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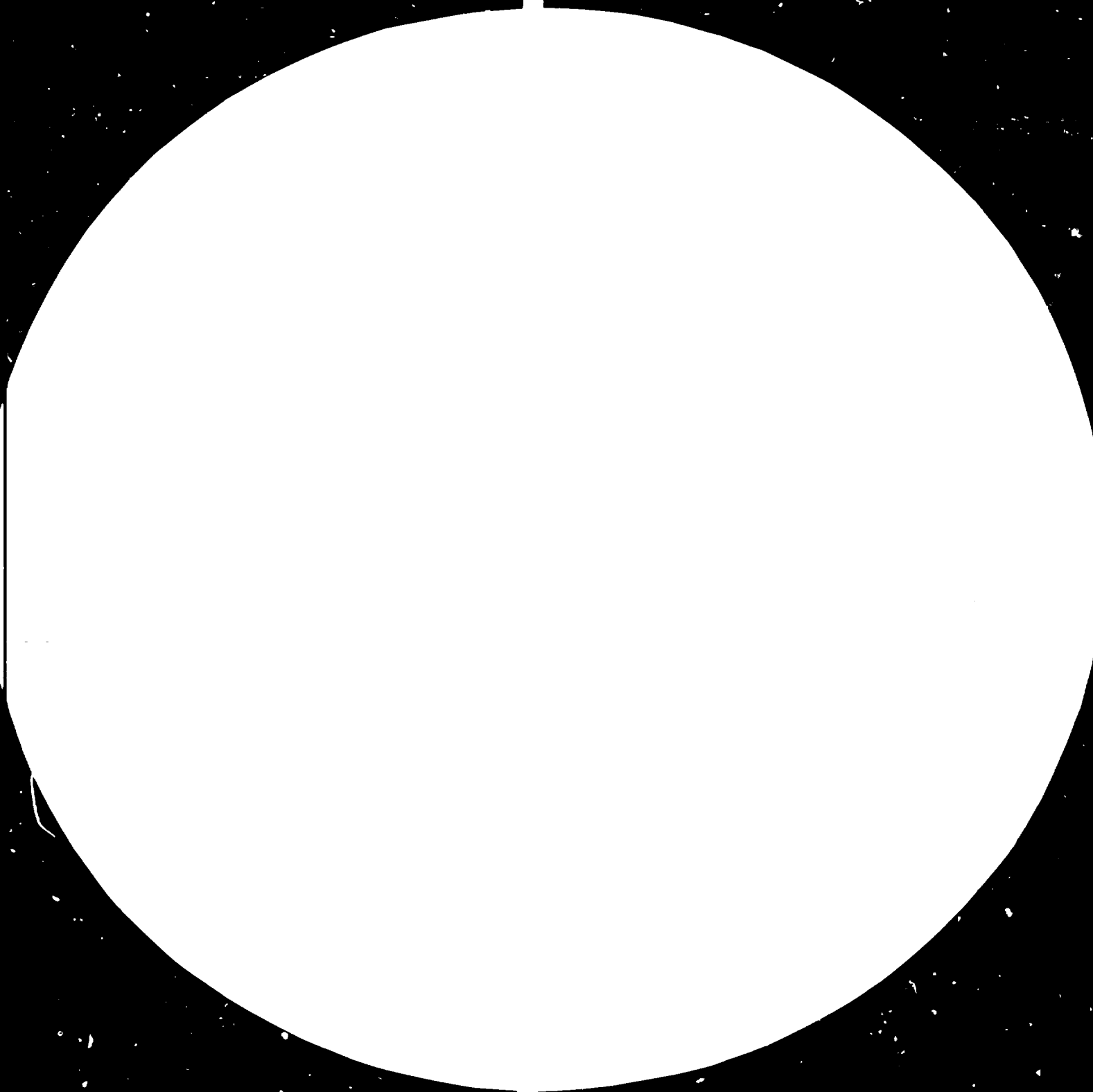
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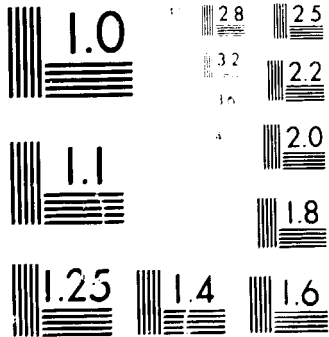
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LICENCING AGREEMENT

