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10 BIOMAGIC, INC.

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CLERK OF DISTRICT COURT
CENTRAL DISTRICT
SANTA ANA

BY FAX

11 UNITED STATES DISTRICT COURT
12 CENTRAL DISTRICT OF CALIFORNIA, SOUTHERN DIVISION

13 SACV10-00290 AG (RNBx)

14 BIOMAGIC, INC., a
15 Delaware Corporation,
16
17 Plaintiff,

Civil Action No.

COMPLAINT FOR PATENT
INFRINGEMENT

18 v.

DEMAND FOR JURY TRIAL

19 DUTCH BROTHERS ENTERPRISES,
20 LLC., an Idaho limited liability
21 company, AGRAKEY SOLUTIONS,
22 LLC., an Idaho limited liability
23 company, and JOHN REITSMA, an
24 individual, and DOES 1 to 10,
25 Defendants.

1. Plaintiff, by and through its attorneys of record, allege as follows:

PARTIES

2. Plaintiff BIOMAGIC, INC. (hereinafter "BioMagic") is a corporation organized and existing under the laws of the State of Delaware, with a place of business at 1030 West 17th Street, Costa Mesa, California, 92627.

1 3. Upon information and belief, Defendant DUTCH BROTHERS
2 ENTERPRISES, LLC. (hereinafter “Dutch Brothers”), is a limited liability
3 company organized and existing under the laws of the State of Idaho, with its
4 principal place of business at 139 River Vista Place, Twin Falls, Idaho, 83301.

5 4. Upon information and belief, Defendant AGRAKEY SOLUTIONS,
6 LLC (hereinafter “AgraKey”), is a corporation organized and existing under the
7 laws of the State of Idaho, with its principal place of business at 329 S. 417 E.,
8 Jerome, Idaho, 83338.

9 5. Upon information and belief, Defendant JOHN REITSMA, an
10 individual (hereinafter “Reitsma”), is an Idaho resident.

11 6. The true names and capacities, whether individual, corporate,
12 associate, representative or otherwise, of DOES 1 through 10, inclusive, are
13 unknown to Plaintiff, who therefore sues them by such fictitious names. Plaintiff
14 will seek leave to amend this complaint to show the true names and capacities of
15 the Defendants when they are ascertained. Plaintiff is informed and believes, and
16 thereupon alleges, that each of the Defendants named as a DOE, along with the
17 named Defendants, is responsible in some manner for the occurrences herein
18 alleged, and that Plaintiff’s damages herein alleged were legally or proximately
19 caused by said Defendants. Wherever it is alleged that any act or omission was
20 also done or committed by any specifically named Defendant or by Defendants
21 generally, Plaintiff intends thereby to allege, and does allege, that the same act or
22 omission was also done and committed by each and every Defendant named as a
23 DOE, and each named Defendant, both separately and in concert or conspiracy
24 with the named Defendants.

25 7. On information and belief, and at all times mentioned herein, each of
the Defendants named herein as DOES 1 through 10, inclusive, performed,
participated in or abetted in some manner the acts alleged herein; proximately

1 caused the damages alleged herein below; and are liable to Plaintiff for the
2 damages and relief sought herein.

3 **JURISDICTION AND VENUE**

4 8. This is an action for patent infringement arising under the patent laws
5 of the United States, *35 U.S.C. §§ 1, et seq.* This Court has subject matter
6 jurisdiction over this action pursuant to *28 U.S.C. §§ 1331 and 1338(a)*.

7 9. This Court has personal jurisdiction over Dutch Brothers, AgraKey
8 and Reitsma, collectively the "Defendants," because each of the Defendants
9 conduct business in this judicial district and in the State of California; and have
10 and continue to commit acts of patent infringement and/or have contributed to or
11 induced acts of patent infringement by others in this judicial district (and elsewhere
12 in California and in the United States).

13 10. Venue is proper in this judicial district pursuant to *28 U.S.C. §§*
14 *1391(b), 1391(c) and 1400(b)* because the Defendants are subject to personal
15 jurisdiction in this judicial district; have regularly conducted business in this
16 judicial district; and certain of the acts complained of herein occurred in this
17 judicial district.

18 **THE PATENT-IN-SUIT**

19 11. BioMagic is the owner of all right, title and interest in and to United
20 States Patent No. 7,637,054 ("the '054 Patent"), entitled "COMPOSITIONS AND
21 METHODS FOR ENHANCING PLANT GROWTH BY CHEMICAL
22 OXYGENATION OF SOILS," which was duly and legally issued on December
23 29, 2009. A true and correct copy of the '054 Patent is attached hereto as **Exhibit**
24 **A**. The '054 Patent is hereinafter referred to as the "Patent-In-Suit."

25 12. The '054 Patent has claims 1-20 drawn to methods for enhancing the
growth of a plant. Many of the claims are directed to producing an odor control

1 solution by mixing a surfactant and a source of nitrogen where the surfactant
2 comprises at most 0.02% wt of the solution.

3 **BACKGROUND**

4 13. BioMagic is engaged in the business of developing, manufacturing
5 and marketing proprietary bio-stimulant products, accessories and supplies. On
6 December 9, 2005, BioMagic entered into an Exclusive License Agreement with
7 Defendants Dutch Brothers under which BioMagic granted to Defendant Dutch
8 Brothers an exclusive license to manufacture, market and sell BioMagic's
9 proprietary bio-stimulant products, accessories and supplies in agriculture and
10 agriculturally-related applications in North America, including Hawaii. On
11 information and belief, Defendant Reitsma is the controlling member of Dutch
12 Brothers, and Dutch Brothers is an alter ego of Defendant Reitsma.

13 14. The parties amended the Exclusive License Agreement by and
14 through execution of a License Transfer Agreement, dated May 7, 2007. (The
15 Exclusive License Agreement and License Transfer Agreement are collectively
16 referred to as "License Agreement.") True and correct copies of the Exclusive
17 License Agreement and the License Transfer Agreement are attached hereto as
18 Exhibits "B" and "C", respectively.

19 15. Under the License Agreement, BioMagic granted an exclusive license
20 in and to the '054 Patent in return for quarterly royalty payments based on a
21 percentage of Defendant Dutch Brothers' gross sales revenues, under a formula as
22 set forth in the License Agreement.

23 16. After the License Agreement was entered into, Defendants Dutch
24 Brothers and Reitsma began manufacturing and marketing BioMagic's bio-
25 stimulant products, accessories and supplies in agriculture and agriculturally
related applications pursuant to the rights granted under the Licensing Agreement.

1 17. On or about May 7, 2007, in order to facilitate the growth and
2 reorganization of Defendants Dutch Brothers' and Reitsma's business, BioMagic,
3 Dutch Brothers and Reitsma entered into the License Transfer Agreement.
4 BioMagic consented to the transfer of the licensed rights under the Exclusive
5 Licensing Agreement from Defendants Dutch Brothers to Reitsma, individually.
6 Thereafter, Defendant Reitsma formed a new company, Defendant AgraKey, to
7 perform the marketing and sales functions under the License Agreement, while
8 Defendant Dutch Brothers continued to manufacture the product under the License
9 Agreement. At the time, Defendants did not disclose the fact that they intended this
10 reorganization as a means to avoid the royalty payments due BioMagic under the
11 License Agreement

12 18. At all times relevant herein, Defendants Dutch Brothers and AgraKey
13 were, and are, enterprises completely dominated and controlled by Defendant
14 Reitsma, and are related companies engaged in a common enterprise, and alter
15 egos of Defendant Reitsma.

16 19. On or about early 2009, each of the Defendants materially breached
17 the License Agreement by marketing and selling BioMagic's proprietary products
18 to businesses not involved in agriculture and agriculturally-related applications,
19 including the sale of BioMagic's products to companies engaged in the
20 manufacture of pulp and paper products, and companies engaged in the industrial
21 waste water business.

22 20. Commencing on or about April 30, 2009, in further breach of the
23 License Agreement, Defendants failed to timely and properly account for and pay
24 the royalties due to BioMagic for the First Quarter of 2009 under Paragraph 4.3 of
25 the License Agreement, by using AgraKey as a shell company to divert revenues.

1 21. Commencing on or about July 30, 2009, each of Defendants further
2 materially breached the License Agreement by failing and refusing to account for
3 or pay any royalties to BioMagic for the Second and Third Quarters of 2009.

4 22. BioMagic has repeatedly notified Defendants of their material
5 breaches of the License Agreement, and demanded that Defendants cure these
6 defaults and perform their obligations under the License Agreement. However,
7 Defendants have failed and refused, and continue to fail and refuse to cure these
8 defaults.

9 23. On or about August 1, 2009, BioMagic gave formal written notice to
10 Defendants, advising that they were in material breach of the License Agreement
11 and of BioMagic's intention to terminate the License Agreement under Paragraph
12 7.1 of the Agreement if the defaults and breached were not cured.

13 24. Defendants did not cure the defaults after more than 90 days and
14 accordingly, BioMagic elected to terminate the License Agreement for cause under
15 Paragraph 7.1 of the License Agreement.

16 25. Further, on or about July 31, 2009, Defendants served written notice
17 on BioMagic of their election to voluntarily terminate the License Agreement
18 under Paragraph 4.1 of the License Agreement. More than 90 days has elapsed
19 since BioMagic's election to terminate the License Agreement, and therefore, if the
20 License Agreement had not been terminated by BioMagic, it was terminated as of
21 November 2, 2009 by the Defendants' voluntary election.

22 26. Paragraph 4.1 of the License Agreement provides that, upon
23 termination of the License Agreement, "Licensee shall forego any further rights or
24 claims related to the Products."

25 27. On November 13, 2009, BioMagic sent a cease and desist letter to
26 Defendants, and also a Demand for Arbitration for Defendants breach of the
27 License Agreement. A true and correct copy of the letter is attached herein as

1 Exhibit "D." The November 13, 2009 cease and desist letter gave formal notice
2 that the License Agreement had been terminated as of November 4, 2009, and
3 unequivocal notice that Defendants are no longer authorized to manufacture,
4 market or sell BioMagic's proprietary products.

5 28. Notwithstanding the termination of the License Agreement effective
6 November 1st or 2nd, 2009, and the November 13, 2009 cease and desist letter,
7 BioMagic is informed and believes and thereon alleges that each of the Defendants
8 continue to manufacture and/or sell BioMagic's proprietary bio-stimulant products,
9 accessories and supplies without BioMagic's consent and in violation of
10 BioMagic's proprietary rights.

11 29. On information and belief, as recently as March 5, 2010, a product
12 called UNLOK™ Soil Treatment 25-0-0 (The "UnLok Product"), was sold,
13 manufactured by Defendant Dutch Brothers and/or Reitsma, and distributed by
14 AgraKey in the Pacific Region of the United States. The label for the UnLok
15 Product shows a composition of polyethylene glycols (nonionic surfactants) at
16 0.004%, which is claimed under the claims of the '054 Patent. A true and correct
17 copy of a label for the UnLok Product is attached herein as Exhibit "E."

18 30. By manufacturing, marketing and selling infringing products to
19 companies outside the scope of their licensed rights during the term of the License
20 Agreement, and by manufacturing, marketing and selling infringing products after
21 termination of the License Agreement, each of the Defendants are willfully and
22 intentionally infringing the '054 Patent.

23 COUNT ONE

24 INFRINGEMENT OF THE '054 PATENT AGAINST ALL DEFENDANTS

25 31. Bio-Magic re-alleges and incorporates herein the allegations of
26 paragraphs 1-30 as if fully set forth herein.

32. The '054 Patent is valid and enforceable.

1 33. Upon information and belief, in violation of *35 U.S.C. § 271*, each of
2 the Defendants has infringed, is currently infringing, and will continue to infringe,
3 either directly or by infringement under the doctrine of equivalents, the '054
4 Patent, by making, using, offering for sale, selling and/or importing into the United
5 States products, and specifically, at least the UnLok Product, in a manner that
6 incorporates and infringes the subject matter protected by at least one of claims 1-
7 20 of the '054 Patent.

8 34. Upon information and belief, in violation of *35 U.S.C. § 271*, each of
9 the Defendants also contributes to and/or induces infringement of one or more of
10 the claims of the '054 Patent as set forth above.

11 35. As a direct and proximate result of each of the Defendants' acts of
12 infringement as alleged herein, Bio-Magic has and will continue to suffer damages
13 in an amount according to proof at trial. Thus Bio-Magic is entitled to recover
14 damages adequate to compensate it for such infringement, but in no event less than
15 a reasonable royalty.

16 36. Unless each of the Defendants is enjoined by this Court from
17 continuing their infringement of the '054 Patent, Bio-Magic will suffer additional
18 irreparable harm and impairment of the value of its patent rights. Thus, Bio-Magic
19 is entitled to an injunction against further infringement.

20 37. Upon information and belief, each of the Defendants had actual notice
21 of the existence of the '054 Patent at before and during their respective
22 infringements.

23 38. Upon information and belief, Defendants' infringement has occurred
24 with knowledge of the '054 Patent, and is and has been in deliberate and willful
25 violation of *35 U.S.C. § 284*, entitling Bio-Magic to increased damages, and
making this case exceptional within the meaning of *35 U.S.C. § 285*.

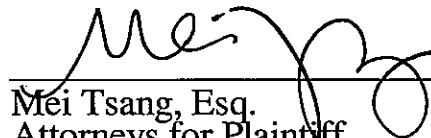
- 1 F) Judgment that the Defendants individually and collectively be ordered to
2 pay all costs and expenses incurred by BioMagic associated with this
3 action pursuant to *35 U.S.C. § 284*;
- 4 G) Judgment that the Defendants individually and collectively be ordered to
5 pay treble damages pursuant to *35 U.S.C. § 284* as a result of the willful
6 and deliberate nature of their conduct;
- 7 H) Judgment that this case is exceptional, and that the Defendants
8 individually and collectively be ordered to pay all of BioMagic's attorney
9 fees associated with this action pursuant to *35 U.S.C. § 285*; and
- 10 I) Judgment that BioMagic be granted such other and additional relief as
11 this Court may deem just and proper.

12 Respectfully submitted,

13 FISH & ASSOCIATES, PC

14 Dated: March 8, 2010

15 By:

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17 Mei Tsang, Esq.
18 Attorneys for Plaintiff
19 BioMagic, Inc.
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DEMAND FOR JURY TRIAL

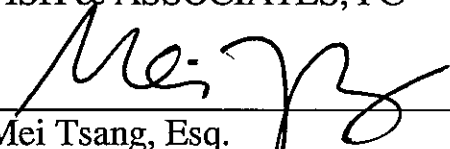
Pursuant to *Federal Rule of Civil Procedure, Rule 38*, and *L.R. 38-1*,
Plaintiff hereby demands a jury trial on all issues so triable.

Respectfully submitted,

FISH & ASSOCIATES, PC

Dated: March 8, 2010

By:



Mei Tsang, Esq.
Attorneys for Plaintiff
BioMagic, Inc.

VERIFICATION

I have read the foregoing complaint for: Patent Infringement, and know its contents.

I am an officer of BioMagic, Inc., and am authorized to make this verification on behalf of BioMagic, Inc., and I make this verification for that reason. I am informed and believe that the matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on MAR 8, 2010, in COSTA MESA, CA

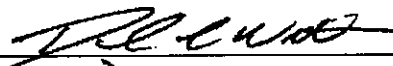

Name: DAVID C. WATT
Title: Chief Executive Officer
BioMagic, Inc.

Exhibit A



US007637054B2

(12) **United States Patent**
Alfrey et al.

(10) **Patent No.:** US 7,637,054 B2
(45) **Date of Patent:** Dec. 29, 2009

(54) **COMPOSITIONS AND METHODS FOR ENHANCING PLANT GROWTH BY CHEMICAL OXYGENATION OF SOILS**

(75) **Inventors:** Janice Alfrey, Costa Mesa, CA (US); Paul Alfrey, Costa Mesa, CA (US)

(73) **Assignee:** Bio Magic, Inc., Costa Mesa, CA (US)

(*) **Notice:** Subject to any disclaimer, the term of this patent is extended or adjusted under 35 U.S.C. 154(b) by 0 days.

(21) **Appl. No.:** 11/972,546

(22) **Filed:** Jan. 10, 2008

(65) **Prior Publication Data**
US 2008/0092613 A1 Apr. 24, 2008

Related U.S. Application Data
(63) Continuation-in-part of application No. 11/781,863, filed on Jul. 23, 2007, now abandoned, which is a continuation-in-part of application No. 10/559,245, filed as application No. PCT/US03/17761 on Jun. 5, 2003.

(60) Provisional application No. 60/838,941, filed on Aug. 18, 2006.

(51) **Int. Cl.**
C05C 1/00 (2006.01)
C05C 3/00 (2006.01)
C05C 5/00 (2006.01)
C05C 9/00 (2006.01)
C05C 13/00 (2006.01)
B01D 12/00 (2006.01)
B01F 17/00 (2006.01)

B01F 17/02 (2006.01)
B01F 17/18 (2006.01)
(52) **U.S. Cl.** 47/58.1 SC; 71/28; 71/29; 71/30; 71/58; 71/61; 71/63; 71/64.1; 516/198; 516/200; 516/204

(58) **Field of Classification Search** None
See application file for complete search history.

