



01-12-1999

DEPARTMENT OF COMMERCE  
TRADEMARK OFFICE



100938275

No.: Long

To the Honorable Commissioner of Patents and Trademarks:  
Please record the attached original documents or copy thereof.

ME01-7-99

<p>1. Name of conveying party(ies):  <u>Long Agribusiness, LLC</u></p> <p>Additional name(s) of conveying party(ies) attached? <u>Yes</u> <input checked="" type="checkbox"/> <u>No</u></p>		<p>2. Name and address of receiving party(ies) Name: <u>NATIONSBANK, N.A.</u></p> <p>Internal Address: _____</p> <p>Street Address: <u>13th Floor, 600 Peachtree Street</u> City: <u>Atlanta</u> State <u>GA</u> Zip: <u>30308</u></p> <p>Additional name(s) &amp; address(es) attached? <u>Yes</u> <input checked="" type="checkbox"/> <u>No</u></p>	
<p>3. Nature of conveyance:  <input type="checkbox"/> Assignment <input type="checkbox"/> Merger <input checked="" type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name  <input type="checkbox"/> Other _____</p> <p>Execution Date: <u>December 18, 1998</u></p>			
<p>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: _____ Title: _____ A. Patent Application No.(s) _____ B. Patent No.(s) _____   5,293,733; 4,346,843   5,024,281 &amp; 5,570,547 Additional numbers attached? <u>Yes</u> <input checked="" type="checkbox"/> <u>No</u></p>			
<p>5. Name and address of party to whom correspondence concerning document should be mailed: Name: <u>Ralph A. Dowell</u> Internal Address: _____  Street Address: <u>Suite 309, 1215 Jefferson Davis Highway Arlington, VA 22202-3124 (703) 415-2555</u></p>		<p>6. Total number of applications and patents involved: <u>4</u></p> <p>7. Total fee (37CFR 3.41).....\$<u>160.00</u> <input checked="" type="checkbox"/> Enclosed <input type="checkbox"/> Authorized to be charged to deposit account</p> <p>8. Deposit account number: _____ (Attach duplicate copy of this page if paying by deposit account.)</p>	
<p>DO NOT USE THIS SPACE</p>			
<p>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.</p> <p><u>Ralph A. Dowell 26,868</u> <u>[Signature]</u> <u>January 6, 1999</u> Name of Person signing Signature Date</p> <p>Total number of pages including cover sheet, attachments and document: <u>12</u></p>			

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

# CONDITIONAL ASSIGNMENT AND PATENT SECURITY AGREEMENT

**THIS CONDITIONAL ASSIGNMENT AND PATENT SECURITY AGREEMENT** (the "Agreement") is made as of the 18<sup>th</sup> day of December, 1998, between LONG AGRIBUSINESS, LLC, a Delaware corporation (the "Assignor"), and NATIONSBANK, N.A., as agent (the "Agent") for the benefit of the lenders from time to time party to the hereinafter defined Loan Agreement.

WHEREAS, the Assignor, the financial institutions from time to time party thereto (the "Lenders"), and the Agent have entered into a Loan and Security Agreement dated as of December 18, 1998, (as amended, modified, supplemented and restated from time to time, the "Loan Agreement"), pursuant to which the Lenders have agreed to make certain loans and other financial accommodations available to the Assignor (the "Loans"); and

WHEREAS, in order to induce the Agent and the Lenders to enter into the Loan Agreement and to make Loans to the Assignor, the Assignor has agreed to assign to the Agent, for the ratable benefit of the Lenders, certain patent rights as described herein.

NOW, THEREFORE, in consideration of the premises, the Assignor hereby agrees with the Agent as follows:

1. Grant of Security Interest.

To secure the complete and timely payment and performance of all Secured Obligations, the Assignor hereby grants, assigns and conveys to the Agent, for the ratable benefit of the Lenders, a security interest in the Assignor's entire right, title and interest in and to the United States patents and patent applications listed in Schedule A attached hereto and by reference made a part hereof and in any further United States patents or patent applications which may issue or be filed during the duration hereof, together with any and all licenses now or hereafter relating thereto and all royalty payments or rights to royalty payments now or hereafter arising therefrom (collectively, the "Patents").

