

PATENT ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	LICENSE
CONVEYING PARTY DATA	
Name	Execution Date
Michigan State University	06/28/2000
RECEIVING PARTY DATA	
Name:	Hyland Seeds, division of W.G. Thompson & Sons, Ltd.
Street Address:	2 Hyland Drive
City:	Blenheim, Ontario
State/Country:	CANADA
Postal Code:	N0P 1A0
PROPERTY NUMBERS Total: 1	
Property Type	Number
Patent Number:	7256325
CORRESPONDENCE DATA	
Fax Number:	(919)416-8384
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	9192868000
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Correspondent Name:	Michael G. Johnston - Moore & Van Allen
Address Line 1:	430 Davis Drive
Address Line 2:	Suite 500
Address Line 4:	Morrisville, NORTH CAROLINA 27707
ATTORNEY DOCKET NUMBER:	012861-000066
NAME OF SUBMITTER:	Michael G. Johnston
Total Attachments: 14 source=066_Thompson_UMich_license#page1.tif source=066_Thompson_UMich_license#page2.tif source=066_Thompson_UMich_license#page3.tif source=066_Thompson_UMich_license#page4.tif	

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EXCLUSIVE LICENSE AGREEMENT

THIS AGREEMENT is made and entered into on July 3rd, 2000, between Michigan State University, a public institution of higher education of the State of Michigan (hereinafter called "Licensor"), having its principal office at East Lansing, Michigan 48824, and Hyland Seeds, division of W.G. Thompson & Sons Ltd., a for-profit corporation organized under the laws of Canada (hereinafter called "Licensee"), having its principal office at 2 Hyland Drive, Blenheim, Ontario, Canada N0P 1A0.

WITNESSETH THAT:

WHEREAS, Licensor has the right to grant licenses under the Licensed Patent Rights (as hereinafter defined), and

WHEREAS, Licensee wishes to obtain a license under the Licensed Patent Rights upon the terms and conditions hereinafter set forth:

NOW, THEREFORE, in consideration of the premises and the faithful performance of the covenants herein contained it is agreed as follows:

ARTICLE I - Definitions

For the purpose of this Agreement, the following definitions shall apply:

1. "Licensed Patent Rights" means:

(a) Ideas, concepts, trade secrets, techniques, methodologies and modifications contained within and relating to the subject matter of Licensor Invention Disclosure 96-003 titled: *"Low-voltage plant transformation"*. (Inventors: *R. Allison et. al.*) and U.S. Patent application Serial No. 09/206,852, jointly December 8th, 1998 by Licensor.

(b) Any and all Improvements, innovations, discoveries, inventions and modifications developed individually/jointly by Licensor and Licensee, whether patentable or not, relating solely to the Licensed Patent Rights.

(c) Any and all patents which may issue on patent applications to be filed on Licensed Patent Rights and Improvements thereof developed individually/jointly by Licensor and Licensee and any and all divisions, substitutions, confirmations, registrations, revalidations, additions, continuations, continuations-in-part, reissues or divisions of, or to any of the foregoing, and extensions or other government acts effectively extending the period of exclusivity of the holder of such patents or applications, and including all United States and foreign counterpart applications and patents.

2. "Product(s)" means:

Any materials, compositions, techniques, devices, methods or inventions relating to or based on the Licensed Patent Rights, developed as of the date of this Agreement or in the future.

3. "Net Sales" means:

(a) Gross sales, FOB Place of Manufacture of Products, less sales and/or use taxes, third party commissions, discounts, customs duties, and shipping.

(b) Commercial use by sublicensees of the Licensed Patent Rights or Products that produce service income shall also be regarded as part of Net Sales.

4. "Improvement(s)" means:

Any and all innovations, discoveries, modifications and inventions developed individually/jointly by Licensor and Licensee, whether patentable or not, relating to the subject matter of the Licensed Patent Rights.

ARTICLE II - Grant of Exclusive License

Licensor hereby grants to Licensee the exclusive worldwide license with the right to sublicense others, to make, have made, use, sell and lease the Products described in and developed through the Licensed Patent Rights. Licensor and Licensee retain the right to continue to use Licensed Patent Rights in any way for non-commercial purposes.

