

PATENT ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	LICENSE
CONVEYING PARTY DATA	
Name	Execution Date
Papworth Hospital NHS Foundation Trust	09/07/2007
RECEIVING PARTY DATA	
Name:	P3 Medical Limited
Street Address:	1 Newbridge Close
City:	Bristol
State/Country:	UNITED KINGDOM
Postal Code:	BS4 4AX
PROPERTY NUMBERS Total: 1	
Property Type	Number
Application Number:	29268031
CORRESPONDENCE DATA	
Fax Number:	(608)831-2106
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	6088312100
Email:	mal@dewittross.com
Correspondent Name:	Marcia Layton
Address Line 1:	8000 Excelsior Drive, Suite 401
Address Line 4:	Madison, WISCONSIN 53717
ATTORNEY DOCKET NUMBER:	11142.001
NAME OF SUBMITTER:	Marcia Layton
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DATED 7th September **2007**

PAPWORTH HOSPITAL NHS (1)
FOUNDATION TRUST
("Trust")

and

HEALTH ENTERPRISE EAST LIMITED (2)
("HEE")

and

P3 MEDICAL LIMITED (3)
("Licensee")

**EXCLUSIVE PATENT, DESIGN RIGHT
AND
NON-EXCLUSIVE KNOW-HOW
LICENCE AGREEMENT**

Project No: GHO-081-06

THIS AGREEMENT dated 7th September 2007 is between:

- 1) Papworth Hospital NHS Foundation Trust of Papworth Hospital, Papworth Everard, Cambridge, Cambridgeshire, CB23 3RE (the "Trust");
- 2) Health Enterprise East a company limited by guarantee (Company Number: 05285665) whose principal place of business is Papworth Hospital, Papworth Everard, Cambridge CB23 3RE ("HEE"); and
- 3) P3 Medical Limited a company incorporated in England and Wales (Company Number: 01072913) whose registered address is 1 Newbridge Close, Bristol, BS4 4AX (the "Licensee").

RECITALS:

- A) The Trust inventor and advisor specified in Schedule 1 have developed technology relating to endotracheal tubes, including the Patents, Design Rights and the Know-how and they have assigned to the Trust all their intellectual property rights in the Patents, Design Rights and the Know-how.
- B) The Licensee wishes to acquire rights under the Patents and Design Rights along with using the Know-how for the development and commercialisation of Licensed Products in the Field and in the Territory, in accordance with the provisions of this Agreement.
- C) The Trust wishes to procure the development and commercialisation of the Licensed Products in the Field and in the Territory to benefit patients.
- D) The Trust has authorised HEE to act as its exclusive agent for the purpose of licensing the Patents, Design Rights, Know-how and related intellectual property rights and has authorised HEE to collect any payments due under the terms of this Agreement.

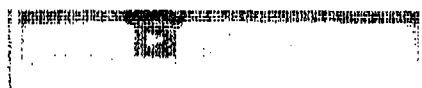
IT IS AGREED as follows:

1 Definitions and Interpretations

1.1 In this Agreement, the following words shall have the following meanings:

Active Marketing

Undertaking an ongoing programme of activities to place the Licensed Products on the market in the relevant territory and building up a consistent reasonable level of sales of the Licensed Product in such territory. Such activities shall include but are not limited to advertising and promotional activities and either establishing a branch or maintaining a



	distribution depot in the relevant territory.
Anniversary	An anniversary of the Commencement Date.
Commencement Date	Monday 13 th August 2007.
Confidential Information	The Know-how and any information marked confidential obtained directly or indirectly by one Party from the other Party.
Design Documents	Any record of the design, whether in the form of a drawing, a written description, a photograph or a model embodying the design, listed or referred to in Schedule 2.
Design Rights	Any unregistered or registered design right or rights to which either party may now be, or may subsequently become, entitled in or in respect of any design recorded or embodied in the Design Document(s) and any and all registered design right applications listed or referred to in Schedule 1 together with any design rights granted pursuant to the applications and any continuations, continuations in part, extensions or reissues that derive priority from the foregoing.
Field	Endotracheal tube products.
Know-how	Technical information relating to the inventions in the Field as identified in Schedule 1 under the supervision of the Principal Investigator and relating directly to the inventions claimed in the Patents and the configurations claimed in the Design Rights.
Improvement	Any input, enhancement, alteration or modification to the Licensed Product or its method of manufacture.
Inventor(s)	Dr Sunit Ghosh and Mrs Susan Ghosh.
Licensed Products	Any product, process or use which incorporates, or the development of which makes use of, any of the Licensed Technology.
Licensed Technology	The Patents, Design Rights and the Know-how.
Net Sales Value	In respect of a Licensed Product, either: (a) the sales value of the Licensed Products invoiced to an independent third party in an



arm's length transaction, sale, licence, rental or other disposal of the Licensed Product's to independent third parties exclusively for money or;

- (b) the sales value that would have been invoiced if such sale, licence, rental or other disposal of the Licensed Product it had been such a transaction to an independent third party

and in both cases without deduction of any commission paid to any third party but less the following permitted deductions:

- (i) related arm's length trade discounts or credits given; and
- (ii) provided the amounts are separately charged on the relevant invoice, any related costs of packaging, insurance, carriage and freight, any value added tax or other sales tax, and any import duties or similar applicable government levies.

Parties	The Trust, HEE and the Licensee, and "Party" shall mean any of them.
Patents	Any and all patents and patent applications listed or referred to in Schedule 1 together with any ensuing national or regional applications, or patents granted pursuant to the applications, along with any continuations, continuations in part, extensions, reissues, divisions, substitutions, confirmations, revalidations, renewals, additions and supplementary protection certificates that derive priority from the foregoing.
Payment Period	The payment periods specified in Schedule 4.
Principal Investigator	Dr Sunit Ghosh, Consultant Anaesthetist.
Regulatory Approval	All approvals (including without limitation pricing and reimbursement approvals), licenses, registrations or authorisations of all relevant regulatory authorities necessary for marketing and sale of a Licensed Product in the relevant territory.
Royalty	The royalty specified in clause 5.3.
Sub-Licence Income	Any payment due from a sub-licensee of the Licensed

Technology to the Licensee excluding royalties on Licensed Products.

Term The period specified in clause 11.1.

Territory Worldwide.

1.2 In this Agreement (except where the context otherwise requires):

- (a) any reference to a clause or schedule is to the relevant clause or schedule of or to this Agreement and any reference to a sub-clause or paragraph is to the relevant sub-clause or paragraph of the clause or schedule in which it appears;
- (b) the clause headings are included for convenience only and shall not affect the interpretation of this Agreement;
- (c) any reference to "person" or "persons" includes natural persons, firms, partnerships, companies, corporations, associations, organisations, governments, states, foundations and trusts (in each case whether or not having separate legal personality);
- (d) the singular includes the plural and vice versa; and
- (e) words preceding "include", "includes", "including" and "included" shall be construed without limitation by the words which follow those words.

1.3 The schedules form part of this Agreement. If a provision of a schedule is inconsistent with a provision of this Agreement, the latter prevails.

2 Grant of rights

2.1 Subject to the provisions of this Agreement the Trust hereby grants to the Licensee:

- (a) an exclusive licence under the Patents and Design Rights, with the right to sub-license subject to clause 2.3 below, to develop, manufacture, have manufactured, use and sell Licensed Products only in the Field in the Territory; and
- (b) a non-exclusive licence to use the Know-how, with the right to sub-license subject to clause 2.3 below, to develop, manufacture, have manufactured, use and sell Licensed Products only in the Field in the Territory.

