

KOLISCH
HARTWELL
DICKINSON
MCCORMACK
& HEUSER

A Professional Corporation

PATENT, TRADEMARK
& COPYRIGHT ATTORNEYS

Jon M. Dickinson
John M. McCormack*
Peter E. Heuser*
David A. Fanning*
David P. Cooper
Pierre C. Van Rysselberghe*
Walter W. Karnstein
Stephen F. Gass, Ph.D.
Charles H. DeVoe
Kasey C. Christie
David S. D'Ascenzo
Owen W. Dukelow**
James R. Abney, Ph.D.*
Mark D. Alleman
James David Fulmer*
M. Matthews Hall, Ph.D.
Christopher S. Tuttle

Of Counsel:

J. Pierre Kolisch
M. H. Hartwell

* CA & D.C. Bars
* OR & CA Bars
* OR, CA & ID Bars
* WA Bar

OREGON ☑
200 Pacific Building
520 S.W. Yamhill Street
Portland, Oregon 97204
Telephone: 503/224-6655
Facsimile: 503/295-6679

CALIFORNIA ☐
260 Sheridan Avenue, Suite 200
Palo Alto, California 94306-2009
Telephone: 650/325-8673
Facsimile: 650/325-5076

IDAHO ☐
101 S. Capitol Boulevard, Suite 500
Boise, Idaho 83702
Telephone: 208/384-9166
Facsimile: 208/384-9169

info@khdmh.com
www.khdmh.com

07-18-2000



101406279

June 12, 2000

6.19.00

Assistant Commissioner for Patents
BOX ASSIGNMENT
Washington, D.C. 20231

Sir:

RECORDATION FORM COVER SHEET
PATENTS ONLY

Enclosed for recordation in the records of the U.S. Patent and Trademark

Office is a copy of a document with particulars as follows:

(1) Name of conveying parties:

Steven G. Lord and John G. Whittemore

(2) Name and address of receiving party:

Athena Controllable Flush Company
17175 S.W. Tulatin Valley Highway
Aloha, Oregon 97006

(3) The nature of the conveyance is a License Agreement

(4) Patent No.(s) Patent Date

5,243,713 September 14, 1993

(5) Any and all correspondence concerning this document should be

addressed and mailed to the following:

20 JUN 17 PM 12:43
COMMUNICATIONS

07/17/2000 RSCOTT 00000261 5243713 40.00 OP
01 FC:581

David P. Cooper
Kolisch, Hartwell, Dickinson,
McCormack & Heuser
200 Pacific Building
520 S.W. Yamhill Street
Portland, Oregon 97204

(6) The total number of patents involved in this conveyance is 1.

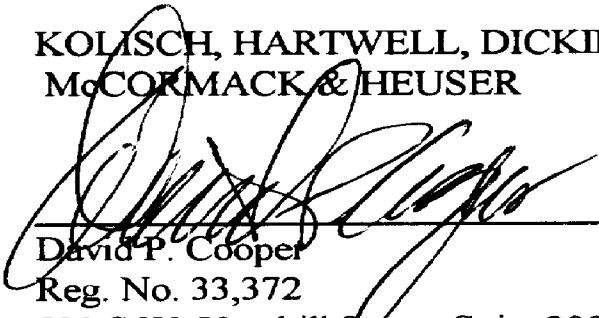
(7) Our check in the amount of \$40.00 to cover the recordation fee is enclosed, in accordance with 37 C.F.R. § 3.41.

(8) Please charge our Deposit Account No. 11-1540 for any additional fees which may be required. A duplicate copy of this form is attached.

(9) 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.

Respectfully submitted,

KOLISCH, HARTWELL, DICKINSON,
McCORMACK & HEUSER



David P. Cooper
Reg. No. 33,372
520 S.W. Yamhill Street, Suite 200
Portland, Oregon 97204
Telephone: (503) 224-6655
Facsimile: (503) 295-6679

of Attorneys for Patentee

TOTAL NUMBER OF PAGES
INCLUDING COVER SHEET,
ATTACHMENTS AND DOCUMENT: 10

LICENSE AGREEMENT

THIS AGREEMENT is made and entered into by and between STEVEN G. LORD and JOHN G. WHITTEMORE (collectively "Owner") and ATHENA CONTROLLABLE FLUSH COMPANY, an Oregon corporation (hereafter the "Company").

1. Ownership. Owner owns all right, title and interest to a certain controllable flush device, as more particularly described in Exhibit A attached hereto (hereafter "Licensed Product"), and founded Company for marketing the Licensed Product.

2. Grant of License. Owner hereby grants to Company a sole and exclusive right and license to manufacture and/or have manufactured, and to sell and to grant others the right to sell and use Licensed Product and any "Improvement Products" as hereafter defined. Such license applies worldwide. Company shall have the right to grant sub-licenses so long as such sub-licenses are not inconsistent with the terms of this Agreement. Company shall be responsible for royalties for sales by such sub-licensees the same as if those sales had been made by Company. Improvement Products include any other product designed by Owner and added to the product line of company as agreed to by the parties in writing or as described and claimed in a U.S. patent.

3. Royalty. Starting with sales made by Company after December 1, 1999, Company will pay a royalty to Owner based on the net selling price received by Company (or the net selling price of a sub-licensee where applicable) of Licensed Products and/or Improvement Products. Net selling price shall be the invoice price less quantity, cash and trade discounts, customary allowances and returns as may be applicable. The royalty amount shall be five percent (5%) of Company's gross sales of Licensed Product and Improvement Product. A Licensed Product shall be considered sold as of the date of invoice or the date of shipment whichever first occurs.

