

## PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1  
 Stylesheet Version v1.2

EPAS ID: PAT3019444

<b>SUBMISSION TYPE:</b>	NEW ASSIGNMENT	
<b>NATURE OF CONVEYANCE:</b>	ASSIGNMENT	
<b>CONVEYING PARTY DATA</b>		
<b>Name</b>		<b>Execution Date</b>
GREGORY J. KAPUST		04/01/2005
<b>RECEIVING PARTY DATA</b>		
<b>Name:</b>	BREATHE TECHNOLOGIES, INC	
<b>Street Address:</b>	175 TECHNOLOGY DRIVE, SUITE 100	
<b>City:</b>	IRVINE	
<b>State/Country:</b>	CALIFORNIA	
<b>Postal Code:</b>	92618	
<b>PROPERTY NUMBERS Total: 1</b>		
<b>Property Type</b>	<b>Number</b>	
<b>Application Number:</b>	12876098	
<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>	949-855-1246	
<b>Email:</b>	cfleischer@stetinalaw.com	
<b>Correspondent Name:</b>	MARK B. GARRED	
<b>Address Line 1:</b>	75 ENTERPRISE, SUITE 250	
<b>Address Line 4:</b>	ALISO VIEJO, CALIFORNIA 92656	
<b>ATTORNEY DOCKET NUMBER:</b>	BRTHE-123P7US	
<b>NAME OF SUBMITTER:</b>	MARK B. GARRED	
<b>SIGNATURE:</b>	/mbg/	
<b>DATE SIGNED:</b>	09/11/2014	
<b>Total Attachments: 23</b>		
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## ASSIGNMENT BY INVENTORS

**THIS ASSIGNMENT**, made this 5 day of May, 2010, by 1) Joseph Cipollone; 2) Gregory Kapust; 3) Todd Allum; 4) Anthony D. Wondka; 5) Darius Eghbal; 6) Joey Aguirre; and 7) Anthony Gerber (hereinafter referred to as Assignors), residing at 1) 9696 Thunderbird Drive, San Ramon, California 94583; 2) 213 Glory Lily Court, San Ramon, California 94582; 3) 4052 Emerson Drive, Livermore, California 94551; 4) 1294 Roselawn Avenue, Thousand Oaks, California 91362; 5) 619 56th Street, Oakland, California 94609; 6) 324 Park Place, San Ramon, California 94583; and 7) 1486 39th Avenue, San Francisco, California 94122, respectively;

**WHEREAS**, Assignors have invented certain new and useful improvements in METHODS, SYSTEMS AND DEVICES FOR NON-INVASIVE OPEN VENTILATION WITH GAS DELIVERY NOZZLES IN FREE SPACE ("invention"), set forth in an application for Letters Patent of the United States, already filed on April 2, 2010 as U.S. Application No. 12/753,846 and an International Patent Application already filed April 2, 2010 as International Patent Application No. PCT/US2010/029871; both of which claim priority to United States Provisional Patent Application Nos. US 61/166,150, filed 04/02/09; US 61/239,728, filed 09/03/09; US 61/255,760, filed 10/28/09 and US 61/294,363, filed 01/12/10; and

**WHEREAS**, Breathe Technologies, Inc., a Corporation organized under and pursuant to the laws of Delaware having its principal place of business at 4000 Executive Parkway, Suite 190, San Ramon, California 94583 (hereinafter referred to as Assignee), is desirous of acquiring the entire right, title and interest in and to said inventions and said Application for Letters Patent of the United States, and in and to any Letters Patent of the United States to be obtained therefore and thereon.

**NOW, THEREFORE**, in consideration of One Dollar (\$1.00) and other good and sufficient consideration, the receipt of which is hereby acknowledged, Assignors have sold, assigned, transferred and set over, and by these presents do sell, assign, transfer and set over, unto Assignee, its successors, legal representatives and assigns, the entire right, title and interest in and to the above-mentioned inventions and application for Letters Patent, and in and to any and all direct and indirect divisions, continuations and continuations-in-part of said application, and any and all Letters Patent in the United States and all foreign countries which may be granted therefor

and thereon, and reissues, reexaminations and extensions of said Letters Patent, and all rights under the International Convention for the Protection of Industrial Property, the same to be held and enjoyed by Assignee, for its own use and benefit and the use and benefit of its successors, legal representatives and assigns, to the full end of the term or terms for which Letters Patent may be granted and/or extended, as fully and entirely as the same would have been held and enjoyed by Assignors, had this sale and assignment not been made.

