

01-22-2003

To the Honor  
Please returnand Trademarks:  
copy thereof.

## 1. Name of Party(ies) conveying an interest:

VALVE SPECIAL PURPOSE CO., LLC  
8200 Cameron Road, Suite A-196  
Austin, Texas 78754

Entity:

☐ Individual(s) ☐ Association☐ General Partnership ☐ Limited Partnership☒ Other: Delaware limited liability company☐ Other \_\_\_\_\_

Additional name(s) of conveying party(ies) attached:

☐ yes ☒ no

## 3. Description of the interest conveyed:

☐ Assignment ☐ Change of Name ☒ Other: Trademark license agreement  
☐ Security Agreement ☐ MergerExecution date of the attached document November 5, 2002

Name:

Street Address:

City:

State/Zip Code:

MEDICAL CARBON RESEARCH INSTITUTE, L.L.C.8200 Cameron Road, Suite A-196AustinTexas 78754

Entity:

☐ Individual(s) ☐ Association☐ General Partnership ☐ Limited Partnership☐ Corporation☒ Other Delaware limited liability company

Citizenship \_\_\_\_\_

If not domiciled in the United States, a domestic  
representative designation is attached:☐ yes ☐ no

(The attached document must not be an assignment)

Additional name(s) and addresses attached:

☐ yes ☒ no4. Application number(s) or registration number(s). Additional sheet attached? ☐ yes ☐ no

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,993,995

2,107,844

2,533,890

2,474,130

2,595,348

5. Name and address of party to whom correspondence  
concerning document should be mailed:Name: Willem F. Gadiano, Esq.  
FIRM: McDermott, Will & Emery  
Address: 600 13th Street, N.W.  
City/State/Zip: Washington, D.C. 20005-30966. Number of applications and registrations involved: 57. ☐ The \$\_\_\_\_\_ filing fee is enclosed.8. ☒ Please charge the \$140.00 filing fee to  
Deposit Account No. 500417.  
(duplicate copy of this page attached)9. ☒ Please charge any deficiencies in fees or credit  
any overpayment to Deposit Account No. 500417.

01/23/2003 TDIAZ1 00000015 500417 1993995

01 FC:8521 40.00 CH  
02 FC:8522 100.00 CH  
03 FC:8524 120.00 CH

DO NOT USE THIS SPACE

## 10. Statement and signature. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Name of Person Signing Willem F. Gadiano, Esq.Signature [Signature]Date January 21, 2003Total number of pages comprising coversheet: 1

## TRADEMARK LICENSE AGREEMENT

This **TRADEMARK LICENSE AGREEMENT** (as amended, supplemented or otherwise modified from time to time, this "Agreement") is dated and entered into as of November 5, 2002, by and between VALVE SPECIAL PURPOSE CO., LLC, having a place of business at 8200 Cameron Road, Suite A-196, Austin, Texas 78754 ("Valve SPC"), and MEDICAL CARBON RESEARCH INSTITUTE, L.L.C., a Delaware limited liability company, having its principal place of business at 8200 Cameron Road, Suite A-196, Austin, Texas 78754 ("MCRI") (each individually referred to as a "Party" and collectively referred to as the "Parties").

**WHEREAS**, Valve SPC and MCRI are entering into a Revenue Interests Assignment Agreement (as the same may be amended, supplemented or modified from time to time (the "RIAA"), with Paul Capital Royalty Acquisition Fund, L.P., a Delaware limited partnership ("PCRAF").

**WHEREAS**, Valve SPC is the owner of certain registered or unregistered trademarks, trade names, service marks including, without limitation, those listed in Appendix A and all goodwill associated therewith (collectively, hereinafter the "Licensed Marks"); and

**WHEREAS**, in connection with entering into the RIAA, MCRI desires to take a license from Valve SPC to use the Licensed Marks in connection with the goods listed in the U.S. registrations and applications for the Licensed Marks (collectively, hereinafter the "Licensed Goods"), pursuant to the terms and provisions set forth herein;

**NOW, THEREFORE**, for and in consideration of the mutual covenants and agreements set forth herein and in the Transaction Documents, and for such other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto, intending to be legally bound hereby, agree as follows:

### SECTION 1. DEFINITIONS

1.1 Capitalized terms used, and not otherwise defined herein, shall have the meaning ascribed to such term in the RIAA.

### SECTION 2. GRANT OF LICENSE

- 2.1 Subject to the terms and conditions set forth in this Agreement, Valve SPC hereby grants to MCRI, and MCRI hereby accepts from Valve SPC, an exclusive worldwide royalty-bearing right and license to all rights, including the right to sublicense, under the Licensed Marks with respect to the Licensed Goods.
- 2.2 Notwithstanding the foregoing grant, upon the occurrence and during the continuance of a Termination Event, Valve SPC reserves and shall retain all

rights, title and interest under the Licensed Marks with respect to the Products to itself develop, make, use, market and sell the Products.