(56) **References Cited**

U.S. PATENT DOCUMENTS

4,911,843 A * 3/1990 Hunniford et al. 210/610
5,264,018 A 11/1993 Koenigsberg et al.
6,206,946 B1 * 3/2001 Hayashi et al. 71/31
6,329,324 B1 12/2001 Brueggemann et al.
6,458,179 B1 10/2002 Puskarich
6,826,866 B2 * 12/2004 Moore et al. 47/48.5
7,192,523 B2 3/2007 Perriello
2005/0022570 A1* 2/2005 Duarte-MacDonald 71/33

* cited by examiner

Primary Examiner—David T Fox

(74) *Attorney, Agent, or Firm*—Fish & Associates, PC

(57) **ABSTRACT**

Chemical combinations known to be used for odor control are provisioned for enhancing growth of a plant. The chemical combinations preferably include a stable, aqueous solution of a surfactant and a chemical source of oxygen. There are numerous ways by which one could learn that such combinations have utility in odor control. In preferred methods a manufacturer, distributor, retailer, farmer or other entity is informed of such through reading a journal article or other publication, or by a receiving a letter, fax, or email. The combinations can be used to reduce consumption of irrigation water and to increase a crop yield, each by at least 5-25%, as a consequence of applying the solution to a soil.

20 Claims, 2 Drawing Sheets

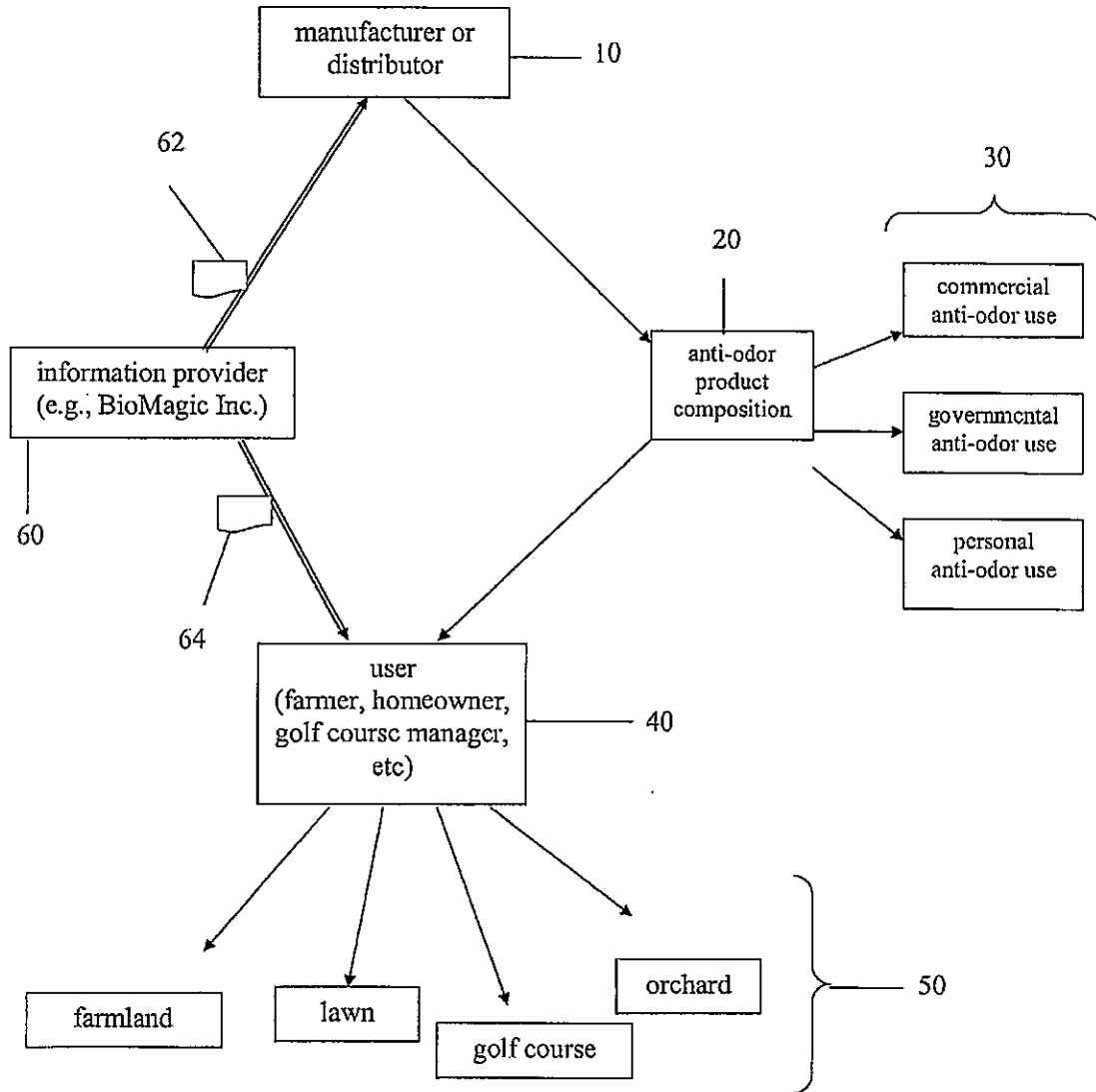


Figure 1

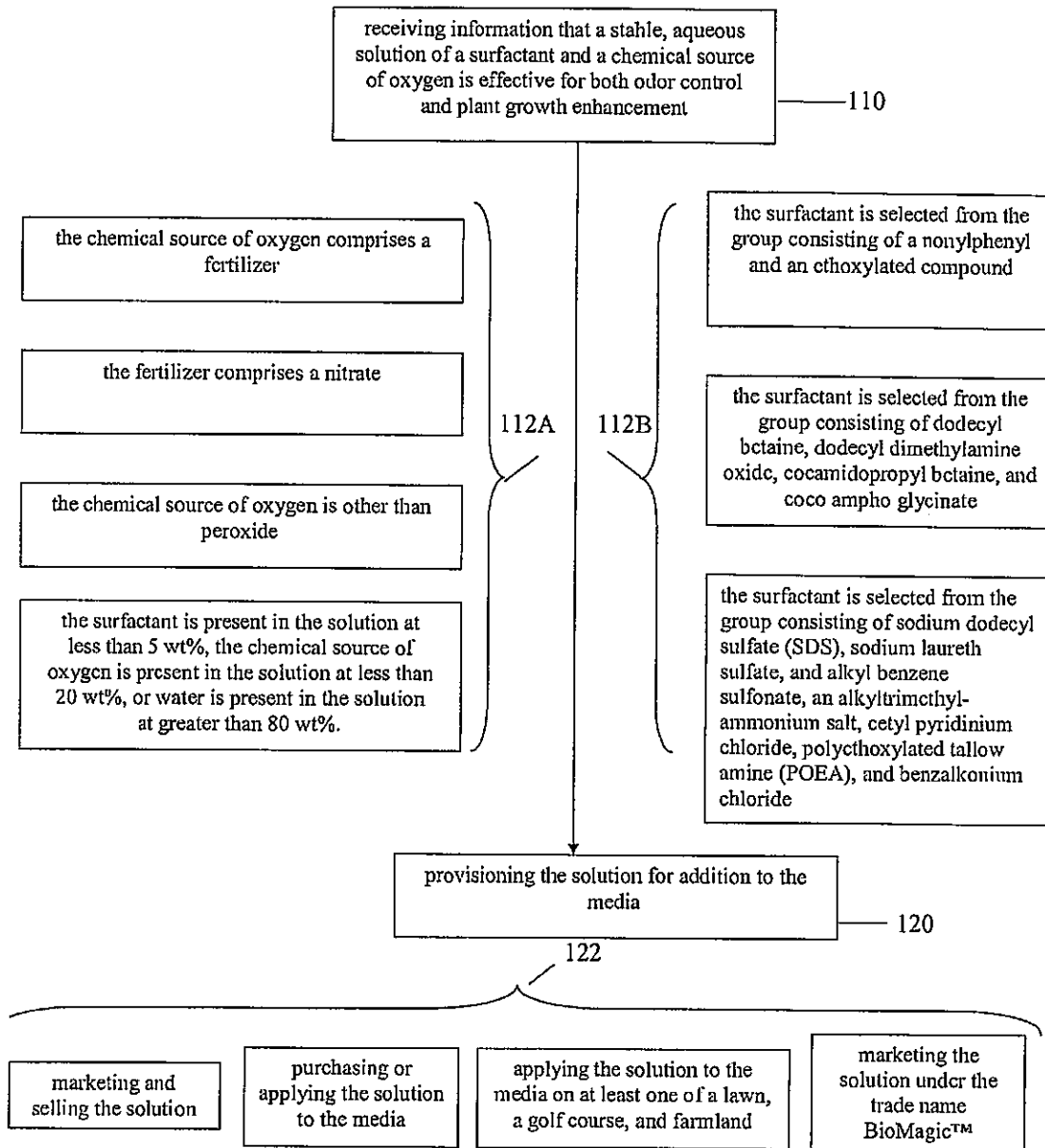


Figure 2

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**COMPOSITIONS AND METHODS FOR
ENHANCING PLANT GROWTH BY
CHEMICAL OXYGENATION OF SOILS**

This application is a continuation-in-part of U.S. Ser. No. 11/781,863 filed Jul. 23, 2007, which was a continuation-in-part of U.S. Ser. No. 10/559,245 filed Apr. 26, 2006, which is a U.S. National Stage under 35 USC 371 of PCT/US03/17761, filed Jun. 5, 2003, and U.S. Ser. No. 11/781,863 also claims priority to provisional 60/838,941, filed Aug. 18, 2006.

FIELD OF THE INVENTION

The field of the invention is substances having a nutrient action on plant growth, especially plant protecting and regulating compositions.

BACKGROUND

Many soils suffer from poor hydraulic conductivity, i.e., reduced or inefficient movement of water, nutrients and oxygen through the soil. In agricultural crops the problem is usually addressed by turning the soil prior to each planting. In large grassy areas, such as golf courses and public parks where the soil cannot effectively be turned, the problem is often addressed by punching numerous small holes in the top of the soil. Unfortunately, these and all commercially practical mechanical methods only improve hydraulic conductivity at a macroscopic level. Moreover, repeated compaction, use of chemical fertilizers, and frequent irrigation tend to recreate or exacerbate the problem with uncomfortable rapidity. The problem even affects ordinary homeowners, who often notice that their lawns need more fertilizer and more water each year to achieve the same results.

There are chemical technologies for improving hydraulic conductivity through aeration of soils. For example, U.S. Pat. No. 3,912,490 to Boghosian (October 1975) teaches direct addition of urea peroxide or hydrogen peroxide to the soil, often with a heavy metal catalyst. Urea peroxide is considered especially advantageous because it is highly mobile, the urea increases the stability of H₂O₂, and urea peroxide is non-toxic at high concentrations. Frankenberger, W. T., *Factors Affecting the Fate of Urea Peroxide Added To Soil*, Bull Environ. Contam. Toxicol. (1997) 59:50-57. Calcium peroxide has also been used to increase oxygen levels, especially in clayey soils where it can significantly improve hydraulic conductivity. Note that these and all other referenced extrinsic materials are incorporated herein by reference in their entirety. Where term definitions are inconsistent between or among references, the broader or broadest definition applies.

Peroxides can also improve hydraulic conductivity by increasing total microbial populations and species diversity. U.S. Pat. No. 5,264,018 to Koenigsberg et al. (November 1993), for example, describes microbial decontamination of soil using high concentrations of metal peroxides (calcium, potassium, or magnesium), along with a surfactant (preferably 0.1 to 1% wt/wt of monolaurate, monopalmitate, monostearate, or monooleate ester or sorbitol, with or without ethoxylation) and an oxygen release modifier (preferably a source of simple phosphate ion). Interestingly, although the '018 patent appreciates the effect of peroxides on microbial populations, it fails to appreciate that such changes may be advantageous to growth of plants.

One drawback of using large quantities of peroxides is that they can sterilize the soil, thereby destroying substantially all of the "good" microbes. For example, U.S. Pat. No. 5,607,856

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to Moon et al. (March 1997) teaches use hydrogen peroxide, peracetic acid, sodium peroxide, potassium peroxide, calcium peroxide, potassium oxide, and magnesium peroxide in sufficient quantities to sterilize soil for bioremediation. In such instances soil must be re-inoculated with beneficial bacteria and fungi for plants to grow effectively.

Non-peroxide sources have also been used to oxygenate soils. For example, U.S. Pat. No. 6,173,526 (January 2001) to Mazzei, teaches irrigating soils with oxygen infused water. While it is known that there are microbial sources of oxygen growing in a soil, extrinsic chemicals that can be manufactured and distributed in bulk, and that are neither ionic nor peroxides, have been largely or completely overlooked as materials for soil oxygenation. That is a considerable oversight since at least some fertilizer materials, including for example nitrates, are good oxygenators.

Fertilizers are sometimes combined with surfactants to enhance plant growth. For example, U.S. Pat. No. 6,206,946 to Hayashi et al. (March 2001) teaches a foliage spray containing a fertilizer, a surfactant, and a heptonic acid. U.S. Pat. No. 5,747,419 to Ishimoto et al. (May 1998) teaches a foliage spray using an iron cyanide fertilizer with a surfactant. US20040069032 to Krysiak et al., (April 2004) uses water soluble polyacrylamides (PAMs) in combination with a surfactant. Browning U.S. Pat. Nos. 5,391,542 (Feb. 1995) and 5,143,939 (September 1992), teach use of a specific surfactant such as UNION CARBIDE'S™ TERGITOL™ 15-S series of ethylene oxide derivatives to enhance plant growth, and to control nematode, worm, mite, and fungus. U.S. Pat. No. 6,460,290 to Moore (Oct. 2002) uses a fertilizer in combination a surfactant and alkyl polyglycoside. In U.S. Pat. No. 6,300,282 to Cooley (Oct. 2001), surfactants are applied to the soil after planting to maintain soil moisture levels near the potato root zone, and to prevent leaching of nutrients. Preferred surfactants are PREFERENCE™, a non-ionic surfactant blend containing soybean based fatty acid and alcohol ethoxylates; LI-319™, a non-ionic surfactant mixture of linear primary alcohol ethoxylates, ACTIVATOR N.F.™; a non-foaming, non-ionic wetting agent, surfactant, penetrant and spreader containing primary aliphatic oxyalkylated alcohol, dimethylpolysiloxane and adjuvant; WET-SOL 99™, a non-ionic surfactant containing poly(oxy-1,2 ethanediyl), alpha-(nonylphenyl)omega-hydroxy and a polysiloxane emulsion; ADVANTAGE FORMULA ONE™, a surfactant containing ammonium laureth sulfate, nonyl phenol ethoxylate; and ACTIVATOR 90™, a biodegradable, low-foaming, non-ionic surfactant and penetrant containing primary alkyl polyoxyethylene ether and free fatty acids and adjuvants. Again, none of these references teach, suggest or motivate one of ordinary skill in the art to provide a soil additive having a surfactant and a significant chemical source of oxygen.

The usual combination for promoting plant growth is a large quantity of fertilizer with a small to large quantity of surfactant. For example, U.S. Pat. No. 6,460,290 (October 2002) and U.S. Pat. No. 6,826,866 (December 2004) to Moore et al. describe aqueous compositions containing 65-99% fertilizer and 1-35% of a surfactant system. Similarly, U.S. 2004/0031305 to Kober et al., (publ. February, 2004) teaches a combination of 5-40% ammonium nitrate with 0.1-5% surfactant.

It is also known that a solution containing a small to large quantity of an oxygenator can be combined with small quantities of surfactants to reduce odors in air, sewage systems, on trash heaps and so forth. See WO04108173 to Alfrey et al., (December 1004). Such solutions apparently work by shifting microbial populations from anaerobic to aerobic metabo-

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lism, thereby reducing noxious smells that would otherwise derive from the anaerobic metabolism.

What appears to have been completely unappreciated is that the same solutions that are effective to treat odors can also be applied to soils or other plant growth media to promote plant growth. Thus, the Moore patents described above suggest nitrate as a fertilizer, but have no mention whatsoever of nitrate as an oxygenator, let alone contemplate using combinations containing nitrate as odor reducers. Still further, it has been completely unappreciated that odor treating compositions having low fertilizer and low surfactant concentrations can be extremely effective in promoting plant growth.

SUMMARY OF THE INVENTION

Compositions, systems, and methods are provided in which chemical combinations known to be used for odor control are provisioned for enhancing growth of a plant, and reducing consumption of water and/or fertilizer. The chemical combinations preferably include a stable, aqueous solution of a surfactant and a chemical source of oxygen. The chemical source of oxygen more preferably excludes peroxide or superoxide.

There are numerous ways by which one could learn that such combinations have utility in odor control. In preferred methods a manufacturer, distributor, retailer, farmer or other entity is informed of such through reading a journal article or other publication, or by receiving a letter, fax, email or other point to point communication.

