

## Appendix 6: Declaration of VITA Member Company

Section 10 of the *VSO Policies and Procedures* requires the undersigned WG Member<sup>4</sup> to complete and execute this Declaration on behalf of the VITA Member Company he or she represents. The Declaration is irrevocable. Any subsequent Declaration covering information disclosed in this Declaration may only supersede this Declaration if the subsequent Declaration is less restrictive upon prospective licensees than the information set forth in this Declaration. This Declaration will apply to the Draft VSO Specification<sup>5</sup> identified below in Section C and to all reaffirmations or revisions to such Draft VSO Specification.

### A. VITA Member Company

Legal Name of Organization Parker Hannifin Corporation

### B. WG Member Representing the VITA Member Company

Name & Department: Rex J. Harvey, Advanced Cooling Systems Business

Address: 9200 Tyler Boulevard, Mentor Ohio 44060

Telephone: (440) 954-8122

Fax: (440) 954-8111

E-Mail: rharvey@parker.com

URL: www.parker.com

### C. Draft VSO Specification

Number: VITA Draft Standard 48.3, revision D0.03 12 January 2006

Title: Mechanical Specifications for Microcomputers Using REDI Liquid Cooling Applied to VITA 46

### D. Disclosure of Patents Containing Essential Claims

1 In accordance with Section 10 of the *VSO Policies and Procedures*, the undersigned WG Member shall disclose, on behalf of the VITA Member Company he or she represents, all patents or patent applications that the VITA Member Company (or its Affiliates<sup>6</sup>) may own or control and that it believes may contain claims essential to create an implementation compliant with the Draft VSO Specification identified above in Section C of this Declaration.

Patent / Application No. U.S. Patent Application Serial Number 60/807,663, filed July 18, 2006

Title: Centering Clamp

<sup>4</sup> For purposes of this Declaration, "WG Member" includes all three levels of membership described in Section 7.1.4 of the *VSO Policies and Procedures*: sponsors, participants, and observers

<sup>5</sup> For purposes of this Declaration, "Draft VSO Specification" includes any eventual standard developed and adopted under Track 1 or Track 2 in Section 7.2 of the *VSO Policies and Procedures* as an IEC Industry Technical Agreement, a VSO or VITA Specification, or an American National Standard.

<sup>6</sup> For purposes of this Declaration, an "Affiliate" is any entity that directly or indirectly controls, is controlled by, or is under common control with, another entity, so long as such control exists. For purposes of this definition, with respect to a business entity, control means direct or indirect beneficial ownership of or the right to exercise (i) greater than fifty percent (50%) of the voting stock or equity in an entity; or (ii) greater than fifty percent (50%) of the ownership interest representing the right to make the decisions for the subject entity in the event that there is no voting stock or equity.

Patent / Application No \_\_\_\_\_  
\_\_\_\_\_

Patent / Application No \_\_\_\_\_  
\_\_\_\_\_

*Attach additional pages if necessary.*

2. Does the VITA Member Company the undersigned represents hold a license from another party to a patent that may include a claim essential to create an implementation compliant with the Draft VSO Specification identified above in Section C of this Declaration?

Yes  No

If yes, the undersigned shall disclose on behalf of the VITA Member Company all patents to which the VITA Member Company holds a license from another party that may include a claim essential to create an implementation compliant with the Draft VSO Specification identified above in Section C.

Patent No \_\_\_\_\_  
Title: \_\_\_\_\_  
Licensor: \_\_\_\_\_

*Attach additional pages if necessary.*

**E VITA Member Company's Declaration regarding the Licensing of Essential Patents**

In accordance with Section 10 of the *VSO Policies and Procedures*, the VITA Member Company, by and through the undersigned, hereby declares for itself, its Affiliates, successors, assigns, and transferees of its patent rights its licensing position with respect to all patents that it may hold or control and that contain claims that may be essential to create an implementation compliant with the Draft VSO Specification identified above in Section C of this Declaration, as follows:


1 The VITA Member Company will grant to all interested parties a nonexclusive, worldwide, nonsublicensable (except to the extent necessary "to have made"), perpetual patent license (or equivalent non-assertion covenant) for its patent claims essential to create an implementation compliant with the above-referenced Draft VSO Specification on fair, reasonable and non-discriminatory terms to use, make, have made, market, import, offer to sell, and sell, and to otherwise directly or indirectly distribute products that implement the Draft VSO Specification. (The license need only extend to the portions of the Draft VSO Specification for which the license is essential to its implementation. Any other intended condition or limitation on this commitment is stated in a letter accompanying this Declaration.)

