

01-02-2001

Docket No.: 3517/12

FORM PTO-1595 (Modified)
(Rev. 6-93)
OMB No. 0651-0011 (exp. 4/94)
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P08/REV02



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SHEET

U.S. DEPARTMENT OF COMMERCE

Patent and Trademark Office

Y

12-15-00

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To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):
Magruder Dry Color, LLC

2. Name and address of receiving party(ies):

Name: **PNC Bank, National Association**

Internal Address:

Additional names(s) of conveying party(ies) ☐ Yes ☒ No

3. Nature of conveyance:

☐ Assignment☐ Merger☒ Security Agreement☐ Change of Name☐ OtherStreet Address: **PNC Bank Center****Two Tower Center Boulevard**City: **East Brunswick**State: **NJ**ZIP: **08816**Execution Date: **October 31, 2000**Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or registration numbers(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s)

B. Patent No.(s)

09/185,931**09/314,797**Additional numbers attached? ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: **Michael R. Friscia**Internal Address: **Wolff & Samson**Street Address: **5 Becker Farm Road**City: **Roseland**State: **NJ**ZIP: **07068**6. Total number of applications and patents involved: **2**7. Total fee (37 CFR 3.41):.....\$ **80.00**☒ Enclosed - Any excess or insufficiency should be credited or debited to deposit account☐ Authorized to be charged to deposit account

8. Deposit account number:

06-2143

01/02/2001 DNGUYEN 00000272 09185931

DO NOT USE THIS SPACE

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9. 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.

Michael R. Friscia

Name of Person Signing

Signature

9

Date

Total number of pages including cover sheet, attachments, and document:

PATENT
REEL: 011382 FRAME: 0448

COLLATERAL ASSIGNMENT OF PATENTS

THIS COLLATERAL ASSIGNMENT OF PATENTS is made on the 31st day of October, 2000 by and among MAGRUDER DRY COLOR, LLC, a New Jersey limited liability company, having its principal office at 1029 Newark Avenue, Elizabeth, New Jersey 07208 (the "Assignor") and PNC Bank, National Association, having an office at PNC Bank Center, Two Tower Center Boulevard, East Brunswick, New Jersey 08816, as Agent for Lenders, (hereinafter referred to as Assignee).

WITNESSETH:

WHEREAS, pursuant to a certain Revolving Credit, Term Loan and Security Agreement (the "Loan Agreement") and other loan documents executed in connection therewith (all of which are collectively referred to as the "Loan Documents") dated the date herewith by and among MAGRUDER COLOR COMPANY, INC. (the "Borrower"), the Assignor as a Guarantor, the Assignee, and various financial institutions named therein or which hereafter become a party thereto (together with the Assignee collectively, "Lenders") and the Assignee as agent for Lenders (in such capacity, "Agent"), the Lenders have agreed to make certain loans to the Borrower; and

WHEREAS, the Assignor owns the United States patents and the applications for a United States patents listed on Schedule A ("Patents"); and

WHEREAS, pursuant to the Loan Agreement, the Assignor is required to and has conveyed and granted to Assignee a security interest in, among other things, all right, title and interest of the Assignor in, to and under all of the Assignor's Patents, whether presently existing or hereafter arising or acquired, and all products, substitutions, replacements and proceeds thereof to secure all obligations of the Borrower to Assignee, including contingent obligations; and

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Assignor does hereby absolutely assign, grant, and convey to Assignee its right and title to, and a security interest in, all of the Assignor's right, title and interest in, to and under the following, whether presently existing or hereafter arising or acquired:

(a) Each of the Patents, which are presently, or in the future may be owned by the Assignor, in whole or in part, as well as all applications for United States patents now or hereafter owned by the Assignor, as the same may be updated hereafter from time to time.

Said assignment, grant, conveyance, and security interest includes, without limitation, all proceeds thereof, the right to sue for past, present, and future infringements thereof, all rights corresponding thereto throughout the world, and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof.