ARTICLE III - License Payments**1. Initial Payment and Royalty Rate** For the license herein granted:

(a) Licensee agrees to pay a sign-up fee of Twenty Five Thousand US Dollars (US\$25000), which shall be due within 30 days upon execution of this Agreement. Licensee has already paid Ten Thousand US Dollars (US\$10000) to Licensors as part of the sign-up fee and therefore only the remaining Fifteen Thousand US Dollars (US\$15000) is due to Licensors within the thirty day period after execution of this Agreement.

(b) Licensee shall also pay Licensors an earned royalty of one percent (1%) of Licensee's Net Sales of its Products.

2. **Sublicenses**. The granting and terms of all sublicenses is at the mutual discretion of Licensors and Licensee. Each party shall nominate two (2) individuals to form a sub-license review committee, who will then consider the granting of sub-licenses to 3rd parties on a case by case basis. Licensors will be represented by Dr. Richard Allison, as well as a representative from Licensors' Office of Intellectual Property or their appropriate designees. Licensee representatives will be the General Manager and the Director of Research, or their appropriate designees. Subsequent 3rd party sub-licenses will be negotiated by either Licensors and Licensee and in no case shall any sub-license be completed without either Licensors and Licensee both fully agreeing to the terms of such a 3rd party sub-license. The distribution of royalties between Licensors and Licensee from any such future sub-license will also be decided on a case by case basis in good faith negotiations between Licensors and Licensee and will take into account the role that each party played in securing the relevant sub-license.

3. **When a Sale is Made**. A sale of Licensed Patent Rights by Licensee shall be regarded as being made upon payment for Products made using Licensed Patent Rights. Royalties paid to Licensors by Licensee where there is a return or non-acceptance by the customer and for which a refund is given to the customer may be credited in an appropriate amount against future royalties payable hereunder.

4. Payments in U.S. All sums payable by Licensee hereunder shall be paid to Licensors in the United States and in the currency of the United States.

5. Interest. In the event any royalties are not paid as specified herein, then a compound interest of ten percent (10%) per annum shall be due in addition to the royalties accrued for the period of default.

ARTICLE IV - Reports, Books and Records

1. Reports. Licensee shall make a written report to Licensors, by September 30th of each calendar year for the duration of this Agreement, setting forth the total Net Sales of Licensed Patent Rights and Products sold, leased or used by Licensee during the annual period. If there are no Net Sales of Licensed Patent Rights or Products, a statement to that effect shall be made by Licensee to Licensors. At the time each report is made, Licensee shall pay to Licensors the royalties or other payments shown by such report to be payable hereunder. The payment and reporting of any and all sublicensing receipts between Licensors and Licensee will be dealt with in each specific sublicense agreement.

2. Books and Records. Licensors and Licensee shall keep Books and Records in such reasonable detail as will permit the Reports provided for in Paragraph 1 of this Article IV to be made and the royalties payable by each party hereunder to be determined. Both parties further agree to permit such Books and Records to be inspected and audited from time to time (but not more often than once annually) during reasonable business hours by a representative or representatives (including independent accountants or other consultants) to the extent necessary to verify the Reports provided for in Paragraph 1 of this Article IV; provided, however, that such representative or representatives shall indicate to the relevant party only whether the Reports and Royalty paid are correct and if not, the reasons why not.

ARTICLE V - Marking

Licensee agrees to mark or have marked all Products made, sold, used or leased by it or its sublicensees under the Licensed Patent Rights, if and to the extent such markings shall be practical, with such patent markings as shall be desirable or required by applicable patent laws.

ARTICLE VI - Diligence

1. Licensee shall use its most reasonable efforts to bring Licensed Patent Rights to market by December 31st, 2010, through a thorough, vigorous and diligent program and to continue active, diligent marketing efforts throughout the life of this Agreement.

2. In addition, Licensee shall adhere to the following milestones:

(a): Licensee shall deliver to Licensor on or before August 31st, 2001, a business plan (no more than 3 pages) for the development of Licensed Patent Rights, which includes, time budgeted and planned for each phase of development and other items as appropriate for the development of Licensed Patent Rights.

(b): Licensee shall permit an in-house inspection of Licensee's facilities by Licensor on an annual basis beginning May 1st, 2001.

