

04-05-2002

Form PTO-1595
(Rev. 03/01)

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U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

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

102044840

Tab settings

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

U.S. PTO
10/28/02
03/28/02

1. Name of conveying party(ies):

James M. Kleinert

3-28-02

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

2. Name and address of receiving party(ies)

Name: Hillerick & Bradsby Co.

Internal Address: _____

Street Address: 800 West Main Street

City: Louisville State: KY Zip: 40202

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other _____
- Merger
- Change of Name

Execution Date: 10/27/00

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: 10/27/00

A. Patent Application No.(s) 10,108815

B. Patent No.(s)

Additional numbers attached? Yes No

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

Name: Charles G. Lamb

Internal Address: _____

Middleton & Reutlinger

Street Address: 2500 Brown & Williamson Tower

City: Louisville State: KY Zip: 40202

6. Total number of applications and patents involved: 1

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

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

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

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.

Charles G. Lamb

Name of Person Signing

Signature

3-28-02

Date

Total number of pages including cover sheet, attachments, and documents: 1

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

04/28/02 15:00:00 00000000 10/28/02
\$ 40.00

PATENT
REEL: 012744 FRAME: 0938

ASSIGNMENT AGREEMENT

This Agreement is entered into this 27 day of October 2000, by and between JAMES M. KLEINERT, M.D., a Kentucky resident, 3422 Glenview Avenue, Louisville, Kentucky 40222 (hereinafter, "GRANTOR"), and HILLERICH & BRADSBY CO., a Kentucky corporation (hereinafter, "GRANTEE"), having its principal place of business at 800 West Main Street, Louisville, Kentucky 40202.

WHEREAS, GRANTOR has invented certain improvements in a batting glove ("INVENTION") and on January 27, 2000 did file an application for letters patent thereupon with, but not limited to, the United States Patent and Trademark Office, Serial No. 09/491,742 ("APPLICATION"); and

WHEREAS, GRANTEE desires to acquire GRANTOR's entire right, title, and interest in the APPLICATION and the INVENTION, and in any United States and foreign patents to be obtained therefor;

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

1. **Definitions.** For purposes of this Assignment, these terms shall have the following meanings:
 - a. "ROYALTY-BEARING PRODUCTS" are defined as sporting equipment or any patent assignment, license or other technology transfer including the subject matter of the INVENTION, that, as sold or otherwise disposed of come within any claim of the APPLICATION.
 - b. The expression "ROYALTY-BEARING PRODUCTS otherwise disposed of" is

defined as:

(i) ROYALTY-BEARING PRODUCTS not sold but delivered by GRANTEE to others (including deliveries for export), regardless of the basis of compensation, if any;

(ii) ROYALTY-BEARING PRODUCTS not sold as such but sold by GRANTEE as components or constituents of other products; and

(iii) ROYALTY-BEARING PRODUCTS put into use by GRANTEE for any purpose other than routine testing.

c. "NET SALES" shall be defined as the gross revenues actually received by Grantee from the sale or provision of ROYALTY-BEARING PRODUCTS at Grantee's wholesale prices, less freight, applicable taxes, discounts, customary returns and allowances.

2. **Assignment.** GRANTOR hereby bargains, sells, assigns, conveys and transfers unto GRANTEE, and GRANTEE hereby accepts, the entire right, title and interest in the APPLICATION and the INVENTION disclosed therein for the United States of America and all countries foreign thereto, including rights of priority under the International Convention of Paris (1883), as amended, and the entire right, title, and interest in and to any and all patent applications, patents, continuations, continuations-in-part, divisionals, and reissues based thereon which may be filed or granted therefor in the United States or any foreign country.

3. **Foreign Patents.** GRANTOR also agrees that GRANTEE, at its own cost and expense and without cost to GRANTOR, may apply for foreign patents on the INVENTION, and furthers agrees to cooperate with GRANTEE and to execute without additional consideration any additional

documents as deemed necessary by GRANTEE to apply for or maintain patents or other legal protection for the INVENTION in any country of the world. GRANTOR agrees to provide all reasonable assistance to GRANTEE to assist GRANTEE in its efforts to obtain foreign patent protection on the INVENTION, without additional consideration to GRANTOR.