1) Assignor covenants and warrants that:

(a) it is the true and lawful exclusive owner of all the Patents listed on Schedule A and that said Patents constitute all the United States Patents registered in the United States Patent and Trademark Office and applications for United States Patents that the Assignor now owns;

(b) The Assignor agrees on a semi-annual basis to execute such additional agreements with respect to any new Patent, Trademark and/or Copyright in which the Assignor hereinafter obtains rights. The Assignor further warrants that it is not aware of any third party claim that any of the aspects of the Assignor's present or contemplated business operations infringe or will infringe on any Patent. The Assignor grants to Assignee an absolute power of attorney to sign any document which will be required by the United States Patent and Trademark Office in order to effect an absolute assignment of all right, title and interest in each Patent and record of same;

(c) The Patents are subsisting and have not been adjudged invalid or unenforceable;

(d) Each of the Patents is valid and enforceable;

(e) Assignor is 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 and encumbrances, including without limitation pledges, assignments, licenses, registered user agreements, and covenants by Assignor not to sue third persons, other than the assignment to Assignee pursuant to this Agreement;

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

(g) Assignor has used, and will continue to use for the duration of this Agreement, proper statutory notice in connection with its use of the Patents;

(h) At its own expense, the Assignor shall make timely payment of all post-issuance fees required pursuant to 35 U.S.C. Sec. 41 to maintain in force rights under each Patent;

(i) The Assignor hereby agrees not to divest itself of any right under any Patent, which divestiture could have a material adverse effect on Assignor's business, its properties, or its ability to perform its obligations under the Loan Agreement; and

(j) The Assignor agrees to promptly, upon learning thereof, furnish Assignee in writing all pertinent information available to the Assignor with respect to any infringement or other violation of the Assignor's rights in any Patent, which infringement or violation could have a material adverse effect on the Assignor, its properties or the Borrower's ability to perform its obligations under the Loan Agreement and other Loan Documents (as defined in the Loan Agreement). The Assignor further agrees to prosecute any Persons infringing upon any Patent to the extent such infringement could have a material adverse affect on the Assignor, its properties or the Borrower's ability to perform its obligations under the Loan Agreement or other Loan Documents (the "Obligations").

- 2) Assignor hereby grants to Assignee and its employees and agents the right to visit Assignor's facilities (during normal business hours and upon reasonable notice) which maintain or store products sold under any of the Patents, and to inspect the products and quality control records relating thereto. Assignor shall do any and all acts reasonably required by Assignee to ensure Assignor's compliance herewith.
- 3) Assignor agrees that, until all of the Obligations shall have been satisfied in full, it will not enter into any agreement which is inconsistent with Assignor's obligations under this Agreement, without Assignee's prior written consent, such consent not to be unreasonably withheld.
- 4) If, before the Obligations 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 reissue, division, continuation, renewal, extension, or continuation-in-part of any Patent or any improvement on any Patent, the provisions hereof shall automatically apply thereto and Assignor shall give to Assignee prompt notice thereof in writing.
- 5) Assignor authorizes Assignee to modify this Agreement by amending Schedule A, to include any future Patents covered hereby.
- 6) Unless and until there shall have occurred an Event of Default (as defined in the Loan Agreement), Assignee hereby grants to Assignor the exclusive, limited, nontransferable right and license to use the Patents on and in connection with products sold by Assignor, 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 limited license granted to Assignor in this paragraph, without the prior written consent of Assignee.
- 7) Upon the occurrence of any Event of Default:

