



05-05-1999

U.S. Department of Commerce
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PATENT



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**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** 4.29.99
☐ **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
Name (line 1) Execution Date
Month Day Year

Name (line 2)
Second Party
Name (line 1) Execution Date
Month Day Year
Name (line 2)

Receiving Party

☐ Mark if additional names of receiving parties attached

Name (line 1) ☐ If document to be recorded
Name (line 2) is an assignment and the
Address (line 1) receiving party is not
Address (line 2) domiciled in the United
Address (line 3) States, an appointment
City State/Country Zip Code of a domestic
representative is attached.
(Designation must be a
separate document from
Assignment.)

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)

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Public burden reporting For this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

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: 9922 FRAME: 0037

Correspondent Name and Address

Area Code and Telephone Number (713) 225-4646

Name GORDON MOCK, JR.

Address (line 1) C/O KIRKENDALL & ISGUR, L.L.P.

Address (line 2) 700 LOUISIANA, SUITE 4200

Address (line 3) HOUSTON, TX 77002

Address (line 4) ATTN: DAVID R. JONES

Pages

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

8

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)

5524405

Patent Number(s)

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

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Number of Properties

Enter the total number of properties involved.

1

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): \$ 40.00

Method of Payment:

Deposit Account

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

Enclosed ☒

Deposit Account ☐

Deposit Account Number:

#

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.

GORDON MOCK, JR.

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)	<input type="text"/>	Execution Date Month Day Year	<input type="text"/>
Name (line 2)	<input type="text"/>		
Name (line 1)	<input type="text"/>	Execution Date Month Day Year	<input type="text"/>
Name (line 2)	<input type="text"/>		
Name (line 1)	<input type="text"/>	Execution Date Month Day Year	<input type="text"/>
Name (line 2)	<input type="text"/>		

Receiving Party(ies)

☐ Mark if additional names of receiving parties attached

Enter additional Receiving Party(ies)

Name (line 1)	<input type="text"/>	<input type="checkbox"/> 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)	<input type="text"/>	
Address (line 1)	<input type="text"/>	
Address (line 2)	<input type="text"/>	<input type="checkbox"/> 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.)
Address (line 3)	<input type="text"/>	
Address (line 3)	<input type="text"/>	
Name (line 1)	<input type="text"/>	<input type="checkbox"/> 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)	<input type="text"/>	
Address (line 1)	<input type="text"/>	
Address (line 2)	<input type="text"/>	<input type="checkbox"/> 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.)
Address (line 3)	<input type="text"/>	
Address (line 3)	<input type="text"/>	

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)

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**COLLATERAL ASSIGNMENT OF PATENT
RIGHTS AND SECURITY AGREEMENT
(Randall L. Byrd as "Debtor")**

This Collateral Assignment of Patent Rights and Security Agreement ("Agreement"), effective April 17, 1999, is made by RANDALL L. BYRD, an individual, whose address is P.O. Box 1550, Brookshire, Texas 77423 (hereinafter called "Debtor"), and is given to GORDON MOCK, JR., an individual, whose address is 11202 Lorton Drive, Houston, Texas 77070 ("Assignee").

W I T N E S S E T H :

A. Debtor desires to grant and Assignee desires to obtain an absolute assignment of Debtor's interest in the Debtor's United States patents and patent applications, together with applicable foreign filing licenses as hereinafter defined, as security for the payment of certain obligations of Debtor to Assignee under (i) that certain Stock Purchase and Settlement Agreement and Release dated effective as of April 17, 1999 (the "Settlement"), and (ii) all renewals, extensions and rearrangements of the Settlement.

The Settlement and all obligations pertaining thereto, executed by Debtor for the benefit of Assignee, shall hereinafter be referred to as the "Obligations".

B. Assignee desires to have its assignment of interest in the Debtor's United States patents and patent applications, together with applicable foreign filing licenses, confirmed by a document identifying that assignment in such form as may be recorded in the United States Patent and Trademark Office and in the Office of the Secretary of State of Texas.