4. **United States Patent and Trademark Office.** From and after the date hereof, GRANTEE shall prepare and file, at its cost and expense and without cost to GRANTOR, the APPLICATION in the United States Patent and Trademark Office, and prosecute the same with the objective of obtaining an issued USA patent on the APPLICATION. GRANTOR shall provide, without additional consideration, all reasonable assistance to GRANTEE in an effort to prosecute the APPLICATION. GRANTOR further agrees to provide, without additional consideration, such assistance as may be requested by GRANTEE if GRANTEE is required to enforce any patent that may issue on the INVENTION or the APPLICATION against third parties, or defend the INVENTION or the APPLICATION or any patent that may issue thereon from attack in the United States Patent Office or any other patent office or forum. The parties hereby agree that an assignment of the INVENTION substantially in the form annexed hereto as Exhibit A shall be executed by GRANTOR and GRANTEE and shall be filed in the United States Patent and Trademark Office. GRANTEE, at its own expense and without cost to GRANTOR, shall use reasonable, good faith efforts in pursuing the APPLICATION to obtain an issued patent thereon. GRANTOR agrees to provide all reasonable assistance to GRANTEE in efforts to obtain a patent or patents based on the APPLICATION, without additional consideration to GRANTOR.

5. **Royalties.** GRANTEE agrees to pay royalties to GRANTOR on ROYALTY-BEARING PRODUCTS at the rate of six percent (6.0%) of NET SALES of all such ROYALTY-BEARING

PRODUCTS sold or otherwise disposed of subsequent to the date of this Agreement and for the term of this Agreement, except as provided in Section 12.

6. **Written Reports.** GRANTEE will make written reports to GRANTOR quarterly within thirty (30) days after the first day of January, April, July, and October of each year, stating in each such report the number, description, and aggregate NET SALES of ROYALTY-BEARING PRODUCTS that were sold or otherwise disposed of during the preceding three (3) calendar months and on which a royalty is payable as provided herein.

Concurrently, with the making of each report, GRANTEE will pay to GRANTOR royalties at the rate specified herein. ROYALTY-BEARING PRODUCTS shall be considered sold when billed out. Royalties paid on ROYALTY-BEARING PRODUCTS that are not accepted by the customer shall be credited to GRANTEE.

7. **Records.** GRANTEE will keep records showing the ROYALTY-BEARING PRODUCTS sold or otherwise disposed of by it pursuant to this Agreement, such records to be in sufficient detail to enable the royalties payable to GRANTOR to be determined. GRANTEE will also permit its books and records to be examined from time to time to the extent necessary to verify the reports provided for herein, such examination to be made at the expense of GRANTOR by an independent auditor appointed by GRANTOR who shall report to GRANTOR only the amount of royalty payable for the period under audit.

8. **License.** Upon written request of GRANTOR during the term of this Agreement, GRANTEE shall, within fifteen (15) business days of such request, grant back to GRANTOR the right and license to exploit the INVENTION in areas other than the sporting goods industry.

9. **Right of First Offer.** If GRANTOR makes an improvement in the INVENTION or invents

a new product or device that may be used in or have an application to the sporting goods industry then prior to using, selling, licensing, or otherwise disposing of said improvement or new invention, GRANTOR shall provide to GRANTEE a written description of the improvement or new invention, and GRANTEE shall have a right to purchase the improvement or the new invention from GRANTOR. GRANTEE shall be bound to GRANTOR by an agreement of confidentiality and shall not disclose any information provided by GRANTOR of the improvement or new product or device to any other party.

GRANTEE shall have a period of thirty (30) days from receipt of GRANTOR's notice to submit to GRANTOR an offer to acquire rights in the improvement or the new invention. During such thirty (30) day period, GRANTEE shall have the right to inspect any prototypes, drawings, or other materials related to the improvement or the new invention in GRANTOR's possession or to which GRANTOR has access. GRANTOR shall have fifteen (15) days from the date of receipt of GRANTEE'S offer in which to elect whether to accept or reject such offer. Failure of GRANTOR to notify GRANTEE of his acceptance or rejection of GRANTEE's offer within such fifteen (15) day period shall be deemed an acceptance of GRANTEE's offer.

