

**RECORDATION FORM COVER SHEET  
PATENTS ONLY**

Atty Ref/Docket No.: 2085.000003

Patent and Trademark Office

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

## 1. Name of conveying party(ies):

National Agriculture and Bio-oriented Research  
Organization (NARO)

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

Name: George Weston Foods Limited (GWF)

Additional name(s) of conveying party(ies) attached?

☐ Yes ☒ NoStreet Address: Level 20 Tower A-Zenith Centre  
821 Pacific Highway  
Chatswood  
NSW 2067  
Australia

## 3. Nature of conveyance:

☐ Assignment☐ Merger☐ Security Agreement ☐ Change of Name☒ Other Grant of Non-Exclusive LicenseAdditional name(s) & address(es) attached? ☐ Yes ☒ NoExecution Date: 11/28/2005

## 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)

Serial No.

B. Patent No.(s)

6,042,867  
6,139,894Additional numbers attached? ☐ Yes ☒ No

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

Name: Andre L. Marais

Address:

Schwegman, Lundberg, Woessner & Kluth, P.A.  
P.O. Box 2938  
Minneapolis, MN 554026. Total number of applications and patents involved: 17. Total fee (37 CFR 3.41): \$ 80.00☐ Enclosed☒ Authorized to be charged to deposit account8. Please charge any additional fees or credit any over payments to our Deposit account number: 19-0743

**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.

Andre L. Marais, Reg. No. 48,095

Name of Person Signing

Signature

Date

Total number of pages including cover sheet: 14

Mail documents to be recorded with required cover sheet information to:

**Mail Stop Assignment Recordation Services**  
**Commissioner for Patents**  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

700306801

**PATENT**  
**REEL: 018777 FRAME: 0962**

CH \$80.00 190743 6042867

Patent License Agreement

National Agriculture and Bio-oriented Research Organization ("NARO"), Nisshin Flour Milling Co., Ltd. ("NISSHIN") and George Weston Foods Limited ("GWF") hereby agree, in respect of certain applications for patent and certain patent rights co-owned by NARO and NISSHIN, as follows:

**Article 1 (Definition)**

The following terms shall have the respective meanings as set forth below:

(1) "Patents" shall collectively mean the U.S. Patents, the Australian Patents and the Canadian Patents, as each set forth in Paragraphs (2), (3), and (4) hereof;

(2) "U.S. Patents" shall mean the following patents obtained in the U.S.A.:

(i) Patent Number: 6042867

Invention Title: FLOUR BLENDS FOR BREADS, CAKES, OR NOODLES, AND FOODS PREPARED FROM THE FLOUR BLENDS

(ii) Patent Number: 6139894

Invention Title: FLOUR BLENDS FOR DEEP FRIED FOODS, STEAMED CHINESE MANJU, DOUGH SHEETS, OKONOMI-YAKI, AND TAKOYAKI

(3) "Australian Patents" shall mean the following patents obtained in Australia:

(i) Patent Number: 703050

Invention Title: Flour Blends for breads, cakes, or noodles, and foods prepared from the flour blends

(ii) Patent Number: 729965

Invention Title: Flour blends for deep fried

foods, steamed Chinese manju,  
dough sheets, okonomi-yaki,  
and takoyaki; and foods  
prepared from the flour  
blends

- (4) "Canadian Patents" shall mean the following applications for patent and patents granted based on these applications in Canada:

(i) Application Number: 2194944

Invention Title: Flour Blends for Breads,  
Cakes, or Noodles, and Foods  
Prepared from the Flour  
Blends

(ii) Application Number: 2213965

Invention Title: FLOUR BLENDS FOR DEEP FRIED  
FOODS, STEAMED CHINESE MANJU,  
DOUGH SHEETS, OKONOMI-YAKI,  
AND TAKOYAKI; AND FOODS  
PREPARED FROM THE FLOUR  
BLENDS

- (5) "Waxy Wheat Flour" shall mean [REDACTED]

- (6) "Waxy Wheat Flour Blend(s)" shall mean wheat flour blend(s) with the specific Waxy Wheat Flour content as described in the claims of the Patents;

- (7) "Licensed Territory" shall mean the United States, Australia and Canada;

- (8) "Secondary Fabrication Foods" shall mean those secondary fabrication foods, as described in the Patents, prepared from Waxy Wheat Flour Blends.

