

PATENT ASSIGNMENT

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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
Hendrikus Antonius RIKKERINK	02/02/2008
Elena Maria HILARIO-ANDRADE	02/02/2008
Andrew Patrick DARE	02/02/2008
Susan Elizabeth GARDINER	02/02/2008
Minsoo YOON	02/02/2008
Vincent Gerardus Maria BUS	02/02/2008
RECEIVING PARTY DATA	
Name:	The Horticulture and Food Research Institute of New Zealand Limited
Street Address:	120 Mt. Albert Road
City:	Mt. Albert, Auckland
State/Country:	NEW ZEALAND
PROPERTY NUMBERS Total: 1	
Property Type	Number
Application Number:	12740318
CORRESPONDENCE DATA	
Fax Number:	(303)499-8089
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	303-499-8080
Email:	ssullivan@greenwin.com
Correspondent Name:	Greenlee Sullivan P.C.
Address Line 1:	4875 Pearl East Circle, Suite 200
Address Line 4:	Boulder, COLORADO 80301
ATTORNEY DOCKET NUMBER:	52-10
NAME OF SUBMITTER:	Sally A. Sullivan - Reg. No. 32,064

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Total Attachments: 9

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HENDRIKUS ANTONIUS RIKKERINK

ELENA MARIA HILARIO-ANDRADE

ANDREW PATRICK DARE

SUSAN ELIZABETH GARDINER

MINSOO YOON

VINCENT GERARDUS MARIA BUS

**THE HORTICULTURE AND FOOD RESEARCH
INSTITUTE OF NEW ZEALAND LIMITED**

**DEED OF ASSIGNMENT OF
INTELLECTUAL PROPERTY RIGHTS**

DEED dated

2 February

8
2007

PARTIES

HENDRIKUS ANTONIUS RIKKERINK, a Dutch citizen of 48 Rosewarne Crescent, Glendene, Waitakere 0602, New Zealand ("First Assignor")

ELENA MARIA HILARIO-ANDRADE, a Mexican citizen of 5 Mountfield Terrace, Owairaka, Auckland 1025, New Zealand ("Second Assignor")

ANDREW PATRICK DARE, a New Zealand citizen of 26 Wyoming Avenue, Murrays Bay, North Shore City 0630, New Zealand ("Third Assignor")

SUSAN ELIZABETH GARDINER, a New Zealand citizen of 115 Staces Road, RD 1, Palmerston North 4471, New Zealand ("Fourth Assignor")

MINSOO YOON, a New Zealand citizen of 467 Dominion Road, Mount Eden, Auckland 1024, New Zealand ("Fifth Assignor")

VINCENT GERARDUS MARIA BUS, a Dutch citizen of 295 Meeanee Road, Napier 4112, New Zealand ("Sixth Assignor")

THE HORTICULTURE AND FOOD RESEARCH INSTITUTE OF NEW ZEALAND LIMITED, a New Zealand company and Crown Research Institute (under the Crown Research Institutes Act 1992) having a place of business at 120 Mt Albert Road, Mt Albert, Auckland, New Zealand ("Assignee")

INTRODUCTION

- A. The Assignors have devised or contributed to the Invention, either during the course of employment with the Assignee or under a commission from the Assignee.
- B. The Assignors acknowledge that the Assignee is or should be the legal and beneficial owner of the Invention and the Intellectual Property Rights.
- C. Each of the Assignors has agreed to assign, and the Assignee has agreed to accept, the Invention and such Intellectual Property Rights subject to the terms and conditions of this deed.

COVENANTS

1. DEFINITIONS

- 1.1 In this deed, including the Introduction, the following words will have the following meanings:

"Assignors" means the First Assignor, Second, Third, Fourth, Fifth and Sixth Assignor;

"Copyright" means:

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- (a) all copyrights and all rights in the nature of copyright, in any original artistic, literary and other works; and
- (b) any database rights,

comprising or relating to the Invention as may exist anywhere in the world;

“Design Rights” means all rights in and to the designs to be applied to articles of or relating to the Invention as may exist anywhere in the world including, but not limited to:

- (a) the right to apply for and obtain protection for such designs in relation to such articles and the rights conferred by such protection when granted;
- (b) the right to claim priority under any international convention or agreement including the Paris Convention (as amended) from any such application or applications referred to in paragraph (a) above; and
- (c) any unregistered design rights.

