

특허기술, 영업비밀 실시허락, 기술이전, 라이선스 영문계약서에서 진술 및 보증조항

REPRESENTATIONS AND WARRANTIES 샘플



11. REPRESENTATIONS AND WARRANTIES.

11.1 The Parties' Representations and Warranties.

Each Party hereby represents, warrants and covenants to the other Party, as of the Effective Date (or as of the Closing Date in the case of Section 11.1(h)), that:

(a) such Party (i) is a corporation duly organized and validly existing under the laws of its jurisdiction of organization, and (ii) has full power and authority and the legal right to own and operate its property and assets and to carry on its business as it is now being conducted and as it is contemplated to be conducted by this Agreement;

(b) such Party has sufficient legal and/or beneficial title under its intellectual property rights necessary for the purposes contemplated under this Agreement and to grant the licenses contained in this Agreement;

(c) such Party is not aware of any pending or threatened litigation, nor has it received any notice of claim, alleging that it has violated or would violate, through the manufacture, import and/or sale of Licensed Products hereunder, or by conducting its obligations as currently proposed under this Agreement, any intellectual property or other rights of any Third Party;

(d) to such Party's knowledge, all of its employees, officers, independent contractors, consultants and agents have executed agreements requiring assignment to such Party of all inventions made during the course of and as a result of their association with such Party and obligating the individual to maintain as confidential the Confidential Information of such Party;

(e) such Party has the power, authority and legal right, and is free to enter into this

Agreement and, in so doing, will not violate any other agreement to which such Party is a party as of the Effective Date and such Party has maintained and will maintain and keep in full force and effect all agreements and regulatory filings necessary to perform its obligations under the Agreement and, during the Term, such Party shall not enter into any agreement with a Third Party that will conflict with the rights granted to the other Party under this Agreement;

(f) this Agreement has been duly executed and delivered on behalf of such Party and constitutes a legal, valid and binding obligation of such Party and is enforceable against it in accordance with its terms, subject to the effects of bankruptcy, insolvency or other laws of general application affecting the enforcement of creditor rights and judicial principles affecting the availability of specific performance and general principles of equity;

(g) such Party has taken all corporate action necessary to authorize the execution, delivery and performance of this Agreement;

(h) such Party has obtained all consents, approvals and authorizations of all Regulatory

Authorities and other Third Parties reasonably deemed necessary by such Party to be obtained in connection with the execution and delivery of this Agreement and the performance of its obligations hereunder;

(i) the execution and delivery of this Agreement and the performance of such Party's obligations hereunder: (i) do not conflict with or violate any provision of the certificate of incorporation, bylaws, limited partnership agreement or any similar instrument of such Party, as applicable, in any material way; (ii) to such Party's knowledge, do not conflict with, violate or breach or constitute a default or require any consent under any indenture, mortgage, contract or instrument to which it is party or by which it is bound; and (iii) to such Party's knowledge, do not conflict with, violate, or breach or constitute a default or require any consent under, any requirement of Applicable Laws or court or administrative order by which such Party is bound;

(j) except in connection with or related to the settlement between Licensee A and the United States Department of Justice, announced on September 1, 2010, neither such Party, nor any of such Party's employees, officers, independent contractors, consultants or agents

who will render services relating to Licensed Products: (i) has ever been debarred or is subject to debarment or convicted of a crime for which an entity or person could be debarred under 21 U.S.C. Section 335a; or (ii) has ever been under indictment for a crime for which a person or entity could be debarred under said Section 335a. If during the Term a Party has reason to believe that it or any of its employees, officers, independent contractors, consultants or agents rendering services relating to Licensed Products: (x) is or will be debarred or convicted of a crime under 21 U.S.C. Section 335a; or (y) is or will be under indictment under said Section 335a, then such Party shall immediately notify the other Party of same in writing; and

(k) such Party currently has no research or development project, or agreement with any Third Party, that, in such Party's reasonable scientific or business judgement, (i) requires or is likely to require changes to the Development Plan attached hereto as Exhibit 4.1, or (ii) is likely to interfere with such Party's ability to enter into and perform its obligations under this Agreement.