- (9) "Products" shall mean Waxy Wheat Flour or flour blends containing Waxy Wheat Flour, as used for the inventions set out in the Patents;

- (10) "Non-Exclusive License" shall mean the non-exclusive license to use the Patents and the non-exclusive tsujo-jisshiken license to use the Patents;

- (11) "GWF Customers" shall mean [REDACTED]

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- [REDACTED]
- (12) "Semiannual Period" shall mean the period from January 1 to June 30 and the period from July 1 to December 31 of each year during the term of this Agreement; provided, however, that the first Semiannual Period shall mean the period from the date hereof to December 31, 2005 and the last Semiannual Period shall mean the period until expiration of this Agreement or the termination day of this Agreement, as the case may be; and
- (13) "Sales Quantity" shall mean the sales quantity of the Waxy Wheat Flour sold during each Semiannual Period; provided, however, that, in the case of the sale of Waxy Wheat Flour Blends or Secondary Fabrication Foods, it shall mean that portion of the quantity equivalent to the quantity of Waxy Wheat Flour.

## Article 2 (Grant of License)

2.1 NARO and NISSHIN hereby grant to GWF a Non-Exclusive License to exploit the U.S. Patents in the U.S.A., including the right to use, manufacture, make, sell, import and export the Secondary Fabrication Foods as well as the Waxy Wheat Flour Blends for use in the Secondary Fabrication Foods. GWF shall not export the Products or the Secondary Fabrication Foods to Japan.

2.2 NARO and NISSHIN hereby grant to GWF an exclusive license to exploit the Australian Patents in Australia, including the right to use, manufacture, make, sell, import and export the Secondary Fabrication Foods as well as the Waxy Wheat Flour Blends for use in the Secondary Fabrication Foods. GWF shall not export the Products or the Secondary Fabrication Foods to Japan.

2.3 NARO and NISSHIN acknowledge and agree they shall not exploit by themselves or license to any third parties the Australian Patents in Australia.

2.4 NARO and NISSHIN hereby grant to GWF a Non-Exclusive License to exploit the Canadian Patents in Canada, including the right to use, manufacture, make, sell, import and export the Secondary Fabrication Foods as well as the Waxy Wheat Flour Blends for use in the Secondary Fabrication Foods. GWF shall not export the Products or the Secondary Fabrication Foods to Japan.

2.5 The Non-Exclusive Licenses referred to in Paragraphs

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2.1 and 2.4 and the exclusive license referred to in Paragraph 2.2 shall include the right;

- (1) for GWF to make improvements to the subject inventions of the Patents; and
- (2) for GWF to sublicense GWF Customers:
  - (A) to use Waxy Wheat Flour to manufacture Waxy Wheat Flour Blends for their own use (which shall include use for the preparation and sale of the Secondary Fabrication Foods) but not for further sale or distribution of such Waxy Wheat Flour Blends to third parties; and
  - (B) to use Waxy Wheat Flour Blends for the preparation and sale of the Secondary Fabrication Foods.

### Article 3 (Consideration)

3.1 GWF shall pay the following respective amounts to each of NARO and NISSHIN in consideration of the licenses granted under the preceding Article:

- (1) Initial Payment: [REDACTED]

- (2) Running Royalties:

- (i) [REDACTED]

- (ii) [REDACTED]

3.2 Provided that:

- (a) Sales Quantity for the purposes of calculating the running royalty shall mean the aggregate Sales Quantity of Waxy Wheat Flour sold to third parties or internally

within divisions of GWF in the Licensed Territory.

- (b) the threshold aggregate cumulative [REDACTED] is a one off threshold and does not start again at the beginning of every Semiannual Period.

#### Article 4 (Payment of Consideration)

4.1 GWF shall, within thirty (30) days from the date of execution hereof, wire transfer the funds in the total Initial Payment [REDACTED]

[REDACTED] as set forth in the preceding Article, less the Australian withholding tax which shall be first deducted in accordance with Article 4.5, to the bank accounts designated by each of NARO and NISSHIN.

4.2 GWF shall, within sixty (60) days from the last day of each Semiannual Period, wire transfer the funds in the respective amounts of running royalties accruing during each such Semiannual Period set forth in the preceding Article, less the Australian withholding tax which shall be first deducted in accordance with Article 4.5, to the bank accounts designated by each of NARO and NISSHIN.

4.3 GWF shall bear its costs and expenses incurred for the wire transfer set forth in the preceding two Paragraphs.

4.4 NARO and NISSHIN shall provide prompt written acknowledgement of each payment after such payment is received from GWF. In the event GWF fails to pay the initial payment or the running royalties by the respective due dates as set forth in Paragraphs 4.1 and 4.2, it shall pay late payment charges accruing from the following day of such due date until the payments are made in full, at the rate of 5% per annum, to NARO and NISSHIN.

4.5 GWF shall be entitled to withhold the applicable amount of Australian withholding tax imposed on any payment by GWF hereunder from the amount of payment and shall, without delay following the payment of such withholding tax to the Australian taxation authorities, provide NARO and NISSHIN with the respective receipts of such tax issued by such authorities.

