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R SHEET

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

To the Honorable Commissioner of I



attached original documents or copy thereof.

1. Name of conveying party(ies): Kirsch, ...

101091709

address of receiving party(ies)

Name: Meat Processing Concepts America
(MPCA)

Internal Address: _____

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

3. Nature of conveyance:

- ☐ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☒ Other---Exclusive (Sub) License Agreement _____

Street Address: 700 Prospect St. S.W.

City: LeMars State: Iowa Zip: 51031

Execution Date: January 29, 1998

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)

08513809 filed 8/25/95

B. Patent No.(s)

5017393

Additional numbers attached? ☐ Yes ☒ No

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

Name: Michael R. Crabb

Internal Address: ZARLEY, MCKEE, THOMTE,

VOORHEES & SEASE, P.L.C.

Street Address: 801 Grand Avenue, Suite 3200

City: Des Moines State: IA Zip: 50309

6. Total number of applications and patents involved:

2

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

- ☒ Enclosed
☒ Authorize any deficiency to be charged to deposit account 26-0084

8. Deposit account number: Charge any additional fee(s) To: _____

(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.

Michael R. Crabb, Reg. No. 37,298

Name of Person Signing

Signature

July 8, 1999

Date

07/15/1999 MTHAI1 00000058 08513809

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80.00 DP

Total number of pages attached (excluding this cover sheet)

8

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

PATENT
REEL: 010078 FRAME: 0860

COPY

LICENSE AGREEMENT

THIS AGREEMENT is made as of the 29th day of January, 1998

BETWEEN:

SAM KIRSCH, a resident of Calgary, Alberta, Canada (herein after called "Kirsch")

- and -

MPCA INC., a Company located in Le Mars, Iowa, U.S.A. (herein after called "MPCA")

WHEREAS:

1. Kirsch has acquired the rights to confidential and proprietary Know-how and Know-how concerning the PMF Leafmeat Process, and concerning use of the PMF Leafmeat Process to manufacture products in accordance with the PMF Patents as well as.
2. Kirsch has the right to enter into a License Agreement.
3. MPCA is interested in the commercialization of the PMF Leafmeat Process and other proprietary technologies, and the confidential Know-how has been disclosed to MPCA pursuant to a Confidentiality Agreement.
4. MPCA wishes to acquire a license to use the confidential and proprietary Know-how and the PMF Patents and Kirsch is willing to provide such license to MPCA upon the terms and conditions set forth below.

NOW THEREFORE it is hereby agreed as follows:

1. Definitions

In this Agreement including the recitals, the following terms shall have the following meaning:

"Exclusive License" means a sole and exclusive license for a specified term which restricts Kirsch from granting any other license to third parties in respect of the same subject matter and the same territory and restricts the exercise of the same subject matter in the same territory by Kirsch;

"PMF Leafmeat Process" means a patented mechanical meat restructuring technology;

"PMF Patents" means U.S. patent application numbers 5,017,393-05/21/91-XFRA 209 -USA, 08/513,809-08/29/95-XFRA 215-USA, 2,157,005-12/28/95-XFRA 215-Canada, and 950186-01/02/95-XFRA 215-Mexico in the name of Maurice Fradin, and for which all researches have been officially done by the American concerned authorities, and for any additions and patent extensions. These patents are linked to this agreement which is in force during the time of validity of the last filed patent.

"Improvements" means any improvements, modifications or changes to the PMF Patents;

"Know-how" means all technical and commercial information relating to the PMF Leafmeat Process and/or the application of the PMF Leafmeat Process, whether or not reduced to writing, including but not limited to discoveries, formulae, methods, plans, processes, specifications, designs and data and including all Improvements as well as other proprietary Know-How owned by Kirsch;

"Royalty" means the royalty defined in Clause 4(a) and payable in accordance with the provisions hereof;

"Minimum Royalty" means the minimum royalty payable under Clause 5 hereof;

"Trade Marks" means the trade marks and trade names registered or unregistered by Kirsch, in particular "PMF Leafmeat Process" and all such other trade marks and trade names as Kirsch may add or substitute from time to time by written notice to MPCA.

2. Grant of Licenses

- (a) Kirsch hereby grants to MPCA an Exclusive License to use the PMF Leafmeat Process and the confidential and proprietary Know-how to produce products in the United States during the term of this Agreement.
- (b) MPCA shall not have the right to grant any sub-licenses or similar authorizations in respect of the right to use the confidential and proprietary Know-how or the licenses granted or to be granted by Kirsch under the PMF Patents.