All manner of surfactants are contemplated, including ionic and non-ionic, and polymeric and non-polymeric surfactants. Preferred surfactants include nonylphenyl and ethoxylated compounds, dodecyl betaine, dodecyl dimethylamine oxide, cocamidopropyl betaine, coco amphi glycinate, sodium dodecyl sulfate (SDS), sodium laureth sulfate, and alkyl benzene sulfonate, an alkyltrimethylammonium salt, cetyl pyridinium chloride, polyethoxylated tallow amine (POEA), and benzalkonium chloride. The surfactant(s) is/are preferably present in the solution at a total concentration of less than 20 wt %, and more preferably less than 5 wt %, 2 wt %, and even 1%. Most preferably the total concentration of surfactant(s) is no more than 0.1%.

All suitable chemical sources of oxygen are contemplated, including those that contain nitrogen, sulfur, and phosphorous. Nitrate and other non-peroxides are especially preferred sources. The chemical source(s) of oxygen is/are preferably present in the solution at a total concentration of less than 50 wt % and more preferably less than 20 wt %, 10 wt %, and even 5%. Water is preferably present in the solution at a concentration of at least 80 wt %, and more preferably at least 90% or even 95%.

Provisioning of a solution can occur in any suitable manner, including recommending, manufacturing, distributing, marketing, using the solution on a lawn, golf course, farmland or anywhere else a plant is grown. Of particular interest is provisioning a solution by marketing or using a solution under the trade name BIOMAGIC.TM However, it is contemplated that provisioning a solution by marketing or using a solution can also be used, marketed, sold, researched and used under any other names, such as generic or brand names. Provisioning also includes combining a solution of the present invention with at least one of humic acid, compost extract, compost tea, and/or adding one or more micronutrients.

Still further contemplated methods include using the contemplated solutions to reduce consumption of irrigation water by at least 5%, at least 15%, or at least 25% as a consequence

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of applying the solution to a soil. Similarly, contemplated methods include using the contemplated solutions to increase a crop yield by at least 5%, at least 15%, or at least 25% as a consequence of applying the solution to a soil.

In what is probably the most surprising result, application of test solutions to soils reduce nitrogen, phosphorous, and potassium (NPK) type fertilizer requirements by between 5 and 25%, depending on plant type, soil type, growing conditions, and other factors not yet elucidated. These or other plant nutrients can be provided within the solution itself, or can be added before or after application of the solution.

Various objects, features, aspects and advantages of the present invention will become more apparent from the following detailed description of preferred embodiments of the invention, along with the accompanying drawings in which like numerals represent like components.

BRIEF DESCRIPTION OF THE DRAWING

FIG. 1 is a schematic showing diversion of an anti-odor product from an anti-odor usage to usage as a plant growth enhancer, and receiving advice related to same from a competitor.

FIG. 2 is a schematic of method according to various aspects of the present invention.

DETAILED DESCRIPTION

In FIG. 1, a manufacturer or distributor 10 provides an anti-odor composition 20 to the marketplace 30. A diverter 40 obtains a quantity of the composition, and applies it as a plant growth enhancer to farmland, lawn, golf course, orchard or other plant growing area 50. A competitor or other information provider 60 finds out about the diverter's activities, and sends a letter or other communication 62, 64 to the manufacturer or distributor 10, or the diverter 40, respectively.

The anti-odor composition 20 is preferably a combination of: (a) a fertilizer or other source of nitrogen; (b) a chemical source of oxygen; (c) a surfactant; and optionally (d) one or more micronutrients; (e) pH adjuster; and (f) a colorant. It is also contemplated that while the anti-odor compositions can be effective by adding it to a known fertilizer, the addition of fertilizer is not necessary to accomplish the same results. While not wishing to be bound to any particular theory or mechanism of action, it is currently contemplated that anti-odor compositions can operate by encouraging growth of aerobic bacteria relative to anaerobic bacteria, and by encouraging facultative bacteria to switch to an aerobic mode in which they produce less odorous waste and decompose biomass. Particularly, the anti-odor compositions stimulate the aerobic bacteria that live in close proximity to the plant roots to disperse beneficial materials and compounds in the soil. This dispersion of beneficial materials and compounds are provided to the immediate area of the roots that otherwise may not be available to the plant. Of particular interest are the enteric group bacteria comprising the enterobacteraceae family, denitrifying bacteria, and other types of facultative bacteria. Some contemplated aerobic bacteria include nitrifying bacteria, sulfur oxidizing bacteria, methane oxidizing bacteria, pseudomonas, etc. Such compositions can be especially effective in accelerating decomposition of organic matter in sewage, sludge or other biomass.

Nitrogen Source(s)

Many sources of nitrogen may be used, as long as the nitrogen is bioavailable. It is known, for example, that bacteria can metabolize nitrates, nitrites, amino acids, urea, uric acid, and creatinine. In preferred embodiments, the source of

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nitrogen is either nitrates or urea because those sources are relatively inexpensive, and are especially nutritious for bacteria. In terms of nitrates, all common and structurally stable nitrates may be used as long as they provide an available nitrogen source to facultative and/or aerobic bacteria. Some common examples of nitrates include HNO_3 , NaNO_3 , LiNO_3 , KNO_3 , RbNO_3 , FrNO_3 , $\text{Be}(\text{NO}_3)_2$, $\text{Mg}(\text{NO}_3)_2$, $\text{Ca}(\text{NO}_3)_2$, $\text{Sr}(\text{NO}_3)_2$, $\text{Ba}(\text{NO}_3)_2$, $\text{Ra}(\text{NO}_3)_2$, NH_4NO_3 , and even $\text{Ag}(\text{NO}_3)_2$. Preferred nitrates include potassium nitrate, calcium nitrate, and ammonium nitrate because they provide further nutrition for facultative and/or aerobic bacteria.

Odor control compositions of the present invention may comprise only one nitrogen source, including for example, potassium nitrate, ammonium nitrate, or creatinine. However, it is also contemplated that a combination of various nitrogen sources may be advantageous, as different sources may be preferentially utilized by different bacteria. In most preferred embodiments, the odor control composition comprises calcium nitrate, ammonium nitrate, potassium nitrate, and urea.

U.S. Pat. No. 4,911,843 by Hunniford et al. (May 1990), reissued as RE36651 (April 2000) and RE37181 (May 2001), teaches that the addition of nitrate, via an aqueous sodium nitrate solution, to sewage systems, waste treatment plants and other industrial waste applications containing dissolved hydrogen sulfide, can be effective in eliminating or substantially reducing the hydrogen sulfide, as well as eliminating other "minor" odors associated with other sulfur-containing compounds. Contrary to the teachings of the Hunniford et al. patents, the current inventors have found experimentally that the percentage of nitrogen in the composition is not especially critical. Compositions having at least 5% of the aqueous solution can be reasonably effective, and compositions having between 10 and 70 percent nitrogen to be even more effective. The amounts of nitrogen sources that are used depend on various factors including types of bacteria involved, temperature, types of odors, strength of the odor, amounts of bacteria present, type and composition of the environment (i.e. volume of water, sewage, air, etc.) to be treated, as well as various other factors that may also come into play. Preferred embodiment is to have compositions having between 2 and 50 percent nitrogen. When urea is used, bacteria has found to grow well in compositions having approximately 2-40% urea, and more preferably between 15-30% urea. In terms of dry weight percents, optimal formulations including at least 2% of at least one of ammonium nitrate and calcium nitrate, at least 2% of urea, and at least 0.01% of potassium nitrate.

In preferred embodiments, it is advantageous to have a total amount of ammonium nitrate, calcium nitrate, and potassium nitrate that is present in an amount between 5-50 wt %. It is especially preferred that the composition comprise a total of 54 wt % of ammonium nitrate, calcium nitrate, and potassium nitrate. One class of especially preferred formulations includes 1-20 wt % calcium nitrate, especially 15 wt %, 2-40 wt % ammonium nitrate, especially 39 wt %, 0.01-12 wt % potassium nitrate, especially 0.1 wt %, and 2-30 wt % urea, especially 20 wt %. In another class of preferred formulations, the composition comprises 30-60 wt % ammonium nitrate, 10-30 wt % calcium nitrate, 1-10 wt % sodium nitrate, 5-10 wt % uric acid, and 1-10 wt % glycine. Another class of preferred formulations includes 10-40 wt % potassium nitrate and 2-20 wt % urea.

Oxygen Source(s)

Preferred oxygen sources are those having loosely associated oxygen, defined herein to mean oxygen other than O_2 that facultative and aerobic bacteria can readily metabolize. Loosely associated oxygen can be covalently or ionically

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bound, and typically includes at least one hydrogen bond. Preferred sources of loosely associated oxygen are nitrates, sulfates, sulfites, phosphates, phosphates, and urea. Specific examples include H_2SO_4 , Na_2SO_4 , Li_2SO_4 , K_2SO_4 , Rb_2SO_4 , Cs_2SO_4 , Fr_2SO_4 , BeSO_4 , MgSO_4 , CaSO_4 , SrSO_4 , BaSO_4 , RaSO_4 , H_2PO_4 , Na_2PO_4 , Li_2PO_4 , K_2PO_4 , Rb_2PO_4 , Cs_2PO_4 , Fr_2PO_4 , BePO_4 , MgPO_4 , CaPO_4 , SrPO_4 , BaPO_4 , RaPO_4 . Other contemplated oxygen sources include carbohydrates, sugars, etc. In addition to providing bacteria with oxygen, carbohydrates and sugars also provide bacteria with energy.

The oxygen source(s) can be the same as the nitrogen source(s) discussed above, and such formulations are preferred. For example, in most preferred embodiments, the oxygen source is loosely associated oxygen that is derived from a nitrate, urea, or combination of both. The oxygen can be present in any amount as long as it is not lethal to the bacterial population. Oxygen sources are especially preferred because they are relatively stable and are readily available for use or consumption by bacteria and may promote a hyper-growth state in such bacteria.

Surfactant(s)

While not wanting to be limited to any particular theory in this or any other aspect of the application, it is contemplated that a surfactant helps the bacteria feed on the nitrogen and oxygen sources and assists in the mixing of the nitrogen and oxygen source(s).

Practically any surfactant can be utilized, as used as long as it is mild and does not tend to disrupt the cellular membrane of microorganisms. Suitable surfactants include those commonly found in soaps, shampoos, detergents, as well as wetting agents. Although both ionic and non-ionic surfactants are contemplated, non-ionic surfactants are preferred because they tend not to alter the pH of the composition.

In preferred embodiments, nonyl-phenyl-ethoxylated surfactants is used with 0.001-5 wt %, as opposed to other preferred embodiments where only 0.02 wt % surfactant is used. Thus, it is contemplated that a large volume of surfactant is not necessary and that more than one type of surfactant may be used to improve the effectiveness of the composition.

Mixing

In preferred embodiments, an odor control composition is created by mixing a combination of a source of nitrogen, a chemical source of oxygen, and a surfactant in an aqueous solution. The combination is produced for the purpose of producing an odor control composition in the manner claimed.

Preferred odor control compositions and methods include water or other aqueous fluid in addition to the nitrogen source(s), oxygen source(s), and surfactant(s). The various ingredients should be thoroughly mixed, preferably via an automatic mixer but may also be accomplished manually, depending on the amount of composition being made. After mixing, the composition is typically pH adjusted to a neutral pH, using standard acid, such as nitric acid and hydrochloric acid (i.e. 6M HNO_3 or 20M HCl) and base, such as ammonium hydroxide and sodium hydroxide (i.e. 6M NH_4OH or 16M NaOH). A non-aqueous fluid may be added to the composition, but such compositions are generally not preferred because they are often harder to work with.

Although various concentrations of the composition have been described herein, it may be advantageous to further dilute or concentrate the composition for use. For example, perhaps a concentrated solution is preferable for sale to keep shipping costs down and to minimize shelf space. Alternatively, perhaps a diluted composition may be preferable for sale so as to reduce any possible hazards in storage, handling, and transport of the composition.

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Furthermore, the concentration of the composition may vary depending on several factors, including the amount of odor that needs to be controlled; the use of the composition; the strength and/or effectiveness of the composition; environmental conditions including temperature, humidity, etc.; amount of nitrogen and oxygen source(s) in the composition; the type and amounts and types of bacteria present in a biomass if applicable; and various other factors. Exemplary dilutions include 1:50, 1:100, and even 1:500 depending on various factors. In a preferred embodiment, a concentrated composition is sold, and the end user may dilute the product to 1:10, 1:100, 1:500, 1:10,000, or even 1:40,000, depending on the desired effectiveness of the composition. It is presently thought that in the treatment of airborne odors, the product would not be diluted to more than 1:700.

Marketing and Usage

The preferred method of marketing for anti-odor usage is to package the composition with a labeling identifying the composition as having efficacy in controlling odors, and offering the same for sale to businesses, households, governments, water districts, and so on. All manner of suitable packaging is contemplated including spray or non-spray bottles for individual use, as well as drum or other bulk packaging. Even small, personal size spray bottles are contemplated that can be readily carried on one's person or in one's luggage to treat odors in carpet or bedding of hotel rooms, and in bathrooms and other places subject to multiple person usage. The odor control compositions can be sold for various purposes, including deodorizing a room, area, or industry, and even for use as a plant growth stimulant.

Diversion

Although it was contemplated in the parent utility and grandparent WIPO applications that odor controlling compositions might be useful for stimulating or otherwise enhancing plant growth, it has now been confirmed that such is the case. It is therefore now contemplated that compositions suitable for anti-odor uses could be manufactured and distributed for use in, or be otherwise be diverted to, enhancing plant growth. It is further contemplated that methods of securing revenue to the inventors from such provisioning would be by advising others of the potential dual use.

In FIG. 2, a method has a first step 110 of "receiving information that a stable, aqueous solution of a surfactant and a chemical source of oxygen is effective for both odor control and plant growth enhancement", and a second step 120 of "provisioning the solution for addition to the media". Optional additional steps and aspects of step 110 are shown as 112A and 112B. Optional additional steps and aspects of step 120 are shown as show as 122.

EXAMPLES

The following examples illustrate particularly embodiments of the present inventive subject matter, and aid those of skill in the art in understanding and practicing the inventive subject matter. They are set forth for explanatory purposes only, and are not to be taken as limiting the present inventive subject matter in any manner.

Example 1

Thatching Treatment

The odor control material commercially sold as BIOMAGIC™ from BIOMAGIC™ Inc., in Costa Mesa, Calif., has been applied experimentally to various plants to determine whether there are any effects on growth of those plants. The

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surprising results are that BIOMAGIC™ is extremely effective in causing the soil particles to hold water in a more sustained manner, and in considerably increasing the growth of the plants.

Thatch is described as a tightly intermingled layer of partially decomposed stems, roots, and some leaves of grasses which develops beneath the actively growing green vegetation at the soil surface. Thatch accumulates when the rate of decomposition is much lower than the rate of grass growth. Use of certain fertilizers or pesticides may encourage an accumulation of thatch by increasing turf growth and/or killing beneficial organisms, such as earthworms. Excessive mowing can also contribute thatch accumulation and it often happens on golf courses. Overgrown thatch reduces penetration of water and other materials, such as fertilizer. It also encourages shallow grass roots which makes turf more susceptible to stress and pests. A heavy build up of thatch can require expensive dethatching.

Soil that has been treated with the anti-odor composition exhibits much more porous and appears to be in aerobic condition. The thatch condition almost completely disappeared. The anti-odor composition opened up the soil and eliminated the compacting that leads to the creation of the thatch layer. Soil that has not been treated with the anti-odor composition but with standard thatching treatment protocol is still left compacted. Hardly any root structure is shown in the thatch and there is still a line delineating the "thatch" layer. Scrapping of this thatch layer would be time consuming and expensive.

Still another surprising result was that use of the contemplated solutions was effective to facilitate settling of particulates in a settling pond. It is also contemplated that application of a stable, aqueous solution of a surfactant and a chemical source of oxygen can reduce NPK type fertilizer requirements by at least 5% for a given crop and growing conditions, more preferably by at least 10%, still more preferably by at least 20% and most preferably by at least 25%.

Thus, specific embodiments and applications have been disclosed for provisioning plant growth enhancers from among compositions that are known to also reduce odors. It should be apparent, however, to those skilled in the art that many more modifications besides those already described are possible without departing from the inventive concepts herein. The inventive subject matter, therefore, is not to be restricted except in the spirit of the appended claims. Moreover, in interpreting both the specification and the claims, all terms should be interpreted in the broadest possible manner consistent with the context. In particular, the terms "comprises" and "comprising" should be interpreted as referring to elements, components, or steps in a non-exclusive manner, indicating that the referenced elements, components, or steps may be present, or utilized, or combined with other elements, components, or steps that are not expressly referenced. Where the specification claims refers to at least one of something selected from the group consisting of A, B, C . . . and N, the text should be interpreted as requiring only one element from the group, not A plus N, or B plus N, etc.

