

02-26-1999

U.S. Department of Commerce
Patent and Trademark Office
PATENT



100973595

222-99

2

**RECORDATION FORM COVER SHEET
PATENTS ONLY**

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

☒ New
☐ Resubmission (Non-Recordation)
Document ID#
☐ Correction of PTO Error
Reel # Frame #
☐ Corrective Document
Reel # Frame #

Conveyance Type

☐ Assignment ☒ Security Agreement
☐ License ☐ Change of Name
☐ Merger ☐ Other
U.S. Government
(For Use ONLY by U.S. Government Agencies)
☐ Departmental File ☐ Secret File

Conveying Party(ies)

☒ Mark if additional names of conveying parties attached

Execution Date
Month Day Year
02051999

Name (line 1) AGRI-HOLDINGS INTERNATIONAL, INC. d/b/a SPECIALTY AGRICULTURAL PRODUCTS

Name (line 2) a corporation of Colorado

Second Party

Execution Date
Month Day Year
02051999

Name (line 1) HARRISTON INDUSTRIES, INC.

Name (line 2) a corporation of North Dakota

Receiving Party

☐ Mark if additional names of receiving parties attached

☐ If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative is attached. (Designation must be a separate document from Assignment.)

Name (line 1) LASALLE NATIONAL BANK

Name (line 2)

Address (line 1) 135 South LaSalle Street

Address (line 2)

Address (line 3) Chicago

IL

60603

City

State/Country

Zip Code

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

02/25/1999 DNGUYEN 00000203 182284 4651511

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Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

PATENT
REEL: 9773 FRAME: 0695

Correspondent Name and Address

Area Code and Telephone Number

Name David J. Richter

Address (line 1) RUDNICK & WOLFE

Address (line 2) P.O. Box 64807

Address (line 3) Chicago, IL 60664-0807

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

10

Application Number(s) or Patent Number(s)

☐ Mark if additional numbers attached

Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).

Patent Application Number(s)

Patent Number(s)

4651511

4744470

4311241

5359835

4936082

4274584

RE34225

5176248

5535689

If this document is being filed together with a new Patent Application, enter the date the patent application was signed by the first named executing inventor.

Month Day Year

Patent Cooperation Treaty (PCT)

Enter PCT application number
only if a U.S. Application Number
has not been assigned.

PCT

PCT

PCT

PCT

PCT

PCT

Number of Properties

Enter the total number of properties involved.

9

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): \$ 360.00

Method of Payment:
Deposit Account

Enclosed ☐

Deposit Account ☒

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

18-2284

Authorization to charge additional fees:

Yes

☒

No

☐

Statement and Signature

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

David J. Richter

Name of Person Signing

Signature

Date

RECORDATION FORM COVER SHEET
CONTINUATION
PATENTS ONLY

U.S. Department of Commerce
Patent and Trademark Office
PATENT

Conveying Party(ies)

☐ Mark if additional names of conveying parties attached

Enter additional Conveying Parties

Name (line 1) LOCKWOOD MANUFACTURING, INC.

Execution Date
Month Day Year
02051999

Name (line 2) a corporation of Colorado

Execution Date
Month Day Year
02051999

Name (line 1) CRARY COMPANY

Name (line 2) a corporation of North Dakota

Execution Date
Month Day Year

Name (line 1)

Name (line 2)

Receiving Party(ies)

☐ Mark if additional names of receiving parties attached

Enter additional Receiving Party(ies)

Name (line 1)

Name (line 2)

Address (line 1)

Address (line 2)

Address (line 3) City State/Country Zip Code

☐ If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative is attached. (Designation must be a separate document from Assignment.)

Name (line 1)

☐ If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative is attached. (Designation must be a separate document from Assignment.)

Name (line 2)

Address (line 1)

Address (line 2)

Address (line 3) City State/Country Zip Code

Application Number(s) or Patent Number(s)

☐ Mark if additional numbers attached

Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property).

Patent Application Number(s)

Patent Number(s)

PATENT AND LICENSE SECURITY AGREEMENT

PATENT AND LICENSE SECURITY AGREEMENT (the "Agreement") made this 5th day of February, 1999 between AGRI-HOLDINGS INTERNATIONAL, INC. d/b/a SPECIALTY AGRICULTURAL PRODUCTS, a Colorado corporation, having its chief executive office and mailing address at 1515 Arapahoe Street, Suite 1500, Denver, Colorado 80202, HARRISTON INDUSTRIES, INC., a North Dakota corporation, having its chief executive office and mailing address at Box 378, Highway 15, West Minto, North Dakota 58261, LOCKWOOD MANUFACTURING, INC., a Colorado corporation, having its chief executive office and mailing address at P.O. Box 400, 220757 Highway 92, Gering, Nebraska 69341, and CRARY COMPANY, a North Dakota corporation, having its chief executive office and mailing address at 237 12th Street, NW, West Fargo, North Dakota 58078 (hereinafter collectively referred to as the "Grantor"), and LASALLE NATIONAL BANK, a national banking association, with its mailing address at 135 South LaSalle Street, Chicago Illinois 60603 (in its individual capacity, "LaSalle"), as administrative agent for the "Banks" under the Credit Agreement referred to below (LaSalle, in such capacity, being "Agent").