3. Know-how Rights

- (a) During the term of and in connections with the grant of an Exclusive License under this Agreement, MPCA shall be entitled to use the confidential and proprietary Know-how for the sole purpose of commercialising the PMF Leafmeat and other proprietary technologies in accordance with the licenses granted by Clause 2 hereof.
- (b) During the term of this Agreement, MPCA shall not be entitled to disclose the Know-how to any third party.

4. Royalties

- (a) In consideration of the rights and licenses granted or to be granted hereunder, MPCA agrees to pay to Kirsch US\$ 50,000.00 within three months of the execution of this agreement and a royalty equal to 6 percent (6%) of sales of product produced during the term of this agreement. The royalty payable hereto shall not be less than US\$ 0.06 /lb of product produced and sold during the term herein.
- (b) Except as provided for in Clause 4 hereof, no additional royalty shall be payable by MPCA in respect of the licenses granted or to be granted hereunder by Kirsch.

- (c) All Royalty accruing due hereunder shall be paid by MPCA to Kirsch on the last day of the calendar month next following the month in which delivery is made of the products produced in respect of which royalty is due. Kirsch may, in addition to any other remedy, charge interest on any Royalty amount not paid when due at the United States Treasury Bill Rate plus 3% calculated and payable monthly.

5. Minimum Royalty

- (a) A Minimum Royalty of US\$ 75,000 (seventy five thousand) shall be paid to Kirsch by MPCA for the first year, US\$ 80,000 (eighty thousand) shall be paid to Kirsch by MPCA for the second year and US\$ 125,000 (one hundred twenty five thousand) shall be paid to Kirsch by MPCA for the third year, US\$ 125,000 (one hundred twenty five thousand) shall be paid to Kirsch by MPCA for each additional year until termination of this Agreement as provided in Clause 13 hereof, in respect of all products produced and sold.
- (b) If in any calendar year commencing from and after January 1, 1998 the aggregate Royalty paid by MPCA to Kirsch in respect of such Royalty is less than what is identified in Clause 5(a) hereof, MPCA shall pay to Kirsch an amount equal to the deficiency within 30 (thirty) days after the end of any such calendar year period.

6. Accounts and Payments

- (a) Within 30 days after the end of each calendar quarter and of each calendar year during the term of the Agreement, MPCA shall deliver to Kirsch a full and complete accounting in writing certified correct by a qualified accountant and showing:
 - (i) the aggregate quantity sold of products produced and sold for such quarter or year.
 - (ii) the aggregate Royalty payments due to Kirsch for such quarter or year.
- (b) The above accounts and all payments of the Royalty due to Kirsch shall be sent to the controller of Kirsch at their respective addresses set out in Clause 18 hereof and all Royalty payments shall be made in United States dollars.
- (c) An accounting shall be submitted for each calendar quarter and calendar year during the term of this Agreement whether or not any products produced were sold in such quarter or year.
- (d) All payments provided for under the Agreement shall be made to Kirsch in full without any deduction, set-off or withholding, other than any direct taxes or withholdings levied or assessed by a governmental authority on any Royalty payment. If MPCA is required by law to deduct or withhold any taxes from any Royalty payment, MPCA shall have the right to deduct any such taxes from such Royalty payment; provided that MPCA shall be required to pay the full amount deducted to the relevant government authority and to furnish to Kirsch such certificates or other documentary evidence certified or executed by an appropriate official or officials of the relevant government authority as may be necessary to enable Kirsch to claim a tax credit or such other relief from double taxation as may be available to it in respect of such deductions or withholding from its Royalty income.

7. Books

MPCA shall keep in complete and accurate books of accounts and records from which the information required to be provided under Clause 6 of this Agreement can be readily and accurately obtained. MPCA shall permit a representative of Kirsch or any independent auditors appointed by Kirsch to examine such relevant books at all reasonable times and shall provide such representatives or auditors in strict confidence with all such relevant information as they may require.

