

08-18-1998

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

RECO



To the Honorable Commissioner of Patents,

100795845

original documents or copy thereof:

1. Name of conveying party(ies):

Richie Eye Research PTY Limited

Additional name(s) of conveying party(ies) attached?

☐ Yes☒ No

3. Nature of Conveyance:

☐ Assignment☐ Merger☐ Security Agreement☐ Change of Name☒ Other: Commercialization License

Execution Date: 24 March 1998

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

Name: Thakral R&D PTY Limited

Internal Address: Level 12

Street Address: 301 George Street

City: Sydney

Country: NSW, Zip: 2000
Australia

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): 5,329,322; 5,576,780; 5,684,561

Additional numbers attached? ☐ Yes ☒ No

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

Name: Greg T. Sueoka

Internal Address: Fenwick & West LLP

Street Address: Two Palo Alto Square

City: Palo Alto State: CA Zip Code: 94306

6. Total number of applications and patents involved: (3)

7. Total fee (37 CFR 3.41): \$120.00

☐ Enclosed☒ Fee Transmittal Enclosed

8. Deposit Account No.: 19-2555

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.

Greg T. Sueoka, 33,800

Attorney, Reg No.

Signature

Date

Total number of pages including cover sheet, attachments, documents: [20]

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5329322

Mail documents to be recorded with required cover sheet information to:

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By Assignment, Commissioner For Patents and Trademarks

Washington, D.C. 20231

Shirt Pocket Autorefractor Project

Second Variation Deed

Date: 24 March 1998

Richie Eye Research Pty. Limited

Richie

Thakral R&D Pty. Ltd.

JV1

AusAcan Financing Limited

Lender

Thakral Corporation Pty. Ltd.

Company

AusAcan Management Limited

Manager

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APR-28-88 06:45 From:FENWICK WEST

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T-501 P.36/88 Job-443

APR-28-88 04:00

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P 36

R-762 Job-601

29. APR. 1998 22:03

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NO. 4423 P. 37

SHIRT POCKET AUTOREFRACTOR PROJECT

SECOND VARIATION DEED

THIS DEED is made at Canberra on 24 March 1998

BETWEEN **RICHE EYE RESEARCH PTY LIMITED**, ACN 066 749 684, of Suite 2505, National Mutual Centre, 44 Market Street, Sydney, NSW, 2000 ("Richie")

AND **THAKRAL R&D PTY LTD**, ACN 067 589 977, Level 12, 301 George Street, Sydney, NSW, 2000 ("JV1") and **RICHE EYE RESEARCH PTY LIMITED**, ACN 066 749 684, of Suite 2505, National Mutual Centre, 44 Market Street, Sydney, NSW, 2000 ("Richie") (the "Investor")

AND **AUSASEAN FINANCING LIMITED**, ACN 003 645 823, Level 1, 50 Carrington Street, Sydney, NSW, 2000 (the "Lender")

AND **THAKRAL CORPORATION PTY LTD**, ACN 056 566 253, Level 12, 301 George Street, Sydney, NSW, 2000 (the "Company")

AND **AUSASEAN MANAGEMENT LIMITED**, ACN 002 866 971, Level 1, 50 Carrington Street, Sydney, NSW, 2000 (the "Manager")

RECITALS:

- A. The parties entered into a Variation Deed on 5 June 1997 to amend the Transaction Documents amongst other matters.
- B. The parties have agreed to amend the Variation Deed on the terms and conditions set out in this Deed.

THIS DEED WITNESSES:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

- (a) Unless the context otherwise requires, capitalised terms used but not defined in this Deed have the meanings given (if any) in the agreement entitled Procedures Memorandum between the parties to this Deed, and dated 30 December 1994 ("Procedures Memorandum").

- (b) In this Deed, unless the context otherwise requires:

"Bank Account" means a bank account at the Wynyard Branch of the Commonwealth Bank of Australia under the New Business Name and such other accounts as may be operated by JV1 in the terms of clause 3.10 for the Joint

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1.

Venture from time to time.

"Closing" has the meaning set out in the Definitive Deed.

REDACTED

"Deed of Charge" means the Deed of Fixed and Floating Charge granted by Richie to JV1 dated 24 April 1997.

"Default Notice" means the document headed "Notice of LRC Event of Default" served on the Lender and the Manager by JV1 on 21 March 1997 and having effect on that date.

"Definitive Deed" means the deed so entitled, if any, which may be entered into by Richie, JV1, Company, Don Robert Yancey, Daphne Eye Technologies, Jan Wayne Svenoy and others on or after the date of this Deed.

