

07-28-1999

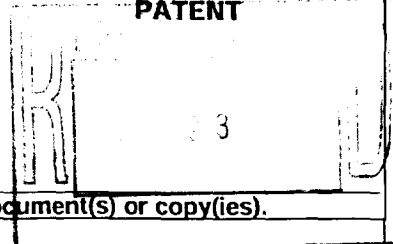


U.S. Department of Commerce
Patent and Trademark Office

PATENT

101103071

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
06 02 99

Name (line 1) Simmons Upholstery, L.L.C.

Name (line 2)

Second Party

Execution Date
Month Day Year

Name (line 1)

Name (line 2)

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) Foothill Capital Corporation

Name (line 2)

Address (line 1) Northpark Town Center, Building 400

Address (line 2) 1000 Abernathy Road, N.E., Suite 1450

Address (line 3) Atlanta

City

Georgia

State/Country

30328

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)

07/27/1999 DNGUYEN 00000411 4803742

FOR OFFICE USE ONLY

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40.00 DP

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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: 010113 FRAME: 0679

PATENT

Correspondent Name and Address

Area Code and Telephone Number

404 815 2235

Name Melissa C. Schwartz

Address (line 1) 600 Peachtree Street, N.E.

Address (line 2) Suite 2400

Address (line 3) Atlanta, Georgia 30308-2222

Address (line 4)

Pages

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

11

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)

4,803,742

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.

1

Fee Amount

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

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:

16-0752

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.

Gretchen E. vonDungelo

Name of Person Signing

Gretchen E. vonDungelo

Signature

7/23/99

Date

PATENT SECURITY AGREEMENT

This PATENT SECURITY AGREEMENT (this "Agreement"), made as of this 2nd day of June, 1999, by **SIMMONS UPHOLSTERY, L.L.C.**, a Delaware limited liability company (the "Pledgor") in favor of **FOOTHILL CAPITAL CORPORATION**, a California corporation (the "Lender").

WITNESSETH

WHEREAS, the Pledgor, Stratford Upholstery Company, L.L.C., a Delaware corporation ("Stratford") and Heath Home Furnishings, L.L.C., a Delaware corporation ("Parent" and together with the Pledgor and Stratford, the "Borrowers"), and the Lender have entered into that certain Loan and Security Agreement dated as of the date hereof (as the same may hereafter be amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"), pursuant to which the Lender has agreed to extend credit to the Borrowers from time to time, and the Borrowers have granted a security interest in all of their respective assets to the Lender; and

WHEREAS, it is a condition precedent to the making of the initial Advance under the Loan Agreement that the Pledgor shall have granted to the Lender a security interest in its patents, patent applications and patent or patent application licenses;

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Pledgor agrees as follows:

1. Incorporation of Loan Agreement. The Loan Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto. Terms used herein which are defined in the Loan Agreement shall have the respective meanings set forth in the Loan Agreement unless otherwise defined or limited herein.

2. Grant of Security Interest in Patents. To secure the complete and timely payment, performance and satisfaction of all of the Obligations, the Pledgor hereby grants to the Lender a security interest, as and by way of a first mortgage and security interest having priority over all other security interests, with power of sale to the extent permitted by applicable law, in all of the Pledgor's right, title and interest in and to the Pledgor's owned or existing and hereafter acquired or arising: (i) patents and patent applications, including, without limitation, the patents and patent applications listed on Schedule 1 attached hereto and made a part hereof, and (a) all renewals thereof, (b) all 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 or dilutions thereof, (c) the right to sue for past, present and future infringements and dilutions thereof, (d) the goodwill of the Pledgor's business symbolized by the foregoing and connected

therewith, and (e) all of the Pledgor's rights corresponding thereto throughout the world (all of the foregoing patents and patent applications, together with the items described in clauses (a)-(e) in this paragraph 2(i), are sometimes hereinafter individually and/or collectively referred to as the "Patents"); and (ii) all proceeds of any and all of the foregoing, including, without limitation, license royalties and proceeds of infringement suits.