W I T N E S S E T H:

WHEREAS, Agri-Holdings International, Inc., d/b/a Specialty Agricultural Products (the "Company") has entered into a Credit Agreement dated as of February 5, 1999 (as amended, modified or supplemented from time to time, the "Credit Agreement"), with the Banks (as defined in the Credit Agreement and hereinafter collectively referred to as the "Banks"), and LaSalle, as administrative agent for the Banks (LaSalle, in such capacity, being "Agent"), pursuant to which the Banks have agreed to make Revolving Loans and a Term Loan (as defined in the Credit Agreement) to the Company (the Revolving Loans and Term Loan hereinafter collectively referred to as the "Loans"), the proceeds of which are to be used as set forth in the Credit Agreement; and

WHEREAS, Lockwood Manufacturing, Inc., Harriston Industries, Inc., and Crary Company (hereinafter collectively referred to as the "Guarantors") have each entered into a Guaranty, dated as of February 5, 1999 (as amended, modified or supplemented from time to time, the "Guaranty") in favor of Agent and the Banks, pursuant to which each Guarantor unconditionally guaranteed the payment and performance of all obligations of the Company under or in connection with the Credit Agreement and any other Loan Document or instrument executed in connection therewith (hereinafter referred to as the "Guarantor Obligations"); and

WHEREAS, in connection with the making of the Loans under the Credit Agreement and as security for all of the Guarantor Obligations, the Banks are requiring that Grantor shall have executed and delivered this Patent and License Security Agreement and granted the security interest contemplated hereby;

NOW, THEREFORE, for and in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor agrees as follows:

1. **Defined Terms.**

- a. Unless otherwise defined herein, the capitalized terms used herein which are defined in the Credit Agreement shall have the meanings specified in the Credit Agreement.
- b. The words "hereof", "herein" and "hereunder" and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section and schedule references are to this Agreement unless otherwise specified.
- c. All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural, and vice versa unless otherwise specified.

2. **Security Interest in Patents.** To secure the complete and timely payment, performance and satisfaction of all of the Guarantor Obligations, Grantor hereby grants to Agent, for its benefit and the ratable benefit of the Banks, a security interest in, having priority over all other security interests, with power of sale to the extent permitted by applicable law, all of Grantor's now owned or existing and filed and hereafter acquired or arising and filed:

a. patents and patent applications, and the inventions and improvements described and claimed therein, including, without limitation, those patents and patent applications listed on Schedule A attached hereto and made a part hereof, and (i) the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (ii) all accounts receivable, income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements thereof, (iii) the right to sue for past, present and future infringements thereof, and (iv) all rights corresponding thereto throughout the world (all of the foregoing patents and applications, together with the items described in the foregoing clauses (i)-(iv), being sometimes hereinafter individually and/or collectively referred to as the "Patents"); and

b. license agreements with any other party now or hereafter entered into in connection

with any Patents or such other party's patents or patent applications, whether Grantor is a licensor or licensee under any such license agreement, including, but not limited to, the license agreements listed on Schedule B attached hereto and made a part hereof, and the right upon the occurrence and during the continuance of an Event of Default to use the foregoing in connection with the enforcement of the rights of Agent and the Banks under the Credit Agreement or any other Loan Document executed in connection therewith (all of the foregoing being hereinafter referred to collectively as the "Licenses"). Notwithstanding the foregoing provisions of this Section 2, the Licenses shall not include any license agreement which by its terms prohibits the grant of the security interest contemplated by this Agreement.

3. **Restrictions on Future Agreements.** Grantor will not, without Agent's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with this Agreement, and Grantor further agrees that it will not take any action, and will use reasonable efforts not to permit any action to be taken by others subject to its control, including licensees (to the extent such licensees are subject to its control), or fail to take any action, which would in any material respect affect the validity or enforcement of the rights transferred to Agent under this Agreement or the rights associated with those Patents and Licenses which are necessary or desirable in the operation of Grantor's business.