If the offer to acquire rights submitted by GRANTEE to GRANTOR is acceptable to GRANTOR, the parties shall proceed in good faith to consummate and document the acquiring of such rights. If the offer submitted by GRANTEE to GRANTOR is unacceptable to GRANTOR, GRANTOR shall nevertheless be required to negotiate in good faith with GRANTEE for a period of thirty (30) days in an effort to reach an agreement on the terms under which GRANTEE may acquire rights in the improvement or new invention. If the parties fail to reach an agreement after such time, GRANTOR shall have the right to market the improvement or the new invention to any

other party; provided that, under no circumstance may GRANTOR accept an offer from any other party that is equal to or less than the best offer submitted by GRANTEE to GRANTOR.

In the event that the parties do not reach an agreement under this Section 9, GRANTEE's rights hereunder shall not terminate relative to any subsequent improvements or new inventions.

10. **Right of First Refusal.** In the event that GRANTOR receives an offer ("Offer") from a third party to acquire an improvement in the INVENTION or any new invention invented by GRANTOR that may be used in or have an application to the sporting goods industry, GRANTOR hereby grants to GRANTEE a right of first refusal to purchase such improvement or new invention at the same price and under the same terms and conditions as are contained in such Offer. Upon receipt of the Offer, GRANTOR shall forward a complete, true, and accurate copy of the Offer to GRANTEE for review; or, if GRANTOR, is prohibited by confidentiality requirements or otherwise from publicizing such Offer, then GRANTOR shall transmit the salient business terms of such Offer to GRANTEE. GRANTEE shall have a period of thirty (30) days from the date of receipt of the Offer to elect to exercise the right of first refusal granted herein. If GRANTEE fails to notify GRANTOR of its intention to exercise its right of first refusal within such thirty (30) day period, GRANTEE shall be deemed to have waived such right, and GRANTOR may thereafter act on such offer without further obligations to GRANTEE. Rejection or waiver of the right of first refusal granted herein shall not terminate such right as applicable to any subsequent improvements or new inventions. If GRANTEE exercises its right of first refusal, the parties shall proceed in good faith to consummate and document the Offer.

11. **GRANTOR's Covenant.** GRANTOR hereby covenants that no assignment, grant, mortgage, license, or other agreement affecting the INVENTION or any future inventions, as

contemplated herein, has been made to others by GRANTOR, and that the full right to convey the same as herein expressed is possessed by GRANTOR.

12. Duration of Agreement. The term of this Agreement shall commence upon the execution hereof by GRANTOR and GRANTEE, continue during the pendency of the APPLICATION, and run for the life of any USA patent that may issue on the INVENTION. If a USA patent is not issued on the APPLICATION covering the INVENTION despite the diligent efforts of GRANTEE to obtain such patent, this Agreement shall continue for a period of ten (10) years from the date of the final rejection of the APPLICATION by the United States Patent and Trademark Office, and GRANTEE's royalty payments to GRANTOR shall be amended to conform with the payment schedule attached hereto and incorporated herein as Schedule 12. After the expiration of the applicable time period referenced in this Section 12, GRANTEE shall have no further obligation to pay royalties to GRANTOR. Further, each respective party shall retain all property acquired during the term of this Agreement.

13. Notices. All notices, requests, or other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given if hand delivered or mailed first class, registered or certified, postage prepaid, return receipt requested and properly addressed to:

Grantor: James M. Kleinert, M.D.
3422 Glenview Avenue
Louisville, Kentucky 40222

Grantee: Hillerich & Bradsby Co.
800 West Main Street
Louisville, Kentucky 40202
Attention: Marty Archer, V.P.

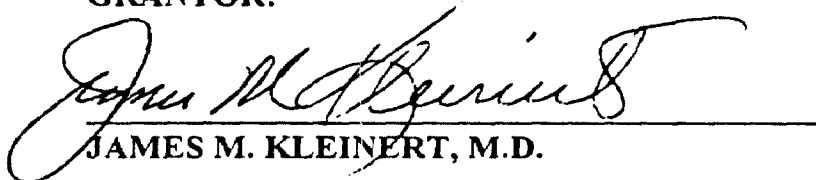
14. Applicable Law. This Agreement shall be construed under the laws of the Commonwealth of Kentucky.

15. **Binding Effects.** The terms and provisions of this Agreement shall binding on and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.

