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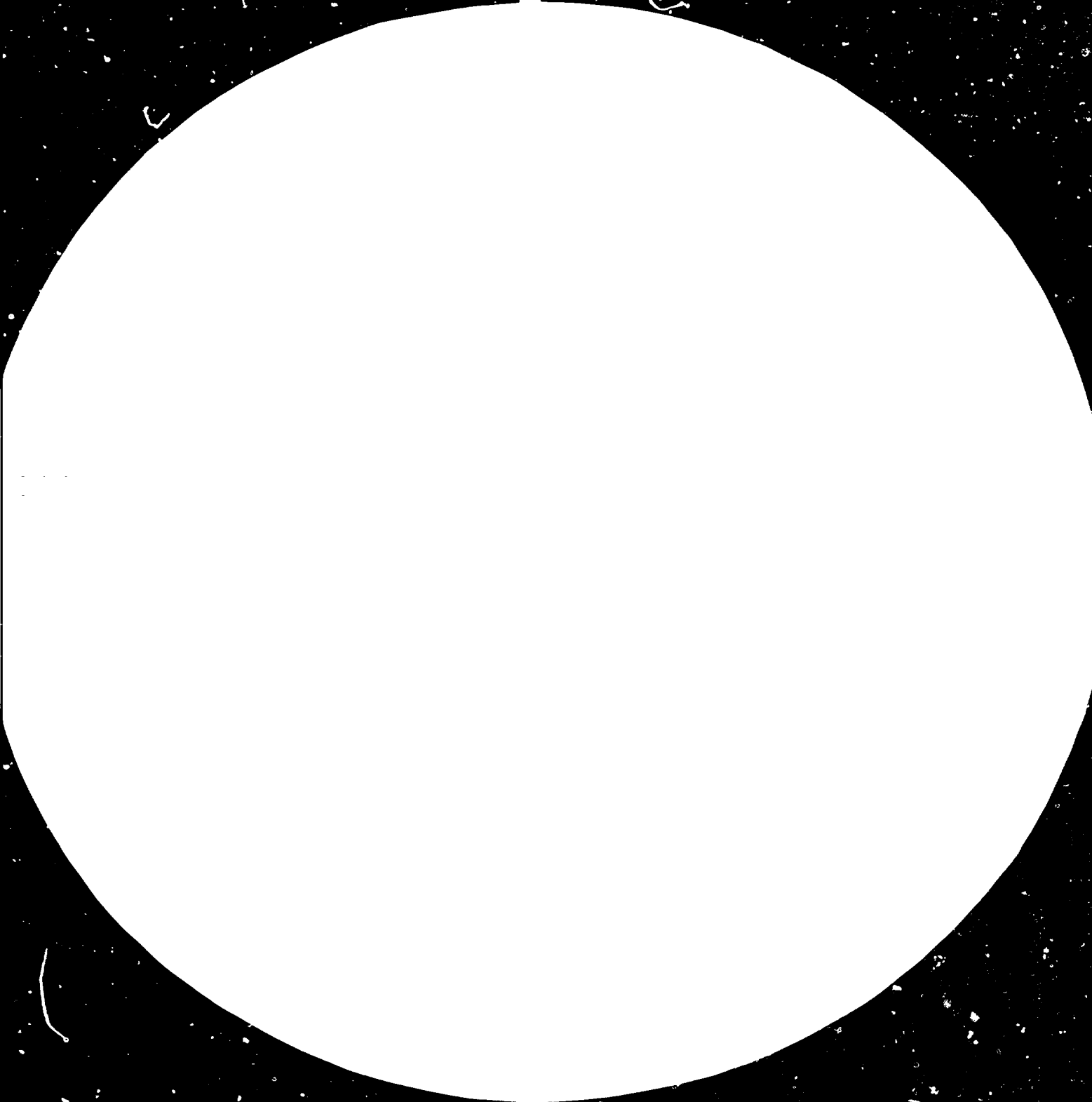
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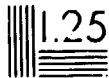
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LICENCING AGREEMENT  
ON  
REAGENTS FOR MEDICAL AND LABORATORY USE\*

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

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\*\* Deputy Director, Technology Transfer Center, Kist. Seoul, Korea

V.81-21666

LICENSE AGREEMENT

This Agreement is made and entered into as follows on this \_\_\_\_\_ day of \_\_\_\_\_, 1976 between a COMPANY A (hereinafter called "LICENSOR"), a corporation organized and existing under the laws of the Country A, with its principal office at \_\_\_\_\_ and COMPANY B (hereinafter called "LICENSEE"), a corporation organized and existing under the laws of Country B, with its principal office at \_\_\_\_\_.

