

04-29-2008



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To the Director of the U.S. Patent and Trademark Office

Documents or the new address(es) below.

**1. Name of conveying party(ies)**

Magnum Global Sales

**2. Name and address of receiving party(ies)**

Name: Hang 3, LLC

Internal Address:

Street Address: 13111 Rockhill Point

City: Cypress

State: TX

Country: USA Zip: 77429

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

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

**3. Nature of conveyance/Execution Date(s):**

Execution Date(s) 03/11/2008

☒ Assignment

☐ Merger

☐ Security Agreement

☐ Change of Name

☐ Joint Research Agreement

☐ Government Interest Assignment

☐ Executive Order 9424, Confirmatory License

☐ Other

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

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

A. Patent Application No.(s)

11/450176

B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

**5. Name and address to whom correspondence concerning document should be mailed:**

Name: John D. Gugliotta

Internal Address: Suite 275

Street Address: 4199 Kinross Lakes Parkway

City: Richfield

State: OH

Zip: 44286

Phone Number: 330-253-2225

Fax Number: 330-253-6658

Email Address: johng@inventorshelp.com

**6. Total number of applications and patents involved:** 10,000.08

**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 07-2380

Authorized User Name John D. Gugliotta

**9. Signature:**

Signature

John D. Gugliotta

Name of Person Signing

04/20/2008 BYRNE 04/25/2008 11450176  
Date

01 FC:8021  
Total number of pages including cover sheet, attachments, and documents:

40.00 12

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

# EXCLUSIVE PATENT ASSIGNMENT

THIS AGREEMENT, effective this 11th day, of March, 2008, is entered into by Magnum Global Sales, LLC, a Delaware limited liability company (hereinafter "ASSIGNOR") and Hang 3 LLC., a Texas Corporation (hereinafter "ASSIGNEE").

## **BACKGROUND**

WHEREAS, ASSIGNOR is the current assignee of record for and further designed and developed a series of products related to a Hanger as defined by U.S. Patent serial number 11450176. (hereinafter "INVENTION").

WHEREAS, ASSIGNOR is the owner of all right, title and interest in a United States Letter of Patents:

- (i) Patent Application 10/073714
- (ii) Serial Number 11450176
- (iii) Reel /Frame 019961/0412
- (iv) Any additional design changes, future improvements, and any new patent application submissions.

(Collectively, hereinafter "ASSIGNED PATENTS").

WHEREAS, ASSIGNOR desires to transfer to ASSIGNEE and ASSIGNEE desires to acquire from ASSIGNOR an exclusive assignment to manufacture and market the INVENTION covered by the patent rights in all other countries, territories and jurisdictions on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth herein, parties agree as follow:




## **SECTION 1. DEFINITIONS**

- 1.1. The term "ASSIGNED PRODUCT(S)" shall mean all products and devices that are employed or are produced by the practice of inventions which are claimed in a VALID CLAIM of the ASSIGNED PATENTS.
- 1.2. The term "NET SALES" shall mean the gross number of ASSIGNED PRODUCT(S) transferred for monies or equivalent consideration. NET SALES shall also include those transfers or monies or equivalent consideration to Affiliates.
- 1.3. The term "AFFILIATES" shall mean any entity, including any corporation, partnership, or joint venture which is controlled by Assignee or which is twenty-five percent (25%) or more owned by Assignee, or which is twenty-five percent (25%) or more owned by any entity which owns twenty-five percent (25%) or more of Assignee.
- 1.4. The term "SUBASSIGNEES" shall mean any third party which has been granted rights to the SUBJECT TECHNOLOGY or rights to make, have made, use or sell ASSIGNED PRODUCT(S) by Assignee.
- 1.5. The term "TERRITORY" shall mean the anywhere in the world.
- 1.6. The term "PATENT RIGHTS" shall mean the right under ASSIGNED PATENTS to make, use and sell ASSIGNED PRODUCT(S).
- 1.7. The term "INDEMNIFIED PARTIES" shall mean Assignor, its employee's officers, directors and agents and each of them.
- 1.8. The term "TERMINATION" includes any and all means of bringing this Agreement to an end, or any provisions thereof, prior to its expiration by its own terms, whether by release, discharge, abandonment, or otherwise.
- 1.9. The term "YEAR" shall mean a calendar year, unless otherwise specified.