“Intellectual Property Rights” means all industrial and intellectual property rights (whether protectable by statute, at common law or in equity) in and to the Invention as may exist anywhere in the world and whether or not registered or registrable including, but not limited to, the Patent Rights, Copyright and Design Rights;

“Invention” means any and all inventions the subject of the Patent Application;

“Know-How” means any information, knowledge, experience, data and designs in the possession of either of the Assignors of a confidential nature and not in the public domain relating to the Invention or the process for making or using it;

“Patent Application” means the patent application identified in the Schedule; and

“Patent Rights” means all patent rights in and to the Invention as may exist or come into existence anywhere in the world including, but not limited to:

- (a) the right to apply for and obtain patents or other similar forms of protection in respect of the Invention in any country;
- (b) the right to claim priority under any international convention or agreement including the Paris Convention (as amended) from any such application or applications referred to in paragraph (a) above;
- (c) all rights conferred by any such patent(s) or similar forms of protection when granted; and
- (d) the Patent Application together with:
 - (i) any patent that may be granted pursuant to the Patent Application; and
 - (ii) any future patent(s) and patent application(s) that are based on or derive priority from or have equivalent claims to the Patent Application in any country in the world (including divisionals, continuations, continuations in part, supplementary protection certificates, reissues, extensions, innovation patents and petty patents).

2. ASSIGNMENT

2.1 **Assignment:** In consideration of the sum of NZ\$1.00 paid by the Assignee to each of the Assignors, the receipt and sufficiency of which is hereby acknowledged by each of the Assignors, each of the Assignors hereby assigns to the Assignee absolutely all of their rights, title and interest in and to:

- (a) the Invention;
- (b) the Intellectual Property Rights; and
- (c) the Know-How and the full, unfettered and exclusive worldwide right to use the Know-How for any purpose whatsoever (including the filing of patent applications in respect of all or any part of it).

2.2 **Rights of action:** The assignments effected by clause 2.1 include, without limitation, the assignment and transfer of:

- (a) all rights of action, powers and benefits arising from the ownership of the Intellectual Property Rights including, without limitation, the right to sue for damages and other legal and equitable remedies in respect of all causes of action arising before, on or after the date of this deed; and
- (b) all rights of ownership of any materials that form part of the Know-How.

2.3 **Moral rights:** The Assignors waive all of their moral rights arising from the Invention throughout the world, to the extent that they may lawfully do so.

3. KNOW-HOW

3.1 **Provision of Know-How:** Each of the Assignors will, at the request of the Assignee and to the extent outstanding:

- (a) disclose to the Assignee in writing all Know-How known to them;
- (b) provide all other reasonable assistance and information as may be reasonably necessary in order to assist the Assignee, or its nominee, to develop and make or use the Invention; and
- (c) where possible, provide all original versions of the Invention and any materials that form part of the Know-How.

3.2 **Confidentiality:**

- (a) The Assignors agree to treat all information relating to the Invention, the Know-How and the Intellectual Property Rights as secret and confidential.
- (b) Following the execution of this deed, the Assignors will not use, disclose or publish the information referred to in paragraph (a) above without the Assignee's prior written consent.
- (c) These obligations of confidentiality will not extend to any information that is or becomes generally available to the public through no act or default of the Assignors.

If either of the Assignors become aware of any actual or potential loss of secrecy or confidentiality in respect of such information, such of the Assignors will promptly advise the Assignee of such matter.

4. IMPROVEMENTS

4.1 **Disclosure:** Following the date of this deed, each of the Assignors, while employed by the Assignee or under any commission from the Assignee, will immediately disclose to the Assignee all improvements in, modifications of or additions to:

- (a) the Invention;
- (b) any original artistic, literary or other works relating to the Invention; and
- (c) any designs to be applied to the articles of or relating to the Invention, devised, created, designed, contributed to or acquired by them ("Improvements").

4.2 **Ownership of Improvements:**

- (a) The Assignee will exclusively own all Improvements and all intellectual property rights in such Improvements. To the extent that any Improvements and such intellectual property rights do not on their creation vest in the Assignee but vest in one or more of the Assignors, such Assignors will hold such Improvements and intellectual property rights on trust for the Assignee.
- (b) The Assignors to whom paragraph (a) above applies will at any time, upon the Assignee's reasonable request and at the Assignee's expense, appropriately execute all documents necessary to:
 - (i) confirm the Assignee's ownership of the Improvements and all intellectual property rights in such Improvements; or
 - (ii) file a protective application for such Improvements and intellectual property rights and/or defend such protective application.

5. EXECUTION OF DOCUMENTS AND FURTHER ACTIONS

5.1 **Further actions:** If requested by the Assignee, each of the Assignors will, at the Assignee's expense, execute all documents, give such assistance and do all other acts and things as may be necessary or desirable to:

- (a) apply for and obtain or (if the Assignee thinks fit) join with the Assignee in applying for and obtaining protection of the Intellectual Property Rights, with the understanding and the intention that all rights, title and interest in and to such applications and any granted protection is to vest in the Assignee;
- (b) vest any such protection referred to in paragraph (a) in the Assignee;
- (c) amend, maintain or renew any such protection referred to in paragraph (a);
- (d) assist the Assignee to:

- (i) enable enforcement of any of the Intellectual Property Rights (including obtaining all remedies as may be available for infringement of the Intellectual Property Rights);
 - (ii) defeat any challenge to the validity of any of the Intellectual Property Rights;
 - (iii) defend any opposition proceedings brought by a third party in respect of the Intellectual Property Rights; or
 - (iv) conduct opposition proceedings in respect of any application for intellectual property protection by a third party where such application may adversely affect the Assignee's ability to exploit the Intellectual Property Rights; and
- (e) otherwise implement and carry out their obligations under this deed.