WITNESSETH

WHEREAS, LICENSOR has discovered or acquired certain articles, devices and/or equipment as well as processes, techniques and designs for use in manufacturing, assembling, packaging and/or selling reagents for medical and laboratory use.

WHEREAS, the products, processes and techniques are recognized by LICENSEE as having superior qualities and attributes; and

WHEREAS, LICENSOR is engaged in the manufacture, use and sale of the products under certain trade marks; and

WHEREAS, LICENSEE desires to produce, manufacture, assemble and package in the territory hereinafter defined the products for sale in the territory, using the processes, techniques, designs, type of equipment, trade marks and patents belonging to LICENSOR, subject to the terms and conditions hereinafter set forth;

NOW, THEREFORE, it is agreed as follows:

I. DEFINITION

The following definitions shall apply herein:

- (a) "PRODUCTS" means those products set forth in Exhibit A and incorporated herein by reference, as the same may be amended hereinafter from time to time, in accordance with Paragraph IV and V.

- (b) "TRADE MARKS" means those trade marks set forth in Exhibit B and incorporated herein by reference, as the same may be amended hereinafter from time to time in accordance with Paragraph IV.
- (c) "PATENTS" means those patents set forth in Exhibit C and incorporated herein by reference, as the same may be amended hereinafter from time to time in accordance with Paragraph IV.
- (d) "TERRITORY" means the Country B.
- (e) "CONFIDENTIAL INFORMATION" means any processes, techniques, information, specifications, data, notes, patent applications, writings, trade secrets and/or know-how relating to the Products owned or developed by LICENSOR and disclosed to LICENSEE hereunder that is neither published nor otherwise available to the public through sources entitled to disclose same.
- (f) "AFFILIATE" means any company, person or firm directly or indirectly controlling, controlled by or under common control with LICENSOR or LICENSEE, as the case may be. For purposes of this definition the term "CONTROL" (including the terms "CONTROLLING", "CONTROLLED BY" and "UNDER COMMON CONTROL WITH") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a company, person or firm, whether through the ownership of voting securities, by contact or otherwise.
- (g) "NET SALES PRICE" means:
  - (i) With respect to Products sold by LICENSEE to any party other than an Affiliate, the gross sales price less discounts and allowance to customers, duties and taxes based directly on the sales; provided, however, that the term "taxes" as used herein shall not be deemed to include franchise or income taxes. No deduction from the gross sales price shall be made from any items of cost incurred by LICENSEE in its operations incident to the manufacture or sale of the Product.

- (ii) With respect to any quantity of Product subject to royalty hereunder that is used by LICENSEE for its own purposes or is sold by LICENSEE to an Affiliate, the net sales price of said product shall be the sales price of such Product prevailing on the open market in the country in which such use or sale is made at the time of such use or sale, less the deductions set forth in the previous paragraph; provided, however, that in the absence of such established sales price, the net sales price of the Product so used or sold shall be the price of that Product at its first sale thereafter to an independent third party.

## II. GRANT OF LICENSE

LICENSOR hereby grants to LICENSEE during the term of this Agreement the sole and exclusive right to use the Trade marks, Patents and Confidential Information in the manufacture, packaging, assembly and sale of the Products in the Territory; provided, that, if in any year during the term hereof LICENSEE shall not fail to meet the sales quota set forth in Exhibit E and incorporated herein by reference, the sales quota for the succeeding year shall be increased by the amount of the deficiency, and provided further that nothing herein shall preclude LICENSOR from disclosing and permitting the use of the Confidential Information to Affiliates of LICENSOR in the Territory. In the event that the LICENSEE fails to meet the revised quota during the succeeding year, this Agreement shall automatically and without notice revert to a non-exclusive license and LICENSOR shall have the right to use the Trade marks, Patents and Confidential Information in the production, manufacture, assembly and packaging of the Products in the Territory or to cause the use of the Trade marks, Patents and Confidential Information in the production, manufacture, assembly and packaging of the Products in the Territory by third parties.

