

10-05-2007



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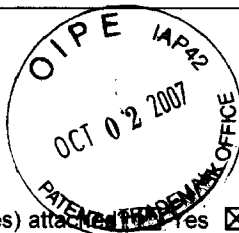
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To the Director of the U.S. Patents

and documents or the new address(es) below.

1. Name of conveying party(ies):

MiVa Engineering Inc.



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

2. Name and address of receiving party(ies)

Name: Toromont Energy Systems Inc.

Internal Address:

Street Address: 10121 Barlow Trail Northeast,

City: Calgary

State: Alberta

Country: Canada Zip: T3J 3C6

Additional Name(s) & address(es) attached? ☐ Yes ☒ No

3. Nature of conveyance:

Execution Date(s) August 15, 2007

- ☐ Assignment ☐ Merger  
☐ Security Agreement ☐ Change of Name  
☐ Government Interest Assignment  
☐ Executive Order 9424, Confirmatory License  
☒ Other Assignment and Royalty Agreement

4. Application number(s) or patent number(s):

☐ This document is being filed together with a new application.

A. Patent Application No.(s)

11/595,877

B. Patent No.(s)

10/03/2007 AWONDAFE 00000044 022095 1159587

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Additional numbers attached? ☐ Yes ☒ No

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

Name: Bereskin & Parr

Internal Address:

Street Address: 40 King Street West

City: Toronto

State: Ontario Zip: M5H 3Y2

Phone Number: (416) 364-7311

Fax Number: (416) 361-1398

Email Address: icaulder@bereskinparr.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 022095

Authorized User Name \_\_\_\_\_

9. Signature:

October 1, 2007

Date

Isis E. Caulder

Signature

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

4

Name of Person Signing

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, V.A. 22313-1450

# **Assignment and Royalty Agreement**

***This Agreement is entered into as of June 5, 2006 between:***

***Toromont Energy Systems Inc.***

***and***

***MiVa Engineering Inc.***

10121 Barlow Trail Northeast,  
Calgary, Alberta, T3J 3C6

411 – 7<sup>th</sup> Avenue  
New Westminster, BC, V3L 1W6

(the "***Company***")

(the "***Contractor***")

For good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, the Company and Contractor agree:

## ***Assignment***

1. The Contractor hereby assigns to the Company all intellectual property rights, applications and registrations (including without limitation all copyrights, trade secrets and patents) with respect to any and all improvements, inventions, designs, literary, artistic and musical works, computer programs and any other works, data, and concepts made, authored, conceived, created or developed by the Contractor during the course of providing services to the Company (the "Intellectual Property").
2. Without limiting the generality of the foregoing, the Contractor hereby assigns to the Company all right, title and interest in and to the inventions described in **Schedule "A"** attached hereto and to any and all letters patent or patents of the United States, Canada and all other countries of the world that may be granted for the invention(s) and in and to any and all divisions, continuations, continuations-in-part of said applications, and reissues and extensions of said letters patent or patents.
3. Without further consideration, but at the expense of the Company, the Contractor undertakes to do such things and sign such documents as are required to fully vest title to the Intellectual Property and any patents, in the Company, its successors or assignees.
4. To the extent each applicable jurisdiction allows, the Contractor assigns all moral or author's rights in the Intellectual Property. If an assignment is not allowed, the Contractor waives all moral or author's rights for the benefit of the Company and anyone claiming through the Company. Contractor shall also obtain such an assignment and \ or waiver from Vladimir Scekic.

## ***Royalty***

5. The Company agrees to pay to the Contractor, a royalty equal to Cdn.\$400 per manufactured gearbox (described on Schedule "A" (the "Product")) incorporating the intellectual property described on Schedule A.



6. Royalties shall be paid quarterly, within 30 days following the end of each calendar quarter, based on the number of units of Product manufactured by the Company during the preceding quarter (or by a licensee as per section 8 below).
7. If the Company assigns this agreement to a third party, such third party will be bound by this agreement in the same way the Company for so long as this Agreement is applicable.
8. This Royalty agreement will apply to any Product manufactured by any third party under a licensing agreement with the Company.
9. Royalties shall be payable:
  - 9.1. Until the expiry of the first patent to be issued in any country with respect to the Product; or
  - 9.2. For a period of five (5) years from the Effective Date, if no patent issues within such 5-year period.

At the end of this period the Company shall have no further obligation to pay any royalty or other compensation whatsoever to the Contractor with respect to the Intellectual Property or the Products. This Agreement shall terminate upon the first to occur of Section 9.1 or 9.2.

### ***Confidential Information***

10. The Contractor acknowledged and agrees that all information produced by the Company or the Contractor with respect to the Intellectual Property and the Product is the exclusive confidential information of the Company. The Contractor agrees hold this information in the strictest confidence and not to use or disclose the information for any purpose whatsoever without the prior written consent of the Company. This obligation shall survive the termination of this Agreement.

### ***General***

11. This is the entire agreement with respect to the matters referred to herein and supersedes all prior discussions and agreements, oral or written, with respect thereto. This agreement may be waived or amended only by written agreement signed by each of the parties.
12. If any provision of this Agreement is held to be invalid, illegal or unenforceable, this shall not affect any other provision. The Company may assign this Agreement without notice to Contractor. The Contractor may not assign any rights or obligations under this Agreement without the prior written consent of the Company.
13. The Company shall have a one time option to extend this Agreement for an additional term of five years prior to the termination of the Agreement under Section 9.1 or 9.2. The option may be exercised at any time prior to the termination of this Agreement.
14. The Contractor agrees that, in consideration of the benefits contained in this Agreement, including the royalty, the receipt and sufficiency of which the Contractor hereby acknowledges, it hereby covenants and agrees with the Company that, during the course of this Agreement, the Contractor and its affiliates will not, directly or indirectly



participate in the development of any products, machines, parts or inventions that compete with the Product in the countries of Canada or the United States. The Contractor agrees that such limitations are reasonable. The Contractor agrees that the Company will be irreparably harmed by a breach of this Section and agrees that the Company may seek an injunction to enforce this Section, without interference from the Contractor. In consideration of the covenants and consideration paid hereunder, Vladimir Scekcic hereby agrees to be bound by the provisions of this Section 12 as if he were the Contractor hereunder. Notwithstanding the foregoing, the Contractor shall be entitled to continue to provide services (including engineering and design work) to the customers and industries served by him that are not competitive with the business currently carried on by the Company. Modifications or improvements to the Product shall be made as provided in prior written agreement(s) between the Company and the Contractor.

15. The Company agrees that it will use commercially reasonable efforts in marketing and applying the Product wherever such application may be technically and economically beneficial. The Contractor may also market the Product with the prior written consent of the Company, which may not be unreasonably withheld but which may be withdrawn.
16. This Agreement and the relationship created between the parties hereby does not and shall not, directly or indirectly, constitute Contractor or any of its personnel as an employee, agent, servant, partner or joint venture of Company. Contractor is and shall at all times be an independent contractor.

MiVa Engineering Inc.

Toromont Energy Systems Inc.

By: VLADIMIR SCEKCIC

By: KURT SCHAEERER

[Signature]

[Signature]

Vladimir Scekcic, P.Eng.

Kurt Schaerer, P.Eng.

Date: 2007/08/12

Date: 2007/08/15

Signed at: N. WESTMINSTER, BC

Signed at: CALGARY, AB.

Witnessed.

By: SINISA MALOZIC

[Signature]

Date: 2007/08/12

Signed at: NEW WESTMINSTER, BC, CA

PATENT

RECORDED: 10/02/2007

REEL: 019947 FRAME: 0592