NOW, THEREFORE, with the foregoing deemed incorporated herein by reference and made a part of this Agreement, and in consideration of the mutual promises herein contained, the parties to this Agreement, intending to be legally bound, agree as follows:

1. Description of Assigned Collateral. For good, valuable, and sufficient consideration, the receipt of which is hereby acknowledged, and to secure the Obligations, Debtor does hereby grant, assign, and convey to Assignee, as security, in and to the following (all of which shall be collectively called, the "Assigned Collateral"):

- (a) all right, title, and interest in and to all patents, patent applications and like protections owned by Debtor which relate or are in any way connected or associated with the United States patent application for Foundation of Type of Concrete Soundwall which is registered as set forth on Exhibit "A" attached hereto, including, without limitation, any improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, together with applicable foreign filing licenses (collectively, the "Patent Rights");
- (b) all rights, interests, claims, and demands that Debtor has or may have in existing and future damages for past and future infringements of the Patent Rights (collectively, the "Claims"), with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified in subsection (a) above; and

- (c) any other proceeds relating to the Patent Rights and Claims, as defined under the Uniform Commercial Code.

2. Warranties and Representations. Debtor warrants and represents to Assignee that (a) Debtor is the sole and lawful exclusive owner of the Assigned Collateral, including all rights and interests herein granted; (b) the Patent Rights are valid and enforceable; (c) Debtor has full power and authority to execute and deliver this Agreement; (d) Debtor has no notice of any suits or actions commenced or threatened against it, or notice of claims asserted or threatened against it, with reference to the Assigned Collateral and the interests granted herein; and (e) the Assigned Collateral and all interests granted herein are so granted free from all liens, charges, claims, options, licenses, pledges, and encumbrances of every kind and character (except for licenses of the Patent Rights to third parties in the ordinary course of Debtor's business).

3. Further Covenants. Debtor further covenants that until all of the Obligations have been satisfied in full, it will (a) not enter into any agreement, including without limitation, license agreements, which are inconsistent with Debtor's undertakings and covenants under this Agreement or which restrict or impair Assignee's rights hereunder, and (b) maintain the Assigned Collateral in full force and effect. Debtor will advise Assignee promptly, in reasonable detail, (c) of any lien or claim made or asserted against the Assigned Collateral, (d) of any material change in the composition of the Assigned Collateral, including, but not limited to, any entitlement to the benefit of any new patent, and (e) of the occurrence of any other event which to its knowledge would have a material effect on the assignment of interests created hereunder.

4. Maintenance and Abandonment of Patent Rights. Debtor shall, at its expense, (a) use reasonable commercial efforts to maintain the validity and enforceability of the Patent Rights in the United States; (b) use reasonable commercial efforts to detect infringements of the Patent Rights in the United States and advise Assignee in writing of any material infringements detected; and (c) use reasonable commercial efforts not to allow the Patent Rights, or any part thereof, to be abandoned, forfeited or dedicated to the public without the prior written consent of Assignee.

5. Use of Assigned Collateral. So long as this Agreement is in effect and so long as there has not been an Event of Default as hereinafter defined, Debtor shall, without payment of any royalty to Assignee, have the exclusive right to license, with the right to sublicense, the Assigned Collateral in the ordinary course of its business with the same effect as if this collateral assignment had not been made. This right and obligation to license the Assigned Collateral is nontransferable.

6. Assignment. Debtor agrees not to sell, assign, or further encumber its rights and interests in the Assigned Collateral, including licenses to third parties in the ordinary course of Debtor's business, without prior written consent of Assignee, which consent shall not be unreasonably withheld.

7. Events of Default. Debtor shall be in default under this Agreement upon the happening of any of the following:

- (a) Default by Debtor in the performance of any Obligation or agreement pertaining thereto or by any maker, endorser, guarantor or surety of any Obligation of Debtor.
- (b) Any warranty, representation or statement made in this Agreement or made or furnished to Assignee by or on behalf of Debtor in connection with this Agreement or any Obligation,

which proves to have been false in any material respect when made or furnished; or any financial statement furnished to Assignee by or on behalf of Debtor or any maker, guarantor, endorser or surety on any Obligation, which shall prove to be false in any material respect, as of the date when the financial statements are furnished to Assignee.

8. Remedies.

In the event of default in the payment of principal, interest or other amount due under any Obligation, or upon the happening of any of the events of default specified above, and at any time thereafter, at the option of the holder thereof, the Obligations shall become immediately due and payable. Each maker, surety, guarantor and endorser of any Obligations hereby expressly waives all notices, including, but not limited to, all demands for payment, presentations for payment, notice of opportunity to cure defaults, notice of intention to accelerate the maturity of the Obligations, protest, notice of protest, and notice of the acceleration of the maturity of the Obligations. Assignee shall have and may exercise with reference to the Assigned Collateral and Obligations, all rights of an owner thereto. In addition, Assignee shall have any or all of the rights and remedies of a secured party under the Uniform Commercial Code as adopted in the State of Texas, and as otherwise granted herein or under any other applicable law or under any other agreement executed by Debtor, including, without limitation, the right and power to sell, at public or private sale or sales, or otherwise dispose of, lease or utilize the Assigned Collateral and any part or parts thereof in any manner authorized or permitted under such Commercial Code after default by a Debtor, and to apply the proceeds thereof toward payment of any reasonable costs, expenses, attorney's fees and other legal expenses thereby incurred by Assignee and toward payment of the Obligations in order or manner as Assignee may elect.

