

PATENT ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	Court Order re: Property Rights
CONVEYING PARTY DATA	
Name	Execution Date
Kemeta, LLC c/o George Miller, Trustee for the Kemeta Estate	06/22/2012
RECEIVING PARTY DATA	
Name:	Invoy Technologies, LLC
Street Address:	1820 E. Ray Road
City:	Chandler
State/Country:	ARIZONA
Postal Code:	85225
PROPERTY NUMBERS Total: 8	
Property Type	Number
Application Number:	10494923
Application Number:	11781784
Application Number:	12228046
Application Number:	12263355
Application Number:	13194564
Patent Number:	6609068
Patent Number:	7364551
Patent Number:	7794994
CORRESPONDENCE DATA	
Fax Number:	
Phone:	480-429-9900
Email:	lubna@invoy.com
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>	
Correspondent Name:	Lubna M. Ahmad
Address Line 1:	1820 E. Ray Road

OP \$320.00 10494923

Address Line 4: Chandler, ARIZONA 85225

NAME OF SUBMITTER:

Lubna M. Ahmad

Total Attachments: 6

source=143#page1.tif

source=143#page2.tif

source=143#page3.tif

source=143#page4.tif

source=143#page5.tif

source=143#page6.tif

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

KEMETA, LLC,

Debtor.

Chapter 7

Case No. 11-10159 (CSS)

Ref. Docket Nos. 27, 29-34, 36, 65, 116, 121, 124

**ORDER CONCERNING MOTION OF INVOY TECHNOLOGIES, LLC TO
COMPEL TRUSTEE'S COMPLIANCE WITH SECTION 365(N) OF
THE BANKRUPTCY CODE**

Upon consideration of: (a) the Motion of Invoy Technologies, LLC to Compel Trustee's Compliance with Section 365(n) of the Bankruptcy Code [Docket No. 27] (the "365(n) Motion"), (b) objections thereto [Docket Nos. 29-34, 36], (c) the Reply Re: Motion of Invoy Technologies, LLC to Compel Trustee Compliance with Section 365(n) of the Bankruptcy Code [Docket No. 65], (c) the Joint Pretrial Memorandum Concerning Motion of Invoy Technologies, LLC to Compel Trustee's Compliance with Section 365(n) of the Bankruptcy Code and Objections Thereto [Docket No. 116], (d) Caliber Partners Fund K, LP's Trial Brief [Docket No. 121], (e) Invoy Technologies, LLC's Trial Brief for the Evidentiary Hearing of March 26-27, 2012 [Docket No. 124], the exhibits and testimony admitted into evidence and the arguments of counsel at the evidentiary hearing held before the Court on March 26-27, 2012, and based upon and for the reasons set forth in the Court's Memorandum Opinion dated May 4, 2012 [Docket No. 140], IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Confidential Exclusive License Agreement between Invoy Technologies, LLC ("Invoy") and Debtor Kemeta, LLC ("Kemeta") effective as of April 7, 2009 (the "License Agreement" or "Contract") was an executory contract on the January 19, 2011 Petition Date. Invoy is entitled to license rights under 11 U.S.C. 365(n) ("Section 365(n)"). The License Agreement has been rejected by the Trustee and the

365(n) Motion is hereby granted as set forth herein.

2. Pursuant to 11 U.S.C. § 365(n)(1)(B), Invoy may elect to retain its rights (including a right to enforce any exclusivity provision of such Contract, but excluding any other right under applicable nonbankruptcy law to specific performance of such Contract) under such Contract and under any agreement supplementary to such Contract, to such intellectual property (including any embodiment of such intellectual property to the extent protected by applicable nonbankruptcy law), as such rights existed immediately before the case commenced, for (i) the duration of the License Agreement; and (ii) any period for which such License Agreement may be extended by Invoy as of right under applicable nonbankruptcy law.

3. In view of the facts and circumstances of this case, including Kemeta's uncured material breach of the License Agreement, the denial of access by Invoy to intellectual property as mandated by 11 U.S.C. § 365(n)(4), and the post-petition looting of subject matter related to Invoy's license rights, Invoy is entitled to a Due Diligence Period within which it may access Licensed Intellectual Property solely for the purpose of determining whether or not to elect to retain its rights under the License Agreement.

(a) During the Due Diligence Period, the Trustee shall grant Invoy reasonable access to the intellectual property that falls within the scope of Invoy's 365(n) rights, as further clarified later herein.

(b) The Trustee shall grant Invoy the access described above within 14 days of entry of this order. The Due Diligence Period shall continue for 70 days thereafter, i.e., 84 days from entry of this Order.

4. If Invoy wishes to retain its rights under section 365(n), it must provide written election of such retention to the chapter 7 trustee (the "Trustee") within 7 days of

the end of such Due Diligence Period. If the Trustee has not received Invoy's written election to retain its rights by such date, pursuant to 11 U.S.C. § 365(n)(1)(A), Invoy shall be deemed to have elected to treat the License Agreement as terminated by its rejection.

5. If Invoy does not elect to retain its rights under Section 365(n), Invoy shall return all items procured during the Due Diligence Period from the Trustee to the Trustee, or destroy them and certify their destruction.

6. If Invoy exercises its section 365(n) election under the License Agreement, then, pursuant to 11 U.S.C. § 365(n)(2)(B), Invoy shall make all royalty payments due under such contract, and the waivers set forth in 11 U.S.C. § 365(n)(2). Invoy cannot avoid paying royalties under section 365(n) by exercising recoupment. Unless otherwise ordered by the Court, Invoy shall make the \$130,000 payment set forth in Section 3.1 of the License Agreement in immediately available funds by no later than 7 days after Invoy's written election of retention pursuant to 11 U.S.C. § 365(n)(i)(a).