2. Representations, Warranties and Covenants.

The Assignor represents, warrants and covenants that:

- (a) Except as set forth on Schedule A, the Patents are subsisting (that is, they have issued and have not subsequently lapsed or prematurely expired) and have not been adjudged invalid or unenforceable, in whole or in part, in

the United States of America (the "U.S.") or in any of the respective states thereof; except that no representation is made that any Patent which is not material to the Assignor's business has not become abandoned through lack of use;

- (b) The Patents listed on **Schedule A** constitute all of the patents owned by the Assignor and all of the patents that are the subject of pending applications for such federal registration that are owned by Assignor;
- (c) To the best of the Assignor's knowledge and belief, each of the subsisting Patents is valid and enforceable in the U.S. and the respective states thereof and all claims by others to rights in the Patents of which the Assignor is aware, including, without limitation, licenses, are noted on **Schedule B**, attached hereto and by reference made a part hereof;
- (d) To the best of the Assignor's knowledge and belief, except as noted on **Schedule B**, the Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Patents, free and clear of any liens, charges, encumbrances, mortgages, hypothecations, pledges, liens, security interests or claims of any kind, including, without limitation, covenants by the Assignor not to sue third persons and licenses, other than Liens in favor of the Agent and Permitted Liens;
- (e) The Assignor has made all necessary applications, filings and recordations to protect and maintain its interest in the subsisting Patents, including, without limitation, all necessary filings and recordations in the U.S. Patent and Trademark Office;
- (f) The Assignor has the unqualified right, power and authority to execute, deliver and perform this Agreement;
- (g) Until all of the Secured Obligations shall have been satisfied in full and the Commitments shall have been terminated, the Assignor will not enter into any agreement which is inconsistent with the Assignor's obligations under this Agreement without the Agent's prior written consent; and
- (h) The Assignor shall perform all acts and execute all documents reasonably requested by the Agent at any time and from time to time to evidence, perfect, maintain, record and enforce the Agent's security interest in the Patents, including, without limitation, any patents falling under Paragraph 3.

3. **Conditional Grant of Security Interest in Additional Patents.**

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If, before the Secured Obligations shall have been satisfied in full and the Commitments shall have been terminated, the Assignor shall have or obtain ownership of any patent or patent application, the provisions of Paragraph 1 shall automatically apply thereto. This Paragraph 3 shall not apply to Patents which are owned by others and licensed to the Assignor. The Assignor shall perform all acts and execute all documents reasonably requested by the Agent at any time and from time to time to evidence, perfect, maintain, record, and enforce the Agent's security interest in the Patents, including, without limitations, any patents falling under this Paragraph.

4. Modification of Agreement.

The Assignor authorizes the Agent to modify this Agreement by amending **Schedule A** and simultaneously amending **Schedule B**, if necessary, to include any additional patents or patent applications which are Patents pursuant to Paragraphs 1 and 3 hereof, together with any then-existing limitations or licenses or claims to rights therein that have been made known to the Agent, and to have this Agreement, as amended, or any other document evidencing the security interest granted therein, recorded in the U.S. Patent and Trademark Office at the expense of the Assignor. The representations and warranties of the Assignor shall be deemed to be remade and restated by the Assignor as of the date of the amendment of **Schedule A** with respect to all Patents listed on the amended **Schedule A** at that time, except that no representation or warranty shall be deemed remade or restated with respect to any Patent that has expired or otherwise lapsed, or that has been adjudged invalid or unenforceable, or as to which any claim or claims by others has been made asserting rights in the Patent provided said claim or claims has been made known to the Agent.

5. Covenants of the Assignor.

(a) The Assignor covenants as follows: (i) it will use and not abandon or do any act or omit to do any act that may cause or contribute to the abandonment of any Patent, or permit the premature expiration of any Patent, provided that, if the Assignor determines that any Patent is not material to the Assignor's business, the Assignor may, if no Event of Default exists, abandon any Patent with prior written notice to the Agent; and (ii) the Assignor shall give the Agent written notice, and a complete copy, of any license or sublicense of the Patents.