2. The VITA Member Company will grant a license to all such claims to all interested parties with a royalty rate that will not exceed: USD \$ 50,000, or 5 % of product price, per unit.

3.  The VITA Member Company attaches to this Declaration a draft licensing agreement for any claims essential to create an implementation compliant with the Draft VSO Specification identified above in Section C (the final licensing agreement will not be more restrictive upon licensees than this draft); or
- The VITA Member Company will not include in its final licensing agreement for all claims essential to create an implementation compliant with the Draft VSO Specification identified above in Section C a grantback, reciprocal license, non-assert provision, covenant not to sue, or defensive suspension provision that is broader and more restrictive upon prospective licensees than those specified in Section 10 of the current VSO *Policies and Procedures*.

**F. Signature**

*By signing this Declaration, the undersigned represents that he or she is authorized to bind the VITA Member Company as stated herein. The undersigned acknowledges and agrees that this Declaration is a binding agreement between the VITA Member Company and VITA, and its terms are enforceable against the VITA Member Company, its Affiliates, successors, assigns, and transferees. The undersigned further acknowledges and agrees on behalf of the VITA Member Company that each licensee and prospective licensee of patent claims essential to implement the Draft VSO Specification identified above in Section C is an intended beneficiary of this agreement, and each such beneficiary is entitled to rely upon and enforce against the VITA Member Company the provisions set forth in this Declaration.*

Signature:  \_\_\_\_\_

Print Name: Mark Seidel

Title: General Manager

Organization: Parker Hannifin Corporation, Gas Turbine Fuel Systems Division

Date: March 16, 2007

## **DRAFT TERMS FOR AGREEMENT**

This Draft Agreement represents the terms that would be extended by Parker-Hannifin Corporation (along with its subsidiaries, "Parker"), an Ohio corporation, through its Gas Turbine Division having an address at 9200 Tyler Road, Mentor, Ohio 44060, to Licensees under the VITA Patent Policy Article 10 "VITA Policy"), regarding Adaptable Card-Locking Expander Device ("Licensed Products") manufactured pursuant to VITA Draft Standard 48.3, revision D0.03 12 January 2006 and subsequent revisions and released standards ("VITA Standard"). This Draft Agreement provides the material license terms for such Licensees; however, any final and determinative agreement is subject to further good faith negotiations between Parker and potential licensees.

The material terms of such agreement are as follows:

### **ARTICLE I** **DEFINITIONS**

The following words and phrases will have the meanings set forth below when used with initial capital letters:

1. **Effective Date**. The last date of signing this Agreement by all parties to this Agreement.
- 1.2 **Licensed Products**. Shall mean any article of manufacture, composition of matter, process, or apparatus made, used, sold, offered for sale, or imported by Licensee in any country which, absent the license herein granted, would infringe, contribute to the infringement, or induce the infringement in that country of any claim of a Licensed Patent.
- 1.3 **Licensed Patents**. Shall mean any patents owned or controlled by Parker, which would be infringed when following the VITA Standard, including the patents and applications listed in Schedule B, and any patents issuing thereon or from later filed continuations, substitutions, or divisionals thereof, and any reissues, reexaminations, renewals, or extensions of the same.
- 1.4 **Territory**. Shall mean the World.

### **ARTICLE II** **GRANT OF RIGHTS**

- 2.1 **License**. PARKER grants to LICENSEE a limited, non-exclusive, non-transferable license during

the term of this Agreement, without the right to sublicense, to use the Licensed Patents only to make, have made, market, use, offer to sell, sell, distribute, and import the Licensed Products for sale in the Territory. No other right or license is provided hereunder, and specifically no right or license is provided for any purpose other than which is essential to make the Licensed Products to the VITA Standard.

- 2.2 **Restrictions.** Except as expressly authorized by Article 2.1 of this Agreement, during and after termination of this Agreement, LICENSEE will not use the Licensed Patents for any other purpose or grant, assign or convey any interest in any of such Licensed Patents to any other entity.
- 2.3 **Grant-Back/Non-Assert.** In consideration of the rights granted hereunder, Licensee grants to Parker a royalty-free, unrestricted, perpetual, world-wide, transferable, non-exclusive right and license to Parker in any improvements, modifications, or changes, whether patentable or not, made, directly or indirectly, in the Licensed Products. Licensee further agrees not to assert any patent right owned or controlled by Licensee, or aid or assist others in doing so, against Parker or its customers, end users, agents or representatives, regarding Parker's (or its customer's, end user's, agent's or representative's) manufacture, use or sale of the Licensed Products, or any improvements, modifications or changes thereto.
- 2.4 **Disclosure.** LICENSEE will not directly or indirectly advise any customer or potential customer of the existence or terms of this Agreement, or that LICENSEE has received a license from PARKER, or that LICENSEE manufactures or sells or has manufactured or sold Licensed Products under license from PARKER, unless approved in advance by Parker.

