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OMB No. 0651-0027 (exp. 5/31/2002)

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

1. Name of conveying party(ies):

Ronald C. Gamble

9-6-01

2. Name and address of receiving party(ies)

Name: TOYO Corporation

Internal Address:

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: July 13, 2001

Street Address: 1-6 Yaesu 1-Chome,

Chuo-ku

City: Tokyo 103-8284 State: Japan Zip:

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)

N/A

B. Patent No.(s)

5,811,802

Additional numbers attached? Yes No

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

Name: A. William Berkman, Jr.

Internal Address: TOYO Corporation

Street Address: 1135 Deana Court

City: Morgan Hill State: Calif. Zip: 95037

6. Total number of applications and patents involved: 1

7. Total fee (37 CFR 3.41) \$ 440.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

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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.

A. William Berkman, Jr.

Name of Person Signing

Signature

August 31, 2001

Date

Total number of pages including cover sheet, attachments, and documents: 12

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

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PATENT REEL: 012145 FRAME: 0064

## DEVELOPMENT AGREEMENT

This Development Agreement (hereinafter referred to as "Agreement") is made effective \_\_\_\_\_, 2001 ("Effective Date"), by and between Pacific Scanning Corporation, a California corporation (hereinafter referred to as "PSC"), located at 2038 Foothill Blvd., Pasadena, CA, 91107, Gamble & Associates, L.L.C., a California limited liability company (hereinafter referred to as "G&A"), Ronald C. Gamble, Ph.D., an individual and the sole Trustee of the Gamble Trust (hereinafter referred to as "Gamble"), and TOYO Corporation, a corporation organized pursuant to the laws of Japan (hereinafter referred to as "TOYO"), having offices at 1-6, Yaesu 1-chome, Chuo-ku, Tokyo 103-8284, JAPAN.

Whereas TOYO is a distributor of electronic instrumentation, PSC has research, development and manufacturing capability in Scanning Probe Microscopes (SPM), G&A is a contractor to PSC and the lessee of the property occupied and used by PSC, and Gamble is a principal shareholder of PSC and the owner of US patent # 5,811,802 titled "Scanning Probe Microscope with Hollow Pivot Assembly", issued September 22, 1992, included as Appendix III (the "Patent") and used in the development and manufacturing of SPM.

Whereas TOYO, PSC, Gamble and G&A consider it desirable to perform the Development and engage in the other transactions contemplated by this Agreement.

The parties agree as follows:

- Engagement.** TOYO agrees to engage the services of PSC as an independent contractor to develop a prototype SPM system as described in Appendices I & II ("Development"). PSC agrees as an independent contractor to conduct the Development. The Development will be under the supervision of Dr. Ronald C. Gamble at PSC with the assistance of appropriate consultants and/or agents of PSC as may be required. G&A agrees to assist PSC in providing personnel and facilities during the Development.
- Confidentiality.** As PSC and TOYO will be cooperating with each other in this Development, and as each may reveal to the other in the course of this Development certain confidential information. PSC and TOYO agree to hold any information obtained from the other which is (a) obtained during the course of this Development and (b) is marked as "CONFIDENTIAL", in confidence, and each party will not disclose same to any third party without the express written consent of the other party. This requirement shall remain in force for a period of five (5) years following either termination of this Agreement or completion of work under this Agreement. Nothing in this paragraph shall in any way restrict the rights of either PSC or TOYO to use, disclose or otherwise deal with any information which:

- a. At the time of disclosure is in the public domain or after disclosure become part of the public domain by publication or otherwise through no act or omission of the receiving party or its employees; or
- b. Can be demonstrated to have been rightfully received by the recipient from a third party who did not require the recipient to hold it in confidence or limit its use and who did not acquire it, directly or indirectly, under obligation of confidentiality to the disclosing party; or
- c. Shall be required for disclosure to Federal regulatory agencies pursuant to approval for use, provided such disclosure is made only with continued obligations of confidentiality with regard to all other parties; or
- d. Is independently developed by the non-disclosing party without use of the confidential information of the disclosing party.

Nothing herein is intended to give TOYO or PSC the right to use for any purpose preexisting confidential information of the other party, except in connection with the parties' exercise of rights under this Agreement.

PSC represents that the individuals that may perform services hereunder are its employees or agents and shall abide by the terms and conditions of this Agreement as if each were a party hereto.

