

TRADEMARK ASSIGNMENT

Electronic Version v1.1  
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	SECURITY INTEREST

CONVEYING PARTY DATA

Name	Formerly	Execution Date	Entity Type
HAWTHORN PHARMACEUTICALS, INC.		12/31/2012	CORPORATION: MISSISSIPPI

RECEIVING PARTY DATA

Name:	MIDCAP FUNDING V, LLC, AS ADMINISTRATIVE AGENT
Street Address:	7255 Woodmont Ave., Suite 200
Internal Address:	Attn: Pemix Account Manager
City:	Bethesda
State/Country:	MARYLAND
Postal Code:	20814
Entity Type:	CORPORATION: DELAWARE

PROPERTY NUMBERS Total: 14

Property Type	Number	Word Mark
Registration Number:	4059980	ARBINOXA
Registration Number:	2850562	DYTAN
Registration Number:	3749059	ELIPHOS
Registration Number:	3749753	HYLIRA
Registration Number:	2850561	ICAR
Registration Number:	3749061	VERIPRED
Registration Number:	2842771	XIRATUSS
Registration Number:	3751655	ZAMICET
Registration Number:	4105641	ZUTRIPRO
Serial Number:	85615837	VITUZ
Serial Number:	85384426	REZIRA
Serial Number:	77763422	HAWTHORN PHARMACEUTICALS, INC.
Serial Number:	85615823	TUZENDA

CH \$365.00 4059980

Serial Number:

85374196

XIREZ

**CORRESPONDENCE DATA**

Fax Number: 2134432926

*Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.*

Phone: 213-617-5493

Email: jcravitz@sheppardmullin.com

Correspondent Name: Sheppard, Mullin, Richter & Hampton LLP

Address Line 1: 333 S. Hope St., 48th Floor

Address Line 2: Attn: J. Cravitz

Address Line 4: Los Angeles, CALIFORNIA 90071

ATTORNEY DOCKET NUMBER:

33KJ-174645

NAME OF SUBMITTER:

Julie Cravitz

Signature:

/julie cravitz/

Date:

01/03/2013

**Total Attachments: 13**

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## TRADEMARK SECURITY AGREEMENT

**THIS TRADEMARK SECURITY AGREEMENT** (the "Agreement") made as of this 31st day of December, 2012, by each of the undersigned (individually and collectively, "Grantor"), in favor of MIDCAP FUNDING V, LLC, a Delaware limited liability company, in its capacity as Administrative Agent for the Lenders party to the Credit Agreement (defined below) (together with its successors and assigns, "Grantee"):

### W I T N E S S E T H:

**WHEREAS**, the undersigned, the lenders from time to time party thereto (the "Lenders"), Grantee and the other parties thereto that are parties to that certain Credit and Guaranty Agreement of even date herewith (as the same may be amended, restated, supplemented, or otherwise modified from time to time, the "Credit Agreement"), providing for extension of credit to be made to Grantor by Lenders; and

**WHEREAS**, pursuant to the terms of the Credit Agreement and certain other Security Documents now and/or hereafter executed by Grantor in favor of Grantee, Grantor has granted to Grantee, for the benefit of Lenders, a security interest in substantially all of the assets of Grantor including all right, title and interest of Grantor in, to and under all now owned and hereafter acquired: (i) all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos and other source or business identifiers, and the goodwill associated therewith, now existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith (other than "intent to use" applications until a verified statement of use is filed with respect to such applications), whether 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, or otherwise and (ii) all renewals thereof ((i) and (ii), collectively, "Trademarks"), (iii) any agreement, written or oral, providing for the grant by or to a Grantor of any right to use any Trademark (collectively, the "Trademark Licenses"), (iv) the goodwill of the business symbolized by Grantor's Trademarks, and (v) all products and proceeds thereof, to secure the payment of all amounts owing by Grantor and the other Borrowers under the Credit Agreement;

**NOW, THEREFORE**, in consideration of the premises set forth herein and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Grantor agrees as follows:

1. Incorporation of Credit Agreement and Security Documents. The Credit Agreement and the Security Documents and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto. All terms capitalized but not otherwise defined herein shall have the same meanings herein as in the Credit Agreement.