### **ARTICLE III EFFORTS**

LICENSEE will use reasonable commercial efforts to manufacture, market and sell the Licensed Products. LICENSEE will be solely responsible for i) obtaining any and all import and export licenses and governmental approvals that may be necessary to permit the sale by LICENSEE and the purchase by its end users of Licensed Products hereunder; ii) complying with any and all governmental laws, regulations, and orders that may be applicable to LICENSEE by reason of its execution and performance of this Agreement, and iii) complying with all laws, regulations, or orders that govern or affect the ordering, export, shipment, import, sale (including government procurement), delivery, or redelivery of Licensed Products. LICENSEE will promptly notify PARKER of any customer complaints regarding the Licensed Products, and provide a brief description thereof.

### **ARTICLE IV**

## PAYMENTS AND ACCOUNTING

### 4 Fees.

i) Initial Fee. Licensee will Pay to Parker an initial, non-refundable fee of twenty five thousand dollars (US\$25,000) within ten (10) days after execution of this Agreement.

ii) Royalty Fee. LICENSEE will pay to PARKER a royalty fee ("Royalty Fee") of 5% of the Net Sales of the Licensed Product for each Licensed Product sold or otherwise disposed of by LICENSEE in the Territory. As used herein, "Net Sales" will mean the total sales of the Licensed Products actually shipped and invoiced by Licensee, after the deduction of any discounts, credits, allowances and/or reductions to customers, returns, freight, or taxes paid for by customers which are incurred in the sale of the Licensed Products. In the event that the Licensed Products are not sold but are otherwise disposed of by Licensee such as by transfer, lease, or other conveyance, or by use, or are sold to a person, firm, corporation, subsidiary, division, or other entity directly or indirectly controlling, controlled by, under common control with, or enjoying a specially favored course of dealing with Licensee, then Net Sales Price shall mean the price would have been invoiced based upon Licensee's price list then in force, had the Licensed Products been sold, or had the sale been a bona fide sale made to a third party at arm's length, less such of the aforesaid deductions as are factually applicable.

4.2 Fee Payment Dates. LICENSEE shall pay the Royalty Fee provided for in Section 4.1(ii) hereof quarterly during the term of this Agreement based upon the calendar quarters ending March 31, June 30, September 30, and December 31. Within thirty (30) days after the end of each such quarterly period, LICENSEE will deliver to PARKER its written report of the number of Licensed Products sold or transferred, and the amount of the Royalty Fee earned during the quarter being reported. Concurrently with the making of each such report, LICENSEE will pay PARKER the Fee shown as due on the report. Payments shall be made to the PARKER address specified in Article 9.11 below, unless otherwise specified by Parker. Licensee shall pay Parker interest on any amount which is past due at an effective annual rate of three percent (3%) above the then current prime rate reported in the "Wall Street Journal" on the date upon which such amount becomes past due, or the maximum rate allowable by law, whichever is lower. Interest under this Section shall compounded daily and shall accrue from the date upon which the amount becomes past due until payment therefor is made.

4.3 Currency and Taxes. All payments required hereunder to be made to PARKER will be made in U.S. dollars with the following deducted. In the event that foreign withholding or similar taxes are imposed on any amount payable under this Agreement, such taxes will be paid by LICENSEE for

PARKER to the proper taxing authority under the applicable convention or similar law or treaty pertaining to the avoidance of double taxation and/or prevention of fiscal evasion with respect to taxes of income or the like between the United States and any applicable foreign country. LICENSEE will send PARKER a certificate issued by the applicable taxing authority evidencing the payment of any such taxes, and LICENSEE may deduct such tax payments from payments hereunder otherwise payable to PARKER after PARKER has received such certificate for the amount to be deducted.

- 5.4 Approvals/Right to Audit. LICENSEE will permit its books and records and manufacturing facilities to be examined by PARKER or its designee, at any reasonable time during LICENSEE's regular business hours, to the extent required by PARKER to verify the reports, payments and obligations herein required and specified.