**AND** for the same consideration, Assignors hereby represent and warrant to Assignee, its successors, legal representatives and assigns, that, at the time of execution and delivery of these presents, except for any rights, titles and/or interests that have arisen to Assignee under law or that have already been transferred to Assignee, Assignors are the sole and lawful owners of the entire right, title and interest in and to the said inventions and application for Letters Patent above-mentioned, and that the same are unencumbered and that Assignors have good and full right and lawful authority to sell and convey the same in the manner herein set forth.

**AND** for the same consideration, Assignors hereby covenant and agree to and with Assignee, its successors, legal representatives and assigns, that Assignors will sign all papers and documents, take all lawful oaths and do all acts necessary or required to be done for the procurement, maintenance, enforcement and defense of any Letters Patent and applications for Letters Patent for said inventions, without charge to Assignee, its successors, legal representatives and assigns, whenever counsel of Assignee, or counsel of its successors, legal representatives and assigns, shall advise: that any proceeding in connection with said inventions, or said Patent application for Letters Patent, or any proceeding in connection with any Letters Patent or applications for Letters Patent for said inventions in any country, including but not limited to interference proceedings, is lawful and desirable; or, that any division, continuation or continuation-in-part of any application for Letters Patent, or any reissue, reexamination or extension of any Letters Patent, to be obtained thereon, is lawful and desirable.

**AND** Assignors hereby request the Commissioner of Patent and Trademarks to issue said Letters Patent of the United States to Assignee, as Assignee of said inventions and the Letters Patent to be issued thereon, for the sole use and benefit of Assignee, its successors, legal representatives and assigns.

**AND** Assignors hereby grant the following individuals the power to insert on this Assignment any further identification which may be necessary or desirable in order to comply with the rules of the United States Patent and Trademark Office for recordation of this document:

PATTON BOGGS LLP


All practitioners at Customer Number 32042

**AND** Assignors acknowledge an obligation of assignment of this invention to Assignee at the time the invention was made.

  
Joseph Cipollone

5/19/2010  
Date

**Witnessed By:**

  
Witness Signature  
Tnyet Weijs  
Printed Witness Name

5/19/2010  
Date

**Witness Address:**

4000 Executive Pkwy, Ste 190  
Street  
San Ramon, CA 94583  
City, State, ZIP Code

*Gregory Kapust*  
Gregory Kapust

5/7/2010  
Date

**Witnessed By:**

*Dana Smead*  
Witness Signature

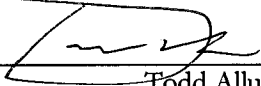
5/7/2010  
Date

*Dana Smead*  
Printed Witness Name

**Witness Address:**


4000 Executive Parkway Ste 190  
Street

San Ramon CA 94583  
City, State, ZIP Code

  
\_\_\_\_\_  
Todd Allum

5 MAY 2010  
\_\_\_\_\_  
Date

**Witnessed By:**

  
\_\_\_\_\_  
Witness Signature  
Tuyen Weijs  
\_\_\_\_\_  
Printed Witness Name

5 May 2010  
\_\_\_\_\_  
Date

**Witness Address:**

4000 Executive Pkwy, Ste 190  
\_\_\_\_\_  
Street  
San Ramon, CA 94583  
\_\_\_\_\_  
City, State, ZIP Code



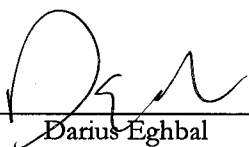
Anthony D. Wondka 5/5/2010  
Anthony D. Wondka Date

**Witnessed By:**

[Signature] 5/5/2010  
Witness Signature Date  
Tuyet Weijs  
Printed Witness Name