2.2 The Parties shall execute such formal licences as may be necessary or

appropriate for registration with Patent Offices and other relevant authorities in particular territories. In the event of any conflict in meaning between any such licence and the provisions of this Agreement, the provisions of this Agreement shall prevail. Prior to the execution of the formal licence(s) (if any) referred to in this clause, the Parties shall so far as possible have the same rights and obligations towards one another as if such licence(s) had been granted. The Parties shall use reasonable endeavours to ensure that, to the extent permitted by relevant authorities, this Agreement shall not form part of any public record.

2.3 The Licensee shall be entitled to grant sub-licences of its rights under this Agreement to any person, provided that:

- (a) the sub-licence shall include terms which are equivalent to the obligations and limitations (including limitations of liability) which apply to the Licensee under this Agreement;
- (b) the sub-licence shall terminate automatically on the termination of this Agreement for any reason;
- (c) within 30 days of the grant of any sub-licence the Licensee shall provide to the Trust a true copy of it; and
- (d) The Licensee shall be responsible for any breach of the a sub-licence of its rights under this Agreement by the relevant sub-licensee, as if the breach had been that of Licensee under this Agreement, and the Licensee shall indemnify each of the Trust and HEE against any loss, damages, costs, claims or expenses which are awarded against or suffered by the Trust or HEE as appropriate as a result of any such breach

2.4 The Trust reserves for itself an irrevocable, world-wide, royalty-free, non-exclusive right to use the Patents and Design Rights in the Field for non-commercial research, publication and teaching.

2.5 Except for the rights expressly set out in this Agreement, no licence is granted and all rights, title and interest in and to the Licensed Technology throughout the world now or hereafter are and shall remain the exclusive property of the Trust.

3 Know-how and confidentiality

3.1 Upon the Licensee's reasonable request, the Trust shall arrange for the Principal Investigator to supply the Licensee with all Know-how in his possession that the Trust is at liberty to disclose and that has not previously been disclosed and which is reasonably necessary or desirable to enable the Licensee to undertake the further development of the Patents and Design Rights. The method of such supply shall be agreed between the Principal

Investigator and the Licensee but shall not require the Principal Investigator to undertake more than two (2) man-days of work, unless otherwise agreed in writing between the Parties. If it is agreed that the Principal Investigator shall travel to the Licensee's premises in connection with such supply, the Licensee shall reimburse all travel (at business class rates), accommodation and subsistence costs incurred.

3.2 No Confidential Information disclosed by one party ("Disclosing Party") to the other party ("Recipient Party") under this Agreement may be disclosed by the Recipient Party to any person except:

- (a) employees, officers, directors, auditors, or subcontractors of the Recipient Party requiring the Confidential Information for the purposes of this Agreement;
- (b) with the prior written consent of the Disclosing Party which consent may be given or withheld in its absolute discretion;
- (c) to actual or potential customers or sub-licensees for Licensed Products in so far as such disclosure is necessary to promote the sale or use of Licensed Products;
- (d) if the Recipient Party is required to do so by law or stock exchange; or
- (e) if the Recipient Party is required to do so in connection with legal proceedings relating to this Agreement.

3.3 No Confidential Information of the Disclosing Party may be used by the Recipient Party for any purpose other than the performance of the Recipient Party's obligations or the exercise of the Recipient Party's rights under this Agreement.

3.4 Any party disclosing information under clause 3.2(a), 3.2(b) or 3.2(c) must use all reasonable endeavours to ensure that persons receiving Confidential Information from it

- (a) do not disclose or use the information except in the circumstances permitted in clauses 3.3 and 3.4; and
- (b) sign a written confidentiality undertaking in terms as least as restrictive as that binding the Recipient Party.

3.5 Clauses 3.2, 3.3 and 3.4 do not apply to Confidential Information which:

- (a) is in or becomes part of the public domain other than through breach of this Agreement or an obligation of confidence owed to the Disclosing Party;
- (b) the Recipient Party can prove by contemporaneous written

documentation was already known to it at the time of disclosure by the Disclosing Party (unless that knowledge arose from disclosure of information in breach of an obligation of confidence);

- 3.6 The Recipient Party must return to the Disclosing Party all documents or other materials containing or referring to Confidential Information (other than the Know-how) which are in its possession, power or control or in the possession, power or control of persons who have received Confidential Information from it under clause 3.2(a), 3.2(b) or 3.2(c) at any time if requested to do so by the Disclosing Party.
- 3.7 The provisions of clauses 3.2 to 3.7 inclusive will remain in force for a period of ten (10) years from the Commencement Date of this Agreement.

4 Improvements

- 4.1 In the event that the Licensee shall at any time make an Improvement then the Licensee shall:
- (i) grant to the Trust an irrevocable, perpetual, non-exclusive, world-wide, royalty free licence to use such Improvement; and
 - (ii) promptly notify the Trust in writing giving details of such Improvement and provide to the Trust such information or explanations as the Trust may reasonably require to be able to effectively to utilise the same.

5 Payments

- 5.1 The Licensee shall pay to HEE on behalf of the Trust the sum of £3621.60 + VAT in reimbursement of external receipted costs in connection with obtaining design right protection in the territories of China, India and Japan prior to the Commencement Date.
- 5.2 The Licensee shall not accept and shall ensure that its sub-licensees do not accept, without the prior written consent of the Trust, any non-monetary consideration for any Licensed Product.
- 5.3 The Licensee shall pay royalties to HEE on behalf of the Trust as calculated in accordance with this clause 5.3 in respect of each sale, licence, rental or other disposal (for the purposes of this clause 5.3, each a "Sale") of a Licensed Product. All such royalties, subject to clause 5.4 below, shall become payable upon the earlier of the date of the relevant invoice for such Sale and the date when the relevant Licensed Product is supplied to the customer. The royalties shall be calculated as follows:

- (a) in respect of each Sale of a Licensed Product by the Licensee (excluding Sales to a sub-licensee) in the relevant Payment Period: 10% of the Net Sales Value of such Licensed Product; and
- (b) in respect of each Sale of a Licensed Product by a sub-licensee of the Licensee in the relevant Payment Period: 10% of the Net Sales Value of such Licensed Product.

Notwithstanding the foregoing, if the Licensee reasonably determines that the amount of Royalties payable under this clause 5.3 is such that it is not economically viable for the Licensee to continue manufacturing and supplying Licensed Products, then the Licensee shall be entitled to require that the Trust discuss in good faith amendments to the royalty calculations set out above such that continuation of this Agreement is economically viable for the Licensee.

5.4 The Licensee shall have no obligation to pay Royalties to HEE until either:

- (a) expiry of the period of 3 years from the Commencement Date of this Agreement; or
- (b) the total Royalties calculated pursuant to clause 5.3 equal £18,621.60.

Following the earlier of (a) or (b) above the Licensee shall pay all Royalties to HEE, on behalf of the Trust, in accordance with clause 5.3.

5.5 The Licensee shall pay HEE on behalf of the Trust:

- (a) 50% of all upfront fees received as Sub-Licence Income;
- (b) 50% of milestone payments received as Sub-Licence Income; and
- (c) 50% of any other Sub-Licence Income not included in sub-clauses (a) or (b).