4. Payment. Royalty payments will be made within thirty (30) days after the end of each calendar quarter.

5. Records. Company will keep records of its sales of Licensed Products and Improvement Products which will be subject to audit by Owners on an annual basis as determined by Owners during business hours and with at least five (5) days notice in writing.

6. Termination. Either party has the right to terminate this Agreement as of the last day of any calendar year, after giving thirty (30) days advance written notice. As of the date of termination, Company will make no further sales of Licensed Products or Improvement Products covered by any claim of a patent issued to Owners and which is not expired. In the absence of such termination, this Agreement shall remain in full force and effect, and shall not expire.

7. Equitable Remedies. In addition to all other legal rights and remedies, either party shall be entitled to obtain from any court of competent jurisdiction all appropriate equitable remedies, including preliminary and permanent injunctive relief, against any actual or threatened violation of any term hereof, as well as an equitable accounting of all profits or benefits arising out of such violation, without requirement of bond, and without a showing of actual damages.

8. Cooperation. The parties agree to fully cooperate in carrying out this Agreement, including the execution of all documents reasonably necessary to effectuate the intention of the parties.

9. Disputes. The legal relations of the parties hereunder, and all other matters hereunder, shall be governed by the laws of the State of Oregon. Unresolved disputes shall be resolved in a court of competent jurisdiction in Portland, Oregon, and all parties hereto consent to the jurisdiction of such court.

10. Entire Agreement. This Agreement sets forth the entire agreement between the parties hereto. Modifications or additions to this Agreement shall be considered valid only when mutually agreed upon in a writing signed by the parties.

11. Severability. If any part of the terms and conditions stated herein is held void or unenforceable, such part will be treated as severable, leaving valid the remainder of the terms and conditions notwithstanding the part or parts found void or unenforceable.

12. Time of Essence. Time is of the essence of this Agreement with respect to each and every provision of this Agreement in which time is a factor.

13. Successors. This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

14. Professional Fees. In case suit or action is instituted to interpret or enforce any of the provisions of this Agreement, the prevailing party therein shall be awarded all reasonable and necessary fees for appraisals, business valuations, title reports, foreclosure guarantees, investigations, and depositions, as well as fees for bookkeepers, accountants and

witnesses (expert or otherwise) reasonably incurred by that party in connection with such suit or action, plus such sums as may be adjudged reasonable for that party's attorney fees incurred prior to and throughout such suit or action, including all hearings, trials, and appeals. An award of fees hereunder shall include all fees and expenses in connection with bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), insolvency proceedings, receivership proceedings, and judgment collection proceedings, including post-judgment procedures.

15. Waiver. No delay or failure by any party to exercise any right, power or remedy with regard to any breach or default by such party under this Agreement, or to insist upon strict performance of any of the provisions hereof, shall impair any right, power or remedy of such party, and shall not be construed to be a waiver of any breach or default of the same or any other provisions of this Agreement. No action or conduct of any of the parties hereto shall be deemed or construed as a waiver or modification of the non-waiver provisions contained in this section.

16. Notices. All notices under this Agreement shall be in writing and mailed by certified mail/return receipt requested to the parties hereto at their respective addresses as set forth below, or at such other address as may be designated by the parties in writing.

17. Legal Representation. This Agreement has been drawn at the direction of Athena Controllable Flush Company, an Oregon corporation ("Athena") by Powers, McCulloch & Bennett, LLP and said firm of attorneys represent Athena only. All other parties have been informed of the fact and have been afforded the opportunity to select and receive independent counsel.

18. Relationship of the Parties. Neither party shall exercise any control over the activities and operations of the other party, and each party hereto is recognized as an independent contractor. Under no circumstances shall the parties be construed as partners, agent and principal, joint venturers, franchisor and franchisee, nor employer and employee.

19. Set-Off. If any party shall breach its obligations hereunder, the non-breaching party shall have the right of set-off, and may pursue any remedy available under this Agreement, at law, or in equity.


20. Third Party Beneficiaries. The provisions of this Agreement are intended solely for the benefit of the parties hereto, and shall create no rights or obligations enforceable by any third party, or any other person or entity not expressly made a party hereto, including but not limited to creditors, partners, agents, employees, owners, officers, directors, or other parties affiliated with any of the parties hereto.

21. Execution. This Agreement shall become binding and enforceable only when

signed as provided herein by all parties listed below. The parties may all sign one or multiple counterparts of an original or copy hereof, or each of the parties may separately sign counterparts of an original or copy hereof. A party's signature need only appear on any one counterpart, original, or copy. This Agreement may be enforced by means of a fully signed original hereof, as well as a legible photocopy or facsimile of the fully signed original, or by multiple counterparts of the original or legible copy hereof which collectively contain the signatures of all parties, or legible copies thereof.

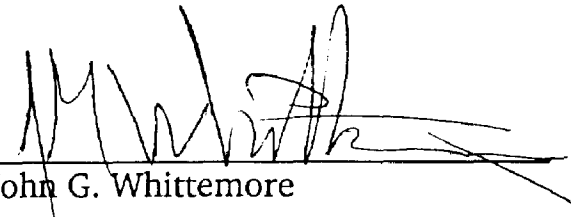
IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first hereinabove written.

OWNERS:



Steven G. Lord

Address: 5393 SW Humphrey Blvd.
Portland, OR 97221



John G. Whittemore

Address: 15818 SW Village Circle
Beaverton, OR 97007

COMPANY:

ATHENA CONTROLLABLE FLUSH
COMPANY, an Oregon corporation

By: 

John G. Whittemore, Vice President

Address: 17175 SW TV Highway
Aloha, OR 97006