What is claimed is:

1. A method of enhancing growth of a plant in a media, said method comprising:
 - (a) receiving information that a stable, aqueous solution comprising a surfactant and a nitrate is effective for both odor control of the media and plant growth enhancement;
 - (b) producing an odor control solution by mixing a surfactant and a source of nitrogen in an aqueous solution, wherein the nitrogen comprises between 2 and 50% wt

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- of the solution and the surfactant comprises at most 0.02% wt of the solution, and wherein the source of nitrogen is a nitrate;
 - (c) provisioning the odor control solution for addition to the media;
 - (d) advising an end user to dilute the odor control solution by at least 100; and
 - (e) advising the end user that the diluted solution is effective for both odor control of the media and plant growth enhancement.
2. The method of claim 1, wherein the surfactant is selected from the group consisting of a nonylphenyl and an ethoxylated compound.
 3. The method of claim 1, wherein the surfactant is selected from the group consisting of dodecyl betaine, dodecyl dimethylamine oxide, cocamidopropyl betaine, and coco ampho glycinate.
 4. The method of claim 1, wherein the surfactant is selected from the group consisting of sodium dodecyl sulfate (SDS), sodium laureth sulfate, an alkyl benzene sulfonate, an alkyl-trimethylammonium salt, cetyl pyridinium chloride, poly-ethoxylated tallow amine (POEA), and benzalkonium chloride.
 5. The method of claim 1, wherein water is present in the odor control solution at greater than 80 wt %.
 6. The method of claim 1, wherein the step of receiving information comprises receiving a letter from a competitor.
 7. The method of claim 1, wherein the step of provisioning comprises at least one of marketing and selling the odor control solution.
 8. The method of claim 1, wherein the step of provisioning comprises at least one of purchasing the odor control solution, diluting the odor control solution, and applying the diluted solution to the media.

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9. The method of claim 7, wherein the step of provisioning comprises marketing the odor control solution under the trade name BIOMAGIC™.
10. The method of claim 8, further comprising applying at least one of humic acid, compost extract, and compost tea to the media.
11. The method of claim 8, further comprising reducing consumption of irrigation water for a crop by at least 5% as a consequence of applying the diluted solution to the media.
12. The method of claim 8, further comprising increasing a crop yield by at least 5% as a consequence of applying the diluted solution to the media.
13. The method of claim 8, further comprising reducing consumption of fertilizer for a crop by at least 5% as a consequence of applying the diluted solution to the media.
14. The method of claim 1, comprising advising the end user to dilute the odor control solution by at least 500.
15. The method of claim 1, wherein the odor control solution further comprises at least one of sulfur and phosphorus.
16. The method of claim 1, wherein the source of the nitrate comprises a fertilizer.
17. The method of claim 1, wherein the odor control solution further comprises at least one plant nutrient in addition to any nutrient provided by the surfactant and the nitrate.
18. The method of claim 1, wherein the nitrate comprises at least one of calcium nitrate, ammonium nitrate and potassium nitrate.
19. The method of claim 1, wherein the odor control solution further comprises urea.
20. The method of claim 19, wherein the odor control solution comprises 15 wt % calcium nitrate, 39 wt % ammonium nitrate, 0.1 wt % potassium nitrate, and 20 wt % urea.

* * * * *

Exhibit B

EXCLUSIVE LICENSE AGREEMENT

THIS AGREEMENT, entered into this 9 day of December, 2005, (hereinafter the effective date), by and between Biomagic, Inc. (hereinafter Licensor), a Delaware Corporation and Dutch Brothers Enterprises, LLC (hereinafter Licensee), an Idaho limited liability company, with its principal place of business located at Twin Falls, Idaho.

RECITALS

WHEREAS, Licensor develops, manufactures and markets bio-stimulant products, accessories, and supplies (the "Products") and desires to appoint a licensee of said bio-stimulant products, accessories and supplies, and any future products, accessories and supplies developed, for manufacturing and marketing in agriculture and agriculturally related applications in North America, including Hawaii, as set forth below; and

WHEREAS, Licensee is an Idaho limited liability company that desires to manufacture and market the Products on the terms and conditions set forth in this Agreement.

THEREFORE, in consideration of good and valuable consideration, the parties herein agree as follows:

ARTICLE I Definitions

1.1 The term "Licensed Rights" as used herein shall mean:

1.1.1 Patents obtained by Paul Alfrey, BioMagic, or any representatives, assignees, or successors, under the patents pending: PCT/US03/17761 (Abstract attached as Exhibit 1.1), WO2004108173 and CA2450549). and includes any and all patents that issue in the United States, Canada, and Mexico that claim the priority of the original PCT filing, any other related technology relating to the same field of interest, as outlined in paragraph 2.1 below, for which patent coverage may issue in the United States from any such related patents, and any other patent that may issue in the United States. regarding any of the above mentioned patents.

1.1.2 Any reissues thereof.

1.2 The term "Licensed Products" shall mean products covered by one or more of the claims of the Patent, or any reissues thereof.

EXHIBIT A

1.3 The term "Agricultural Use" means all agriculturally related applications of the Products, including but not limited to: 1) water treatment; 2) the raising of livestock or other agricultural animals, for commercial or personal purposes, 3) the raising of crops, turf or flora of any kind, including their cultivation, harvesting, and transportation, for commercial or personal purposes, and 4) the manufacture, transportation, and marketing of compost, compost tea, and related products.

1.4 The term "Territory" means North America, including Hawaii.

1.5 The term "Products" means the bio-stimulant invention that is the subject of the Patents pending.

1.3 The term "the effective date of this Agreement" shall mean the ____ day of _____, 2005.

ARTICLE II **License Grant**

2.1 Licensor hereby grants to Licensee, and Licensee hereby accepts an exclusive license to the Licensed Rights, as set forth in paragraphs 1.1.1 and 1.1.2, to manufacture, market, and distribute the Products for Agricultural Use in the Territory and to purchase the Products from Licensor (as specified in this agreement). Licensee may elect to make the licensed products at only its manufacturing facilities located in Twin Falls County, Idaho, or at any other location in Southern Idaho which is a replacement facility for the Twin Falls County facility, and to use and sell licensed Products anywhere in North America, and Hawaii. Licensor will provide all information reasonably necessary or useful to allow Licensee to manufacture the License Products. Licensor shall also provide any information necessary for approval by Federal, state or other regulatory agencies in the exclusive geographic area to manufacture, sell and distribute the Licensed Products. (and provide verification to DB) No rights are granted for the manufacture of licensed product at any additional plants that Licensee may acquire in the future unless approved in writing by Licensor, which approval will not be unreasonably withheld. Licensee may elect not to manufacture the Products may continue to purchase the Products from Licensee as stated in this agreement.

The exclusive license for manufacturing the Products is for use and sale in agriculture and agriculturally related applications. Agriculture and agriculturally related applications shall include any activity associated with or related to i) the raising of livestock or other agricultural animals, for commercial or personal purposes, ii) the raising of crops, turf or flora of any kind, including their cultivation, harvesting and transportation, for commercial or personal purposes, iii) the manufacture, transportation, and marketing of compost, compost tea, and related products primarily composed of animal waste, and water treatment. Licensor reserves the right to compost in the municipal solid waste market, In the event that there is an overlap between composting for municipal solid waste and agriculturally based animal waste composting, the parties shall in good faith, work out a sharing arrangement acceptable to both parties.

Licensee's exclusive license shall be in North America, including Hawaii. Licensor shall not market, sell, or distribute the Products for Agricultural Use to any person or entity within the Territory, or permit any other person or entity to do the same.

2.2 No sub-licensing rights are granted hereunder to Licensee.

2.3 This grant of license shall be non-assignable, non-transferable, and non-severable, except as set forth in Article XVI, entitled NON-ASSIGNABILITY herein.

Licensee shall have the right to use, sell and distribute the Products to nonagricultural users and non-agriculturally related applications inside and outside of the exclusive area on a non-exclusive basis, so long as the use, sale or distribution of the Products does not conflict with the use, sale or distribution of the Products by Licensor or its authorized distributors or licensees. In the event the use, sale or distribution of Products conflicts with the use, sale or distribution by Licensor or its authorized distributors or licensees, Licensee shall obtain a written authorization for such use, sale or distribution. If Licensor elects to not give written authorization, it shall provide a commission for the Products use, sales or distribution in the amount equal to commissions paid to its selling agents.

2.4 Licensee may request additional exclusive rights or the expansion of its exclusive area. Licensor shall grant the expansion of the Licensee's exclusive rights or exclusive area to the extent Licensee demonstrates its ability to achieve reasonable sales and distribution levels in a timely manner. The grant of any additional license shall be subject to the parties negotiating an appropriate licensing fee. Licensor shall not unreasonably withhold its approval of such expansion.

ARTICLE III

Term

3.1 The term of this Agreement, and the license granted hereunder, shall cover the time period beginning with the effective date of this Agreement, and shall continue perpetually unless earlier terminated as provided herein.

ARTICLE IV

Fees and Royalties

4.1 Licensor has previously paid Licensor \$250,000 toward the exclusive license granted in this Agreement. Licensor shall pay Licensee installment payments on the following schedule:

4.1.1 \$175,000 payable on April 1, 2006.

4.1.2 \$175,000 payable on October 1, 2006.

4.1.3 \$200,000 payable on April 1, 2007.

4.1.4 \$200,000 payable on October 1, 2007.

Licensee shall retain the right to terminate its exclusive license upon timely notification to Licensor without further payments or obligations. In order to terminate its exclusive license, Licensee shall provide written notification to Licensor at least 90 days prior to the next scheduled installment payment. By providing such notification, Licensee shall forego any further rights or claims related to the Products. In the event Licensee terminates its exclusive license, it shall provide copies to Licensor of any Product testing results obtained by Licensee during the period of its exclusive license. Licensor shall have the right to use these testing results without restriction.

4.2 Unless mutually agreed by Licensor and Licensee, Licensor will retain sole responsibility for manufacturing the Products until Licensee has paid \$600,000 of the installment payments. Licensee shall have the right to prepay the installment payments, without penalty, in order to reach \$600,000 and gain manufacturing rights. If Licensee prepays any installment payments, any remaining payments can be paid in accordance with the schedule described above with no required acceleration of payments.

During the period in which Licensor retains responsibility for manufacturing the Products, it shall provide the Products to Licensee at pricing as follows:

4.2.1 After the first installment payment and until the second installment payment, pricing of the Products shall be Licensor's direct costs of production in accordance with generally accepted accounting principles, plus fifty percent (50%) plus \$.50 per gallon to cover indirect costs any freight or handling charges.

4.2.2 After the second installment payment and until the third installment, pricing shall be Licensor's direct costs of production in accordance with generally accepted accounting principles plus forty percent (40%) plus \$.40 per gallon to cover indirect costs, plus any freight or handling charges.

4.2.3 After the third installment (for a total of \$600,000), manufacturing responsibility will be transferred to the Licensee if Licensee elects to manufacture the Products. The cost of the manufacturing facilities shall be the responsibility of the Licensee.

4.3 Licensee shall pay Licensor a Royalty based on gross sales revenues, excluding delivery and handling charges (Revenues). The Royalty will be calculated as follows:

4.3.1 Twelve percent (12%) of first \$1,750,000 in each calendar year, of annualized Revenues of the Products;

4.3.2 Ten percent (10%) of the annualized Revenues between \$1,750,000 and \$2,750,000 in each calendar year; and

4.3.3 Eight percent (8%) of the annualized Revenues in excess of \$2,750,000 in each calendar year

During the period of time in which Licensor retains manufacturing responsibilities, the Licensee shall pay a royalty of 7percent (7%)·In the event that Licensee assumes responsibility for manufacturing, the Licensee shall pay the full amount of the calculated Royalty.

Royalties shall be paid on a quarterly basis within thirty (30) days of the last day of each calendar quarter. Licensee, at its option, may pay an estimated royalty at the time of the purchase of the product. Licensee shall provide an actual royalty due calculation bi-annually to reconcile estimated royalties due. If there is a difference in royalty payments, Licensor shall record a debit or credit as appropriate to the outstanding balance due from Licensee. Licensor, may upon fifteen (15) days written request, inspect the books and records of Licensee at the expense of Licensor. Licensee must provide access to the Licensor or its representatives with the necessary documents to be able to verify royalty as deemed reasonable by the Licensor or its representative. Licensee may upon fifteen (15) days written request, inspect the books and records of Licensor at the expense of Licensee. Licensor must provide access to the Licensee or its representatives with the necessary documents to be able to verify direct costs as deemed reasonable by the Licensee or its representative.

ARTICLE V

Representations, Warranties and Liquidated Damages

5.1 Licensee Representations and Warranties. Licensee represents and warrants to Licensor the following:

5.1.1 Licensee will manufacture the Products under the following guidelines:

- i. There will be no modification of the production formula or the process without written authorization of the Licensor.
- ii. There will be no modification of the name of the product without the express written consent of the Licensor;
- iii. There will be no substitution of raw materials without the written authorization of the Licensor.

- iv. Regular inspection of the manufacturing facilities by the Licensor will be allowed upon reasonable notice.
- v. Licensee will provide Licensor with prompt reporting of manufacturing issues or regulatory issues within 5 days of receipt of notice or discovery by the Licensee.

5.1.2 Licensee will develop the systems and processes to document and manage Product tracking;

5.1.3 Licensee will use commercially reasonable efforts to promote and distribute the Products;

5.1.4 Licensee will hire employees which possess the requisite knowledge, skill and expertise necessary to promote and distribute the Products;

5.1.5 Licensee will develop the capacity, facilities and personnel necessary to carry out its obligations under this Agreement; and

5.1.6 The execution, delivery and performance by Licensee of this Agreement has been duly authorized by all requisite action on the part of Licensee and the performance by Licensee under this Agreement will not conflict with or cause a breach of any other agreement to which Licensee is a party and which breach could have a material adverse effect on Licensee;

5.1.7 This Agreement constitutes the legal, valid and binding obligation of Licensee, enforceable against Licensee in accordance with its terms.

5.1.8 Licensee shall not register products in any jurisdiction without the consultation and approval of Licensor.

5.1.9 Licensee shall not market or sell the products for any use or indication that is not covered by the patent application referred to above and/or within the scope of this Agreement.

5.2 Licensor Representations and Warranties. Licensor represents and warrants to Licensee the following:

5.2.1 Licensor has full right, title and interest in and to the Patent (Pending) and has full authority to license the Patent to Licensee as set forth in this Agreement; Licensor will maintain patents and reasonable extensions and will use its best efforts to get the patents issued expeditiously in accordance with the Licensor's patent strategy. In

addition, the Licensor shall file in jurisdictions that the parties deem reasonably necessary to protect the Licensee's market. Any technical modifications or improvements would be owned by Licensor and hereby included in the Licensed Rights. BioMagic has no indication that the Patents may be disapproved, and shall promptly notify Licensee in writing of any such indications. The rights granted by BioMagic herein shall be sufficient to vest in Licensee full right, power and authority to exploit the Licensed Rights granted in this Agreement.

5.2.2 BioMagic will provide DBE with prompt reporting of any manufacturing/regulatory issues within 5 days of receipt of notice or discovery by BioMagic.

5.2.3 Licensor has no knowledge of any infringement by any third party of any rights arising out of or related to the Patent or that the Patent is not valid and enforceable;

5.2.4 Licensor has no knowledge of any claims by any third party or any rights being asserted by any third party against the Patent except the recent notification of a possible infringement by Selective, Inc.;

5.2.5 Licensor has no knowledge of any negative, adverse or damaging effects or results from use of the Licensed Products as intended by Licensee and will provide Licensee with from notice of any such effects or results, or the possibility of such effects or results, upon discovery by the Licensor. BioMagic will obtain and provide all information necessary for approval by federal, state or other regulatory agencies. BioMagic agrees to investigate the requirements of federal, state or other regulatory agencies to use the products for Agricultural Uses, and to provide all information to Licensee.

5.2.6 Licensor will provide Licensee with prompt reporting of manufacturing issues or regulatory issues within 5 days of receipt of notice or discovery by the Licensor

5.2.7 To the best of Licensor's knowledge, Licensor's rights in the Patent (Pending) and the exploitation of the Patent (Pending) by Licensee pursuant to this Agreement does not infringe on any third party's rights in any technology or intellectual property rights the same as, or similar to, the Patent (Pending);

5.2.8 Licensor intends that the rights granted by Licensor herein shall be sufficient to vest in Licensee full right, power and authority to exploit the Patent as contemplated hereby;

5.2.9 To Licensor's knowledge, the use by Licensee of the Patent will not conflict with any agreement, document, understanding or commitment to

which Licensor is a party or by which it or its assets, including the Patent, are bound; and

5.2.10 Licensor knows of no agreements, documents, commitments or understandings with respect to the Patent or any rights therein except for the License granted herein.

5.2.11 Licensor represents and warrants to Licensee that Licensor has full legal right and power, all authorizations and approvals required by law, and full authority to license the Patent to Licensee as contemplated hereby, and to make the representations, warranties and agreements made hereunder.

5.2.12 Licensor represents and warrants to Licensee that Licensor is authorized to execute and perform this Agreement and Licensor's performance under this Agreement will not breach any contractual obligation that it may have to another individual or entity.

