

06-10-1998



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To the Honorable Com.

100734396

R SHEET

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

is attached original documents or copy thereof.

1. Name of conveying party(ies):
ZAPATA INDUSTRIES, INC.,
a Pennsylvania corporation

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:

- ☐ Assignment ☐ Merger
☒ Security Agreement ☐ Change of Name
☐ Other _____

As of October 10, 1997

Execution Date: _____

2. Name and address of receiving party(ies)

Name: NATIONAL BANK OF CANADA

Internal Address: _____

Street Address: _____

Suite 430

Boca Raton

FL

33486

City: _____ State: _____ ZIP: _____

Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is: _____

A. Patent Application No.(s)

B. Patent No.(s)

4,905,852 (3/6/90)

4,271,953 (1/9/81)

Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Dean A. Brooks

Name: _____

Internal Address: _____

c/o Mombach Boyle

Street Address: _____

500 E. Broward Blvd., Suite 1950

Ft. Lauderdale

FL

33394

City: _____ State: _____ ZIP: _____

6. Total number of applications and patents involved:

7. Total fee (37 CFR 3.41).....\$ 80.00

☐ Enclosed

☐ Authorized to be charged to deposit account

8. Deposit account number: _____

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Dean A. Brooks

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments, and document:

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patents & Trademarks, Box Assignments
Washington, D.C. 20231

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PATENT
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PATENT SECURITY AGREEMENT

THIS PATENT SECURITY AGREEMENT is made as of the 10th day of October, 1997, by and between ZAPATA INDUSTRIES, INC., a Pennsylvania corporation, having offices located at 4400 Don Cayo Drive, Muskogee, Oklahoma 74403 (the "Debtor"), and NATIONAL BANK OF CANADA, a Canadian Chartered Bank, having offices located at 5100 Town Center Circle, Suite 430, Boca Raton, Florida 33486 (the "Secured Party").

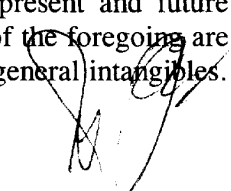
WHEREAS, Secured Party has agreed to modify and make those certain loans in the aggregate principal amount of Twelve Million Two Hundred Thousand and 00/100 Dollars (\$12,200,000.00) (collectively, the "Loan") to Debtor and to ZAPATA INNOVATIVE PLASTICS, INC., a Delaware corporation ("Plastics"), which Loan is evidenced by a Modification Master Revolving Promissory Note in the principal amount of Five Million and 00/100 Dollars (\$5,000,000.00), a Consolidation Promissory Note in the principal amount of Five Million Two Hundred Thousand and 00/100 Dollars (\$5,200,000.00) and a CAPEX Line/Term Promissory Note in the principal amount of Two Million and 00/100 Dollars (\$2,000,000.00) executed by Debtor and Plastics in favor of Secured Party (said promissory notes being hereinafter collectively referred to as the "Notes"), a Loan Agreement executed by Debtor and NATIONAL CANADA FINANCE CORP, a National Bank of Canada Subsidiary ("NCFC"), dated as of May 24, 1995, as amended by a First Amendment to Loan Agreement executed by Debtor, Plastics, and Secured Party dated as of April 12, 1996, as assigned by NCFC to Secured Party, as further amended by a Second Amendment to Loan Agreement dated of even date herewith executed by Debtor, Plastics and Secured Party, and as the same may be further amended from time to time (collectively the "Loan Agreement"), one or more Security Agreements, and other collateral loan documents (all of the foregoing, as amended, assigned and reaffirmed from time to time being hereinafter collectively referred to as the "Loan Documents");

WHEREAS, all capitalized terms not specifically defined herein shall have the meanings assigned to them in the Loan Agreement; and

WHEREAS, as a condition to granting the Loan, the Secured Party has required the Debtor to execute and deliver this Patent Security Agreement as security for all of the Debtor's obligations to Secured Party.

