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HEET

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

Tab settings

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

1. Name of conveying party(ies):

Fleet Air Industries Inc.

Additional names(s) of conveying party(ies) ☐ Yes ☒ No

3. Nature of conveyance:

- ☐ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☒ Other License Agreement

Execution Date: May 2, 2000

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

Name: Bestop, Inc.

Address: 2100 W. Midway Blvd.,

City: Broomfield State/Prov.: Colorado

Country: U.S.A. ZIP: 80038

Additional name(s) & address(es) ☐ Yes ☒ No

4. Application number(s) or registration numbers(s):

If this document is being filed together with a new application, the execution date of the application is: _____

Patent Application No. Filing date



05-23-2001

U.S. Patent & TMO/TM Mail RptDt #71

Additional numbers

B. Patent No.(s)

5,725,273

☐ Yes ☒ No

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

Name: Jeffrey T. Imai

Registration No. 34,991

Address: Magna International Inc.

337 Magna Drive

City: Aurora State/Prov.: ON

Country: Canada ZIP: L4G 7K1

6. Total number of applications and patents involved:

1

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

☒ Enclosed - Any excess or insufficiency should be credited or debited to deposit account

☐ Authorized to be charged to deposit account

8. Deposit account number:

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.

Jeffrey T. Imai

Name of Person Signing

Signature

May 11, 2001

Date

Total number of pages including cover sheet, attachments, and

PATENT

REEL: 011855 FRAME: 0447

LICENSE AGREEMENT

THIS AGREEMENT is made as of the 2nd day of May, 2000 between **Bestop, Inc.**, a corporation organized and existing under the laws of the State of Delaware having a post office address of 2100 W. Midway Blvd., Broomfield, Colorado 80038 ("Bestop") and **Fleet Air Industries, Inc.**, a corporation organized and existing under the laws of the State of Tennessee, having a post office address of P.O. Box 4836, Oneida, Tennessee 37841 ("Fleet Air"). In consideration of the mutual covenants contained in this Agreement and other good and valuable consideration, the parties to this Agreement hereby agree with each other as follows:

SECTION 1

DEFINITIONS

When used in this Agreement, the following words and terms shall have the meanings indicated below:

1.1 **"Affiliate"** means any Person who directly or indirectly controls, is controlled by or is under direct or indirect common control with such Person;

1.2 **"After Market"** means sales of products to any Person other than an Affiliate or an OEM;

1.3 **"Agreement"** means this agreement and all schedules attached hereto as amended from time to time in accordance with the terms hereof:

1.4 **"Improvements"** means any and all inventions, information, designs, processes, techniques, products, developments, alterations, enhancements and upgrades in or to the Technology developed, owned or acquired by Bestop during the Term hereof subsequent to the date of this Agreement, which are related to one or more of the claims of the Licensed Patent but does not include Independent Improvements;

1.5 **"Licensed Patent"** shall mean United States Patent No. 5,725,273 and any divisions, continuations, continuations in part, and reissues thereof, and any and all equivalent foreign patent applications and patents granted or issued therefor;

1.6 **"Net Sales"** means the gross revenues and other income from all Products sold by Fleet Air or its Affiliates which are manufactured by Fleet Air or its Affiliates or third parties on Fleet Air's behalf in such fiscal year, minus (i) shipping, packaging and insurance costs, (ii) normal sales or volume discounts or allowances, (iii) customer credits and returns, (iv) value added, sales, use or excise taxes, (v) separately invoiced tooling revenues that are clearly identified as a cost to Fleet Air's customer, (vi) the income, if any, derived from prototypes or samples, and (vii) the cost component attributable to any value added components of Fleet Air relating thereto;

1.7 **"OEMs"** shall mean original equipment manufacturers of automobiles;

1.8 **"Person"** shall, as the context requires, include any individual, body corporate, partnership, joint venture, association, syndicate, trust or unincorporated organization or any legal representative or combination thereof;

1.9 **"Products"** means the General Motors Tracker hard top which is covered by the Licensed Patent;

1.10 **"Technology"** means the Licensed Patent and the Improvements; and

1.11 **"Term"** means the period of time commencing on the date of execution hereof and ending on the date of expiry of the Licensed Patent.