III. TECHNICAL ASSISTANCE BY LICENSOR

LICENSOR shall render such technical assistance and make such disclosures as, in its sole opinion, will enable LICENSEE to properly staff, equip, and operate its manufacturing facility and to produce the Products consistent with the standards of quality established from time to time by LICENSOR for the Products. LICENSEE shall pay the travelling expenses of LICENSOR management and technical personnel to and from the Territory from the point of departure, reasonable expenses of such personnel while engaged in such assistance. LICENSEE agrees to purchase from LICENSOR all of the equipment and instruments necessary to establish LICENSEE's facility for the manufacture of the Products at a price to be mutually determined.

IV. DELETION OF PRODUCTS, TRADE MARKS, PATENTS AND CONFIDENTIAL INFORMATION

Any Product, and the Trade marks, Patents and Confidential Information granted to LICENSEE by LICENSOR under this Agreement may be deleted from this Agreement by LICENSOR upon thirty (30) days prior written notice to LICENSEE, if:

- (a) LICENSEE fails to manufacture and/or sell reasonable quantities of such Products in such country for any interrupted period of twelve (12) months after LICENSOR has rendered the technical assistance required by Paragraph III hereof, or if
- (b) LICENSEE breaches any of the provisions of this Agreement with respect to such Product, and fails to remedy such breach within thirty (30) days after notice by LICENSOR.

V. PRODUCT IMPROVEMENT

LICENSOR agrees to amend this license to include any improvement in any of the Products developed and utilized by LICENSOR. LICENSEE shall communicate promptly to LICENSOR full information concerning any improvement made or acquired by LICENSEE with respect to any of the Products or Confidential Information pertaining thereto.



LICENSOR shall have the right to apply for and obtain in its own name and for its own benefit patent in any countries or the Territory of such improvement. The parties hereto agree to negotiate in good faith whether a royalty or other consideration shall be due to LICENSEE in consideration of LICENSOR's right to apply for and obtain Patents on revolutionary improvements. All other improvements shall be provided to LICENSOR royalty free. LICENSEE agrees to sign and execute all such documents as may be necessary in that connection.

#### VI. CONFIDENTIALITY

Neither LICENSEE nor its agents or employees shall disclose to any person, firm or corporation any of the Confidential Information acquired from or through LICENSOR nor, except as herein expressly permitted, shall ever use or benefit, directly or indirectly, from such Confidential Information learned or acquired during LICENSEE's association with LICENSOR.

#### VII. QUALITY CONTROL

LICENSEE agrees to use only such materials or components and manufacturing practices as shall meet the written specifications issued hereunder from time to time by LICENSOR. LICENSEE agrees that all Products produced by it shall meet the written specifications provided by LICENSOR from time to time. To that end LICENSEE shall supply, free of charge, at such intervals and in such quantities as reasonably may be requested by LICENSOR, samples of the Products manufactured by LICENSEE pursuant to this Agreement.

If LICENSEE fails or refuses to correct any deviation from such specifications within a reasonable time after receiving notice from LICENSOR of such deviations, LICENSOR have the option to do any one or all of the following:

- (a) Suspend the right of LICENSEE to manufacture and sell the Product involved until the deviation is corrected;
- (b) Delete the Product involved;
- (c) Suspend or terminate the LICENSEE's right to use related Trade marks and Patents, if any;
- (d) Terminate this Agreement.

#### VIII. HEALTH REGISTRATIONS

Any registration of Products with Health Authorities in the Territory which may be required from time to time shall be accomplished by LICENSEE in the name of LICENSOR, unless prohibited by law, in which case such registrations shall be held in trust by LICENSEE on behalf of LICENSOR and subject to transfer or cancellation at the discretion of LICENSOR. The expense of obtaining such registrations shall be for the account of LICENSEE, but LICENSOR shall make available such data and investigation reports as it possesses, to the extent that these will facilitate registrations in the Territory.