NOW, THEREFORE, in consideration of the mutual promises contained herein and other good and valuable consideration, the parties hereto agree as follows:

1. (a) To secure the complete and timely satisfaction of all Indebtedness (as defined herein), the Debtor hereby grants to the Secured Party a security interest in and to: (i) those certain patents more particularly described on Exhibit "A" attached hereto, including without limitation all renewals thereof, all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringement and all rights corresponding thereto throughout the world (all of the foregoing are collectively called the "Patents"); and (ii) all of the Debtor's goodwill and general intangibles.



(b) The term "Indebtedness" means all obligations of any kind owing by the Debtor to the Secured Party. Indebtedness includes, without limitation, the Debtor's obligations under the Notes and all other Loan Documents, and all other obligations of the Debtor to the Secured Party which: (i) are now existing or hereafter incurred; (ii) are direct or indirect; or (iii) arise from loans, guaranties, endorsements or otherwise. The Indebtedness may be: (i) related or unrelated to the purpose of the original extension of credit; (ii) of the same or a different class as the primary obligation; and (iii) from time to time reduced or extinguished and thereafter increased or reincurred.

2. The Debtor covenants and warrants that:

(a) The Patents are subsisting and have not been adjudged invalid or unenforceable;

(b) To the best of the Debtor's knowledge, each Patent is valid and enforceable;

(c) To the best of the Debtor's knowledge, except as provided on Exhibit "B" attached hereto, the Patents are subject to no claim of infringement, unfair competition, or any other claim that the use of any Patent does or may violate the right of any third person, and to the best of the Debtor's knowledge, there is no pending interference, opposition or cancellation proceeding or other pending material litigation involving any of the Patents;

(d) The Debtor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to the Patents, free and clear of any liens, charges and encumbrances, including, without limitation, pledges, assignments, licenses, registered user agreements and covenants by the Debtor not to sue third persons;

(e) The Debtor has the unqualified right to enter into this Patent Security Agreement and perform its terms;

(f) The Debtor has used, and will continue to use for the duration of this Patent Security Agreement, proper statutory notice in connection with its use of the Patents;

(g) To the best of the Debtor's knowledge, there exists no event, condition, or occurrence that constitutes, or which with notice and/or the passage of time would constitute, a breach or default under any term or condition of the Patents; and

(h) The Debtor shall not take any action which would destroy or impair the security of the Secured Party under this Patent Security Agreement.

3. The Debtor agrees that, until all of the Indebtedness shall have been satisfied in full, it will not enter into any agreement (for example, a license agreement) which is inconsistent with the Debtor's obligations under this Patent Security Agreement.

4. Unless and until there shall have occurred an Event of Default under the Loan Agreement, the Debtor shall retain legal and equitable title to the Patents and shall have the exclusive and sole right to make, use and sell the inventions described and claimed in the Patents in connection with the ordinary course of the Debtor's business, for the Debtor's own benefit and account and for no other.

5. If any Event of Default shall have occurred under the Loan Agreement, the Secured Party shall have, in addition to all other rights and remedies given it by this Patent Security Agreement, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Patents may be located and, without limiting the generality of the foregoing, the Secured Party may immediately, without demand of performance and without other notice or demand whatsoever to the Debtor (except as set forth below), all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon, in Florida, or elsewhere, the Patents, or any interest which the Debtor may have therein, and after deducting from the proceeds of sale or other disposition of the Patents all expenses (including all reasonable expenses for brokers' fees and legal services), shall apply the residue of such proceeds toward the payment of the Indebtedness. Any remainder of the proceeds after payment in full of the Indebtedness shall be paid over to the Debtor. Notice of any sale or other disposition of the Patents shall be given to the Debtor at least ten (10) days before the time of any intended public or private sale or other disposition of any Patent is to be made, which the Debtor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, any holder of the Notes or the Secured Party may, to the extent permissible under applicable law, purchase the whole or any part of any Patent sold, free from any right of redemption on the part of the Debtor, which right is hereby waived and released.

