

## PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1  
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EPAS ID: PAT2901898

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT
<b>CONVEYING PARTY DATA</b>	
<b>Name</b>	<b>Execution Date</b>
EVERGREEN INNOVATION PARTNERS I, LP	03/06/2014
<b>RECEIVING PARTY DATA</b>	
<b>Name:</b>	FITWARE, LLC
<b>Street Address:</b>	1137 WINTHROP ST S
<b>City:</b>	ST. PAUL
<b>State/Country:</b>	MINNESOTA
<b>Postal Code:</b>	55119
<b>PROPERTY NUMBERS Total: 1</b>	
<b>Property Type</b>	<b>Number</b>
<b>Patent Number:</b>	7326428
<b>CORRESPONDENCE DATA</b>	
<b>Fax Number:</b>	
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>	
<b>Phone:</b>	651-235-3213
<b>Email:</b>	Marj@MarjWeir.com
<b>Correspondent Name:</b>	MARJORIE WEIR
<b>Address Line 1:</b>	1137 WINTHROP ST S
<b>Address Line 4:</b>	ST. PAUL, MINNESOTA 55119
<b>NAME OF SUBMITTER:</b>	MARJORIE WEIR
<b>SIGNATURE:</b>	/Marjorie Weir/Fitware LLC/
<b>DATE SIGNED:</b>	06/17/2014
This document serves as an Oath/Declaration (37 CFR 1.63).	
<b>Total Attachments: 7</b>	
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PATENT

## PURCHASE AGREEMENT

This Patent and Intellectual Property Purchase Agreement ("Agreement") is entered into on this 3rd day of March, 2014 ("Effective Date"), by and between Fitware, LLC, with a principal place of business at 1137 Winthrop Street South, St. Paul, MN 55119 ("Purchaser") and Evergreen Innovation Partners I, L.P. (together with its affiliate Evergreen Innovation Partners, LLC) with a principal place of business at 5984 S Prince St. Suite 207, Littleton, CO 80120 ("Seller(s)"). Purchaser and Seller(s) agree as follows:

### RECITALS:

- I. Sellers are the owners of the entire right, title, and interest in and to Patent No. 7,326,428 MULTI-COMPARTMENT CONTAINER AND LID ASSEMBLY and various market research and design documents relating thereto ("IP Rights").
- II. Subject to the terms and conditions of this Agreement, Purchaser wishes to purchase the IP Rights from Sellers, and Sellers wish to sell, transfer, and convey the IP Rights to Purchaser.

NOW, THEREFORE, the parties hereto hereby agree as follows:

### AGREEMENT

#### 1. PURCHASE OF THE PATENT/IP RIGHTS

Subject to the terms and conditions of this Agreement, Sellers shall sell, transfer, convey, and assign the IP Rights to Purchaser in consideration of Sellers' receipt, on the Effective Date, of a one-time Patent Purchase Payment of \$22,750.

#### 2. DELIVERY AND PAYMENT

2.1 On the Effective Date, Seller will deliver to Purchaser the IP Rights and Purchaser will deliver to Seller the Patent Purchase Payment as set forth in Section 1.

2.2 Sellers agree to execute and deliver to Purchaser an Assignment of IP Rights (the "Assignment Agreement") Exhibit A.

2.3 Payment: Purchaser will pay to Seller the amount of \$22,750 by wire transfer. Seller will furnish Purchaser with all necessary information to make a wire transfer to a designated bank account of Seller.

2.4 Closing. Subject to the terms and conditions of this Agreement, Buyer and Seller will use commercially reasonable efforts to complete the purchase and sale of the IP Rights contemplated herein by March 15, 2014 (the "Closing")

**2.5 Termination.** In the event that the Closing has not occurred by March 15, 2014 either Party may terminate this Agreement by written notice to the other Party. Upon termination, Buyer shall return all Documents received from Seller hereunder.

