

06-14-2000



101381032

LICENSOR:

Melvyn C. James and Maurice L. James

LICENSEE:

BEN-CAP

INTEREST TO BE TERMINATED:

Transfer of license to manufacture, use
and/or sell the patented product



PRODUCTS LICENSED OR PATENTABLE INVENTIONS DISCLOSED AND CLAIMED:

Patent No. 5,611,400 - "DRILL HOLE PLUGGING CAPSULE".

NOTICES AND COMMUNICATIONS REGARDING THE REQUEST TO RECORD THE DOCUMENTS SHOULD BE SENT TO:

Courtney R. Kepler
Brown, Drew & Massey, LLP
159 North Wolcott, Suite 200
Casper, WY 82601

NUMBER OF PATENT APPLICATIONS AFFECTED: One

FEES: \$40.00

DOCUMENT EXECUTED: April 28, 1999

I, Courtney Kepler, do hereby state that, to the best of my knowledge and belief, the information contained in this Cover Sheet is true and correct and any copy submitted is a true and correct copy of the original.

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LICENSE AGREEMENT

THIS LICENSE AGREEMENT is entered into and made effective this 28th day of April, 1999, by and between Melvyn C. James and Maurice L. James (hereinafter, "Licensor"), having their principal residence and place of business in Casper, Wyoming and BEN-CAP (hereinafter, Licensee) of Mills, Wyoming.

WHEREAS, Licensor, as owner of certain patentable inventions disclosed and claimed in:

- (i) "DRILL HOLE PLUGGING CAPSULE" identified by U.S. Patent No. 5,611,400.

WHEREAS, Licensor warrants that he controls all right, title, and interest in and to the Inventions;

WHEREAS, Licensee desires an exclusive, transferable license for use in the United States.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

I. DEFINITIONS

A. "Agreement Term" shall mean the term of this Agreement and shall be the period beginning on the effective date of this Agreement as written above and ending at the expiration of the patent.

B. "Patent Rights" shall mean U.S. Patent 5,611,400 and any divisionals, reissues, reexaminations, continuation in part applications, or in letters patent thereof. This term shall not include U.S. Patents 5,657,822 or 5,810,085, and any divisionals, reissues, reexaminations, continuation in part applications, or in letters patent thereof.

C. "Licensed Product" shall mean the apparatus and method for filing drill holes disclosed in U.S. Patent 5,611,400, and any inventions and improvements thereon. This term does not include the apparatus and method for filling drill holes disclosed in U.S. Patents 5,657,822 or 5,810,085, and any inventions and improvements thereon.

D. "Royalty Base" shall mean all sales by Licensee from use, and/or sale of the Licensed Product.

II. LICENSE GRANT

Licensor hereby grants unto Licensee an exclusive, transferable license to use, and/or sell the Licensed Product, with the express reservation to Licensor of certain rights referred to below.

III. TECHNICAL INFORMATION AND KNOW-HOW

Licensor may assist, consult, and cooperate with Licensee personnel in the sale and use of the Licensed Product, upon the condition that any expenses of Licensor in providing such assistance including any research expenses, telephone or facsimile charges, postage, travel, lodging, and food will be paid by the Licensee.

IV. LICENSEE IMPROVEMENTS

It is mutually understood and agreed that Licensee will communicate any inventions or improvements of Licensed Products to Licensor. It is further agreed that any inventions related to or improvements in the Licensed Product developed by Licensee during the course of this Agreement based on knowledge, information, and know-how provided to the Licensee by the Licensor shall belong exclusively to Licensor. It is further agreed that the Licensee will make all reasonable efforts in assisting the Licensor in obtaining patents directed to said improvements and inventions, including the execution of all documents necessary to assign Licensee's interest in said improvements and inventions to the Licensor. In the event that the Licensor obtains a patent or patents respecting said inventions or improvements developed, the Licensor agrees to grant to Licensee an exclusive license subject to the same terms of this Agreement.

V. REMUNERATION

In consideration of the rights granted herein, and the range of proprietary information to be provided by Licensor to Licensee:

- (A) Licensee agrees to pay to Licensor an advance on future royalty payments in the amount of twenty thousand dollars (\$20,000), on signing this agreement. This amount will be deducted from the royalty payments until accounted for in full.