3. Grant of Security Interest in Patent Licenses. To secure the complete and timely payment, performance and satisfaction of all of the Obligations, the Pledgor hereby grants to the Lender a security interest, as and by way of a first mortgage and security interest having priority over all other security interests, with power of sale to the extent permitted by applicable law, in all of the Pledgor's right, title and interest in and to the Pledgor's owned or existing and hereafter acquired or arising rights under or interest in any license agreements with any other party, whether the Pledgor is a licensee or licensor under any such license agreement, including, without limitation, license agreements listed on Schedule 2 attached hereto and made a part hereof, and the right to use the foregoing in connection with the enforcement of the Lender's rights under the Loan Agreement, including without limitation, the right to prepare for sale and sell any and all Inventory now or hereafter owned by the Pledgor and now or hereafter covered by such licenses (all of the foregoing are hereinafter referred to collectively as the "Licenses"). Notwithstanding the foregoing provisions of this paragraph 3, the Licenses shall not include any license agreement in effect as of the date hereof which by its terms prohibits the grant of the security contemplated by this Agreement; provided, however, that upon the termination of such prohibitions for any reason whatsoever, the provisions of this paragraph 3 shall be deemed to apply thereto automatically.

4. Restrictions on Future Agreements. The Pledgor will not, without the Lender's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with this Agreement, and the Pledgor further agrees that it will not take any action, and will use its best efforts not to permit any action to be taken by others subject to its control, including, without limitation, licensees, or fail to take any action, which would in any material respect affect the validity or enforcement of the rights granted to the Lender under this Agreement or the rights associated with the Patents or the Licenses.

5. New Patents and Licenses. The Pledgor represents and warrants that, from and after the Closing Date, (a) the Patents listed on Schedule 1 include all of the patents and patent applications now owned or held by the Pledgor, (b) the Licenses listed on Schedule 2 include all of the license agreements under which the Pledgor is the licensee or licensor, and (c) no liens, claims or security interests in such Patents or Licenses have been granted by the Pledgor to any Person other than the Lender and except as disclosed in the Loan Agreement. If, prior to the termination of this Agreement, the Pledgor shall (i) become entitled to the benefit of any patent or patent application or any reissue, division, continuation, renewal, extension or continuation-in-part of any Patent or any improvement on any Patent, (ii) obtain rights to any new license agreements, (iii) become entitled to the benefit of any patents or patent applications

or license agreements whether as licensee or licensor, or (iv) enter into any new license agreement, the provisions of paragraphs 2 and 3, as applicable, above shall automatically apply thereto (to the extent permitted by licensors under agreements in connection with the granting of such licenses). The Pledgor shall give to the Lender written notice of events described in clauses (i), (ii), (iii) and (iv) of the preceding sentence promptly after the occurrence thereof. The Pledgor and the Lender agree to modify this Agreement from time to time (i) by amending Schedule 1 to include any future patents and patent applications, which are Patents under paragraph 2 above or under this paragraph 5, (ii) by amending Schedule 2 to include any future license agreements which are Licenses under paragraph 3 above or under this paragraph 5, and (iii) by filing, in addition to and not in substitution for this Agreement, a duplicate original of this Agreement containing on Schedule 1 thereto, as the case may be, such future patents and patent applications and containing on Schedule 2 thereto, as the case may be, such future license agreements.

6. Royalties. The Pledgor hereby agrees that the use by the Lender of the Patents and the Licenses as authorized hereunder in connection with the Lender's exercise of its rights and remedies under paragraph 15 or pursuant to any Loan Document shall be coextensive with the Pledgor's rights thereunder and with respect thereto and without any liability for royalties or other related charges from the Lender to the Pledgor.