#### Article 5 (Report)

5.1 GWF shall, within [REDACTED] from the last day of each Semiannual Period, send to NARO and NISSHIN a written report which states the quantity of Waxy Wheat Flour, on a

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product-by-product and customer-by-customer basis, used for the Products and the Secondary Fabrication Foods sold by GWF during each such Semiannual Period, along with the identification of the relevant Patent for each such product, aggregate sales quantity of Waxy Wheat Flour and the amount of running royalties and, in the cases of sublicensing to GWF Customers, the name and address of each sublicensee. For the purpose of this Paragraph, "product" means a Waxy Wheat Flour Blend product or a Secondary Fabrication Food product.

5.2 GWF shall keep and maintain books and records setting out the detailed particulars relating to the sale of the Products and the Secondary Fabrication Foods.

#### Article 6 (Audit)

6.1 GWF shall, upon request from NARO and NISSHIN, make the account books, slips and any other records relating to the use of the Patents available for inspection by an auditor designated by NARO and NISSHIN.

6.2 NARO and NISSHIN shall be entitled to seek from GWF explanations on, or as may be necessary, to seek from an auditor designated by NARO and NISSHIN that auditor's opinion only on the correctness of the royalty report information obtainable from the relevant books etc. referred to in the preceding Paragraph, in the event they have any questions regarding the account books etc. referred to in the preceding Paragraph or the royalty report referred to in Article 5 in light of such account books etc.

6.3 Neither NARO nor NISSHIN shall divulge to any third party any confidential information of GWF, including any royalty report information, which may come to their notice or use for any purpose other than for the purpose of securing the performance of this Agreement.

6.4 Notwithstanding the term of this Agreement, the provisions of this Article 6 shall remain effective for a period of three years following the end of the term of this Agreement.

#### Article 7 (Non-Refundable Consideration)

GWF shall not seek to refund any payments made to NARO and NISSHIN under this Agreement for any reason whatsoever.

**Article 8 (Registration of License)**

8.1 GWF shall, after execution of this Agreement, be entitled to register the licenses in each country of the Licensed Territory at its own expense. Any costs and expenses incurred by GWF for or in connection with license registration shall be borne by GWF.

8.2 NARO and NISSHIN shall, upon request from GWF, agree to cooperate with GWF in relation to the registration of the license, and shall deliver any documents necessary for GWF to complete the procedures referred to in the preceding Paragraph.

**Article 9 (Validity of Patents)**

9.1 NARO and NISSHIN shall use their best efforts to maintain the Patents including payment of any fees in relation to the maintenance of the Patents; provided, however, that neither NARO nor NISSHIN shall guarantee the validity of the Patents.

9.2 Notwithstanding the provisions of Article 13 hereof, NARO and NISSHIN shall be entitled to terminate this Agreement in the event GWF, whether directly or indirectly, contests the validity of the Patents.

9.3 If one Patent is or becomes invalid or expires, this Agreement continues to be valid in relation to the other Patents, subject to GWF's right to terminate as set out in Article 13. The parties acknowledge and agree that the terms of this Agreement shall not apply to any Patent from the time when that Patent is or becomes invalid or expires during the Term. NISSHIN and NARO acknowledge and agree that where any one of the Patents in any one country of the Licensed Territory becomes invalidated, the obligation to pay royalties for the portions under such invalidated Patent will [automatically] cease to exist thereafter [without the need of terminating that part of the Agreement]. [HPLO: Mr. Okuda says that they would like us to delete the word "automatically" and the phrase "without the need of terminating that part of the Agreement." We have asked them to reconsider, and this matter remains outstanding until we provide them with revised Japanese draft agreement.]

9.4 In the event any one of the two Patents in any one country of the Licensed Territory should be invalidated, GWF acknowledges and agrees that it shall pay royalties on those portions of the Products or the Secondary Fabrication Foods



sold in the other countries where the corresponding Patent remains valid.

**Article 10 (Liability for Reduction to Use)**

10.1 Neither NARO nor NISSHIN shall be liable to GWF or any third party for any technical, economical or any other matters relating to the reduction to use of the inventions of the Patents or for whether such reduction to use will infringe upon any right of any third party.

10.2 Each of NARO and NISSHIN warrants to GWF that NARO and NISSHIN:

- (i) are the sole owners of the Patents and the subject inventions of the Patents;
- (ii) have not granted to any third party any right, title or interest inconsistent with the grant of the license to GWF; and
- (iii) have authority to enter into this Agreement.

**Article 11 (Exclusion of Infringement and Defense Against Claims)**

11.1 In the event either of GWF and NARO/NISSHIN finds any infringement by a third party upon the Patents or any act which is likely to infringe upon the Patents, it/they shall immediately inform the other party (parties) thereof.