2. Grant and Reaffirmation of Grant of Security Interests. To secure the payment and performance of the Obligations, and without limiting any other grant of any security interest or lien in any assets of Grantor provided for or created under any other Security Document, Grantor hereby grants to Grantee, for its benefit and the benefit of Lenders, and hereby reaffirms its prior grant pursuant to the Credit Agreement and the other Security Documents of, a

continuing security interest in Grantor's entire right, title and interest in and to the following (all of the following items or types of property being herein collectively referred to as the "Trademark Collateral"), whether now owned or existing and hereafter created, acquired or arising:

(i) each Trademark License and Trademark listed on Schedule 1 annexed hereto, together with any reissues, continuations or extensions thereof, and all of the goodwill of the business connected with the use of, and symbolized by, each Trademark; and

(ii) all products and proceeds of the forgoing, including without limitation, any claim by Grantor against third parties for past, present or future (a) infringement or dilution of any Trademark, or (b) injury to the goodwill associated with any Trademark.

3. Agreement to Deliver Supplements. Grantor hereby covenants and agrees that, in connection with the delivery by Grantor of the Compliance Certificate required to be delivered by Grantor under Section 4.1 of the Credit Agreement in connection with the financial statements of Grantor and its affiliates, Grantor shall (i) provide Grantee a listing of any new Trademark or Trademark License (including any new trademark application and any new trademark registered with respect to any trademark application previously listed on Schedule 1 hereto or on Schedule A to any other supplement delivered to Grantee in accordance with this paragraph, "New Trademarks") acquired during the fiscal quarter corresponding to such financial statement and (ii) deliver to Grantee a duly executed supplement to this Agreement in the form of Exhibit A hereto, listing all such New Trademarks on Schedule A thereto, pursuant to which Grantor shall grant and reconfirm the grant of a security interest in such New Trademarks and the proceeds thereof to Grantee to secure the Obligations, which such supplement may be and is intended by the parties to be filed with the United States Patent and Trademark Office.

4. Representations and Warranties. Grantor hereby represents and warrants to Grantee and to the Lenders that Schedule 1 sets forth a full, complete and correct list of all issued Trademarks and pending trademark applications, owned by Grantor as of the date hereof.

5. Events of Default and Remedies. Upon the occurrence of and during the continuance of any Event of Default, Grantee, in addition to all other rights, options, and remedies granted to Grantee under the Credit Agreement or any other Security Document, or otherwise available to Grantee at law or in equity, may exercise, either directly or through one or more assignees or designees, with respect to the Trademark Collateral all rights and remedies granted to it as a secured creditor under the Uniform Commercial Code as in effect in the State of Maryland from time to time.


6. Governing Law. THIS AGREEMENT AND ALL MATTERS RELATING HERETO OR ARISING HEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MARYLAND, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

*(Signature Pages Follow)*

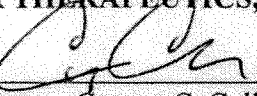
**IN WITNESS WHEREOF**, intending to be legally bound, Grantor has duly executed this Trademark Security Agreement as of the day and year first hereinabove set forth.

**GRANTORS:**


**PERNIX THERAPEUTICS HOLDINGS, INC.**

By:   
Name: Cooper C. Collins  
Title: President and Chief Executive Officer

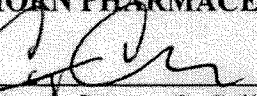
**PERNIX THERAPEUTICS, LLC**

By:   
Name: Cooper C. Collins  
Title: President and Chief Executive Officer,  
Pernix Therapeutics Holdings, Inc.,  
Sole Member and Sole Manager of Pernix Therapeutics, LLC

**CYPRESS PHARMACEUTICALS, INC.**

By:   
Name: Cooper C. Collins  
Title: President and Chief Executive Officer

**HAWTHORN PHARMACEUTICALS, INC.**

By:   
Name: Cooper C. Collins  
Title: President and Chief Executive Officer

Agreed and Accepted  
As of the Date First Written Above

**GRANTEE:**

MIDCAP FUNDING V, LLC,  
a Delaware limited liability company, as  
Administrative Agent and Grantee

By: Michael Min  
Name: Michael Min  
Title: Director

**Schedule 1**

**A. Cypress Pharmaceuticals, Inc.**

**Trademarks**

Trademark/Service Mark	Registration Number	Registration Date	Goods/Services
Cypress Pharmaceutical, Inc. & design	2101153	09/30/1997	Pharmaceutical preparations for the treatment of pain, histamine production, congestion, cough, urinary tract disorders, respiratory ailments, psychotic conditions, hemorrhoids, gastrointestinal disorders, spasms, pinworms, urinary incontinence, and nausea