5.6 The Licensee shall be responsible for collecting and paying to HEE all payments due to the Trust in respect of sub-licensing, including Royalties.

5.7 All consideration and any other monies due under this Agreement are exclusive of Value Added Tax which where applicable shall be paid by the Licensee to HEE. All payments shall:

- (i) be made in pounds sterling by telegraphic transfer to the account of Health Enterprise East Limited at Barclays Bank Plc of West Anglia Business Banking, PO Box 421, 1 Church Street, Peterborough, PE1 1QP, sort code 20-43-63, account number 10704814;

- (ii) in the event of a change in the national currency of the United Kingdom, be converted from pounds sterling into the new national currency of the United Kingdom at the buying rate of such new currency as quoted by Barclays Bank plc in London on the day when such currency change comes into force;
 - (iii) in the case of monies received by the Licensee from sales or sub-licensing in a currency other than pounds sterling, be calculated in the other currency and then converted into the national currency of the United Kingdom at the buying rate of such other currency as quoted by Barclays Bank plc in London as at the close of business on the last business day of the Payment Period with respect to which the payment is made;
 - (iv) be made by the due date, failing which HEE may charge interest on any outstanding amount on a daily basis at 3% above Barclays Bank plc base lending rate then in force or under the Late Payment of Commercial Debts (Interest) Act 1998, whichever shall be the more favourable to the Trust; and
 - (v) be made without deduction of income tax or other taxes charges or duties.
- 5.8 All payments shall be made in accordance with Schedule 4 Part B and each payment shall be accompanied by a financial report in the form set out in Schedule 4 Part A. Such reports shall include details of payments due in respect of sub-licensing.
- 5.9 The Licensee shall report to HEE the date of first sale of a Licensed Product within 60 days of occurrence.
- 5.10 The Licensee shall keep at its normal place of business all information used to calculate payments due to HEE under this Agreement including detailed and up to date records and accounts showing the quantity, description and value of Licensed Products sold by it its sub-licensees, and the amount of sub-licensing revenues other than Royalties received by it in respect of Licensed Products, on a country by country basis. The Licensee shall keep these records separate or otherwise make them extractable easily from its other business records and shall not dispose of them until after the sixth anniversary of their creation.
- 5.11 The Licensee shall make such information available, on reasonable notice, for audit during business hours by an HEE duly authorised representative for the purpose of verifying the accuracy of any report given by the Licensee to HEE under this clause 5. The representative shall be required to keep confidential all information learnt during any such inspection, and to disclose to HEE and the Trust only such details as may be necessary to report on the accuracy of the Licensee's financial reports. The Trust shall be responsible for the representative's professional charges unless the representative certifies that there is an inaccuracy of more than 5 % in any financial statement, in which

case the Licensee shall pay his charges in respect of that inspection. The Licensee shall pay any underpayment reported by the representative within 30 days of receipt of a Trust invoice requiring payment for the same.

- 5.12 The Licensee shall ensure that the Trust has the same rights as those set out in clause 5.10 and clause 5.11 in any sub-licence of the Licensed Technology granted pursuant to this Agreement.

6 Commercialisation obligations and reports

- 6.1 The Licensee shall use reasonable endeavours to develop and commercially exploit the Licensed Technology.
- 6.2 The Licensee shall use reasonable endeavours to meet the following minimum sales targets in respect of the Licensed Products by the dates specified in the table below:

On the Anniversary in	Minimum Sales Target (Aggregate Net Sales Value from Commencement Date to relevant Anniversary)
2009	£ 120,000
2010	£ 292,000
2011	£ 1,460,000

If the Licensee does not meet the minimum sales targets by the relevant dates specified, the Trust may in its absolute discretion:

- (i) terminate this Agreement forthwith on written notice to the Licensee; or
- (ii) terminate the rights granted to the Licensee under clause 2.1 in respect of any part of the Territory as the Trust so wishes; or
- (iii) terminate the exclusivity of the rights granted to the Licensee under clause 2.1(a) (such that the Licensee's licence under the Patents and Design Rights is non-exclusive) in respect of any part of the Territory as the Trust so wishes.

6.3 The Licensee shall:

- (i) use all reasonable endeavours to obtain Regulatory Approval in the United States and Japan within 3 years of the Commencement Date; and
- (ii) undertake Active Marketing of the Licensed Products in the United States and Japan within 3 years of the Commencement Date.

If, upon expiry of the period of 3 years from the Commencement Date, the Licensee has failed to obtain such Regulatory Approval or, in the Trusts reasonable opinion, has failed to fulfil such Active Marketing, the Trust may in its absolute discretion terminate the licence granted in clause 2.1 in respect of the United States and Japan.

6.4 Without prejudice to the generality of the Licensee's obligations under clause 6.1, the Licensee shall send HEE within 30 days of each Anniversary an updated, written development plan, covering as a minimum the 12 months preceding the Anniversary and the 12 months following it. The report shall show:

- (a) the projected and actual dates of first sale of a Licensed Product;
- (b) actions taken to attain Regulatory Approval and Active Marketing in the United States and Japan;
- (c) all past, current and projected activities taken or to be taken by the Licensee to bring Licensed Products to market and maximise the sale of Licensed Products in the Territory
- (d) and any Sub-Licence Income invoiced or received.

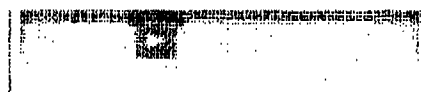
HEE and the Trust's receipt or approval of any such plan shall not be taken to waive or qualify the Licensee's obligations under clause 6.1.

6.5 If the Trust considers at any time during the Term that the Licensee has without legitimate reason failed to use reasonable endeavours to develop and commercially exploit the Licensed Technology, the Trust shall be entitled to refer to an independent expert the following questions:

- (a) whether the Licensee has acted diligently; and if not
- (b) what specific action the Licensee should have taken ("Specific Action") in order to have acted diligently.

6.6 The independent expert shall be appointed in accordance with the provisions of Schedule 3 and his decision shall be final and binding on the Parties.

6.7 If the expert determines that the Licensee has failed to comply with its obligations under this clause 6, and if the Licensee fails to take the Specific Action within 3 months of the expert giving his decision in accordance with Schedule 3, the Trust shall be entitled, by giving, at any time within 3 months after the end of that 3 month period, not less than 21 days' notice to terminate this Agreement and the licences granted to the Licensee under clause 2.



7 Intellectual property

7.1 HEE on behalf of the Trust, shall be responsible for maintenance of the Patents and Design Rights. HEE shall keep the Licensee informed in relation to the status of the Patents and Design Rights. The Licensee shall reimburse HEE on an indemnity basis for all costs and expenses reasonably incurred by the Trust or HEE (or for which they have incurred liability):

- (a) in relation to the preparation, filing, prosecution and maintenance of the Patents and Design Rights up to and including the date of this Agreement; and
- (b) as a result of the performance of its obligations under this clause 7.1.

All such payments shall be made by the Licensee within 30 days of the date of HEE's invoice for the same. Non-payment by the Licensee of the same within such 30 day period shall be deemed to be a material breach of this Agreement and the Trust shall be entitled to terminate this Agreement pursuant to clause 11.4(a). Furthermore, where the Licensee does not make any such payment in accordance with this clause 7.1, the Trust nor HEE shall have no obligation to continue to maintain any of the Patents or Design Rights.

7.2 Each Party shall inform the other Party promptly if it becomes aware of any infringement or potential infringement of any of the Patents or Design Rights in the Field.

