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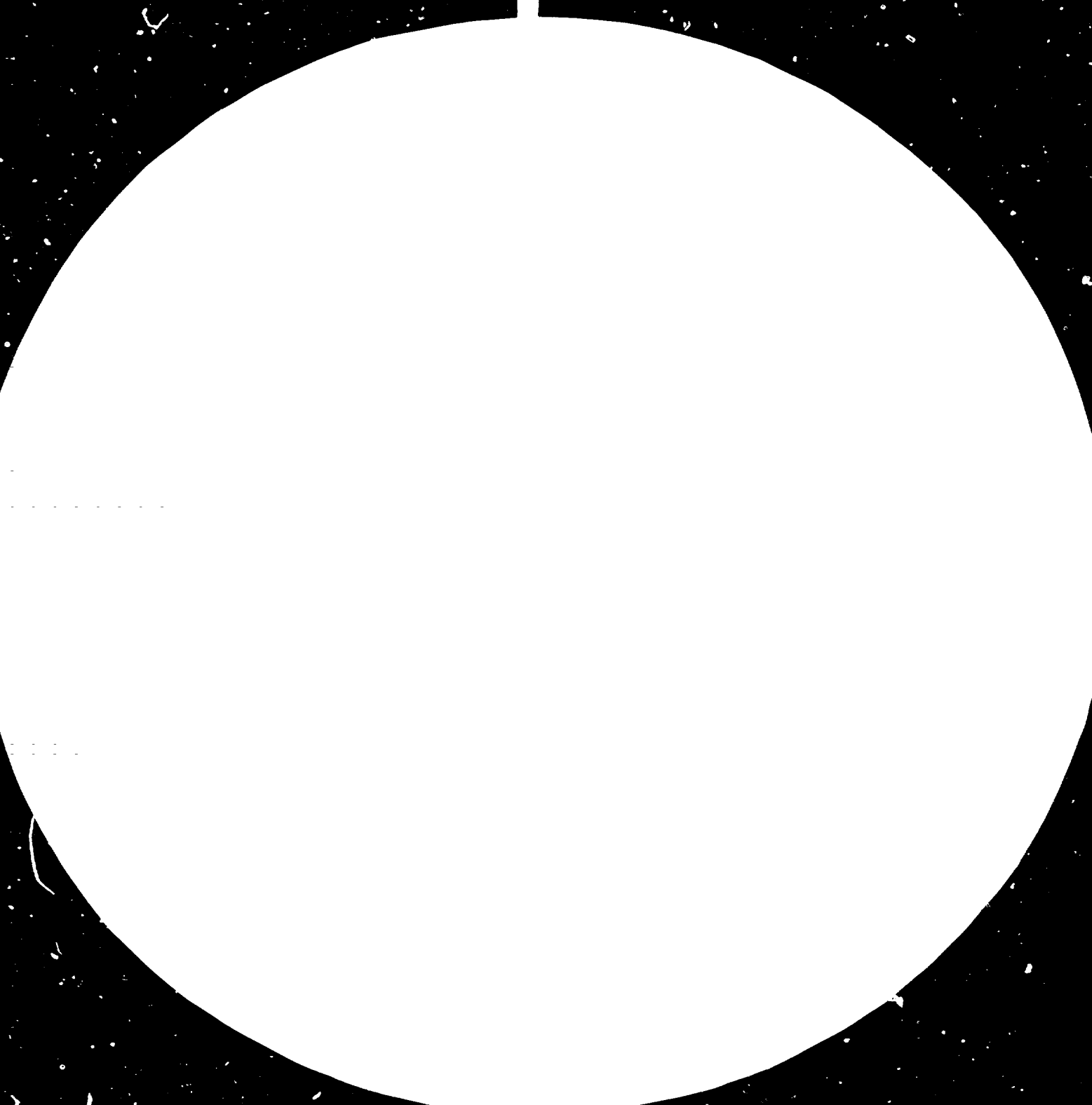
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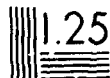
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UNITED NATIONS  
INDUSTRIAL DEVELOPMENT ORGANIZATION