**B. Hawthorn Pharmaceuticals, Inc.**

**Trademark Applications**

Trademark/Service Mark	Serial Number	Filing Date	Goods/Services
Vituz	85615837	05/03/2012	Pharmaceutical preparations for the treatment of cough and upper respiratory symptoms associated with allergy or common cold
Tuzenda	85615823	05/03/2012 <i>Abandoned</i> 08/12/2012	Pharmaceutical preparations for the treatment of cough and upper respiratory symptoms associated with allergy or common cold
Rezira	85384426	07/29/2011	Cough treatment preparations; Preparations for treating colds
Xirez	85374196	07/18/2011 <i>Abandoned</i> 06/07/2012	Pharmaceutical preparations for the relief of cough and congestion in the common cold
Hawthorn Pharmaceuticals, Inc. (and Design)	77-763422	06/18/2009 <i>Abandoned</i> 09/30/2012	Pharmaceutical preparations for the treatment of pediatric conditions, renal conditions, and the relief of pain.

**Trademarks**

Trademark/Service Mark	Registration Number	Registration Date	Goods/Services
Arbinoxa	4059980	11/22/2011	Allergy medications
Zutripro	4105641	02/28/2012	Cough treatment preparations; Preparations for treating colds
Hylira	3749753	02/16/2010	Pharmaceutical preparations for the treatment of xerosis
Veripred	3749061	02/16/2010	Steroids
Zamicet	3751655	02/23/2010	Analgesics
Eliphos	3749059	02/16/2010	Pharmaceutical preparations for the treatment of hyperphosphatemia in end stage renal failure
DYTAN	2850562	06/08/2004	Antihistaminic for amelioration of allergic reactions
ICAR	2850561	06/08/2004	Vitamin and mineral supplements
Xiratuss	2842771	05/18/2004	Pharmaceutical preparation for the symptomatic relief of the cough and nasal congestion associated with the common cold

C. Pernix Therapeutics, LLC



**Trademark Applications**


Trademark/Service Mark	Serial Number	Filing Date	Goods/Services
Allanhist PDX	85347049	06/15/2011	Pharmaceutical preparations for the treatment of coughing; Pharmaceutical preparations for treating allergic rhinitis and asthma; Pharmaceutical products for treating respiratory diseases; Drug delivery agents consisting of compounds that facilitate delivery of a wide range of pharmaceuticals; Medicinal preparations for the mouth to be applied in the form of drops, capsules, tablets and compressed tablets; Pharmaceutical preparations, namely, drug delivery agents consisting of compounds that facilitate the delivery of a continuous release of a wide variety of therapeutic agents
Pediahist	85347018	06/15/2011	Pharmaceutical preparations for the treatment of coughing; Drug delivery agents consisting of compounds that facilitate delivery of a wide range of pharmaceuticals; Medicinal preparations for the mouth to be applied in the form of drops, capsules, tablets and compressed tablets; Pharmaceutical preparations for treating allergic rhinitis and asthma; Pharmaceutical preparations, namely, drug delivery agents consisting of compounds that facilitate the delivery of a continuous release of a wide variety of therapeutic agents; Pharmaceutical products for treating respiratory diseases and asthma
Z-Pro	77541481	08/07/2008 <i>Abandoned</i> 04/30/2012	Pharmaceutical preparations in the nature of a pediatric antihistamine; Pharmaceutical preparations for coughing; Cough medicine
Infatuss	85292460	04/12/2011	Pharmaceutical preparations for the treatment of coughing; Cough medicines
Infahist	85292466	04/12/2011	Pharmaceutical preparations in the nature of antihistamines
Encinta	85097598	07/31/2010	Vitamins; Pharmaceutical preparations for allergy relief; Pharmaceutical preparations for treatment of nausea
Nazyne	77542160	08/08/2008 <i>Abandoned</i> 08/06/2012	Pharmaceutical preparations in the nature of a pediatric antihistamine; Pharmaceutical preparations for coughing; Cough medicine
Infahist	77-247036	08/03/2007 <i>Abandoned</i> 05/16/2011	Pharmaceutical preparations in the nature of antihistamines
Infatuss	77-247057	08/03/2007 <i>Abandoned</i> 05/16/2011	Pharmaceutical preparations for the treatment of coughing. Cough medicines
Allres	77-269717	08/31/2007	Pharmaceutical preparations, namely, prescription cough and cold medication
Infapred	85-637869	05/29/2012	Liquid steroid-containing drug preparation for oral use, namely, pharmaceutical preparation for the treatment of respiratory inflammation
Painergy	85-744457	10/03/2012	Pharmaceutical preparation for providing energy and pain relief