4. **New Patents and Licenses.** Grantor represents and warrants that the Patents and Licenses listed on Schedule A and Schedule B, respectively, include all of the patents, patent applications and license agreements in connection with patents or patent applications now owned or held by Grantor. If, prior to the termination of this Agreement, Grantor shall (i) create or obtain rights to any new patentable inventions or license agreements in connection with patents or patent applications, or (ii) become entitled to the benefit of any patent, patent application or patent for any reissue, division, continuation, renewal, extension or continuation-in-part of any Patent or any improvement on any Patent, the provisions of Section 2 above shall automatically apply thereto and Grantor shall give to Agent prompt written notice thereof. Grantor hereby authorizes Agent to modify this Agreement by (a) amending Schedules A or B, as the case may be, to include any future patents, patent applications and license agreements in connection with patents and patent applications that are Patents or Licenses under Section 2 above, or under this Section 4 (whether or not any such notice from Grantor has been sent or received), and (b) filing, in addition to and not in substitution for, this Agreement, a supplement or addendum to this Agreement containing on Schedules A or B thereto, as the case may be, such patents, patent applications and license agreements which are Patents or Licenses, as the case may be, under Section 2 above or this Section 4.

5. **Royalties.** Grantor hereby agrees that the use by Agent of the Patents and Licenses as authorized hereunder shall be co-extensive with Grantor's rights thereunder and with respect thereto and without any liability for royalties or other related charges from Agent or the Banks to Grantor or anyone.

6. **Nature and Continuation of Security Interest.** This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Patents and the Licenses and shall remain in full force and effect until the Guarantor Obligations have been paid in full and the Credit Agreement terminated.

7. **Right to Inspect; Further Assignments and Security Interests.** Agent shall have the right, during normal business hours and upon reasonable prior notice (or at any time without notice if an Event of Default exists) to inspect Grantor's premises and to examine Grantor's books, records and operations relating to the Patents; provided, that in conducting such inspections and examinations, Agent shall use reasonable efforts not to disturb unnecessarily the conduct of Grantor's ordinary business operations. Grantor agrees not to sell or assign its respective interests in, or grant any license under, the Patents without the prior written consent of Agent.

8. **Duties of Grantor.** Grantor shall have the duty to the extent desirable in the normal conduct of Grantor's business, (i) to prosecute diligently any patent application that is part of the Patents pending as of the date hereof or thereafter until the termination of this Agreement; (ii) to make application on such unpatented but patentable inventions as Grantor deems appropriate; and (iii) to preserve and maintain all of Grantor's rights in the patent applications and patents that are part of the Patents and Licenses. Any expenses incurred in connection with the foregoing shall be borne by Grantor. Grantor shall not abandon any right to file a patent application or any pending patent application or patent which is or shall be necessary or economically desirable in the operation of Grantor's business. Grantor agrees to retain an experienced patent attorney reasonably acceptable to Agent for the filing and prosecution of all such applications and other proceedings. Agent shall not have any duty with respect to the Patents and Licenses. Without limiting the generality of the foregoing, Agent shall not be under any obligation to take any steps necessary to preserve rights in the Patents or Licenses against any other parties, but may do so at its option during the continuance of an Event of Default, and all expenses incurred in connection therewith shall be on the sole account of Grantor and added to the Guarantor Obligations secured thereby.

9. **Agent's Right to Sue.** From and after the occurrence and during the continuance of an Event of Default, Agent shall have the right, but shall not be obligated, to bring suit or take any other action to enforce the Patents and the Licenses, and, if Agent shall commence any such suit or take any such action, Grantor shall, at the request of Agent, do any and all lawful acts and execute any and all proper documents required by Agent in aid of such enforcement. Grantor shall, upon demand, promptly reimburse and indemnify Agent for all costs and expenses incurred by Agent in the exercise of its rights under this Section 9 (including, without limitation, all Attorney Costs). If, for any reason whatsoever, Agent is not reimbursed with respect to the costs and expenses referred to in the preceding sentence, such costs and expenses shall be added to the Guarantor Obligations secured hereby.

10. **Waivers.** No course of dealing between Grantor and Agent or the Banks, and no failure

to exercise or delay in exercising on the part of Agent any right, power or privilege hereunder or under the Credit Agreement or any other Loan Document executed in connection therewith shall operate as a waiver of any of Agent's or the Banks' rights, powers or privileges. No single or partial exercise of any right, power or privilege hereunder or under the Credit Agreement or any other Loan Document executed in connection therewith shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

11. **Exercise of Rights and Remedies Upon Default.** Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence and during the continuance of an Event of Default, Agent and the Banks may exercise any of the rights and remedies provided in this Agreement, the Credit Agreement or any other Loan Document executed in connection therewith. Without limiting the generality of the foregoing, Grantor acknowledges and agrees that (i) the Patents and Licenses comprise a portion of the Collateral and Agent and the Banks shall have the right to exercise their rights under the Credit Agreement or any other Loan Document executed in connection therewith with respect to the Patents and Licenses to the same extent as with respect to all other items of Collateral described therein, and (ii) from and after the occurrence of an Event of Default, Agent or its nominee may use the Patents and Licenses in connection with the conduct of Grantor's business.

