TERMINAL DISCLAIMER TO OBLVATE A DOUBLE PATENTING REJECTION OVER A "PRIOR" PATENT

Docket Number (Optional)
60251CON2(47992)

In re Application of: Nancy Smyth-Templeton et al.

Application No.: 10/825,803-Conf. #8697

Filed: April 15, 2004

For: NOVEL LIPOSOME COMPLEXES FOR INCREASED SYSTEMIC DELIVERY

The owner of National Institutes of Health, of 100 percent interest in the instant application hereby disclaims, except as provided below, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of prior patents Nos. 6,413,544 and 6,770,291 as the terms of said prior patents are defined in 35 U.S.C. 154 and 173, and as the terms of said prior patents are presently shortened by any terminal disclaimer. The owner hereby agrees that any patent so granted on the instant application shall be enforceable only for and during such period that it and the prior patents are commonly owned. This agreement runs with any patent granted on the instant application and is binding upon the grantee, its successors or assigns.

In making the above disclaimer, the owner does not disclaim the terminal part of the term of any patent granted on the instant application that would extend to the expiration date of the full statutory term as defined in 35 U.S.C. 154 and 173 of the prior patents, "as the terms of said prior patents are presently shortened by any terminal disclaimer," in the event that said prior patents later:
- expire for failure to pay a maintenance fee;
- are held unenforceable;
- are found invalid by a court of competent jurisdiction;
- are statutorily disclaimed in whole or terminally disclaimed under 37 CFR 1.321;
- have all claims canceled by a reexamination certificate;
- are reissued; or
- are in any manner terminated prior to the expiration of their full statutory terms as presently shortened by any terminal disclaimer.

Check either box 1 or 2 below, if appropriate.

1. For submissions on behalf of a business/organization (e.g., corporation, partnership, university, government agency, etc.), the undersigned is empowered to act on behalf of the business/organization.

2. X The undersigned is an attorney or agent of record. Reg. No. 34,558

Signature
Gregory B. Butler, Ph.D., Esq.
Typed or printed name
February 14, 2005
Date

617-439-4444
Telephone Number

Terminal disclaimer fee under 37 CFR 1.20(d) is included.

I hereby certify that this correspondence is being deposited with the U.S. Postal Service as Express Mail, Airbill No. EV51793158US, in an envelope addressed to: MS Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1490, on the date shown below.

Dated: February 14, 2005
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(Handwritten Signature: Judy Daley)