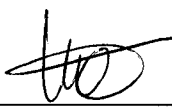
**Witness Address:**

4000 Executive Pkwy, Ste 190  
Street  
San Ramon, CA 94583  
City, State, ZIP Code

  
\_\_\_\_\_  
Darius Eghbal

5 MAR 2010  
\_\_\_\_\_  
Date

**Witnessed By:**

  
\_\_\_\_\_  
Witness Signature  
Tuyet Weijs  
\_\_\_\_\_  
Printed Witness Name

5 May 2010  
\_\_\_\_\_  
Date

**Witness Address:**

4000 Executive Pkwy. Ste 190  
\_\_\_\_\_  
Street  
San Ramon. CA 94583  
\_\_\_\_\_  
City, State, ZIP Code

Joey Aguirre  
Joey Aguirre

5-5-10  
Date

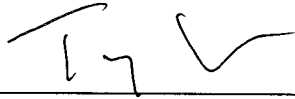
**Witnessed By:**

Tuyet Weijs  
Witness Signature  
Tuyet Weijs  
Printed Witness Name

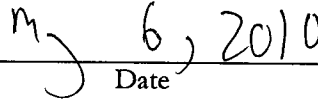
5 May 2010  
Date

**Witness Address:**

4000 Executive Pkwy, Ste 190  
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San Ramon, CA 94583  
City, State, ZIP Code

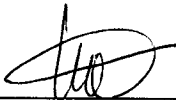


Anthony Gerber

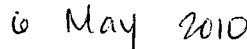


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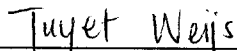
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Witness Signature



Date

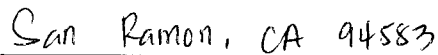


Printed Witness Name

**Witness Address:**



Street



City, State, ZIP Code

**Breathe Technologies, Inc.**

Anthony D. Wondka  
By: Printed Name and Position of  
Representative

Anthony D. Wondka 5/5/2010  
Signature of Representative Date

Representative Address:

4000 Executive Pkwy, Ste 190  
Street

San Ramon, CA 94503  
City, State, ZIP Code

**Witnessed By:**

Tuyet Weijs  
Witness Signature  
Tuyet Weijs  
Printed Witness Name

5/5/2010  
Date

Witness Address:

4000 Executive Pkwy, Ste 190  
Street

San Ramon, CA 94503  
City, State, ZIP Code

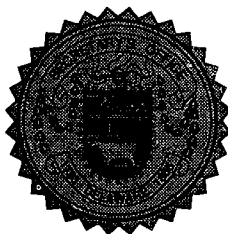
# Delaware

PAGE 1

*The First State*

I, HARRIET SMITH WINDSOR, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY THE ATTACHED IS A TRUE AND CORRECT COPY OF THE RESTATED CERTIFICATE OF "INOVAVENT, INC.", CHANGING ITS NAME FROM "INOVAVENT, INC." TO "BREATHE TECHNOLOGIES, INC.", FILED IN THIS OFFICE ON THE THIRTY-FIRST DAY OF MARCH, A.D. 2006, AT 2:13 O'CLOCK P.M.

A FILED COPY OF THIS CERTIFICATE HAS BEEN FORWARDED TO THE NEW CASTLE COUNTY RECORDER OF DEEDS.



3957393 8100

060307513

*Harriet Smith Windsor*

Harriet Smith Windsor, Secretary of State

AUTHENTICATION: 4636674

DATE: 03-31-06

PATENT  
REEL: 033725 FRAME: 0127

**INOVAVENT, INC.**  
**AT WILL EMPLOYMENT, CONFIDENTIAL INFORMATION,**  
**INVENTION ASSIGNMENT,**  
**AND ARBITRATION AGREEMENT**

As a condition of my employment with **InovaVent, Inc.**, its subsidiaries, affiliates, successors or assigns (together the "Company"), and in consideration of my employment with the Company and my receipt of the compensation now and hereafter paid to me by Company, I agree to the following:

1. *At-Will Employment.*

I UNDERSTAND AND ACKNOWLEDGE THAT MY EMPLOYMENT WITH THE COMPANY IS FOR AN UNSPECIFIED DURATION AND CONSTITUTES "AT-WILL" EMPLOYMENT. I ALSO UNDERSTAND THAT ANY REPRESENTATION TO THE CONTRARY IS UNAUTHORIZED AND NOT VALID UNLESS OBTAINED IN WRITING AND SIGNED BY THE PRESIDENT OF THE COMPANY. I ACKNOWLEDGE THAT THIS EMPLOYMENT RELATIONSHIP MAY BE TERMINATED AT ANY TIME, WITH OR WITHOUT GOOD CAUSE OR FOR ANY OR NO CAUSE, AT THE OPTION EITHER OF THE COMPANY OR MYSELF, WITH OR WITHOUT NOTICE.

