

10-14-2005



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REC

To the Director of the U.S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies)
Jakob Nelles

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

2. Name and address of receiving party(ies)
Name: The Mozza-Lessa Company, LLC
Internal Address: _____
Street Address: 201 South Wisconsin Ave
City: Stratford
State: WI
Country: USA Zip: 54484
Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance/Execution Date(s):
Execution Date(s) 9/27/2000

Assignment Merger
 Security Agreement Change of Name
 Joint Research Agreement
 Government Interest Assignment
 Executive Order 9424, Confirmatory License
 Other _____

4. Application or patent number(s): This document is being filed together with a new application.
A. Patent Application No.(s)
10/14/2005; DBYRNE 00000160 170055 6645542
01 Feb:8021 40.00 DA

B. Patent No.(s)
6,645,542
Additional numbers attached? Yes No

5. Name and address to whom correspondence concerning document should be mailed:
Name: Keith M. Baxter
Internal Address: Quarles & Brady LLP
Street Address: 411 East Wisconsin Avenue
Suite 2040
City: Milwaukee
State: WI Zip: 53202
Phone Number: 414-277-5719
Fax Number: 414-978-8719
Email Address: kmb@quarles.com

6. Total number of applications and patents involved: 1

7. Total fee (37 CFR 1.21(h) & 3.41) \$ 40.00

Authorized to be charged by credit card
 Authorized to be charged to deposit account
 Enclosed
 None required (government interest not affecting title)

8. Payment Information

a. Credit Card Last 4 Numbers _____
Expiration Date _____

b. Deposit Account Number 17-0055
Authorized User Name Keith M. Baxter

9. Signature: [Signature]
Signature
Keith M. Baxter
Name of Person Signing

October 7, 2005
Date

Total number of pages including cover sheet, attachments, and documents: 10

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O.Box 1450, Alexandria, V.A. 22313-1450

PURCHASE AGREEMENT**(NELLES PATENTS AND TRADEMARK)**

THIS AGREEMENT is entered into by and between **Jakob Nelles** (the "Seller") and **The Mozza-Lessa Company, LLC**, a Wisconsin limited liability company (the "Buyer").

RECITALS

(i) Seller has developed and is the owner of the following described patents (the "Patents" or individually the "Patent"):

U.S. utility patent 5,952,030 entitled Method for the Manufacture of Reduced and Low-Fat Pasta Filata Cheese issued September 14, 1999 (Seller is the sole owner);

U.S. utility patent 5,967,026 entitled Apparatus for the Manufacture of Reduced and Low-Fat Pasta Filata Cheese issued October 19, 1999 (Seller is the sole owner); and

Patent Cooperation Treaty Application filed July 7, 2000 entitled Apparatus and Method for the Manufacture of Rice-Based Food Additive (Seller is a joint owner/applicant with Anthony J. Hilgemann).

(ii) Seller is the owner of the trademark **MOZZA-LESSA** for "reduced fat and reduced lactose mozzarella cheese", (in Int. Class 029), Application Serial No. 75/326,275, filed July 27, 1997 (the "Trademark").

(iii) It is the desire of the parties to enter into the transaction set forth herein whereby Buyer will acquire from Seller all of the rights, title and interest in the Patents and the Trademark.

NOW THEREFORE, in consideration of these recitals and the covenants and agreements set forth herein, the parties agree as follows:

1. **Agreement to Sell and Purchase.** Subject to the terms and conditions hereof, Seller hereby agrees to sell, transfer, and convey to Buyer, and Buyer hereby agrees to purchase and accept from Seller: (i) all of the rights, title, and interest in the Patents for the full term for which the letters patent or any reissues, renewals, or extensions thereof are or may be granted, including the full and exclusive right to make, use, license, and sell the method and apparatus, together with all drawings, designs, and information relating thereto, and including all corresponding foreign applications and patents, subject, however, to the ownership rights of Anthony J. Hilgemann as joint owner/applicant of the Patent Cooperation Treaty Application

filed July 7, 2000 entitled Apparatus and Method for the Manufacture of Rice-Based Food Additive; and (ii) all of the rights, title and interest in the Trademark, including the full and exclusive right to use, license and sell the same, together with all goodwill of the business symbolized by the Trademark.

2. **Purchase Price; Payments.**

(a) **Purchase Price.** The purchase price for all of the property and rights to be conveyed pursuant to Section 1 is [REDACTED]

(b) **Payments.** The purchase price shall be paid by Buyer to Seller as follows:

(i) There shall be a downpayment of [REDACTED] due and payable on the closing date, with the sum of [REDACTED] having previously been advanced to Seller as evidenced by a certain Promissory Note dated August 1, 2000 given by Seller to A&B Process Systems Corp. which Promissory Note Buyer shall cause to be cancelled and returned to Seller at closing, and with the balance of [REDACTED] paid in cash to Seller at closing.