Among the rights of Assignee in the event of default, and without limitation, Assignee shall have the right to take possession of the Assigned Collateral and to enter upon any premises where same may be situated for such purpose, without being deemed guilty of trespass and without liability for damages thereby occasioned, and to take any action deemed necessary, appropriate or desirable by Assignee, at its option and in its discretion, to prepare the Assigned Collateral for sale or other use or disposition as herein authorized.

To the extent permitted by law, Debtor expressly waives any notice of sale or other disposition of the Assigned Collateral and any other rights or remedies of Debtor or formalities prescribed by law relating to the sale or disposition of the Assigned Collateral or exercise of any other right or remedy of Assignee existing after default hereunder; and to the extent any such notice is required and cannot be waived, Debtor agrees that if such notice is mailed, postage prepaid, to Debtor at the address shown herein at least ten days before the time of the sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving such notice.

All recitals in any instrument of assignment or in any other instrument executed by Assignee incident to the sale, transfer, assignment or other disposition or utilization of the Assigned Collateral, or any part thereof, shall be full proof of the matters stated therein and no other proof shall be required to establish full legal propriety of the sale or other action taken by Assignee or of any fact, condition or thing incident thereto. All prerequisites of such sale or other action or of any fact, condition or thing incident thereto, shall be presumed conclusively to have been performed or to have occurred.

Assignee may require Debtor to assemble the Assigned Collateral and make it available to Assignee at a place to be designated by Assignee that is reasonably convenient to both parties. All reasonable expenses of retaking, holding, preparing for sale or other use or disposition, selling or otherwise using or disposing of the Assigned Collateral, which are incurred or paid by Assignee as authorized or permitted hereunder, including all attorney's fees, other legal expenses and costs, shall be added to the Obligations of Debtor, and Debtor shall be liable therefor.

All rights and remedies of the Assignee, whether provided for herein or in the instruments or documents evidencing any Obligation, or conferred by law, are cumulative, alternative and may be enforced successively or concurrently. The repossession, sale or retention of Assigned Collateral shall not bar an action for the recovery of any of the indebtedness of Debtor to Assignee nor shall the bringing of such an action bar Assignee's right to repossess. No single or partial exercise by Assignee or delay by Assignee in the exercise of any rights or remedies hereunder will be deemed to waive or exhaust any other rights or remedies hereunder. To be binding on Assignee, any waiver, modification, or change of any terms hereof must be made in writing and signed by Assignee's duly authorized officer.

9. Modification and Waiver. No modification or waiver of any provisions set forth herein shall be effective unless the same shall be in writing and signed by the party against whom enforcement is being sought.

10. Enforcement by Assignee. If Debtor fails to comply with any of its understandings and covenants hereunder, Assignee may at its sole option do so in its name, but at Debtor's expense, and Debtor agrees to reimburse Assignee in full for all expenses, including reasonable attorneys' fees, incurred by Assignee in protecting, defending, enforcing, and maintaining the Assigned Collateral, and interest shall accrue on such expenses at the highest lawful rate from the date they are incurred by Assignee until they are paid.

11. Termination of Assignment and Security Interest. Upon full and unconditional satisfaction of all Debtor's obligations to Assignee, Assignee shall execute and deliver to Debtor all documents reasonably necessary to (i) revest in Debtor full title to the Assigned Collateral and to convey, assign and transfer to Debtor the instruments and any other property included in the Assigned Collateral and not sold under or by virtue of this Agreement and (ii) satisfy and discharge Assignee's interests in the Assigned Collateral.

12. Recording. Debtor hereby acknowledges and agrees that this Agreement may be recorded in the United States Patent and Trademark Office and in the Office of the Secretary of State of Texas.

13. No Waiver. No course of dealing between Debtor and Assignee, nor any failure to exercise, nor any delay in exercising, on the part of Assignee any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege.