5.2.13 Licensor and Licensee agreed that there is no adequate remedy at law for a breach by Licensor of any other representations and warranties set forth in this Article V. For that reason, Licensor and Licensee agree that in the event that a court of competent jurisdiction should make a finding that the Licensor has breached any of the representations or warranties set forth in this Article V, Licensee shall be entitled to injunctive relief, in addition to whatever other relief Licensee may be entitled to, including damages.

5.2.14 In the event Licensor is unable to provide adequate information for obtaining approvals by regulatory agencies or other controlling entities, or if the Licensed Products are determined to be unsafe or hazardous for Agriculture and agriculturally related applications, then the parties shall cooperate in good faith to continue operations under this Agreement to the extent that the product may be exploited for uses and markets where the product has not been determined to be unsafe or hazardous. If such a determination(s) diminishes Licensees ability to market and sell the product to such an extent that Licensee, in its sole discretion, cannot reasonably continue operations under this agreement, then Licensee shall have the right to terminate the contract and Licensor shall return a pro-rata amount of the fees paid by Licensee for its exclusive license based on the good faith negotiations of the parties. This provision does not include any warranty by Licensor regarding the effectiveness or economic viability of the Licensed Products.

5.2.15 Licensor shall make every effort to prosecute and protect the patent in any jurisdiction covered by this License Agreement..

5.2.16 To the best knowledge of the Licensor, there has been no other patent applications filed for the inventions covered by the patent referred to in paragraph 1.1.1 filed by any person entitled to file within the last eighteen months.

5.2.17. Licensor shall undertake the filing of an additional or supplemental patent application to expand the use of the product to cover use for soil conditioning, wastewater conditioning, improved growth of crops, flora, turf, or any other aid in the cultivation of such, and any related indication agreed upon by the parties.

ARTICLE VI

Defense of Licensed Rights

6.1 If, at any time during the term of this Agreement, it appears that a third party is infringing upon the Licensed Rights, Licensor may take appropriate legal action in connection therewith. The expenses incurred in taking said appropriate legal action shall be paid by Licensor. Licensor may conduct the legal action as he deems advisable, and may enter into a settlement, compromise or termination of such litigation as Licensor, in his sole discretion, shall deem advisable. Licensor shall not settle any claims by the granting of an additional license without the express consent of the Licensee. Any monetary recoveries to Licensor shall be retained by the Licensor.

6.2 In the event the Licensor does not institute the legal action described in paragraph 6.1 within ninety (90) days of receiving notice of the infringement of Licensed Rights, then Licensee may elect to initiate and prosecute such appropriate legal action. Licensor shall cooperate fully in such litigation, even as a party if requested by Licensee. The expenses incurred by both Licensee and Licensor in the taking of said appropriate legal action shall be paid by Licensee. The initiation, prosecution, termination, settlement or compromise of any such litigation shall be at the Licensee's sole discretion. The provisions of paragraph 2.2 do not apply to the Licensee's rights to terminate, settle or compromise any litigation commenced under or pursuant to this paragraph. The proceeds of any such litigation, or any settlement thereof, shall be retained by the Licensee. Should Licensee take any such action, against the wishes of Licensor, then it shall indemnify and hold harmless Licensor from any claims, demands or judgment made as a result of said action.

6.3 In the event either party initiates litigation under Sections 6.1 or 6.2, the other party shall have the right, at its own expense, to intervene and join in the litigation as a party. However, the Licensee may only join in litigation involving the infringement of rights deemed to affect its exclusive rights in the Licensed Products.

6.4 If at any time during the term of this agreement a third party shall claim that Licensee's practice of the Licensed Rights infringes upon that third party's

proprietary rights, Licensee shall give Licensor immediate written notice thereof. Licensor may take appropriate legal action in connection therewith. The expenses incurred in taking said appropriate legal action shall be paid in a timely manner and in accordance with normal commercial practices by Licensor. And in the event that Licensor elects not to defend against such claim itself, Licensor shall cooperate with Licensee in defense of such claim. In such latter event, Licensee shall be entitled to enter into any compromise, settlement or termination of such litigation, provided Licensee gives prior written notice to Licensor of such intended settlement, compromise or termination.

6.5 In the event that a court of competent jurisdiction should issue a final judgment declaring the Licensed Rights are determined to be within the public domain, then Licensee may (1) terminate this agreement and receive a return of all installment payments paid by Licensee to Licensor; or (2) elect to continue as though no such ruling had taken place. A ruling of invalidity as to some, but not substantially all, of the Licensed Rights shall not affect the terms of this agreement.

ARTICLE VII Termination

7.1 Either party shall have the right to terminate this agreement prior to the expiration of the term, upon the occurrence of any material breach or default by the other party of any of the terms, obligations, covenants, representations or warranties under this agreement that is not waived in writing by the non-defaulting party. In such case, the non-defaulting party shall notify in writing the defaulting party of such alleged reach or default, and the defaulting party shall have a period of ninety (90) days to cure same.

7.2 Upon the third anniversary date of the execution of this Agreement, if Licensee has not achieved Revenues of \$1,000,000 of the Products, on an annualized basis, then the Licensee shall present a plan acceptable to Licensor to achieve annualized Revenues of \$2,000,000 on the fourth anniversary date and annualized Revenues of \$3,000,000 on the fifth anniversary date. The parties understand that the future revenues generated by DBE cannot be determined or guaranteed at the time of signing this Agreement. Further, the parties acknowledge that it is to their mutual benefit to maximize revenues as much as possible. However, variables beyond the control of the parties will influence the revenues generated, and, therefore, the parties understand and agree that this Agreement requires the best efforts of both parties to cooperate. If upon the fifth anniversary date and each succeeding anniversary date, these

Revenues have not been achieved, Licensor shall retain a right to terminate this Agreement.

7.3 In the event an order is made or an effective resolution is passed for the winding-up or dissolution of the Licensor; the Licensor is bankrupt within the meaning of the applicable bankruptcy legislation, makes a general assignment for the benefit of creditors or voluntarily makes a proposal in bankruptcy; or a receiving order against the Licensor or similar order is made against the Licensor, is made under applicable legislation, which is not contested or denied by the Licensor, then all right title and interest in the Patent only for exclusive rights in the Licensed Products shall immediately be conveyed to Licensee, upon which this Agreement shall be terminated. Licensor agrees to cooperate fully with Licensee in executing the necessary documents to effect said conveyance of the Patent.

7.4 In the event that effective patent coverage, as anticipated by the parties, is not obtained by the Licensor within five (5) years of the date of this Agreement (or in the event that Licensor receives notification by the relevant authority that the Patent will probably not be approved, or, the Patents are approved but with substantially less coverage than indicated in the Preliminary International Patentability Report, the Licensee shall have the option to terminate the Agreement. In addition, if patent coverage is obtained but is substantially less than what is currently indicated to be allowable in the Preliminary International Patentability Report, the parties will renegotiate the royalty rates, in good faith, to reflect fairly the then current market. If Licensee terminates the Agreement pursuant to this paragraph, they agree not to sell the product formulations to a third party.

ARTICLE VIII Independent Relationship

8.1 This agreement does not constitute Licensor or Licensee as a partner, joint venturer, employee or agent of the other for any purpose whatsoever. It is the intention of both parties to this agreement that Licensee is to act as an independent contractor and that neither party is authorized to make any agreement, contract or representation on behalf of the other party or to create any liabilities on behalf of the other party beyond the scope of this agreement.

ARTICLE IX Severability and Integration

9.1 If any provision of this Agreement is invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted. The remainder of the Agreement shall be valid and enforceable to the maximum extent possible.

9.2 Licensor and Licensee hereto acknowledge that the terms, conditions and covenants of this agreement regarding distribution of the Products for agriculture and agriculture related applications within the geographic area referenced in this agreement, shall supersede any prior negotiations and agreements of the parties with respect to those subjects, that there are no other agreements not contained in this agreement with respect to those subjects, and that this agreement shall be the final expression of the agreement of the parties and shall control with respect to those subjects. This Agreement is not intended to modify or affect other agreements of the parties, verbal or written, concerning subjects other than the distribution of the Products for agriculture and agriculture related applications within the geographical area above referenced. No modifications of this agreement shall be valid unless in writing and executed by all the parties hereto.

ARTICLE X
General

10.1 This Agreement shall apply to and bind the successors and assigns of both parties,. The rights or privileges provided for in this Agreement may be assigned or transferred by either party only with the prior written consent of the other party and with the authorization or approval of any governmental authority as then may be required, but such successor, before such assignment or transfer is effective, shall expressly assume in writing to the other party the performance of all of the terms and conditions of the assigning party. In the event of any assignment or change in ownership by either party, the rights and obligations specified in this Agreement shall continue in full force and effect, and the individual or entity acquiring ownership shall be fully bound by all the terms and conditions of this Agreement.

This Agreement shall be construed, and the legal relations between the parties hereto shall be determined, in accordance with the law of the State of California, and any actions to enforce this agreement shall take place in California.

IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, OR FOR SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, AND EACH PARTY COVENANTS NOT TO SEEK ANY SUCH DAMAGES WITH RESPECT TO ANY CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT.

Any notice, request, demand or other communication required or permitted under this agreement shall be deemed to have been delivered either upon personal delivery or five (5) working days after having been deposited in the mail, postage prepaid, certified or registered mail, addressed to the party to be notified at the address set forth below. A change of address for notice purposes may be made by the same procedure.

In the case of Licensor:

David C. Watt
Biomagic, Inc.
1030 W. 17th Street
Costa Mesa, CA 92627

Copy to:

Taylor Gibson
Chief Financial Officer
Biomagic, Inc.
1030 W. 17th Street
Costa Mesa, CA 92627

In the case of Licensee:

John Reitsma
Dutch Brothers Enterprises, LLC
139 River Vista Place
Twin Falls, Idaho 83301

ARTICLE XI

Entire Agreement and Confidentiality

11.1 All of the terms, provisions and conditions agreed upon by the parties hereto are expressed herein, and except as contained in this agreement, there are no other or further understandings. Any amendments, modifications or waivers to this agreement must be in writing and signed by both parties hereto. If any part of this agreement is determined to be illegal or unenforceable, that part alone shall be deemed stricken and the remainder of this agreement shall remain in full force and effect.

11.2 The parties shall keep the terms of this Agreement confidential and shall not now nor hereafter divulge the terms of this Agreement or any part thereof to any third party, except with the prior written consent of the other party; to any government body having jurisdiction and calling therefore or as otherwise may be required by law.

ARTICLE XII

Attorney's Fees

12.1 If any action at law or in equity is necessary to enforce or interpret the provisions of this agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which it may be entitled.

ARTICLE XIII

Mediation and Arbitration

13.1 Should any dispute arise between the parties regarding any of the terms of this Agreement, the parties shall submit such dispute to a Mediator agreed on by the parties. The parties shall attempt to mediate the dispute in good faith. Should the mediation process not result in a satisfactory resolution for either party, then the parties agree to submit any disputes arising from this agreement to final and binding arbitration in a location mutually decided upon between the parties under the rules of the American Arbitration Association. Both parties shall bear equally the cost of the arbitration (exclusive of legal fees and expenses, all of which each party shall bear separately). All decisions of the arbitrators shall be final and binding on both parties and enforceable in any court of competent jurisdiction.

ARTICLE XIV

Waiver

14.1 A waiver by either party of a breach by the other party of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition of this agreement. Further, any waiver shall be in writing signed by each of the parties hereto.

ARTICLE XVI

Non-Assignability

15.1 This agreement is personal to Licensee and Licensee shall not, nor shall it have the power to, assign any of its rights and obligations, in whole or in part, under this agreement; provided, however, that Licensee shall be entitled to assign this agreement and its rights and obligations thereunder to:

15.1.1 Any affiliate of Licensee (its parent company or any wholly owned subsidiary of Licensee or its parent company); or

15.1.2 The purchaser of all or substantially all of the assets of Licensee, upon the prior written consent of Licensor, which consent shall not be unreasonably withheld or delayed.

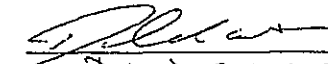
ARTICLE XVII

Successors and Assigns

16.1 Except as limited by the preceding Article XV, the terms, covenants and conditions contained herein shall apply to, and bind the successors and assigns of, the parties hereto.

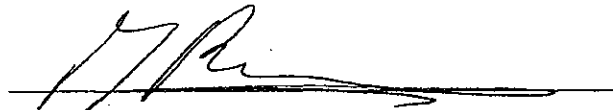
IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

LICENSOR:



DAVID C. WATT 12/9/05
CEO

LICENSEE:



JOHN REITSMAN
12-9-05

LICENSE TRANSFER AGREEMENT

WHEREAS, On December 9, 2005, Dutch Brothers Enterprises, LLC (hereinafter "Licensee") entered into an Exclusive License Agreement (hereinafter the "Agreement") with Biomagic, Inc., a Delaware corporation (hereinafter the "Licensor") whereby Licensee obtained the rights to develop, manufacture and market a line of proprietary products developed and owned by "Licensor";

WHEREAS, the parties agree that in order to facilitate the financial growth and development of the business, the License referred to above be transferred to John Reitsma, (the "Successor Licensee") a principal of the Licensee;

WHEREAS, the Successor Licensee agrees that the Licensee shall continue to be responsible for the sales, marketing and distribution of the products subject to the license on terms that will be negotiated by and between the parties;

NOW THEREFORE, for good and valuable consideration, which is hereby acknowledged, the parties agree to transfer said license to the Successor Licensee on the following terms:

1. Transfer of License. The license and all right, title and interest referred to above shall be transferred from Licensee to Successor Licensee.
2. New Agreement. Commencing with the execution of this License, Successor Licensee and Licensee shall, as soon as possible, negotiate and enter into an agreement for terms that will allow the Licensee to continue to market, sell and distribute the product subject to the License;
3. Consent of Licensor Licensor hereby consents to the transfer of the License as described herein.

Agreed this 7 day of ~~April~~^{May}, 2007

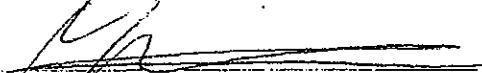
"Licensee"

DUTCH BROTHERS ENTERPRISES, LLC

By: 
JOHN REITSMA, Member

By: 
JOHN WIERSMA, Member

"Successor Licensee"


JOHN REITSMA

"Licensor"

BIOMAGIC, INC.

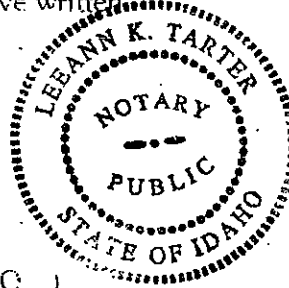
By: [Signature]
DAVID C. WATT

Its: _____

STATE OF IDAHO)
 :SS
County of Twin Falls)

On this 7th day of May, 2007, before me, a Notary Public in and for said County and State, personally appeared JOHN REITSMA, individually and as a member of Dutch Brothers Enterprises, LLC, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that they executed the same individually and on behalf of the company.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the day and year in this certificate first above written.

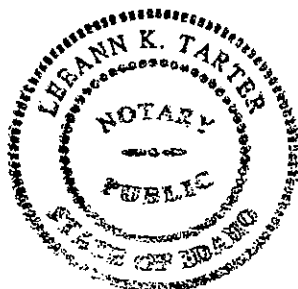


[Signature]
NOTARY PUBLIC for Idaho
Residing at: 429 Conner, TF
Commission Expires: 4-21-12

STATE OF IDAHO)
 :SS
County of Twin Falls)

On this 7th day of May, 2007, before me, a Notary Public in and for said County and State, personally appeared JOHN WIERSMA, member of Dutch Brothers Enterprises, LLC, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that they executed the same on behalf of the company.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the day and year in this certificate first above written.



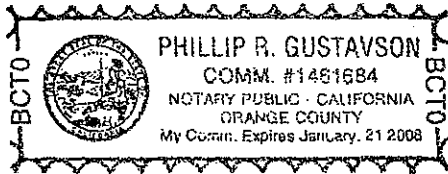
[Signature]
NOTARY PUBLIC for Idaho
Residing at: 429 Conner, TF
Commission Expires: 4-21-12

STATE OF CALIFORNIA

County of ORANGE:SS

On this 8 day of May, 2007, before me, a Notary Public in and for said County and State, personally appeared DAVID C. WATT, _____ of Biomagic, Inc., known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that they executed the same on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the day and year in this certificate first above written.