- a) Assignor's limited license hereunder to use the Patents shall terminate forthwith;
 - b) Assignee shall have, in addition to all other rights and remedies given to it by this Agreement, the Loan Agreement, and the Loan Documents, those rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Patents may be located; and
 - c) Assignee may, in addition to any other remedies which may be available to Assignee, without being deemed to have made an election of remedies, and without the assignment hereunder being deemed to be anything less than an absolute assignment, immediately, without demand of performance and without other notice (except as may be set forth below) or demand whatsoever to Assignor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale (or, to the extent required by law, otherwise realize upon in a commercially reasonable manner), all or from time to time, any of the Patents, or any interest which the Assignor may have therein, and after deducting from the proceeds of sale or other disposition of the Patents all reasonable expenses (including all reasonable expenses for broker's fees and legal services), may apply the residue of such proceeds to the payment of the Obligations. Any remainder of the proceeds after payment in full of the Obligations shall be paid over to the Assignor. Notice of any sale or other disposition of the Patents shall be given to Assignor at least five (5) business days before the time of any intended public or private sale or other disposition of the Patents is to be made, which notice Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, Assignee may, to the extent permissible under applicable law, purchase the whole or any part of the Patents sold, free from any right or equity of redemption on the part of Assignor, which right and equity of redemption are hereby waived and released.
- 8) At such time as Borrower shall completely satisfy all of the Obligations, this Agreement shall terminate and Assignee shall execute and deliver to Assignor at Assignor's expense all deeds, assignments and other instruments as may be necessary or proper to re-vest in Assignor full title to the Patents, subject to any disposition thereof which may have been made by Assignee pursuant hereto and in accordance with the terms hereof.
- 9) Any and all reasonable fees, costs and expenses, of whatever kind or nature, including reasonable attorney fees and legal expenses incurred by Assignee 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, encumbrances or otherwise protecting, maintaining or preserving the Patents, in defending or prosecuting any actions or proceedings arising out of or related to the Patents, or in the enforcement by Assignee of any of its rights or remedies under this Agreement, the Loan Agreement or any Loan Document shall be borne and paid by Assignor on demand by Assignee and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the rate of interest chargeable pursuant to the Loan Agreement upon an Event of Default.
- 10) Assignor shall have the duty, through counsel reasonably acceptable to Assignee, to prosecute diligently any actions for or of the Patents pending as of the date of this Agreement or thereafter until the Obligations shall have been paid in full and to file and prosecute opposition and cancellation proceedings and to do any and all acts which are reasonably necessary or desirable to preserve and maintain all rights in the Patents. Any expenses incurred in connection with the Patents shall be borne by Assignor. The Assignor shall not abandon any Patents without the consent of Assignee, which consent shall not be unreasonably withheld.
- 11) Assignor shall have the right to bring any opposition proceedings, cancellation proceedings or lawsuit in its own name to enforce or protect the Patents, in which event Assignee may, if necessary, be joined as a nominal party to such suit if Assignee shall have been satisfied that it is not incurring any risk of liability because of such joinder. Assignor shall promptly, upon demand, reimburse and indemnify Assignee for all damages, costs and expenses, including attorney fees, incurred by Assignee in the fulfillment of the provisions of this paragraph. The obligations of the Assignor under this paragraph shall survive the termination of this Agreement.


