

10-13-1999

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TO: The Commissioner of Patents and

**Submission Type**

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

101169846

**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

Final document(s) or copy(ies).

**Conveying Party(ies)**

☐ Mark if additional names of conveying parties attached

Name (line 1) Dalen Products Inc.

Execution Date  
Month Day Year  
09/30/99

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) Fleet Capital Corporation

☐ 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) 300 Galleria Parkway, N. W.

Address (line 2) Suite 800

Address (line 3) Atlanta Georgia 30339  
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)

10/12/1999 MTHAI1 00000126 60023889

FOR OFFICE USE ONLY

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280.00 OP

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 collection of information to the U.S. Patent and Trademark Office, Office of Management and Administration, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Administration, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. Use OMB Information Collection Budget Package 0651-0027, Patent and Trademark: Assignment Records. 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

**Correspondent Name and Address**

Area Code and Telephone Number (404) 420-5566

Name Yufang Han (Paralegal)

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

Address (line 2) 1500 Marquis Two Tower

Address (line 3) 285 Peachtree Center Avenue, NE

Address (line 4) Atlanta, Georgia 30303

**Pages**

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

# 7

**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)**

60/023,887

08/888,250

08/903,929

**Patent Number(s)**

4,910,052

5,873,194

5,047,099

5,199,214

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.

# 7

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41): \$ 280.00

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.

YUFANG HAN

Name of Person Signing

Yufang Han

Signature

10/07/99

Date

## PATENT COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT

THIS PATENT COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT is made this 30th day of September, 1999, between **DALEN PRODUCTS, INC.**, a Tennessee corporation having as its principal place of business at 11110 Gilbert Drive, Knoxville, Tennessee 37932 (herein referred to as "Assignor"), and **FLEET CAPITAL CORPORATION** having an office at 300 Galleria Parkway, N.W., Suite 800, Atlanta, Georgia 30339 (herein referred to as "Lender"), as follows:

1. As collateral security for, and to secure the prompt payment in full of, any and all indebtedness, obligations, liabilities, covenants and duties of Assignor to Lender of every kind and description, whether or not evidenced by any note, invoice, billing, guaranty or other instrument, and whether or not for the payment of money, direct or indirect, absolute or contingent, liquidated or unliquidated, joint or several, due or to become due, now existing or hereafter arising, including, without limitation, any debt, liability or obligation at any time owing by Assignor to Lender under that certain Loan and Security Agreement of even date herewith, between Assignor and Lender (hereinafter, including collectively all riders, exhibits and attachments thereto and any amendments thereof, "Loan Agreement") or any other agreement between Assignor and Lender, and all expenses and attorneys' fees chargeable to Assignor, whether or not provided in said Loan Agreement, this Agreement or any other agreement between Assignor and Lender (all such indebtedness, obligations, liabilities, covenants and duties being collectively herein referred to as "Obligations"), Assignor hereby grants, assigns and conveys to Lender the entire right, title and interest of Assignor in and to the patent applications and patents listed in Exhibit A attached hereto, including, without limitation, all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements, all rights corresponding thereto throughout the world, and all re-issues, divisions, continuations, renewals, extensions and continuations-in-part thereof (all of the foregoing being herein collectively referred to as the "Patents").

2. Assignor covenants with and warrants to Lender that:

(a) The Patents are, to the best of its knowledge, subsisting and have not been adjudged invalid or unenforceable, in whole or in part;

(b) Except as disclosed in Exhibit A, Assignor 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, charges, claims, rights and encumbrances, including, without limitation, licenses, shop rights and covenants by Assignor not to sue third persons; and

(c) Assignor has the unqualified right to enter into this Agreement and perform its terms and 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.

3. Until all of the Obligations have been satisfied in full and the Loan Agreement has been terminated, Assignor shall not enter into any license agreement relating to any of the Patents with any person or entity having any interest in any of the Patents, or otherwise become a party to any agreement with any person or entity that is inconsistent with Assignor's Obligations under this Agreement.

4. If, before the Obligations shall have been satisfied in full, Assignor 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 1 shall automatically apply thereto and Assignor shall give to Lender prompt notice thereof in writing.

5. Assignor authorizes Lender to modify this Agreement by amending Exhibit A to include any future patents and patent applications which are Patents under Paragraph 1 or Paragraph 4 hereof.

6. Assignor agrees to execute such further papers and to do such other acts as may be necessary and proper to vest full title in and to the Patents in the Lender.

7. Unless and until there shall have occurred and be continuing an Event of Default (as defined in the Loan Agreement), Lender hereby grants to Assignor the exclusive, non-transferable right and license to make, have made, use and sell the inventions disclosed and claimed in the Patents for Assignor's own benefit and account and for none other. Assignor agrees not to sell or assign its interest in, or grant any sublicense under, the license granted to Assignor in this Paragraph 7, without the prior written consent of Lender which consent will not be unreasonably withheld.