## **SECTION 2. GRANT OF INVENTION AND PATENT RIGHTS**

In consideration for the up-front monies and royalty to be paid under Sections 4 and 5, ASSIGNOR grants to ASSIGNEE:



- (a) an exclusive, nontransferable assignment to manufacture and market the INVENTION in the United States; for the duration of the patent life or the life of this AGREEMENT, whichever is shorter.
- (b) an exclusive, nontransferable assignment to manufacture and market the INVENTION in all foreign countries; for the duration of the patent life or the life of this AGREEMENT, whichever is shorter; and
- (c) all technology, trade secrets and know-how related to the design and manufacture of the INVENTION, including all design plans, blueprints and any documentation or software related thereto.

### **SECTION 3. ASSIGNOR AND ASSIGNEE ACKNOWLEDGEMENTS**

The ASSIGNOR and ASSIGNEE each acknowledge and are aware that ASSIGNOR will be entering into an Addendum to the Hanger Asset Purchase Agreement with James D. Bonner and that ASSIGNEE will be entering into an agreement with James D. Bonner. ASSIGNOR and ASSIGNEE each represent that they consent to these terms and that any warranty or representation herein is subject to the Addendum and Agreement with James D. Bonner. ASSIGNEE also acknowledges and is aware that John D. Gugliotta has worked on the patent transfer of the Hanger.

The representations and warranties in section 9 are subject to the acknowledgements herein and ASSIGNEE is accepting this assignment "as is" accepting all risks, known or unknown.

### **SECTION 4. ASSIGNMENT FEE**

ASSIGNEE shall pay to ASSIGNOR a nonrefundable assignment fee of \$50,000.00 in United States funds. The assignment fee shall be paid in an amount of \$5,000.00 upon effectiveness of this agreement within 30 days, and the balance of \$45,000.00 due no later than December 1,



2008. Failure to make any such payments on the day due will result in the remedies for termination under Section 13.

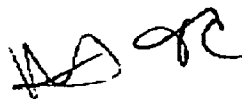
## **SECTION 5. ROYALTY**

ASSIGNEE shall pay ASSIGNOR a royalty payment on Net Sales of sold product. Said royalty payment shall be calculated based upon \$0.09 per each product for the duration of this agreement. ASSIGNEE warrants that although certain purchase orders for sales may exist at this time, no licensed product has been delivered to any purchasers. The royalty payment shall be paid on all net sales of the product including any and all purchase orders or sales which exist at the time of the execution of this agreement.

## **SECTION 6. TIMING OF ROYALTY PAYMENTS AND MINIMUM ROYALTY**

6.1. QUARTERLY PAYMENTS. Beginning with the first Net Sale of Assigned product ASSIGNEE shall pay ASSIGNOR a royalty for each quarter of each year during which this Agreement is in effect. ASSIGNEE shall pay ASSIGNOR quarterly, four times per year, on or before the 30<sup>th</sup> day after January 1, April 1, July 1, and October 1 of each year during which this Agreement is in effect.

6.2 MINIMUM ROYALTY. No minimum royalties are required for the first eighteen (18) months of this agreement. Thereafter, a minimum of \$50,000.00 in total Royalties are to be paid for each 12 month period thereof of this agreement. If such minimums are not achieved, the sole remedy under this agreement will be the cancellation of any exclusivity to ASSIGNEE. If these minimum Royalties are not met for two consecutive years, then ASSIGNOR shall have the option to terminate this agreement under Section 13.



