

07-09-1999

U.S. Department of Commerce
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PATENT



101086717

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Submission Type

☒ **New**

☐ **Resubmission (Non-Recordation)**
Document ID#

☐ **Correction of PTO Error**
Reel # Frame #

☐ **Corrective Document**
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Conveyance Type

☐ **Assignment** ☒ **Security Agreement**

☐ **License** ☐ **Change of Name**

☐ **Merger** ☐ **Other**

U.S. Government
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☐ **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 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)

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Address (line 3)
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)

07/04/1999 MTHAI1 00000122 361546

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240.00 OP

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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: 010070 FRAME: 0061

Correspondent Name and Address

Area Code and Telephone Number (404) 523-5300

Name Mark E. Freitag, Esq.

Address (line 1) Parker, Hudson, Rainer & Dobbs LLP

Address (line 2) 1500 Marquis Two Tower

Address (line 3) 285 Peachtree Center Avenue, N.E.

Address (line 4) Atlanta, Georgia 30303

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)

Patent Number(s)

361546	361547	361975
4645267	388759	399812

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.

6

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): \$ 240.00

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:

#

Authorization to charge additional fees:

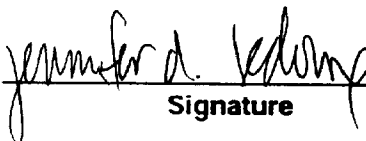
Yes ☐ No ☐

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.

Jennifer D. LeDoux

Name of Person Signing



Signature

July 7, 1999

Date

EXHIBIT A

Patents

<u>Patent</u>	<u>Federal Registration Number</u>	<u>Registration Date</u>
Front Face for Vehicle Wheel	D 361,546	August 22, 1995
Front Face for Vehicle Wheel (Type 5)	D 361,547	August 22, 1995
Front Face for Vehicle Wheel (Type 4)	D 361,975	September 5, 1995
Vehicle Wheel Having Non-Suspension Wire Spokes	4,645,267	February 24, 1987
Vehicle Wheel Front Face (Scorpion)	D 388,759	January 6, 1998
Vehicle Wheel Front Face (Bat Style)	D 399,812	October 20, 1988

Patent Applications

None.

PATENT SECURITY AGREEMENT

This **PATENT SECURITY AGREEMENT** (this "Agreement") is made this 18th day of June, 1999, between **PNC BANK, NATIONAL ASSOCIATION**, a national banking association having an office at 18th Floor, Two PNC Plaza, 620 Liberty Avenue, Pittsburgh, Pennsylvania 15222, in its capacity as collateral and administrative agent for the Lenders (as hereinafter defined) (together with its successors in such capacity, "Agent"), and **WELD RACING, INC.**, a Missouri corporation having its principal place of business at 933 Mulberry Street, Kansas City, Missouri 64101 (the "Company").

RECITALS:

The Company desires to obtain loans and other financial accommodations from those financial institutions (collectively, "Lenders") that are parties from time to time to that certain Revolving Credit, Term Loan, Equipment Loan and Security Agreement dated on or about the date hereof, among the Company, Agent and Lenders (as at any time amended, the "Loan Agreement").

Lenders are willing to make loans and other financial accommodations to the Company from time to time, pursuant to the terms of the Loan Agreement, provided that the Company executes this Agreement.

The Company has contemporaneously herewith, pursuant to the Loan Agreement, granted to Agent, for the Pro Rata benefit of the Lenders, a lien upon and security interest in all or substantially all of the Company's assets, including, without limitation, all of the Company's Patents (as hereinafter defined).

NOW, THEREFORE, for Ten Dollars (\$10.00) in hand paid and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company hereby agrees with Agent as follows:

1. All capitalized terms used herein, including those used in the Recitals hereto, unless otherwise defined shall have the meanings ascribed to them in the Loan Agreement.

2. To secure the prompt payment and performance of the Obligations, the Company hereby grants, assigns and pledges to Agent, for the Pro Rata benefit of the Lenders, a continuing security interest in and Lien upon all of the following property of the Company, whether now existing or hereafter acquired: (i) the entire right, title and interest of the Company in and to the patent applications and patents listed in Exhibit A attached hereto, and all re-issues, divisions, continuations, renewals, extensions and continuations-in-part thereof, including, without limitation, all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), (ii) the right to sue for past, present and future infringements, and (iii) all rights corresponding thereto throughout the world, (all of the foregoing being herein collectively referred to as the "Patents").

