

09-13-1999



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RECORDATION FORM COVER SHEET PATENT LICENSE

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

1. Name of conveying party(ies):

Fike Corporation
704 South 10th Street
Blue Springs, Missouri 64013

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

United States of America, as
represented by the Secretary of the Army
Washington, D. C. 20231

3. Nature of conveyance: Patent License

Execution Date: July 29, 1999

4A. Patent Application Number(s):

4B. Patent Number(s):

4,505,180

5. Name and address of party to whom

correspondence concerning document should be mailed: Commander
U.S. Army Aviation and Missile Command
ATTN: AMSAM-L-G-I (JMGlandon)
Redstone Arsenal, AL 35898-5000

6. Total number of applications and patents involved: 1

7. Total Fee (37 CFR 3.41): \$40.00

8. Please charge the required fee and any additional required fees to deposit account number 19-2201

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.

09/13/1999 NTH:AI1 00000055 192201 4505180
01 FC:581 40.00 CH

Jack M. Glandon
Jack M. Glandon, Reg. No. 30,636
Telephone Number (256) 876-1123

31 Aug 99
Date

Total number of pages including cover sheet, attachments, and documents: 15

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

PATENT LICENSE AGREEMENT

THIS AGREEMENT is effective as of the EFFECTIVE DATE, defined herein, between the UNITED STATES OF AMERICA (hereinafter called the Government), and Fike Corporation (hereinafter called FIKE).

WHEREAS, FIKE filed suit No. 95-58C in the United States Court of Federal Claims, alleging infringement of United States Patent No. 4,505,180 (the '180 patent) by the Government (the Action) and the Court has issued an opinion reported at 41 Fed. Cl. 776 (1998);

WHEREAS, FIKE and the Government wish to eliminate all future claims, uncertainties and controversies between them for the remaining term of the '180 patent through the grant of licenses and releases as set forth herein, in conjunction with the settlement of the Action; and

WHEREAS, this LICENSE is authorized by law, including 10 U.S.C. § 2386,

NOW THEREFORE, in consideration of the grant, license, release, and agreements hereinafter recited, the parties hereby agree as follows:

1. Warranties

FIKE warrants that it is and has been at all times the sole owner of the '180 patent, issued to James Hinrichs and has the right to grant the license set forth herein. FIKE further warrants that it is a corporation duly organized and validly existing and in good standing under the laws of the state of Missouri.

2. Definitions

Licensee

The United States of America, as represented by the Secretary of the Army, is the LICENSEE in this LICENSE AGREEMENT.

Licensors

FIKE is the LICENSOR in this LICENSE AGREEMENT. "LICENSOR" means FIKE and its affiliates, partners, successors, any surviving entity into which LICENSOR may be merged, or any entity resulting from a consolidation of LICENSOR with any other entity.

Government

"GOVERNMENT" means the Federal Government of the United States of America.

"AMCOM" means U.S. Army Aviation and Missile Command, Redstone Arsenal, Alabama. AMCOM was formerly known as "MICOM" which means the U.S. Army Missile Command, Redstone Arsenal, Alabama.

Effective Date

"EFFECTIVE DATE" means the date upon which this LICENSE AGREEMENT has been signed by all representatives of the LICENSOR and LICENSEE.

License Agreement

"LICENSE AGREEMENT" means this license agreement, defined by the document in which this paragraph appears. This LICENSE AGREEMENT is between the United States of America, as represented by the Secretary of the Army, as LICENSEE, and FIKE as LICENSOR.

Licensed Patent

"LICENSED PATENT" means United States Patent No. 4,505,180 issued to James Hinrichs, which has been duly assigned to and is owned by FIKE, and any corresponding foreign patents and foreign applications for patents.