ON

AIR COMPRESSORS\*

A CASE STUDY  
by  
Young-Hun Kim\*\*

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- \* This document has been reproduced without formal editing  
\*\* Deputy Director, Technology Transfer Center, KIST, Seoul Korea

V.81-21665

AGREEMENT

Made by and between COMPANY A having its principal office at \_\_\_\_\_, Country A (hereinafter referred to as LICENSOR), and COMPANY B having a principal office at \_\_\_\_\_, Country B (hereinafter referred to as LICENSEE).

WHEREAS, LICENSOR is the owner of certain Proprietary Data relating to the design, manufacture, sale and operation of Licensed Products; and

WHEREAS, LICENSEE desires to obtain design and engineering assistance from LICENSOR in connection with the design, manufacture, sale and operation of the Licensed Products and to use the Proprietary Data in connection therewith;

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound thereby, the parties hereto agree as follows:

ARTICLE 1 - DEFINITIONS

- 1.1 "Licensed Territory" shall be Country B.
- 1.2 "Licensed Products" shall be the following:
  - (a) All sizes of reciprocating air compressors which are being manufactured by LICENSOR as of the Effective Date of the Agreement and which are identified by any of the following LICENSOR's designations: Model WG 9, WN 112, WN 114 and all the variations of these models such as oil free, low pressure, high pressure, and packaged units.
  - (b) All products designed by or for LICENSEE and which use or are based upon the Proprietary Data or Specific Proprietary Data.

- 1.3 "Proprietary Data" shall include, but shall not be limited to those designs, shop drawings, specifications, test data and procedures, technical and engineering information, charts, graphs, operation sheets, bills of materials, patent specifications and the like relating to the Licensed Activities which are presently owned or controlled by LICENSOR and/or are acquired by LICENSOR through its own efforts during the term of this Agreement.
- 1.4 "Specific Proprietary Data" shall include the data furnished to LICENSEE in accordance with the provisions of Article 3.6 hereof of a nature which LICENSOR would not normally be obligated to furnish under this Agreement, for example: information relating to a specific use, design or manufacture of the Licensed Products which involves generation of data by LICENSOR, other than the Proprietary Data specified in Article 1.3.
- 1.5 "Net Selling Price" shall be the gross selling price less the following amounts:
  - (a) Prices of parts or half-finished products purchased from LICENSOR and delivered to LICENSEE's plant
  - (b) Sales commission
  - (c) Trade and quantity discount
  - (d) Packaging and freight charges
  - (e) Indirect taxes
- 1.6 "Effective Date" or "Effective Date of this Agreement" shall be the date upon which this Agreement is finally approved by the Government of Country B in accordance with the provisions of Article 10.1 hereof.
- 1.7 "Term" or "Term of this Agreement" shall be for a period of seven (7) years from the Effective Date hereof.

ARTICLE 2 - LICENSES GRANTED

- 2.1 LICENSOR hereby grants to LICENSEE, and LICENSEE hereby accepts upon the terms and conditions herein, the exclusive right to use the Proprietary Data in connection with the manufacture of the LICENSED Products in the Licensed Territory and non-exclusive right to use the Proprietary Data in connection with the use and selling of the Licensed Product in the Licensed Territory.
- 2.2 LICENSOR hereby grants to LICENSEE, and LICENSEE hereby accepts, upon the terms and conditions herein, the right to sub-contract the manufacture of the Licensed Products in the Licensed Territory and to make available to its sub-contractors such Proprietary Data as is necessary for the manufacture of the Licensed Products.