### 3. **PSC Obligations.**

PSC shall:

- a. Develop a prototype SPM system ("Nano-R") and deliver it to TOYO within three months of the Effective Date. The prototype shall include a master computer (generic Windows-based PC), data station ("PScan2 Controller"), SPM scanner ("PTrak4 Scanner"), and control software ("SPM Cockpit"). Specifications for the prototype are provided in Appendix II. PSC warrants that the design drawings for the prototype shall conform to the specifications provided in Appendix II, and that the prototype shall conform to the design drawings and such specifications, in each case as the same may be modified pursuant to this Agreement.
- b. Host TOYO employees at PSC for design reviews and product input as necessary. PSC shall be responsible for helping coordinate travel arrangements and accommodations for TOYO employees in Pasadena. TOYO shall be responsible for all costs incurred by its employees in performing the design reviews.

- c. Promptly notify TOYO of any recommended changes in the product design or specifications, and promptly notify TOYO of any substantial recommended changes in the product design or specifications in writing at least one month before the project's conclusion, which substantial changes shall be subject to TOYO's approval. PSC shall also provide TOYO with project update reports on a regular basis.
- d. Use the proceeds of this Agreement only for the development of the prototype Nano-R SPM system. Uses include reasonable overhead, salaries, contractors, supplies, and consultants. Additionally, PSC shall maintain financial records outlining the use of funds from this contract, and shall provide TOYO with access to such records upon request.
- e. PSC represents and warrants to TOYO that it has sufficient rights to the Patent and other intellectual property to perform its obligations under this Agreement, and that the prototype Nano-R System will not infringe upon or violate any patent, copyright, trade secret, invention, proprietary information or other rights of any third party. PSC shall assist TOYO in the defense against claims by any third party for such infringement.
- f. Grant TOYO the exclusive right to market, sell and otherwise distribute the Nano-R, PScan2 Controller, PTrak4 Scanner and SPM Cockpit (the "Products") in the country of Japan.

4. **Gamble Obligations.** In consideration of the substantial benefits inuring to Gamble pursuant to this Agreement in light of Gamble's being a principal stockholder of PSC, Gamble hereby grants to TOYO a security interest in the Patent as security for PSC's performance of its obligations under this Agreement, agrees to execute and deliver such UCC-1 financing statements and other documents which TOYO deems reasonably necessary to evidence or perfect such security interest, and agrees that TOYO may file such statements and documents with the California Secretary of State, US Patent and Trademark Office, or any other appropriate governmental authority. Gamble hereby represents and warrants to TOYO that is the sole owner of the Patent, free and clear of any liens, mortgages, or other rights or encumbrances of any third party, and that it is duly authorized to grant to TOYO a security interest in the Patent.

5. **TOYO Obligations.**

TOYO shall:

- a. Provide a total of \$400,000 to PSC for development of the prototype Nano-R SPM system. This sum shall be made in three payments, with the due date of each payment being subject to PSC's completion and delivery of the items set forth below and TOYO's approval of such items (the "Milestone(s)"):

<u>Time</u>	<u>Amount</u>	<u>Milestone</u>
Upon Signing perfection filings	\$150,000	Agreement, UCC or other
After first month	\$150,000	Design Drawings
After second month	\$100,000	Assembled prototype

PSC shall promptly modify or improve the Design Drawings if TOYO determines that they do not conform to the specifications set forth in Appendix II, and shall promptly modify or improve the prototype if TOYO determines that they do not conform to the Design Drawings or specifications, in each case as modified pursuant to this Agreement.

- b. Provide input to PSC with regard to software design. A best effort will be made by PSC to incorporate any software improvements recommended by TOYO.
- c. Review the progress of the development project on a monthly basis and provide in writing concerns with the project's progress. Additionally, TOYO shall provide in writing any changes that are recommended to proposed changes in the product design or specifications .
6. **Inventions and Patents.** Subject to the security interest granted to TOYO pursuant to Section 4a and TOYO's rights in and title to the deliverable items listed in Section 3a, , all rights and title to any intellectual property used in the Development shall belong to PSC.
7. **Title to Equipment.** PSC shall retain title to all equipment purchased and/or fabricated by it with funds provided by TOYO under this Agreement except for the deliverable items listed in Section 3a.
8. **Assignment.** This Agreement may not be assigned by either party without the prior written consent of the other party.
9. **Basic Term.** A grace period of one month in the delivery date of the prototype Nano-R SPM System will be granted to PSC if the extension is requested at the end of the second month after the Effective Date.