3. Licensee agrees to meet Licensor at least twice a year to discuss the commercialization efforts for the Licensed Patent Rights and each such meeting shall occur in a mutually agreed upon time and place between Licensee and Licensor.

4. Licensee's failure to perform in accordance with either Paragraphs 1. or 2. of this ARTICLE VI may provide grounds for Licensor to terminate this Agreement. Any termination by Licensor of this Agreement will abide by the protocol described in Article VIII 2 (a) 2.

ARTICLE VII - Irrevocable Judgment With Respect to Validity of Patents

If a judgment or decree shall be entered in any proceeding in which the validity or infringement of any claim of any patent under which the license is granted hereunder shall be in issue, which judgment or decree shall become not further reviewable through the exhaustion of all permissible applications for rehearing or review by a superior tribunal, or through the expiration of the time permitted for such application, (such a judgment or decree being hereinafter referred to as an "Irrevocable Judgment"), the construction placed on any such claim by such Irrevocable Judgment shall thereafter be followed not only as to such claim, but also as to all claims to which such construction applies, with respect to acts occurring thereafter and if an Irrevocable Judgment shall hold any claim invalid, Licensee shall be relieved thereafter from including in its reports hereunder that portion of the royalties due under ARTICLE III payable only because of such claim or any broader claim to which such Irrevocable Judgment shall be applicable, and from the performance of any other acts required by this Agreement only because of any such claims.

ARTICLE VIII - Termination or Conversion to Non-Exclusive License**1. Termination by Licensee.**

(a) Option of Licensee to Terminate. Licensee may terminate the license granted by this Agreement, provided Licensee shall not be in default hereunder, by giving Licensor ninety (90) days notice of its intention to do so. If such notice shall be given, then upon the expiration of such ninety (90) days the termination shall become effective; but such termination shall not operate to relieve Licensee from its obligation to pay Royalties or to satisfy any other obligations, accrued hereunder prior to the date of such termination.

(b) Option of Licensee to Convert to Non-Exclusive License. Licensee shall have the right to convert this license to a non-exclusive license at the same royalty rate as for the exclusive license. Upon termination of this Agreement, all of the Licensed Patent Rights shall be returned to the assignees of the Licensed Patent Rights. In the event of

termination of the Agreement by Licensee or said conversion of the Agreement by Licensee, Licensee shall grant to Licensors a non-exclusive, royalty-free license, with right to sublicense, to manufacture, use and sell improvements including all know-how to Licensed Patent Rights made by Licensee during the period of this Agreement prior to the termination or conversion, to the extent that such improvements are dominated by or derived from the Licensed Patent Rights.

2. Termination by Licensors.

(a) Default by Licensee. Licensors may, at its option, terminate this Agreement by written notice to Licensee, if Licensee shall default in:

- (1) The payment of any Royalties required to be paid by Licensee to Licensors hereunder or in the making of any reports required hereunder and such default shall continue for a period of sixty (60) days after Licensors shall have given to Licensee a written notice of such default; or
- (2) The performance of any other material obligation contained in this Agreement on the part of Licensee to be performed and such default shall continue for a period of sixty (60) days after Licensors shall have given to Licensee written notice of such default.

(b) Bankruptcy, etc. Licensors shall have the right, by written notice to Licensee, to terminate this Agreement at any time upon or after;

- (1) An adjudication that Licensee is bankrupt or insolvent;
- (2) The filing by Licensee of a Petition of Bankruptcy, or a Petition or Answer seeking reorganization, readjustment or rearrangement of its business or affairs under any law or governmental regulation relating to bankruptcy or insolvency;
- (3) The appointment of a receiver of the business or for all or substantially all of the property of Licensee;
- (4) The making by Licensee of an assignment or an attempted assignment for the benefit of its creditors; or

(5) The institution by Licensee of any proceedings for the liquidation or winding up of its business or affairs.

(c) Effect of Termination. Termination of this Agreement shall not in any way operate to impair or destroy any of Licensee's or Licensor's rights or remedies, either at law or in equity, or to relieve Licensor and Licensee of any of their obligations to pay Royalties on Product sales or sub-licensee receipts, or to comply with any other of the obligations hereunder, accrued prior to the effective date of termination.