14. Remedies Cumulative. All of Assignee's rights and remedies with respect to the Assigned Collateral, whether established hereby or by the Settlement and the documents securing same, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently.

15. Personal Liability. This Security Agreement shall not be construed as relieving Debtor from full personal liability on the Settlement and any other Obligations secured hereby and for any deficiency thereon.

16. Interest. If maturity of the Settlement or any other Obligation shall be accelerated for any reason, the Settlement or other Obligation shall be credited for the full amount of any interest then unearned which has been collected theretofore by Assignee. Notwithstanding any other provision in this Agreement or in the documents evidencing the Obligations, Debtor shall never be liable for unearned interest on the Obligations, and shall never be required to pay interest thereon at a rate in excess of the maximum amount permitted by law from time to time. However, the provisions of this paragraph shall have no application to a premium or bonus payable upon any voluntary anticipation of payment by Debtor on the Obligations or any part thereof.

17. Severability. The provisions of this Agreement are severable, and if any clause or provision 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.

18. Notices. Any notice provided or permitted to be given under this agreement must be in writing and shall be served and effective as follows: (a) by depositing the same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested, in which case such notice shall be effective on the earlier of the date received or three days (excluding Sundays and legal holidays) after the same is deposited in the mail as aforesaid, or (b) by delivering the same in person to such party, in which case such notice shall be effective on the date received, or (c) by depositing the same with a courier service guaranteeing overnight delivery, in which case such notice shall be effective on the day after the same is deposited with such courier service (excluding Sundays and legal holidays). For purposes of notice, the address of the parties as set forth in the first paragraph of this Agreement.

19. Binding on Successors. This Agreement shall be binding upon Debtor, its successors, and assigns, and shall inure to the benefit of Assignee, its successors, and assigns.

THIS AGREEMENT IS EXECUTED AND DELIVERED AS AN INCIDENT TO A LENDING TRANSACTION NEGOTIATED, CONSUMMATED, AND PERFORMABLE IN HARRIS COUNTY, TEXAS, AND SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. COURTS WITHIN THE STATE OF TEXAS SHALL HAVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN DEBTOR AND ASSIGNEE, WHETHER IN LAW OR IN EQUITY, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL DISPUTES ARISING OUT OF OR RELATING TO THIS SECURITY AGREEMENT; AND VENUE IN ANY SUCH DISPUTE, WHETHER IN FEDERAL OR STATE COURT, SHALL LIE IN HARRIS COUNTY, TEXAS.

In witness whereof, Debtor has executed this Agreement, to be effective as of the day and year indicated above.

"Debtor"

RANDALL L. BYRD

By: 

Randall L. Byrd

"Assignee"

GORDON MOCK, JR.

By: 

Gordon Mock, Jr.

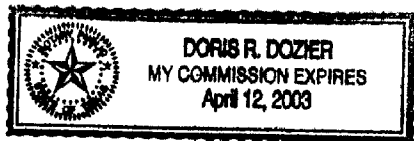
STATE OF TEXAS

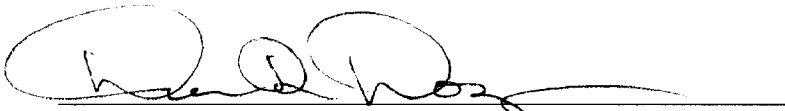
§
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COUNTY OF HARRIS

Before me, on this day personally appeared Randall L. Byrd, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 17th day of April, 1999.




Notary Public Signature

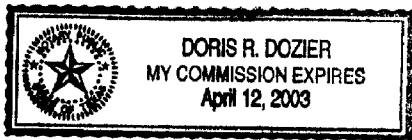
STATE OF TEXAS

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COUNTY OF HARRIS

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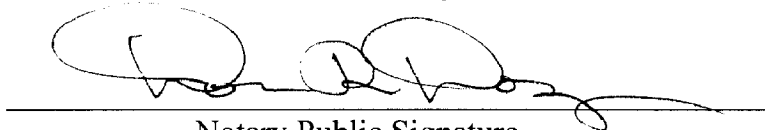

Notary Public Signature

Exhibit "A" to the Collateral Assignment of Patent Rights and Security Agreement effective April 17, 1999, between RANDALL L. BYRD and GORDON MOCK, JR.

Place of registration: United States Department of Commerce, Patent and Trademark Office

<u>Patent</u>	<u>Registration Number</u>	<u>Registration Date</u>
Foundation of Type of Concrete Soundwall	5524405	06/11/96