### **3. SELLER OBLIGATIONS**

**3.1 Patent Assignment:** Seller hereby sells, assigns, transfers and conveys to Purchaser all right, title and interest it has in and to the Patents and all inventions and discoveries described therein, including without limitation, all rights of Seller under the Assignment Agreements, and all rights of Seller to collect royalties under such Patents.

**3.2 Disclosure of Confidential Information:** Within five business days from the execution of this Agreement, Seller shall provide to Purchaser "any relevant Confidential Information or Work Product relating the Invention IP that is a product of its commercialization activities and which Evergreen IP believes would be helpful to future marketing efforts." as discussed in Paragraph 10.2(b) of the Assignment and Marketing Agreement dated December 20, 2005.

**3.3 Post Closing Obligations:** For twenty four months after the execution of this Agreement, Seller shall not directly or indirectly develop, market or sell products that are related to the Assigned IP Rights.

### **4. SELLER'S REPRESENTATIONS AND WARRANTIES**

Seller/Sellers hereby represent and warrants to the Purchaser as follows:

**4.1 Authority:** Seller is a company duly formed, validly existing, and in good standing under the laws of the jurisdiction of its formation. Seller has the full power and authority and has obtained all third party consents, approvals, and/or other authorizations required to enter into this Agreement and to carry out its obligations hereunder, including, without limitation, the assignment of the Assigned IP Rights to Purchaser.

**4.2 Title and Contest:** Seller owns all right, title, and interest to the Assigned IP Rights, including, without limitation, all right, title, and interest to sue for infringement of the Patents. Seller has obtained and properly recorded previously executed assignments for the Patents as necessary to fully perfect its rights and title therein in accordance with governing law and regulations in each respective jurisdiction. The Assigned IP Rights are free and clear of all liens, claims, mortgages, security interests or other encumbrances, and restrictions. There are no actions, suits, investigations, claims, or proceedings threatened, pending, or in progress relating in any way to the Assigned IP Rights. There are no existing contracts, agreements, options, commitments, proposals, bids, offers, or rights with, to, or in any person to acquire any of the Assigned IP Rights.

**4.3 Fees:** All maintenance fees, annuities, and the like due or payable on the Patents have been timely paid. For the avoidance of doubt, such timely payment includes payment of any maintenance fees for which the fee is payable.

## 5. PURCHASER'S REPRESENTATIONS AND WARRANTIES

Purchaser hereby represents and warrants to Sellers that: If the Purchaser is not an individual, Purchaser is a company duly formed, validly existing, and in good standing under the laws of the jurisdiction of its formation; and the Purchaser has the full power and authority and has obtained all third party consents, approvals, and/or other authorizations required to enter into this Agreement and to carry out its obligations hereunder, including, without limitation, the purchase of the IP Rights from Seller.

## 6. GENERAL PROVISIONS

**6.1 Limitation of Liability:** EXCEPT IN THE EVENT OF BREACH OF ANY OF THE WARRANTIES IN THE ABOVE SECTIONS, SELLER'S TOTAL LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE PURCHASE PRICE. PURCHASER'S TOTAL LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE PURCHASE PRICE. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS ON POTENTIAL LIABILITIES SET FORTH IN THIS SECTION 6.1 WERE AN ESSENTIAL ELEMENT IN SETTING CONSIDERATION UNDER THIS AGREEMENT.

**6.2 Limitation on Consequential Damages:** EXCEPT IN THE EVENT OF BREACH OF ANY OF THE WARRANTIES IN THE ABOVE SECTIONS NEITHER PARTY WILL HAVE ANY OBLIGATION OR LIABILITY (WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, AND NOTWITHSTANDING ANY FAULT, NEGLIGENCE (WHETHER ACTIVE, PASSIVE OR IMPUTED), REPRESENTATION, STRICT LIABILITY OR PRODUCT LIABILITY), FOR COVER OR FOR ANY INCIDENTAL, INDIRECT OR CONSEQUENTIAL, MULTIPLIED, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES OR LOSS OF REVENUE, PROFIT, SAVINGS OR BUSINESS ARISING FROM OR OTHERWISE RELATED TO THE LETTER AGREEMENT, EVEN IF A PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES ACKNOWLEDGE THAT THESE EXCLUSIONS OF POTENTIAL DAMAGES WERE AN ESSENTIAL ELEMENT IN SETTING CONSIDERATION UNDER THIS AGREEMENT.