8. Warranty

- (a) Kirsch warrants that Kirsch has the rights to the confidential and proprietary Know-How and PMF Patents and is entitled to grant to MPCA the rights and licenses provided for hereunder.
- (b) Kirsch expressly does not warrant that the PMF Leafmeat Process is free of infringement of any third party patents or other intellectual property rights and Kirsch shall not be liable to MPCA or to customers of MPCA, except to the extent expressly provided for in subclause 8(c) below, for any damage or loss of whatsoever nature sustained by MPCA or its customers for any third party claims against it or them arising out of or in connection with the performance of the Agreement. Kirsch does represent, however, that it is not aware of any such third party patent or other rights, and Kirsch agrees to give reasonable assistance to MPCA in the event there is an alleged infringement of any third party patents by MPCA's use of the PMF Leafmeat Process.
- (c) If MPCA is required to pay damages (by order of Court or otherwise with the approval in writing of Kirsch) for infringement of a third party patent due to the use by MPCA of the PMF Leafmeat Process as provided for in the PMF Patents and if the PMF Leafmeat Process cannot be used without infringement of such third party patent, Kirsch shall pay for half with MPCA such damages but limited to US\$ 50,000 (fifty thousand) for Kirsch for the first 2 (two) years. MPCA shall take reasonable steps to minimize any damages which may become payable by Kirsch as aforesaid and shall inform Kirsch promptly if any third party claims any such damages from MPCA.
- (d) MPCA accepts sole responsibility for the operation of the PMF Leafmeat Process and at no time shall Kirsch be liable to MPCA or to customers of MPCA for any damage or loss of whatsoever nature concerning the operation of the PMF Leafmeat Process.
- (e) None of the parties hereto makes or has made any warranties, inducements, promises or representations to the other respecting the subject matter of the Agreement, except as expressly stated in this Agreement.

9. Best Efforts

- (a) During the term of the applicable Exclusive License or Exclusive Licenses, as the case may be, MPCA shall use its best efforts to commercialize the PMF Leafmeat Process and other proprietary technologies in the United States.
- (b) MPCA will do their best to control copies or imitations or any other infringements on the PMF Patents, and MPCA will notify Kirsch about any such infringement as soon as it is recognized.

MPCA Exclusive License Agreement**- 5 -****10. Improvements**

- (a) Each of Kirsch and MPCA shall make complete, full and prompt disclosure to the other of any Improvements and shall deliver or make available to the other all documents and other physical material containing information relating thereto.
- (b) All Improvements developed by Kirsch or MPCA shall be owned by Kirsch; provided that:
 - (i) MPCA shall be entitled to use the Improvements subject to the terms and conditions of this Agreement; and
 - (ii) if any Improvements are the subject of patent rights obtained by MPCA, Kirsch shall grant to MPCA an Exclusive License to use such Improvements in the same country where MPCA has an Exclusive License to the PMF Leafmeat Process in accordance with the PMF Patents, subject to the terms and conditions of this Agreement.

11. Trade Marks

During the term of this Agreement, MPCA shall use the name "PMF Leafmeat Process" in any sales literature regarding the PMF Leafmeat Process and shall state therein that the PMF Leafmeat Process is used under license from Kirsch; provided that MPCA shall not be entitled to make any other use of the Kirsch name or any other Trade Marks of Kirsch. All Trade Marks of Kirsch and the PMF Leafmeat Process name shall at all times remain the property of Kirsch.

12. Term

The provisions of this Agreement shall continue in full force, virtue and effect until terminated in accordance with the provisions of Clause 14 hereof.

13. Termination

- (a) This Agreement and all rights and licenses granted to MPCA hereunder may be terminated by Kirsch upon the occurrence of any of the following events of default:
 - (i) if MPCA defaults in the payment of any Royalty (including, without limitation, the Minimum Royalty) when due hereunder or materially defaults in the performance of any other obligation hereunder and such default is not remedied within forty-five (45) days after MPCA receives written notice from Kirsch specifying the alleged default; or
 - (ii) upon the insolvency, bankruptcy or liquidation of MPCA.
- (b) This Agreement may be terminated by MPCA on six (6) months prior written notice to Kirsch.
- (c) Termination for any reason shall not relieve MPCA of its obligations to pay any Royalty then due or accruing due in respect of any and all products produced and sold prior to such termination.