6. At such time as the Debtor shall completely satisfy all of the Indebtedness and relinquish in writing its right, if any, to obtain further advances from the Secured Party, this Patent Security Agreement and the security interests granted herein shall terminate and the Secured Party shall execute and deliver to the Debtor all UCC termination statements or other instruments as may be reasonably necessary to evidence such termination.

7. Any and all fees, costs and expenses, of any kind or nature, including reasonable attorneys' fees and legal expenses incurred by the Secured Party in connection with the preparation of this Patent Security Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all fees in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving any Patent, or in defending or protecting any action or proceeding arising out of or related to any Patent, shall be borne and paid by the Debtor on demand by the Secured Party, and until so paid shall be added to the principal amount of the Indebtedness and shall bear interest at the default rate of interest (as determined in the Notes).

8. The Debtor shall have the duty, through counsel acceptable to the Secured Party, until the Indebtedness shall have been paid in full, to make federal application on registrable but

unregistered patents, to file and prosecute opposition and cancellation proceedings and to do any and all acts which are necessary or desirable to preserve and maintain all rights in each Patent. Any expense incurred in connection with any Patent shall be borne by the Debtor. The Debtor shall not abandon any Patent without the consent of the Secured Party, which consent shall not be unreasonable withheld.

9. The Debtor shall have the right with the prior written consent of the Secured Party, which consent will not be unreasonably withheld, to bring any opposition proceedings, cancellation proceedings or lawsuit in its own name to enforce or protect any Patent, in which event the Secured Party may, if necessary, be joined as a nominal party to such suit if the Secured Party shall have been satisfied that it is not thereby incurring any risk of liability because of such joinder. The Debtor shall promptly, upon demand, reimburse and indemnify the Secured Party for all damages, costs and expenses, including attorneys' fees, incurred by the Secured Party in the fulfillment of the provisions of this Section.

10. Upon the occurrence of any Event of Default under the Loan Agreement, the Debtor hereby authorizes and empowers the Secured Party to make, constitute and appoint any officer or agent of the Secured Party as the Secured Party may select, in its exclusive discretion, as the Debtor's true and lawful attorney-in-fact, with the power to endorse the Debtor's name on all applications, documents, papers and instruments necessary for the Secured Party to use the Patents, or to grant or issue any exclusive or non-exclusive license under each Patent to anyone else, or necessary for the Secured Party to assign, pledge, convey or otherwise transfer title in or dispose of any Patent to anyone else. The Debtor hereby ratifies all actions that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable for the life of this Patent Security Agreement.

11. If the Debtor fails to comply with any of its obligations hereunder, the Secured Party may do so in the Debtor's name or in the Secured Party's name, but at the Debtor's expense, and the Debtor hereby agrees to reimburse the Secured Party in full for all expenses, including reasonable attorneys' fees, incurred by the Secured Party in protecting, defending and maintaining any Patent.

12. No course of dealing between the Debtor and the Secured Party, nor any failure to exercise, nor any delay in exercising, on the part of the Secured Party, any right, power or privilege hereunder or under the Loan Agreement or other Loan Documents shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other further exercise thereof or the exercise of any other right, power or privilege.

13. All of the Secured Party's rights and remedies with respect to the Patents, whether established hereby, by the Loan Agreement, by any other agreement or by law shall be cumulative and may be exercised singularly or concurrently. In the event of any conflict between the terms hereof and the terms of the Loan Agreement or any of the Loan Documents, the terms giving the greater rights or benefits to the Secured Party shall govern.

14. The provisions of this Patent Security Agreement are severable, and if any clause or provision shall be held invalid and unenforceable, in whole or in part, in any jurisdiction then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Patent Security Agreement in any jurisdiction.

15. This Patent Security Agreement is subject to modification only by a writing signed by the parties.

16. This Patent Security Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

17. The validity and interpretation of this Agreement and the rights and obligations of the parties hereto shall be governed by the internal laws (and not the law of conflicts) of the State of New York.