Licensed Rupture Disc Assembly

"LICENSED RUPTURE DISC ASSEMBLY" means any Rupture Disc Assembly that (1) is covered by any claim of the LICENSED PATENT, (2) is designed for use in the "Javelin Propulsion Unit Assemblies, Live" (hereinafter, Javelin motors) currently manufactured by Atlantic Research Corporation (ARC), and (3) is manufactured by or sold by anyone other than FIKE, its subsidiaries, agents or licensees for use by or for the GOVERNMENT. Such a Rupture Disc Assembly is exemplified by MICOM Part Number 13304937-009 as depicted in MICOM drawing 13304937, Rev. C (or any superseding revision thereof), and also by Fike Part Number A 6395-1, and is currently manufactured by Continental Disc Corporation as a Part Number CD 30462.

Invention

"INVENTION" means any idea or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code.

3. License Grant

(a) FIKE hereby grants to the Government an irrevocable, non-exclusive, non-transferable license under the LICENSED PATENT throughout the world, to manufacture, use, sell, offer to sell, export, import, or dispose of according to law, or to have others do so on behalf of the GOVERNMENT, including Foreign Military Sales under 10 U.S.C. § 2304, any LICENSED RUPTURE DISC ASSEMBLY.

(b) This license is executed in conjunction with a Stipulation for Entry of Judgment, attached as Exhibit A. In the event that Judgment is not entered in accordance with this Stipulation, this LICENSE AGREEMENT shall be null and void.

(c) Nothing contained herein shall limit any rights relating to the LICENSED PATENT

which the GOVERNMENT may have obtained by virtue of prior contracts and/or prior licenses by operation of law or otherwise.

4. Confirmation of Release

The Stipulation attached as Exhibit A contains a release covering Rupture Disc Assemblies covered by the LICENSED PATENT that were manufactured by or for the United States on or before October 31, 1999. Such release includes 4260 assemblies procured by ARC from Continental Disc Corporation under its purchase order 7C9720692 dated September 12, 1997, as modified by Change Order 2, dated April 23, 1998, whether or not such assemblies have been manufactured and delivered as of the date(s) of execution of the Stipulation for Entry of Judgment. No royalties are due for any such assemblies that have been released.

5. Royalties - Computation, Reporting and Payment

(a) In consideration of the release and licenses granted herein, LICENSEE or its designee shall pay to LICENSOR FIKE, a royalty of ninety dollars (\$90.00) for each LICENSED RUPTURE DISC ASSEMBLY that is manufactured for ARC or any other Javelin motor contractor or subcontractor for use by or for the Government during the term of this LICENSE AGREEMENT starting with each LICENSED RUPTURE DISC ASSEMBLY delivered to the Javelin motor subcontractor or its designee on or after November 1, 1999 and continuing for any LICENSED RUPTURE DISC ASSEMBLY manufactured up to and including November 18, 2003, the date of expiration of the '180 patent. For purposes of the preceding sentence, a LICENSED RUPTURE DISC ASSEMBLY shall be considered, in the absence of any other evidence, to have been manufactured for the GOVERNMENT as of the date that its manufacturer or vendor certifies that the manufacturing lot containing said LICENSED RUPTURE DISC ASSEMBLY has passed its Lot Acceptance Test procedure.

(b) The GOVERNMENT shall direct any contractor or subcontractor purchasing LICENSED RUPTURE DISC ASSEMBLIES, such as ARC, to furnish FIKE and the GOVERNMENT with a copy of each Purchase Order or similar document and each Change Order thereof for the purchase of said LICENSED RUPTURE DISC ASSEMBLIES that is issued during the term of this license and with a copy of each shipping invoice or other document evidencing delivery of said assemblies to the Javelin motor subcontractor or its designee. Said copies shall be forwarded to FIKE and to the GOVERNMENT within 10 working days of their issuance and/or receipt. In addition, during calendar year 2003, beginning in January 2003, any such contractor or subcontractor purchasing LICENSED RUPTURE DISC ASSEMBLIES further shall be directed to furnish to FIKE and to the GOVERNMENT a copy of each Lot Acceptance Test (LAT) document provided by the manufacturer or vendor of said LICENSED RUPTURE DISC ASSEMBLIES within 10 working days of receipt of such LAT documents, so that the GOVERNMENT and FIKE may determine the number of LICENSED RUPTURE DISC ASSEMBLIES manufactured for the Government prior to the expiration of the '180 patent. Any unit price and total price information may be redacted from such copies of purchase orders, change orders thereto, shipping invoices, and LAT documents. Those copies shall be sent to:

Logan J. Wilson, Esquire
General Counsel
FIKE Corporation
704 South 10th Street
Blue Springs, Missouri 64013

and

(c) Starting on November 1, 2000, royalties shall be paid annually (32) days after the end of each of the Fiscal Years 2000 through 2003 by the GOVERNMENT or its designee for all LICENSED RUPTURE DISC ASSEMBLIES manufactured for and delivered to the Javelin motor subcontractor or its designee for use by or for the GOVERNMENT, during the previous Fiscal Year, ending September 30th. In addition, for Fiscal Year 2003, a final royalty payment shall be made by December 31, 2003, for all LICENSED RUPTURE DISC ASSEMBLIES that were manufactured for the GOVERNMENT from the beginning of Fiscal Year 2003 through and including November 18, 2003, but were not yet delivered in Fiscal Year 2003. For purposes of the preceding sentence, a LICENSED RUPTURE DISC ASSEMBLY shall be considered, in the absence of any other evidence, to have been manufactured for the GOVERNMENT as of the date that its manufacturer or vendor certifies that the manufacturing lot containing said LICENSED RUPTURE DISC ASSEMBLY has passed its Lot Acceptance Test procedure.

(d) Royalty payments shall be made to the Fike Corporation, 704 South 10th Street, Blue Springs, Missouri 64013, or any other place designated by FIKE. The GOVERNMENT may direct the manufacturer or vendor of said LICENSED RUPTURE DISC ASSEMBLIES, or the subcontractor purchasing said LICENSED RUPTURE DISC ASSEMBLIES for use in manufacturing Javelin motors, to make royalty payments under this license directly to FIKE.

6. Readjustment of Payments

(a) If any license, under substantially the same patent and authorizing substantially the same acts which are authorized under this LICENSE AGREEMENT, has been or shall hereafter

be granted within the United States, on royalty terms which are more favorable to the licensee than those contained herein, the GOVERNMENT shall be entitled to the benefit of such more favorable terms with respect to all royalties accruing under this LICENSE AGREEMENT after the date such more favorable terms become effective, and the LICENSOR shall promptly notify the LICENSEE in writing of the granting of such more favorable terms.

(b) In the event any claim of any patent hereby licensed is construed or held invalid by decision of a court of competent jurisdiction, the requirement to pay royalties under this LICENSE AGREEMENT insofar as it arises solely by reason of such claim, and any other claim not materially different therefrom, shall be interpreted in conformity with the court's decision as to the scope of validity of such claims; provided, however, that in the event such decision is modified or reversed on appeal, the requirement to pay royalties under this LICENSE AGREEMENT shall be interpreted in conformity with the final decision rendered on such appeal.

7. License Term

The term of this LICENSE AGREEMENT shall commence on its EFFECTIVE DATE and this LICENSE AGREEMENT shall terminate upon acceptance of the final royalty payment after the expiration of the LICENSED PATENT, unless this LICENSE AGREEMENT earlier terminates either by its terms, operation of law, or by acts of the parties in accordance with the terms of this LICENSE AGREEMENT.

8. Non-Estoppel

The GOVERNMENT reserves the right at any time to contest the enforceability, validity, scope of, or the title to any patent or patent application herein licensed without waiving or forfeiting any right under this LICENSE AGREEMENT.

9. Covenant Against Contingent Fees.

(a) The LICENSOR warrants that no person or agency has been employed or retained to solicit or obtain this license upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the GOVERNMENT shall have the right to annul this LICENSE AGREEMENT without liability or, in its discretion, to deduct from the license price or consideration, or otherwise recover, the full amount of the contingent fee.