## **SECTION 7. REPORTS AND RECORDS**

7.1. ASSIGNEE shall provide a quarterly report to ASSIGNOR showing the number of units manufactured and shipped during each quarter beginning the first quarter after the execution of this agreement.

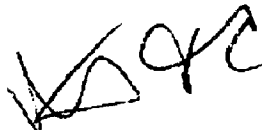
7.2. RECORDS. ASSIGNEE shall keep records of the Hanger Sales and number of units manufactured and sold pursuant to this Agreement in sufficient detail to enable the royalty payment to ASSIGNOR to be determined.

7.3. ANNUAL INSPECTION. ASSIGNEE shall allow ASSIGNOR's representative, one annual inspection, during regular business hours or at such other times as may be mutually agreeable, to inspect ASSIGNEE's books and records to the extent reasonably necessary to determine ASSIGNEE's compliance with the terms of this Agreement.

## **SECTION 8. OBLIGATIONS OF ASSIGNOR**

The ASSIGNOR agrees with the ASSIGNEE to execute such documents and give such assistance as the ASSIGNEE may reasonably require:

- (a) to defeat any challenge to the validity of, and resolve any questions concerning the Patent Rights;
- (b) to apply for and obtain patents or similar protection for the INVENTION in other parts of the world at the ASSIGNEE's expense;
- (c) to do all that is necessary to vest such protection in the ASSIGNEE;



(d) to inform the ASSIGNEE of all technical information concerning the INVENTION;  
and

(e) to supply the ASSIGNEE with any documents or drawings relevant to the  
INVENTION.

## **SECTION 9. REPRESENTATIONS AND WARRANTIES OF ASSIGNOR**

9.1. As of the date hereof and as of the Closing date, ASSIGNOR represents and warrants to  
ASSIGNEE as follows:

- (a) ASSIGNOR is the sole and exclusive owner of the INVENTION and the Patent  
Rights through a purchase from the Inventor.
- (b) The ASSIGNOR has not granted any assignments to use the INVENTION to any  
other parties;
- (c) ASSIGNOR has the right and power to enter into this Agreement, and has made no  
prior transfer, sale or assignment of any part of the INVENTION, patent rights  
pertaining to the INVENTION or the Patent Rights;
- (d) ASSIGNOR is not aware of any parties infringing on the patent rights transferred  
hereunder;
- (e) The INVENTION was not procured by the use of confidential information, trade  
secrets, or in other respects in violation of law, and there is no action, order or  
proceeding, to the ASSIGNOR's knowledge, alleging any of the foregoing.

9.2. Each of the warranties and representations set forth above are true on and as of the date of  
Closing, as though such warranty and representation was made as of such time. ASSIGNOR  
shall indemnify ASSIGNEE should any breach of section 9.1 be subsequently found.



## **SECTION 10. ASSIGNEE'S OBLIGATIONS**

- 10.1. **INDEMNIFICATION.** The ASSIGNEE agrees to hold harmless, defend and indemnify (including the payment of reasonable attorney fees) the ASSIGNOR and its employees, members, owners and their heirs, successors, assigns and legal representatives from liability incurred or claimed by persons who are injured or claimed to be injured as a consequence of conduct of ASSIGNEE, or from the operation of ASSIGNEE'S business and the use of the INVENTION, or as a consequence of any defects in the INVENTION.
- 10.2. **QUARTERLY ROYALTY.** The ASSIGNEE agrees to pay the above stated quarterly royalty without demand.
- 10.3. **REASONABLE EFFORTS.** The ASSIGNEE agrees to utilize all reasonable efforts to manufacture and market the INVENTION.
- 10.4. **REPORTS.** The ASSIGNEE agrees to provide a report at the end of each quarter without demand.
- 10.5. **PROFESSIONALISM.** The ASSIGNEE agrees to the extent reasonably possible, have all manufacturing, shipping, and sales performed in a professional and equitable manner.
- 10.6. **LIABILITY INSURANCE.** The ASSIGNEE agrees to maintain liability insurance to cover the INVENTION in an amount greater than or equal to \$1,000,000.
- 10.7. **TRADE SECRETS.** The ASSIGNEE agrees to take all reasonable steps to maintain the confidentiality of all trade secrets provided by the ASSIGNOR to the ASSIGNEE during and after this Agreement.

