

10-18-2006



HEET

103323262... attached documents or the new address(es) below.

10-16-06

To the Director of the U.S. Patent and Tr.

1. Name of conveying party(ies):

Markwort Sporting Goods Company

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

3. Nature of conveyance:

Execution Date(s) October 5, 2006

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

2. Name and address of receiving party

Name: Shock Doctor, Inc.

Street: 3405 Annapolis Lane North Suite 200

City: Plymouth

State: MN

Country: USA ZIP: 55447

Additional names(s) & addresses(es) attached? Yes No

4. Application or patent number(s):

This document is being filed together with a new application.

A. Patent Application No.(s)

B. Patent No. 5,245,706

Additional numbers attached? Yes No

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

Name: Polster, Lieder, Woodruff & Lucchesi, L.C.

Street Address: 12412 Powerscourt Drive Ste. 200

City: St. Louis State: MO Zip: 63131-3615

Phone Number: 314-238-2400

Fax Number: 314-238-2401

Email Address: patents@patpro.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 to credit card.
- Authorized to be charged to deposit account.
- Check Enclosed. Any deficiency or overpayment is authorized to be charged or credited to deposit account 162201.
- None required (government interest not affecting title)

8. Payment Information

a. Credit Card Last 4 Numbers _____
Expiration Date _____

b. Deposit account number: 162201

Authorized User Name _____

9. Signature:

William G. Bruns
Signature

Oct 12, 2006
Date

William G. Bruns

Total number of pages including cover sheet, attachments, and document: 7

10/17/2006 DBYRNE 00000216 5245706

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40.00 DP

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to: Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450.

PATENT LICENSE AGREEMENT

This Patent License Agreement ("Agreement") is made and entered into as of OCTOBER 5TH, 2006 ("Effective Date") between Markwort Sporting Goods Company ("Licensor") and Shock Doctor, Inc. ("Licensee") (each individually a "Party" and collectively the "Parties").

WHEREAS Licensor owns all rights in the Licensed Patents; and

WHEREAS Licensee desires to acquire certain rights in the Licensed Patents.

NOW THEREFORE, in consideration of the premises and the covenants and agreements herein contained and for other good and valuable consideration, the Parties, intending to be legally bound, agree as follows:

**ARTICLE I
DEFINITIONS**

1.1 Covered Products means the shoulder pad products (with chest protector) currently sold by Licensee under the names Smoke®, da Vinci® and Formula®, and any future products (or methods of making or using such products) that are covered by one or more claims of the Licensed Patents in the Licensed Fields.

1.2 Licensed Patents means U.S. Patent No. 5,245,706 and all continuations, continuations-in-part, divisionals, reexaminations, and reissuances thereof and foreign counterparts of the foregoing, if any.

1.3 Licensed Fields means the fields of lacrosse, hockey, karting and motocross.

**ARTICLE II
GRANT OF LICENSE**

2.1 Right to License. Licensor hereby represents and warrants that it is the owner of record of the Licensed Patents by virtue of an Assignment recorded in the United States Patent and Trademark Office and to the best of its knowledge and belief has the right to grant the semi-exclusive license set forth in Section 2.2. and has made no agreements in conflict therewith.

2.2 Scope of License. Licensor grants to Licensee a worldwide, royalty-bearing license under the Licensed Patents to make, use, have made for it, sell (including through sales representatives or other third parties), offer to sell (including through sales

representatives or other third parties), import, or otherwise dispose of Covered Products in the Licensed Fields. Licensor shall not grant any other person or entity a license under the Licensed Patents to make, have made, use, sell, offer to sell, import, or otherwise dispose of Covered Products in the Licensed Fields or to have a third party do any of the foregoing on such person's or entity's behalf. Without limiting the foregoing, Licensor may make, or have made on its behalf, use, sell, offer to sell, import, or otherwise dispose of Covered Products in the Licensed Fields.

2.3 Duration. This Agreement shall become effective upon the Effective Date and shall expire when the Licensed Patents no longer have any valid, enforceable and unexpired claims.

2.4 Representations, Warranties and Admissions. Neither Party represents or warrants as to the scope, validity, or enforceability of the Licensed Patents, or takes on any obligation, limitation, or prohibition with respect to the same, including without limitation an obligation to defend or a prohibition to challenge such scope, validity, or enforceability. Licensee makes no admission that any claim of the Licensed Patents reads on any Covered Product.

2.5 Transfer. Neither Party shall sell, assign, transfer, convey or encumber this Agreement or any right or interest herein, or permit any of the foregoing to occur by operation of the law without the prior written consent of the other Party, except in connection with the sale of all or substantially all of the business in which the rights under this Agreement are being used.

2.6 Recordation. Licensor will attempt to record this Agreement with the United States Patent & Trademark Office within thirty (30) days of the Effective Date.

ARTICLE III ROYALTY PAYMENTS

3.1 Annual Royalty Payments. Licensee shall pay to Licensor an annual royalty payment of \$4,000.00 for the term of the Agreement.

3.2 Covered Product Royalty Payments. In addition to the annual royalty payment, Licensee shall pay to Licensor a royalty of \$2.00 per Covered Product sold for the term of the Agreement, less any returns of Covered Products.