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ENGLISH

TECHNICAL COOPERATION AGREEMENT

ON

PNEUMATIC ROCK DRILLS\*

A CASE STUDY

by

Ycung-Hun Kim \*\*

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\*\* Deputy Director, Technology Transfer Centre, KIST. Seoul, Korea

TECHNICAL COOPERATION AGREEMENT

This Agreement made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1976 by and between Company A, incorporated under the laws of Country A and having its principal office at \_\_\_\_\_, (hereinafter called "LICENSOR"), and Company B, incorporated under the laws of the Country B and having its principal office at \_\_\_\_\_, Country B (hereinafter called "LICENSEE").

WITNESSETH THAT:

WHEREAS, LICENSOR has for many years been engaged in the manufacture, use, and sale of pneumatic rock drills, has acquired a substantial amount of technology and know-how embodied in the design of, and utilized in the production of, said pneumatic rock drills, and has the right to grant to manufacture and sell the "Products" as defined in Article 1 of this Agreement under such technology and know-how; and WHEREAS, LICENSEE is desirous of obtaining, and LICENSOR is willing to grant to LICENSEE, the right to manufacture and sell the Products under such technology and know-how on the terms and conditions hereinafter set forth. NOW, THEREFORE, in consideration of the premises, mutual covenants and agreements herein contained, and each party executing this Agreement with intention of being legally bound thereto, the parties hereto agree as follows:

ARTICLE 1 - DEFINITIONS

For the purpose of this Agreement, the following terms shall have the following meanings:

1. "Products" means specifically the 322D Air Leg Drill, the LB56 Air Leg, and accessories and spare parts thereof, out of various pneumatic rock drills developed by LICENSOR.
2. "Agreed Territory" means Country B.
3. "Technical Information" means collectively the "Know-how" and "Technical Data" hereinafter defined.

- (1) "Know-how" means general or specific knowledge, experience, and information, not in the form of written or printed document, owned by LICENSOR in relation to the manufacture, assembly, or service of the Products.
- (2) "Technical Data" means the following documents including drawings, specifications, and any other data, used or owned by LICENSOR for the purpose of the manufacture, assembly, or service of the Products:
  - a. Drawings of the Products and parts thereof
  - b. A list of parts with detailed specifications
  - c. Lists of materials and tools with technical specifications
  - e. Particulars on the assembly
  - f. Specifications on the performance
  - g. Data on repair and maintenance service
  - h. Data on production facilities, production load, personnel planning, and plant lay out
  - i. Other data necessary for the manufacture of the Products.

#### ARTICLE 2 - GRANT OF RIGHT

For the effective period of this Agreement, LICENSOR hereby agrees to grant to LICENSEE the exclusive right to manufacture and sell the Products in the Agreed Territory utilizing the Technical Information owned by LICENSOR.

LICENSEE shall not in any manner transfer to others any or all of the right granted by LICENSOR.

#### ARTICLE 3 - NON-CONTEST

LICENSEE shall not manufacture and/or sell the products in the areas other than the Agreed Territory.

ARTICLE 4 - SUPPLY OF TECHNICAL INFORMATION

For the effective period of this Agreement, LICENSOR shall furnish LICENSEE with the Technical Information necessary for the manufacture, assembly, and service of the Products.

LICENSOR shall supply the Technical Information to LICENSEE in accordance with the production schedule for the products made out by LICENSEE and in such portion as may be required for each phase of said schedule.

As the first supply of such Technical Information, LICENSOR, within thirty (30) days after receipt of the initial payment, shall furnish LICENSEE with the initially required Technical Information.

The Technical Information supplied by LICENSOR to LICENSEE under this Agreement shall be in the language of Country A, except, however, that LICENSOR may use the English version thereof.