(ii) The balance of [REDACTED] shall be evidenced by a Promissory Note issued and delivered by Buyer to Seller on the closing date, payable with interest on the unpaid balance at the rate of [REDACTED] per annum in four (4) consecutive annual installments of principal of [REDACTED] each plus accrued interest, with the first installment being due and payable on the first anniversary of the closing date and successive installments being due and payable on each anniversary date thereafter until paid in full. Prepayment of the Promissory Note shall be subject to the Seller's consent. A copy of the Promissory Note more specifically setting forth the terms is attached hereto and made a part hereof as Exhibit "A".

3. **Closing.**

(a) **Closing Date and Location.** The closing of this transaction (the "Closing") shall take place on September 27, 2000, at the office of Buyer, 201 South Wisconsin Avenue, Stratford, Wisconsin, or at such other time or place as shall be agreed to in writing by the parties.

(b) **Deliveries of Seller.** At the Closing, Seller shall execute and deliver to Buyer (i) assignments of each of the Patents in a form sufficient to convey to and vest in Buyer all rights, title and interest to be conveyed in each of the Patents, and (ii) an assignment of the Trademark in a form sufficient to convey to and vest in Buyer all rights,

title and interest to be conveyed in the Trademark; said assignments to be in substantially the forms attached hereto and made a part hereof as Exhibit "B".

(c) **Deliveries of Buyer.** At the Closing, Buyer shall execute and deliver to Seller the following:

(i) That certain Promissory Note in the principal sum of [REDACTED] [REDACTED] dated August 1, 2000 given by Seller to A&B Process Systems Corp. marked "CANCELLED";

(ii) Immediately available funds in the sum of [REDACTED]; and

(iii) Promissory Note in the sum of [REDACTED] in substantially the form attached hereto as Exhibit "A".

4. **Representations and Warranties of Seller.** Seller hereby represents and warrants to Buyer as follows:

(a) **Authority.** This Agreement is a valid and binding obligation of Seller and is enforceable in accordance with its terms.

(b) **Ownership and Title.** Seller is, and at closing will be, the sole and exclusive owner of the Patents (except Patent Cooperation Treaty Application filed July 7, 2000 entitled Apparatus and Method for the Manufacture of Rice-Based Food Additive of which Seller is a joint owner/applicant with Anthony J. Hilgemann) and the Trademark, and Seller has, and at closing will have, good title thereto free and clear of all mortgages, liens, pledges, charges or encumbrances.

(c) **Absence of Conflict.** Neither the execution and delivery of this Agreement nor the consummation of the transaction contemplated hereby (i) violates, or conflicts with, or results in a breach of any provision of, or constitutes a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or results in the termination of, or accelerates the performance required by, or results in the creation of any lien, security interest, charge or encumbrance upon any of the Patents or upon the Trademark under any of the terms, conditions or provisions of any note, bond, mortgage, indenture, deed of trust, license, agreement or other instrument or obligation to which Seller is a party, or by which Seller or any of the Patents or the Trademark may be bound or affected, or (ii) violates any order, writ, injunction, decree, statute, rule or regulation applicable to Seller or any of the Patents or the Trademark.

(d) **Litigation.** There is no action, dispute, claim, litigation, proceeding, arbitration, investigation or other proceeding at law or in equity pending or threatened

against Seller with respect to any of the Patents or the Trademark, or otherwise relating to the transaction contemplated by this Agreement, and there is no basis for any such action with respect to any of the Patents or the Trademark, except the existence of one or more potential patent infringement claims with regard to one or more of the apparatuses and/or methods that are the subject of the Patents. There are no decrees, injunctions or orders of any court or governmental department or agency outstanding against Seller with respect to any of the Patents or the Trademark.

(e) **Compliance with Laws.** Seller has complied and is currently complying in all material respects with all applicable statutes, regulations, orders, ordinances and other laws of the United States of America and all state and local governments, and agencies of any of the foregoing, as they relate in any respect to each of the Patents and the Trademark. Seller has not received any notice to the effect that, or otherwise been advised that any Seller is not in compliance with any of such statutes, regulations, orders, ordinances or other laws as they relate in any respect to any of the Patents or the Trademark.