- 12) In the event of the occurrence of a Default or an Event of Default, Assignor hereby authorizes and empowers Assignee to make, constitute and appoint any officer or agent of Assignee as Assignee may select, in its sole discretion, as Assignor's true and lawful attorney-in-fact, with the power to endorse Assignor's name on all applications, documents, papers and instruments necessary for Assignee to use the Patents, or to grant or issue any exclusive or nonexclusive license under the Patents to anyone else, or necessary for Assignee to assign, pledge, convey or otherwise transfer title in or dispose of the Patents to anyone else. Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable for the life of this Agreement.
- 13) If Assignor fails to comply with any of its obligations hereunder, Assignee may do so in Assignor's name or in Assignee's name, but at Assignor's expense, and Assignor hereby agrees to reimburse Assignee in full for all expenses, including reasonable attorney's fees, incurred by Assignee in protecting, defending and maintaining the Patents.
- 14) No course of dealing between Assignor and Assignee, nor any failure to exercise, nor any delay in exercising, on the part of Assignee, any right, power or privilege hereunder or under the Loan Agreement, or under any Loan Document 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 further exercise thereof or the exercise of any other right, power or privilege.
- 15) All of Assignee's rights and remedies with respect to the Patents, whether established hereby or by the Loan Agreement, or by any other agreement(s) or by law, shall be cumulative and may be exercised singly 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, 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.
- 17) This Agreement is subject to modification only by a writing signed by the parties, except as provided elsewhere herein.
- 18) The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and 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 laws of the State of New Jersey.
- 20) THE PARTIES HERETO AGREE TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN NEW JERSEY IN CONNECTION WITH ANY MATTER ARISING HEREUNDER, INCLUDING THE COLLECTION AND ENFORCEMENT HEREOF. THE ASSIGNOR AND ASSIGNEE EACH HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE ACTIONS OF LENDER. THIS WAIVER IS MADE KNOWINGLY AND IN CONSIDERATION OF THE ADVANCES MADE UNDER THE LOAN AGREEMENT.
- 21) This Agreement, the Loan Agreement and the Loan Documents embody the entire agreement and understanding between the Assignor and Assignee and supersedes all prior agreements and understandings relating to the subject matter hereof and thereof.

WITNESS the execution hereof under seal as of the day and year first above written.

ATTEST:

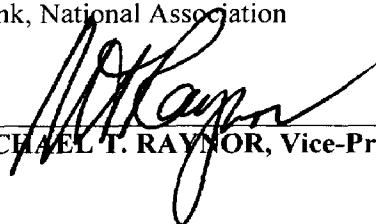
MAGRUDER DRY COLOR, LLC


JOEL S. WEISSGLASS, Secretary

BY: 
ALLAN WEISSGLASS, President
Magruder Color Company, Inc.
(Sole Member)

[SEAL]

PNC Bank, National Association

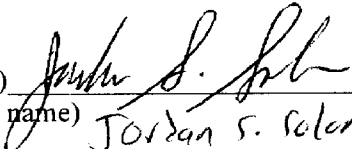
By: 
MICHAEL T. RAYNOR, Vice-President

STATE OF NEW JERSEY)
 : ss.
COUNTY OF Middlesex)

I CERTIFY that on October 31, 2000, ALLAN WEISSGLASS personally came before me and stated under oath to my satisfaction that:

- (a) this person is the President of Magruder Color Company, Inc., the corporation named as the sole member of Magruder Dry Color, LLC, the limited liability company named in this Instrument;
- (b) this Instrument was signed and delivered by the limited liability company as its voluntary act duly authorized by a proper resolution of its Members;
- (c) this person knows the proper seal of the limited liability company which was affixed to this Instrument;
- (d) this person signed this acknowledgement to attest to the truth of these facts.

Signed and sworn to before me on
October 31, 2000

(sign)  (notary)
(type name) Jordan S. Solomon
Attorney at law of the State of New Jersey

STATE OF NEW JERSEY)

COUNTY OF Middlesex)

I CERTIFY that on October __, 2000, Michael T. Raynor personally came before me and stated under oath to my satisfaction that:

- (a) this person is the Vice President of PNC Bank, National Association, the financial institution named in this Instrument;
- (b) this Instrument was signed and delivered by the financial institution as its voluntary act duly authorized by a proper resolution of its Board of Directors;
- (c) this person knows the proper seal of the corporation which was affixed to this Instrument;
- (d) this person signed this acknowledgement to attest to the truth of these facts.

Signed and sworn to before me on

October 31, 2000

(sign) [Signature] (notary)
(type name) attorney at law of NV

SCHEDULE A
(PATENTS)

ACTIVE PATENT APPLICATIONS OWNED BY MAGRUDER DRY COLOR, LLC		
MARK	APPLICATION NUMBER	APPLICATION FILING DATE
CRYSTAL GROWTH INHIBITOR	09/185,931	November 4, 1998
INK WITH IMPROVED FLOW CHARACTERISTICS	09/314,797	May 18, 1999