3.3 Payment for Sales Prior to the Effective Date. The Parties agree that any and all past use of the Licensed Patents by Licensee prior to the Effective Date shall be covered with a one-time payment as calculated in Appendix A, and payable upon the execution of this Agreement.

3.4 Due Dates for Future Payments. Annual royalty payments for each current calendar year are due on January 31. Covered Product royalty payments for each preceding calendar quarter are due on April 30, July 31, October 31 and January 31, respectively.

3.5 Recordkeeping. Licensee agrees to provide to Licensor a record of the number of Covered Products subject to actual royalties upon payment of royalties pursuant to Section 3.4.

3.6 Audit Right. Licensor shall have the right once each calendar year at its expense to examine the books of Licensee during regular business hours by a certified public accountant of its choice upon 15 days written notice.

ARTICLE IV MAINTENANCE AND ENFORCEMENT OF PATENTS

4.1 Right to Enforce. Licensee shall have the exclusive right (but not the obligation), in its sole discretion and expense, to enforce the Licensed Patents in the Licensed Fields against a third party. The Licensor shall have the same enforcement right (but not the obligation) in all fields other than the Licensed Fields. Any amounts recovered by enforcement by Licensee shall be the property of Licensee, but Licensee shall pay up to the \$2.00 per unit Covered Product royalty of Section 3.2 to Licensor for such recovered amounts, *provided, however*, that if the recovered amount per unit is less than \$2.00, Licensee shall pay the recovered amount per unit.

4.2 Cooperation. In the event that a Party enforces a Licensed Patent as set forth in Section 4.1, the other Party shall reasonably assist the enforcing Party as requested by the enforcing Party, including joinder as a party, at the expense of the enforcing Party.

ARTICLE V MARKING AND ADVERTISING

5.1 Marking. Licensee shall mark all Covered Products as "Licensed Under U.S. Patent No. 5,245,706".

ARTICLE VI BREACH AND TERMINATION

6.1 Notice of Breach and Cure. If a Party breaches this Agreement (the "Breaching Party"), the other Party (the "Non-Breaching Party") shall have the right to terminate this Agreement upon sixty (60) days prior written notice by the Non-Breaching Party specifying the nature of the alleged breach, provided the alleged Breaching Party does not cure such breach within the sixty (60) day written notice period. Any dispute

between the Parties regarding whether a breach has in fact occurred or has been cured shall suspend the Non-Breaching Party's right to terminate and the alleged Breaching Party's time to cure until such dispute is legally resolved.

6.2 No Termination. Except as set forth in Section 6.1, this Agreement shall not be terminated by either Party for the duration of the Agreement.

ARTICLE VII MISCELLANEOUS

7.1 Jointly Drafted Agreement. The Parties acknowledge that this Agreement was jointly drafted by the Parties.

7.2 Entire Agreement; Modification. This document sets forth the entire agreement between the Parties with respect to the subject matter herein and supersedes all previous negotiations, agreements, and writings with respect to such subject matter. Any modifications of this Agreement shall be in writing and shall be hand-signed with ink by a duly authorized representative of each Party.

7.3 Separability. The Parties agree that if any part, term, or provision of this Agreement shall be found illegal, invalid, or unenforceable or otherwise in conflict with any controlling law, remaining provisions shall not be affected thereby.

7.4 Choice of Law. This Agreement shall be construed in accordance with the laws of the State of Missouri, without regard to conflicts of law.

7.5 Relationship of Parties. This Agreement does not create any agency, partnership, or joint venture between the Parties.

7.6 No Confidentiality. No obligation or limitation is imposed on either Party regarding the confidentiality or use of know-how or other information that may have been given by one Party to the other prior to or during the course of this agreement.

7.7 No Obligation to Sell. Licensee is not obligated to use any level of effort to sell Covered Products.

7.8 DISCLAIMER OF OBLIGATIONS LIMITATIONS AND PROHIBITIONS. OTHER THAN THE OBLIGATIONS AND LIMITATIONS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY IS SUBJECT TO (AND EACH PARTY DISCLAIMS) ANY AND ALL OBLIGATIONS, LIMITATIONS, OR PROHIBITIONS, WHETHER IMPLIED BY LAW, FACT, OR ESTOPPEL OR BASED ON ORAL DISCUSSIONS BETWEEN THE PARTIES, ACQUIESCENCE OF A PARTY, OR OTHERWISE.

7.9 LIMITATION OF LIABILITIES. IN NO EVENT WILL EITHER PARTY OR ITS TRUSTEES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, AND AFFILIATES BE

LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR INDIRECT DAMAGES OF ANY KIND, WHETHER GROUNDED IN TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, CONTRACT, OR OTHERWISE.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date written below.

Shock Doctor, Inc.

By: Steven J. Washburn
Steven J. Washburn
President and Chief Executive Officer

Markwort Sporting Goods Company

By: Herbert W. Markwort, Jr.
Name: HERBERT W. MARKWORT, JR.
Title: PRESIDENT
OCTOBER 5TH, 2006

APPENDIX A

(Worksheet for Calculating Payment Under Section 3.3 Attached)

M2:20783708.03