*[Handwritten signature]*

## **SECTION 11. CONDITIONS TO CLOSING**

ASSIGNEE's obligation to pay the up-front monies and the royalty shall be subject to the satisfaction on or before the Closing of the following conditions, any one or more which may be waived by ASSIGNEE:

- (a) The warranties and representations made by the ASSIGNOR in this Agreement shall be true and correct in all material respects on the Closing date as if such warranties and representations had been given as of the Closing date.
- (b) ASSIGNOR shall have delivered to ASSIGNEE such instruments of transfer as may be reasonably requested by ASSIGNEE to consummate the transactions contemplated hereby.


## **SECTION 12. MARKING OF INVENTION**

ASSIGNEE agrees to affix patent pending and patent notices to all INVENTIONS prior to their sale in accordance with 35 U.S.C. §282. Each device shall have either the words "PATENT PENDING" or "Patent No." followed by the patent number conspicuously marked on each of the goods sold under the Patent Rights subject to the reasonable approval of the ASSIGNOR.

## **SECTION 13. DURATION AND TERMINATION**

13.1. This Agreement shall remain in full force and effect unless and until termination or cancellation as hereinafter provided.

13.2.1. If ASSIGNEE shall at any time default in rendering any of the statements, reports or records required hereunder, and payment of any monies due hereunder, or in fulfilling any of the other material obligations hereof, and such default is not cured within thirty (30) days



after written notice is given by the ASSIGNOR to ASSIGNEE, ASSIGNOR shall have the right to terminate this Agreement by giving written notice of termination to ASSIGNEE. ASSIGNEE shall have the right to cure any such default up to, but not after the written notice of termination. Upon Default by ASSIGNEE, this agreement shall terminate and ASSIGNOR shall have the right to accelerate payment of all monies due under this agreement. Further, ASSIGNOR shall have the right of replevin and return of all assigned patents, technology, trade secrets, know-how related to the design and manufacture of the INVENTION.

13.2.2 In addition to the rights under 13.2.1 above, should ASSIGNEE default on obligations of Section 4 above, ASSIGNOR shall have the further right of replevin to ASSIGNOR including the forfeiting of any tooling, molding or inventory associated with the INVENTION. This remedy is only available for breaches in section 4 of this Agreement.

13.2.3 ASSIGNEE shall be responsible for reasonable attorney fees and costs incurred by ASSIGNOR in enforcing its rights under this agreement.

13.3. ASSIGNOR shall have the right to terminate this Agreement by giving written notice of termination to ASSIGNEE in the event of any of the following:

- (a) Liquidation of ASSIGNEE;
- (b) Insolvency or bankruptcy of ASSIGNEE, whether voluntary or involuntary; or
- (c) Appointment of a Trustee or Receiver for ASSIGNEE.

#### **SECTION 14. MAINTENANCE FEES AND INFRINGEMENT COSTS**

14.1. MAINTENANCE FEES. ASSIGNEE shall be responsible for paying all maintenance fees for the Patent Rights until they expire.



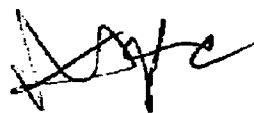
14.2. **DEFENDING AGAINST INFRINGEMENT.** ASSIGNEE shall be responsible for all expenses, including but not limited to legal fees, associated with protecting against an infringement, and has the right to bring action involving the INVENTION. ASSIGNEE also agrees to vigorously defend at its own expense any invalidity actions brought against the Patent Rights.