(b) "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a licensor for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain GOVERNMENT contracts nor holds itself out as being able to obtain any GOVERNMENT contract or contracts through improper influence.

"Bona fide employee," as used in this clause, means a person, employed by a licensor and subject to the licensor's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain GOVERNMENT contracts nor holds out as being able to obtain any GOVERNMENT contract or contracts through improper influence.

"Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a GOVERNMENT contract.

"Improper Influence" as used in this clause, means any influence that induces or tends to induce a GOVERNMENT employee or officer to give consideration or to act regarding a GOVERNMENT contract on any basis other than the merits of the matter.

10. Assignment of Claims

(a) The LICENSOR under the Assignment of Claims Act, as amended, 31 U.S.C. 3727, 41 U.S.C. 15 (hereafter referred to as the "the Act"), may assign its rights to be paid amounts due or to become due as a result of the performance of this LICENSE AGREEMENT to a bank, trust company, or other financing institution, including any Federal lending agency. The assignee under such an assignment may thereafter further assign or reassign its right under the original assignment to any type of financing institution described in the preceding sentence.

(b) Any assignment or reassignment authorized under the Act and this clause shall cover all unpaid amounts payable under this LICENSE AGREEMENT, and shall not be made to more than one party, except that an assignment or reassignment may be made to one party as agent or trustee for two or more parties participating in the financing of this license.

(c) The LICENSOR shall not furnish or disclose to any assignee under this LICENSE AGREEMENT any classified document or information related to work under this LICENSE AGREEMENT until the Contracting Officer authorizes such action in writing.

11. Gratuities

(a) The right of the LICENSOR to proceed may be terminated by written notice if, after notice and hearing, the agency head or a designee determines that the LICENSOR, its agent, or another representative--

- (1) Offered or gave a gratuity (e.g., an entertainment or gift) to an officer, official, or employee of the GOVERNMENT; and
- (2) Intended, by the gratuity, to obtain a license or favorable treatment under a LICENSE AGREEMENT.

(b) The facts supporting this determination may be reviewed by any court having lawful

jurisdiction.

(c) If this LICENSE AGREEMENT is terminated under paragraph (a) above, the GOVERNMENT is entitled--

(1) To pursue the same remedies as in a breach of the LICENSE AGREEMENT;
and,

(2) In addition to any other damages provided by law, to exemplary damages of not less than 3 nor more than 10 times the cost incurred by the LICENSOR in giving gratuities to the person concerned, as determined by the agency head or a designee. (This subparagraph (c)(2) is applicable only if this license uses money appropriated to the Department of Defense.)

(d) The rights and remedies of the GOVERNMENT provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this LICENSE AGREEMENT.

12. Disputes

(a) This LICENSE AGREEMENT is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613).

(b) Except as provided in the Act, all disputes arising under or relating to this LICENSE AGREEMENT shall be resolved under this clause.

(c) "Claim," as used in this clause, means a written demand or written assertion by one of the contracting parties seeking, as a matter of right, the payment of money in a sum certain, the adjustment or interpretation of license terms, or other relief arising under or relating to this license. A claim arising under a license, unlike a claim relating to that license, is a claim that can be resolved under a license clause that provides for the relief sought by the claimant. However, a

written demand or written assertion by the LICENSOR seeking the payment of money exceeding \$100,000 is not a claim under the Act until certified as required by subparagraph (d)(2) of this clause. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(d)(1) A claim by the LICENSOR shall be made in writing and, unless otherwise stated in this LICENSE AGREEMENT, submitted within 6 years after accrual of the claim to the Contracting Officer for a written decision. A claim by the GOVERNMENT against the LICENSOR shall be subject to a written decision by the Contracting Officer.

(2) (i) LICENSOR shall provide the certification specified in subparagraph (d)(2)(iii) of this clause when submitting any claim exceeding \$100,000.