5.2 **Power of attorney:** Each of the Assignors hereby irrevocably appoints the Assignee as their attorney with full power to act in their name and on their behalf in fulfilling any of the matters set out in clause 5.1:

- (a) to the extent that such of the Assignors fails to do any of such matters after being called upon to do so by the Assignee; or
- (b) if the Assignee is unable, after making reasonable and proper inquiries, to locate such of the Assignors to request the fulfilment of such matters.

6. GENERAL

6.1 **Waiver:** No failure or delay by any party in exercising any right, power or privilege under this deed will operate as a waiver of such right, power or privilege, nor will any single or partial exercise preclude any other or further exercise of any right, power or privilege under this deed.

6.2 **Entire agreement:** This deed contains the whole of the contract and understanding between the parties relating to the matters covered by it and supersedes all prior representations, agreements, statements and understandings between the parties relating to those matters, whether verbal or in writing.

6.3 **Facsimile counterparts:**

- (a) This deed may be executed in any number of counterparts (including facsimile copies) all of which, when taken together, will constitute one and the same instrument.
- (b) A party may enter into this deed by executing any counterpart. The parties acknowledge that this deed may be executed on the basis of an exchange of facsimile copies and confirm that their respective execution of this deed by such means will be a valid and sufficient execution.

6.4 **Governing law:** The formation, validity, construction and performance of this deed will be governed by and construed in accordance with the laws of New Zealand. The parties irrevocably agree that the Courts of New Zealand will have non-exclusive jurisdiction to hear and determine all disputes under or in connection with this deed. The parties

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irrevocably waive any objections to New Zealand as the forum for proceedings on the grounds of forum non-conveniens or any similar grounds.

SIGNED AS A DEED

Signed by HENDRIKUS ANTONIUS RIKKERINK in the presence of:


Signature

WITNESS

Signature:



Name:

Robin MacLarnid

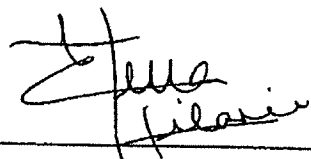
Address:

2 Takanu St, Ederlee, Auckland

Occupation:

Scientist

Signed by ELENA MARIA HILARIO-ANDRADE in the presence of:


Signature

WITNESS

Signature:



Name:

Kim Snowden

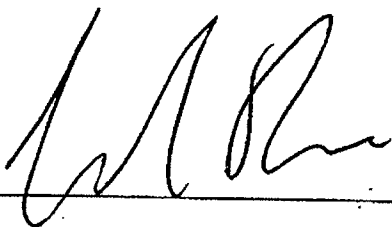
Address:

23B Keystone Ave, Mt Roskill

Occupation:

Scientist

Signed by ANDREW PATRICK DARE in the presence of:


Signature

WITNESS

Signature:



Name:

Charles Ampomah-Dwamena

Address:

79A O'Donnell Ave, Mt Roskill

Occupation:

Scientist

Signed by SUSAN ELIZABETH GARDINER in the presence of:


Signature

WITNESS

Signature:



Name: EMILY BUCK
Address: 117CD FARM ROAD, LEVIN
Occupation: SCIENTIST

Signed by MINSOO YOON in the presence of:

MINSOO YOON
Signature

WITNESS
Signature: [Signature]

Name: MARK ANDERSEN
Address: 23 CHURCH CREW, PARNAMURE
Occupation: SCIENTIST

Signed by VINCENT GERARDUS MARIA BUS in the presence of:

[Signature]
Signature

WITNESS
Signature: [Signature]

Name: ALLAN WHITE
Address: 236 NAPIER ROAD, RD2 HASTINGS
Occupation: BUSINESS LEADER

Signed by THE HORTICULTURE AND FOOD RESEARCH INSTITUTE OF NEW ZEALAND LIMITED by:

WITNESS :

[Signature]
Neelam Sharma
34A Harbutt Ave,
Mt. Albert,
Auckland
IP Coordinator

[Signature]
Signature of Director

Michael James (CFO)
Name of Director

Signature of Director

Name of Director

**SCHEDULE
PATENT APPLICATION**

Country	Application No.	Title	Priority Date
New Zealand	563032	RESISTANCE GENE AND USES THEREOF	31 October 2007