2. *Confidential Information.*

A. *Company Information.* I agree at all times during the term of my employment and thereafter, to hold in strictest confidence, and not to use, except for the benefit of the Company, or to disclose to any person, firm or corporation without written authorization of the Board of Directors of the Company, any Confidential Information of the Company, except under a non-disclosure agreement duly authorized and executed by the Company. I understand that "Confidential Information" means any non-public information that relates to the actual or anticipated business or research and development of the Company, technical data, trade secrets or know-how, including, but not limited to, research, product plans or other information regarding Company's products or services and markets therefor, customer lists and customers (including, but not limited to, customers of the Company on whom I called or with whom I became acquainted during the term of my employment), software, developments, inventions, processes, formulas, technology, designs, drawings, engineering, hardware configuration information, marketing, finances or other business information. I further understand that Confidential Information does not include any of the foregoing items which have become publicly known and made generally available through no wrongful act of mine or of others who were under confidentiality obligations as to the item or items involved or improvements or new versions thereof.

B. *Former Employer Information.* I agree that I will not, during my employment with the Company, improperly use or disclose any proprietary information or trade secrets of any former or concurrent employer or other person or entity and that I will not bring onto the premises of the Company any unpublished document or proprietary information belonging to any such employer, person or entity unless consented to in writing by such employer, person or entity.

C. *Third Party Information.* I recognize that the Company has received and in the future will receive from third parties their confidential or proprietary information subject to a duty on the Company's part to maintain the confidentiality of such information and to use it only for certain limited purposes. I agree to hold all such confidential or proprietary information in the strictest confidence and not to disclose it to any person, firm or corporation or to use it except as necessary in carrying out my work for the Company consistent with the Company's agreement with such third party.

3. *Inventions.*

A. *Inventions Retained and Licensed.* I have attached hereto, as Exhibit A, a list describing all inventions, original works of authorship, developments, improvements, and trade secrets which were made by me prior to my employment with the Company (collectively referred to as "Prior Inventions"), which belong to me, which relate to the Company's proposed business, products or research and development, and which are not assigned to the Company hereunder; or, if no such list is attached, I represent that there are no such Prior Inventions. If in the course of my employment with the Company, I incorporate into a Company product, process or service a Prior Invention owned by me or in which I have an interest, I hereby grant to the Company a nonexclusive, royalty-free, fully paid-up, irrevocable, perpetual, worldwide license to make, have made, modify, use and sell such Prior Invention as part of or in connection with such product, process or service, and to practice any method related thereto.

B. *Assignment of Inventions.* I agree that I will promptly make full written disclosure to the Company, will hold in trust for the sole right and benefit of the Company, and hereby assign to the Company, or its designee, all my right, title, and interest in and to any and all inventions, original works of authorship, developments, concepts, improvements, designs, discoveries, ideas, trademarks or trade secrets, whether or not patentable or registrable under copyright or similar laws, which I may solely or jointly conceive or develop or reduce to practice, or cause to be conceived or developed or reduced to practice, during the period of time I am in the employ of the Company (collectively referred to as "Inventions"), except as provided in **Section 3.F** below. I further acknowledge that all original works of authorship which are made by me (solely or jointly with others) within the scope of and during the period of my employment with the Company and which are protectible by copyright are "works made for hire," as that term is defined in the United States Copyright Act. I understand and agree that the decision whether or not to commercialize or market any invention developed by me solely or jointly with others is within the Company's sole discretion and for the Company's sole benefit and that no royalty will be due to me as a result of the Company's efforts to commercialize or market any such invention.

C. *Inventions Assigned to the United States.* I agree to assign to the United States government all my right, title, and interest in and to any and all Inventions whenever such full title is required to be in the United States by a contract between the Company and the United States or any of its agencies.

D. *Maintenance of Records.* I agree to keep and maintain adequate and current written records of all Inventions made by me (solely or jointly with others) during the term of my employment with the Company. The records will be in the form of notes, sketches, drawings, and



any other format that may be specified by the Company. The records will be available to and remain the sole property of the Company at all times.