7.3 Subject to clause 7.4, the Licensee shall be entitled to take legal or other action against any third party to enforce the Patents or Design Rights at its sole expense. If the alleged infringement is both within and outside the Field, the Parties shall also co-operate with the Trust's other licensees (if any) in relation to any such action. The Trust shall agree to be joined in any such legal action subject to being indemnified and secured in a reasonable manner as to any costs, damages, expenses or other liability and shall have the right to be separately represented by its own counsel at its own expense.

7.4 Before starting legal action in accordance with sub-clause 7.3 or agreeing to any settlement, the Licensee shall consult the Trust and take its views into account about the advisability of the action or settlement, its effect on the Trust's good name, the public interest and how the action should be conducted. Any monetary recovery from any legal or other action, less the Licensee's reasonable expenses in securing it, shall be deemed to be Net Sales Value, upon which the Licensee shall pay the Trust a Royalty in accordance with clause 5.3, or Sub-Licence Income, depending on the nature of the payment. Clause 2.3 specifies the extent to which the Licensee may grant a sub-licence to an infringer.

7.5 In the event that the Licensee is unsuccessful in persuading the alleged infringer to desist or fails to have initiated an infringement action within six months of the Licensee first becoming aware of the basis for such action, the Trust shall have the right, at its sole discretion, to prosecute such infringement

under its sole control and its sole expense, and any recovery obtained shall belong to the Trust.

- 7.6 If any warning letter or other notice of infringement is received by a Party, or legal action is brought against a Party, alleging infringement of third party rights in the manufacture, use or sale of any Licensed Product or use of any Patents or Design Rights, that Party shall promptly provide full details to the other Party, and the Parties shall discuss the best way to respond.
- 7.7 The Licensee shall have the right but not the obligation to defend such action and shall have the right to settle with such third party, provided that if any action or proposed settlement involves the making of any statement, express or implied, concerning the validity of any Patent or Design Right, the consent of the Trust must be obtained before taking such action or making such settlement.

8 Warranties

- 8.1 The Licensee acknowledges that the Licensed Technology is at an early stage of development, that it is provided "as is" and specific results cannot be guaranteed. The Licensee shall be exclusively responsible for the technical and commercial development and manufacture of Licensed Products and for incorporating any modifications or developments thereto that may be necessary or desirable and for all Licensed Products sold or supplied.
- 8.2 The Trust makes no representations or warranties of any kind, express or implied, concerning the Licensed Technology including (i) as to the satisfactory quality or fitness for a particular purpose (ii) as to the absence of latent or other defects, whether or not discoverable (iii) as to the validity or scope of the Patents or Design Rights or (iv) that the exploitation of the Licensed Technology or any Licensed Product will not infringe any patents, design rights or other intellectual property rights of a third party and all conditions, warranties or other terms implied by statute or common law are excluded from this Agreement to the fullest extent permitted by law.
- 8.3 Without prejudice to the generality of clause 8.2 above, the Trust does not give any warranty, representation or undertaking as to the efficacy, usefulness, safety or commercial or technical viability of the Intellectual Property and/or the Licensed Products.

9 Compliance, indemnity and insurance

- 9.1 The Licensee acknowledges that the exercise of the rights granted to it under this Agreement are subject to all applicable laws and regulations in the Territory and that it shall have sole responsibility at all times for compliance with the same. The Licensee shall obtain at its own expense all necessary

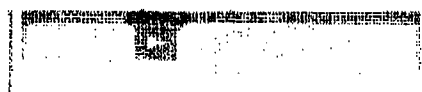
licences, permits and consents required in relation to the provision of the Licensed Products in the Territory.

- 9.2 The Licensee shall at all times (notwithstanding the termination of this Agreement) be responsible for and indemnify and keep each of the Trust and HEE indemnified against and maintain insurance cover in respect of all claims, liabilities, costs and expenses suffered or incurred by the Trust or HEE as appropriate arising out of the performance or non-performance of the Licensee's obligations under this Agreement or any other actions of the Licensee or resulting from any claims arising from the provision of the Licensed Products by the Licensee in the Territory, including without limitation any failure by the Licensee to comply with any applicable laws and regulations relating to the provision of the Licensed Products in the Territory.
- 9.3 The Licensee shall obtain and maintain (notwithstanding the termination of this Agreement) sufficient product liability and comprehensive general liability insurance cover for the claims identified in clause 9.2. Such insurances may be limited in respect of one claim provided that such limit must be at least £5,000,000. Product liability insurance shall continue to be maintained for a further 6 years from the end of the Term.

10 Exclusions and limitations of liability

- 10.1 Nothing in this Agreement shall exclude or restrict the liability of the Trust or HEE to the Licensee for death or personal injury resulting from negligence or for fraudulent misrepresentation or in any other circumstances where liability may not be so limited under any applicable law.
- 10.2 Subject to clause 10.1 neither the Trust nor HEE shall not be liable to the Licensee whether in contract, tort, negligence or for breach of statutory duty or otherwise for loss of revenue or profit or other financial or economic loss or any indirect or consequential loss or damage, costs or expenses whatsoever and howsoever arising under or in connection with this Agreement
- 10.3 Subject to clauses 10.1 and 10.2 the total liability of each of the Trust and HEE to the Licensee whether in contract, tort, negligence, breach of statutory duty or otherwise for any direct loss or damages, costs or expenses arising under or in connection with this Agreement shall not exceed the lesser of:
- (i) the royalties as have been paid to the Trust under this Agreement within the 12 months to the date of the claim; or
 - (ii) the sum of £10,000.

If this limitation is adjudged to be unreasonable in the circumstances, the limit of the Trust's or HEE's liability shall be increased to the amount that the Trust or HEE (as appropriate) can recover from its insurer in respect of its liability



for direct loss suffered by the Licensee.

- 10.4 The royalties due under this Agreement have been negotiated and agreed on the basis that the Trust or HEE (as appropriate) may exclude or limit its liability to the Licensee as set out in this Agreement. The Licensee confirms that it has understood the scope and extent of these exclusions and limitations and acknowledges that it considers them reasonable in the circumstances.

11 Duration and termination

- 11.1 This Agreement, and the licences granted hereunder, shall come into effect on the Commencement Date and, unless terminated earlier in accordance with this clause 11, shall continue in force on a country by country basis until the date on which all the Patents or Design Rights have expired or been revoked without a right of further appeal and on such date this Agreement and the licences granted hereunder shall terminate automatically by expiry.
- 11.2 The Licensee may terminate this Agreement at any time on 90 days' notice in writing to the Trust.
- 11.3 The Trust may terminate this Agreement
- (a) forthwith by giving written notice to the Licensee if the Licensee or its sub-licensee commence(s) legal proceedings, or assist(s) any third party to commence legal proceedings, to challenge the validity or ownership of any of the Patents or Design Rights;
 - (b) as provided in clause 5, 6 and 7; and
- 11.4 Without prejudice to any other right or remedy, either Party may by written notice to the other Party terminate this Agreement at any time by notice in writing to the other Party, if
- (a) the other Party has materially breached this Agreement (and for the avoidance of doubt non-payment by the Licensee under clause 5 or 7 shall be deemed a material breach) and, in case of a remediable breach other than a persistent breach, has failed to remedy that breach within thirty days of the date of service of a written notice from the other Party specifying the breach and requiring that it be remedied; or
 - (b) the other Party ceases to carry on business, is unable to pay its debts when they fall due, is declared bankrupt, or an order is made or a resolution passed for the winding up of that other Party or the appointment of an administrator, receiver, liquidator or manager of that other Party.
- 11.5 For the avoidance of doubt, upon termination of this Agreement by expiry

under clause 11.1 above, the licence of the Patents in clause 2.1(a) and Know-how in clause 2.1(b) shall terminate.