11.2 GWF shall cooperate with NARO and NISSHIN in the event NARO and NISSHIN attempt to preclude any third party from infringing upon the Patents.

11.3 If NARO or NISSHIN does not defend any claim by a third party in relation to the Australian Patents including invalidity or that GWF's use of the Australian Patents may infringe any third party rights, GWF may, at its own cost and expense, defend such claim (including by using NARO's and NISSHIN's name if necessary) and NARO and NISSHIN agree to provide reasonable cooperation to GWF.

11.4 If NARO or NISSHIN does not prosecute any infringement of the Australian Patents, GWF may, at its own cost and expense, prosecute such infringement (including by using NARO's and NISSHIN's name if necessary) and NARO and NISSHIN agree to provide reasonable cooperation to GWF.

11.5 NARO and NISSHIN agree to keep GWF informed of any claims or challenges to the Patents or in relation to the use of the Patents.

Article 12 (Term)

The term of this Agreement shall be [REDACTED] years from the date of execution hereof and, with regard to possible arrangements thereafter, the parties shall, prior to the termination hereof, discuss and determine the same to enter into a new agreement.

Article 13 (Termination)

13.1 In the event the other party (parties) breaches any provision of this Agreement and fails to cure such breach within one month after receipt of a notice seeking to cure the same, the notifying party shall be entitled to terminate this Agreement by informing the other party thereof and seek damages incurred by it as a result of such breach.

13.2 (i) For the avoidance of doubt, GWF may terminate this Agreement if all of the Patents (a total of six Patents in the three countries) are invalidated.

(ii) GWF may terminate this Agreement if there is any third party infringing a Patent or engaging in conduct which is likely to infringe a Patent and NARO and NISSHIN has not taken any action within a reasonable period.

Article 14 (Entire Agreement)

14.1 This Agreement constitutes the entire agreement between the parties and in the event any oral or written agreement made prior to the execution of this Agreement conflicts with any provision of this Agreement, such oral or written agreement shall be deemed non-existing for the purposes of construction of this Agreement.

14.2 [REDACTED]

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(2)

**Article 15 (Severability)**

Invalidity of any provision of this Agreement shall not affect in any way any of the other provisions of this Agreement.

**Article 16 (Governing Law)**

This Agreement has been executed in Japanese, and shall be governed by and construed in accordance with the laws of Japan.

**Article 17 (Exclusive Jurisdiction)**

The Tokyo District Court shall have the exclusive jurisdiction of the first instance in the event either party files a lawsuit in connection with this Agreement.

**Article 18 (Discussion)**

In the event there arises any dispute with respect to any matter not expressly set forth in this Agreement or to construction of any of the provisions hereof, the parties shall endeavor to resolve the same through discussions between them; provided, however, that in the event they fail to settle any such dispute through discussion, the parties shall be subject to the preceding Article.

IN WITNESS WHEREOF, the parties have prepared three (3) copies of this Agreement and executed each of them, each party retaining one such copy each.

NARO: National Agriculture and Bio-oriented Research  
Organization  
3-1-1 Kannondai, Tsukuba-shi, Ibaraki Prefecture  
President, Eitaro Miwa  
[signature]

Date: 28 November, 2005

NISSHIN: Nisshin Flour Milling Co., Ltd.  
25 Kanda-Nishiki-cho 1-chome, Chiyoda-ku, Tokyo

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Director and President, Ryuji Nakamura

[signature]

Date: 17 November, 2005

GWF:

George Weston Foods Limited  
Level 20 Tower A-Zenith Centre 821 Pacific  
Highway Chatswood NSW 2067, Australia  
Finance Director, John Kavanagh

[signature]

Date: 7 December, 2005


本契約締結の証として、本書三通を作成し、NARO、NISSHIN および GWF は署名の上各一通を保有する。

NARO

独立行政法人農業・生物系特定産業技術研究機構

茨城県つくば市観音台 3-1-1

理事長 三輪 審太郎

 (サイン)

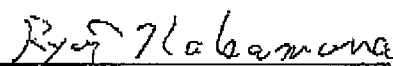
日付：2005 年 11 月 28 日

NISSHIN

日清製粉株式会社

東京都千代田区神田錦町一丁目 25 番地

取締役社長 中村 隆司

 (サイン)

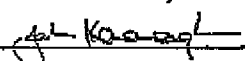
日付：2005 年 11 月 17 日

GWF

George Weston Foods Limited

Level 20 Tower A-Zenith Centre 821 Pacific

Highway Chatswood NSW 2067, Australia

~~Chief Executive George Weston~~  
Finance Director, John Kavanagh  
日付：2005 年 月 日