E. *Patent and Copyright Registrations.* I agree to assist the Company, or its designee, at the Company's expense, in every proper way to secure the Company's rights in the Inventions and any copyrights, patents, mask work rights or other intellectual property rights relating thereto in any and all countries, including the disclosure to the Company of all pertinent information and data with respect thereto, the execution of all applications, specifications, oaths, assignments and all other instruments which the Company shall deem necessary in order to apply for and obtain such rights and in order to assign and convey to the Company, its successors, assigns, and nominees the sole and exclusive rights, title and interest in and to such Inventions, and any copyrights, patents, mask work rights or other intellectual property rights relating thereto. I further agree that my obligation to execute or cause to be executed, when it is in my power to do so, any such instrument or papers shall continue after the termination of this Agreement. If the Company is unable because of my mental or physical incapacity or for any other reason to secure my signature to apply for or to pursue any application for any United States or foreign patents or copyright registrations covering Inventions or original works of authorship assigned to the Company as above, then I hereby irrevocably designate and appoint the Company and its duly authorized officers and agents as my agent and attorney in fact, to act for and in my behalf and stead to execute and file any such applications and to do all other lawfully permitted acts to further the prosecution and issuance of letters patent or copyright registrations thereon with the same legal force and effect as if executed by me.

F. *Exception to Assignments.* I understand that the provisions of this Agreement requiring assignment of Inventions to the Company do not apply to any invention which qualifies fully under the provisions of California Labor Code Section 2870 (attached hereto as Exhibit B). I will advise the Company promptly in writing of any inventions that I believe meet the criteria in California Labor Code Section 2870 and not otherwise disclosed on Exhibit A.

4. *Conflicting Employment.*

I agree that, during the term of my employment with the Company, I will not engage in any other employment, occupation or consulting directly related to the business in which the Company is now involved or becomes involved during the term of my employment, nor will I engage in any other activities that conflict with my obligations to the Company.

5. *Returning Company Documents.* I agree that, at the time of leaving the employ of the Company, I will deliver to the Company (and will not keep in my possession, recreate or deliver to anyone else) any and all devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings blueprints, sketches, materials, equipment, other documents or property, or reproductions of any aforementioned items developed by me pursuant to my employment with the Company or otherwise belonging to the Company, its successors or assigns, including, without limitation, those records maintained pursuant to **paragraph 3.D**. In the event of the termination of my employment, I agree to sign and deliver the "Termination Certification" attached hereto as Exhibit C.

6. *Notification of New Employer.* In the event that I leave the employ of the Company, I hereby grant consent to notification by the Company to my new employer about my rights and obligations under this Agreement.

7. *Solicitation of Employees.* I agree that for a period of twelve (12) months immediately following the termination of my relationship with the Company for any reason, whether with or without cause, I shall not either directly or indirectly solicit, induce, recruit or encourage any of the Company's employees to leave their employment, or take away such employees, or attempt to solicit, induce, recruit, encourage or take away employees of the Company, either for myself or for any other person or entity.

8. *Conflict of Interest Guidelines.* I agree to diligently adhere to the Conflict of Interest Guidelines attached as Exhibit D hereto.

9. *Representations.* I agree to execute any proper oath or verify any proper document required to carry out the terms of this Agreement. I represent that my performance of all the terms of this Agreement will not breach any agreement to keep in confidence proprietary information acquired by me in confidence or in trust prior to my employment by the Company. I hereby represent and warrant that I have not entered into, and I will not enter into, any oral or written agreement in conflict herewith.