11.6 Upon termination of this Agreement for any reason otherwise than in accordance with clause 11.1:

- (i) the Licensee and its sub-licensees shall be entitled to sell, use or otherwise dispose of (subject to payment of royalties under clause 5.3) any unsold or unused stocks of the Licensed Products for a period of 6 months following the date of termination;
- (ii) subject to paragraph (i) above, the Licensee shall no longer be licensed to use or otherwise exploit in any way, either directly or indirectly, the Patents or Design Rights, in so far and for as long as any of the Patents or Design Rights remain in force or the Know-how;
- (iii) subject to paragraph (i) above, the Licensee shall consent to the cancellation of any formal licence granted to it, or of any registration of it in any register, in relation to any of the Patents or Design Rights;
- (iv) each Party shall return to the other (or destroy at the other's request) all Confidential Information disclosed to it by the other and all materials containing any Confidential Information in its possession or control (including, in the case of the Licensee, in the possession or control of its sub-licensees); and
- (v) upon the Trust's request, the Parties shall negotiate in good faith the terms of an agreement between them on reasonable commercial terms to enable the Trust to arrange for the further exploitation of the Licensed Technology and Licensed Products as they exist at the date of termination.

11.7 If the Parties are unable to agree the terms of an agreement as described in clause 11.6(v) they may initiate the procedure in clause 12.

11.8 The expiry or termination of this Agreement does not affect any rights or obligations of either Party which have arisen or accrued up to and including the date of expiry or termination including the right to payment under this Agreement.

11.9 Clauses 2.3(d), 2.5, 3, 4, 8, 9, 10, 11.5, 11.6, 11.7 11.9, 12 and 13 survive expiry or termination (for whatever reason).

12 Dispute resolution

- 12.1 The Parties agree that should any dispute arise between them in relation to this Agreement (other than under clause 6), they shall meet as soon as practicable and negotiate in good faith with a view to resolving the dispute.
- 12.2 If the Parties are unable to settle any dispute by negotiation within 28 days the Parties will attempt to settle it by mediation in accordance with the Centre for Effective Dispute Resolution (CEDR) Model Mediation Procedure.
- 12.3 To initiate mediation a party must give notice in writing to the other party, requesting mediation in accordance with this clause.
- 12.4 Nothing in this clause 12 shall restrict a Party seeking in any court of competent jurisdiction any interim or provisional relief that may be necessary to protect the rights or property of that Party.

13 General

- 13.1 Notwithstanding any other provision of this Agreement, no Party need act if it is impossible to act due to force majeure, meaning any cause beyond its control (including war, riot, natural disaster, labour dispute, or law taking effect after the date of this Agreement). A Party affected by force majeure agrees to notify the other Party promptly after it determines that it is unable to act.
- 13.2 A Party has no responsibility or liability for any loss or expense suffered or incurred by the other Party as a result of its not acting for so long as the force majeure under clause 13.1 continues. However, the non-performing Party agrees to make reasonable efforts to avoid or remove the circumstances giving rise to the force majeure and agrees to continue performance under this Agreement promptly when they are removed.
- 13.3 Save as provided by clause 13.4 and 13.5, no party may assign, transfer, charge or deal in any other manner with this Agreement nor purport to do so without the prior written consent of the other parties.
- 13.4 The Trust or HEE may assign any of its rights under this Agreement provided that the Trust's or HEE's assignee shall undertake to be bound by and perform the Trust's or HEE's obligations under this Agreement. The Trust or HEE shall notify the Licensee of any assignment under this Agreement.
- 13.5 The Licensee may assign its rights under this Agreement where the assignment is connected with the transfer of all or substantially all of the Licensee's assets to a single purchaser and provided such purchaser undertakes to the Trust to be bound by and perform the obligations of the Licensee under this Agreement and is capable of performing such obligations. The Licensee



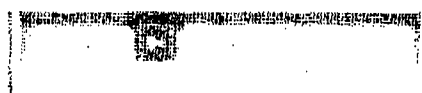
shall notify the Trust and HEE of any such assignment.

- 13.6 A provision of this Agreement or any right created under it cannot be waived or varied except in writing signed by the Parties.
- 13.7 If the whole or any part of a provision of this Agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this Agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this Agreement or is contrary to public policy.
- 13.8 Nothing contained or implied in this Agreement constitutes a Party the partner, agent, or legal representative of another Party or of the other Party for any purpose or creates any partnership, agency or trust, and no Party has any authority to bind the other Party in any way.
- 13.9 Any notice to be given under this Agreement shall be in writing and delivered by hand, prepaid registered post or facsimile to the other Party at the address or fax number set out below or to such other address or fax number as either Party may specify in writing to the other.

Notices to the Trust	Senior R&D Manager, Papworth Hospital NHS Foundation Trust of Papworth Hospital, Papworth Everard, Cambridge, Cambridgeshire, CB23 3RE Fax number: 01480 364550
Notices to HEE	Health Enterprise East, Papworth Hospital, Papworth Everard, Cambridge CB23 3RE. Fax number: 01480 364681
Notices to the Licensee	Simon Talbot, Director, P3 Medical Limited of 1 Newbridge Close, Bristol, BS4 4AX. Fax number: 01179 724863

Notices are deemed to have been given:

- (a) if delivered by hand, at the time of the delivery unless delivered after 5pm in the place of receipt or on a non-business day, in which case the notice is deemed to have been given at 9am the next business day;
- (b) if sent by registered post from within the United Kingdom, three business days after posting (or seven business days if posted from outside the United Kingdom); and
- (c) if sent by facsimile, at the time the facsimile is received shown in the



transmission report as the time that the whole facsimile was sent unless received after 5pm in the place of receipt or on a non-business day, in which case the notice is deemed to have been given at 9am the next business day.

- 13.10 Each Party agrees to execute, acknowledge and deliver such further instruments, and do all further similar acts, as may be necessary or appropriate to carry out the purposes and intent of this Agreement.
- 13.11 A Party may not make press or other announcements or releases relating to this Agreement or the transactions the subject of this Agreement without the approval of the other Party to the form and manner of the announcement or release unless and to the extent that the announcement or release:
- (a) is required to be made by the Party, by law or by a stock exchange; or
 - (b) is made in the annual report of the Trust or HEE.
- 13.12 This Agreement constitutes the entire agreement and understanding of the Parties and supersedes all negotiations, understandings or previous agreement between the Parties relating to the subject matter of this Agreement. Nothing in this Agreement, including this clause and clause 10, shall operate to limit or exclude liability for fraud or fraudulent misrepresentation.
- 13.13 Any Trust wholly owned subsidiary, the Inventors and the Principal Investigator may enforce those terms of this Agreement which expressly confer rights on them, subject to and in accordance with the Contracts (Rights of Third Parties) Act 1999. Save as aforesaid no term of this Agreement shall be enforceable under that Act by a person who is not a party to this Agreement, but this shall not affect any right or remedy of any third party which exists or is available other than under that Act. Notwithstanding that any term of this Agreement may be or become enforceable under that Act by a person which is not a party to it, this Agreement may be amended in any respect, or suspended, cancelled or terminated by agreement in writing between the Parties, in each case without the consent of such third party.
- 13.14 The Licensee shall not use and shall ensure that its sub-licensees do not use the name, any adaptation of the name, any logo, trademark or other device of the Trust or HEE, nor of the Inventors or Principal Investigator in any advertising, promotional or sales materials without prior written consent obtained from the Trust or HEE in each case, except that Licensee may state that it is licensed by the Trust to use the Licensed Technology and to make and supply the Licensed Products.
- 13.15 To the extent commercially feasible the Licensee shall mark and cause its sub-licensees to mark each Licensed Products with the number of each issued Patent and Design Right which applies to the Licensed Product.
- 13.16 This Agreement and any documents to be entered into pursuant to it shall be

governed by and construed in accordance with English law and each Party irrevocably submits to the exclusive jurisdiction of the courts of England over any claim or matter arising under or in connection with this Agreement and the documents entered into pursuant to it except that a Party may seek an interim injunction in any court of competent jurisdiction.

