

MRD  
7-27-98

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08-03-1998

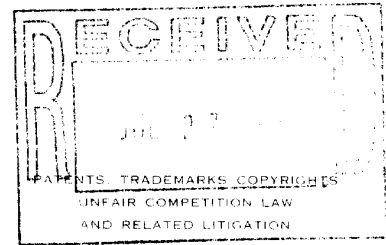


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July 23, 1998

U.S. Patent and Trademark Office  
Assignment Division  
Box Assignments  
North Tower Building  
2800 Crystal Drive  
Washington, D.C. 20231

Re: Assignment of Intellectual Property  
from Krofft-Brakston International, Inc  
to International Titanium Powder, L.L.C.

Sir:

Please record the attached original document or copy thereof.

1. Name of conveying party(ies):

Krofft-Brakston International, Inc.

2. Name and address of receiving party(ies):

International Titanium Powder, L.L.C.  
659 Executive Drive  
Willowbrook, IL 60521

3. Nature of Conveyance:

Assignment of Intellectual Property Agreement dated July 8, 1998.

4. This Assignment is to be recorded against U.S. serial no. 08/283,358 filed August 1, 1994 and U.S. serial no. 08/782,816 filed January 13, 1997, which is a C-I-P of U.S. serial no. 08/283,358..

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PATENT  
REEL: 9348 FRAME: 0127

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Hon. Commissioner of Patents  
and Trademarks  
July 23, 1998  
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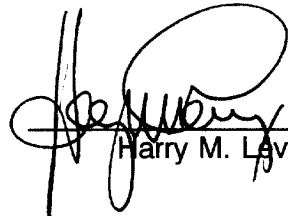
5. Name and address of party to whom correspondence concerning document should be mailed:

Harry M. Levy, Esq.  
Emrich & Dithmar  
Suite 3000  
300 South Wacker Drive  
Chicago, Illinois 60606

6. Total number of applications involved: 2
7. Total fee enclosed (37 CFR 3.41): \$ 80.00
8. Please charge any additional fees or credit any overpayment to Deposit Account No. 05-1060. A duplicate copy of this letter is enclosed.
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.

Date: 7/24/98

  
\_\_\_\_\_  
Harry M. Levy

Total Number of Pages Including Cover Sheet: 8

## ASSIGNMENT OF INTELLECTUAL PROPERTY

This Agreement is between Krofft-Brakston International, Inc., a corporation duly organized and existing under the laws of Delaware and having its principal office at 5836 Sunrise Avenue, Clarendon Hills, Illinois 60514 (hereinafter referred to as "KBI"), and International Titanium Powder, L.L.C., a limited liability partnership duly organized under the laws of Illinois and having its principal office at 659 Executive Drive, Willowbrook, Illinois 60521 (hereinafter referred to as "ITP").

### WITNESSETH

WHEREAS, KBI is the owner of certain INTELLECTUAL PROPERTY (as later defined herein) relating to the ARMSTRONG PROCESS (as later defined herein) and desires to transfer rights to the INTELLECTUAL PROPERTY for the production of titanium metal to ITP and to retain rights to the INTELLECTUAL PROPERTY for uses other than titanium metal production.

WHEREAS, ITP desires to obtain ownership of INTELLECTUAL PROPERTY for the production of titanium metal upon the term and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the promises and the mutual covenants contained herein, the parties agree as follows:

### ARTICLE 1 - DEFINITIONS

For the purposes of this Agreement, the following words and phrases shall have the following meanings:

1.1 "ARMSTRONG PROCESS" shall mean all methods of producing a material from a halide vapor disclosed in U.S. patent application serial number 08/283,358 filed August 1, 1994 and any divisions, continuations or continuations-in-part and any foreign patents or applications based thereon.

1.2 "INTELLECTUAL PROPERTY" shall mean all of the following KBI intellectual property regarding the ARMSTRONG PROCESS:

- (a) the United States and foreign patents and/or patent applications listed in paragraph 1.1.
- (b) United States and foreign patents issued from the applications listed in paragraphs 1.1 and from divisionals and continuations of these applications;
- (c) claims of U.S. and foreign continuation-in-part applications, and of the resulting patents, which are directed to subject matter described in the U.S. and foreign applications listed in paragraph 1.1;

- (d) claims of all foreign patent applications, and of the resulting patents, which are directed to subject matter described in the United States patents and/or patent applications described in (a), (b) or (c) above;
- (e) any reissues of United States patents described in (a), (b) or (c) above;
- (f) proprietary data comprising process analyses, hardware designs, and operational data generated by KBI during reduction of the ARMSTRONG PROCESS to practice as it relates solely to the production of titanium metal practiced in laboratory experiments.