10. *Arbitration and Equitable Relief.*

A. *Arbitration.* IN CONSIDERATION OF MY EMPLOYMENT WITH THE COMPANY, ITS PROMISE TO ARBITRATE ALL EMPLOYMENT-RELATED DISPUTES AND MY RECEIPT OF THE COMPENSATION, PAY RAISES AND OTHER BENEFITS PAID TO ME BY THE COMPANY, AT PRESENT AND IN THE FUTURE, I AGREE THAT ANY AND ALL CONTROVERSIES, CLAIMS, OR DISPUTES WITH ANYONE (INCLUDING THE COMPANY AND ANY EMPLOYEE, OFFICER, DIRECTOR, SHAREHOLDER OR BENEFIT PLAN OF THE COMPANY IN THEIR CAPACITY AS SUCH OR OTHERWISE) ARISING OUT OF, RELATING TO, OR RESULTING FROM MY EMPLOYMENT WITH THE COMPANY OR THE TERMINATION OF MY EMPLOYMENT WITH THE COMPANY, INCLUDING ANY BREACH OF THIS AGREEMENT, SHALL BE SUBJECT TO BINDING ARBITRATION UNDER THE ARBITRATION RULES SET FORTH IN CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 1280 THROUGH 1294.2, INCLUDING SECTION 1283.05 (THE "RULES") AND PURSUANT TO CALIFORNIA LAW. DISPUTES WHICH I AGREE TO ARBITRATE, AND THEREBY AGREE TO WAIVE ANY RIGHT TO A TRIAL BY JURY, INCLUDE ANY STATUTORY CLAIMS UNDER STATE OR FEDERAL LAW, INCLUDING, BUT NOT LIMITED TO, CLAIMS UNDER TITLE VII OF THE CIVIL RIGHTS ACT OF 1964, THE AMERICANS WITH DISABILITIES ACT OF 1990, THE AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967, THE OLDER WORKERS BENEFIT PROTECTION ACT, THE CALIFORNIA FAIR EMPLOYMENT AND HOUSING ACT, THE CALIFORNIA LABOR CODE, CLAIMS OF HARASSMENT, DISCRIMINATION OR WRONGFUL TERMINATION AND ANY STATUTORY CLAIMS. I FURTHER UNDERSTAND THAT THIS AGREEMENT TO ARBITRATE ALSO APPLIES TO ANY DISPUTES THAT THE COMPANY MAY HAVE WITH ME.

B. *Procedure.* I AGREE THAT ANY ARBITRATION WILL BE ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION ("AAA") AND THAT THE NEUTRAL ARBITRATOR WILL BE SELECTED IN A MANNER CONSISTENT WITH ITS NATIONAL RULES FOR THE RESOLUTION OF EMPLOYMENT DISPUTES. I AGREE THAT THE ARBITRATOR SHALL HAVE THE POWER TO DECIDE ANY MOTIONS BROUGHT BY ANY PARTY TO THE ARBITRATION, INCLUDING MOTIONS FOR SUMMARY JUDGMENT AND/OR ADJUDICATION AND MOTIONS TO DISMISS AND DEMURRERS, PRIOR TO ANY ARBITRATION HEARING. I ALSO AGREE THAT THE ARBITRATOR SHALL HAVE THE POWER TO AWARD ANY REMEDIES, INCLUDING ATTORNEYS' FEES AND COSTS, AVAILABLE UNDER APPLICABLE LAW. I UNDERSTAND THE COMPANY WILL PAY FOR ANY ADMINISTRATIVE OR HEARING FEES CHARGED BY THE ARBITRATOR OR AAA EXCEPT THAT I SHALL PAY THE FIRST \$200.00 OF ANY FILING FEES ASSOCIATED WITH ANY ARBITRATION I INITIATE. I AGREE THAT THE ARBITRATOR SHALL ADMINISTER AND CONDUCT ANY ARBITRATION IN A MANNER CONSISTENT WITH THE RULES AND THAT TO THE EXTENT THAT THE AAA'S NATIONAL RULES FOR THE RESOLUTION OF EMPLOYMENT DISPUTES CONFLICT WITH THE RULES, THE RULES SHALL TAKE PRECEDENCE. I AGREE THAT THE DECISION OF THE ARBITRATOR SHALL BE IN WRITING.

C. *Remedy.* EXCEPT AS PROVIDED BY THE RULES AND THIS AGREEMENT, ARBITRATION SHALL BE THE SOLE, EXCLUSIVE AND FINAL REMEDY FOR ANY DISPUTE BETWEEN ME AND THE COMPANY. ACCORDINGLY, EXCEPT AS PROVIDED FOR BY THE RULES AND THIS AGREEMENT, NEITHER I NOR THE COMPANY WILL BE PERMITTED TO PURSUE COURT ACTION REGARDING CLAIMS THAT ARE SUBJECT TO ARBITRATION. NOTWITHSTANDING, THE ARBITRATOR WILL NOT HAVE THE AUTHORITY TO DISREGARD OR REFUSE TO ENFORCE ANY LAWFUL COMPANY POLICY, AND THE ARBITRATOR SHALL NOT ORDER OR REQUIRE THE COMPANY TO ADOPT A POLICY NOT OTHERWISE REQUIRED BY LAW WHICH THE COMPANY HAS NOT ADOPTED.