18. Waiver of Trial by Jury. THE PARTIES HERETO DO HEREBY KNOWINGLY, VOLUNTARILY, MUTUALLY AND WILLINGLY WAIVE THEIR RIGHT TO A TRIAL BY JURY OF ANY AND ALL CLAIMS MADE BETWEEN THEM, WHETHER NOW EXISTING OR ARISING IN THE FUTURE, INCLUDING, WITHOUT LIMITATION, ANY AND ALL CLAIMS, DEFENSES, COUNTERCLAIMS, CROSS-CLAIMS, THIRD PARTY CLAIMS AND INTERVENOR'S CLAIMS, WHETHER ARISING FROM OR RELATED TO THE NEGOTIATION, EXECUTION AND PERFORMANCE OF THE TRANSACTIONS TO WHICH THIS PATENT SECURITY AGREEMENT, THE NOTES OR ANY ASSOCIATED LOAN DOCUMENTS RELATE.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first above written.

DEBTOR:

ZAPATA INDUSTRIES, INC.,
a Pennsylvania corporation

By: 

RAYMOND TORRES, Chief Operating
Officer

By: 

JOHN GIGAS, Finance Manager and
Asst. Secretary

(Corporate Seal)

SECURED PARTY:

NATIONAL BANK OF CANADA, a Canadian
Chartered Bank

By: 
FRANK H. D'ALTO, Vice President

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October 8, 1997



EXHIBIT "A"

**Zapata Industries, Inc.
Schedule of Patents**

<u>Patent Number</u>	<u>Description</u>	<u>Date of Patent</u>
4,905,852	PLASTIC CLOSURE WITH IMPROVED SEAL	3/6/90
4,271,953	AUTOMATIC FEEDING HOPPER EMPLOYING AN ANTI-JAMMING MECHANISM	1/9/81

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A handwritten signature in black ink, appearing to be a stylized 'J' or 'Z' followed by a flourish.

EXHIBIT "B"
Litigation

LITOW, CUTLER, ZABLUDOWSKI & ALLEN

ATTORNEYS & COUNSELORS AT LAW

ONE BISCAYNE TOWER

SUITE 3100

2 SOUTH BISCAYNE BOULEVARD

MIAMI, FLORIDA 33131

PHILIP A. ALLEN, III, P.A.

WRITER'S DIRECT LINE:

(305) 995-5444

TELEPHONE (305) 381-8400

FACSIMILE (305) 381-7910

September 30, 1997

Gregory St. John, III, Esq.
Adorno & Zeder
2601 South Bayshore Drive
Suite 1600
Miami, Florida 33153

**Re: National Bank of Canada Loans to Zapata Industries, Inc. and Zapata
Innovative Plastics**

Dear Greg:

Enclosed is a copy of our most recent report to Zapata Industries, Inc.'s auditors. It includes a discussion of the issues related to the litigation styled, *Zapata Industries, Inc. v. W.R. Grace & Co.-Conn.*, Case No. 95-2420-Civ-Middlebrooks/Turnoff. There have been no material changes in that matter since the date of the enclosed.

I contacted Sal Hazday at Zapata about your request that I review the Assignment and Security Agreements attached to your letter. Sal's view is that there is no need for me to review those documents at this time and, therefore, I have not reviewed them.

Please let me know if I may be of further assistance.

Sincerely,



Philip A. Allen, III, P.A.

Enclosure

PAA/sa

stjohnlfr.sept30.zapata.doc

LITOW, CUTLER, ZABLUDOWSKI & ALLEN

ATTORNEYS & COUNSELORS AT LAW

ONE BISCAYNE TOWER

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2 SOUTH BISCAYNE BOULEVARD

MIAMI, FLORIDA 33131

PHILIP A. ALLEN, III, P.A.