10. **Default and Termination.** In the event that either party to this Agreement shall be in default of any of its material obligations hereunder and shall fail to remedy such default within fifteen (15) days after receipt of written notice thereof, the party not in default shall, in addition to any other remedies it may have in law or equity, have the option of terminating this Agreement by giving written notice thereof, notwithstanding anything to the contrary contained in this Agreement. In the event that PSC shall be in default of any of its material obligations hereunder and shall fail to remedy such default within fifteen (15) days after receipt of written notice thereof, TOYO may, in addition to any other remedies it may have in law or in equity, exercise all remedies available to a secured party under the California Commercial Code with respect to the Patent.
11. **Entire Agreement.** The parties acknowledge that this Agreement and the attached Appendices hereto represent the sole and entire Agreement between the parties hereto pertaining to the Development and that such supersedes all prior Agreements, understandings, negotiations and discussions between the parties regarding same, whether oral or written. There are no warranties, representations or other Agreements between the parties in connection with the subject matter hereof except as specifically set forth herein. No supplement, amendment, alteration, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the parties hereto.
12. **Governing Law.** This Agreement shall be governed and interpreted in accordance with the substantive laws of the State of California and with applicable laws of the United States of America. Any disputes shall be settled under binding arbitration under the rules of the American Arbitration Association in the state of California.

13. **Notices.** Any notices, statements, payments, or reports required by this AGREEMENT shall be considered given if sent by Certified or Registered Mail, postage prepaid, with supplementary confirmatory facsimile, to the following addresses and facsimile numbers:

If to PSC, G&A, or Gamble:

Ronald C. Gamble, Ph.D.  
Pacific Scanning Corporation  
2038 Foothill Blvd.  
Pasadena, CA 91107  
Voice: (626) 796-7983

FAX: (626) 796-7476

If to TOYO:

Mr. A. William Berkman, Jr.  
TOYO U. S. Liaison Office  
1135 Deana Court  
Morgan Hill, CA 95037  
Voice: (800) 809-0872

FAX: (408) 779-1848

and

Mr. Kohzo Yumoto  
TOYO Corporation  
1-6, Yaesu 1-chome  
Chuo-ku, Tokyo 103-8284, JAPAN  
Voice: 011.81.33.279.0771

FAX: 011.81.35.205.2030

Agreed to:

Pacific Scanning Corporation

By: Ronald C. Gamble  
Name: Ronald C. Gamble  
Title: President  
Date: 7/23/01

TOYO Corporation

By: A. William Berkman, Jr.  
Name: A. William Berkman, Jr.  
Title: Authorized Representative  
Date: 13 Jul 01

