

05-20-2003



1st SHEET

U.S. DEPARTMENT OF COMMERCE

Patent and Trademark Office

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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):
Active Power Technologies, Inc.

5.16.03

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

Name: **APT AIM Energy, Inc.**

Address: **154 Greenview Lane**

Additional names(s) of conveying party(ies)

☐ Yes ☒ No

3. Nature of conveyance:

☒ Assignment

☐ Merger

☐ Security Agreement

☒ Change of Name

☐ Other

City: **Port Ludlow**

State/Prov.: **WA**

Country: **USA**

ZIP: **98365**

Execution Date: **March 10, 2003**

Additional name(s) & address(es)

☐ Yes ☒ No

4. Application number(s) or patent 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

B. Patent No.(s)

5,397,927

Additional numbers

☐ Yes ☒ No

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

Name: **David L. Garrison**

Registration No. **24,298**

Address: **2001 Sixth Avenue, Suite 3300**

05/19/2003 LMUELLER 00000047 5397927

01 FC:8021

40.00

City: **Seattle**

State/Prov.: **WA**

Country: **USA**

ZIP: **98121-2522**

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:

50-0684

(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.

David L Garrison

DAVID L GARRISON

May 13, 2003

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments, and

PATENT

REEL: 014066 FRAME: 0410

BUSINESS ASSETS AND LIABILITIES TRANSFER AGREEMENT

This Business Assets And Liabilities Transfer Agreement ("Agreement") is entered into this 10 day of March 2003, by and between APT AIM Energy, Inc., a Washington corporation (hereinafter "APT-Washington"), and Active Power Technologies, Inc., a California corporation (hereinafter "APT-California").

WHEREAS APT-California operates a business focusing on the development, manufacture, licensing and sale of devices for improving electric power distribution systems, as well as services and activities reasonably related thereto.

WHEREAS APT-California wants to dissolve and to transfer all of its assets and liabilities to a Washington corporation.

WHEREAS APT-Washington was formed for the specific purpose of acquiring all of the assets and liabilities of APT-California.

NOW THEREFORE, in consideration of the mutual covenants contained herein, APT-Washington and APT-California agree follows:

1. Assets and Liabilities to be Transferred

All of the assets ("Assets") and all of the liabilities ("Liabilities") of every kind and description that are the property and obligations of APT-California on the effective date ("Effective Date") of this Agreement are hereby transferred to and accepted by APT-Washington. Said Assets and Liabilities are respectively identified on Exhibits A and B attached hereto and incorporated herein by this reference. APT-California shall convey and APT-Washington shall accept such title to the Assets as is held by the APT-California on the Effective Date. No other warranty or representation regarding APT-California's title to or condition of the Assets or Liabilities is made or required by the parties hereto, provided however, until the Effective Date APT-California shall exercise its best commercial efforts to maintain all of Assets and Liabilities in the same condition that they are on the date of mutual execution of this Agreement, reasonable wear and tear as well as changes arising in the normal course of AIM-California's business excepted.

2. Dissolution of AIM-California

As soon after the Effective Date as is reasonably possible APT-California shall be officially and permanently dissolved, with all necessary documents having been prepared, properly executed, and filed with the Secretary of State and such other local, state and federal agencies as is required therefor.

3. Cessation of Business by AIM-California

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REEL: 014066 FRAME 0411

Upon the Effective Date APT-California shall permanently cease to do business other than to assist APT-Washington in winding up APT-California's affairs and completing the transfer of said Assets and Liabilities.

4. Consideration

a. The consideration for APT-California's transfer of the Assets to APT-Washington is the acceptance by APT-Washington of the Liabilities.

b. The consideration for APT-Washington's acceptance of the Liabilities is the transfer by APT-California to APT-Washington of the Assets, the cessation of business and dissolution of APT-California, and the payment by APT-California of all of the expenses associated with the formation of APT-Washington, the dissolution of APT-California, the negotiation and legal fees associated with the drafting of this Agreement and other necessary documents, and all other expenses associated with the transfer of the Assets and Liabilities.

c. The parties hereto agree that it is their intention that the ownership and shareholders of APT-California shall on the Effective Date be identical to the ownership and shareholders of APT-Washington, provided however, it is agreed that any owner and shareholder of APT-California who wishes to become an owner and shareholder of APT-Washington must properly execute and return to APT-Washington a stock subscription agreement substantially in the form approved by the directors of APT-Washington at their meeting on February 4, 2003, a copy of which is attached hereto as Exhibit C and incorporated herein by this reference.