- (B) The basis for the royalty will be five percent (5%) of all sales of capsules.
- (C) Licensee shall use its best efforts to maximize the Royalty Base.
- (D) The advance royalty and all future royalty payments shall be made in separate payments of 50% to Melvyn C. James at 1714 James St., Casper, Wyoming 82601 and 50% to Maurice L. James, 105 big Horn Road, Casper, Wyoming 82601.

VI. STATEMENTS AND PAYMENTS

(A) Licensee shall provide Licensors, within thirty (30) days after the end of each calendar month (the "Royalty Period"), a complete and accurate statement of the Royalty Base and the calculated royalty. Said statement shall include information as to the capsule number and amount of all sales.

(B) The amount in United States currency shown in the Licensee's statements as being due the Licensors shall be paid simultaneously with the submission of such statements.

(C) If the Licensee fails to pay the Licensors the full amount of the royalty due and owing as provided above within fifteen (15) days of when due, this License Agreement shall be in default, and Licensors may in his discretion exercise all remedial rights as provided below in Paragraph X.

VII. AUDIT

(A) The Licensee shall keep accurate books of account and records containing all information necessary to establish the accurate Royalty Base for computation of Royalties. The Licensors and its duly authorized representatives shall have the right to inspect said books of account and records of the Licensee at any time with fourteen (14) days notice.

(B) All books of account and records of the Licensee covering all transactions relating to the License shall be retained by Licensee for at least three (3) years following the close of the calendar quarter to which they pertain for inspection and audit by the Licensors.

VIII. INFRINGEMENT

(A) In the event that any infringement of the Patent Rights comes to the attention of either party, such party shall promptly notify the other party of the infringement. In such event and provided the infringing product is substantially similar to the Licensed Product, the Licensors or Licensee at its own expense may bring suit or otherwise take such action as is needed to abate the infringement, and with the right to all recoveries associated with the Licensed Product. If the Licensors fails to take such action or the infringement is not abated within ninety (90) days of notice, the Licensee shall suspend royalty payments in that region until abatement of infringement or prevailing settlement of the legal actions.

In the event of any suit alleging patent infringement filed by either Licensors or Licensee, both parties agree to execute any necessary papers for such suit, to keep the other fully informed as to the progress of such suit, and not to make any settlements which affect the rights of the other without consent.

(B) Regions are defined as follows:

1. West Coast -- Washington, Oregon, Idaho, Nevada, California, Arizona, and Utah.
2. Rocky Mountain -- Montana, North Dakota, South Dakota, Kansas, Colorado, Nebraska, and Wyoming.
3. Gulf Coast -- New Mexico, Texas, Oklahoma, Arkansas, Louisiana, Mississippi, Alabama, Florida, and Georgia.
4. Other -- All other states.

IX. CONFIDENTIALITY

It is understood that some of the technical information and know-how made available or disclosed by Licensors to Licensee under this Agreement is of a confidential and proprietary nature in that it describes or relates to manufacturing methods or processes and technical data which is not generally available to the public. This technical information and know-how is made available or disclosed by Licensors to Licensee in connection with or in relation to use of Licensed Product. Licensee agrees that it will take all reasonable care to ensure that such Technical Information and know-how will be held secret and confidential during the term of this Agreement and five years thereafter and will not be disclosed or made known to any person or entity (except to their own employees that are required to use the information and then only to the limited extent to which they require it) except insofar as:

(i) The disclosure may be specifically authorized by Licensor in writing from time to time.

(ii) The Technical Information and/or know-how is necessarily disclosed by its use under this Agreement.

(iii) The Technical Information and/or know-how is made public by Licensor.

(iv) The Technical Information and/or know-how is established by Licensee to be in the public domain other than as a consequence of a breach of the obligation of confidentiality herein undertaken.

X. TERMINATION

(A) Default under this Agreement shall be deemed to have occurred, if any of the following events happen:

(i) If Licensee shall default in the performance or observance of any of its obligations under this Agreement, including, but not limited to, the timely payment of royalties as above described in Paragraph VI or the observance of the confidentiality provisions hereto;

(ii) If Licensee shall become insolvent, discontinue, or cease business for all practical purposes, become bankrupt, or apply for or consent to the appointment of a trustee, receiver, or liquidator of its assets, or seeks relief under any law for the aid of debtors, or takes or permits any action under the laws of the territory similar to the foregoing; or

(iii) Upon the occurrence of any events of default as specified above the Licensor may terminate this Agreement by serving thirty (30) days written notice of such termination on Licensee. Termination shall only be effective if the default is not cured within the thirty (30) day notice period. Such right to terminate shall not be exclusive, and the exercise or failure to exercise thereof by Licensor shall not preclude the exercise by Licensor of any other right or remedy that it may have by law against Licensee on account of any default by Licensee.