ARTICLE 5 - DESPATCH OF PERSONNEL

1. During the effective period of this Agreement, upon request of LICENSEE, AND LICENSOR considers it appropriate, LICENSOR agrees to receive LICENSEE's engineers or workers at LICENSOR's manufacturing plants as trainees to acquaint themselves with the knowledge and experience necessary for the manufacture, assembly, and service of the Products. The number of such trainees and the time and period of training shall be determined from time to time by mutual consultation of the parties taking into account the convenience of LICENSOR's plants. Such trainee shall, during the period of training, observe the rules of, and be subject to the instructions at, LICENSOR's plants. LICENSEE shall bear the travelling expenses to and from Country A, living expenses and all other expenses incurred by such trainees.
2. During the effective period of this Agreement, LICENSOR, upon request of LICENSEE, and to the extent that LICENSOR deems it appropriate, agrees to send its engineers and/or specialists

to LICENSEE's plants to provide technical advice on the manufacture, assembly, and service of the Products. The number of engineers and/or specialists to be despatched, and the time and period of despatch shall be determined from time to time by mutual consultation of the parties.

LICENSEE shall bear the air charges to and from Country B, living expenses in Country B and daily allowances incurred by LICENSOR's engineers and specialists. In this case, the daily allowance per capita shall be determined as follows:

- |  |         |
|--|---------|
| a. Senior engineers or higher (Section Head or higher) | US\$100 |
| b. Engineer and Junior engineer                        | US\$ 80 |
| c. Others  | US\$ 60 |

#### ARTICLE 6 - OBSERVANCE OF SECRECY

1. LICENSEE shall take all reasonable measures necessary to prevent all Technical Information made available by LICENSOR under this Agreement from being disclosed to any other party.
2. LICENSEE shall, in case of termination of this Agreement due to the provisions of Article 15 or 16 herein, promptly return to LICENSOR all the Technical Information made available by LICENSOR under this Agreement and copies thereof.

#### ARTICLE 7 - PAYMENT

1. In consideration of the Technical Information supplied by, and the right granted by, LICENSOR under this Agreement:
  - a. LICENSEE shall pay to LICENSOR the sum of Fifty Thousand U.S. dollars (US\$50,000) as initial payment within thirty (30) days after the effective date of this Agreement: and
  - b. LICENSEE shall pay to LICENSOR the royalty of two per cent (2%) of the net selling price of the Products which have been shipped from LICENSEE's plants. The net selling price shall be the gross selling price less the following amount:



- (a) Prices of parts or half-finished products purchased from LICENSOR and delivered to LICENSEE's plants
- (b) Sales commission
- (c) Trade and quantity discount
- (d) Packaging and freight charges
- (e) Indirect taxes

The royalty shall, during the effective period of this Agreement, be calculated annually as of December 31 and paid to LICENSOR within ninety (90) days after such date.

2. LICENSEE shall, at the time of royalty payment, submit to LICENSOR a written report stating the quantity of the products shipped from LICENSEE's plants during the year for which the royalty is to be paid, as well as stating other data necessary for the calculation of such royalty.
3. LICENSEE shall bear all kinds of taxes arising under this Agreement including even the tax to be levied under the laws of Country B on the income of LICENSOR.

#### ARTICLE 8 - RECORDS AND INSPECTION

1. During the effective period of this Agreement, LICENSEE shall keep a special book and record the quantity, delivery date, name of the customer by item and use of the Products manufactured and sold under this Agreement and other data required for the full calculation of the royalty.
2. LICENSOR may, at any time during the effective period of this Agreement and within one (1) year after the termination thereof, inspect the book and records relating to the Products at the office of LICENSEE and request LICENSEE to submit such data as LICENSOR may deem necessary.

ARTICLE 9 - QUALITY CONTROL AND GUARANTEE

1. LICENSOR assumes no liability or responsibility for any defect or responsibility for any defect or malfunction of the Products manufactured by LICENSEE including any outcome resulting therefrom. LICENSEE shall indemnify and hold harmless LICENSOR from all liabilities for all claims, suits, expenses and losses of all kinds which result from any defect or malfunction of the Products manufactured by LICENSEE.
2. LICENSOR may from time to time inspect the quality of the Products manufactured by LICENSEE and, if deemed appropriate, may request LICENSEE to send samples to LICENSOR at the expense of LICENSEE. LICENSOR shall inform LICENSEE of the result of quality inspection and, in the event that defective products be found, may order LICENSEE not to ship such products.