WRITER'S DIRECT LINE:

(305) 895-5444

TELEPHONE (305) 381-8400

FACSIMILE (305) 381-7910

April 24, 1997

VIA FACSIMILE AND MAIL

Deloitte & Touche, LLP
One Williams Center
Suite 2400
Tulsa, Oklahoma 74172

Re: Zapata Industries, Inc., a Unit of Zapata International Corporation

Gentlemen:

We have been requested by letter dated April 1, 1997 (the "Request Letter"), from John Gigas, Manager of Finance for Zapata Industries, Inc. ("Zapata"), to furnish you with certain information concerning Zapata in connection with your examination of the financial statements of Zapata for the year ending December 31, 1996, and to the date of this response.

The scope of our reply has been limited, as a matter of policy, to include only those matters to which we have given substantive legal attention. While this firm has represented Zapata during the past year, our representation has been limited to specific matters as to which we were consulted by Zapata. Subject to the foregoing, please be advised that we have the following matter to report:

Pending or Threatened Litigation, Claims and Assessments*Zapata Industries, Inc. v. W.R. Grace & Co.*

Zapata is the plaintiff in a civil action styled *Zapata Industries, Inc. v. W.R. Grace & Co.*, Case No. 95-2420-Civ-Nesbitt, in the United States District Court for the Southern District of Florida. The defendant in this action, W.R. Grace, manufactures compound from which closure liners are manufactured and distributes and sells these products in interstate and international commerce. Grace purchased all of the assets of another corporation, Advanced Oxygen Technologies, Inc. f/k/a Aquanautics Corporation ("AOTI"), in April 1995. Those assets consisted primarily of patents on technology relating to the absorption and management of oxygen. Prior to that sale, in 1989, Zapata and AOTI entered into a Development Agreement

PATENT

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Deloitte & Touche, LLP
April 24, 1997
Page 2

relating to the technology developed jointly by the two parties under which Zapata received ownership of the "manufacturing technology" and AOTI received ownership of the "oxygen technology." Subsequently, Zapata invented oxygen technology for use in closures and other packaging materials utilizing ascorbate and its isomers in conjunction with metal catalysts. Following negotiations between Zapata and AOTI relating to the ownership of the new oxygen technology, the parties entered into a License Agreement. Under the License Agreement, AOTI received ownership of the oxygen technology and all rights in related patents issued or applied for by either party. Zapata was granted licenses of all patents covering the oxygen technology and agreed to pay royalties to AOTI on the sales of liners utilizing the technology covered by the patents. The License Agreement also provided that employees of both parties were prohibited from accepting employment with the other party, which was breached when AOTI hired Zapata's former president. Zapata then commenced arbitration proceedings and suspended its performance of the License Agreement. In January 1992, Zapata and AOTI entered into a Settlement Agreement under which Zapata dismissed all claims raised in the arbitration and agreed to assign all patents and patent applications to AOTI, and AOTI granted to Zapata worldwide, royalty-free licenses of the oxygen technology and the patents embodying that technology, specifically for the sale of compound and closures for beverages and certain food sector markets. The licenses are non-exclusive, except that they are exclusive for patents with respect to beer closures in seven Latin American countries. Since then, Zapata has continued to develop and commercialize the oxygen technology embodied in the AOTI patents under the "Pure Seal" trademark.

Grace has procured United States patents related to oxygen absorption or oxygen scavenging technology which claim gasket compositions containing ascorbate as an oxygen scavenger. At the time that Grace filed its applications for these patents, the United States Patent and Trademark Office was not aware of the prior art utilizing ascorbate or its isomers as an oxygen scavenger. In April 1995, Grace assumed AOTI's rights and obligations under the Settlement Agreement and acquired all of AOTI's interests in the AOTI patents. Grace then demanded, among other things, that Zapata assign its interests in patent applications pending in Australia, South Africa, Europe, Japan and Brazil; purchase a non-exclusive license of the Grace patents and pay a royalty to Grace as a condition of continuing to manufacture and sell closure liners and compound for closure liners that use the technology covered by the AOTI patents; and enter into an agreement that all future improvements in the AOTI technology that Zapata might invent would become the property of Grace. The complaint alleges in Count I that the Grace patents are invalid as they constitute prior art. In Count II, Zapata contends that Grace is estopped from asserting that the Grace patents dominate the AOTI patents and that the Grace patents are a restriction on Zapata's commercialization of the AOTI patent and oxygen technology. Counts III and IV of the complaint allege that Grace attempted and, with AOTI, conspired to monopolize commerce in the relevant market. The complaint demands declaratory and injunctive relief, as well as an award of attorneys' fees and costs.