16. **Severability.** The parties agree that if any part, term, or provision of this Agreement shall be found illegal or in conflict with any valid controlling law, the validity of the remaining provisions shall not be affected thereby.

IN WITNESS WHEREOF, the parties have executed the Agreement on the day and year first written above.

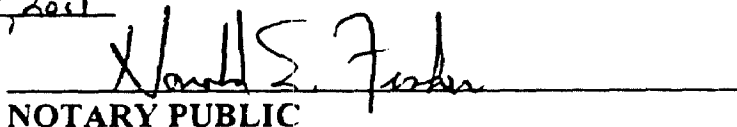
GRANTOR:


JAMES M. KLEINERT, M.D.

COMMONWEALTH OF KENTUCKY)
)SS:
COUNTY OF JEFFERSON)

Before me personally appeared James M. Kleinert, M.D., and acknowledged the foregoing instrument to be his free act and deed this 27 day of OCTOBER, 2000.

My Commission expires: JUNE 30, 2001


NOTARY PUBLIC

SCHEDULE 12

<u>Years After Final Rejection</u>	<u>Percentage*</u>
1-2	6.0
3	5.4
4	4.86
5	4.37
6	3.92
7	3.54
8	3.19
9	2.87
10	2.58

* The Percentages stated on this Schedule 12 are the rates of royalties due to GRANTOR from GRANTEE from the NET SALES of all ROYALTY-BEARING PRODUCTS sold or otherwise disposed of subsequent to the effective date of this Agreement.

EXHIBIT A

MEMORANDUM OF ASSIGNMENT AGREEMENT

Whereas, I, JAMES M. KLEINERT, M.D., a Kentucky resident, invented certain improvements in a batting glove ("Invention") and did file an application ("Application") for letters patent thereupon with the United States Patent and Trademark Office, Serial No. 09/491,792; and

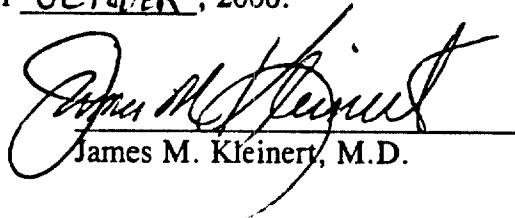
Whereas, HILLERICH & BRADSBY CO., of Louisville, Kentucky, a Kentucky corporation whose principle place of business is located at 800 West Main Street, Louisville, Kentucky 40202 (including its successors and assigns) desires to acquire my entire right, title and interest in said Application and Invention, and in any United States and foreign patents to be obtained therefor;

Now therefore, for good and valuable consideration, the receipt of which is hereby acknowledged, I hereby bargain, sell, assign, convey, and transfer unto HILLERICH & BRADSBY CO., the entire right, title and interest in said Application and the Invention disclosed therein for the United States of America and all countries foreign thereto, including rights of priority under the International Convention of Paris (1883), as amended, and the entire right, title, and interest in and to any and all patent applications, patents, continuations, continuations-in-part, divisionals, and reissues based thereon which may be filed or granted therefor in the United States or any foreign country.

I also agree that HILLERICH & BRADSBY CO. may apply for foreign patents on the Invention, and I agree to cooperate with HILLERICH & BRADSBY CO. and to execute without additional consideration any additional documents as deemed necessary by HILLERICH & BRADSBY CO. to apply for or to maintain patents or other legal protection for the invention in any country of the world.

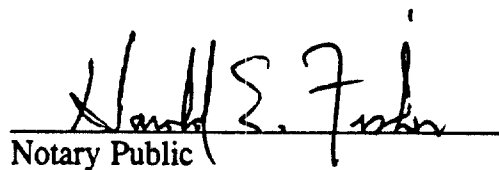
I hereby authorize and request the U.S. Commissioner of Patents and Trademarks to issue any Letters Patent granted upon the Invention set forth in the Application to said HILLERICH & BRADSBY CO.

Executed this 27TH day of OCTOBER, 2000.


James M. Kleinert, M.D.

COMMONWEALTH OF KENTUCKY)
) SS:
COUNTY OF JEFFERSON)

Before me personally appeared James M. Kleinert, M.D., and acknowledged the foregoing instrument to be his free act and deed this 27 day of OCTOBER, 2000.


Notary Public

My Commission Expires: JUNE 30, 2001