### **SECTION 3. COMPENSATION**

- 3.1. Upon the request of Valve SPC, MCRI shall pay to Valve SPC for the Term of this Agreement, on account of MCRI's, its Affiliates' or its sublicensees' sale of the Licensed Goods under the Licensed Marks, license fees in a reasonable amount to be mutually determined by agreement of the Parties.
- 3.2. All payments due Valve SPC shall be made in United States currency by check drawn on a U.S. bank, unless otherwise specified by Valve SPC.

### **SECTION 4. ACCOUNTING**

- 4.1. MCRI shall deliver to Valve SPC such information as Valve SPC shall reasonably request regarding payments made by MCRI to Valve SPC hereunder.
- 4.2. Each Party shall keep complete and accurate records and books of account containing all information required for the computation and verification of the amounts to be paid hereunder and shall use its best efforts to require its sublicensees to do likewise.
- 4.3. Valve SPC shall have the right, upon reasonable notice, to inspect MCRI's books and records and all other material documents in MCRI's possession or control with respect to the subject matter of this Agreement. Valve SPC shall have free and full access thereto for such purposes and may make copies thereof.

### **SECTION 5. OWNERSHIP AND PROTECTION OF THE LICENSED MARK**

- 5.1. MCRI acknowledges Valve SPC's exclusive right, title and interest in and to the Licensed Marks. MCRI acknowledges that it shall acquire no ownership rights to the Licensed Marks by virtue of this Agreement or otherwise and that all such uses by MCRI of the Licensed Marks shall inure to the benefit of Valve SPC. MCRI shall not, during the period of this Agreement, directly or indirectly acquire or assert any interest or property right in the Licensed Marks.
- 5.2. MCRI shall not, during the term of this Agreement, use any Licensed Mark adjacent or in close proximity to any trademark, trade name, word, character or symbol of MCRI or any third party without Valve SPC's prior written consent. Except as expressly permitted under this Agreement, MCRI shall not use any trademark, trade name, word, character, symbol, or combination thereof that in any language or culture is colorably imitative of or confusingly similar to any Licensed Mark or part thereof without Valve SPC's prior consent.

- 5.3. MCRI shall not, during the term of this Agreement, adopt, use or register or attempt to register as a trademark, service mark, trade name, domain name or corporate name or as part thereof, any of the Licensed Marks or any word, symbol or picture or combination thereof that is confusingly similar to the Licensed Marks.
- 5.4. MCRI agrees that it shall not do anything which impairs Valve SPC's ownership of or the validity of the Licensed Marks. MCRI agrees that it shall not, during the term of this Agreement, or thereafter, challenge or participate in any challenge against the title or any rights of Valve SPC in or to the Licensed Marks, nor shall MCRI challenge or participate in any challenge against the validity of this Agreement, except as otherwise may be required by law.
- 5.5. MCRI shall perform all lawful acts and execute such instruments as Valve SPC may reasonably request to confirm, evidence, maintain or protect Valve SPC's rights to and under the Licensed Marks or as reasonably requested by Valve SPC to effect the terms, conditions or intents of this Agreement.

## **SECTION 6. GOODWILL OF MARKS**

- 6.1. MCRI recognizes the great value of the Licensed Marks and the goodwill associated therewith, and acknowledges that the Licensed Marks and all rights therein and the goodwill pertaining thereto belong exclusively to Valve SPC.

## **SECTION 7. USE; QUALITY CONTROL**

- 7.1. MCRI shall only use the Licensed Marks as expressly authorized by this Agreement.
- 7.2. Valve SPC expressly reserves and retains the right to control the nature and quality of all products on which MCRI may use the Licensed Marks. MCRI agrees to the following:
- 7.2.1. MCRI shall always conduct its business affairs with its customers, consumers of Licensed Goods, and the public generally, such that the goodwill associated with the Licensed Marks will always be enhanced. MCRI shall not use or permit any use of the Licensed Marks by any other Person in any manner that might adversely affect the goodwill associated with the Licensed Marks.
- 7.2.2. MCRI's goods and services identified by the Licensed Marks shall be consistent with their premium nature and the market image of the Licensed Marks. All of the Licensed Goods involving the Licensed Marks shall be of a high quality satisfactory to Valve SPC and the

Licensed Goods shall be marketed and distributed in channels of trade that are consistent with their premium nature and the market image of the Licensed Marks.