5. Noncompetition And Nonsolicitation

a. For a period of five (5) years following the closing of the transaction covered by this Agreement, without first obtaining the written approval of APT-Washington, which approval may be withheld in APT-Washington's sole discretion, except of behalf of APT-Washington no person who on the Effective Date is an APT-California officer, director or employee shall directly or indirectly, individually or as an officer, director, employee, shareholder, member, manager, consultant, partner, joint venturer, agent, equity owner, or in any other capacity,

- i. engage in any business that is similar to or in competition with APT-Washington in any market in which APT-California directly or indirectly did or prospected for business, or in the reasonable expansion zone of any such market;
- ii. induce or attempt to influence any then existing client or prospective client, customer, vendor, strategic partner, contractor, subcontractor, or consultant, of APT-Washington to curtail, discontinue business, or to not engage in business with APT-Washington;
- iii. induce or attempt to influence, directly or indirectly, any person in the employ or in

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the process of becoming an employee of APT-Washington to terminate or fail to commence his/her employment with APT-Washington; or

- iv. solicit or engage in any business (which business is similar to or in competition with APT-Washington) with APT-California's current, past or potential clients or customers, in any market in which APT-California directly or indirectly did or prospected for business, or in the reasonable expansion zone of any such market.

b. It is mutually agreed that the geographical area and the time period for the covenants set out in this Section 5 of this Agreement are reasonable and acceptable. It is expressly recognized and agreed that such covenants are for the purpose of restricting the activities of APT-California, and its officers, directors and employees, only to the extent necessary for the protection of the legitimate business interests of APT-Washington, and APT-California agrees that such covenants are reasonable for that purpose and do not preclude any current APT-California officers, directors or employees from engaging in activities sufficient for the purpose of earning a living, or impose an undue hardship on any such persons particularly in light of Section 7 below which provides that on the Effective Date the officers, directors and employees of APT-California shall hold identical positions in APT-Washington.

6. Closing.

a. The closing of the transaction covered by this Agreement shall occur on the Effective Date.

b. The transfer from APT-California to APT-Washington of any of the Assets which are personal property shall be by means of a bill of sale substantially in the form attached hereto as Exhibit D and incorporated herein by this reference.

c. The transfer from APT-California to APT-Washington of any of the Assets which are real or intangible property shall be by means of an assignment substantially in the form attached hereto as Exhibit E and incorporated herein by this reference.

7. Officers, Directors, Employees, Agents and Vendors.

No later than on the Effective Date (i) all employees of APT-California shall become employees of APT-Washington, and all rights and obligations of APT-California as an employer shall become the rights and obligations of APT-Washington, (ii) all agents of APT-California shall become agents of APT-Washington, and all rights and obligations of APT-California in connection with said agents shall become the rights and obligations of APT-Washington, (iii) all of APT-California's vendors of goods and services of all kinds, to the extent mutually acceptable to them and APT-Washington, shall become the vendors of APT-Washington, and (iv) all officers and directors of APT-California shall become officers and directors of APT-Washington.

8. Default And Remedies.

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a. General Provisions. In the event either party breaches this Agreement, the non-breaching party shall be entitled to any remedy available in law or in equity, and the non-breaching party may pursue such remedies concurrently or consecutively at its own election and the pursuit of one remedy shall not constitute a waiver of the other remedies.

b. Specific Provisions. Notwithstanding any provision of this Section 8 to the contrary, APT-California acknowledges and agrees that any violation of the covenants stated in Section 5 of this Agreement will have an immediate adverse and unfair impact on APT-Washington's business and further acknowledges that APT-Washington would not have entered into this Agreement without such covenants by APT-California. With respect to each breach or violation, or threatened breach or violation, of these covenants, by any person who on the Effective Date is an APT-California officer, director or employee, APT-Washington shall be entitled to seek an injunction enjoining the commencement or continuation of such activities by any such person and, without notice to said person, may apply to any court of competent jurisdiction for entry of an immediate restraining order or injunction without posting of a bond. In addition, upon demand, such person must immediately account for and pay over to APT-Washington an amount equal to five (5) times the amount which such person is entitled to receive from the third-party for whom such person is performing services which are in violation of the covenants stated in Section 5, because the amount of actual damages caused to APT-Washington by such person's acts in breach of these covenants is likely to be difficult to calculate precisely. The parties hereto agree that APT-Washington may recover the amount defined in the immediately preceding sentence as liquidated damages, which amount the parties agree is a reasonable estimate of the actual damages that would be sustained by APT-Washington on account of any such breach or violation. However, APT-Washington may, at its option, attempt to prove and recover the precise amount of its actual damages.

c. Attorney's Fees. In the event of any action or proceeding brought by either party hereto against the other under this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party the reasonable fees of the prevailing party's attorneys in such action or proceeding, including reasonable costs of appeal, if any, in such amount as the court may adjudge reasonable as attorney's fees. In addition, should it be necessary for either party hereto to employ legal counsel to enforce any of the provisions herein contained, the noncomplying party agrees to pay all attorneys' fees and court costs reasonably incurred by the enforcing party.

d. Jurisdiction And Venue. All parties hereto agree that the proper jurisdiction for the resolution of any dispute or controversy arising under this Agreement shall be in the Superior Court for King County, Washington, and the proper venue for such an action shall be in the Seattle branch of said Court.

9. Assignment. Neither this Agreement nor any of the rights or obligations contained herein may be assigned or transferred by any party hereto without first obtaining the written consent of the non-assigning party, which consent need not be given by said non-assigning party.