7. Scope of License Rights

(a) Invoy's license rights in Kemeta's Intellectual Property as defined in Sections 1.11 and 2.1 of the License Agreement shall be exclusive for the Licensed Field of Use described in Section 1.8 of the License Agreement, as clarified in this Order. "Licensed Intellectual Property" includes the intellectual property that existed as of the petition date.

(b) The scope of Invoy's rights under Section 365(n) is according to the literal language of the License Agreement. Kemeta's retained Field of Use (License Agreement Section 1.7) is limited to uses under Kemeta's Intellectual Property for the detection and analysis of breath acetone and no other analyte, and

further to the specific uses or applications expressly set forth in subsections (a) through (f) of Section 1.7. Any rights under the Kemeta Intellectual Property not falling within the Kemeta Field of Use shall be within Invoy's Licensed Field of Use, as Sections 1.7 and 1.8 of the Agreement provide. Any device or method covered by Kemeta's Intellectual Property that detects or analyzes a breath analyte in addition to or instead of acetone is within Invoy's Licensed Field of Use. For greater clarity, provided Invoy's device or method is capable of detecting, measuring or analyzing an analyte other than acetone, the device is in Invoy's Licensed Field of Use.

(c) Invoy is entitled to reasonable access to the Licensed Technology, Licensed Processes, and Licensed Patents (collectively "Licensed Intellectual Property") as defined in the License Agreement. This includes but is not limited to technology pertaining to Kemeta's breath analysis devices or methods for sensing acetone, whether alone or in addition to any other analyte. Moreover, Invoy is entitled to reasonable physical access to any and all embodiments of the Kemeta Intellectual Property, including but not limited to all prototypes and other embodiments of it, and shall have the right to inspect, analyze, test, copy, photocopy, photograph, or otherwise use such prototypes and embodiments, provided they are done non-destructively. For chemicals, enzymes and embodiments in the possession of the Trustee, Invoy shall be entitled to 30% of them so as to avoid disputes as to destructive or non-destructive inspection or testing.

8. The remaining provisions of section 365(n) relating to the rejected License Agreement are applicable and the parties must comply with them.

9. This Order contemplates the possibility that a sale of the Debtor's assets,

subject to Invoy's Section 365(n) rights under this Order, may be made to a purchaser ("Purchaser"). In the course of such sale and thereafter, the Trustee or any Purchaser shall not interfere with Invoy's rights as provided in the License Agreement, or any agreement supplementary to it, to the Kemeta Intellectual Property (including embodiments thereof), including any right to obtain such intellectual property (or such embodiment) from another entity, or other rights granted to Invoy pursuant to Section 365(n) or this Order, except as expressly set forth herein. 11 U.S.C. § 365(n)(1)(B) and 365(n)(4)(B).

10. Invoy has expressed an interest in collecting Licensed Intellectual Property outside the possession of the Trustee ("Outside the Estate IP"). Should Invoy elect to do so, in accordance with 11 USC 365(n)(3)(b), the Trustee will not interfere with the rights of Invoy as provided in the License Agreement, or any agreement supplementary to such contract, to such intellectual property (including such embodiment) including any right to obtain such intellectual property (or such embodiment) from another entity. 11 U.S.C. §365(n)(3)(B) and §365(n)(4)(B).

Order for Matters Not Expressly Addressed in the Court's Opinion

11. Invoy shall have the full right and authority to assign or transfer the rights and interests granted or duties delegated under this Order, in whole or in part.

12. Section 4.1 of the License Agreement sets forth several exclusivity milestones. Invoy has satisfied the first exclusivity milestone of License Agreement as set forth in Section 4.1(a). This finding is supported in part by documents from Invoy that evidence its achievement of FDA clearance for oxygen as a breath analyte. Each of the remaining exclusivity milestones shall be extended two years from the date stated therein to compensate Invoy for the delay occasioned by Kemeta's failure to tender the

Licensed Technology and Licensed Processes. Achievement of the exclusivity milestones shall be interpreted based on the literal language of the milestones.

13. The Court is aware of the Agreement between Invoy and Dow Global Technologies, Inc. ("DGTI Agreement"), which Kemeta aided in procuring in order to grant Invoy its license rights. The DGTI Agreement on its face contemplates that, if Kemeta's rights to that certain Dow intellectual property expire or are terminated, Invoy should makes any royalties due to Kemeta to DGTI. As such, if, for whatever reason, Invoy pays DGTI or a third party under the DGTI Agreement a royalty that would otherwise be due to the Trustee or his designee or purchaser under the License Agreement, any such payments made pursuant to the DGTI Agreement shall be deducted from Invoy's royalty payment obligation under this Order. This concept of no double-payment is expressly set forth in the DGTI Agreement, and is adopted here.

14. Invoy's rights are statutorily-granted property rights, and not contract rights. Any actual or alleged failure by Invoy to meet its obligations under the License Agreement, particularly any failure to pay royalties, may be remedied by an action for money damages, but may not divest Invoy of its property rights to intellectual property under Section 365(n).

15. The Court shall retain jurisdiction to enforce the terms of this Order.



The Honorable Christopher S. Sontchi
United States Bankruptcy Judge

Dated: June 22, 2012