(d) Effect of Delay, etc. Failure or delay by Licensor to exercise its rights of termination hereunder by reason of any default by Licensee in carrying out any obligation imposed upon it by this Agreement shall not operate to prejudice Licensor's right of termination for any other subsequent default by Licensee.

ARTICLE IX - Term

Unless previously terminated as herein before provided, the term of this Agreement shall be from and after the date hereof until the expiration of the last to expire of the licensed issued patents or patents to issue under the Licensed Patent Rights under ARTICLE I. Licensee shall not be required to pay royalties due only by reason of its use, sale, licensing, lease or sublicensing under issued patents licensed by this Agreement that have expired or been held to be invalid by an Irrevocable Judgment, where there are no other of such issued patents valid and unexpired covering the Licensee's use, sale, licensing, lease or sublicensing; provided, however, that such non-payment of royalties shall not extend to royalty payments already made to Licensor more than six (6) months prior to Licensee's discovery of expiration or an Irrevocable Judgment.

ARTICLE X - Patent Litigation

1. Initiation. In the event that Licensor advises Licensee in writing of a substantial infringement of the patents included in the Licensed Patent Rights, Licensee may, but is not obligated to, bring suit or suits through attorneys of Licensee's selection with respect to such infringement. In the event Licensee fails to defend any declaratory judgment action brought against any patent or patents of the Licensed Patent Rights, Licensor on written notice to Licensee may terminate the license as to the particular patent or patents involved in such declaratory judgment action.

2. Expenses and Proceeds of Litigation. Where a suit or suits have been brought by Licensee, Licensee shall maintain the litigation at its own expense and shall keep any judgments and awards arising from these suits excepting that portion of the judgments attributable to Royalties from the infringer shall be divided equally between Licensor and Licensee after deducting any and all expenses of such suits; provided, however, Licensor shall not be entitled to receive more under this provision than it would have received if the infringer had been licensed by Licensee.

3. Licensor's Right to Sue. If Licensee shall fail to commence suit on an infringement hereunder within one (1) year after receipt of Licensor's written request to do so, Licensor in protection of its reversionary rights shall have the right to bring and prosecute such suits at its cost and expense through attorneys of its selection, in its own name, and all sums received or recovered by Licensor in or by reason of such suits shall be retained by Licensor; provided, however, no more than one lawsuit at a time shall commence in any such country.

ARTICLE XI - Patent Filings and Prosecuting

1. Licensee shall pay future costs of the prosecution of the patent application presently pending in the United States Patent and Trademark Office as set forth in ARTICLE I, which are reasonably necessary to obtain a patent. Furthermore, Licensee will pay for the

costs of filing, prosecuting and maintaining foreign counterpart applications to such pending U.S. Patent Applications, such foreign applications to be filed within ten (10) months after the filing date of the corresponding U.S. Patent Application.

2. Improvements on Licensed Patent Rights shall be owned by Licensor and Licensee. Licensee shall pay future costs of preparation, filing, prosecuting and maintenance of patents and applications on patentable improvements made by the inventors, however, in the event that Licensee refuses to file patent applications on such patentable improvements in the U.S. and selected foreign countries when requested by Licensor, the rights to such patentable improvements for said countries shall be returned to Licensor.

3. The patent preparation, prosecution and maintenance of patent applications and patents undertaken at Licensee's cost shall be performed by patent attorneys agreed to by Licensee and Licensor; and due diligence and care shall be used in preparing, filing, prosecuting, and maintaining such applications on patentable subject matter. Both parties shall review and approve any and all patent related documents.

4. Licensee shall have the right to, on thirty (30) days written notice to Licensor, discontinue payment of its share of the prosecution and/or maintenance costs of any of said patents and/or patent applications. Upon receipt of such written notice, Licensor shall have the right to continue such prosecution and/or maintenance in its own name at its own expense in which event the license shall be automatically terminated as to the subject matter claimed in said patents and/or applications.

5. Notwithstanding Paragraph 4. of this ARTICLE XI, Licensee's obligations under such paragraphs shall continue only so long as Licensee continues to have an exclusive license under the Licensed Patent Rights and, in the event of conversion of the license to non-exclusive in accordance with ARTICLE VIII, Paragraph 1., after the date of such conversion:

(a): The costs of such thereafter preparation, filing, prosecuting and maintaining of said licensed patents and patent applications shall be the responsibility of Licensor, provided

such payments are at the sole discretion of the Licensor;

ARTICLE XII - Notices, Assignees

1. Notices. Notices and payments required hereunder shall be deemed properly given if duly sent by United States First Class Mail and addressed to the parties at the addresses set forth below. The parties hereto will keep each other advised of address changes.