Trademark/Service Mark	Serial Number	Filing Date	Goods/Services
Epi-Twin	85-277378	03/25/2011 <i>Abandoned</i> 12/22/2011	Injectable pharmaceuticals for the treatment of allergies

### Trademarks

Trademark/Service Mark	Registration Number	Registration Date	Goods/Services
	4076351	12/27/2011	Full line of medical, pharmaceutical, and therapeutic preparations for use in connection with humans
Pernix	3897832	12/28/2010	Full line of medical, pharmaceutical, and therapeutic preparations for use in connection with humans
Cardec	3986999	06/28/2011	Cough syrups
Pediatex	2684051	02/04/2003	Pharmaceutical preparations in the nature of a pediatric antihistamine
Cedax	1610363	08/21/1990	Antibiotic preparation
	2764357	09/16/2003	Pharmaceutical preparation for the treatment of allergies, seasonal and perennial rhinorrhea, itchy watery eyes, nose and throat, and hay fever
Brovex	3347390	12/04/2007	Pharmaceutical preparation for the treatment of allergies, seasonal and perennial rhinorrhea, itchy watery eyes, nose and throat, and hay fever
Aldex	2748943	08/05/2003	Allergy and cold relief medication for adults and children
Zema-Pak	3794748	05/25/2010	Pharmaceutical preparations and products for treatment of poison ivy, poison oak, eczema, and skin rashes; Pharmaceutical products, drugs, and medicines for treatment of skin rashes
Rezyst	3703028	10/27/2009	Pharmaceutical preparations, drugs, medicines, and medical foods for treatment of respiratory diseases and disorders; pharmaceutical preparations, drugs, medicines, and medical foods for respiratory relief; antibiotics; antibiotic pharmaceuticals, drugs, medicines and medical foods; pharmaceutical preparations, drugs, medicines, and medical foods for providing antibiotic aid
Quinzyme	3703027	10/27/2009	Pharmaceutical preparations, drugs, medicines, and medical foods for treatment of respiratory diseases and disorders; pharmaceutical preparations, drugs, medicines, and medical foods for respiratory relief; cardiovascular pharmaceuticals, drugs, medicines and medical foods; pharmaceutical preparations, drugs, medicines, and medical foods for treatment of cardiovascular related disorders and diseases
Coco-Cof	3854065	09/28/2010	Pharmaceutical products for treating respiratory diseases and asthma; and nutritional supplements for respiratory relief
Nodolor	3962007	05/17/2011	Pharmaceutical preparation used as an antihistamine; pharmaceutical preparation for pain relief; pharmaceutical preparation for treating upper respiratory diseases and asthma
Z-Cof	2738086	07/15/2003	Cough medicine
TCT	2995512	09/13/2005	Pharmaceutical preparations for human and veterinary use, namely

Trademark/Service Mark	Registration Number	Registration Date	Goods/Services
			decongestants, cough suppressants, antitussives, pharmaceutical preparations for neuroleptic purposes; pharmaceutical preparations for sleeping purposes; nutraceuticals for use as a dietary supplement
TCT TANNATE CONVERSION TECHNOLOGY	3085781	04/25/2006	Pharmaceutical preparations for human and veterinary use, namely decongestants, cough suppressants, antitussives
	3133887	08/22/2006	Full line of pharmaceuticals
Tussinac	4129092 [Ser. No. 77805126]	04/17/2012	Prescription medical food products for treating respiratory diseases and asthma comprising n-acetylcysteine as an active ingredient; nutritional supplements for respiratory relief comprising n-acetylcysteine as an active ingredient

**D. Pernix Therapeutics Holdings, Inc.**

**Trademarks**

Trademark	Serial No. Filing Date	Filing Date	Registration No. Registration Date	Registration Date
DR. COCOA'S	85-700789	08/10/2012	None	None.
DR. COCOA'S	85-700783	08/10/2012	None	None.
FIGHT THE COUGH NOT THE KID	85-772252	11/06/2012	None	None.