(b) With respect to each Patent, the Assignor agrees to take all reasonable steps, including, without limitation, in the U.S. Patent and Trademark Office or in any court, to: (i) maintain each such Patent, and (ii) pursue any patent application now or hereafter included in the Patents under this Agreement, including, without reservation, filing of responses to correspondence issued by the U.S. Patent and Trademark Office and payment of all maintenance fees or taxes as they become due during the life of the Patent, provided, that, if the Assignor determines that any Patent is not material to its business, the Assignor may, if no Event of Default exists, abandon or not pursue any Patent with prior written notice to the Agent. The Assignor agrees to take corresponding steps with respect to each new or acquired Patent or patent application covered by Paragraph 3 hereof.

(c) With respect to each Patent, the Assignor agrees that it shall notify Agent promptly after it becomes aware of any alleged infringement of any of the Patents by a third party. The Assignor further agrees to pursue all reasonable and appropriate causes of action against all infringers of the Patents, and the Assignor shall be solely liable for all costs associated with such causes of action, including, but not limited to, attorneys' fees. Notwithstanding the foregoing, if the Assignor determines that any such Patent is not material to the Assignor's business, the Assignor may, if no Event of Default exists, elect not to pursue any such infringement action with prior written notice to the Agent.

(d) Upon the Agent's request from time to time, the Assignor shall provide to the Agent an up-to-date list of all license agreements relating to or affecting the Patents, together with the names and addresses of each licensee and, if requested by the Agent, a copy of each license agreement.

6. Remedies Upon Default; Power of Attorney

(a) In addition to the grant of the security interest contained in Paragraphs 1 and 3 hereof, if any Event of Default shall have occurred, upon the election of the Agent, all right, title and interest in and to the Patents shall be automatically granted, assigned, conveyed and delivered to the Agent or its designee. The Assignor hereby irrevocably constitutes and appoints the Agent and any officer, agent or employee thereof, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Assignor and in the name of the Assignor or the Agent's own name or the name of the Agent's designee, all acts of said attorney being hereby ratified and confirmed, upon the occurrence and continuance of an Event of Default: (i) to complete, date, execute and file, or cause to be filed, the Assignment attached hereto as Exhibit A and by reference made a part hereof (the "Assignment") in the U.S. Patent and Trademark Office and in all other applicable offices, and to execute and deliver any and all documents and instruments which may be necessary or desirable to accomplish the purpose of the Assignment, including, without limitation, the right (but not the obligation) to prosecute applications in the name of the Assignor or the Agent, and to take any other actions deemed necessary by the Agent to maintain such registration in effect; (ii) to collect all proceeds from the Patents (including, without limitation, license royalties and proceeds of infringement suits); (iii) to convey in any transaction authorized by the Loan Documents, any goods covered by the Patents to any purchaser thereof; and (iv) to make payment or to discharge taxes or liens levied or placed upon or threatened against any goods covered by the Patents, the legality or validity thereof and the amounts necessary to discharge the same to be determined by the Agent in its sole discretion, and such payments made by the Agent to become the obligations of the Assignor to the Agent, due and payable immediately without demand. Such power, being coupled with an interest, is irrevocable.

(b) The Agent shall have, in addition to all other rights and remedies given it by this 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

enforceable, and, without limiting the generality of the foregoing, the Agent may, if any Event of Default shall have occurred and be continuing, immediately, without demand or performance and without other notice (except as set forth below) or demand whatsoever to the Assignor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon, the Patents, 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 in accordance with the terms of the Loan Agreement. Notice of any sale or other disposition of the Patents shall be given to the Assignor at least 10 days before the time of any intended public or private sale or other disposition of the Patents is to be made, which the Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, the Agent or any Lender may, to the extent permissible under applicable law, purchase the whole or any part of the Patents sold, free from any right of redemption on the part of the Assignor, which right is hereby waived and released. The Assignor hereby agrees to execute any documents reasonably requested by the Agent in connection with any disposition hereunder.

(c) Upon the occurrence of the conditional assignment provided for herein, the Assignor shall have no right, title, or interest in or to any of the Patents and shall cease and desist in the use of the Patents, and shall, upon written demand of the Agent, or pursuant to the terms of the Loan Documents, deliver to the Agent all goods covered by the Patents.

7. Termination of Agreement.

At such time as the Assignor shall completely satisfy all of the Secured Obligations and the Commitments shall have been terminated, the Agent shall execute and deliver to the Assignor all deeds, assignments and other instruments as may be necessary or proper to re-vest in the Assignor title to the Patents, subject to any disposition thereof which may have been made by the Agent pursuant hereto.