For Licensor:

Office of Intellectual Property,
Attn: Dr. Colm Lawler,
238 Administration Building,
Michigan State University,
East Lansing, MI 48824,
USA.

For Licensee:

Mr. Henry Olechowski,
Hyland Seeds-WG Thompson & Sons Ltd.
2 Hyland Drive,
Blenheim,
Ontario,
Canada N0P 1A0

2. Assignees, etc. This Agreement may not be assigned without the prior written consent of all Parties.

ARTICLE XIII – Miscellaneous

1. Law of Michigan Governs. This Agreement is executed and delivered in Michigan and shall be construed in accordance with the laws of that State.
2. No Other Understanding. This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter thereof and merges all prior discussions between them.
3. No Representations or Warranties Regarding Patents of Third Parties. No

representation or warranty is made by Licensor that the Licensed Patent Rights manufactured, used, sold or leased under the Exclusive License granted herein is or will be free of claims of infringement of patent rights of any other person or persons. The Licensor warrants that it has title to the Licensed Patent Rights from the inventors.

4. Indemnity. Licensee shall indemnify, hold harmless, and defend Licensor and its trustees, officers, employees, students and agents against any and all allegations and actions for death, illness, personal injury, property damage, and improper business practices arising out of the use of the Licensed Patent Rights.

5. Insurance. During the term of this Agreement, Licensee shall maintain the following insurance coverage:

(a) Commercial General Liability with a limit of no less than One Million Dollars (\$1,000,000.00) each occurrence. Such insurance shall be written on a standard ISO occurrence form or substitute form providing equivalent coverage.

(b) Workers' Compensation consistent with statutory requirements. Such insurance shall be carried with companies rated A or better by A.M. Best. Certificates of Insurance shall be provided to Licensor upon request and shall include the provision for 30-day notification to the certificate holder of any cancellation or material alteration in the coverage.

6. Headings, etc. The titles or headings of articles, sections or paragraphs set forth in this Agreement have been inserted merely to facilitate reference and shall have no bearing upon the interpretation of any of the provisions of this Agreement.

7. Advertising. Licensee agrees that Licensee may not use in any way the name of Licensor or any logotypes or symbols associated with Licensor or the names of any researchers without the express written permission of Licensor through its Office of Intellectual Property.

8. Counterparts. This Agreement may be executed in any number of counterparts, any one of which shall be deemed to be the original without the production of others.

9. Confidentiality. The parties agree to maintain discussions and proprietary information revealed pursuant to this Agreement in confidence, to disclose them only to persons within their respective organizations having a need to know, and to furnish assurances to the other party that such persons understand this duty of confidentiality. In the event that any law or court order requires the disclosure of the contents of this Agreement, Licensor shall notify Licensee of any such request for disclosure, order or other attempt to obtain the contents of this Agreement. Such notice shall be promptly forwarded to Licensee to provide it with the opportunity to take action to prevent any disclosure of this Agreement, and in no event shall such notice be given more than ten (10) days after Licensor receives or learns of such request, order or other attempt.

10. Disclaimer of Warranty. Licensed Patent Rights are experimental in nature and are provided WITHOUT WARRANTY OR REPRESENTATIONS OF ANY SORT, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT. Licensor makes no representation and provides no warranty that the use of the Licensed Patent Rights will not infringe any patent or proprietary rights of third parties.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed
by their duly authorized representatives.

AGREED TO AND ACCEPTED:

C.L.
6/28/00

MICHIGAN STATE UNIVERSITY

June 28, 2000

Date of Signature:

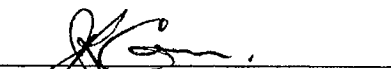
By: 

Name: Dr. Fred Poston

Title: VP-Finance, Operations & Treasurer

HYLAND SEEDS-WG THOMPSON & SONS LTD.

06/26/00
Date of Signature

By: 

Name: Todd Coward

Title: General Manager