(B) Upon termination of this Agreement for any cause whatsoever, Licensee shall immediately discontinue and refrain for a period of five (5) years following such termination from the manufacture, use, sales and/or distribution of any products or methods which were designed or developed through the use of the confidential know-how and Technical Information or pursuant to the technical assistance provided during the Agreement Term by the Licensor. The Licensee must return all Technical Information and know-how provided during the Agreement Term by Licensor to the Licensee.

(C) Termination of this Agreement for any reason shall not relieve either party hereto of any obligation which it shall have accrued to such party prior to termination.

(D) Following the termination of this Agreement for any reason by Licensor, Licensor shall have all right, title and interest to make, use or sell the Licensed Product without the consent of Licensee and without accounting to the Licensee. Licensee shall continue to have the right to sell the patented product but only if purchased from Licensor.

XI. SUCCESSORS AND ASSIGNS

All terms of this Agreement shall bind and inure to the benefit of the Licensor and Licensee and their respective successors and assigns. Further, Licensor is expressly granted all rights to receive royalties from the Licensed Product even after Licensee assigns rights to the Licensed Product to any third party.

XII. NOTICES, COMMUNICATIONS, PAYMENT

Licensee shall send all notices and reports and other communications separately to Melvyn C. James at 1714 James St., Casper, Wyoming 82601 and Maurice L. James at 105 Big Horn Road, Casper, Wyoming 82601. All notices and other communications mentioned in this Agreement may be mailed, postage paid to the last known addressee's designated individual. All notice periods and other times for taking any action mentioned in this Agreement shall start on the day that such notice or other communication is actually mailed.

XIII. COOPERATION

Licensor and Licensee mutually agree that each of them shall cooperate to assist the other in perfecting this Agreement with the U. S. Patent Office, including, but not limited to, the execution of any necessary amendments to this Agreement to satisfy the requirements of the U. S. Patent Office. All filing fees to perfect this Agreement shall be paid by Licensor.

XIV. CHOICE OF LAW

This Agreement, and any disputes arising under it, shall be governed by the laws of the State of Wyoming.

XV. HEADINGS

The descriptive headings contained in this Agreement are included for convenience and reference only and shall not be held to expand, modify, or aid in the interpretation, construction, or meaning of this Agreement.

XVI. ALTERATION

This Agreement cannot be altered or amended except by an instrument in writing, signed by an authorized officer of the Licensee and of the Licensor.

XVII. SEVERABILITY

Should any part or provision of this Agreement be unenforceable or otherwise in conflict with or in violation of any law, rule, or regulation of any jurisdiction, such part or provision shall be deemed severable from this Agreement and the remainder of this Agreement shall remain binding upon the parties. In such event, that part or provision deemed severable shall be replaced with a part of provision not unenforceable and not in conflict with such laws rules or regulations which most closely approaches the idea and purpose of the Agreement.

XVIII. WAIVER

No waiver by either party of any non-performance or violation by the other party of any covenants, obligations, or agreements of such other party hereunder shall be deemed to be a waiver of any subsequent violation or non-performance of the same or any other covenant, agreement, or obligation, nor shall forbearance by any party be deemed to be waived by such party of its rights or remedies with respect to such violation or non-performance.

XIX. ENTIRE AGREEMENT

This Agreement contains the entire and only agreement between the parties and supersedes all preexisting agreements between them respecting its subject matter. Any representation, promise or condition in connection with such subject matter which is not incorporated in this agreement shall not be binding upon either party.

IN WITNESS WHEREOF, the parties have executed this agreement by affixing respectively their individual signatures as of the effective date mentioned above.

LICENSOR:

Melvyn C. James Melvyn C. James
Melvyn C. James

Maurice L. James Maurice L. James
Maurice L. James

LICENSEE:

BEN-CAP

By Eugene Theriault
Eugene Theriault