SECTION 2

LICENSE GRANT

2.1 Subject to the terms and provisions of this Agreement, and in consideration of the payments provided for in Section 4.1 hereof, Bestop hereby grants to Fleet Air a nonexclusive worldwide license to use the Technology to make, have made, use, have used, market, import, export and sell Products to General Motors Corporation for the duration of the Cami Tracker SPO program.

SECTION 3

PATENTS AND IMPROVEMENTS

3.1 Bestop, at its expense, shall apply for, prosecute and maintain the Licensed Patent and Improvements.

3.2 Any Improvement made, developed or acquired independently by Bestop, or jointly by Fleet Air and Bestop or any of its officers or employees during the term hereof shall belong to Bestop.

SECTION 4

ROYALTIES AND OTHER PAYMENTS

4.1 Commencing from the date of commencement of commercial production of Products by or for Fleet Air and during the Term hereof, Fleet Air will pay to Bestop royalties at the rate of \$

for each Product sold. In no event shall the royalties provided for herein be payable in respect of Products for which the Licensed Patent has expired or been declared invalid by a duly constituted court or regulatory authority.

4.2 The royalty payments provided for herein shall be payable to Bestop within thirty (30) days following the end of each applicable fiscal quarter of Fleet Air in accordance with payment instructions provided by Bestop. Such payments, if any, shall be made based upon the good faith estimate of Fleet Air as to the amount of royalties, if any, payable in respect of such preceding quarter.

SECTION 5

STATEMENTS AND RECORDS

5.1 Within one hundred and twenty (120) days of the end of each fiscal year in which royalty payments, if any, have been made by Fleet Air hereunder, Fleet Air shall furnish Bestop with a complete and accurate statement of the Net Sales of applicable Products by or on behalf of Fleet Air or its Affiliates during each such fiscal year on a quarter by quarter basis in sufficient detail to permit verification of the calculation of the royalty payments for such fiscal quarter(s) and of the deductions made from gross revenues in respect of such fiscal year. Such statement shall include:

- (a) the quantity of the Products sold in such fiscal year on a quarter by quarter basis by or on behalf of Fleet Air or an Affiliate;
- (b) a summary of all deductions from gross revenues and other income made in order to determine Net Sales of Products, if applicable;
- (c) the calculated royalty, on both a quarter by quarter and an aggregate fiscal year basis; and
- (d) a description of any amounts withheld as permitted by this Agreement and the reason(s) therefore;

and shall be certified as correct by a financial officer of Fleet Air. To the extent such statement indicates that amounts payable pursuant to Section 4.2 were greater than or less than the actual aggregate amount of royalties payable in respect of such fiscal year, then the following provisions shall apply. Any amounts paid by Fleet Air in excess of such aggregate amount shall be credited against future royalties payable. Any shortfall in respect of royalty payments owed by Fleet Air to Bestop in respect of such year shall be forthwith paid by Fleet Air to Bestop.

5.2 Fleet Air shall keep full accurate and complete records and books of account relating to the gross revenues and other income, deductions and Net Sales of Products in order to make an accurate determination of the royalty payments to be made under this Agreement. All records and books of account of Fleet Air necessary for the determination of such royalty payments shall be available upon reasonable written notice during business hours during the term hereof, and for a period of one (1) year thereafter, for inspection and audit by duly authorized independent chartered accountants or other authorized representatives designated by Bestop not more than one time in respect of any given fiscal year to which an annual royalty payment relates, solely for the purpose of ascertaining the accuracy of the royalty payments. Such representatives shall be entitled to take extracts therefrom, make copies thereof and report on the same to Bestop. All such information shall be retained by Bestop and any such third parties in strict confidence and shall not be disclosed to a third party without Fleet Air's prior written consent. The costs and expenses for any inspection and audit shall be borne by Bestop provided that no error in Bestop's favour of greater than ten percent (10%) in the amount of the royalty paid or payable to Bestop shall be revealed by the inspection and audit, in which case such reasonable costs and expenses shall be borne by Fleet Air.

SECTION 6

PAYMENTS AND SET OFFS

6.1 Payments accrued at the close of each fiscal quarter or year, as applicable, shall be due and payable as aforesaid and shall be paid in United States dollars.

6.2 In the case of sales of Products transacted in foreign currency, such foreign currency shall be converted into equivalent United States dollars at the exchange rate of such currency as published in the Wall Street Journal for the last business day of the applicable fiscal quarter to which such sales relate.