3. The Company covenants with and warrants to Agent that:

(a) The Patents are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;

(b) Except as disclosed in Exhibit A, the Company is now and shall continue to be the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Patents, free and clear of any Liens other than Permitted Liens;

(c) The Company has the unqualified right to enter into this Agreement and perform its terms and, to the extent it deems reasonably necessary, has entered and will enter into written agreements with each of its present and future employees, agents and consultants which will enable it to comply with the covenants herein contained; and

(d) The Company has used, and will continue to use for the duration of this Agreement, proper statutory notice in connection with its use of the Patents and has made, and will continue to make, all appropriate filings with the United States Patent and Trademark Office to maintain the Patents in existence, including, without limitation, filing all necessary documents with the United States Patent and Trademark Office for each Patent to maintain it without loss of protection therefor.

4. Until all of the Obligations have been satisfied in full and the Loan Agreement has been terminated, the Company shall not enter into any license agreement relating to any of the Patents with any Person having any interest in any of the Patents except non-exclusive licenses to customers of the Company in the regular and ordinary course of the Company's business as presently conducted and for reasonable and customary compensation, and shall not become a party to any agreement with any Person that is inconsistent with the Company's obligations under this Agreement.

5. If, before the Obligations shall have been satisfied in full, the Company shall obtain rights to any new patentable inventions, or become entitled to the benefit of any 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 paragraph 2 shall automatically apply thereto and the Company shall give to Collateral Agent prompt notice thereof in writing.

6. The Company authorizes Collateral Agent to modify this Agreement by amending Exhibit A to include any future patents and patent applications which are Patents under paragraph 2 or paragraph 5 hereof.

7. The Company hereby grants to Agent, and its employees and agents the right upon prior notice to the Company, and subject only to any obligations of confidentiality to which the Company, its employees and agents are then subject with respect thereto, to visit the Company's plants and facilities which manufacture, inspect or store products sold under any of the Patents and

to inspect the products and quality control records relating thereto at reasonable times during regular business hours.

8. Upon and at any time after the occurrence of an Event of Default, Agent shall have, in addition to all other rights and remedies given it by this Agreement, all rights and remedies under Applicable Law and all rights and remedies of a secured party under the UCC. Without limiting the generality of the foregoing, Agent may immediately, for its benefit and the benefit of Lenders, without demand of performance and without other notice (except as described in the next sentence, if required by Applicable Law), or demand whatsoever to the Company, each of which the Company hereby expressly waives, and without advertisement (except as otherwise provided by Applicable Law), collect directly any payments due the Company in respect of the Patents, or sell at public or private sale or otherwise realize upon the whole or from time to time any of the Patents, or any interest which the Company may have therein. The Company hereby agrees that seven (7) days notice to the Company of any public or private sale or other disposition of any of the Patents shall be reasonable notice; provided, however, that no notice shall be required hereunder if not otherwise required by Applicable Law. At any such sale or disposition, Agent may, to the extent permitted by Applicable Law, purchase the whole or any part of the Patents sold, free from any right of redemption on the part of the Company, which right the Company hereby waives and releases. After deducting from the proceeds of such sale or other disposition of the Patents all costs and expenses incurred by Agent in enforcing its rights hereunder (including, without limitation, all attorneys' fees), Agent shall apply the remainder of such proceeds to the payment of the Obligations, for the Pro Rata benefit of Lenders, in accordance with the terms of the Loan Agreement. Any remainder of the proceeds after payment in full of the Obligations shall be paid over to the Company. If any deficiency shall arise, the Company and each guarantor of the Obligations shall remain jointly and severally liable to Lenders therefor.

9. The Company hereby makes, constitutes and appoints Agent and any officer or agent of Agent as Agent may select as the Company's true and lawful attorney-in-fact, with full power to do any or all of the following if an Event of Default shall occur and be continuing: to endorse the Company's name on all applications, documents, papers and instruments necessary for Agent to continue the maintenance of or to use the Patents, or to grant or issue any exclusive or nonexclusive license under the Patents to any other Person, or to assign, pledge, convey or otherwise transfer title in or dispose of the Patents to any other Person. The Company hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney, being coupled with an interest, shall be irrevocable until all of the Obligations shall have been satisfied in full and the Loan Agreement shall have been terminated.

10. At such time as all of the Obligations shall have been satisfied finally and in full and the Commitments under the Loan Agreement shall have been terminated, Agent shall execute and deliver to the Company, without representation, warranty or recourse and at the Company's expense, all releases and other instruments necessary to terminate Agent's security interest in the Patents, subject to any disposition thereof which may have been made by Agent pursuant to the terms of this Agreement, the Loan Agreement or any other Loan Document.

11. Any and all fees, costs and expenses, of whatever kind or nature, (including, without limitation, reasonable attorneys' fees and legal expenses) incurred by Agent, Administrative Agent or any Lender in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including, without limitation, all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees or encumbrances, or otherwise, in protecting, maintaining and preserving the Patents or in defending or prosecuting any actions or proceedings arising out of or related to the Patents, shall be borne and paid by the Company (it being the intent of the Company and Agent that the Company shall be responsible for the payment of all sums, fees, costs and expenses, including, without limitation, all maintenance fees payable with respect to the Patents) or, if paid by Agent in its sole discretion, shall be paid by the Company to Agent **on demand** by Agent and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the rate per annum in effect from time to time under the Loan Agreement.