D. *Availability of Injunctive Relief.* IN ADDITION TO THE RIGHT UNDER THE RULES TO PETITION THE COURT FOR PROVISIONAL RELIEF, I AGREE THAT ANY PARTY MAY ALSO PETITION THE COURT FOR INJUNCTIVE RELIEF WHERE EITHER PARTY ALLEGES OR CLAIMS A VIOLATION OF THE EMPLOYMENT, CONFIDENTIAL INFORMATION, INVENTION ASSIGNMENT AGREEMENT BETWEEN ME AND THE COMPANY OR ANY OTHER AGREEMENT REGARDING TRADE SECRETS, CONFIDENTIAL INFORMATION, NONSOLICITATION OR LABOR CODE §2870. I UNDERSTAND THAT ANY BREACH OR THREATENED BREACH OF SUCH AN AGREEMENT WILL CAUSE IRREPARABLE INJURY AND THAT MONEY DAMAGES WILL NOT PROVIDE AN ADEQUATE REMEDY THEREFOR AND BOTH PARTIES HEREBY CONSENT TO THE ISSUANCE OF AN INJUNCTION. IN THE EVENT EITHER PARTY SEEKS INJUNCTIVE RELIEF, THE PREVAILING PARTY SHALL BE ENTITLED TO RECOVER REASONABLE COSTS AND ATTORNEYS FEES.

E. *Administrative Relief.* I UNDERSTAND THAT THIS AGREEMENT DOES NOT PROHIBIT ME FROM PURSUING AN ADMINISTRATIVE CLAIM WITH A LOCAL, STATE OR FEDERAL ADMINISTRATIVE BODY SUCH AS THE DEPARTMENT OF FAIR EMPLOYMENT AND HOUSING, THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION OR THE WORKERS' COMPENSATION BOARD. THIS AGREEMENT DOES, HOWEVER, PRECLUDE ME FROM PURSUING COURT ACTION REGARDING ANY SUCH CLAIM.

F. *Voluntary Nature of Agreement.* I ACKNOWLEDGE AND AGREE THAT I AM EXECUTING THIS AGREEMENT VOLUNTARILY AND WITHOUT ANY DURESS OR UNDUE INFLUENCE BY THE COMPANY OR ANYONE ELSE. I FURTHER ACKNOWLEDGE AND AGREE THAT I HAVE CAREFULLY READ THIS AGREEMENT AND THAT I HAVE ASKED ANY QUESTIONS NEEDED FOR ME TO UNDERSTAND THE TERMS, CONSEQUENCES AND BINDING EFFECT OF THIS AGREEMENT AND FULLY UNDERSTAND IT, INCLUDING THAT ***I AM WAIVING MY RIGHT TO A JURY TRIAL.*** FINALLY, I AGREE THAT I HAVE BEEN PROVIDED AN OPPORTUNITY TO SEEK THE ADVICE OF AN ATTORNEY OF MY CHOICE BEFORE SIGNING THIS AGREEMENT.

11. *General Provisions.*

A. *Governing Law; Consent to Personal Jurisdiction.* This Agreement will be governed by the laws of the State of California. I hereby expressly consent to the personal jurisdiction of the state and federal courts located in California for any lawsuit filed there against me by the Company arising from or relating to this Agreement.

B. *Entire Agreement.* This Agreement sets forth the entire agreement and understanding between the Company and me relating to the subject matter herein and supersedes all prior discussions or representations between us including, but not limited to, any representations made during my interview(s) or relocation negotiations, whether written or oral. No modification of or amendment to this Agreement, nor any waiver of any rights under this Agreement, will be effective unless in writing signed by the President of the Company and me. Any subsequent change or changes in my duties, salary or compensation will not affect the validity or scope of this Agreement.

C. *Severability.* If one or more of the provisions in this Agreement are deemed void by law, then the remaining provisions will continue in full force and effect.

D. *Successors and Assigns.* This Agreement will be binding upon my heirs, executors, administrators and other legal representatives and will be for the benefit of the Company, its successors, and its assigns.