7.2.3. The Licensed Goods, packaging, labels and the advertising, promotion, publicity and promotional material therefor, shall comply with the standards set by Valve SPC and all applicable federal, state and local laws and regulations. The marketing, distribution, promoting, and advertising of the Licensed Goods as well as all other uses of the Licensed Marks under this Agreement shall all be of a quality, style, appearance, character and taste that will be satisfactory to Valve SPC, in its sole discretion.

7.2.4. At Valve SPC's request, MCRI shall provide Valve SPC with representative goods, packaging, labels, advertising, and promotional materials bearing the Licensed Marks to permit reasonable inspection by Valve SPC of the Licensed Goods, MCRI's use of the Licensed Marks, and MCRI's operations and facilities, and to audit MCRI's relevant records in order to verify the quality, nature, scope, quantity and other aspects of the Licensed Goods. Should Valve SPC notify MCRI of Valve SPC's disapproval of any of the Licensed Goods, operations, facilities or materials, MCRI shall act as soon as reasonably practicable to withdraw such disapproved goods and/or material or to conform such disapproved goods, operations, facilities and/or material to Valve SPC's reasonable satisfaction.

## **SECTION 8. REPRESENTATIONS AND WARRANTIES**

8.1. Each of Valve SPC and MCRI hereby represents and warrants as of the date hereof and as of the Closing Date that their respective representations and warranties contained in Article III of the RIAA, insofar as such representations and warranties are applicable to either or their respective properties, are true and correct in all respects as of each such date, each such representation and warranty set forth in such Article III (insofar as applicable as aforesaid) and all other terms of the RIAA to which reference is made therein, together with all related definitions and ancillary provisions, being hereby incorporated into this Agreement by reference as though specifically set forth in Section 8.1.

## **SECTION 9. INDEMNIFICATION; INSURANCE; LIABILITY**

9.1 MCRI agrees to fully defend, indemnify, save, and hold Valve SPC and its Affiliates, officers, directors, agents and employees harmless, at its own expense, from and against any and all liabilities, claims, causes of actions, suits, damages, and expenses (including reasonable attorneys' fees) for which Valve SPC may become liable or which it may incur or may pay in any action or as a result of any claims against Valve SPC for or by reason of any: (i) actual or alleged defects in

the Licensed Goods or other claims related to the offering of the Licensed Goods by MCRI; or (ii) MCRI's false or misleading advertising in connection with the Licensed Goods; or (iii) violation of any federal, state or local law or regulation in connection with the marketing, sale, advertisement or promotion of the Licensed Goods; or (iv) use of any of the Licensed Marks in a manner not authorized by this Agreement. This Section 9.1 shall survive the expiration, termination, breach, or alleged breach of this Agreement.

9.2 At Valve SPC's request, MCRI shall procure and maintain in full force and effect and at its own expense during the term of this Agreement a policy or policies of liability insurance in respect to this Agreement and naming Valve SPC as an "additional insured" issued by such company or companies in such amounts and with such coverage as may from time to time reasonably be agreed upon by the Parties hereto.

9.3 In all transactions regarding Licensed Goods, MCRI shall assume sole responsibility and liability for any commitments, obligations, or representations made by it in connection with the sale, marketing, advertising or other exploitation thereof.

## **SECTION 10. INFRINGEMENT LITIGATION**

10.1 MCRI shall promptly notify Valve SPC in writing of any act which it believes to be an infringement by third parties of any of its rights hereunder or of the Licensed Marks, promptly upon learning of the same. Valve SPC may take whatever action it may deem advisable or necessary to such infringements. MCRI shall join with Valve SPC, if requested by Valve SPC and at the expense of Valve SPC, in taking such action. Valve SPC shall have the right to determine what action, if any, will be taken to remedy such infringements. Should Valve SPC choose not to take action, MCRI, in its sole discretion and at its sole expense, may take any such action, and may retain all of the resulting monetary recovery, if any.