## EXHIBIT A

### SUPPLEMENT TO TRADEMARK SECURITY AGREEMENT

THIS SUPPLEMENT TO TRADEMARK SECURITY AGREEMENT (the "Supplement") made as of this \_\_\_ day of \_\_\_\_\_, 201\_\_ by \_\_\_\_\_ (the "Grantor"), in favor of MIDCAP FUNDING V, LLC, a Delaware limited liability company, in its capacity as Administrative Agent for the Lenders party to the Credit Agreement (as defined in the Trademark Agreement) (together with its successors and assigns, "Grantee");

#### WITNESSETH:

**WHEREAS**, Grantor, Grantee, certain guarantors and certain financial institutions are parties to that certain Credit and Guaranty Agreement dated as of December 31, 2012 (as the same heretofore may have been and hereafter may be amended, restated, supplemented or otherwise modified from time to time, the "Credit Agreement");

**WHEREAS**, Grantor and Grantee are parties to a certain Trademark Security Agreement dated as of December 31, 2012 (as the same heretofore may have been and hereafter may be amended, restated, supplemented or otherwise modified from time to time, the "Trademark Agreement"); capitalized terms used herein but not otherwise defined shall have the meanings given thereto in the Trademark Agreement);

**WHEREAS**, pursuant to the terms of the Trademark Agreement, Grantor has granted to Grantee to secure the Obligations a security interest in and to all of Grantor's now existing and hereafter New Trademarks and all proceeds thereof; and

**WHEREAS**, also pursuant to the Trademark Agreement, Grantor has agreed that in connection with the acquisition by Grantor of any New Trademarks, Grantor shall deliver to Grantee a Supplement to the Trademark Agreement in the form of Exhibit A to such Trademark Agreement pursuant to which Grantor shall grant and reconfirm the grant by them of a security interest in all such New Trademarks and the proceeds thereof, which such Supplement may be and is intended by the parties to be filed with the United States Trademark Office.

**NOW, THEREFORE**, in consideration of the premises set forth herein and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, and with the foregoing background and recitals incorporated by reference, Grantor agrees as follows:

1. Grant and Reaffirmation of Grant of Security Interests. To secure the payment and performance of the Obligations, and without limiting any other grant of any security interest or lien in any assets of Grantor provided for or created under the Credit Agreement or any other Security Document, Grantor hereby grants to Grantee, for its benefit and the benefit of the Lenders, and hereby reaffirms its prior grant pursuant to the Credit Agreement and the other Security Documents, specifically including the Trademark Agreement of, a continuing security interest in Grantor's entire right, title and interest in and to the New Trademarks listed on Schedule A to this Supplement, including any reissues, continuations or extensions thereof, and all of the goodwill of the business connected with the use of, and symbolized by, each Trademark, and all products and proceeds of the forgoing, including without limitation, any

claim by Grantor against third parties for past, present or future (a) infringement or dilution of any Trademark, or (b) injury to the goodwill associated with any Trademark, and agrees that all such New Trademarks and the proceeds thereof shall be included in and be part of the Trademark Collateral and otherwise subject to all of the terms and provisions of the Trademark Agreement.

2. Representations and Warranties. Grantor hereby represents and warrants to Grantee and to the Lenders that Schedule A sets forth a full, complete and correct list of all issued New Trademarks and pending applications for Trademarks owned by Grantor as of the date hereof that were not (i) listed on the Schedule 1 delivered in connection with the original Trademark Agreement or (ii) listed on the Schedule A delivered in connection with any Supplement to the Trademark Agreement delivered by Grantor to Grantee prior to the date hereof.

3. Incorporation of the Trademark Agreement. The terms and provisions of the Trademark Agreement are hereby incorporated by reference and this Supplement shall be considered an amendment and supplement to and part of the Trademark Agreement, all of the provisions of which Trademark Agreement are and remain in full force and effect. Any reference after the date hereof in any Financing Document to the Trademark Agreement shall be a reference to the Trademark Agreement as amended and supplemented by this Supplement.

4. Governing Law. THIS SUPPLEMENT AND ALL MATTERS RELATING HERETO OR ARISING HEREFROM (WHETHER SOUNDING IN CONTRACT LAW, TORT LAW OR OTHERWISE), SHALL BE GOVERNED BY, AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF MARYLAND, WITHOUT REGARD TO CONFLICTS OF LAWS PRINCIPLES.

*[Signatures on Following Page]*

**IN WITNESS WHEREOF**, intending to be legally bound, the undersigned have duly executed this Supplement to the Trademark Security Agreement as of the day and year first hereinabove set forth.

**GRANTOR:**

[ \_\_\_\_\_ ]

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Agreed and Accepted

As of the Date First Written Above

**GRANTEE:**

MIDCAP FUNDING V, LLC, a Delaware  
limited liability company, as Administrative  
Agent

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SCHEDULE A TO SUPPLEMENT TO TRADEMARK SECURITY AGREEMENT  
DATED \_\_\_\_\_**

**Trademark Applications**

Trademark/Service Mark	Serial Number	Filing Date	Goods/Services

**Trademarks**

Trademark/Service Mark	Registration Number	Registration Date	Goods/Services