AGREED by the parties through their authorised signatories:

For and on behalf of

**PAPWORTH HOSPITAL NHS
FOUNDATION TRUST**

Alto Fort
signed

ALISTAIR GRANT
print name

SENIOR R+I) MANAGER
title

08.08.07

date

For and on behalf of

HEALTH ENTERPRISE EAST
LIMITED

signed

ANNE BLACKWOOD
print name

HEAD OF INNOVATION

7/9/77
date

For and on behalf of

P3 MEDICAL LIMITED

signed

SC TAU 207

print name

Dragon
title

8/8/07
date

Schedule 1**Invention(s)**

An anaesthetic apparatus, namely a modified double-lumen endotracheal tube, consisting of a main tube with two lumens and a bifurcated carina seating means which forks into the tracheal channels. Whereby, the seating means consists of two wings or arms comprising the distal ends of each of the tube lumens. The main tube also has a sealing means, such as an inflatable balloon, located in the distal region of the tube.

The Patent(s)

UK Patent Number: GB 2397229

Title: Apparatus for controlling fluid flow in a Y-shaped channel

Filing Date: 15th January 2003

Status: In Force

The Design Right(s)**Registered Designs:**

European Community Design Number: 000575071-0001

Filing Date: 8th August 2006.

Lacarno Classification: 24, 0

Design Right Applications:

US Design Patent Serial Number: 29/268,031

Title: Endotracheal Tube

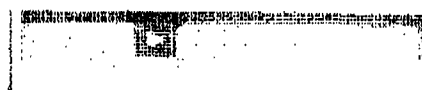
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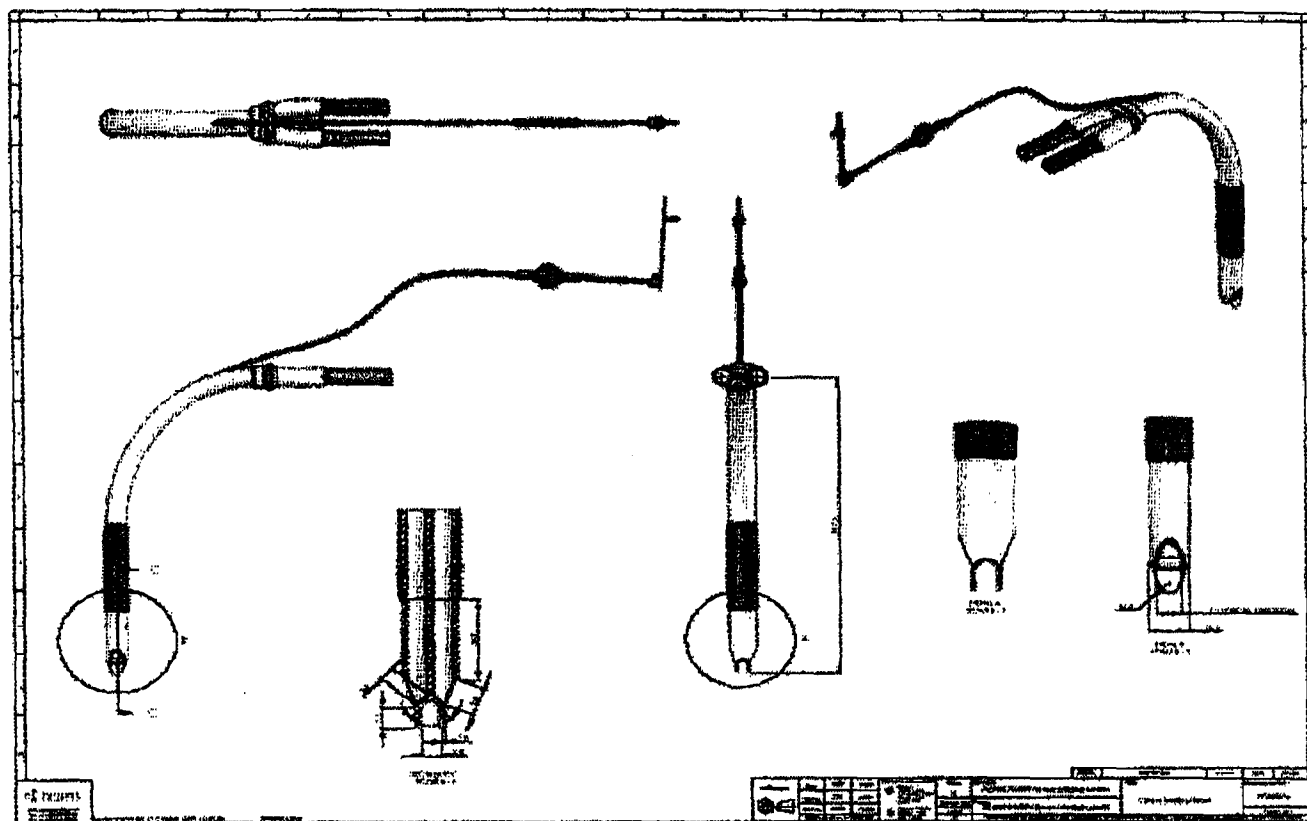
Priority Date: 8th August 2006