(f) **Required Consents.** No consents of, registrations with or notices to, any governmental authorities, creditors or other parties to contracts or agreements with Seller with respect to any of the Patents or the Trademark are required on the part of Seller with respect to the consummation of the transaction contemplated by this Agreement.

(g) **Disclosure.** No representation or warranty made by Seller in this Agreement and no document furnished or to be furnished by Seller pursuant hereto contains or will contain any untrue statement of material fact or omits or will omit any material fact which causes or would cause the statements contained herein or therein to be misleading.

(h) **Fees and Commissions.** Seller has not retained, employed or used any broker or finder in connection with the transaction provided for herein or in connection with the negotiations thereof.

(i) **Effectiveness.** All representations and warranties made by Seller in this Agreement are true and correct in all material respects as of the date of this Agreement, and will be true and correct in all material respects at the Closing and shall be deemed again made in their entirety at the Closing.

5. **Representations and Warranties of Buyer.** Buyer hereby represents and warrants to Seller as follows:

(a) **Organization.** Buyer is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Wisconsin, and has

the power and authority to acquire and own the Patents and the Trademark and to carry on its business.

(b) **Authority.** The execution, delivery and performance of this Agreement has been duly and effectively authorized by Buyer's governing body. No other proceedings on the part of Buyer are necessary to authorize this Agreement or the consummation of the transaction contemplated hereby. This Agreement is a valid and binding obligation of Buyer and is enforceable in accordance with its terms.

(c) **Fees and Commissions.** Buyer has not retained, employed or used any broker or finder in connection with the transaction provided for herein or in connection with the negotiations thereof.

(d) **Effectiveness.** All representations and warranties made by Buyer in this Agreement are true and correct in all material respects as of the date of this Agreement, and will be true and correct in all material respects at the Closing and shall be deemed again made in their entirety at the Closing.

6. **Indemnification.**

(a) **Indemnification by Seller.** Seller agrees to indemnify and hold harmless Buyer from and against all liabilities, claims, losses, damages, deficiencies and expenses in respect of:

(i) Any breach or default in the representations and warranties made by Seller in this Agreement, any other agreement or document delivered by Seller in connection herewith, or any error or omission in any document furnished in connection herewith;

(ii) Any non-fulfillment of any obligations of Seller under any provision of this Agreement or any other agreement or document delivered by Seller in connection herewith; and

(iii) Any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses (including legal expenses and reasonable attorneys' fees) incident to any of the foregoing.

The indemnity and hold harmless agreement by Seller under the provisions of this Section 6(a) shall not apply to any patent infringement claims (past, present or future) with regard to any one or more of the Patents.

(b) **Indemnification by Buyer.** Buyer agrees to indemnify and hold harmless Seller from and against all liabilities, claims, losses, damages, deficiencies and expenses in respect of:

(i) Any breach or default in the representations and warranties made by Buyer in this Agreement, any other agreement or document delivered by Buyer in connection herewith, or any error or omission in any document furnished in connection herewith;

(ii) Any non-fulfillment of any obligations of Buyer under any provision of this Agreement or any other agreement or document delivered by Buyer in connection herewith; and

(iii) Any and all actions, suits, proceedings, claims, demands, assessments, judgments, costs and expenses (including legal expenses and reasonable attorneys' fees) incident to any of the foregoing.

(c) **Procedure for Indemnification.** Buyer and Seller will promptly notify the other of the existence or occurrence of any facts or events which give rise to the assertion of any claim under the provisions of this Section 6. If such claims are due to the claims of third parties, the indemnifying party shall promptly and diligently take such actions as may be reasonably required to defend or settle such claims and shall keep the indemnified party advised of the current status thereof. The indemnified party shall, at the indemnifying party's expense, reasonably cooperate with the indemnifying party's defense, and the indemnifying party shall reasonably consider the indemnified party's advice. Notwithstanding the foregoing, in no event will the indemnified party be required, prior to making a claim against the indemnifying party or becoming entitled to recovery hereunder from indemnifying party, to commence litigation or to take any other action (other than reasonable efforts to file claims to obtain insurance recoveries) against any third party with respect to a matter for which the indemnified party may have a claim against indemnifying party under this Agreement.

(d) **Payment.** All amounts payable by one party to the other pursuant to the provisions of this Section 6 shall be payable within thirty (30) days after final determination thereof in accordance with the provisions hereof.

7. Fees, Expenses, Transfer Taxes, Etc.

(a) Except as otherwise provided in this Section 7, Buyer and Seller shall pay their own respective fees, costs and expenses incurred in connection with this Agreement and the transaction contemplated hereby, including, without limitation, all fees of legal counsel, accountants, brokers and finders, whether or not such transaction is consummated hereunder.