14. Results of Termination

Upon expiration or termination of the Agreement:

- (a) all rights and licenses granted to MPCA hereunder shall revert to Kirsch;
- (b) MPCA shall cease all use of the PMF Leafmeat Process in accordance with the PMF Patents as well as all other proprietary technologies;
- (c) MPCA shall return to Kirsch all written documents and other materials furnished by Kirsch to MPCA including all copies thereof;
- (d) MPCA shall cease all use of the Trade Marks, including any modification, continuation or colourable imitation thereof, and shall remove from public view any and all materials bearing the Trade Marks, and without restricting the generality of the foregoing, shall not thereafter identify itself with Kirsch or ECA or the Trade Marks nor use the Trade Marks in any manner or form as trade mark or trade name or portion thereof or otherwise in connection with any goods, services or business whatsoever. MPCA agrees that this covenant is reasonable and necessary to protect the integrity of the Trade Marks, and that this covenant is enforceable by injunction including interlocutory injunction by any court of competent jurisdiction;
- (e) all amounts accrued or payable by MPCA to Kirsch to the date of expiration or termination (including any Royalty payments then due or accruing due and a pro rata share of the Minimum Royalty to the date of expiration or termination) shall become due and payable and shall be paid in full within three business days after the effective date of expiration or termination; and
- (f) all other rights and obligations between the parties pursuant to this Agreement shall terminate, except for the rights and obligations which are intended to survive the termination of the Agreement (including, without limitation, the obligations of MPCA under Clauses 14 and 16 hereof).

15. Assignment

- (a) MPCA shall not assign or transfer this Agreement or any part hereof, by operation of law or otherwise, including by way of merger, amalgamation, or license unless otherwise agreed to in writing by Kirsch.
- (b) Kirsch may freely assign all or any part of his rights and benefits under this Agreement.

16. Confidentiality

- (a) Kirsch and MPCA hereby dually agree to keep confidential and not to make any commercial use of any confidential technical or commercial information received from each other which is not essential to the exercise of the rights and licenses granted hereunder. This obligations shall not apply to information:
 - (I) which is publicly available prior to the receipt of the information from Kirsch;
 - (ii) which becomes publicly available subsequently through no act or failure of Kirsch or MPCA; or

- (iii) which becomes known to Kirsch or MPCA without restriction from a third party which is not in breach of any confidentiality restrictions of Kirsch or MPCA.

This obligation shall survive termination of this Agreement. Kirsch and MPCA agree that this covenant is reasonable and necessary to protect the integrity of the confidential information, and that this covenant is enforceable by injunction including interlocutory injunction by any court of competent jurisdiction.

- (b) MPCA is hereby released from its obligations under the Confidentiality Agreement but only insofar as such obligations conflict with the rights and licenses granted to MPCA under this Agreement.

17. Notices

Any notice, request, demand, consent or other communication provided or permitted hereunder shall be in writing and shall be given by personal delivery, telex or telefax to the party for which it is intended at its address set out below or as may be designated by notice pursuant hereto:

Kirsch: Mr. Sam Kirsch
 1941-45th Street S.W.
 Calgary, Alberta, Canada
 T3E 3S6

Attention: Mr. Sam Kirsch

MPCA: MPCA Inc.
 P.O. Box 911
 Le Mars, Iowa, U.S.A. 51031

Attention: Mr. Sam Kirsch

Each party may change its address for purposes of notices by giving 10 days prior written notice of such change to the other parties in the manner prescribed above. Any notice so given shall be deemed to have been received on the date on which it was delivered or transmitted by telecommunications service.

18. Waiver

No waiver, modification or cancellation of any term or condition of this Agreement shall be effective unless executed in writing. No waiver shall excuse the performance of any act other than the act specifically referred to in such a waiver. No assent to or waiver of any breach of any one or more of the covenants and agreements herein contained, whether such assent or waiver be expressed or implied, shall be deemed to be taken to be a waiver of any succeeding or other breach. The various rights, remedies, powers, options and elections of the parties contained in the Agreement are cumulative, and no one of them shall be deemed to be exclusive of the others or of such other rights, remedies, powers, options or elections as are now or may hereafter be conferred upon the parties by law.

19. Independent Contractors

This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture between the parties hereto. Neither part shall have any right to obligate or bind the other in any manner whatsoever and nothing contained in this Agreement shall give or is intended to give any rights of any kind to persons not a party to this Agreement. Each party shall ensure that neither it nor any of its employees represent to any third party that it or they are servants or agents of the other.

20. Entire Agreement

This Agreement contains the entire agreement between Kirsch and MPCA with respect to the subject matter hereof and supersedes all other prior agreements, negotiations, representations and proposals, written or oral, relating to the subject matter hereof.

21. Governing Law

This Agreement shall in all respects be construed according to and governed by the laws of the State of Iowa, U.S.A.

This agreement shall be binding upon and shall enure to the benefit of the parties hereto and their respective heirs, executives, administrators and assigns.

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

Sarah Langer)
Witness to the Signature of
SAM KIRSCH

Sam Kirsch
SAM KIRSCH

MPCA INC.

Per: Sam Kirsch