12. **Severability.** The clauses or provisions of this Agreement are severable, and if any clause or provisions shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction. or any other clause or provision of this Agreement in any jurisdiction.

13. **Modification.** This Agreement cannot be altered, amended or modified in any way, except as specifically provided in Section 2 and Section 4 hereof or by a writing signed by the parties hereto.

14. **Cumulative Remedies; Power of Attorney.** All of Agent's rights and remedies with respect to the Patents and the Licenses, whether established hereby, by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently. Grantor hereby irrevocably appoints Agent as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor or otherwise to carry out the acts described below. Subject to the terms of the Credit Agreement and any other Loan Document executed in connection therewith, Grantor hereby authorizes Agent to, in its sole discretion, upon the continuance of an Event of Default, (i) endorse Grantor's name on all applications, documents, papers and instruments necessary or desirable for Agent in the use or transfer of the Patents and the Licenses, (ii) take any other actions with respect to the Patents and the Licenses as Agent deems is in its best interest, (iii) grant or issue any exclusive or non-exclusive license with respect to the Patents to anyone and (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Patents and the Licenses to anyone. Grantor hereby ratifies all that such attorney-in-fact shall lawfully do or

cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until this Agreement shall have been terminated pursuant to Section 6. Grantor acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of Agent or the Banks under the Credit Agreement or any other Loan Document executed in connection therewith, but rather is intended to facilitate the exercise of such rights and remedies. Agent shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Patents may be located or deemed located.

15. **Binding Effect; Benefits.** This Agreement shall be binding upon Grantor and its successors and assigns, and shall inure to the benefit of Agent and the Banks, and their respective nominees, successors and assigns. Grantor's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession of or for Grantor; provided, however, that Grantor shall not voluntarily assign its obligations hereunder without the prior written consent of Agent.

16. **Governing Law.** This Agreement shall be governed by, and be construed and interpreted in accordance with, the laws of the State of Illinois, except for its choice of law provisions.

17. **Notices.** All notices or other communications hereunder shall be given in the manner and to the addresses set forth in the Security Agreement.

18. **Section Headings.** The section headings herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.

19. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement on the day and year first above written.

**AGRI-HOLDINGS INTERNATIONAL, INC.
d/b/a SPECIALTY AGRICULTURAL
PRODUCTS**

By: [Signature]
Name: MARK KING
Title: VP

LOCKWOOD MANUFACTURING, INC.

By: [Signature]
Name: MARK KING
Title: VP

HARRISTON INDUSTRIES, INC.

By: [Signature]
Name: MARK KING
Title: VP

CRARY COMPANY

By: [Signature]
Name: MARK KING
Title: VP

Accepted and agreed to in Chicago, Illinois as of this 5 day of February , 1999.

LASALLE NATIONAL BANK, as Agent

By: Mark E. McCarthy
Name: Mark E. McCarthy
Title: Group Senior Vice President

SCHEDULE A
(to Patent and License Security Agreement)

PATENTS

CRARY COMPANY

PATENT	PATENT/SERIAL NO.	COUNTRY	CO. NAME HELD IN	ISSUE DATE
1. Mower Assembly	4,651,511	U.S.	Crary Company	3/24/87
2. Underwater Weed Roller	5,359,835	U.S.	Crary Company	11/1/94
3. Modular Sickle Bar Sections	Re. 34,225 Orig. 4,805,390	U.S. U.S.	Crary Company	4/20/93 2/21/89
4. Modular Sickle Bar Sections	608843	Australia	Crary Company	5/13/88
5. Mechanical Air Reel	4,936,082	U.S.	Crary Company	6/26/90

LOCKWOOD MANUFACTURING, INC.

PATENT	PATENT/SERIAL NO.	COUNTRY	CO. NAME HELD IN	ISSUE DATE
1. Belted Chain	5,176,248	U.S.	Assignment to Lockwood Manufacturing, Inc. to be filed with the U.S. PTO	1/5/93
2. Method of Separating Clods and the Like from Potatoes	4,311,241	U.S.	same as above	1/19/82
3. Land Irrigation System and Method	4,274,584	U.S.	same as above	6/23/81
4. Vacuum Planting Apparatus	5,535,689	U.S.	same as above	7/16/96

SCHEDULE B
(to Patent and License Security Agreement)

LICENSES

1. Patent license from Crary Company to John Deere, dated August 8, 1994, with respect to United States Re. 34,255 and Canada 1,286,508.
2. Patent license from Juran Metal Works Ltd., an Israel company, to Harriston Industries, Inc., dated June 25, 1991, with respect to United States 4,744,470.

SCHEDULE B TO PATENT AND LICENSE SECURITY AGREEMENT

RECORDED: 02/22/1999

PATENT
REEL: 9773 FRAME: 0707