1.3 "OUTFIELD" shall mean any and all applications of the ARMSTRONG PROCESS for production of materials other than titanium metal.

1.4 "PATENT RIGHTS" shall mean KBI Intellectual property regarding the ARMSTRONG PROCESS described in 1.2(a), 1.2(b), 1.2(c), 1.2(d) and 1.2(e).

## ARTICLE 2 - ASSIGNMENT AND GRANT

2.1 KBI hereby assigns full right, title and interest to INTELLECTUAL PROPERTY to ITP subject to the continued fulfillment of ITP's obligations set forth in articles 2,3,4,5,6,and 7.

2.2 ITP hereby grants to KBI an irrevocable right and exclusive license to the OUTFIELD INTELLECTUAL PROPERTY including PATENT RIGHTS.

2.3 ITP shall have the right to license or sell INTELLECTUAL PROPERTY to third parties, subject to the grant of the OUTFIELD to KBI, as necessary to commercialize the ARMSTRONG PROCESS for titanium metal production. ITP must obtain prior written concurrence from KBI to license or sell INTELLECTUAL PROPERTY; such concurrence shall not be unreasonably withheld by KBI.

2.4 ITP agrees that any sale or license provided by ITP to INTELLECTUAL PROPERTY shall provide that the obligations of Articles 2.2, 2.5, 4, 5, 6, and 7 of this Agreement shall be binding upon the recipient of INTELLECTUAL PROPERTY as if it were a party this Agreement.

2.5 ITP agrees to forward to KBI a copy of any and all license or sales agreements regarding INTELLECTUAL PROPERTY promptly upon execution by parties.

## ARTICLE 3 – PAYMENTS

3.1 ITP will provide to KBI a total of \$100,00 in two equal payments, the last of which will be provided to KBI by October 31, 1997.

#### ARTICLE 4 - PATENT PROSECUTION

4.1 ITP shall apply for and seek prompt issuance of the PATENT RIGHTS in the United States and in the foreign countries listed in Appendix B hereto. Appendix B may be amended by written agreement of the parties. The prosecution, filing and maintenance of all PATENT RIGHTS patents and applications shall be the responsibility of and paid for by ITP. However, KBI shall cooperate with ITP in such prosecution, filing and maintenance. ITP shall furnish copies of all patent-related documents to KBI. It is the intent of the parties that ITP will pay for all domestic and foreign patent prosecution and maintenance of the ARMSTRONG PROCESS, notwithstanding the exclusive license granted to KBI herein.

4.2 Each party shall promptly inform the other as to all matters that come to its attention that may affect the preparation, filing, prosecution, or maintenance of the PATENT RIGHTS and permit each other to provide comments and suggestions with respect to the preparation, filing, and prosecution of PATENT RIGHTS, which comments and suggestions shall be considered by the other party.

4.3 Payments of all fees and costs relating to the filing, prosecution and maintenance of the PATENT RIGHTS shall be the responsibility of ITP, whether such fees and costs were incurred before or after the date of this Agreement.

4.4. All patent prosecution and maintenance shall be directed and controlled by KBI or its designees.

#### ARTICLE 5 – INFRINGEMENT

5.1 KBI and ITP agree to notify each other promptly of each infringement or possible infringement, as well as any facts which may affect the validity, scope, or enforceability of the PATENT RIGHTS of which either party becomes aware.

5.2 ITP will with respect to patent rights owned by it pursuant to this Agreement: (a) bring suit in its own time, at its own expense, and on its own behalf for infringement of presumably valid claims in the PATENT RIGHTS; (b) In any such suit, enjoin infringement and collect for its use, damages, profits, and awards of whatever nature recoverable for such infringement; and (c) settle, with the concurrence of KBI, any claim or suit for infringement of the PATENT RIGHTS. ITP shall take no action to compel KBI either to initiate or to join in any such suit for patent infringement, unless such action is required to bring suit or to avoid dismissal of the suit. Should KBI be made a party to any such suit, ITP shall reimburse KBI for any costs, expenses, or fees which KBI incurs as a result thereof. In all cases, ITP agrees to keep KBI reasonably apprised of the status

and progress of any litigation. ITP shall control and direct any litigation to which it is a party, pursuant to this paragraph 5.2 or paragraph 5.4.