**6.3 Compliance with Laws:** Notwithstanding anything contained in this Agreement to the contrary, the obligations of the Parties with respect to the consummation of the transactions contemplated by this Agreement shall be subject to all laws, present and future, of any government having jurisdiction over the Parties and this transaction, and to orders, regulations, directions or requests of any such government.

**6.4 Confidentiality of Terms:** The Parties hereto will keep the terms of this Agreement confidential and will not now or hereafter divulge any of this information to any third party except:

- (a) with the prior written consent of the other Party;
- (b) as otherwise may be required by law or legal process;

- (c) during the course of litigation, so long as the disclosure of such terms and conditions is restricted in the same manner as is the confidential information of other litigating parties;
- (d) in confidence to its legal counsel, accountants, banks, and financing sources and their advisors solely in connection with complying with or administering its obligations with respect to this Agreement;
- (e) by Purchaser, to potential purchasers or licensees of the IP Rights such that Purchaser can utilize any materials that Purchaser received from Seller in any way deemed by Purchaser to potentially benefit its efforts to commercial the Assigned IP Rights.

**6.5 Notices:** All notices given hereunder will be given in writing (in English or with an English translation), and will be delivered to the address set forth on the signature page to this Agreement by personal delivery or delivery postage prepaid by an internationally-recognized express courier service. Notices are deemed given on the date of receipt if delivered personally or by express courier, or if delivery refused, the date of refusal. Notice given in any other manner will be deemed to have been given only if and when received at the address of the Party to be notified. Either Party may from time to time change its address for notices under this Agreement by giving the other Party written notice of such change.

**6.6 Relationship of Parties:**

**6.6(a) No Partnership:** Nothing in this Agreement will be construed to create a partnership, joint venture, franchise, fiduciary, employment or agency relationship between the Parties. Neither Party has any express or implied authority to assume or create any obligations on behalf of the other or to bind the other to any contract, agreement or undertaking with any third party.

**6.6(b) Termination of Prior Agreement(s):** The parties to this Agreement are also parties to a Patent and Know-How License Agreement dated October 10, 2012 (terminated under section 13.5(iv)), and an Assignment and Marketing Agreement, dated December 20, 2005 ("05 Assignment Agreement"). The parties agree that execution of this Agreement shall render all terms of the '05 Assignment Agreement null and void, including any confidentiality obligations. Notwithstanding the foregoing, section 6.4 of this Agreement shall be valid and enforceable.

**6.7 Severability:** If any provision of this Agreement is found to be invalid or unenforceable, then the remainder of this Agreement will have full force and effect, and the invalid provision will be modified, or partially enforced, to the maximum extent permitted to effectuate the original objective.

**6.8 Waiver:** Failure by either Party to enforce any term of this Agreement will not be deemed a waiver of future enforcement of that or any other term in this Agreement or any other agreement that may be in place between the Parties.

**6.9 Governing Law:** This Agreement will be interpreted, construed, and enforced in all respects in accordance with the laws of the State of Colorado, without reference to its choice of law principles.

**6.10 Entire Agreement:** The Agreement, including its exhibits, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and merges and supersedes all prior and contemporaneous agreements, understandings, negotiations, and discussions. Neither of the Parties will be bound by any conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof other than as expressly provided herein. No oral explanation or oral information by either Party hereto will alter the meaning or interpretation of this Agreement. The terms and conditions of this Agreement will prevail notwithstanding any different, conflicting or additional terms and conditions that may appear on any letter, email or other communication or other writing not expressly incorporated into this Agreement.

**6.11 Amendments:** No amendments or modifications will be effective unless in writing signed by authorized representatives of both Parties.