ARTICLE 3 - PROPRIETARY DATA

- 3.1 Subsequent to the Effective Date of this Agreement, LICENSOR shall furnish LICENSEE with Proprietary Data, in English language and the units as used by LICENSOR, which will enable LICENSEE to undertake the manufacture and selling of the Licensed Products.
- 3.2 LICENSEE agrees that during the Term of this Agreement and of any continuations or extensions thereof, the Proprietary Data furnished to LICENSEE by LICENSOR remains the property of LICENSOR and upon expiration or termination of this Agreement for any reason whatsoever LICENSEE will cease using LICENSOR's patents and Proprietary Data and will return all LICENSOR's Proprietary Data (including all copies thereof) to LICENSOR.
- 3.3 LICENSEE shall reimburse in full for all costs and expenses incurred by LICENSOR in furnishing such Specific Proprietary Data to LICENSEE including, but not limited to, LICENSOR's direct labour and material expenses and a reasonable amount for overhead. Such payments shall not be considered as an advance of Fees due and payable under Article 5 hereof.

ARTICLE 4 - TECHNICAL ASSISTANCE

- 4.1 LICENSOR shall assist LICENSEE in relation to the Licensed activities by instructing and advising a reasonable number of LICENSOR's engineers and technical personnel for a reasonable period of time at LICENSEE's expense at LICENSOR's plants in the United States.
- 4.2 LICENSOR shall provide, upon the written notice from LICENSEE, the services of a consultant in the Licensed Territory to provide technical consultation relating to the manufacture, use or selling of the Licensed Products. The services of the consultant shall be for a period not exceeding thirty (30) days at any one time nor shall the total consulting services provided be more than sixty (60) mandays in any consecutive twelve (12) month period. LICENSEE shall pay to such personnel a sum of One Hundred U.S. dollars (US\$100) per diem plus round air ticket from and to the point of origin of such personnel and local travelling and living expenses.

ARTICLE 5 - FEES

- 5.1 LICENSEE agrees to pay LICENSOR a one time lump sum fee of Thirty Thousand U.S. dollars (US\$30,000) within thirty (30) days from the Effective Date of this Agreement.
- 5.2 In addition to the Fee specified in Article 5.1 and during the Term of this Agreement or any continuations or extensions thereof LICENSEE shall pay to LICENSOR running royalty of four per cent (4%) of the net Selling Price of all the manufactured Licensed Products.
- 5.3 Irrespective of the Licensed Products manufactured by the LICENSEE, the royalties payable under this Agreement shall not be less than:
- (a) 5,000 U.S. Dollars in the first year;
  - (b) 10,000 U.S. Dollars in the second year; and
  - (c) 15,000 U.S. Dollars in the third year and each succeeding year.



ARTICLE 6 - REPORTS, PAYMENTS, RECORDS

- 6.1 LICENSEE shall furnish LICENSOR with quarterly reports within a period of thirty days after December 31, March 31, June 30 and September 30 to each year hereunder, setting forth in detail, by specific products and application, the Licensed Products manufactured by or for it and invoiced, transferred, leased or consigned by it and the selling or lease price therefore during the quarter year immediately preceding such thirty (30) day period.
- 6.2 All Fees and other payments payable hereunder shall be based on the prevailing telegraphic spot exchange rate on the date on which payment is due or made, whichever date shall occur first, and LICENSEE shall provide detailed conversion calculations with every payment submitted hereunder.
- 6.3 LICENSEE shall keep such accurate records and books of account as will show in detail the number and type of Licensed Products manufactured by or for it and sold or leased by it and the selling or lease prices therefor.

ARTICLE 7 - LICENSEE'S OBLIGATIONS

- 7.1 LICENSEE shall indemnify and hold harmless LICENSOR, its subsidiaries and distributors from any claims, losses, liabilities or damages, including special indirect or consequential damages, such as loss of profits, lost production, property damages, personal injuries or other similar damages.
- 7.2 LICENSEE shall hold harmless LICENSOR from expense or liability asserted by third parties with regard to any alleged infringement of the Licensed Products manufactured by LICENSEE or other parties' patents.

- 7.3 LICENSEE shall not tie up with any third party in any way in respect to manufacture of the product similar in features and functions to the Licensed Product.
- 7.4 LICENSEE shall procure materials, parts, components, and equipments necessary for the production of the Licensed Products from or through LICENSOR deemed hard to be manufactured or procured in the Licensed Territory.
- 7.5 LICENSEE shall attach a name plate to the Licensed Products stating that the products are manufactured under license from LICENSOR.
- 7.6 LICENSEE shall not export the Licensed Products to any other countries or regions outside the Territory.