8. If any Event of Default shall have occurred and be continuing and Lender shall have elected to terminate Borrower's right to obtain loans under the Loan Agreement, Assignor's license under the Patents as set forth in Paragraph 6 shall terminate forthwith, and Lender shall have, in addition to all other rights and remedies given it by this Agreement, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in the State of Georgia. Without limiting the generality of the foregoing, Lender may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to Assignor, all of which are hereby expressly waived, and without advertisement (except as otherwise provided by applicable law), sell at public or private sale or otherwise realize upon the whole or from time to time any part of the Patents, or interest which the Assignor may have therein, and after deducting from the proceeds of sale or other disposition of the Patents all expenses (including all reasonable expenses for brokers' fees, auctioneer's fees and legal services), shall apply the residue of such proceeds toward the payment of the Obligations. Any remainder of the proceeds after payment in full of the Obligations shall be paid over to Assignor. Notice of any sale or other disposition of the Patents shall be given to Assignor at least seven (7) days before the time of any intended public or private sale or other disposition of the Patents is to be made, which Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, Lender may, to the extent permissible under applicable law, purchase the whole or any

part of the Patents sold, free from any right of redemption on the part of the Assignor, which right is hereby waived and released.

9. At such time as Assignor shall completely satisfy all of the Obligations, Lender shall promptly execute and deliver to Assignor all such deeds, assignments and other instruments as may be necessary or proper to revest in Assignor full title to the Patents, subject to any disposition thereof which may have been made by Lender pursuant hereto.

10. Any and all fees, costs and expenses, of whatever kind or nature, including all attorneys' fees and legal expenses incurred by 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 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 Assignor (it being the intent of Assignor and Lender that Assignor 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 Lender in its sole discretion, shall be paid by Assignor to Lender **on demand** by Lender 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.

11. Assignor shall have the duty, consistent with Assignor's past practice, through counsel reasonably acceptable to Lender, to prosecute diligently any patent application of the Patents 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 of the Patents. Any expenses incurred in connection with such an application shall be borne by Assignor. Assignor shall not abandon any right to file a patent application, or any pending patent application or patent, without the prior written consent of Lender, which consent shall not be unreasonably withheld.

12. (a) Lender 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 Assignor shall at the request of lender do any and all lawful acts and execute any and all proper documents required by lender in aid of such enforcement and Assignor shall promptly, upon demand, reimburse and indemnify Lender for all costs and expenses incurred by Lender in the exercise of its rights under this Paragraph 12(a); and

(b) Lender 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 Assignor shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents required by Lender in aid of such defense and Assignor shall promptly, upon demand, reimburse and indemnify Lender for all costs and expenses incurred by Lender in the exercise of its rights under this Paragraph 12(b).

13. No course of dealing between Assignor and Lender, nor any failure to exercise, nor any delay in exercising, on the part of Lender, 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.

14. All of Lender's rights and remedies with respect to the Patents, whether established hereby or by the Loan Agreement, or by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently.

15. 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.

16. This Agreement is subject to the terms and conditions of licenses for the Patents existing as of the effective date of this Agreement.

17. This Agreement is subject to modification only by a writing signed by the parties, except as provided in Paragraph 5.

18. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and the permitted assigns of the parties.

19. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the internal laws of the State of Georgia.

20. Assignor waives notice of Lender's acceptance hereof.

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

ATTEST:

**DALEN PRODUCTS, INC.**  
("Assignor")

  
David N. Caldwell, Secretary

By:   
E. Neal Caldwell, Chairman

Accepted in Atlanta, Georgia:

**FLEET CAPITAL CORPORATION**  
("Lender")

By:

A handwritten signature in black ink, appearing to read "M. J. Schenck", written over a horizontal line.

Title:

VICE PRESIDENT

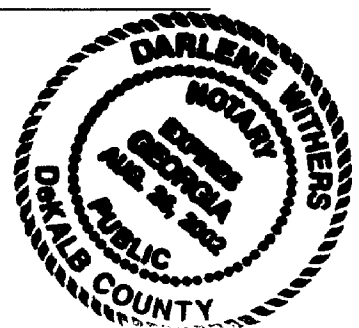
STATE OF GEORGIA  
COUNTY OF FULTON

§  
§  
§

BEFORE ME, the undersigned authority, on this day personally appeared E. Neal Caldwell, Chairman of **DALEN PRODUCTS, 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 30<sup>th</sup> day of September, 1999.

Darlene Withers  
Notary Public  
My Commission Expires:  
August 26, 2002  
[NOTARIAL SEAL]



STATE OF GEORGIA  
COUNTY OF FULTON

§  
§  
§

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_ of **FLEET CAPITAL CORPORATION**, 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 30<sup>th</sup> day of September, 1999.

Darlene Withers  
Notary Public  
My Commission Expires:  
August 26, 2002  
[NOTARIAL SEAL]





EXHIBIT A

<u>Patent No.</u>	<u>Issue Date</u>	<u>Title</u>
4,910,052	03/20/90	Mulch Material and Method of Making the Same ( Miracle Mulch)
5,047,099	09/10/91	Mulch Material and Method of Making the Same
5,199,214	04/06/93	Tree Staking System, Parts Therefor and Methods of Making the Same
5,873,194	02/23/99	Perforated Embossed Landscaping Film

<u>Serial No.</u>	<u>Application Date</u>	<u>Title</u>
60/023,887	08/13/96	Cross-Merchandiser
08/888,250	07/07/97	Cross-Merchandising Display Stand
08/903,929	07/31/97	Owl With Movable Head