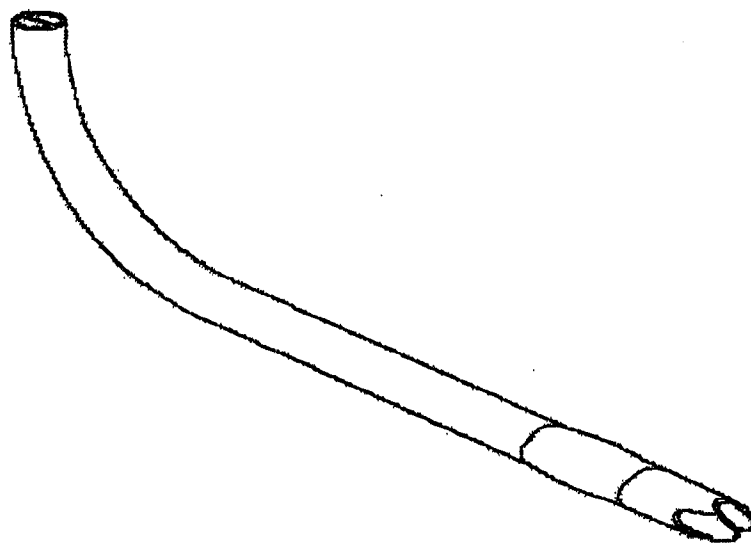
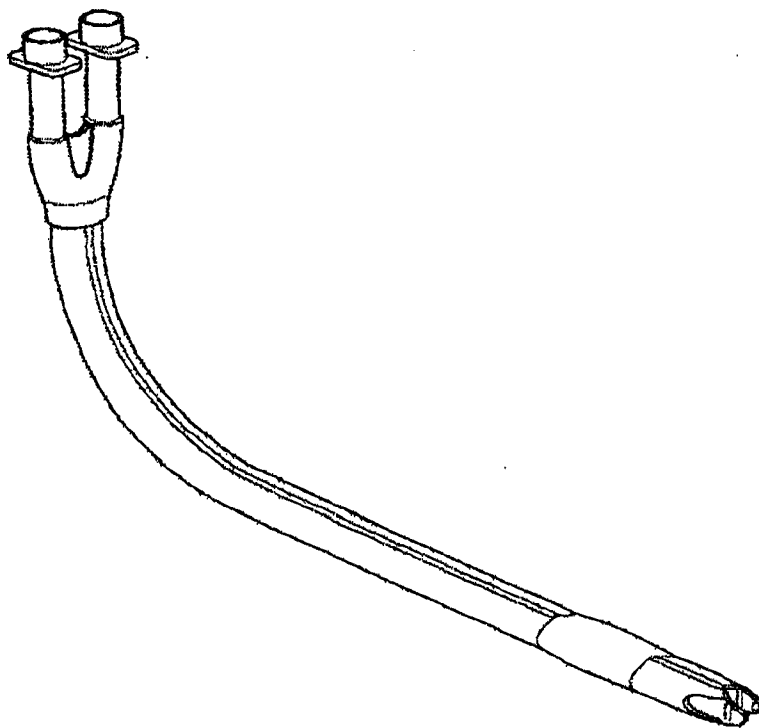
Japan Design Application Number: 2007-002930
Title: Endotracheal Tube
Filing Date: 8th February 2007
Priority Date: 8th August 2006

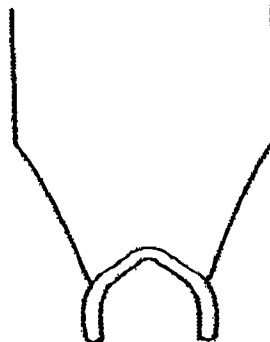
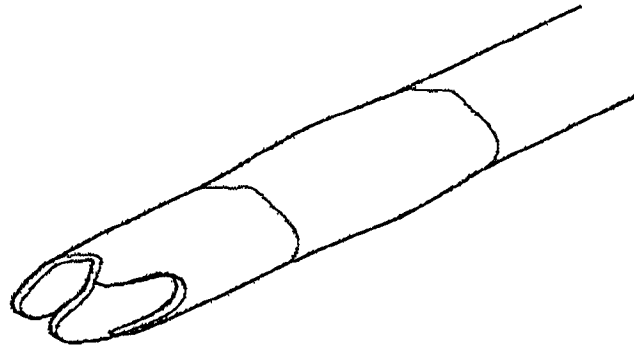
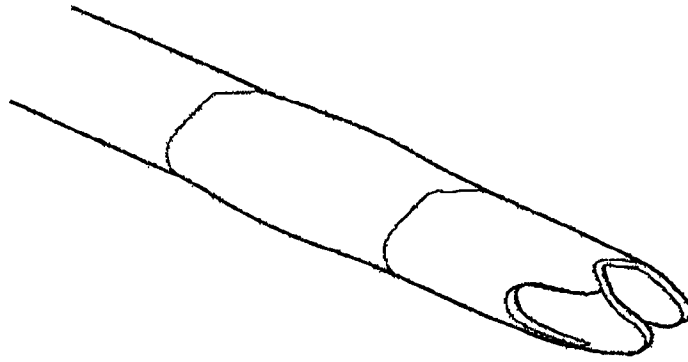
India Design Application Number: 208285
Title: Endotracheal Tube
Filing Date: 8th February 2007
Priority Date: 8th August 2006

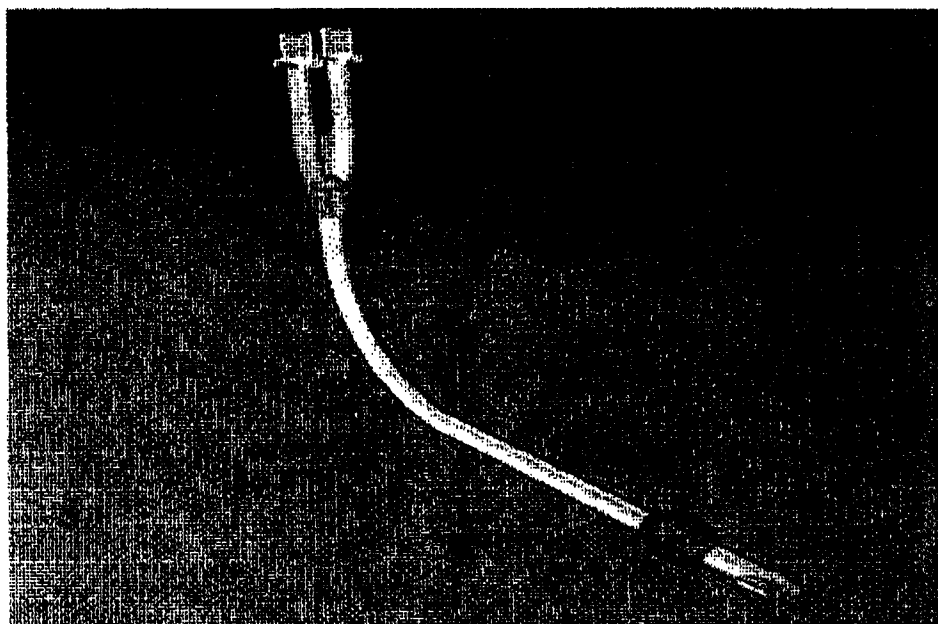
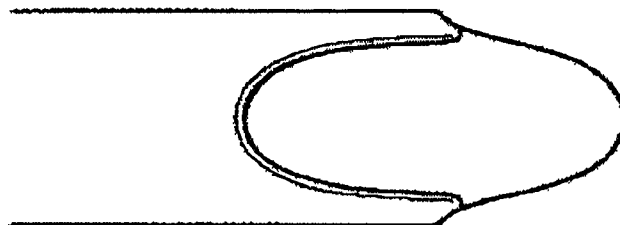
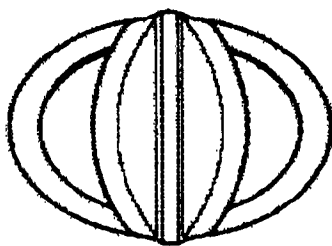
China Design Application Number: 200730004039.1
Title: Endotracheal Tube
Filing Date: 7th February 2007
Priority Date: 8th August 2006



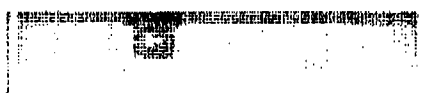
Schedule 2**The Design Document(s)****Design of the Endotracheal Tube:**