Gamble and Associates, LLC

By: Ronald C. Gamble  
Name: Ronald C. Gamble  
Title: President  
Date: 7/13/01

The Gamble Trust

By: Ronald C. Gamble  
Name: Ronald C. Gamble  
Title: Trustee  
Date: 7/13/01

Ronald C. Gamble

By: Ronald C. Gamble  
Date: 7/13/01

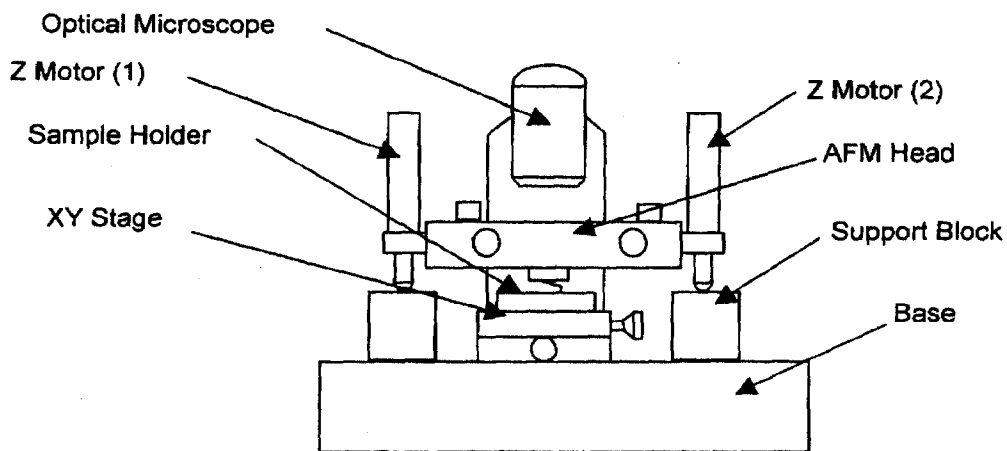


## Appendix I – Product Description

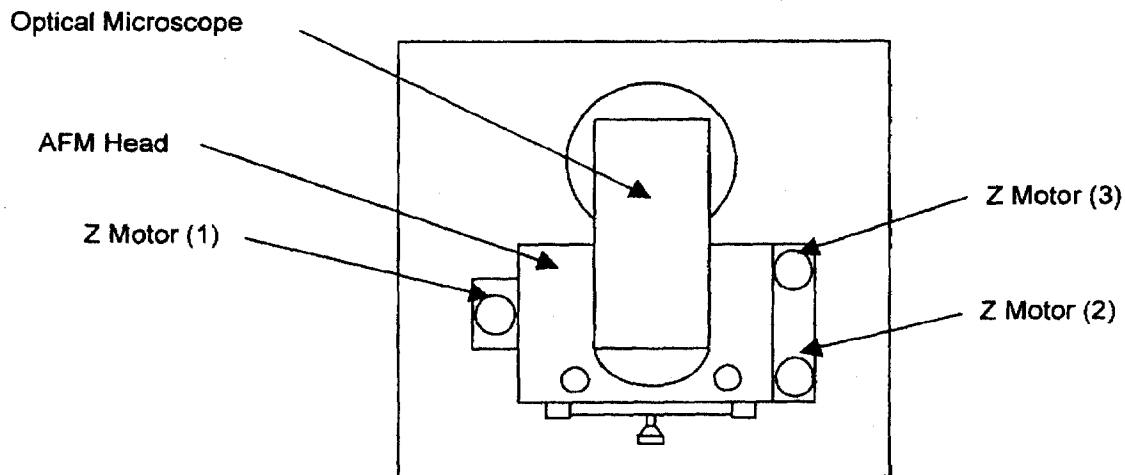
The Nano-R SPM system is optimized for Nanotechnology research and NanoScience research and development. The Nano-R system has an extremely high value/price ratio in comparison to other SPM systems in the market.

### Stage Design

The Nano-R SPM includes the PTrak4 Scanner, an optical microscope, an X-Y positioning stage, sample holder, and support base. The Scanner is removed from the support stage after lifting the optical microscope head. A side view and top view of the standard support stage and optical microscope are illustrated below.

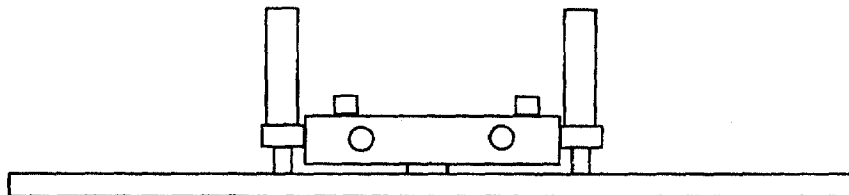


Side View



Top View

Additionally, the PTrak4 Scanner can be used in a "stand alone" format so that samples of any size, such as glass sheets, can be directly measured. The PTrak4 AFM can be directly place on an inverted microscope.



### Ease of Use

The Nano-R SPM system is easy to use. If required a typical customer will be able to install the Nano-R system and make routine measurements.

### Software

The SPM Cockpit instrument control software developed by PSC will be sold with the Nano-R SPM system. SPM Cockpit software has typical mode ("EZ Mode") for less experienced users as well as Expert mode for advanced users.

A standard feature of the Nano-R system is SPM analysis software that makes 3-D displays, Line Scans, color 2-d and light shaded 2-D images. More advanced software purchased from Digital Surf will be sold as an option with the Nano-R SPM system. Two options of display Digital Surf software will be made available for an additional price.

**Appendix II – Specifications****Standard System:**

SPM Scanner Head	PTrak4 scanner	
	X-Y Range	80 Microns
	Z Range	8 Microns
	X-Y linearizers	
	Independent Z-sensor	
	90, 45 degree optical view	
X-Y Positioning Stage	1" X 1" Travel (manual)	
Sample Holder	Magnetic Disk	
Optical Microscope		
Resolution	< 4 Microns	
Zoom/Focus	Motorized	
Zoom Ratio	4:1	
FOV	To Be Determined	
Magnification	To Be Determined	
Controller	PScan2 by Pacific Scanning	
Master Computer	Pentium III	
Acquisition Software	EZ Mode	
	Expert Mode	
Analysis Software	3-D View	
	Color Scale 2-D	
	Light Shade 2-D	
	Line Scan	
Noise floor	< 0.1 nanometer (requires vibration isolation, not included)	

**Options:**

Sample Holders	
SEM Stub	JEOL, Hitachi
Cross Section	Samples- ½" Thick, 1" Long, ½ " deep
Analysis Software	
Advanced	
Expert	
High Resolution Optic	Resolution <1.5 Microns
	Mitutoyo High Resolution Optic

**Appendix II – US patent # 5,811,802,  
Titled “Scanning Probe Microscope  
with Hollow Pivot Assembly”,  
issued September 22, 1998.**

**ATTACHED**