8. Limitation of Liability and Indemnification.

The Assignor hereby releases the Agent and any Lender from, and agrees to hold the Agent and any Lender free and harmless from and against, any claims arising out of any action taken or omitted to be taken with respect to the Patents (except to the extent of the Agent's or any Lenders' gross negligence or willful misconduct), and the Assignor agrees to indemnify the Agent and any Lender from and against any and all claims, demands, suits, losses, damages or other expenses (including reasonable attorneys' fees) arising from or in any way related to the Patents.

9. Waiver and Amendment.

(a) No course of dealing between the Assignor and the Agent or the Lenders, nor any failure to exercise, nor any delay in exercising, on the part of the Agent or the Lenders, any right, power or privilege hereunder or thereunder shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

(b) This Agreement is subject to modification only by a writing signed by the parties hereto.

10. Cumulative Rights.

All of the Agent's and the Lenders' rights and remedies with respect to the Patents, whether established hereby or under the Loan Documents, or by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently.

11. Severability.

The provisions of this 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 Agreement in any jurisdiction.

12. Survival.

The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

13. Counterparts.

This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

14. Choice of Law.

The validity, construction and enforcement of this Agreement, and the determination of the rights and duties of the parties shall be governed by the laws of the State of Georgia regardless of any choice of law or other provision that would result in the application of the laws of any other jurisdiction.

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

LONG AGRIBUSINESS, LLC.

By: Antonio M. Alvarez

Name: Antonio M. Alvarez, et

Title: Manager

NATIONSBANK, N.A., as Agent

By: Scott R. McQueen

Name: SCOTT R. MCQUEEN

Title: Vice President



## **SCHEDULE A**

### **U.S. Patent Registrations**

<b><u>Patent</u></b>	<b><u>Patent No.</u></b>	<b><u>Issue Date</u></b>
<b>Defoliating Tobacco Harvester</b>	<b>5,293,733</b>	<b>March 15, 1994</b>
<b>Pivotally Mounted Hose Reel Frame for Irrigation Machine</b>	<b>4,346,843</b>	<b>August 31, 1982</b>
<b>Reversible Moldboard Plow</b>	<b>5,024,281</b>	<b>June 18, 1991</b>
<b>Grain Feed Tank with Swinging Cap</b>	<b>5,570,547</b>	<b>November 5, 1996</b>

**SCHEDULE B**

**Liens and Claims of Third Parties**

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## EXHIBIT A

### Assignment of Patents

THIS ASSIGNMENT dated the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_, from LONG AGRIBUSINESS, LLC, a Delaware corporation (the "Assignor"), to NATIONSBANK, N.A., as Agent (the "Assignee"), recites and provides:

WHEREAS, the Assignor is owner of all right, title and interest in and to certain patents and patent applications identified in Schedule A appended hereto (the "Patents"); and

WHEREAS, the Assignee desires to obtain for the Lenders (as defined in the Conditional Assignment and Patent Security Agreement dated as of \_\_\_\_\_, 1998 between the Assignor and the Assignee (the "Conditional Assignment")), all of the Assignor's right, title and interest in all such Patents.

NOW, THEREFORE, in exchange for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Assignor does hereby sell, assign and transfer to the Assignee, its successors and assigns, the entire right, title and interest of the Assignor in and to the Patents and any and all licenses now or hereafter relating thereto and all royalty payments or rights to royalty payments now or hereafter arising therefrom.

The Assignor further agrees to execute such further instruments and documents and perform such further acts as the Assignee may deem necessary to secure to the Assignee the rights herein conveyed.

The Assignor warrants and represents that it is the sole owner of the interest conveyed hereunder and that such interest is not the subject of any prior transfer, assignment, lien, mortgage or other transaction which would affect the Assignor's ability to transfer such interest, except as permitted under the Conditional Assignment.

The Assignor further agrees to indemnify the Assignee and the Lenders for any breach of the above warranty.

IN WITNESS WHEREOF, the Assignor has executed this Assignment as of the day and year first above written.

LONG AGRIBUSINESS, LLC.

By: Antonio M. Alvarez  
Name: Antonio M. Alvarez  
Title: Manager

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