14.3. **BRINGING AN INFRINGEMENT LAWSUIT.** ASSIGNEE shall also be responsible for all expenses, including but not limited to legal fees, associated with bringing an infringement action involving the Patent Rights. ASSIGNEE agrees to initiate and vigorously prosecute proceedings to the termination of any infringements on the Patent Rights.

14.4. **NOTIFICATION.** ASSIGNEE and ASSIGNOR both agree to notify each other of any legal action involving the Patent Rights or the INVENTION.

## **SECTION 15. CONFIDENTIALITY**

Assignee acknowledges that all of the information communicated to Assignee by Assignor to enable the manufacture of ASSIGNED PRODUCT(S) in the TERRITORY shall be deemed to be secret and confidential in character and, as between the parties, will be considered to be the exclusive property of Assignor. Such information is provided to Assignee solely to enable Assignee to perform its obligations hereunder and it is not to be made available to third parties, except to the extent that may be absolutely necessary to achieve the purposes of this Agreement. Assignee further agrees to take all possible measures to prevent its employees or agents from divulging such information in a manner that may be contrary to the interest of either party. Assignee agrees to maintain the SUBJECT TECHNOLOGY in confidence and to use the same only in accordance with this Assignment Agreement. Confidentiality extends to information transferred initially and from time to time.



#### **SECTION 16. BINDING ARBITRATION**

Any controversy or claim arising out of or relating to this contract, or the breach thereof, between the ASSIGNOR and the ASSIGNEE shall be settled by binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association in a convenient location in Delaware. The judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

#### **SECTION 17. GOVERNING LAW**

This Agreement shall be governed in accordance with the substantive laws of the State of Delaware of the United States of America.

#### **SECTION 18. SEVERABILITY**

- 18.1. The parties agree that if any part, term, or provision of this Agreement shall be found illegal or in conflict with any valid controlling law, the validity of the remaining provisions shall not be affected thereby.
- 18.2. In the event the legality of any provision of this Agreement is brought into question because of a decision by a court of competent jurisdiction, ASSIGNOR, by written notice to ASSIGNEE, may revise the provision in question or delete it entirely so as to comply with the decision of said court.

#### **SECTION 19. NOTICES UNDER THE AGREEMENT**

For the purposes of all written communications and notices between the parties, their addresses shall be:


Handwritten signature and initials in black ink.

conditions, either oral or written, between them other than herein set forth. No subsequent alteration, amendment, change or addition to this Agreement shall be binding upon either party unless reduced in writing and signed by them.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers on the respective dates hereinafter set forth.

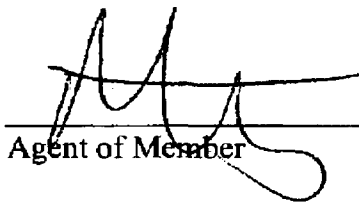
Witnesses:

Magnum Global Sales, LLC, ASSIGNOR, by:



By:

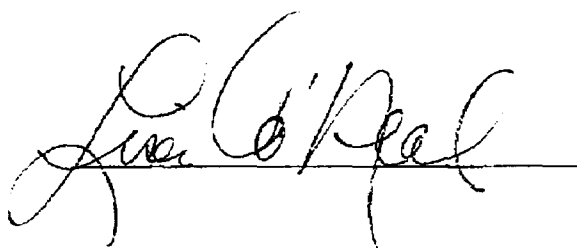
Agent of Member



Date

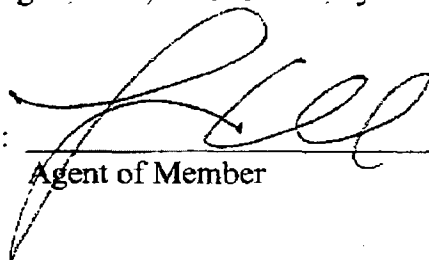
3/28/2008

Hang 3, LLC, ASSIGNEE, by:



By:

Agent of Member



Date

3/21/08