5.3 KBI shall cooperate fully with ITP in connection with any infringement action initiated under Paragraph 5.2. KBI agrees promptly to provide access to all necessary documents and to render reasonable assistance in response to a request by ITP at no expense to KBI or its officers or employees.

5.4 in the event that a declaratory judgment action alleging invalidity or non-infringement of any of the PATENT RIGHTS shall be brought against ITP or raised by way of counterclaim or affirmative defense in an infringement suit brought by ITP under Paragraph 5.2 pursuant to this agreement, ITP will (a) defend the suit in its own name, at its own expense, and on its own behalf for presumably valid claims in the PATENT RIGHTS; (b) in any such suit, ultimately to enjoin infringement and to collect for its use, damages, profits and awards of whatever nature recoverable for such infringement; and (c) settle, with the occurrence of KBI, any claim or suit for declaratory judgment involving the PATENT RIGHTS. ITP shall take no action to compel KBI to join in any such declaratory judgment action. ITP may request KBI to join any such suit if necessary to avoid dismissal of the suit. Should KBI be made a party to any such suit by motion or any other action of ITP, ITP shall reimburse KBI, its and employees for any costs, expenses, or fees which KBI incurs as a result of such motion or other action.

#### ARTICLE 6 - PRODUCT LIABILITY

6.1 ITP shall at all times indemnify, defend and hold KBI, its directors, officers, employees and affiliates, harmless against all claims, proceedings, demands and liability of any kind whatsoever, including legal expenses and reasonable attorneys' fees, arising out of the death of or injury to any person or persons or out of any damage to property, or resulting from the production, manufacture, sale, use, lease, consumption or advertisement of the ARMSTRONG PROCESS AS IT RELATES TO THE PRODUCTION AND/OR USE OF TITANIUM METAL.

6.2 Except as otherwise expressly set forth in this Agreement, KBI, its directors, officers, employees, and affiliates make no representations and extend no warranties of any kind, either express or implied, including but not limited to warranties of merchantability, fitness for a particular purpose, validity of patent rights, claims, issued or pending, and the absence of latent or other defects, whether or not discoverable. Nothing in this Agreement shall be construed as a representation made or warranty given by KBI that the practice by ITP of any rights or process granted hereunder shall not infringe the patent rights of any third party. In no event shall KBI, its directors, officers, employees and affiliates be liable for incidental or consequential damages of any kind, including economic damage or injury and lost profits.

#### ARTICLE 7 - NON-USE OF NAMES

ITP shall not use the name of Krofft-Brakston International, Inc., nor any adaption thereof, nor the names of any of its employees, in any advertising, promotional or sales literature without prior written consent obtained from KBI, or said employee, in each case. However, ITP may use the name "ARMSTRONG PROCESS" to identify the process used to produce titanium metal.

#### ARTICLE 8 – ASSIGNMENT

This Agreement is not assignable by either party without the written consent of the other party.

#### ARTICLE 9 - MISCELLANEOUS PROVISIONS

9.1 This agreement shall be construed, governed, interpreted and applied in accordance with the laws of the State of Illinois, except that questions affecting the construction and effect of any patent shall be determined by the law of the country in which the patent was granted.

9.2 The parties hereto acknowledge that this agreement sets forth the entire agreement and understanding of the parties hereto as to the subject matter hereof, and shall not be subject to any change or modification except by the execution of a written instrument subscribed to by the parties hereto.

9.3 The provisions of this Agreement are severable, and in the event that any provisions of this Agreement shall be determined to be invalid or unenforceable under any controlling body of the law, such invalidity or unenforceability shall not in any way affect the validity or enforceability of the remaining provisions hereof.

9.4 The failure of either party to assert a right hereunder or to insist upon compliance with any term, or condition of this Agreement shall not constitute a waiver of that right or excuse a similar subsequent failure to perform any such term or condition by the other party.

IN WITNESS WHEREOF, the parties have duly executed this ASSIGNMENT OF  
INTELLECTUAL PROPERTY AGREEMENT the day and year set forth below:

KROFFT-BRAKSTON INTERNATIONAL, INC.

By:

Name *Sam R. Armstrong*

Title *Vice President*

Date *7/8/98*

INTERNATIONAL TITANIUM POWDER, L.L.C.

By: *Art Wong*

Name *ARTHUR WONG*

Title *MANAGER*

Date *7/8/98*