6.3 Fleet Air may deduct and make appropriate payments to the taxing authorities having jurisdiction for any withholding taxes validly imposed by such taxing authorities, but only for those withholding taxes in respect of which no prior clearance or waiver from such withholding tax has been obtained from such taxing authorities. Fleet Air shall promptly provide Bestop with an official tax withholding receipt for any such withholding taxes paid by Fleet Air.

SECTION 7

WARRANTIES

7.1 Bestop represents, warrants and covenants to Fleet Air as of the date of this Agreement, that:

- (a) The Licensed Patent is subsisting and Schedule "A" attached hereto contains a full and complete listing of all patents and patent applications relating to the Technology;
- (b) Bestop is the sole and exclusive owner of the entire right, title and interest in and to the Licensed Patent;
- (c) Bestop has made and maintained and will maintain and defend all necessary filings and registrations necessary to maintain ownership of Licensed Patent in the United States of America;
- (d) Bestop has the full power and authority to enter into this Agreement and grant the within license to the Technology in the manner provided for in this Agreement;
- (e) The use and enjoyment by Fleet Air of the Technology will not, to the best of Bestop's knowledge and belief after due enquiry, infringe on the intellectual property rights of any third party;
- (f) Bestop has not granted any rights in the Licensed Patent to any third party which would in any way derogate from or impair the full use and enjoyment by Fleet Air of the license rights granted to it hereunder.

7.2 Fleet Air represents, warrants and covenants to Bestop as of the date of this Agreement, that:

- (a) Fleet Air has the full power and authority to enter into this Agreement.

SECTION 8

INDEMNITY

8.1 Bestop agrees to defend, protect, indemnify and save Fleet Air harmless from and against all actions, suits, claims and proceedings and from all costs, losses, fines, damages and expenses arising by reason of any breach by Bestop of its obligations under this Agreement, including without limitation, any breach of the representations, warranties and covenants contained in Section 7.1 above.

8.2 Fleet Air agrees to defend, protect, indemnify and save Bestop harmless from and against all suits or claims and from all costs, damages and expenses arising by reason of any breach of the representations, warranties and covenants contained in Section 7.2 above and/or the manufacture of Products by Fleet Air to its OEM customers or affiliates, as applicable.

SECTION 9

TERMINATION

9.1 This Agreement may be terminated by either party by providing sixty (60) days' written notice to the other party (the "Termination Notice"), in the event such other party:

- (a) files a petition, proposal, assignment, arrangement or other application or request for reorganization, rearrangement or winding up under the provisions of any applicable bankruptcy or insolvency laws, or is declared bankrupt or has any of the foregoing matters filed against it and has failed to contest such filing within the applicable period provided at law;
- (b) liquidates its assets or sells all or substantially all of its assets to an entity other than an Affiliate;
- (c) has a trustee or receiver appointed for all or substantially all of its business; or
- (d) ceases to carry on business in the ordinary course for a period in excess of one hundred and twenty (120) days.

9.2 If a party is in default of any material obligations under this Agreement, the non-defaulting party may, at its option, give the defaulting party written notice specifying the default in reasonable detail and requesting the default be cured within thirty (30) business days (the "Default Notice"). In the event that the defaulting party has not cured or taken steps to commence to cure such default within such thirty (30) business day time period, the non-defaulting party may, at its option, immediately terminate this Agreement by delivering a written notice of termination to the defaulting party (the "Termination Notice"), provided, however, such Termination Notice must be given within sixty (60) business days of the Default Notice.

9.3 Any termination hereunder shall be without prejudice to any other rights, remedy or relief vested in or to which a party may otherwise be entitled against the other party. The foregoing remedy shall not exclude any other remedies which a party may have at law or in equity by reason of the default, breach or non-observance by the other party of any provisions hereof,

9.4 If this Agreement is terminated, Fleet Air shall, subject to the royalty obligations provided for herein, be entitled to sell off any and all inventory of Product (including work in process) then in its possession.

SECTION 10

INFRINGEMENT

10.1 Fleet Air shall notify Bestop Air in writing immediately upon becoming aware of any infringement, potential infringement or unauthorized use of the Licensed Patent by any Person. Fleet Air's notice shall describe in reasonable detail all facts and circumstances relating to such infringement.