Phillip R. Gustavson
NOTARY PUBLIC for ~~Idaho~~ CALIFORNIA
Residing at: ORANGE COUNTY
Commission Expires: 1/21/2008

Exhibit C

LAW OFFICES

CASE, KNOWLSON & JORDAN LLP
A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS
620 NEWPORT CENTER DRIVE, SUITE 280

GARY S. MOBLEY
A PROFESSIONAL CORPORATION

NEWPORT BEACH, CALIFORNIA 92660
TELEPHONE (949)729-0700
TELECOPIER (949)729-0729

LOS ANGELES OFFICE
2029 CENTURY PARK EAST
SUITE 2500
LOS ANGELES, CA 90067
TELEPHONE (310) 552-2766
TELECOPIER (310) 552-3229

November 13, 2009

Frank J. Dykas, Esq.
DYKAS, SHAVER & NIPPER, LLP
1403 W. Franklin Street
Boise, ID 83702

Re: BioMagic, Inc. v. Dutch Brothers Enterprises, Reitsma, et al.
Demand to Cease and Desist

Dear Mr. Dykas:

Enclosed is a courtesy copy of the Demand for Arbitration we have filed in the above matter with the American Arbitration Association on behalf of our client, BioMagic, Inc., against Respondents Dutch Brothers Enterprises, LLC, John Reitsma and AgraKey Solutions. This Demand for Arbitration relates to disputes arising under the Exclusive License Agreement between the parties, under which Respondents were licensed to manufacture, market and sell Claimant's proprietary bio-stimulant products for "agriculture and agriculturally related applications."

This License Agreement has been terminated effective November 2, 2009 by virtue of your July 31, 2009 letter. This License Agreement has also been terminated for cause based on Respondents' failure to cure the defaults noted in the August 1, 2009 letter from David Watt, CEO, BioMagic, Inc., to John Reitsma. As noted in Paragraph 4.1, the provision under which you elected to voluntarily terminate the License Agreement, upon termination of the agreement, "Licensee shall forego any further rights or claims related to the Products."

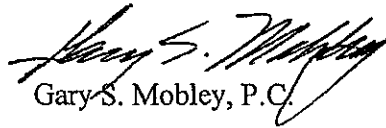
By virtue of the termination of this License Agreement, Respondents are no longer authorized to manufacture, market or sell BioMagic's proprietary products. Demand is therefore made that Respondents: (1) immediately cease and desist from any further manufacturing, marketing or sale of BioMagic's proprietary products, (2) promptly, and in no event later than 10 days, provide written assurance that Respondents have ceased all manufacturing, marketing and sales activities of BioMagic's proprietary products, and (3) allow BioMagic access to its facilities to confirm that all such activities have ceased.

LAW OFFICES
CASE, KNOWLSON & JORDAN, LLP
A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

Frank J. Dykas, Esq.
BioMagic, Inc.
November 13, 2009
Page 2

If Respondents fail to immediately comply with these demands, notice is hereby given that BioMagic will seek restitution and disgorgement of all of Respondents' gross sales from the unauthorized manufacturing, marketing and sale of BioMagic's products as well as punitive damages against Respondents for these unauthorized activities.

Very truly yours,



Gary S. Mobley, P.C.

cc: John Lopker, Esq.

GSM/dh

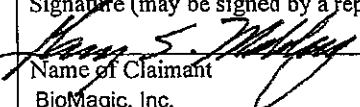
ENCLOSURES



American Arbitration Association
Dispute Resolution Services Worldwide

**COMMERCIAL ARBITRATION RULES
DEMAND FOR ARBITRATION**

MEDIATION: If you would like the AAA to contact the other parties and attempt to arrange a mediation, please check this box.
There is no additional administrative fee for this service.

Name of Respondent Dutch Brothers Enterprises, LLC			Name of Representative (if known) See Attachment A(1)		
Address 139 River Vista Place			Name of Firm (if applicable)		
			Representative's Address		
City Twin Falls	State ID	Zip Code 83301-	City	State	Zip Code
Phone No. (208) 733-5235		Fax No.	Phone No.		Fax No.
Email Address:			Email Address:		
The named claimant, a party to an arbitration agreement dated <u>December 9, 2005</u> , which provides for arbitration under the Commercial Arbitration Rules of the American Arbitration Association, hereby demands arbitration.					
THE NATURE OF THE DISPUTE Breach of License Agreement, accounting, injunctive relief, damages, restitution, and punitive damages. See Attachment A(2) for further detail.					
Dollar Amount of Claim \$300,000.00			Other Relief Sought: <input checked="" type="checkbox"/> Attorneys Fees <input checked="" type="checkbox"/> Interest <input checked="" type="checkbox"/> Arbitration Costs <input checked="" type="checkbox"/> Punitive/ Exemplary <input checked="" type="checkbox"/> Other <u>acctg, etc.</u>		
Amount Enclosed \$ <u>2,750.00</u> In accordance with Fee Schedule: <input type="checkbox"/> Flexible Fee Schedule <input checked="" type="checkbox"/> Standard Fee Schedule					
PLEASE DESCRIBE APPROPRIATE QUALIFICATIONS FOR ARBITRATOR(S) TO BE APPOINTED TO HEAR THIS DISPUTE: Arbitrator with commercial litigation expertise					
Hearing locale <u>Orange County</u> (check one) <input checked="" type="checkbox"/> Requested by Claimant <input type="checkbox"/> Locale provision included in the contract					
Estimated time needed for hearings overall: _____ hours or <u>2.00</u> days			Type of Business: Claimant <u>Manufacturer/Licensor</u> Respondent <u>Licensor</u>		
Is this a dispute between a business and a consumer? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No Does this dispute arise out of an employment relationship? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If this dispute arises out of an employment relationship, what was/is the employee's annual wage range? Note: This question is required by California law. <input type="checkbox"/> Less than \$100,000 <input type="checkbox"/> \$100,000 - \$250,000 <input type="checkbox"/> Over \$250,000					
You are hereby notified that copies of our arbitration agreement and this demand are being filed with the American Arbitration Association's Case Management Center, located in (check one) <input type="checkbox"/> Atlanta, GA <input type="checkbox"/> Dallas, TX <input type="checkbox"/> East Providence, RI <input checked="" type="checkbox"/> Fresno, CA <input type="checkbox"/> International Centre, NY, with a request that it commence administration of the arbitration. Under the rules, you may file an answering statement within fifteen days after notice from the AAA.					
Signature (may be signed by a representative) 		Date: 11/13/2009	Name of Representative Gary S. Mobley, PC		
Name of Claimant BioMagic, Inc.		Name of Firm (if applicable) Case, Knowlson & Jordan, LLC			
Address (to be used in connection with this case)			Representative's Address 620 Newport Center Drive, Suite 280		
City	State	Zip Code	City	State	Zip Code
			Newport Beach	CA	92660-
Phone No.		Fax No.	Phone No. (949) 729-0700		Fax No. (949) 729-0729
Email Address:			Email Address: gmobley@ckjlaw.com		
To begin proceedings, please send two copies of this Demand and the Arbitration Agreement, along with the filing fee as provided for in the Rules, to the AAA. Send the original Demand to the Respondent.					
Please visit our website at www.adr.org if you would like to file this case online. AAA Customer Service can be reached at 800-778-7879					

1 **Commercial Arbitration Rules - Demand for Arbitration**
2 **Attachment A**

3 Re: BioMagic, Inc. v. Dutch Brothers Enterprises, LLC

4 **Attachment A(1) (Respondents):**

5 Respondent 1: Dutch Brothers Enterprises, LLC
6 139 River Vista Place
7 Twin Falls, ID 83301
8 Phone: 208/733-5235

9 329 S. 417 E
10 Jerome, ID 83338
11 Phone: 208/733-5235

12 Respondent 2: Mr. John Reitsma
13 329 S. 417 E
14 Jerome, ID 83338
15 Phone: 208/733-5235

16 Respondent 3: AgraKey Solutions, LLC
17 c/o John Reitsma
18 329 S. 417 E
19 Jerome, ID 83338
20 Phone: 208/733-5235

21 **Attachment A(2) (Nature of the Dispute):**

22 This action arises out of Respondents' breach of the Exclusive License Agreement
23 between the parties dated December 9, 2005, as amended by the License Transfer
24 Agreement dated May 7, 2007, true and correct copies of which are attached hereto as
25 Exhibits "A" and "B", respectively. (The Exclusive License Agreement and License
26 Transfer Agreement are collectively referred to as "License Agreement".)

27 Paragraph 13.1 of the License Agreement provides that any disputes arising under
28 this agreement shall be submitted to final and binding arbitration before the American
Arbitration Association. Paragraph 10.1 of the License Agreement provides that this
arbitration shall take place in California.

Claimant, BioMagic, Inc. ("BioMagic"), is engaged in the business of developing,
manufacturing and marketing proprietary bio-stimulant products, accessories and
supplies. On December 9, 2005, Claimant entered into an Exclusive License Agreement
with Respondents Dutch Brothers Enterprises, LLC ("Dutch Brothers"), and its principal,

1 Respondent John Reitsma (“Reitsma”), under which BioMagic granted to Respondents
2 an exclusive license to manufacture, market and sell BioMagic’s proprietary bio-
3 stimulant products, accessories, and supplies in “agriculture and agriculturally related
4 applications in North America, including Hawaii. Although there is no fixed term for
5 the License Agreement , the License Agreement contains no fixed termination date,
6 Paragraph 7.1 of the agreement provides that either party shall have the right to terminate
7 this License Agreement prior to the expiration of the term upon the occurrence of any
8 material breach or default by the other party of the terms, obligations, covenants,
9 representations or warranties under this agreement, and Paragraph 4.1.1 provides that the
10 licensee may elect to terminate the License Agreement for any reason by giving 90 days
11 written notice.

12 In return for being granted an exclusive license to manufacture, market and sell
13 BioMagic’s proprietary products in “agriculture and agriculturally related applications,”
14 Respondents agreed, among other things, to pay BioMagic quarterly royalty payments
15 based on a percentage of gross sales revenues under a formula as set forth in Paragraph
16 4.3 of the License Agreement, to be paid within 30 days of the last day of each calendar
17 quarter.

18 After the License Agreement was entered into, Respondents Dutch Brothers and
19 Reitsma (“Reitsma”) began manufacturing and marketing BioMagic’s bio-stimulant
20 products, accessories and supplies in agriculture and agriculturally related applications
21 pursuant to the rights granted under the Licensing Agreement.

22 On or about May 7, 2007, in order to facilitate the growth and reorganization of
23 Respondents’ business, the parties entered into a License Transfer Agreement, in which
24 Claimant BioMagic consented to the transfer of the licensing rights under the Licensing
25 Agreement from Respondents Dutch Brothers to Respondent Reitsma, individually.
26 Thereafter, Respondent Reitsma formed a new company, Respondent AgraKey
27 Solutions, LLC (“AgraKey”) to perform the marketing and sales functions under the
28 License Agreement, while Respondent Dutch Brothers continued to manufacture the

1 product under the License Agreement. At the time, Respondents did not disclose the fact
2 that they intended this reorganization as a means to avoid the royalty payments due
3 Claimant under the License Agreement

4 At all times relevant herein, Respondents Dutch Brothers and AgraKey were, and
5 are, enterprises completely dominated and controlled by Respondent Reitsma, related
6 companies engaged in a common enterprise and *alter egos* of Respondent Reitsma.

7 At all times relevant herein, Claimant has fully performed all conditions,
8 covenants, and promises required of it under the License Agreement except for any such
9 conditions, covenants or promises that it was prevented or excused from performing.

10 Commencing in or about early 2009, Respondents materially breached the License
11 Agreement by marketing and selling Claimant's proprietary products to business not
12 involved in agriculture and agriculturally-related applications, including the sale of
13 Claimant's products to companies engaged in the manufacture of pulp and paper
14 products and companies engaged in the industrial waste water business.

15 Thereafter, in further breach of the License Agreement, commencing on or about
16 April 30, 2009, Respondents failed to timely and properly account for and pay the
17 royalties due to Claimant for the First Quarter of 2009 under Paragraph 4.3 of the
18 License Agreement, by using AgraKey as a shell company to divert revenues.

19 Thereafter, commencing on or about July 30, 2009,, Respondents have further
20 materially breached the License Agreement by failing and refusing to account for or pay
21 any royalties to Claimant for the Second and Third Quarters of 2009.

22 Claimant has repeatedly notified Respondents of its material breaches of the
23 License Agreement and demanded that Respondents cure these defaults and perform
24 their obligations under the License Agreement. However, Respondents have failed and
25 refused, and continue to fail and refuse to cure these defaults.

26 On or about August 1, 2009, Claimant gave formal written notice to Respondents
27 in that they were in material breach of the License Agreement and of Claimant's
28 intention to terminate the License Agreement under Paragraph 7.1 of the Agreement if

1 the defaults and breached were not cured. More than 90 days has elapsed since this
2 notice, and these defaults have not been cured. Accordingly, Claimant hereby elects to
3 terminate the License Agreement for cause under Paragraph 7.1 of the License
4 Agreement.

5 Further, on or about July 31, 2009, Respondents served written notice on Claimant
6 of their election to voluntarily terminate the License Agreement under Paragraph 4.1 of
7 the License Agreement. More than 90 days has elapsed since Claimant's election to
8 terminate and the License Agreement, and, therefore, the License Agreement was also
9 terminated as of November 2, 2009 based on Respondents' voluntary election.

10 Paragraph 4.1 of the License Agreement provides that, upon termination of the
11 License Agreement, "Licensee shall forego any further rights or claims related to the
12 Products." Notwithstanding the termination of the License Agreement effective
13 November 2, 2009, Claimant is informed and believes and thereon alleges that
14 Respondents continue to manufacture and sell Claimant's proprietary bio-stimulant
15 products, accessories and supplies without Claimant's consent and in violation of
16 Claimant's proprietary rights.

17 By continuing to manufacture, market and sell Claimant's proprietary products
18 after termination of the License Agreement and to companies outside the scope of their
19 licensing rights, Respondents are intentionally misappropriating Claimant's property,
20 engaging in unfair competition, and intentionally interfering with Claimant's prospective
21 business relationships.

22 WHEREFORE, Claimant prays for relief as follows:

23 1. For an order requiring Respondents, and each of them, to provide a
24 complete and accurate accounting of all royalties due Claimant under Paragraph 4.3 of
25 the License Agreement from January 2009 through the termination of the License
26 Agreement on or about November 2, 2009 and all revenues obtained by Respondents'
27 from unauthorized sales of Claimant's proprietary products outside the scope of
28 Respondents' licensing rights and after termination of the License Agreement;

EXCLUSIVE LICENSE AGREEMENT

THIS AGREEMENT, entered into this 9 day of December, 2005, (hereinafter the effective date), by and between Biomagic, Inc. (hereinafter Licensor), a Delaware Corporation and Dutch Brothers Enterprises, LLC (hereinafter Licensee), an Idaho limited liability company, with its principal place of business located at Twin Falls, Idaho.

RECITALS

WHEREAS, Licensor develops, manufactures and markets bio-stimulant products, accessories, and supplies (the "Products") and desires to appoint a licensee of said bio-stimulant products, accessories and supplies, and any future products, accessories and supplies developed, for manufacturing and marketing in agriculture and agriculturally related applications in North America, including Hawaii, as set forth below; and

WHEREAS, Licensee is an Idaho limited liability company that desires to manufacture and market the Products on the terms and conditions set forth in this Agreement.

THEREFORE, in consideration of good and valuable consideration, the parties herein agree as follows:

ARTICLE I Definitions

1.1 The term "Licensed Rights" as used herein shall mean:

1.1.1 Patents obtained by Paul Alfrey, BioMagic, or any representatives, assignees, or successors, under the patents pending: PCT/US03/17761 (Abstract attached as Exhibit 1.1), WO2004108173 and CA2450549). and includes any and all patents that issue in the United States, Canada, and Mexico that claim the priority of the original PCT filing, any other related technology relating to the same field of interest, as outlined in paragraph 2.1 below, for which patent coverage may issue in the United States from any such related patents, and any other patent that may issue in the United States. regarding any of the above mentioned patents.

1.1.2 Any reissues thereof.

1.2 The term "Licensed Products" shall mean products covered by one or more of the claims of the Patent, or any reissues thereof.

EXHIBIT A

1.3 The term "Agricultural Use" means all agriculturally related applications of the Products, including but not limited to: 1) water treatment; 2) the raising of livestock or other agricultural animals, for commercial or personal purposes, 3) the raising of crops, turf or flora of any kind, including their cultivation, harvesting, and transportation, for commercial or personal purposes, and 4) the manufacture, transportation, and marketing of compost, compost tea, and related products.

1.4 The term "Territory" means North America, including Hawaii.

1.5 The term "Products" means the bio-stimulant invention that is the subject of the Patents pending.

1.3 The term "the effective date of this Agreement" shall mean the ____ day of _____, 2005.

ARTICLE II **License Grant**

2.1 Licensors hereby grants to Licensee, and Licensee hereby accepts an exclusive license to the Licensed Rights, as set forth in paragraphs 1.1.1 and 1.1.2, to manufacture, market, and distribute the Products for Agricultural Use in the Territory and to purchase the Products from Licensors (as specified in this agreement). Licensee may elect to make the licensed products at only its manufacturing facilities located in Twin Falls County, Idaho, or at any other location in Southern Idaho which is a replacement facility for the Twin Falls County facility, and to use and sell licensed Products anywhere in North America, and Hawaii. Licensors will provide all information reasonably necessary or useful to allow Licensee to manufacture the License Products. Licensors shall also provide any information necessary for approval by Federal, state or other regulatory agencies in the exclusive geographic area to manufacture, sell and distribute the Licensed Products. (and provide verification to DB) No rights are granted for the manufacture of licensed product at any additional plants that Licensee may acquire in the future unless approved in writing by Licensors, which approval will not be unreasonably withheld. Licensee may elect not to manufacture the Products may continue to purchase the Products from Licensee as stated in this agreement.