"New Business Name" means "Shirt Pocket Auto-Refractor Project" being a registered business name in New South Wales, registration no T9316432

"Research Agreement" means the agreement so entitled, entered into by JV1 and Technology Management and Development Pty Limited, ACN 078 186 928 and dated 5 June 1997.

"Variation Deed" means the deed so entitled, entered into by each party to this Deed and dated 5 June 1997.

"\$" means Australian dollars.

1.2 Transaction Document

- (a) Each party acknowledges and agrees that this Deed is a Transaction Document and that without limitation, each reference to "Transaction Document" in the Procedures Memorandum and the LRC Agreement, shall be deemed to include a reference to the instruments listed in Part A of Schedule 2.
- (b) Each party acknowledges and agrees that on and from Closing, each reference to "Transaction Document" in the Procedures Memorandum and the LRC Agreement shall be deemed to include a reference to the instruments listed in Part B of Schedule 2.
- (c) If and to the extent that any provision of this Deed is inconsistent with any provision of any other Transaction Document, the terms of this Deed shall prevail and to the extent of such inconsistency such other Transaction Document shall be deemed to be amended.

1.3 Interpretation

Notwithstanding the timing of their execution, the provisions of the Procedures Memorandum apply to this Deed.

2. CONSIDERATION

Each party acknowledges to the other parties that it enters this Deed and incurs obligations and gives rights under it for valuable consideration received from the other parties to this Deed.

3. VARIATION OF TRANSACTION DOCUMENTS**3.1 Amendments with effect from 22 March 1997**

With deemed effect from and including 22 March 1997:

REDACTED

- (c) The Procedures Memorandum is amended as set out in Part C of the Schedule.

REDACTED

- (e) The LRC Agreement is amended as set out in Part E of the Schedule.

3.2 Amendment

With effect from and including the date of this Deed:

REDACTED

- (b) The Variation Deed is amended as set out in Part G of the Schedule provided that the amendments in paragraph 2 will have no force and effect unless and until Closing occurs.

3.3 Amendments not to Affect Validity, Rights, Obligations

Except as expressly provided for in this Deed, nothing in this Deed:

- (a) prejudices or adversely affects any party's right, power, authority, discretion or remedy arising under the Procedures Memorandum REDACTED before the date of this Deed; or
- (b) discharges, releases or otherwise affects any liability or obligation of a party arising under the Memorandum REDACTED before the date of this Deed.

3.4 Confirmation of 22 March 1997 amendments

With effect on and from 22 March 1997:

REDACTED

REDACTED

- (c) Each party to the Procedures Memorandum is bound by the Procedures Memorandum as amended by this Deed.

REDACTED

- (c) Each party to the LRC Agreement is bound by the LRC Agreement as amended by this Deed.

3.5 Confirmation

With effect on and from the Date of this Deed:

REDACTED

- (b) Each party to the Variation Deed is bound by the Variation Deed as amended by this Deed.

3.6 Acknowledgement

Each party acknowledges that this Deed is entered into in accordance with the Transaction Documents.

3.7 Notice of LRC Event of Default

Notwithstanding anything to the contrary in this Deed, the parties acknowledge and agree that for the purposes of the Transaction Documents as amended by this Deed, the Default Notice is, with effect from and including 21 March 1997, a notice referred to in clause 9.1 of the LRC Agreement which is given to Richie, the Lender and the Manager on 21 March 1997.

3.8 Research Agreement

Each of the parties acknowledges and agrees that the Research Agreement was terminated on 21 August 1997.

3.9 New Business Name

- (a) Each party acknowledges and agrees that Richie consented to the registration by JV1 in its name of the New Business Name for the Joint Venture.
- (b) JV1 and Richie agree and acknowledge that the New Business Name is a Joint Venture Asset.

REDACTED

REDACTED**4. REPRESENTATIONS AND WARRANTIES****4.1 Representations and Warranties**

- (a) Richie makes the same representations and warranties in this Deed as it made in clause 14.1 of the Variation Deed.
- (b) Each party makes the same representations and warranties in this Deed as it made in clause 14.2 of the Variation Deed.

4.2 Reliance by JV1 on Richie representations and Warranties

Richie acknowledges that JV1 has relied upon the correctness of the representations and warranties contained in clause 4.1 in entering into this Deed and will continue to do so in dealing with Richie, and Richie agrees that each such representation and warranty shall be repeated on each day whilst any monies advanced pursuant to the Facility Agreement remain outstanding (whether or not then due for payment) with reference to the facts and circumstances then subsisting as if made on each such day.

4.3 No Reliance on JV1

Each party (other than JV1 and the Company) acknowledges that it has not entered into this Deed in reliance on, or as a result of any conduct by JV1 or the Company (including any advice, representation, warranty or undertaking).