ARTICLE 10 - MARKS OF PRODUCTS

1. All the Products manufactured by LICENSEE under this Agreement shall carry LICENSOR's marks either independently or in combination with LICENSEE's marks at conspicuous places.
2. The Products manufactured by LICENSEE under this Agreement should, whenever possible, have the expression saying "Manufactured in Country B under the license of LICENSOR".

ARTICLE 11 - SUPPLY OF RAW MATERIALS, PARTS, AND HALF-FINISHED PRODUCTS

LICENSEE may employ, subject to prior approval of LICENSOR, those raw materials which can be produced in Agreed Territory as far as LICENSOR considers that such procurement is technically permissible. As for those raw materials, parts, or half-finished products which cannot be obtained in Agreed Territory due to their inferior quality or economic conditions, LICENSEE shall import those offered by LICENSOR.

ARTICLE 12 - PROHIBITION OF COMPETITIVE PRODUCTS

LICENSEE shall not, during the effective period of this Agreement, manufacture or sell the products similar to, or competitive with the Products.

ARTICLE 13 - LIABILITIES FOR MANUFACTURE AND SALE

LICENSOR shall not assume in any manner any liability for any risks which may arise from the manufacture and sale of the Products by the use of, or in relation to the use of, the Technical Information furnished by LICENSOR. It is understood that such risks shall be borne by LICENSEE.

ARTICLE 14 - VALIDITY

This Agreement shall become effective on the date of the approval of the Government of Country B.

ARTICLE 15 - EFFECTIVE PERIOD

1. The effective period of this Agreement shall be full five (5) years from the effective date.
2. If neither of the parties gives to the other a notice of termination at least six (6) months prior to the expiration of this Agreement, then this Agreement shall be automatically extended by one (1) year and same shall apply thereafter. Such notice shall be made in writing.

ARTICLE 16 - TERMINATION

In the event of failure or neglect of either party hereto to fulfill any or all of the covenants or provisions hereof to be performed by it, and if the other party gives written notice of such default, then if such default is not remedied within forty-five (45) days after the giving of such notice, the party giving such notice shall have the right to terminate this Agreement at any time thereafter by giving written notice of such termination. In such case, the party terminating this Agreement shall have the right to claim the other party for damages.

ARTICLE 17 - PROCEEDINGS AFTER TERMINATION

If, at the termination of this Agreement, LICENSEE hereto is liable for debts against LICENSOR under this Agreement, this Agreement remains still effective for such liability even after the termination thereof.

ARTICLE 18 - FORCE MAJEURE

No failure or omission by the parties hereto in the performance of any obligation of this Agreement shall be deemed a breach of this Agreement nor create any liability if the same shall arise from war, military operations, rebellion, riot, restraint, orders of any governmental authority, strikes, lockouts, interruption, act of God and any other cause or causes beyond the control of the parties. In the event that any of the above should occur, this Agreement shall be suspended during the period the same should continue.

ARTICLE 19 - ARBITRATION

All disputes that may arise under or in relation to this Agreement shall be submitted to arbitration under the Commercial Arbitration Rules of Country A.

ARTICLE 20 - ADDRESS OF NOTICE

Any notice or request with reference to this Agreement, or any letters exchanged in relation to the implementation of this Agreement shall, except otherwise specified, be sent to the addresses of the parties first above written by either registered air mail or cable.

ARTICLE 21 - MODIFICATIONS AND SUCCESSORS OF AGREEMENT

1. Any modification or supplement to this Agreement shall become effective when confirmed in writing by the parties, and if such modification or supplement shall require the approval of the government, after such approval is obtained.
2. All the provisions set forth in this Agreement shall also be binding upon the legal successor or successors of either of the parties previously approved in writing by the other party.

ARTICLE 22 - GOVERNING LAW

This Agreement shall be construed and the legal relations between the parties hereto determined in accordance with the laws of Country A.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in English in duplicate by their duly authorized officers or representatives on the day and year first above written, respectively retain one (1) copy thereof.

Company B

Company A

\_\_\_\_\_  
President

\_\_\_\_\_  
President