LITOW, CUTLER, ZABEL, TOWSKI & ALLEN
ONE BISCAYNE TOWER • SUITE 3100 • 2 SOUTH BISCAYNE BOULEVARD, MIAMI, FL 33133 • TEL. (305) 381-8400

PATENT
REEL: 9214 FRAME: 0497

Deloitte & Touche, LLP

April 24, 1997

Page 3

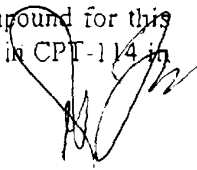
Grace moved to dismiss the complaint on several grounds. The motion was referred by U.S. Judge Lenore Nesbitt to Chief U.S. Magistrate Judge William C. Turnoff for his recommendation. Magistrate Turnoff, in his Report and Recommendation dated August 16, 1996, has recommended that W.R. Grace's motion to dismiss Counts I and II of the complaint be denied, and that Grace's motion to dismiss Counts III and IV be granted. ZapataA filed a timely objection to the recommended dismissal of the antitrust Counts III and IV. Grace did not object to the denial of its motion as to Counts I and II. As a result, the case will proceed to the discovery phase on the basis on Counts I and II. If the District Judge sustains ZapataA's objections to the recommended dismissal of Counts III and IV, then discovery as to the antitrust claims will proceed as well.

In February and March of 1997, respectively, Grace commenced patent infringement actions against ZapataA affiliates in France (Tapon France, S.A.) and Canada (Capsules ZapataA Auscan, Inc.), alleging infringement of patents issued in those countries that purport to cover ZapataA's oxygen absorbing technology. ZapataA has filed motions for temporary restraining order and for a preliminary injunction to abate all foreign actions until the court in the pending action in Florida can determine whether, as ZapataA has alleged in Count II, Grace is bound to recognize ZapataA's worldwide license to practice the technology. Grace has essentially agreed to a standstill of all foreign litigation through May 30, 1997, so that a hearing on the preliminary injunction hearing may be held.

ZapataA seeks only declaratory and injunctive relief, and there is no present claim for damages. ZapataA is considering whether Grace's seizure of evidence in France in connection with its action there may give rise to damages on the ground that Grace sought and received overbroad, unnecessary relief in order to intentionally gain possession of proprietary formulas, processes and related trade secrets. If the antitrust claims remain in the case, and if ZapataA succeeds in those claims, ZapataA will be entitled to recover its attorneys' fees in connection with this action. Otherwise, ZapataA's rights to recover its fees are at best uncertain.

Grace has filed an amended counterclaim against ZapataA for alleged infringement of the same two patents that ZapataA has sought to have declared invalid through its complaint for a declaratory judgment and injunctive relief. The amendment broadens Grace's counterclaim to include the allegation that its patents cover any closure liner that contains ascorbate, regardless of its relative quantity and regardless of whether its is intended to, or does act, as an oxygen scavenger, as it does in ZapataA's PureSeal™ oxygen absorbing liner.

The result of the amendment is to broaden Grace's allegations to include both PureSeal™ and "CPT-114" as allegedly infringing products. ZapataA has advised us that CPT-114 is a closure liner that ZapataA has supplied exclusively to Anheuser-Busch. The compound for this liner includes ascorbate. However, in contrast to PureSeal™, ascorbate is present in CPT-114 in



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Deloitte & Touche, LLP
April 24, 1997
Page 4

liner includes ascorbate. However, in contrast to PureSeal™, ascorbate is present in CPT-114 in much smaller amounts and, more importantly, ascorbate is not present in CPT-114 for the purpose of absorbing residual oxygen from the head space of bottled beer to prevent oxidation and extend shelf life. Instead, the purpose of CPT-114 is to prevent decomposition of the liner compound during processing. This, in turn, prevents decomposed liner compound from mixing with the beer itself, thereby protecting the beer's flavor. Ascorbate is present for the purpose of stabilizing the compound prior to and during processing. However, the ascorbate is depleted after processing is complete. Neither Zapata nor Anheuser-Busch consider CPT-114 to be an oxygen scavenger.