Date: April 1, 2005

*Gregory J. Kapust*  
Signature

Gregory J. Kapust  
Name of Employee (typed or printed)

Exhibit A

**LIST OF PRIOR INVENTIONS  
AND ORIGINAL WORKS OF AUTHORSHIP**

<u>Title</u>	<u>Date</u>	<u>Identifying Number or Brief Description</u>
Upper Airway Stent	June 6, 2004	Stent-like device that maintains patent airways, allowing the occurrence of "normal" breathing by the patient.
Nasal Cannula for CPAP	February, 2003	Novel nasal cannula device for delivery of gas to patients via the nose.

☐ No inventions or improvements

☐ Additional Sheets Attached

Signature of Employee: *Gregory J. Kapust*

Print Name of Employee: Gregory J. Kapust

Date: April 1, 2005.

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Files\Content.IE5\UTVN2WAS\UnovaVent\_Employee\_Agreement\_PALIB2\_3054887\_1\_w[1].GJK\_Exhibit.DOC

**Exhibit B**

**CALIFORNIA LABOR CODE SECTION 2870  
INVENTION ON OWN TIME-EXEMPTION FROM AGREEMENT**

"(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for the employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable."

**Exhibit C**

**InovaVent, Inc.**

**TERMINATION CERTIFICATION**

This is to certify that I do not have in my possession, nor have I failed to return, any devices, records, data, notes, reports, proposals, lists, correspondence, specifications, drawings, blueprints, sketches, materials, equipment, other documents or property, or reproductions of any aforementioned items belonging to **InovaVent, Inc.**, its subsidiaries, affiliates, successors or assigns (together, the "Company").

I further certify that I have complied with all the terms of the Company's Employment, Confidential Information, Invention Assignment and Arbitration Agreement signed by me, including the reporting of any inventions and original works of authorship (as defined therein), conceived or made by me (solely or jointly with others) covered by that agreement.

I further agree that, in compliance with the Employment, Confidential Information, Invention Assignment, and Arbitration Agreement, I will preserve as confidential all trade secrets, confidential knowledge, data or other proprietary information relating to products, processes, know-how, designs, formulas, developmental or experimental work, computer programs, data bases, other original works of authorship, customer lists, business plans, financial information or other subject matter pertaining to any business of the Company or any of its employees, clients, consultants or licensees.

I further agree that for twelve (12) months from this date, I will not solicit, induce, recruit or encourage any of the Company's employees to leave their employment.

Date: \_\_\_\_\_

\_\_\_\_\_  
(Employee's Signature)

\_\_\_\_\_  
(Type/Print Employee's Name)



## **Exhibit D**

### **InovaVent, Inc.**

#### **CONFLICT OF INTEREST GUIDELINES**

It is the policy of **InovaVent, Inc.** to conduct its affairs in strict compliance with the letter and spirit of the law and to adhere to the highest principles of business ethics. Accordingly, all officers, employees and independent contractors must avoid activities which are in conflict, or give the appearance of being in conflict, with these principles and with the interests of the Company. The following are potentially compromising situations which must be avoided. Any exceptions must be reported to the President and written approval for continuation must be obtained.

1. Revealing confidential information to outsiders or misusing confidential information. Unauthorized divulging of information is a violation of this policy whether or not for personal gain and whether or not harm to the Company is intended. (The Employment, Confidential Information, Invention Assignment and Arbitration Agreement elaborates on this principle and is a binding agreement.)
2. Accepting or offering substantial gifts, excessive entertainment, favors or payments which may be deemed to constitute undue influence or otherwise be improper or embarrassing to the Company.
3. Participating in civic or professional organizations that might involve divulging confidential information of the Company.
4. Initiating or approving personnel actions affecting reward or punishment of employees or applicants where there is a family relationship or is or appears to be a personal or social involvement.
5. Initiating or approving any form of personal or social harassment of employees.
6. Investing or holding outside directorship in suppliers, customers, or competing companies, including financial speculations, where such investment or directorship might influence in any manner a decision or course of action of the Company.
7. Borrowing from or lending to employees, customers or suppliers.
8. Acquiring real estate of interest to the Company.
9. Improperly using or disclosing to the Company any proprietary information or trade secrets of any former or concurrent employer or other person or entity with whom obligations of confidentiality exist.
10. Unlawfully discussing prices, costs, customers, sales or markets with competing companies or their employees.