The exclusive license for manufacturing the Products is for use and sale in agriculture and agriculturally related applications. Agriculture and agriculturally related applications shall include any activity associated with or related to i) the raising of livestock or other agricultural animals, for commercial or personal purposes, ii) the raising of crops, turf or flora of any kind, including their cultivation, harvesting and transportation, for commercial or personal purposes, iii) the manufacture, transportation, and marketing of compost, compost tea, and related products primarily composed of animal waste, and water treatment. Licensors reserves the right to compost in the municipal solid waste market, In the event that there is an overlap between composting for municipal solid waste and agriculturally based animal waste composting, the parties shall in good faith, work out a sharing arrangement acceptable to both parties.

Licensee's exclusive license shall be in North America, including Hawaii. Licensors shall not market, sell, or distribute the Products for Agricultural Use to any person or entity within the Territory, or permit any other person or entity to do the same.

2.2 No sub-licensing rights are granted hereunder to Licensee.

2.3 This grant of license shall be non-assignable, non-transferable, and non-severable, except as set forth in Article XVI, entitled NON-ASSIGNABILITY herein.

Licensee shall have the right to use, sell and distribute the Products to nonagricultural users and non-agriculturally related applications inside and outside of the exclusive area on a non-exclusive basis, so long as the use, sale or distribution of the Products does not conflict with the use, sale or distribution of the Products by Licensor or its authorized distributors or licensees. In the event the use, sale or distribution of Products conflicts with the use, sale or distribution by Licensor or its authorized distributors or licensees, Licensee shall obtain a written authorization for such use, sale or distribution. If Licensor elects to not give written authorization, it shall provide a commission for the Products use, sales or distribution in the amount equal to commissions paid to its selling agents.

2.4 Licensee may request additional exclusive rights or the expansion of its exclusive area. Licensor shall grant the expansion of the Licensee's exclusive rights or exclusive area to the extent Licensee demonstrates its ability to achieve reasonable sales and distribution levels in a timely manner. The grant of any additional license shall be subject to the parties negotiating an appropriate licensing fee. Licensor shall not unreasonably withhold its approval of such expansion.

ARTICLE III

Term

3.1 The term of this Agreement, and the license granted hereunder, shall cover the time period beginning with the effective date of this Agreement, and shall continue perpetually unless earlier terminated as provided herein.

ARTICLE IV

Fees and Royalties

4.1 Licensor has previously paid Licensor \$250,000 toward the exclusive license granted in this Agreement. Licensor shall pay Licensee installment payments on the following schedule:

4.1.1 \$175,000 payable on April 1, 2006.

4.1.2 \$175,000 payable on October 1, 2006.

4.1.3 \$200,000 payable on April 1, 2007.

4.1.4 \$200,000 payable on October 1, 2007.

Licensee shall retain the right to terminate its exclusive license upon timely notification to Licensor without further payments or obligations. In order to terminate its exclusive license, Licensee shall provide written notification to Licensor at least 90 days prior to the next scheduled installment payment. By providing such notification, Licensee shall forego any further rights or claims related to the Products. In the event Licensee terminates its exclusive license, it shall provide copies to Licensor of any Product testing results obtained by Licensee during the period of its exclusive license. Licensor shall have the right to use these testing results without restriction.

4.2 Unless mutually agreed by Licensor and Licensee, Licensor will retain sole responsibility for manufacturing the Products until Licensee has paid \$600,000 of the installment payments. Licensee shall have the right to prepay the installment payments, without penalty, in order to reach \$600,000 and gain manufacturing rights. If Licensee prepays any installment payments, any remaining payments can be paid in accordance with the schedule described above with no required acceleration of payments.

During the period in which Licensor retains responsibility for manufacturing the Products, it shall provide the Products to Licensee at pricing as follows:

4.2.1 After the first installment payment and until the second installment payment, pricing of the Products shall be Licensor's direct costs of production in accordance with generally accepted accounting principles, plus fifty percent (50%) plus \$.50 per gallon to cover indirect costs any freight or handling charges.

4.2.2 After the second installment payment and until the third installment, pricing shall be Licensor's direct costs of production in accordance with generally accepted accounting principles plus forty percent (40%) plus \$.40 per gallon to cover indirect costs, plus any freight or handling charges.,

4.2.3 After the third installment (for a total of \$600,000), manufacturing responsibility will be transferred to the Licensee if Licensee elects to manufacture the Products. The cost of the manufacturing facilities shall be the responsibility of the Licensee.

4.3 Licensee shall pay Licensor a Royalty based on gross sales revenues, excluding delivery and handling charges (Revenues). The Royalty will be calculated as follows:

4.3.1 Twelve percent (12%) of first \$1,750,000 in each calendar year, of annualized Revenues of the Products;

4.3.2 Ten percent (10%) of the annualized Revenues between \$1,750,000 and \$2,750,000 in each calendar year; and

4.3.3 Eight percent (8%) of the annualized Revenues in excess of \$2,750,000 in each calendar year

During the period of time in which Licensor retains manufacturing responsibilities, the Licensee shall pay a royalty of 7percent (7%). In the event that Licensee assumes responsibility for manufacturing, the Licensee shall pay the full amount of the calculated Royalty.

Royalties shall be paid on a quarterly basis within thirty (30) days of the last day of each calendar quarter. Licensee, at its option, may pay an estimated royalty at the time of the purchase of the product. Licensee shall provide an actual royalty due calculation bi-annually to reconcile estimated royalties due. If there is a difference in royalty payments, Licensor shall record a debit or credit as appropriate to the outstanding balance due from Licensee. Licensor, may upon fifteen (15) days written request, inspect the books and records of Licensee at the expense of Licensor. Licensee must provide access to the Licensor or its representatives with the necessary documents to be able to verify royalty as deemed reasonable by the Licensor or its representative. Licensee may upon fifteen (15) days written request, inspect the books and records of Licensor at the expense of Licensee. Licensor must provide access to the Licensee or its representatives with the necessary documents to be able to verify direct costs as deemed reasonable by the Licensee or its representative.

ARTICLE V

Representations, Warranties and Liquidated Damages

5.1 Licensee Representations and Warranties. Licensee represents and warrants to Licensor the following:

5.1.1 Licensee will manufacture the Products under the following guidelines:

- i. There will be no modification of the production formula or the process without written authorization of the Licensor.
- ii. There will be no modification of the name of the product without the express written consent of the Licensor;
- iii. There will be no substitution of raw materials without the written authorization of the Licensor.

- iv. Regular inspection of the manufacturing facilities by the Licensors will be allowed upon reasonable notice.
- v. Licensee will provide Licensors with prompt reporting of manufacturing issues or regulatory issues within 5 days of receipt of notice or discovery by the Licensee.

5.1.2 Licensee will develop the systems and processes to document and manage Product tracking;

5.1.3 Licensee will use commercially reasonable efforts to promote and distribute the Products;

5.1.4 Licensee will hire employees which possess the requisite knowledge, skill and expertise necessary to promote and distribute the Products;

5.1.5 Licensee will develop the capacity, facilities and personnel necessary to carry out its obligations under this Agreement; and

5.1.6 The execution, delivery and performance by Licensee of this Agreement has been duly authorized by all requisite action on the part of Licensee and the performance by Licensee under this Agreement will not conflict with or cause a breach of any other agreement to which Licensee is a party and which breach could have a material adverse effect on Licensee;

5.1.7 This Agreement constitutes the legal, valid and binding obligation of Licensee, enforceable against Licensee in accordance with its terms.

5.1.8 Licensee shall not register products in any jurisdiction without the consultation and approval of Licensors.

5.1.9 Licensee shall not market or sell the products for any use or indication that is not covered by the patent application referred to above and/or within the scope of this Agreement.

5.2 Licensors Representations and Warranties. Licensors represents and warrants to Licensee the following:

5.2.1 Licensors has full right, title and interest in and to the Patent (Pending) and has full authority to license the Patent to Licensee as set forth in this Agreement; Licensors will maintain patents and reasonable extensions and will use its best efforts to get the patents issued expeditiously in accordance with the Licensors patent strategy. In

addition, the Licensor shall file in jurisdictions that the parties deem reasonably necessary to protect the Licensee's market. Any technical modifications or improvements would be owned by Licensor and hereby included in the Licensed Rights. BioMagic has no indication that the Patents may be disapproved, and shall promptly notify Licensee in writing of any such indications. The rights granted by BioMagic herein shall be sufficient to vest in Licensee full right, power and authority to exploit the Licensed Rights granted in this Agreement.

5.2.2 BioMagic will provide DBE with prompt reporting of any manufacturing/regulatory issues within 5 days of receipt of notice or discovery by BioMagic.

5.2.3 Licensor has no knowledge of any infringement by any third party of any rights arising out of or related to the Patent or that the Patent is not valid and enforceable;

5.2.4 Licensor has no knowledge of any claims by any third party or any rights being asserted by any third party against the Patent except the recent notification of a possible infringement by Selective, Inc.;

5.2.5 Licensor has no knowledge of any negative, adverse or damaging effects or results from use of the Licensed Products as intended by Licensee and will provide Licensee with from notice of any such effects or results, or the possibility of such effects or results, upon discovery by the Licensor. BioMagic will obtain and provide all information necessary for approval by federal, state or other regulatory agencies. BioMagic agrees to investigate the requirements of federal, state or other regulatory agencies to use the products for Agricultural Uses, and to provide all information to Licensee.

5.2.6 Licensor will provide Licensee with prompt reporting of manufacturing issues or regulatory issues within 5 days of receipt of notice or discovery by the Licensor

5.2.7 To the best of Licensor's knowledge, Licensor's rights in the Patent (Pending) and the exploitation of the Patent (Pending) by Licensee pursuant to this Agreement does not infringe on any third party's rights in any technology or intellectual property rights the same as, or similar to, the Patent (Pending);

5.2.8 Licensor intends that the rights granted by Licensor herein shall be sufficient to vest in Licensee full right, power and authority to exploit the Patent as contemplated hereby;

5.2.9 To Licensor's knowledge, the use by Licensee of the Patent will not conflict with any agreement, document, understanding or commitment to

which Licensor is a party or by which it or its assets, including the Patent, are bound; and

5.2.10 Licensor knows of no agreements, documents, commitments or understandings with respect to the Patent or any rights therein except for the License granted herein.

5.2.11 Licensor represents and warrants to Licensee that Licensor has full legal right and power, all authorizations and approvals required by law, and full authority to license the Patent to Licensee as contemplated hereby, and to make the representations, warranties and agreements made hereunder.

5.2.12 Licensor represents and warrants to Licensee that Licensor is authorized to execute and perform this Agreement and Licensor's performance under this Agreement will not breach any contractual obligation that it may have to another individual or entity.

5.2.13 Licensor and Licensee agreed that there is no adequate remedy at law for a breach by Licensor of any other representations and warranties set forth in this Article V. For that reason, Licensor and Licensee agree that in the event that a court of competent jurisdiction should make a finding that the Licensor has breached any of the representations or warranties set forth in this Article V, Licensee shall be entitled to injunctive relief, in addition to whatever other relief Licensee may be entitled to, including damages.

5.2.14 In the event Licensor is unable to provide adequate information for obtaining approvals by regulatory agencies or other controlling entities, or if the Licensed Products are determined to be unsafe or hazardous for Agriculture and agriculturally related applications, then the parties shall cooperate in good faith to continue operations under this Agreement to the extent that the product may be exploited for uses and markets where the product has not been determined to be unsafe or hazardous. If such a determination(s) diminishes Licensees ability to market and sell the product to such an extent that Licensee, in its sole discretion, cannot reasonably continue operations under this agreement, then Licensee shall have the right to terminate the contract and Licensor shall return a pro-rata amount of the fees paid by Licensee for its exclusive license based on the good faith negotiations of the parties. This provision does not include any warranty by Licensor regarding the effectiveness or economic viability of the Licensed Products.

5.2.15 Licensor shall make every effort to prosecute and protect the patent in any jurisdiction covered by this License Agreement..

5.2.16 To the best knowledge of the Licensor, there has been no other patent applications filed for the inventions covered by the patent referred to in paragraph 1.1.1 filed by any person entitled to file within the last eighteen months.

5.2.17. Licensor shall undertake the filing of an additional or supplemental patent application to expand the use of the product to cover use for soil conditioning, wastewater conditioning, improved growth of crops, flora, turf, or any other aid in the cultivation of such, and any related indication agreed upon by the parties.

ARTICLE VI

Defense of Licensed Rights

6.1 If, at any time during the term of this Agreement, it appears that a third party is infringing upon the Licensed Rights, Licensor may take appropriate legal action in connection therewith. The expenses incurred in taking said appropriate legal action shall be paid by Licensor. Licensor may conduct the legal action as he deems advisable, and may enter into a settlement, compromise or termination of such litigation as Licensor, in his sole discretion, shall deem advisable. Licensor shall not settle any claims by the granting of an additional license without the express consent of the Licensee. Any monetary recoveries to Licensor shall be retained by the Licensor.

6.2 In the event the Licensor does not institute the legal action described in paragraph 6.1 within ninety (90) days of receiving notice of the infringement of Licensed Rights, then Licensee may elect to initiate and prosecute such appropriate legal action. Licensor shall cooperate fully in such litigation, even as a party if requested by Licensee. The expenses incurred by both Licensee and Licensor in the taking of said appropriate legal action shall be paid by Licensee. The initiation, prosecution, termination, settlement or compromise of any such litigation shall be at the Licensee's sole discretion. The provisions of paragraph 2.2 do not apply to the Licensee's rights to terminate, settle or compromise any litigation commenced under or pursuant to this paragraph. The proceeds of any such litigation, or any settlement thereof, shall be retained by the Licensee. Should Licensee take any such action, against the wishes of Licensor, then it shall indemnify and hold harmless Licensor from any claims, demands or judgment made as a result of said action.

6.3 In the event either party initiates litigation under Sections 6.1 or 6.2, the other party shall have the right, at its own expense, to intervene and join in the litigation as a party. However, the Licensee may only join in litigation involving the infringement of rights deemed to affect its exclusive rights in the Licensed Products.

6.4 If at any time during the term of this agreement a third party shall claim that Licensee's practice of the Licensed Rights infringes upon that third party's

proprietary rights, Licensee shall give Licensor immediate written notice thereof. Licensor may take appropriate legal action in connection therewith. The expenses incurred in taking said appropriate legal action shall be paid in a timely manner and in accordance with normal commercial practices by Licensor. And in the event that Licensor elects not to defend against such claim itself, Licensor shall cooperate with Licensee in defense of such claim. In such latter event, Licensee shall be entitled to enter into any compromise, settlement or termination of such litigation, provided Licensee gives prior written notice to Licensor of such intended settlement, compromise or termination.

6.5 In the event that a court of competent jurisdiction should issue a final judgment declaring the Licensed Rights are determined to be within the public domain, then Licensee may (1) terminate this agreement and receive a return of all installment payments paid by Licensee to Licensor; or (2) elect to continue as though no such ruling had taken place. A ruling of invalidity as to some, but not substantially all, of the Licensed Rights shall not affect the terms of this agreement.

ARTICLE VII **Termination**

7.1 Either party shall have the right to terminate this agreement prior to the expiration of the term, upon the occurrence of any material breach or default by the other party of any of the terms, obligations, covenants, representations or warranties under this agreement that is not waived in writing by the non-defaulting party. In such case, the non-defaulting party shall notify in writing the defaulting party of such alleged reach or default, and the defaulting party shall have a period of ninety (90) days to cure same.

7.2 Upon the third anniversary date of the execution of this Agreement, if Licensee has not achieved Revenues of \$1,000,000 of the Products, on an annualized basis, then the Licensee shall present a plan acceptable to Licensor to achieve annualized Revenues of \$2,000,000 on the fourth anniversary date and annualized Revenues of \$3,000,000 on the fifth anniversary date. The parties understand that the future revenues generated by DBE cannot be determined or guaranteed at the time of signing this Agreement. Further, the parties acknowledge that it is to their mutual benefit to maximize revenues as much as possible. However, variables beyond the control of the parties will influence the revenues generated, and, therefore, the parties understand and agree that this Agreement requires the best efforts of both parties to cooperate. If upon the fifth anniversary date and each succeeding anniversary date, these

Revenues have not been achieved, Licensor shall retain a right to terminate this Agreement.

7.3 In the event an order is made or an effective resolution is passed for the winding-up or dissolution of the Licensor; the Licensor is bankrupt within the meaning of the applicable bankruptcy legislation, makes a general assignment for the benefit of creditors or voluntarily makes a proposal in bankruptcy; or a receiving order against the Licensor or similar order is made against the Licensor, is made under applicable legislation, which is not contested or denied by the Licensor, then all right title and interest in the Patent only for exclusive rights in the Licensed Products shall immediately be conveyed to Licensee, upon which this Agreement shall be terminated. Licensor agrees to cooperate fully with Licensee in executing the necessary documents to effect said conveyance of the Patent.