#### **ARTICLE V** **TRADEMARKS AND PUBLICATIONS**

5. Production Identification. LICENSEE will mark or label all Licensed Products manufactured by or for LICENSEE in a permanent and distinctive manner to identify the Licensed Products as being manufactured by or on behalf of LICENSEE.
- 5.2 Trademarks, Trade Names. LICENSEE will not use any trademark or trade name of PARKER, whether on products or on packages or advertising or catalogs for products, on or in connection with the sale of the Licensed Products. This prohibition extends to all trademarks and trade names of PARKER and of all entities related to PARKER by common ownership or control, whether registered or not registered, and whether used in the Territory or used only outside of the Territory.
- 5.3 Product Publications. LICENSEE will not copy any Parker product publications, will not use the same or similar part numbers as Parker, will not use the same or similar product publication color combinations as Parker, and will not convey the same or similar visual impression on its product publications as Parker, in conjunction with sale or marketing of the Licensed Products.

#### **ARTICLE VI** **LIABILITY AND INDEMNIFICATION**

6. Liability. PARKER hereby disclaims any and all warranties regarding the Licensed Products and the Licensed Patents, including any warranties of merchantability or fitness for a particular purpose, and warranties of non-infringement. LICENSEE IS SOLELY RESPONSIBLE FOR ITS ACTIVITIES CARRIED OUT UNDER THE RIGHTS GRANTED HEREUNDER, AND HEREBY REPRESENTS AND WARRANTS TO PARKER THAT LICENSEE HAS THE EXPERTISE NECESSARY TO MANUFACTURE THE LICENSED PRODUCTS IN A SAFE AND EFFECTIVE MANNER. IN NO EVENT SHALL

PARKER BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS ARISING FROM OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR RELATING TO THE LICENSED PRODUCTS, OR TO LICENSEE'S USE THEREOF, OR LICENSEE'S MANUFACTURE, OFFER FOR SALE, OR SALE THEREOF, OR TO THE USE OF THE LICENSED PRODUCTS BY LICENSEE OR ITS CUSTOMERS, WHETHER ALLEGED TO ARISE FROM PERSONAL INJURY, PROPERTY DAMAGE, SHUTDOWN OR NON-OPERATION OF ANY FACILITY, OR ANY OTHER CAUSE, OR UNDER ANY THEORY OF LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, PATENT, TRADE MARK, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS INFRINGEMENT, OR OTHERWISE, AND REGARDLESS OF WHETHER PARKER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

- 7.2 Indemnification. LICENSEE will indemnify and hold PARKER, its subsidiaries, and their respective officers, directors, employees, and representatives, harmless from and against any and all losses, claims, causes of action, restrictions, disputes, complaints, liabilities, costs, expenses and/or damages, including attorney fees, pertaining to the Licensed Products or arising from LICENSEE (or its agents, employees, subcontractors, or representatives) manufacturing, using and/or selling the Licensed Products, or arising from LICENSEE's performance or nonperformance under this Agreement. LICENSEE will maintain general liability insurance with limits up to at least \$2M; and, if the Licensed Products are for aircraft applications, aircraft products liability insurance with limits up to at least \$5M.

## ARTICLE VII ARBITRATION

Any controversy or claim arising out of or relating to this Agreement, or the enforcement, breach, termination or validity thereof, that cannot be resolved by good faith negotiations between the parties, shall be settled by binding arbitration in accordance with the CPR Institute Rules for Non-Administered Arbitration ([www.cpradr.org](http://www.cpradr.org)) in effect on the date of this Agreement by a sole arbitrator. Any other choice of law clause to the contrary in this Agreement notwithstanding, the arbitration shall be governed by the United States Arbitration Act, 9 U.S.C. Sec.1-16, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The place of the arbitration will be Cleveland, Ohio. Insofar as the proceeding relates to patents, it shall also be governed by 35 U.S.C. Sec 294, to the extent applicable. The arbitrator is not empowered to award trebled, punitive or any other damages in excess of compensatory damages. The parties acknowledge that the remedies available at law for breaches of this Agreement may be inadequate to compensate and protect each party's rights. The parties thereby agree that each shall have the right, in its sole discretion and in addition to all other remedies it



may have available, to seek temporary and permanent injunctive relief to enforce the provisions of this Agreement without the necessity of proving actual damages and without the necessity of first submitting its claims to arbitration. Each party will pay its own attorneys fees, costs and other expenses in conjunction with the arbitration, as well as one-half the cost of the arbitrator and the arbitration expenses. The arbitrator shall make a reasoned award.