(ii) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(iii) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the license adjustment for which the LICENSOR believes the GOVERNMENT is liable; and that I am duly authorized to certify the claim on behalf of the LICENSOR."

(3) The certification may be executed by any person duly authorized to bind the LICENSOR with respect to the claim.

(e) For LICENSOR claims of \$100,000 or less, the Contracting Officer must, if requested in writing by the LICENSOR, render a decision within 60 days of the request. For

LICENSOR-certified claims over \$100,000, the Contracting Officer must, within 60 days, decide the claim or notify the LICENSOR of the date by which the decision will be made.

(f) The Contracting Officer's decision shall be final unless the LICENSOR appeals or files a suit as provided in the Act.

(g) If the claim by the LICENSOR is submitted to the Contracting Officer or a claim by the Government is presented to the LICENSOR, the parties, by mutual consent, may agree to use Alternative Dispute Resolution (ADR). If the LICENSOR refuses an offer for ADR, the LICENSOR shall inform the Contracting Officer, in writing, of the LICENSOR's specific reasons for rejecting the offer.

(h) The GOVERNMENT shall pay interest on the amount found due and unpaid from (1) the date that the Contracting Officer receives the claim (certified, if required); or (2) the date that payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the Contracting Officer initially receives the claim. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the Contracting Officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

(i) The LICENSOR shall proceed diligently with performance of this LICENSE AGREEMENT, pending final resolution of any request for relief, claim, appeal, or action arising under or relating to the LICENSE AGREEMENT, and comply with any decision of the Contracting Officer.

13. Termination

Notwithstanding any other provision of this LICENSE AGREEMENT, the GOVERNMENT shall have the right to terminate the within license, in whole or in part, by giving the LICENSOR not less than thirty (30) days notice in writing of the date such termination is to be effective; provided, however, that such termination shall not affect the obligation of the GOVERNMENT to pay royalties which have accrued prior to the effective date of such termination.

14. Successors and Assignees

This Agreement shall be binding upon the LICENSOR, its successors and assignees, but nothing in this Article shall authorize an assignment of any claim against the GOVERNMENT otherwise than as permitted by law.

15. Notices

Any notices required under this LICENSE AGREEMENT shall refer to this agreement and be given to the signatories, or their successors, at the following addresses:

Fike Corporation
c/o Logan J. Wilson, Esquire
General Counsel
FIKE Corporation
704 South 10th Street
Blue Springs, Missouri 64013

Sarah P. Kerry
Contracting Officer
c/o Arthur H. Tischer, Esquire
Patent Counsel
U.S. Army Aviation and Missile Command
AMSAM-L-G-I
Sparkman Center
Building 5300
Redstone Arsenal, AL 35898-5000

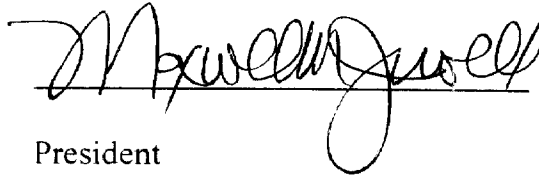
IN WITNESS WHEREOF, the parties hereto have executed this agreement

FOR Fike Corporation:

Dated July 21, 1999

CORPORATE SEAL of
Fike Corporation

By:

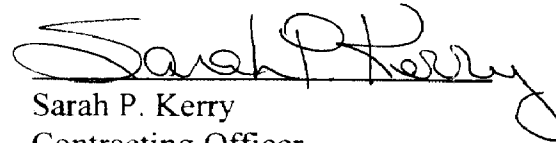


President
FIKE Corporation
704 South 10th Street
Blue Springs, Missouri 64013

FOR THE UNITED STATES OF AMERICA:

Dated: July 29, 1999

By:



Sarah P. Kerry
Contracting Officer
U.S. Army Aviation and Missile Command
AMSAM-AC-TM-H
Redstone Arsenal, Alabama 35898