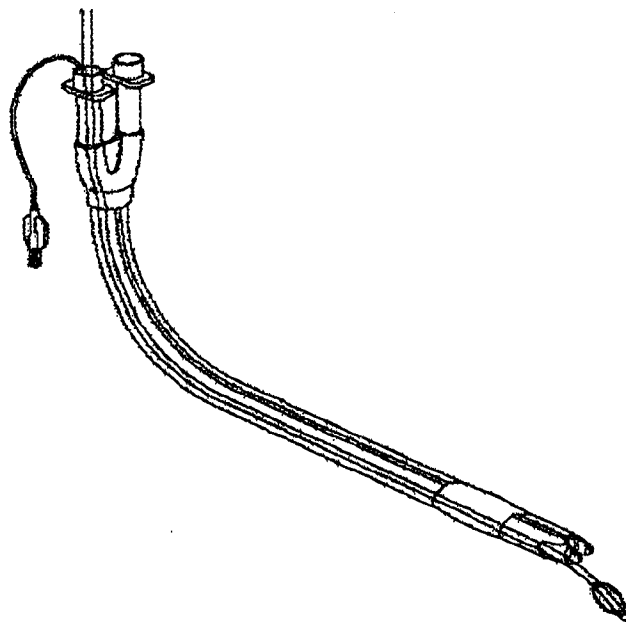
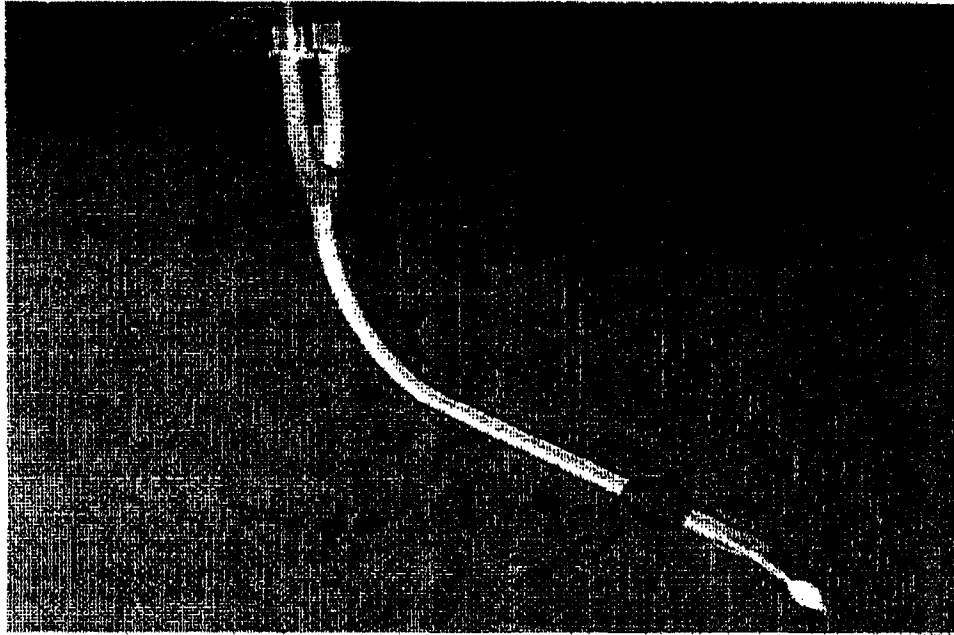






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Schedule 3
Appointment of Expert

- 1 Pursuant to clause 6.5, the Trust may serve notice on the Licensee ("Referral Notice") that it wishes to refer to an expert (the "Expert") the questions set out in clause 6.5 (a) and (b).
- 2 The parties shall agree the identity of a single independent, impartial expert to determine such questions. In the absence of such agreement within 30 days of the Referral Notice, the questions shall be referred to an expert appointed by the President of Law Society of England and Wales.
- 3 60 days after the giving of a Referral Notice, both parties shall exchange simultaneously statements of case in no more than 10,000 words, in total, and each side shall simultaneously send a copy of its statement of case to the Expert.
- 4 Each party may, within 30 days of the date of exchange of statement of case pursuant to paragraph 3 above, serve a reply to the other side's statement of case of not more than 10,000 words. A copy of any such reply shall be simultaneously sent to the Expert.
- 5 The Expert shall make his decision on the said questions on the basis of written statements and supporting documentation only and there shall be no oral hearing. The Expert shall issue his decision in writing within 30 days of the date of service of the last reply pursuant to paragraph 4 above or, in the absence of receipt of any replies, within 60 days of the date of exchange pursuant to paragraph 3 above.
- 6 The Expert's decision shall be final and binding on the parties.
- 7 The Expert's charges shall be borne equally by the parties.

Schedule 4
Part A: Financial Report Format

LICENCE DETAILS									
Only those parts of the form relevant to the payment being made need to be completed.									
Licensor Name: P3 Medical Limited				HEE Project Number: GH0-081-06					
Licensor Invoice Address: P3 Medical Limited of 1 Newbridge Close, Bristol, BS4 4AX.				Commencement Date: Monday 13 th August 2007					
Licensed Technology known as: Papworth BiVent Endotracheal Tube									
Payment Periods: 6 month periods ending on 31 st March and 30 th September									
Royalty Report for the 6 month period [] to []									
Licensor Royalties									
Products	Royalty Rate	Territory	No of products	*Net Sales Value		Total/£			
				Local currency	UK currency				
Sub-Licensor Royalties									
Products	Royalty Rate	Territory	No of products	*Net Sales Value		Total/£			
				Local currency	UK currency				
Grand Total (All Royalties due with this Royalty Report)									
Sub-Licence Income arising during the Payment Period (Clause 5.5)									
Date of Invoice	Date of Receipt	Payment Rate	Local Currency	Conversion Rate	UK currency total/£				
For sub-licence royalties or income: Copy sub-licence enclosed? YES / NO / ALREADY SENT									

Schedule 4
Part B: *Payment and Report Schedule*

Licensee Name:	P3 Medical Limited	HEE Case Number: GHO-081-06
Licensee Invoice Address:	P3 Medical Limited of 1 Newbridge Close, Bristol, BS4 4AX	
Licensed Technology known as:	Papworth BiVent Endotracheal Tube	Commencement Date: Monday 13 th August 2007
Payment Periods: 6 month periods ending on 31 st March and 30 th September		Term: From the Commencement Date until expiry
Due date for payment: within 30 days of the payment date specified in the right hand column below (Interest is payable if this period is exceeded.) Payments due between the end of the final Payment Period and termination or expiry of this Agreement shall be paid within 30 days of termination or expiry.		
Each payment shall be accompanied by a report (as in Part A above). Other types of reports are also required (see the right hand column below)		
Event	Payment and reports dates	
Up-front Fee - Reimbursement of Design Right costs	<i>Payment date</i> - the Commencement Date.	
Royalties including for sub-licensees	<i>Payment date</i> - last day of each Payment Period for invoices sent during the Payment Period. <i>Royalty Reports</i> are due annually prior to first sale of a Licensed Product. Subsequently reports to be submitted within 30 days of the end of each Payment Period (nil returns are required) along with any <i>Royalty</i> payment.	
Sub-Licence Income	<i>Payment date</i> - date of Licensee's invoice to sub-licensee or receipt of payment from sub-licensee, whichever is the earlier. <i>Report</i> the payment in next <i>Royalty</i> Report.	
Commercialisation	<i>Report</i> within 30 days of each anniversary of the Commencement Date.	
First sale of a Licensed Product	<i>Report</i> within 60 days of first sale.	