**6.12 Headings:** The section headings contained in this Agreement are for reference purposes only and will not affect in any way the meaning or interpretation of this Agreement.

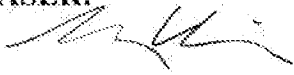
**6.13 Severability:** Any of the provisions of this Agreement which are determined to be invalid or unenforceable in any jurisdiction shall be ineffective to the extent of such invalidity or unenforceability in such jurisdiction, without rendering invalid or unenforceable the remaining provisions hereof or affecting the validity or enforceability of any of the provisions of this Agreement in any other jurisdiction.

**6.14 No Rights in Third Parties:** The Agreement is not intended to confer any right or benefit on any third party (including, but not limited to, any employee or beneficiary of any Party), and no action may be commenced or prosecuted against a Party by any third party claiming as a third-party beneficiary of this Agreement or any of the transactions contemplated by this Agreement.


**6.15 Counterparts:** This Agreement shall become binding when any one or more counterparts hereof, individually or taken together, shall bear the signatures each of the Parties hereto. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original as against the Party whose signature appears thereon, but all of which taken together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, the Parties have entered into this Agreement as of the Effective Date.

**PURCHASER:**

By:   
Name: Marjorie Weir  
Title: Manager, Fitware, LLC

**SELLER:**

By:   
Name: John Funk  
Title: Managing Partner, EIP, LLC  
Manager, EIP I, LP

## EXHIBIT A

### **Patent Assignment**

This Assignment is by Evergreen Innovation Partners I, LP ("Assignor"), with an office at 5984 S Prince St., Suite 207, Littleton, CO 80120. Assignor currently owns a certain invention (the "Invention") described in Letters Patent of the United States entitled MULTI-COMPARTMENT CONTAINER AND LID ASSEMBLY (the "Patent"), issued on Feb 5, 2008 as U.S. Patent No. 7,326,428 and based upon US Patent Application No. 10/741,285 (the Application).

Fitware, LLC with a principal place of business at 1137 Winthrop Street South, St. Paul, MN 55119, desires to acquire the entire right, title and interest in and to the Invention, the Application, the Patent, and any other patent or application that claims priority to the Application and/or the Patent.

For valuable consideration, the receipt and sufficiency of which Assignor acknowledges, Assignor hereby sells, assigns, and transfers to Assignee, its successors, legal representatives and assigns, the entire right, title and interest in and to: the Invention(s), the Application, the Patent, and any divisions, continuations, and continuations-in-part of the Application and any other application claiming priority rights from the Application; any reissues, reexaminations, or extensions of any and all of the above; the right to file foreign applications directly in the name of Assignee; and the right to claim priority rights deriving from the Application (collectively, the "Rights"). Assignor warrant that Assignor owns the Rights, and that the Rights are unencumbered. Assignor also agrees to not sign any writing or do any act conflicting with this assignment, and, without further compensation, sign all documents and do such additional acts as Assignee deems necessary or desirable to: perfect Assignee's enjoyment of the Rights; conduct proceedings regarding the Rights, including any litigation or interference proceedings; or perfect or defend title to the Rights. Assignor requests the Commissioner of Patents to issue any Patent of the United States that may be issued on the Invention(s) to Assignee. This Assignment may be executed in counterparts.



## Audit Trail

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Document name: Try #3

Status: Signed and closed

03/06/2014

15:36:13 UTC-7 Document (Revised Agreement.Weir-EIP.final2.docx)  
uploaded by john.funk@gmail.com  
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15:40:06 UTC-7 Document signed by john.funk@gmail.com  
IP: 67.166.31.229

15:40:06 UTC-7 Document sent for signature to: John Funk  
(Marj@marjweir.com)  
IP: 67.166.31.229

16:35:36 UTC-7 Document viewed by Marjorie Weir  
(marj@marjweir.com)  
IP: 174.254.240.5

16:39:35 UTC-7 Document signed by Marjorie Weir  
(marj@marjweir.com)  
IP: 174.254.240.5

16:39:35 UTC-7 The document has been signed and is now closed.