## **SECTION 11. DISPUTE RESOLUTION**

11.1 In the event that a Party to this Agreement perceives the existence of a dispute with the other Party concerning any right or duty provided for herein, the Parties shall, as soon as practicable, confer in an attempt to resolve the dispute. In the event that resolution of the dispute is not forthcoming, the Parties shall consult with a view toward submitting the dispute to mediation or arbitration under mutually acceptable terms. There is no enforceable obligation to enter into mediation or arbitration conferred by this paragraph. Any such mediation or arbitration, if entered into, shall be conducted by one or more attorneys registered to practice before the United States Patent and Trademark Office.

## SECTION 12. TERM AND TERMINATION

- 12.1 This Agreement shall remain in full force and effect until January 1, 2013, unless earlier terminated by agreement of the Parties.
- 12.2 Valve SPC may terminate this Agreement if any of the following occur:
- 12.2.1 MCRI becomes insolvent, ceases doing business, or seeks protection from creditors;
  - 12.2.2 MCRI makes a general assignment of its assets or business for the benefit of creditors (other than in connection with a commercial bank loan, a financing in which MCRI or its parent company assigns or sells a right to receive payments in respect of product sales, or equipment financings);
  - 12.2.3 A trustee or receiver is appointed to conduct MCRI's business or affairs;
  - 12.2.4 MCRI breaches this Agreement and does not cure such breach within sixty (60) days after written notice thereof;
  - 12.2.5 MCRI shall assign or attempt to assign any of its rights and duties hereunder without the consent of Valve SPC as required by Section 13; or
  - 12.2.6 MCRI is adjudged in any legal proceeding to be either voluntarily or involuntarily bankrupt.
- 12.3 Upon termination of this Agreement, the rights granted herein shall forthwith cease and terminate.

## SECTION 13. ASSIGNMENT

- 13.1. This Agreement and any and all rights and duties appertaining thereto may not be assigned, transferred, conveyed, sold or otherwise disposed of by either Party without first obtaining the written consent of the other Party hereto, nor may either Party pledge, or grant a lien on or security interest in such Party's rights appertaining to this Agreement, provided however, that Valve SPC may, pursuant to the Security Agreement, grant in favor of PCRAF a security interest in, or lien on, or otherwise pledge to PCRAF, all of its respective rights, title and interest therein and hereunder as collateral security for its respective Obligations to PCRAF under the RIAA and the other Transaction Documents. Any such purported assignment, without the written consent of the other Party, shall be null and of no effect.

## **SECTION 14. COUNTERPARTS; EFFECTIVENESS**

- 14.1. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same instrument. This Agreement shall become effective when each Party hereto shall have received a counter part hereof signed by the other Party hereto.

## **SECTION 15. EXPORT CONTROL**

- 15.1. It is understood that the Parties are subject to United States laws and regulations controlling the export of technical data, computer software, laboratory prototypes and other commodities, articles and information, including the Arms Export Control Act as amended in the Export Administration Act of 1979, and that its obligations hereunder are contingent upon compliance with applicable United States export laws and regulations. The transfer of certain technical data and commodities may require a license from the cognizant agency of the United States Government and/or written assurances by a Party, that Party shall not export data or commodities to certain foreign countries without prior approval of such agency.

## **SECTION 16. FURTHER ASSURANCES**

- 16.1. The Parties shall, with reasonable diligence, do all such things and provide all such reasonable assurances as may be required to consummate the transactions contemplated by this Agreement, and each Party shall provide such further documents or instruments required by the other Party as may be reasonably necessary or desirable to effect the purpose of this Agreement and carry out its provisions.
- 16.2. The Parties shall execute and file, record or register such financing or continuation statements, or amendments thereto, and such other instruments, assignments or notices, as may be necessary or desirable, or as Valve SPC may request, in order to create, preserve, perfect and protect the pledge, assignment, license, and security interests and other rights granted or purported to be granted to MCRI.

## **SECTION 17. GOVERNING LAW**

- 17.1. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED, INTERPRETED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF DELAWARE.
- 17.2. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT MAY BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT



JURISDICTION IN THE STATE OF DELAWARE. BY EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY HERETO IRREVOCABLY CONSENTS TO AND ACCEPTS, FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY THE NON-EXCLUSIVE JURISDICTION OF SUCH COURTS. EACH PARTY HERETO HEREBY FURTHER IRREVOCABLY WAIVES ANY OBJECTION, INCLUDING ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON THE GROUNDS OF FORUM NON CONVENIENS, WHICH IT MAY NOW OR HEREAFTER HAVE TO THE BRINGING OF ANY ACTION OR PROCEEDING IN SUCH JURISDICTION IN RESPECT OF THIS AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT.

