dermavive Oregon that relate to the calculation of the royalties to be paid under paragraph 3.a above. In the event the royalties are found to be underpaid by an amount of five percent (5%) or more after any given audit, Dermavive Oregon shall immediately pay 200 percent of the deficiency amount to Strube and all shall pay all costs associated with the audit. All information reviewed by Strube or Dermavive Washington pursuant to the above audit rights shall be treated as strictly confidential, and shall not be used or disclosed to any third party except as necessary to enforce the rights arising under this Agreement.

d. Cap on Royalties. At such time as Strube has been paid royalties collectively totaling \$150,000, no further royalties shall be due or owing. In the event a lawsuit is filed which challenges the validity or scope of the Patent prior to Strube's having received the full \$150,000 royalty, Strube shall lose the right to be paid additional royalties after such suit is filed if she has received \$100,000 or more prior to such filing, but in no event shall be required to refund any royalties paid to her prior to the filing of such suit. Notwithstanding the above, if such a suit is filed, Strube may elect to personally defend the litigation on behalf of Dermavive Oregon, in which case she shall retain her right to receive the full \$150,000 royalty.

4. Warranties of Strube and Dermavive Washington. Strube and Dermavive Washington each warrant that they hold good and marketable title to the property being assigned

under this Agreement in the manner set forth above, free and clear of any restrictions to its transfer, and free and clear of liens, pledges, and encumbrances of any kind, and each agrees to indemnify, defend and hold Dermavive Oregon harmless against any claim, expense, loss, damage, or other liability, including, without limitation, attorneys' fees, arising out of or connected with any breach of this warranty.

5. Notices. Any notice, request, demand, or other communication to be provided under this Agreement shall be in writing, and shall be delivered to the parties at the addresses designated below, or at such other address as a party may later designate by written notice to the other parties. All notices shall be effective upon hand delivery or when placed in the United States mail, properly addressed, with postage prepaid as certified mail.

Marilyn Strube
16113 NE 29th Ave
Ridgefield, Washington 98642

Dermavive Skincare Co.
16113 NE 29th Ave
Ridgefield, Washington 98642

Dermavive, Inc.
4091 Colts Foot Lane
Lake Oswego, Oregon 97035

6. Notice of Default. No party shall be deemed in default until the party claiming the default has given written notice to the other party, and the claimed default has not been remedied within 30 days after notice is given.

7. Remedies Upon Breach. In the event that any payment due under this Agreement is not timely made or a party breaches or defaults upon any other covenant, warranty or term of this Agreement, the non-paying or defaulting party shall be in breach of this Agreement. Upon breach, the non-breaching party may declare the full unpaid balance of all amounts owed to it immediately due and payable, and may pursue any other legal or equitable remedy available under the laws of the state of Oregon.

8. Non-Waiver. The failure or delay of any party to require performance of, or to otherwise enforce, any condition or other provision of this Agreement shall not waive or otherwise limit that party's right to enforce, or pursue remedies for the breach of, any such provision or condition. Any waiver by any party of any particular condition or provision of this Agreement, including this non-waiver provision, shall not constitute a waiver or limitation on that party's right to enforce performance of, or pursue remedies for the breach of, any other condition or provision of this Agreement.

9. Successor Interests. This Agreement is binding upon and shall inure to the benefit of the heirs, successors, assigns, legatees, devisees, bankruptcy estates, administrators, personal representatives, and executors of each of the parties.

10. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Oregon without regard to, or application of, any conflict of law provisions.

11. Jurisdiction, Venue. The parties agree that any suit, action or arbitration proceeding arising out of or relating to this Agreement shall be brought in Multnomah County, Oregon, and the parties expressly consent to the personal jurisdiction over them of any state or federal court in Multnomah County, Oregon.

12. Arbitration. In the event a dispute arises between the parties relating to or arising out of this Agreement, the parties agree to submit such dispute to binding arbitration pursuant to ORS 36.300 through 36.365, as amended. The arbitrator shall be selected by mutual agreement or pursuant to ORS 36.320. The arbitrator's fees shall be shared equally by the parties during the course of the arbitration, but shall be recoverable as costs to the prevailing party. Unless otherwise agreed upon by the parties, pleading, procedure, discovery and evidentiary issues in the arbitration shall be governed by the Oregon Rules of Civil Procedure, the Uniform Trial Court Rules and the Oregon Rules of Evidence. The arbitrator will control the scheduling of all events and will resolve all disputes, including disputes regarding pretrial procedure and discovery.

13. Attorneys Fees. If any party to this Agreement breaches any term of this Agreement, then any other party shall be entitled to recover all expenses of whatever form or nature, costs and attorneys fees reasonably incurred to enforce the terms of the Agreement, whether or not suit is filed, including such costs or fees as may be awarded in arbitration or by a court at trial or on appeal. In addition, in the event either party to this Agreement becomes a debtor subject to the United States Bankruptcy Code, the non-debtor party shall be entitled to recover any expenses, costs and fees, including attorneys fees, incurred in connection with enforcing its rights against the debtor party, whether those rights arise under this contract or involve matters arising solely under the Bankruptcy Code.

14. Legal Representation. This Agreement was prepared by Delo & Bowers, LLP on behalf of Dermavive, Oregon. Strube and Dermavive Washington acknowledge that they are not represented by Delo & Bowers, LLP, and that Dermavive Oregon and Delo & Bowers, LLP have encouraged Strube and Dermavive Washington to obtain separate counsel to advise them of their rights and obligations under this Agreement.

15. Further Actions. The parties agree to execute such documents and take such other actions as may reasonably be requested by any party to carry out the purposes and provisions of this Agreement, and shall use their own best efforts to carry out the terms and conditions of the Agreement.

16. Severability. If any court of competent jurisdiction finds any term of this Agreement, or of any other document or instrument referred to or contemplated in this Agreement, to be invalid or unenforceable, such determination shall not affect the validity and enforceability of the remainder of the Agreement, and the court shall reform such provision to the least and narrowest extent necessary to render it legal and valid, and shall then enforce such reformed provision.

17. Paragraph Headings. All paragraph headings in this Agreement appear for convenience of reference, and shall not affect the meaning or interpretation of the Agreement.

18. Amendments. This Agreement may be amended or modified only by a written instrument executed by the parties which expressly states the intent of the parties to modify or amend this Agreement.

19. Entire Agreement. This Agreement constitutes the entire agreement between the parties pertaining to the subject matter of the Agreement, and supersedes all prior discussions, negotiations, understandings, representations, and agreements, whether oral or written. All terms of this Agreement are contractual and not mere recitals.

20. Facsimile Execution. Execution of this Agreement may be evidenced by transmission of a facsimile copy of an original signature, and delivery of this Agreement so executed shall be binding upon the signing party to the same extent as if the original executed Agreement had been delivered.

IN WITNESS, the parties have executed this Agreement on the dates set forth by their signatures.

DERMAVIVE SKINCARE CO.

By Marilyn Strube 8/28/03
Marilyn Strube, President

DERMAVIVE, INC.

By Marilyn Strube 8/28/03
Marilyn Strube, President

Marilyn Strube 8/28/03
Marilyn Strube, personally