(b) Buyer shall be responsible for the payment of all recording fees and transfer fees with respect to the assignment and transfer of the Patents and the Trademark from Seller to Buyer.

8. **Notices.** All notices, requests, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given, if delivered in person or by a nationally-recognized overnight delivery service, or if sent by telefax, telegraph, telex and confirmed by certified or registered mail, postage prepaid, as follows:

If to Seller:

Jakob Nelles
1048 Pershing Road
Maquoketa, IA 52060

If to Buyer:

The Mozza-Lessa Company, LLC
201 South Wisconsin Avenue
P. O Box 86
Stratford, WI 54484

or to such other address as shall be specified by like notices.

9. **Arbitration.**

(a) Any controversy, dispute or claim arising out of, in connection with, or in relation to the interpretation, performance or breach of this Agreement, including, without limitation, any claim based on contract, tort or statute, and any claim for indemnification pursuant to the provisions of Section 6 hereof, shall be settled by arbitration. Any arbitration filed pursuant to this Agreement shall be conducted at a location mutually agreed upon by the parties and in accordance with the then existing Rules for Commercial Arbitration of the American Arbitration Association, provided that three (3) arbitrators as selected by Buyer and Seller in accordance with this Section 9 shall conduct the arbitration proceeding. One (1) arbitrator shall be selected by Buyer, one (1) arbitrator shall be selected by Seller and one (1) arbitrator shall be selected by the two (2) arbitrators already chosen. In any matters submitted to arbitration hereunder, the arbitrators may not through their award compromise any difference between the positions of Buyer on the one hand, and Seller on the other. Instead, three days before any arbitration is scheduled to commence, Buyer on the one hand and Seller on the other shall each submit to the arbitration panel a proposed award. The arbitrators shall endorse as their final award either the award proposed by Buyer or the award proposed by Seller. No other award may be made. Any award made in accordance herewith shall be final and

binding. Any judgment upon any interim or final award or order rendered by the arbitrators may be entered by any federal or state court having jurisdiction thereof.

(b) The parties intend that the agreement to arbitrate as set forth in this Section 9 shall be valid, enforceable and irrevocable. Each party in any arbitration proceeding commenced hereunder shall bear such party's own costs and expenses (including expert witness and attorneys' fees) of investigating, preparing and pursuing such arbitration claim. The parties to any arbitration shall have the right to discover the relevant books and records of the other side that are not confidential or privileged.

10. General.

(a) **Entire Agreement.** This Agreement constitutes the entire agreement and understanding of the parties in respect of the transaction contemplated hereby and supersedes all prior or contemporaneous agreements, arrangements and understandings. This Agreement may be amended or modified only in a writing signed by all parties hereto.

(b) **Exhibits.** The Exhibits attached hereto are incorporated herein and made a part hereof.

(c) **Governing Law.** This Agreement is governed by and shall be construed in accordance with the laws of the State of Wisconsin, except to the extent that the laws of the United States govern matters arising out of the Patents or the Trademark.

(d) **Waiver.** No provision of this Agreement may be waived except in a writing executed by the party having the benefit of the provision. No waiver of a breach of any provision of this Agreement shall operate or be construed as a waiver of any subsequent breach of that or any other provision.

(e) **Headings.** The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(f) **Binding; Benefit.** This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the parties hereto and their respective heirs, legal representatives, successors and assigns. Except as otherwise expressly provided herein, nothing expressed or implied herein is intended or shall be construed to confer upon or give any person, firm or corporation, other than the parties hereto, any right or remedy hereunder or by reason hereof.

(g) **Survival of Representations and Warranties.** All representations and warranties of Seller or Buyer made in this Agreement or as provided for herein shall survive the date hereof and the Closing.

(h) **Additional Documents.** After the Closing, Seller shall cooperate with Buyer and shall execute and deliver such additional instruments and documents as may be reasonably required to transfer absolute ownership of the Patents and the Trademark to Buyer such that Buyer may enjoy to the fullest extent the property and rights to be conveyed hereunder.

(i) **Execution.** This Agreement may be executed in counterparts, all of which shall constitute one and the same instrument. Documents transmitted by telefax, showing on the signature page(s) a signature which purports to be that of the transmitting party shall be legally binding on such party.

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement.

SELLER:

9/27/00
Date

Jakob Nelles
Jakob Nelles

BUYER:

The Mozza-Lessa Company, LLC

9/27/00
Date

By: Anthony J. Hagemann
Anthony J. Hagemann, President

9/27/00
Date

Attest: John A. Hermeier
John A. Hermeier, Secretary