10.2 If, as a result of exploiting the Licensed Patent, Fleet Air, an Affiliate or a customer, as applicable, is threatened or a proceeding commenced for infringement of any patent or other intellectual property right by reason of the manufacture, sale or use of Products by Fleet Air, an Affiliate or customer, as applicable or if payment of license fees and/or damages are demanded from Fleet Air, an Affiliate or a customer, as applicable, Fleet Air shall notify Bestop immediately upon becoming aware of such threat or proceeding.

10.3 Bestop shall have the lesser of the time period designated for a response by the applicable legal process as extended if applicable or ninety (90) days from receipt of the written notice from Fleet Air provided for in Sections 10.1 and 10.2 within which to commence appropriate proceedings against the alleged infringer or unauthorized user, or to commence defence of such threat or proceeding as the case may be. The benefits of any proceedings commenced by Bestop shall accrue to Bestop, Bestop shall have no obligation whatsoever to commence such proceedings and shall at all times retain the right to settle such proceedings in its sole discretion following consultation with Fleet Air.

10.4 If Bestop elects not to commence proceedings as aforesaid, it shall notify Fleet Air not less than ten (10) business days prior to the expiry of the applicable response period of such election. In such event, Fleet Air shall have the right to commence or defend appropriate proceedings and Fleet Air shall prosecute such proceedings diligently at its sole expense. Fleet Air shall keep Bestop fully informed regarding the status of any such proceedings, or negotiations in relation thereto, and may settle or compromise such proceedings without the prior written consent of Bestop. The benefits of any proceedings commenced by Fleet Air shall be retained by Fleet Air.

10.5 If a third party patent infringement claim is successful in that Fleet Air or any Affiliate or customer, as applicable, are ordered to discontinue their use of the Licensed Patent, then Fleet Air may, in addition to any other rights provided for herein, terminate this Agreement forthwith by written notice to Bestop. If Fleet Air or its Affiliates or customers, as applicable, are only ordered to make payments to the aggrieved party whose patent rights have been held to be Infringed, then in such event, Fleet Air shall have the right to deduct payments so required from any and all payments to be made to Bestop herein and to credit any such amounts against future payments, as and when due. If such payments so required are in excess of the royalties payable by Fleet Air to Bestop

hereunder, with the effect that Fleet Air or its Affiliates or customers, as applicable, are required to make payments to such aggrieved party in excess of any such set off amounts, then Fleet Air may at its option terminate this Agreement immediately.

10.6 Fleet Air and Bestop shall fully co-operate and provide such assistance as may be reasonably required by either party to pursue any third Person for infringement or unauthorized use, including the execution of documents and the provision of written or oral evidence.

SECTION 11

CONFIDENTIALITY

11.1 **Fleet Air Confidentiality.** Fleet Air shall not, directly or indirectly, disclose or divulge any technology relating to the Licensed Patent in a manner which would impact negatively on the sales of Products.

11.2 **Exceptions.** The confidentiality requirement described in Sections 11.1 and 11.2 above shall not apply to information which (i) was previously known to the receiving party prior to receipt, (ii) was previously in the public domain or comes into the public domain through no act or fault of the receiving party, (iii) was received from the disclosing party without confidentiality restriction, (iv) was developed independently or acquired by Fleet Air or Bestop without reference to the Confidential Information of the other party, (v) was received from a third party without confidentiality restrictions in circumstances which, to the actual knowledge of the recipient, do not breach any confidentiality covenant of the third party, or (vi) is required to be disclosed by law or final order of a court or a body having jurisdiction. It is understood that substantially all of the Confidential Information and not simply parts of it must be available in the public domain or in the receiving party's possession before the obligations of Sections 11.1 do not apply.

SECTION 12

GENERAL

12.1 **Further Assurances.** Each of the parties to this Agreement agree on request to execute such documents and agreements and to do all such things as may reasonably be necessary or desirable to carry out the provisions and purposes of this Agreement.

12.2 **Notices.** Any notice required or permitted to be given under this Agreement shall be in writing and may be delivered in person or by registered mail or by telefax or by other recorded communication addressed to the respective parties at the address set forth below or such changed address as may be given by a party to the other by such written notice. Any such notice shall be

considered to have been given when personally delivered or five (5) business days after the date of mailing or one (1) business day after the date of forwarding if sent by telefax or other recorded communication.