5. GENERAL**5.1 Governing law and jurisdiction**

- (a) This Deed is governed by the laws of the Australian Capital Territory.
- (b) Each of the parties irrevocably submits to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

5.2 Waiver and Variation

A provision of, or a right created under, this Deed may not be waived or varied except in writing signed by the party or parties to be bound. No waiver of one breach of any term or condition of this Deed will operate as a waiver of another breach of the same or any other term or condition of this Deed.

5.3 Severability

Any provision of this Deed which is illegal, void or unenforceable shall be ineffective to the extent of such illegality, voidness or unenforceability without invalidating the remaining provisions of this Deed.

5.4 Confidentiality

Without limiting a party's obligations under clause 4 of the Procedures Memorandum, a party must not disclose the contents of this Deed to a third party except with the prior written consent of JV1 or as required by any competent authority or as required by law or ministerial or judicial or parliamentary authority or to any legal or other professional advisers.

5.5 Assignment

- (a) Subject to clause 5.5(b), the rights and obligations of a party under this Deed may not be assigned, novated, charged or otherwise dealt with and a party shall not attempt or purport to do so, without the prior written consent of all the parties.
- (b) Each of JV1 and the Company may assign, novate, charge or otherwise deal with any of its rights and obligations under this Deed. Each other party will upon request co-operate in any such dealing including without limitation executing any necessary novation of this Deed.

5.6 Counterparts

- (a) This Deed may be executed in any number of counterparts.
- (b) All counterparts, taken together, constitute one instrument.
- (c) A party may execute this Deed by signing any counterpart.

5.7 Attorneys

Each of the Attorneys executing this Deed states that the Attorney has no notice of the revocation of the power of attorney appointing that Attorney.

6. COSTS

- 6.1 Each party will bear its own costs in respect of registration, preparation and execution of this Deed and any other document to be executed pursuant to this Deed or to give effect to the provisions of this Deed.
- 6.2 The parties acknowledge and agree that clause 9 of the Procedures Memorandum applies to this Deed as if all references to the Researcher were references to Richie.

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P 43

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+61 2 52740884

NO. 4423 P. 43

EXECUTED in Canberra as a deed.

SIGNED, SEALED AND DELIVERED)
for and on behalf of **RICHIE EYE**)
RESEARCH PTY LIMITED by)
Nicholas John Symons)
its attorney under ~~POWER~~ ^{SOLICITOR} of Attorney)
dated 24 December 1997 and who declares)
that he has not received any notice of the)
revocation of such Power of Attorney in the)
presence of:)

(Signature)

(Signature of Witness)

RACHAEL LEWIS

~~SOLICITOR~~ ^{SOLICITOR} A.C.T.

(Name of Witness in Full)

SIGNED, SEALED AND DELIVERED)
for and on behalf of **ADRIAN**)
FINANCING LIMITED by)
Nicholas John Symons)
its attorney under ~~POWER~~ ^{SOLICITOR} of Attorney)
dated 23 February 1998 and who declares)
that he has not received any notice of the)
revocation of such Power of Attorney in the)
presence of:)

(Signature)

(Signature of Witness)

RACHAEL LEWIS

~~SOLICITOR~~ ^{SOLICITOR} A.C.T.

(Name of Witness in Full)

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7.

24/03 '88 TUE 17:11 [TX/RX NO 8854] 012

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NO. 4423 P. 44

SIGNED, SEALED AND DELIVERED)
for and on behalf of ADHASEAN)
MANAGEMENT LIMITED by)
Nicholas John Symons)
is attorney under a Power of Attorney)
dated 25 February 1998 and who declares)
that he has not received any notice of the)
revocation of such Power of Attorney in the)
presence of:)



(Signature of Witness)

RACHAEL LEWIS
Solicitor, A.C.T.

(Name of Witness in Full)

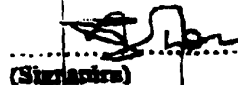
SIGNED, SEALED AND DELIVERED)
for and on behalf of THAKRAL R&D)
PTY LTD by Nicholas John Symons)
is attorney under a Power of Attorney)
dated 24 April 1997 and who declares that)
he has not received any notice of the)
revocation of such Power of Attorney in the)
presence of:)



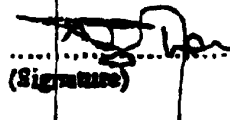
(Signature of Witness)

RACHAEL LEWIS
Solicitor, A.C.T.

(Name of Witness in Full)



(Signature)



(Signature)

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8.