## **ARTICLE VIII** **TERM AND TERMINATION**

- 8.1 **Term.** The term of this Agreement will commence on the Effective Date and will continue through the last to expire Licensed Patent.
- 8.2 **Termination for Special Cause.** In the event of any material breach of this Agreement by LICENSEE that is not corrected within sixty (60) days after notice by PARKER, this Agreement may be terminated by PARKER. Challenging the validity or enforceability of any of the Licensed Patents such as by lawsuit, reexamination, or nullity action, shall constitute a non-correctable material breach of the Agreement. In the event Licensee challenges the Licensed Patents, Licensee shall reimburse Parker for the costs in defense thereof, including legal fees, whether or not Licensee is successful or not. This Agreement may also be terminated if one party files a petition in bankruptcy, shall be adjudicated as bankrupt, shall take advantage of the insolvency laws of any state, shall make an assignment for the benefit of creditors, shall be voluntarily or involuntarily dissolved, or shall have a receiver, trustee, or other court officer appointed for its property.
- 8.3 **Termination of Manufacture.** Upon termination of this Agreement under Article 9.2, LICENSEE will terminate all direct and indirect manufacture, use and sale of the Licensed Products.
- 8.4 **Continuing Obligations.** Articles 1, 2.2; 2.3; 2.4; 4; 5.2; 5.3; 6; and 7 will survive any termination of this Agreement.

## **ARTICLE IX** **MISCELLANEOUS**

9. **Marking.** If requested by Parker, Licensee shall mark all Licensed Products, or the packaging or labels for the Licensed Product if it impractical to apply the marking directly to the Licensed Product, sold by Licensee hereunder with an appropriate patent marking notice as directed by Parker.
- 9.2 **Expenses.** Each party will bear its own expenses in carrying out the terms of this Agreement.
- 9.3 **Modifications.** No modification, amendment, deletion, addition or other change in this Agreement or any provision thereof will be effective for any purpose unless set forth in writing and signed by

the parties to be bound thereby.

- 9.4 **Injunctive Relief.** The parties to this Agreement agree that any breach of the Agreement that is not cured under Article 8.2 will cause irreparable harm to PARKER that cannot be compensated only by monetary damages, and PARKER will be entitled to preliminary and final injunctive relief to prohibit any such breach without the need for posting bond.
- 9.5 **Entire Agreement.** This Agreement comprises the entire Agreement between LICENSEE and PARKER with respect to the subject matter to which the Agreement relates.
- 9.6 **Controlling Law.** All questions concerning the validity and operation of this Agreement and the performance of obligations imposed upon the parties under this Agreement will be governed by the laws of the State of Ohio, without regard to its conflicts of laws provisions. The parties expressly agree to exclude the application of the United Nations Convention on the International Sale of Goods.
- 9.7 **Successors and Assigns.** This Agreement, and the rights and obligations of each party hereunder, may not be assigned or transferred by LICENSEE, except by written authorization signed by an officer of PARKER.
- 9.8 **Counterparts.** Duplicate copies of this Agreement will be executed, and each such copy will be deemed an original thereof.
- 9.9 **Force Majeure.** Neither party will be liable to the other party for any loss or damage suffered directly or indirectly as a result of such party's failure to perform or delay in performing any term or condition hereof where such failure or delay is caused by fire, explosion, flood, war, act of Nature, agency or governmental authority, interruption of or delay in transportation, labor troubles (including strikes and lockouts), or any other circumstance beyond such party's reasonable control
- 9.10 **Official Language.** This Agreement is written in the English language, and any dispute with respect to the Agreement or the meaning of any term, provisions, phrase or word thereof will be resolved by reference to its ordinary and common English usage except as otherwise defined in Article I.
- 9.11 **Notices.** All notices and communications required or permitted to be given under this Agreement will be written in the English language and will be deemed given upon receipt when sent by official air mail as registered or certified air mail, postage prepaid, and addressed to the other party at the address set forth below, unless by such notice a different person or address or method of delivery shall have been designated:

IF TO LICENSEE:

Attention:

IF TO PARKER:

Parker-Hannifin Corporation

Gas Turbine Fuel Systems Division  
9200 Tyler Road  
Mentor, Ohio 44060  
Attention: General Manager

With a Copy To:

Parker-Hannifin Corporation  
6035 Parkland Boulevard  
Cleveland, Ohio 44124 USA  
Attention: Aerospace Group President

9.12 Parker Sales. Nothing in this agreement will limit or restrict the right of Parker to make, have made, use, sell or import Licensed Products anywhere in the world.

**SCHEDULE A**

**Products**

**SCHEDULE B**

**Patents and Applications**

**Centering Clamp, U.S. Patent Application Serial Number 60/807,663, filed July 18, 2006**