Address of Bestop: **Bestop Inc.**
2100 W. Midway Blvd.
Broomfield, Colorado
80038
U.S.A.
Attention: President
Telephone No.: (303) 465-1755
Telefax No.: (303) 464-2696

Address of Fleet Air: **Fleet Air Industries, Inc.**
P. O. Box 4836
Oneida, Tennessee 37841
U.S.A.
Attention: President
Telephone No.: (800) 982-8677
Telefax No.: (865) 569-8009

12.3 **Entire Agreement.** This Agreement shall constitute the entire agreement and understanding between the parties as to the subject matter of this Agreement. There are not and shall not be any verbal statements, representations, warranties, undertakings, or agreements between the parties to this Agreement except to the extent expressly provided for in this Agreement or the Purchase Agreement, as applicable.

12.4 **Amendment.** This Agreement may not be amended or modified in any respect except by written instrument signed by each of the parties hereto.

12.5 **Division and Headings.** The insertion of headings and the division of this Agreement into separate articles and/or sections are for convenience of reference only and shall have no effect on the construction or interpretation of the terms and conditions of this Agreement.

12.6 **Time.** Time is of the essence of this Agreement.

12.7 **Applicable Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the State of Colorado, excluding conflicts of laws principles, applicable therein and the parties hereto hereby submit to the exclusive jurisdiction of the duly constituted State and/or Federal courts of the District of Colorado.

12.8 **Severability.** The invalidity of any particular provision of this Agreement or any covenant herein contained on the part of any party shall not affect any other provision or covenant contained in this Agreement and this Agreement shall be construed as if such invalid provision was omitted.

12.9 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which so executed shall constitute an original and all of which together shall constitute one and the same agreement.

12.10 **Default and Waiver.** The failure of a party hereto at any time to require performance of any provision of this Agreement shall not affect the full right of such party to require such performance at any later time. The waiver of a breach of any provision by a party hereto shall not constitute a waiver by such party of the provision or of any succeeding breach.

12.11 **Binding Effect.** This Agreement shall be binding upon the parties hereto and their respective successors, assigns and other legal representatives and shall enure to the benefit of the parties hereto and their respective successors, permitted assigns and other legal representatives.

12.12 **Negation of Relation.** The parties hereto acknowledge that this Agreement does not and shall not be considered to create any relationship between the parties in the nature of principal and agent, partnership, joint venture, syndication or association whatsoever.

12.13 **Assignment.** The rights and obligations arising from this Agreement are personal and may not be assigned by either party hereto in whole or in part without the prior written consent of the other party to this Agreement.

12.14 The remedies of the parties hereunder are cumulative and in addition to and not in substitution for any other rights or remedies that may be available at law or in equity.

IN WITNESS WHEREOF the parties have duly executed this agreement as of the day and year first above written.

BESTOP, INC.

By: R. N. MacLean
Name: ROSS N. MACLEAN
Title: PRESIDENT

FLEET AIR INDUSTRIES INC.

By: W. Dale Gordon
Name: W. Dale Gordon
Title: PRESIDENT

(Signatures continue on following page.)

(Signatures continued from previous page.)

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

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SCHEDULE "A"

Licensed Patent Number

U.S. Patent #5, 725,273

LICENSE AGREEMENT

as between

BESTOP INC.

and

FLEET INDUSTRIES INC.

dated

May 2nd, 2000

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as between

BESTOP, INC.

and

FLEET AIR INDUSTRIES INC.

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TABLE OF CONTENTS

<u>Heading</u>	<u>Page Number</u>
SECTION 1 - Definitions.....	1
SECTION 2 - License Grant.....	2
SECTION 3 - Patents and Improvements	2
SECTION 4 - Royalties and Other Payments	2
SECTION 5 - Statements and Records	3
SECTION 6 - Payments and Set Offs	4
SECTION 7 - Warranties	4
SECTION 8 - Indemnity	5
SECTION 9 - Termination.....	6
SECTION 10 - Infringement.....	7
SECTION 11 - Confidentiality	8
SECTION 12 - General.....	8
SCHEDULE A - Licensed Patent Numbers	12