For this reason, even if the Grace patents in suit are found to be valid, as discussed in our September 5, 1996 letter, the counterclaim may be defended as to liability with respect to CPT-114 under the "Reverse Doctrine of Equivalents." That doctrine holds, essentially, that the inclusion of an ingredient or design element that is the subject of a patent does not constitute patent infringement if the ingredient or design element is serving an entirely different purpose or performing a different function than that contemplated by the patent claims.

Based on the facts supplied by the company, our preliminary view is that the defense is well taken with respect to CPT-114. Notably, Zapata has never represented to Anheuser-Busch that CPT-114 can or does scavenge oxygen, and the product was developed to meet an Anheuser-Busch specification that calls for flavor protection during processing. The specification is silent as to the scavenging of residual, head-space oxygen, and this is the subject of the Grace patents.

In the event the Grace patents are found to be valid, and if the reverse doctrine of equivalents defense is rejected, we estimate that Grace's damage claims will be in the following ranges:

PureSeal™: Total sales through December 1996 have been approximately \$4.15 million. If Grace succeeds, it will be entitled to a reasonable royalty on those sales. In correspondence dating from before the commencement of this action, Grace said that a reasonable royalty would be seven and one-half percent (7.5%) of the price of all crowns sold. Using this analysis, Grace would be entitled to damages of \$311,000. However, this may overstate the appropriate recovery, as the PureSeal™ formulation adds no more than fifteen percent to the sales price of an ordinary liner. Assuming gross profit margin of thirty percent and a net profit margin of ten percent, then Zapata's profits attributable to the PureSeal™ technology are no more than \$60 thousand to \$180 thousand.

CPT-114: Total Sales for 1994 through the first nine months of 1996 were \$28,887,882. (At this writing, sales totals for 1993 were unavailable, but the total was less than the \$9,359 million sold in 1994). Zapata's management informs us that Zapata has been unable to sell

L. TOW CUTLER ZABUDOWSKI & ALLEN

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Deloitte & Touche, LLP

April 24, 1997

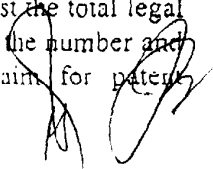
Page 5

CPT-114 to Anheuser-Busch at a price that is higher than its price for ordinary crowns. Instead, ZapataA earns its normal and customary mark up over its price for crowns, and the cost of the additives that comprise the CPT-114 simply serves to reduce ZapataA's profits. Accordingly, there is no value added to the sales price by CPT-114, and a reasonable royalty on that value added would be seven and one-half percent of nothing. (In contrast, ZapataA does, in fact, earn higher prices on the PureSeal™ product because that product performs the oxygen scavenging function and, therefore, it is perceived as having qualities and capacities not found in an ordinary crown). This would result in Grace recovering its lost profits on sales of compound. The amount ZapataA has paid a third-party supplier for manufacturing CPT-114 compound under contract is approximately \$2,888,788. Assuming gross margins of thirty percent and net profits of ten percent on the value added by CPT-114, ZapataA's profits are between \$864,000 and \$289,000. Grace's recovery on its CPT-114 claim, if accepted by the court, would fall somewhere within this range.

This analysis is preliminary and subject to verification for a number of reasons. The measure of damages finally utilized is subject to some uncertainty. Also, the sales totals, profit levels and other facts and circumstances set forth herein have been provided by the Company's management, and they not been independently verified by counsel. Discovery has not yet begun in this action, and we have not yet determined Grace's position on these matters. Based on the information that is presently available, the potential loss from Grace's counterclaims appears to be in a range that is not materially different from that set forth herein.