7.4 In the event that effective patent coverage, as anticipated by the parties, is not obtained by the Licensor within five (5) years of the date of this Agreement (or in the event that Licensor receives notification by the relevant authority that the Patent will probably not be approved, or, the Patents are approved but with substantially less coverage than indicated in the Preliminary International Patentability Report, the Licensee shall have the option to terminate the Agreement. In addition, if patent coverage is obtained but is substantially less than what is currently indicated to be allowable in the Preliminary International Patentability Report, the parties will renegotiate the royalty rates, in good faith, to reflect fairly the then current market. If Licensee terminates the Agreement pursuant to this paragraph, they agree not to sell the product formulations to a third party.

ARTICLE VIII

Independent Relationship

8.1 This agreement does not constitute Licensor or Licensee as a partner, joint venturer, employee or agent of the other for any purpose whatsoever. It is the intention of both parties to this agreement that Licensee is to act as an independent contractor and that neither party is authorized to make any agreement, contract or representation on behalf of the other party or to create any liabilities on behalf of the other party beyond the scope of this agreement.

ARTICLE IX

Severability and Integration

9.1 If any provision of this Agreement is invalid under any applicable statute or rule of law, it is to that extent to be deemed omitted. The remainder of the Agreement shall be valid and enforceable to the maximum extent possible.

9.2 Licensor and Licensee hereto acknowledge that the terms, conditions and covenants of this agreement regarding distribution of the Products for agriculture and agriculture related applications within the geographic area referenced in this agreement, shall supersede any prior negotiations and agreements of the parties with respect to those subjects, that there are no other agreements not contained in this agreement with respect to those subjects, and that this agreement shall be the final expression of the agreement of the parties and shall control with respect to those subjects. This Agreement is not intended to modify or affect other agreements of the parties, verbal or written, concerning subjects other than the distribution of the Products for agriculture and agriculture related applications within the geographical area above referenced. No modifications of this agreement shall be valid unless in writing and executed by all the parties hereto.

ARTICLE X
General

10.1 This Agreement shall apply to and bind the successors and assigns of both parties,. The rights or privileges provided for in this Agreement may be assigned or transferred by either party only with the prior written consent of the other party and with the authorization or approval of any governmental authority as then may be required, but such successor, before such assignment or transfer is effective, shall expressly assume in writing to the other party the performance of all of the terms and conditions of the assigning party. In the event of any assignment or change in ownership by either party, the rights and obligations specified in this Agreement shall continue in full force and effect, and the individual or entity acquiring ownership shall be fully bound by all the terms and conditions of this Agreement.

This Agreement shall be construed, and the legal relations between the parties hereto shall be determined, in accordance with the law of the State of California, and any actions to enforce this agreement shall take place in California.

IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOST PROFITS, OR FOR SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES, AND EACH PARTY COVENANTS NOT TO SEEK ANY SUCH DAMAGES WITH RESPECT TO ANY CLAIM ARISING OUT OF OR RELATED TO THIS AGREEMENT.

Any notice, request, demand or other communication required or permitted under this agreement shall be deemed to have been delivered either upon personal delivery or five (5) working days after having been deposited in the mail, postage prepaid, certified or registered mail, addressed to the party to be notified at the address set forth below. A change of address for notice purposes may be made by the same procedure.

In the case of Licensor:

David C. Watt
Biomagic, Inc.
1030 W. 17th Street
Costa Mesa, CA 92627

Copy to:

Taylor Gibson
Chief Financial Officer
Biomagic, Inc.
1030 W. 17th Street
Costa Mesa, CA 92627

In the case of Licensee:

John Reitsma
Dutch Brothers Enterprises, LLC
139 River Vista Place
Twin Falls, Idaho 83301

ARTICLE XI

Entire Agreement and Confidentiality

11.1 All of the terms, provisions and conditions agreed upon by the parties hereto are expressed herein, and except as contained in this agreement, there are no other or further understandings. Any amendments, modifications or waivers to this agreement must be in writing and signed by both parties hereto. If any part of this agreement is determined to be illegal or unenforceable, that part alone shall be deemed stricken and the remainder of this agreement shall remain in full force and effect.

11.2 The parties shall keep the terms of this Agreement confidential and shall not now nor hereafter divulge the terms of this Agreement or any part thereof to any third party, except with the prior written consent of the other party; to any government body having jurisdiction and calling therefore or as otherwise may be required by law.

ARTICLE XII

Attorney's Fees

12.1 If any action at law or in equity is necessary to enforce or interpret the provisions of this agreement, the prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which it may be entitled.

ARTICLE XIII

Mediation and Arbitration

13.1 Should any dispute arise between the parties regarding any of the terms of this Agreement, the parties shall submit such dispute to a Mediator agreed on by the parties. The parties shall attempt to mediate the dispute in good faith. Should the mediation process not result in a satisfactory resolution for either party, then the parties agree to submit any disputes arising from this agreement to final and binding arbitration in a location mutually decided upon between the parties under the rules of the American Arbitration Association. Both parties shall bear equally the cost of the arbitration (exclusive of legal fees and expenses, all of which each party shall bear separately). All decisions of the arbitrators shall be final and binding on both parties and enforceable in any court of competent jurisdiction.

ARTICLE XIV

Waiver

14.1 A waiver by either party of a breach by the other party of any term, covenant or condition contained herein shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition of this agreement. Further, any waiver shall be in writing signed by each of the parties hereto.

ARTICLE XVI

Non-Assignability

15.1 This agreement is personal to Licensee and Licensee shall not, nor shall it have the power to, assign any of its rights and obligations, in whole or in part, under this agreement; provided, however, that Licensee shall be entitled to assign this agreement and its rights and obligations thereunder to:

15.1.1 Any affiliate of Licensee (its parent company or any wholly owned subsidiary of Licensee or its parent company); or

15.1.2 The purchaser of all or substantially all of the assets of Licensee, upon the prior written consent of Licensor, which consent shall not be unreasonably withheld or delayed.

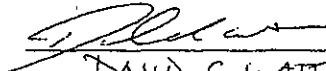
ARTICLE XVII

Successors and Assigns

16.1 Except as limited by the preceding Article XV, the terms, covenants and conditions contained herein shall apply to, and bind the successors and assigns of, the parties hereto.


IN WITNESS WHEREOF, the parties have executed this agreement as of the day and year first above written.

LICENSOR:



DAVID C. WATT 12/9/05
CEO

LICENSEE:



JOHN REITSMAN
12-9-05

LICENSE TRANSFER AGREEMENT

WHEREAS, On December 9, 2005, Dutch Brothers Enterprises, LLC (hereinafter "Licensee") entered into an Exclusive License Agreement (hereinafter the "Agreement") with Biomagic, Inc., a Delaware corporation (hereinafter the "Licensor") whereby Licensee obtained the rights to develop, manufacture and market a line of proprietary products developed and owned by "Licensor";

WHEREAS, the parties agree that in order to facilitate the financial growth and development of the business, the License referred to above be transferred to John Reitsma, (the "Successor Licensee") a principal of the Licensee;

WHEREAS, the Successor Licensee agrees that the Licensee shall continue to be responsible for the sales, marketing and distribution of the products subject to the license on terms that will be negotiated by and between the parties;

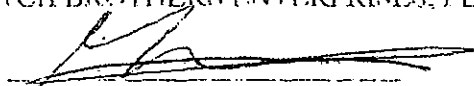
NOW THEREFORE, for good and valuable consideration, which is hereby acknowledged, the parties agree to transfer said license to the Successor Licensee on the following terms:

1. Transfer of License. The license and all right, title and interest referred to above shall be transferred from Licensee to Successor Licensee.
2. New Agreement. Commencing with the execution of this License, Successor Licensee and Licensee shall, as soon as possible, negotiate and enter into an agreement for terms that will allow the Licensee to continue to market, sell and distribute the product subject to the License;
3. Consent of Licensor. Licensor hereby consents to the transfer of the License as described herein.

Agreed this 7 day of ^{May}~~April~~ 2007

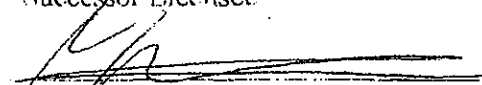
"Licensee"

DUTCH BROTHERS ENTERPRISES, LLC

By: 
JOHN REITSMA, Member

By: 
JOHN WIERSMA, Member

"Successor Licensee"

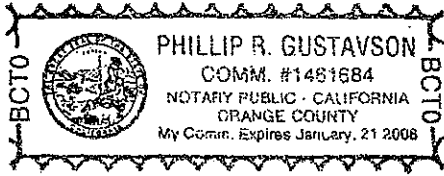

JOHN REITSMA

STATE OF CALIFORNIA

County of ORANGE:SS

On this 8 day of May, 2007, before me, a Notary Public in and for said County and State, personally appeared DAVID C. WATT, _____ of Biomagic, Inc., known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that they executed the same on behalf of the corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and seal, the day and year in this certificate first above written.



Phillip R. Gustavson
NOTARY PUBLIC for ~~Idaho~~ CALIFORNIA
Residing at: ORANGE COUNTY
Commission Expires: 1/21/2008

Exhibit D



Soil Treatment
25-0-0

Patent Pending

Guaranteed Analysis

Total Nitrogen (N)..... 25%
 8.6% Ammoniacal Nitrogen
 12.0% Nitrate Nitrogen
 4.4% Urea Nitrogen
 Calcium (Ca) 4 %

Derived from Ammonium Nitrate, Urea, Calcium Nitrate and Potassium Nitrate.

ALSO CONTAINS NON-PLANT FOOD INGREDIENTS:

Polyethylene Glycols
 (Nonionic Surfactant): 0.004%

Other Information:

pH range..... 6.8 to 7.2
 Specific Gravity Range 1.34 to 1.40

Directions for Use and Application Rates

Soil Treatment: Apply a minimum of two gallons UNLO₂K per acre. **DO NOT BROADCAST UNDILUTED.** Minimum dilution of a 1:10 ratio followed immediately by a watering. UNLO₂K should be diluted or chemigated to a minimum 1 part UNLO₂K to 500 parts water and irrigated into the root zone. Store at room temperature above 40 degrees F and avoid extended periods of direct exposure to sunlight. Keep from freezing and do not allow to dry out. Mix well before using.

Product Description: UNLO₂K is a proprietary blend of specialized ingredients intended to help improve soil conditions. UNLO₂K is intended as a supplement to a regular fertilization program and may not, by itself, provide all the nutrients normally required by crops or other intended plants. Additional information and MSDS can be found at www.agrakey.com.

Precautionary Information: Wear eye protection and gloves when handling. Prolonged contact with eyes or skin may cause irritation. May be harmful if swallowed. If ingested, seek medical assistance immediately. If in eyes, flush with clear water for at least 15 minutes. Get medical attention if irritation persists. **KEEP OUT OF REACH OF CHILDREN.**

Compatibility: This product should not be used with herbicides, fungicides or pesticides. Apply as a stand alone application according to directions and application guidelines.

Information regarding the contents and levels of metals in this product is available on the internet at <http://www.aapfco.org/metals.htm>

Net Contents:

270 Gallons (1,022 Liters)

Net Weight:

3,168 lbs. (1,437 Kg)

Manufactured by and Guaranteed by:
 Dutch Brothers Enterprises, LLC
 329 South 417 East
 Jerome, ID 83338
 Office (208) 733-0711

Distributed by:
 Agrakey Solutions, LLC
 329 South 417 East
 Jerome, ID 83338
 Office (208) 733-5235
www.agrakey.com

UNLOCKING SOIL POTENTIAL

Conditions of Sale:
 The information contained on this label is believed to be accurate and reliable. Buyer and user acknowledge and assume all liability resulting from the use of this material. Follow directions carefully. Timing, method of application, weather, crop conditions and other factors are beyond the control of the seller.



**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

I (a) PLAINTIFFS (Check box if you are representing yourself <input type="checkbox"/>) BIOMAGIC, INC.	DEFENDANTS DUTCH BROTHERS ENTERPRISES, LLC., an Idaho limited liability company, AGRAKEY SOLUTIONS, LLC., an Idaho limited liability company, and JOHN REITSMA, an individual, and DOES 1 to 10,
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) FISH & ASSOCIATES, PC 2603 Main Street, Suite 1000, Irvine, CA 92614 (949) 943-8300 / (949) 943-8358 Fax	Attorneys (If Known) <div style="font-size: 2em; font-weight: bold; letter-spacing: 0.5em;">BY FAX</div>

II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)	III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border-collapse: collapse;"> <tr> <td style="width:30%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> <td style="width:40%;"></td> <td style="width:10%; text-align: center;">PTF</td> <td style="width:10%; text-align: center;">DEF</td> </tr> <tr> <td>Citizen of This State</td> <td align="center"><input type="checkbox"/> 1</td> <td align="center"><input type="checkbox"/> 1</td> <td>Incorporated or Principal Place of Business in this State</td> <td align="center"><input checked="" type="checkbox"/> 4</td> <td align="center"><input type="checkbox"/> 4</td> </tr> <tr> <td>Citizen of Another State</td> <td align="center"><input type="checkbox"/> 2</td> <td align="center"><input type="checkbox"/> 2</td> <td>Incorporated and Principal Place of Business in Another State</td> <td align="center"><input type="checkbox"/> 5</td> <td align="center"><input checked="" type="checkbox"/> 5</td> </tr> <tr> <td>Citizen or Subject of a Foreign Country</td> <td align="center"><input type="checkbox"/> 3</td> <td align="center"><input type="checkbox"/> 3</td> <td>Foreign Nation</td> <td align="center"><input type="checkbox"/> 6</td> <td align="center"><input type="checkbox"/> 6</td> </tr> </table>		PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
	PTF	DEF		PTF	DEF																				
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input checked="" type="checkbox"/> 4	<input type="checkbox"/> 4																				
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input checked="" type="checkbox"/> 5																				
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6																				

IV. ORIGIN (Place an X in one box only.)

1 Original Proceeding
 2 Removed from State Court
 3 Remanded from Appellate Court
 4 Reinstated or Reopened
 5 Transferred from another district (specify):
 6 Multi-District Litigation
 7 Appeal to District Judge from Magistrate Judge

V. REQUESTED IN COMPLAINT: JURY DEMAND: Yes No (Check 'Yes' only if demanded in complaint.)

CLASS ACTION under F.R.C.P. 23: Yes No MONEY DEMANDED IN COMPLAINT: \$ According to Proof

VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)

VII. NATURE OF SUIT (Place an X in one box only.)

OTHER STATUTES <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	CONTRACT <input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	TORTS PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	TORTS PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition FORFEITURE/PENALTY <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input checked="" type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) (405(g)) <input type="checkbox"/> 863 DIWC/DIWW <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 FSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS-Third Party 26 USC 7609
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SACV10-00290 AG (RNBx)

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

**UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET**

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes
If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes
If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) A. Arise from the same or closely related transactions, happenings, or events; or
 B. Call for determination of the same or substantially related or similar questions of law and fact; or
 C. For other reasons would entail substantial duplication of labor if heard by different judges; or
 D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
 Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
ORANGE COUNTY	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
 Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Idaho

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Orange County, California	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):  Date March 9, 2010

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Andrew Guilford and the assigned discovery Magistrate Judge is Robert N. Block.

The case number on all documents filed with the Court should read as follows:

SACV10- 290 AG (RNBx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

Western Division
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Name & Address: Robert Fish, Esq. (SBN 149711)
Mei Tsang, Esq. (SBN 237959)
Josh Emory, Esq. (SBN 247398)
Fish & Associates, PC
2603 Main Street, Suite 1000
Irvine, CA 92614

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BIOMAGIC, INC., a
Delaware Corporation,

PLAINTIFF(S)

v.

DUTCH BROTHERS ENTERPRISES, LLC., an
Idaho limited liability company, AGRAKEY
SOLUTIONS, LLC., an Idaho limited liability
and JOHN REITSMA, an individual,
and DOES 1 to 10,

DEFENDANT(S).

CASE NUMBER

SACV10-00290 AG (RNBx)

SUMMONS

TO: DEFENDANT(S): DUTCH BROTHERS ENTERPRISES, LLC., an Idaho limited liability company,
AGRAKEY SOLUTIONS, LLC., an Idaho limited liability company, and JOHN REITSMA
an individual, and DOES 1 TO 10

A lawsuit has been filed against you.

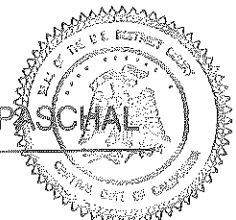
Within 21 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached complaint amended complaint counterclaim cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, Robert D. Fish, Esq., whose address is 2603 Main Street, Suite 1000, Irvine, CA 92614. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: March 9, 2010

By: ROLLS ROYCE PASCHAL
Deputy Clerk

(Seal of the Court)



1144

BY FAX

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].