## **SECTION 18. HEADINGS AND CAPTIONS**

- 18.1. The headings and captions in this Agreement are for convenience and reference purposes only and shall not be considered a part or affect the construction or interpretation of any provision of this Agreement.

## **SECTION 19. INDEPENDENT PARTIES**

- 19.1. The Parties are independent entities and contractors and neither is an agent of the other. Neither Party is authorized or empowered to act as agent for the other Party for any purpose and shall not on behalf of the other Party take any action which would suggest to a reasonable person that an agency relationship exists between the Parties. No representations will be made or acts taken by either Party which could establish any apparent relationship of agency, joint venture or partnership and neither Party shall be bound in any manner whatsoever by any agreements, warranties or representations made by the other Party to any other person or with respect to any other action of the other Party.

## **SECTION 20. INTEGRATION; MODIFICATION**

- 20.1. This Agreement sets forth the entire agreement between the Parties hereto relating to the subject matter hereof, and this Agreement or any term or provision hereof may not be amended, changed or modified except with the written consent of the Parties hereto, and, during the term of the RIAA, the prior written consent of PCRAF.

## **SECTION 21. NO IMPLIED WARRANTIES**

- 21.1. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT AND THE OTHER TRANSACTION DOCUMENTS, NEITHER PARTY HERETO MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION,

ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT, OR ANY WARRANTIES THAT MAY ARISE FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

## SECTION 22. NOTICES

- 22.1 All notices, statements, reports and other communications which are required or which may be given under the provisions of this Agreement shall be in writing and shall be hand-delivered with receipt acknowledged in writing, as follows

If for Valve SPC, to:

8200 Cameron Road, Suite A-196  
Austin, Texas 78754

If for MCRI, to:

8200 Cameron Road, Suite A-196  
Austin, Texas 78754

- 22.2 All notices, statements, reports and other communications shall be effective on the date received at the recipient's address stated above. Either Party hereto may change its address for notice by written notice to that effect given to the other Party in accordance with this Section.

## SECTION 23. SEVERABILITY

- 23.1 If any term, clause or provision hereof is held invalid or unenforceable by a court of competent jurisdiction, such invalidity shall not affect the validity or operation of any other term, clause or provision and such invalid term, clause or provision shall be deemed to be severed from the Agreement.

## SECTION 24. WAIVER

- 24.1 No waiver by either Party of any default shall be deemed as a waiver of prior or subsequent default of the same or other provisions of this Agreement.

## SECTION 25. WAIVER OF JURY TRIAL

- 25.1 EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS

AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT OR THE  
TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY. THIS  
WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS,  
RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS  
AGREEMENT OR ANY OTHER TRANSACTION DOCUMENT.

[Signature page follows]

IN WITNESS WHEREOF, the Parties hereto, intending to be legally bound thereby, have executed this Agreement by their duly respective authorized corporate officers as of the date first above written.

VALVE SPECIAL PURPOSE CO., LLC

By: William E. Cooper  
Name: William E. Cooper  
Title: Chief Financial Officer

MEDICAL CARBON RESEARCH INSTITUTE, L.L.C.

By: Jack C. Bokros  
Name: Jack C. Bokros  
Title: President and Chief Executive Officer

[Signature Page To Trademark License Agreement (Exhibit L)]

**APPENDIX A****LICENSED MARKS****U. S. TRADEMARKS**

Trademark	Reg. No.	Registration Date	Goods/Classes
ON-X	1,993,995	8/13/96	(Class 1) (Pyrocarbon)
ON-X	2,107,844	10/21/97	(Class 10) (heart valves)
MCRI & Wave Design	2,533,890	1/29/02	(Class 10) (heart valves)
NATURAL BY DESIGN	2,474,130	7/31/01	(Class 10) (heart valves)
CONFORM-X	2,595,348	7/16/02	(Class 10) (heart valves)

**FOREIGN TRADEMARKS**

COUNTRY	TRADEMARK	REGIS. NO.	REGIS. DATE
Australia	ON-X	832,315	4/18/00
Taiwan	ON-X	933,190	3/1/01
South Korea	ON-X	505,981	11/8/01
China	ON-X	1,605,672	7/21/01
Europe. Cntry.	ON-X	31,492	1/8/98
Europe. Cntry.	MCRI and Design	279,406	1/27/99

COUNTRY	TRADEMARK	APPLN. NO.	FILING DATE
Japan	ON-X	2000-39908	4/14/00