Apart from and in addition to the counterclaim issues discussed above, counsel is presently unable to definitively opine as to the probable outcome of the case, as Grace has not yet revealed its position with respect to the validity of its patents other than to dispute ZapataA's contention that the patents are invalid. However, the Pennie & Edmunds firm provided ZapataA with an earlier opinion that the Grace patents are likely to be found invalid for the reasons alleged in the complaint. Litigation counsel is aware of no facts or circumstances which would call this opinion into question. Moreover, Grace, by assuming AOTI's position as ZapataA's licensor of the AOTI patents and technology, provided ZapataA with a means of defending itself from Grace charges of infringement that is unrelated to the validity of the Grace patents. Further, the dismissal of the antitrust claims, if sustained by the District Judge, would not materially affect the outcome of the case as those claims sought relief that is both duplicative and derivative of the relief sought in Counts I and II. The primary significance of the antitrust claims is the entitlement to attorneys' fees that would result from their successful prosecution.

Attorneys' fees paid to this firm to date on this matter, including pre-litigation counseling and planning, total \$162,590.20. It is not presently possible to reasonably forecast the total legal expense to be incurred throughout this complex litigation, as that will depend on the number and nature of Grace's defenses; whether Grace asserts the expected counterclaim for patent



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Deloitte & Touche, LLP
April 24, 1997
Page 6

infringement; whether the antitrust claims remain in the suit; and a number of other factors. Counsel has recently estimated that fees through trial could be as low as \$500,000 to as much as \$1,000,000, or more, depending on the amount of extra labor that may be generated by Grace in an attempt to drive up the cost of the litigation in order to increase its own settlement leverage.

Our practice is not to comment on any matters outside the scope of our legal expertise or which do not fall within the scope of the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information (December 1975).

Please note that, in accordance with clauses (b) and (c) of Paragraph 5 of the Statement, no response concerning specifically identified loss contingencies within the scope of such clauses (b) and (c) is set forth herein because Zapata has not requested information concerning such loss contingencies.

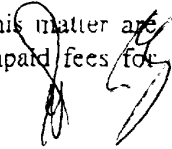
The information set forth herein is as of the date of this letter, and we disclaim any undertaking to advise you of changes which thereafter may be brought to our attention.

Unasserted Claims and Assessments

This response is limited by and in accordance with the ABA Statement of Policy Regarding Lawyers' Responses to Auditors' Requests for Information (December 1975). Without limiting the generality of the foregoing, the limitations set forth in such Statement on the scope and use of this response (Paragraphs 2 and 7) are specifically incorporated herein by reference, and any description herein of any "loss contingencies" is qualified in its entirety by Paragraph 5 of the Statement and the accompanying Commentary (which is an integral part of the Statement). Consistent with the last sentence of Paragraph 6 of the Statement and pursuant to Zapata's request, this letter will confirm as correct Zapata's understanding, as set forth in its Request Letter to us that, whenever in the course of performing legal services for Zapata with respect to a matter recognized to involve an unasserted possible claim or assessment that may call for financial statement disclosure concerning such possible claim or assessment, we, as a matter of professional responsibility to Zapata, will so advise Zapata and will consult with Zapata concerning the question of such disclosure and the applicable requirements of Statement of Financial Accounting Standards No. 5.

Fees for Services Rendered

As of the date of this letter, the unbilled fees for services rendered in this matter are approximately \$30,000. As of December 31, 1996, the amount of billed and unpaid fees for services rendered was \$1,102.50.



SENT BY:

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April 24, 1997
Page 7

This letter is solely for your information in connection with your examination of the financial statements of Zapata as of December 31, 1996, and is not to be quoted in whole or in part or otherwise referred to in any financial statements of Zapata or related documents, nor is it to be filed with any governmental agency or other person, without our prior written consent.

Sincerely,



Philip A. Allen, III
For the Firm

cc: John Gigas, Zapata
Deanna McSwain, Esq., Zapata

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RECORDED: 05/23/1998

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