#### ARTICLE 8 - INVENTIONS AND IMPROVEMENTS

- 8.1 LICENSEE shall promptly and fully disclose to LICENSOR, in writing and in the English language, any inventions or improvements which relate to any of the Licensed Products or to the Licensed Activities, which are conceived during the term of this Agreement or any continuations or extensions thereof, and in which LICENSEE is entitled to claim a proprietary right, including those inventions or improvements made by any employee of LICENSEE or by any contractor of LICENSEE to whom LICENSEE has sub-contracted work relating to the Licensed Products.
- 8.2 LICENSEE, at the request of LICENSOR, shall grant to LICENSOR a royalty-free, irrevocable, non-exclusive license, to make, use or sell the inventions or improvements made by LICENSEE.

#### ARTICLE 9 - TERMINATION

- 9.1 This Agreement shall terminate seven (7) years from the Effective Date hereof and shall be renewable thereafter upon mutual agreement of the parties hereto and upon the securing of any necessary governmental approvals.

9.2 In the event either party shall fail or be unable to perform its obligations hereunder and if such default or inability shall continue for ninety (90) days after receipt of written notice thereof from the non-defaulting party, the non-defaulting party shall have the right to terminate the Agreement by written notice of such termination at any time after the expiration of said ninety (90) day period provided that the default has not been cured as of the date of termination.

ARTICLE 10 - MISCELLANEOUS

- 10.1 LICENSOR warrants that Proprietary Data, Specific Proprietary Data and Consultant recommendations which is furnished will be currently used by LICENSOR in its own manufacture of the Licensed Product. However, LICENSOR shall have no responsibility for any of the Licensed Products which may be manufactured by LICENSEE in accordance with any furnished Proprietary Data, Specific Proprietary Data and Consultant recommendations.
- 10.2 LICENSEE acknowledges that one manner in which LICENSOR conducts business is in the licensing of Proprietary Data on a worldwide basis. Accordingly, LICENSEE agrees that during the term of this Agreement, it will not conduct any activities outside of the Licensed Territory with respect to the Licensed Products which would in any way conflict with rights of other licensees of LICENSOR and which activities are beyond the scope of the licenses specifically granted hereunder.
- 10.3 No rights or licenses are granted by this Agreement, expressly or by implication to use the trademark of LICENSOR, or any other trademark similar thereto, either in English or translated versions, in connection with any products manufactured, used, sold or leased by LICENSEE, or as part of LICENSEE's corporate or firm name or for any other purpose unless expressly agreed to in writing by LICENSOR.

10.4 This Agreement may not be assigned or transferred by LICENSEE in whole or in part without the prior written consent of LICENSOR.

10.5 All disputes, controversies or differences which may arise between LICENSOR and LICENSEE out of, in relation to, or in connection with this Agreement, or for breach thereof which cannot be settled by mutual negotiations shall be finally settled in the country of company A in accordance with the internal laws of the country of company A.

10.6 Except as otherwise specifically provided herein, any notice or communication of LICENSOR or LICENSEE may be sufficiently given or transmitted if deposited in the mail, postage prepaid, duly registered and addressed respectively:

To LICENSOR : Company A  
\_\_\_\_\_  
\_\_\_\_\_

To LICENSEE : Company B  
\_\_\_\_\_  
\_\_\_\_\_

10.7 Neither party shall be liable for failure to perform any part of this Agreement when such failure constitutes for a period of no longer than six (6) months and is due to fire, flood, strikes, labour troubles or other industrial disturbances, war embargoes, blockades, legal restrictions, riots, insurrections, or any cause beyond the control of the parties and the parties shall continue once more with its performance when the causes of such non-performance have ceased or have been eliminated. Notwithstanding the foregoing, LICENSEE shall not be excused by any such causes from its obligations to furnish the royalty statements and to make the payments of royalties due hereunder.

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the day and year indicated below.

ATTEST :

Company A

By \_\_\_\_\_

Title \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_, 1977

At \_\_\_\_\_

ATTEST :

Company B

By \_\_\_\_\_

Title \_\_\_\_\_

On the \_\_\_\_\_ day of \_\_\_\_\_, 1977

At \_\_\_\_\_