7. Right to Inspect; Further Assignments and Security Interest. The Lender may from time to time hereafter (during normal business hours if no Event of Default then exists or at any time if an Event of Default then exists), have access to, examine, audit, make copies (at the Pledgor's expense) and extracts from and inspect the Pledgor's premises and examine the Pledgor's books, records and operations relating to the Patents or the Licenses. The Pledgor agrees (i) not to sell or assign its respective interests in, or grant any license under, the Patents without the prior and express written consent of the Lender, and (ii) not to sell or assign its respective interests in the Licenses without the prior and express written consent of the Lender.

8. Nature and Continuation of the Lender's Security Interest; Termination of the Lender's 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 terminate only when the Obligations have been paid in full and the Loan Agreement has been terminated. When this Agreement has terminated, the Lender shall promptly execute and deliver to the Pledgor, at the Pledgor's expense, all termination statements and other instruments as may be necessary or proper to terminate the Lender's security interest in the Patents and in the Licenses, subject to any disposition thereof which may have been made by the Lender pursuant to this Agreement.

9. Duties of the Pledgor. The Pledgor shall, to the extent desirable in the normal conduct of the Pledgor's business, (x) prosecute any patent application that is part of the Patents pending as of the date hereof or hereafter until the termination of this Agreement, and (y)

to take all reasonable and necessary action to preserve and maintain all of the Pledgor's rights in the Patents. The Pledgor further agrees (i) not to abandon any Patent or any License without the prior written consent of the Lender, which consent shall not be unreasonably withheld, conditioned or delayed, and (ii) to use its best efforts to maintain in full force and effect the Patents and the Licenses that are or shall be necessary or economically desirable in the operation of the Pledgor's business as determined by the Pledgor in its reasonable discretion. Any expenses incurred in connection with the foregoing shall be borne by the Pledgor. The Lender shall not have any duty with respect to the Patents or the Licenses. Without limiting the generality of the foregoing, the Lender shall not be under any obligation to take any steps necessary to preserve rights in the Patents or the Licenses against any other parties, but the Lender may do so at its option from and after the occurrence of an Event of Default, and all expenses incurred in connection therewith shall be for the sole account of the Pledgor and shall be added to the Obligations secured hereby.

10. Indemnification by the Pledgor. The Pledgor hereby agrees to indemnify and hold harmless the Lender for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements (including reasonable attorneys' fees) of any kind whatsoever which may be imposed on, incurred by or asserted against the Lender in connection with or in any way arising out of any suits, proceedings or other actions, relating to any or all of the Patents or the Licenses (including, without limitation, whether brought by the Pledgor or any other Person, suits, proceedings or other actions in which an allegation of liability, strict or otherwise, is or may be made by any Person who alleges or may allege having suffered damages as a consequence of alleged improper, imprudent, reckless, negligent, willful, faulty, defective or substandard design, testing, specification, manufacturing supervision, manufacturing defect, manufacturing deficiency, publicity or advertisement or improper use, howsoever arising or by whomsoever caused, of any inventions disclosed and claimed in the Patents or any of them); unless with respect to any of the above, the Lender is judicially determined to have acted or failed to act with gross negligence or willful misconduct. The indemnification in this paragraph shall survive the termination of this Agreement.

11. The Lender's Right to Sue. From and after the occurrence of an Event of Default, the Lender shall have the right, but shall not be obligated, to bring suit in its own name to enforce the Patents and the Licenses and, if the Lender shall commence any such suit, the Pledgor shall, at the request of the Lender, do any and all lawful acts and execute any and all proper documents reasonably required by the Lender in aid of such enforcement. The Pledgor shall, upon demand, promptly reimburse the Lender for all costs and expenses incurred by the Lender in the exercise of its rights under this paragraph 11 (including, without limitation, fees and expenses of attorneys and paralegals for the Lender).

12. Waivers. The Lender's failure, at any time or times hereafter, to require strict performance by the Pledgor of any provision of this Agreement shall not waive, affect or diminish any right of the Lender thereafter to demand strict compliance and performance

therewith nor shall any course of dealing between the Pledgor and the Lender have such effect. No single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. None of the undertakings, agreements, warranties, covenants and representations of the Pledgor contained in this Agreement shall be deemed to have been suspended or waived by the Lender unless such suspension or waiver is in writing signed by an officer of the Lender and directed to The Pledgor specifying such suspension or waiver.

13. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but 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 hereof, 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.

14. Modification. This Agreement cannot be altered, amended or modified in any way, except as specifically provided in paragraph 5 hereof or by a writing signed by the parties hereto.

15. Power of Attorney; Cumulative Remedies. (a) The Pledgor hereby irrevocably designates, constitutes and appoints the Lender (and all officers and agents of the Lender designated by the Lender in its sole and absolute discretion) as the Pledgor's true and lawful attorney-in-fact, and authorizes the Lender and any of the Lender's designees, in the Pledgor's or the Lender's name, upon the occurrence and during the continuation of an Event of Default to take any action and execute any instrument necessary or reasonably advisable to accomplish the purposes of this Agreement, including, without limitation, to (i) endorse the Pledgor's name on all applications, documents, papers and instruments necessary or reasonably desirable for the Lender in the use of the Patents or the Licenses, (ii) assign, pledge, convey or otherwise transfer title in or dispose of the Patents or the Licenses to anyone (subject to the restrictions set forth in any License), (iii) grant or issue any exclusive or nonexclusive license under the Patents or the Licenses to anyone (subject to the restrictions set forth in any License), and (iv) take any other actions with respect to the Patents or the Licenses as the Lender reasonably deems in its best interest for the payment of the Obligations. The Pledgor hereby ratifies all that such attorney 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 is terminated. The Pledgor acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of the Lender under the Loan Agreement or any other Loan Document, but rather is intended to facilitate the exercise of such rights and remedies.

(b) The Lender 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 or the Licenses may be located or deemed located. Upon the occurrence of an Event of Default and the election by the Lender to exercise any of its remedies under Section 9-504 or Section 9-505 of the Uniform Commercial Code with respect to the Patents or the Licenses, the Pledgor agrees to assign, convey and otherwise transfer title in and to the Patents and the Licenses to the Lender or any transferee of the Lender and to execute and deliver to the Lender or any such transferee all such agreements, documents and instruments as may be necessary, in the Lender's sole discretion, to effect such assignment, conveyance and transfer. All of the Lender's rights and remedies with respect to the Patents and the Licenses, whether established hereby, by the Loan Agreement or by any other agreements or by law, shall be cumulative and may be exercised separately or concurrently. Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence of an Event of Default, the Lender may exercise any of the rights and remedies provided in this Agreement, the Loan Agreement or any of the other Loan Documents. The Pledgor agrees that any notification of intended disposition of any of the Patents or the Licenses required by law shall be deemed reasonably and properly given if given at least five (5) Business Days, if such notice is given by facsimile or eight (8) Business Days, if such notice is given by mail, before such disposition; provided, however, that the Lender may give any shorter notice that is commercially reasonable under the circumstances.

16. Successors and Assigns. This Agreement shall be binding upon The Pledgor and its successors and assigns, and shall inure to the benefit of each of the Lender and its nominees, successors and assigns. The Pledgor's successors and assigns shall include, without limitation, a receiver or a trustee of the Pledgor; provided, however, that the Pledgor shall not voluntarily assign or transfer its rights or obligations hereunder without the Lender's prior written consent.

17. Governing Law. This Agreement shall be construed and enforced and the rights and duties of the parties shall be governed by in all respects in accordance with the laws and decisions of the State of Illinois without reference to the conflicts or choice of law principles thereof.

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

19. Paragraph Titles. The paragraph titles herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.

20. 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.

21. Merger. This Agreement represents the final agreement of the Pledgor and the Lender with respect to the matters contained herein and may not be contradicted by evidence of prior or contemporaneous agreements, or subsequent oral agreements, between the Pledgor and the Lender.

22. Effectiveness. This Agreement shall become effective on the Closing Date.

[Remainder of this page intentionally left blank.]