#### IX. TRADE MARKS

Products shall be sold by LICENSEE using the Trade marks designated by LICENSOR. LICENSEE shall only use the Trade marks in the Territory and shall not use the Trade marks other than in connection with the sale of the Products. The Trade marks shall remain the exclusive property of LICENSOR and LICENSEE recognizes LICENSOR's exclusive right in such Trade marks and will at no time question their validity, or make except as provided in this Agreement.

#### X. TRADE MARK AND PATENT INFRINGEMENT

If LICENSOR and LICENSEE agree in writing that suit shall be brought for claims or damages resulting from the infringement of LICENSOR's Patents and Trade marks in the Territory, such suit shall be brought by LICENSEE in the name of LICENSOR and LICENSOR shall give necessary assistance for the effective prosecution of such suit, and the expenses and recovery shall be borne by LICENSEE.

#### XI. ROYALTIES

- (a) LICENSEE shall pay to LICENSOR a royalty of three per cent (3%) of the Net Sales Price, which shall accrue semi-annually; the amount of the royalty paid to LICENSOR shall be calculated after deducting any income taxes which are deductible in the COMPANY A required by the laws of the Territory to be withheld

upon remission of royalties to LICENSOR; provided, that LICENSEE agrees to furnish to LICENSOR receipts for all such taxes paid.

- (b) The price charged for Products to customers by LICENSEE shall be determined by LICENSEE in good faith and in the exercise of a sound business discretion based upon prevailing market conditions in the Territory.

XII. TERM AND TERMINATION

- (a) This Agreement shall be effective for three (3) years from the date of commencement of commercial production of all products, provided that LICENSOR has the option to renew this Agreement for one additional three (3) years term; and provided, that all necessary governmental approvals of the terms and conditions of the extended agreement have been obtained.
- (b) This Agreement and all rights of LICENSEE shall immediately terminate without notice:
- If LICENSEE shall become bankrupt, insolvent or subject to an assignment for the benefit of its creditors or otherwise divested of the control of its own affairs;
  - If either party shall default in the performance or observation of any material term or condition and shall fail to remedy such default within 30 days after notice from the other party;
  - If the present ownership or control of LICENSEE shall change in any material respect without prior notice to and approval from LICENSOR; or
  - If the Government of Country B refuses to register this Agreement within 180 days of the date of execution of this Agreement.

XIII. EFFECTS OF TERMINATION

- (a) Upon expiration or termination of this Agreement, LICENSEE covenants that:
- (i) All obligations of LICENSEE hereunder then unsatisfied shall forthwith become due and payable;
  - (ii) LICENSEE shall immediately cease manufacture and sale of the Products;
  - (iii) LICENSEE shall immediately cease to use the Trade marks, Patents and Confidential Information and shall immediately return to LICENSOR all Confidential Information.
- (b) In the event the present ownership of LICENSEE changes prior to the termination or expiration of this Agreement, or upon termination of this Agreement for any reason other than default by LICENSOR, LICENSOR shall have the option, but no obligation to acquire all the right, title and interest of LICENSEE in and to any and all equipment, including any and all improvements and additions thereto, made, furnished, or recommended by LICENSOR or LICENSEE for use under this Agreement, and which LICENSEE then owns or possesses for the reasonable market value thereof.

XVI. ARBITRATION

In the event any dispute arises between LICENSOR and LICENSEE regarding the application or interpretation of this Agreement, the authorized officers or representatives of LICENSOR and LICENSEE mutually shall negotiate for the adjustment of such dispute. In the event that the representatives of both parties cannot reach a decision, the dispute shall be referred to a board of arbitration, consisting of least at three members, under the rules of the International Chamber of Commerce of Paris and the party hereto against whom the matter arbitrated is decided shall pay the other party's cost of arbitration.

IN WITNESS WHEREOF, this Agreement has been executed in duplicate by the parties hereto, by their proper officers thereonto duly authorized, on the day first mentioned above.

COMPANY B'

COMPANY A

By \_\_\_\_\_  
President

By \_\_\_\_\_  
President