24/03 '98 TUE 17:11 [TZ/RS NO 8084] 013

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NO. 4423 P. 45

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SIGNED, SEALED AND DELIVERED
for and on behalf of **THAKRAL**
CORPORATION PTY LTD by

Nicholas John Symons
his attorney under a Power of Attorney
dated 30 May 1987 and who declares that
he has not received any notice of the
revocation of such Power of Attorney in the
presence of:

Rachael Lewis
(Signature of Witness)
RACHAEL LEWIS
Solicitor, A.C.T.

(Name of Witness to Fill)

[Signature]
(Signature)

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9.

26/03 '88 TUE 17:11 [TX/RX NO 6884] 0014

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NO. 4423 P. 46

SCHEDULE 1

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10.

Part C**Amendments to Procedures Memorandum****1. Clause 1.1 of the Procedures Memorandum is amended by:**

- (a) deleting the definition of "Expiry Date" and replacing it with:

"Expiry Date" means 30 days after the date which is the earlier of:

- (a) expiry of the Commercialisation Period (excluding any Further Term); and
- (b) the Investor giving notice referred to in Clause 3.10(d) or Clause 9.1 of the LRC Agreement to both the Researcher and the Lender on or after 22 March 1997."

- (b) inserting the following definitions in alphabetical order:

"Other Contracts" means any contracts or agreements to which JV1 is a party prior to the Purchase Date other than the Transaction Documents or such thereof as are necessarily incidental to or required under or contemplated by the Transaction Documents.

"Second Variation Deed" means the deed so entitled entered into between the parties to the Procedures Memorandum and dated 24 March 1998.

- (c) deleting the definition "R&D Period" and inserting in lieu thereof:

"R&D Period" means the period commencing on the date of this Agreement and ending on 21 August 1997.

- (d) deleting the definition of "Researcher" and inserting in lieu thereof:

"Researcher" means Richic Eye Research Pty Limited, ACN 066 749 684 (formerly Cain) in any capacity in which it may act from time to time under the Transaction Documents.

- (e) deleting in the definition of "Purchase Event": "; the occurrence of an "Event of Default" as described in the Variation Deed" and inserting in lieu thereof ".".

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P 48

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P 50

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NO. 4423 P. 50

REDACTED

Part E**Amendments to the LRC Agreement**

1. Insert new clauses 3.8(f) and 3.8(g) as follows:

"(f) Except pursuant to and in accordance with any licence granted to JV2 under clause 8(a) of the Variation Deed, notwithstanding anything else in this Agreement or the Transaction Documents JV2 may not use the Research Results for further research, development or commercialisation (as defined in clause 6.2 of the LRC Agreement) outside of the Project.

(g) JV1 may at its discretion sell, develop, market, encumber, licence or otherwise deal with the Research Results as it sees fit."

2. In clause 6.1(b), delete the words in line one "If an LRC Event of Default has not occurred".

3. In the Schedule to the Project Schedule, delete items 1 and 2 and replace them with the following:

"1. (a) US Patent Application Serial Number 888,166 filed May 26, 1992 that issued as US Patent Number 5,329,322;

(b) US Patent Application Serial Numbers 888,166 filed May 26, 1992 and 267,123 filed June 27, 1994 that issued as US Patent Number 5,684,561; and

(c) US Patent Application Serial Numbers 888,166 filed May 26, 1992, 267,123 filed June 27, 1994 and 490,604 filed June 6, 1995 that issued as US Patent Number 5,576,780.

2. All continuation, divisional, reissue patents granted in respect of the patents listed in 1 above, including the subject-matter of any and all claims which may be obtained in every such patent and all foreign counterparts."

REDACTED

Part G**Amendments to Variation Deed**

1. In clause 1.1(b) insert the following definition in alphabetical order:

"Event of Default" means an Event of Default as defined in clause 7.1 of the Security."

2. Delete each reference to "x" in Clause 7.1 and replace it with "x".

3. In clause 1.2(a), insert at the end of the clause "and the Facility Agreement between Cain and JV1 dated 24 April 1997".

4. In clause 10:

(a) Delete clause 10.2(a); and

(b) Insert as a new clause 10.3:

Cain hereby irrevocably and unconditionally directs New Marketer, with effect immediately upon receipt by Cain of notice from JV1 following the occurrence of any of the events referred to in clause 3.9 of the Facility Agreement, to pay any royalties otherwise payable by New Marketer under clause 7.1:

(a) to JV1, until repayment in full of all monies due and payable under the Facility Agreement; and

(b) following repayment in full of all monies due and payable under the Facility Agreement, to Cain or as Cain may thereafter direct from time to time.

APR-29-98 06:49 From:FENWICK WEST

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T-501 P.53/88 Job-443

APR-29-98 04:58

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R-762 Job-601

29. APR. 1998 22:08

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NO. 4423 P. 53

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