12. The Company shall use its best efforts to detect any infringers of the Patents and shall notify the Agent in writing of infringements detected. The Company shall have the duty through counsel reasonably acceptable to Agent, to prosecute diligently any patent application for a Patent pending as of the date of this Agreement or thereafter until the Obligations shall have been paid in full and the Loan Agreement terminated, to make application on unpatented but patentable inventions and to preserve and maintain all rights in patent applications for the Patents. Any expenses incurred in connection with such an application shall be borne by the Company. The Company shall not abandon any pending patent application or patent, without the prior written consent of Agent.

13. (a) Agent shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Patents and any license hereunder, in which event the Company shall at the request of Agent do any and all lawful acts (including bringing suit) and execute any and all proper documents required by Agent in aid of such enforcement and the Company shall promptly, upon demand, reimburse and indemnify Agent for all costs and expenses incurred by Agent in the exercise of its rights under this Paragraph 13(a); and

(b) Agent shall have the right, but shall in no way be obligated, to defend any suit or counterclaim in its own name in order to defend the Patents and any license hereunder, in which event the Company 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 defense and the Company shall promptly, upon demand, reimburse and indemnify Agent for all costs and expenses incurred by Agent in the exercise of its rights under this Paragraph 13(b).

14. No course of dealing between the Company and Agent, nor any failure to exercise, nor any delay in exercising, on the part of Agent, any right, power or privilege hereunder or under the Loan Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or future exercise thereof or the exercise of any other right, power or privilege.

15. All of Agent's rights and remedies with respect to the Patents, whether established by this Agreement or by the Loan Agreement, or by any other agreements or by Applicable Law, shall be cumulative and may be exercised singularly or concurrently.

16. 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, the same shall be deemed severed herefrom and shall not in any manner affect such clause or provisions in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

17. This Agreement constitutes and expresses the entire understanding of the parties hereto with respect to the subject matter hereof, and supercedes all prior agreements and understandings, inducements or conditions, whether express or implied, oral or written. This Agreement is subject to modification only by writing signed by the parties, except as provided in paragraph 6 hereof.

18. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the successors and assigns of Agent and upon the successors and permitted assigns of the Company. The Company shall not assign its rights or delegate its rights or assign its duties hereunder without the prior written consent of Agent.

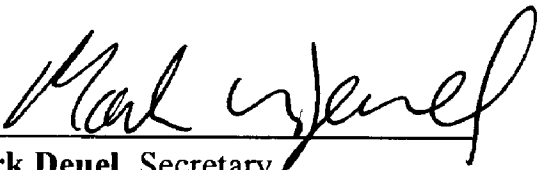
19. The Company hereby waives notice of Agent's acceptance hereof.

20. THIS AGREEMENT HAS BEEN NEGOTIATED, EXECUTED AND DELIVERED AT AND SHALL BE DEEMED TO HAVE BEEN MADE IN ATLANTA, GEORGIA. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF GEORGIA.

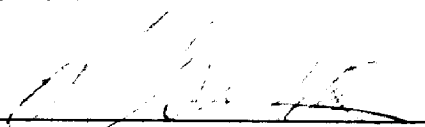
21. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE COMPANY AND AGENT EACH WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE COLLATERAL.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement under seal in Atlanta, Georgia, on the day and year first written above.

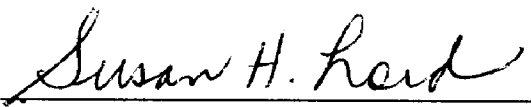
ATTEST:


Mark Deuel, Secretary

WELD RACING, INC.
("Company")


By: 
Richard G. Weld, President

[CORPORATE SEAL]


Witness

Accepted in Atlanta, Georgia:

PNC BANK, NATIONAL ASSOCIATION,
as Agent ("Agent")

By: 
Name: James H. Steffy
Title: Vice President

STATE OF GEORGIA
COUNTY OF FULTON

§
§
§

BEFORE ME, the undersigned authority, on this day personally appeared Richard G. Weld, President of Weld Racing, Inc., to me known 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, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 18 day of June, 1999.



Leigh C. Freer
Notary Public
My Commission Expires:
9-28-2002
[NOTARIAL SEAL]

STATE OF GEORGIA
COUNTY OF FULTON

§
§
§

BEFORE ME, the undersigned authority, on this day personally appeared James H. Steffy of PNC Bank, National Association, 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, in the capacity therein stated, and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this 18 day of June, 1999.



Leigh C. Freer
Notary Public
My Commission Expires:
9-28-2002
[NOTARIAL SEAL]

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