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10. Miscellaneous.

a. Payment Of Fees. The payment of any and all legal and other fees and expenses incurred in connection with the negotiation and closing of the transaction covered by this Agreement shall be governed by the provisions of section 4.b. of this Agreement.

b. Exhibits. Exhibits A, B, C, D and E which are affixed to this Agreement are a part hereof.

c. Waiver. The waiver by any party hereto of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant or condition or any subsequent breach of the same or any other term, covenant or condition herein contained. The subsequent acceptance of any payment hereunder by any party hereto shall not be deemed to be a waiver of any preceding default by any other party hereto of any term, covenant or condition of this Agreement, other than the failure of the other party to pay the particular amount so accepted, regardless of any party's knowledge of such preceding default at the time of the acceptance of such amount.

d. Marginal Headings. The marginal headings and titles to the sections and subsections of this Agreement are not a part of this Agreement and shall have no effect upon the construction or interpretation of any part hereof.

e. Time. Time is of the essence in this Agreement and in each and all of its provisions in which performance is a factor.

f. Successors and Assigns. The covenants and conditions herein contained, subject to the provisions herein on assignment, apply to and bind the heirs, successors, executors, administrators and assigns of the parties hereto.

g. Prior Agreements. This Agreement contains all of the agreements of the parties hereto with respect to any matter covered or mentioned in this Agreement, and no prior agreements or understanding pertaining to any such matters shall be effective for any purpose. No provision of this Agreement may be amended or added to accept by an agreement in writing signed by the parties hereto or their respective successors in interest. This Agreement shall not be effective or binding on any party until fully executed by all parties hereto.

h. Inability to Perform. This Agreement and the obligations of each party hereunder shall not be affected or impaired because any party is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of strike, labor troubles, acts of God, or any other cause beyond the reasonable control of the non-fulfilling party, in which case the time allowed for the performance of any such obligation shall be extended by the time consumed by such delay.

i. Partial Invalidity. Any provision of this Agreement which shall prove to be invalid,

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void, or illegal shall in no way affect, impair or invalidate any other provision hereof, and all such other provisions shall remain in full force and effect.

j. Choice of Law. This Agreement shall be governed by the laws of the State of Washington.

k. Notices. All notices and demands which may or are to be required or permitted to be given by either party to the other hereunder shall be in writing and delivered in person or sent by United States Mail, postage prepaid, addressed to the intended recipient at the address set out below, or to such other place as either party hereto may from time to time designate in writing in a notice to the other party hereto. All such notices and demands shall be effective on the earlier of (i) the time when received by the addressee, or (ii) two (2) business days after being so mailed.

To APT-California at: Active Power Technologies, Inc.
154 Greenview Lane
Port Ludlow, Washington 98365
Attn: President
Fax: 360-437-7778

To APT-Washington at: APT AIM Energy, Inc.
154 Greenview Lane
Port Ludlow, Washington 98365
Attn: President
Fax: 360-437-7778

l. Brokers. Each party hereto warrants and represents to each other party hereto that it has had no dealings with any business or other broker or agent in connection with the negotiation of this Agreement, and each agrees to indemnify and hold each other party hereto harmless in the event that any broker or agent alleges that, as the result of an action by the warranting and representing party, it is entitled to any reimbursement, fee, or commission as a result of the transaction covered by this Agreement.

m. Tax Free Transfer. The parties hereto intend the transfer which is the subject matter of this Agreement to be tax free since they intend it to be a transfer from the 100% owners of APT-California to the same people who are also the 100% owners of APT-Washington, but no representation or warranty in this regard is made by either party hereto to the other party, its officers, directors, employees or shareholders.

n. Authority, Advice and Drafting. Each person executing this agreement warrants and represents to each other person executing this Agreement that (i) he or she has the authority to do so, (ii) prior to executing this Agreement and he or she, and if appropriate, his or her corporation, had the opportunity to consult with legal counsel of his or her own choosing in order to properly understand and if so desired to negotiate the terms and conditions of this Agreement, and (iii)

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notwithstanding the fact that the first and subsequent drafts of this Agreement were drafted by Stuart A. Heller, counsel for APT-California, this Agreement shall be construed as if each party hereto had an equal hand in drafting it.

o. Counterparts. This Agreement may be executed in counterparts, each of which shall be considered an original when delivered to the other party by the signing party. At the option of the transmitting party such delivery may be by fax transmission so long as the original Agreement bearing one party's actual original signature is provided to the other party within five (5) business days of such fax transmission.

p. Effective Date. The Effective Date of this Agreement shall be the date upon which the boards of directors and shareholders of both APT-California and APT-Washington have, by votes sufficient to bind their respective corporations, approved the transfer that is the subject matter of this Agreement as well as the terms and conditions of this Agreement.

IN WITNESS WHEREOF each party hereto has entered into this Agreement to be effective as of the Effective Date specified above.

ACTIVE POWER TECHNOLOGIES, INC.:

By George S. Koley Date: March 10, 2003
George Koley, President

APT AIM ENERGY, INC.:

By George S. Koley Date: March 10, 2003
George Koley, President

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