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

Sworn to and subscribed before me this 28th day of May, 1999.

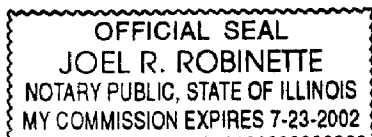

NOTARY PUBLIC

My Commission Expires

SIMMONS UPHOLSTERY, L.L.C.

By: Karl W. Fry
Its: Manager

Accepted and agreed to as of the day and year first above written.



Sworn to and subscribed before me this 28th day of May, 1999.

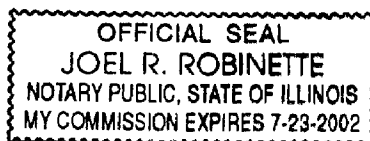

NOTARY PUBLIC

My Commission Expires

FOOTHILL CAPITAL CORPORATION

By: James V. K. Jones
Its: Vice President

Accepted and agreed to as of the day and year first above written.



Schedule 1

Patents

PATENT NAME

NUMBER

ISSUE DATE

Convertible Bed

4,803,742

2/14/89

Patent Applications

None.

Schedule 2

Licenses

1. Patent and Technology License Agreement dated July 13, 1990 by and between Simmons Company and Simmons Upholstered Furniture, Inc. (license to sell in the Licensed Territory (as defined therein) upholstered products using the Patents and Technology set forth on Exhibit A to this Schedule 2).

LICENSED INTANGIBLE PROPERTY
(Patents)

EXHIBIT A

SCHEDULE A
TO
PATENT AND TECHNOLOGY LICENSE AGREEMENT

<u>Pat. Title</u>	<u>Status</u>	<u>Filing Date</u>	<u>Serial/ Appin. No.</u>	<u>Issue Date</u>	<u>Pat. No.</u>
<u>OWNED PATENTS</u>					
M/A FOR MAKING SERIES OF POCKETED	ISSUED	07/16/81	284,240	04/03/84	4,439,977
POCKETED SPRING ASSEMBLY	ISSUED	11/20/81	323,574	06/05/84	4,451,946
THERMALLY WELDED SPRING POCKETS	ISSUED	10/02/78	947,545	11/25/80	4,234,983
POCKETED SPRING ASSEMBLY	ISSUED	03/19/79	022,067	11/25/80	4,234,984
POCKETED SPRING ASSEMBLY APPARATUS	ISSUED	01/29/82	343,892	08/30/83	4,401,501
SYS. ACCUM. & HANDLING STRIPS OF POCKETED SPRINGS	ISSUED	04/16/82	369,321	09/27/83	4,408,391
COIL SPRING CONSTRUCTION	ISSUED	04/07/83	482,759	12/04/84	4,485,506
ULTRASONIC SEPARATION APPARATUS	ISSUED	11/02/83	548,053	01/01/85	4,491,491
INDEPENDENT BLOCK ASSEMBLY OF SPRINGS	ISSUED	09/17/82	419,369	06/18/85	4,523,344
APPARATUS FOR MFG. POCKETED COIL SPRINGS	ISSUED	12/24/84	685,573	01/21/86	4,565,046
M/A FOR MFG. INNERSPRING CONSTRUCTIONS	ISSUED	01/28/85	695,311	01/28/88	4,566,926
INNERSPRING CONSTRUCTION	ISSUED	03/09/84	586,867	04/01/86	4,578,834
FLAT OVERLAP SIDE SEAM POCKETED COIL	ISSUED	06/13/88	205,920	08/08/89	4,854,023
POCKETED COIL STRINGS HAVING A FLAT OVERLAT SIDE SEAM	PENDING	05/19/89	354,482		
UPHOLSTERY COIL TRANSFER MECHANISM	ISSUED	08/31/77	829,218	08/28/79	4,165,808
<u>LICENSED PATENTS</u>					
MATTRESS OR CUSHION SPRING ASSEMBLY TO LICENSOR	LICENSED	10/16/75	622,886	10/04/77	4,051,567