11.2 Representations and Warranties of Licensor M.

Licensor M hereby represents, and warrants and covenants to Licensee A, as of the Effective Date, that:

(a) Licensor M is the sole and exclusive owner of all right, title and interest, in, to and under the Licensed Intellectual Property in the Territory;

(b) M is the sole and exclusive owner of all right, title and interest, in, to under the Licensed Intellectual Property necessary or useful in the Manufacture of Licensed Products;

(c) M has sufficient rights to grant the rights and licenses granted herein, free and clear of any security interests, claims, encumbrances or charges of any kind that would conflict in any material respect with the rights and licenses granted hereunder;

(d) M has not assigned or granted to any Third Party any rights under the Licensed Intellectual Property that cover Licensed Products in the Territory except as granted to independent contractors in the ordinary course of business in connection with M's research, Development and Manufacturing of Licensed Products, and consistent with the terms and intent of this Agreement;

(e) (i) M has not received any written notice from any Third Party asserting or alleging that any Development, Manufacturing, or Commercialization of the Licensed Products has infringed or misappropriated any Patent or intellectual property right of such Third Party, (ii) to the knowledge of M, the manufacture, use, offer for sale, sale or importation of Licensed Products in the Territory has not infringed and, as of the Effective Date, will not infringe, any Patent of any Third Party or misappropriate any technology of any Third Party, and (iii) there are no pending, and, to the knowledge of M, no threatened, adverse actions, suits, arbitrations, litigations, or proceedings of any nature, civil, criminal, regulatory or otherwise, in law or in equity, against M or any of its Affiliates alleging that the Development, Manufacture, Commercialization or other exploitation of Licensed Products has infringed any Patent, or misappropriated any intellectual property right of any Third Party;

(f) to Licensor M's knowledge, the issued Patents within the M Patent Rights in the Territory are valid and enforceable;

(g) all applicable maintenance and renewal fees with respect to the M Patent Rights in the Territory have been paid and all documents, and certificates required to be filed for the purpose of maintaining such M Patent Rights have been filed;

(h) to Licensor M's knowledge, no Third Party has asserted that any Licensed Intellectual Property is invalid or not enforceable;

(i) (i) other than as disclosed by M in writing to A prior to the Effective Date, none of the M Patent Rights, were developed with federal or state funding from any Governmental Authority, (ii) no Governmental Authority has any march in rights or other rights to use the Licensed Intellectual Property in the Territory, and (iii) neither the execution and delivery of this Agreement nor the performance hereof by M will result in the breach of, or give rise to, any right of termination, rescission, renegotiation or acceleration under, or trigger any other rights under, any agreement or contract to which M is a party, or to which it may be subject, that relates to the Licensed Products;

(j) no written communication has been received by M from any Third Party that alleges,

and there is no pending litigation that alleges, that (i) any issued M Patent is invalid or unenforceable as of the Effective Date, or (ii) any patent application included in the M Patents, if issued, would be, invalid or unenforceable;

(k) to the knowledge of Licensor M, no Third Party (i) is infringing any M Patent Rights or has misappropriated any M Know-How, or (ii) has challenged the ownership, scope, duration, validity, enforceability, priority or right to use any M Patent Rights (including, by way of example, through the institution of or written threat of institution of interference, re-examination, review, supplemental examination, derivation proceeding, protest, opposition, nullity or similar invalidity proceeding before the U.S. Patent and Trademark Office or any analogous foreign entity) or any M Know-How;

(l) the Licensed Intellectual Property licensed to Licensee A hereunder constitutes all of the intellectual property rights Controlled by M that are necessary for A to Commercialize Licensed Products in the Territory;

(m) to Licensor M's knowledge, M has complied in all material respects with all Applicable

Laws in the prosecution and maintenance of the M Patent Rights in the Territory;

(n) all of Licensor M's and its Affiliates' employees, officers, and consultants/contractors involved in the research, Manufacture or Development of Licensed Products are and have been obligated to assign to M or such Affiliate, as the case may be, all Inventions claimed in the M Patent Rights and to maintain as confidential the Confidential Information of M or such Affiliate, as applicable; and

(o) all inventors of any Inventions included within the M Patent Rights and M Know-How have assigned their entire right, title, and interest in and to such Inventions and the corresponding Patents and Information to M and have been listed in the M Patent Rights as inventors.

국제계약, 영문계약, 계약분쟁, 손해배상, Claim, License, R&D 제휴계약

T. 02-591-0657 E. kkh@kasanlaw.com H. www.kasanlaw.com