

03-07-2001



FORM PTO-1619A  
Expires 06/30/99  
OMB 0651-0027

101629466

U.S. Department of Commerce  
Patent and Trademark Office  
**PATENT**

2. 22.01

**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
- License
- Merger
- Security Agreement
- Change of Name
- Other-Collateral Assignment

*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)                      R.H. Wyner Associates, Inc.

Execution Date  
Month    Day    Year  
02    12    2001

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)                      Citizens Bank of Massachusetts

Name (line 2)

Address (line 1)                      28 State Street

Address (line 2)

Address (line 3)                      Boston  
City

MA  
State/Country

02109  
Zip Code

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.)

**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)

**FOR OFFICE USE ONLY**

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: 011551 FRAME: 0045**

**Correspondent Name and Address**

Area Code and Telephone Number

Name: Miriam J. Rovner  
Address (line 1): Senior Legal Assistant  
Address (line 2): Goodwin, Procter & Hoar LLP  
Address (line 3): Exchange Place, 53 State Street  
Address (line 4): Boston, MA 02109-2881

(617) 570-1292

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

# 35

**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)

See attached Schedule

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:

# 07-1700

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.*

Christine C. Sullivan  
Name and Person Signing

  
Signature

February 22, 2001  
Date

SCHEDULE 1

R.H. WYNER ASSOCIATES, INC.

PATENTS

<u>Patent Number</u>	<u>Description</u>
5677048	Coated skived foam and fabric article containing energy absorbing phase change material
5950264	Bedding articles enclosed in elastic laminated waterproof moisture-permeable allergen barriers
4761324	Elastic, laminated, waterproof, moisture-permeable fabric
5507902	Multi-layered sheet
5955188	Skived foam article containing energy absorbing phase change material
5851338	Skived foam article containing energy absorbing phase change material
5874140	Sheet material with adhesive

NOTICE OF SECURITY INTEREST

(IN U.S. PATENTS)

WHEREAS, R.H. WYNER ASSOCIATES, INC. , a Massachusetts corporation (herein referred to as "Assignor"), owns the letters patent and/or applications for letters patent of the United States, more particularly described on Schedule 1 annexed hereto as part hereof (the "Patents");

WHEREAS, Assignor is obligated to CITIZENS BANK OF MASSACHUSETTS (herein referred to as "Assignee") pursuant to that certain Revolving Credit Agreement dated as of April 18, 1995 (as amended, the "Credit Agreement") and has entered into a Trademark, Patent and Copyright Security Agreement dated the date hereof (the "Agreement") with Assignee; and

WHEREAS, pursuant to the Agreement, Assignor has granted to Assignee a security interest in, and mortgage on, all right, title and interest of Assignor in and to the Patents, together with any reissue, continuation, continuation-in-part or extension thereof, and all proceeds thereof, including, without limitation, any and all causes of action which may exist by reason of infringement thereof for the full term of the Patents (the "Collateral"), to secure the prompt payment, performance and observance of all Obligations (as defined in the Credit Agreement), including, without limitation, any and all obligations and liabilities of the Assignor to the Assignee under the Credit Agreement and to the Assignee and State Street Bank and Trust Company under the IRB Letter of Credit and the Reimbursement Agreements (as defined in the Agreement), now or hereafter owing by the Assignor.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Assignor does hereby grant to Assignee a security interest in, and mortgage on,

the Collateral to secure the prompt payment, performance and observance of the Obligations now or hereafter owing by the Assignor.

Assignor does hereby further acknowledge and affirm that the rights and remedies of Assignee with respect to the security interest in, and mortgage on, the Collateral made and granted hereby are more fully set forth in the Agreement, the terms and provisions of which are hereby incorporated herein by reference as is fully set forth herein.

Assignee's address is 28 State Street, Boston, MA 02109.



SCHEDULE 1

R.H. WYNER ASSOCIATES, INC.

PATENTS

<u>Patent Number</u>	<u>Description</u>
5677048	Coated skived foam and fabric article containing energy absorbing phase change material
5950264	Bedding articles enclosed in elastic laminated waterproof moisture-permeable allergen barriers
4761324	Elastic, laminated, waterproof, moisture-permeable fabric
5507902	Multi-layered sheet
5955188	Skived foam article containing energy absorbing phase change material
5851338	Skived foam article containing energy absorbing phase change material
5874140	Sheet material with adhesive

# TRADEMARK, PATENT AND COPYRIGHT SECURITY AGREEMENT

TRADEMARK, PATENT AND COPYRIGHT SECURITY AGREEMENT (the "Agreement") made as of this 12th day of February, 2001 by and between R.H. WYNER ASSOCIATES, INC., a Massachusetts corporation (the "Debtor") and CITIZENS BANK OF MASSACHUSETTS, a Massachusetts bank (the "Bank"), having its principal place of business at 28 State Street, Boston, Massachusetts 02109.

WHEREAS, on the date hereof, the Debtor is the owner of the United States Trademarks (as hereinafter defined) described on Schedule A annexed hereto and made a part hereof;

WHEREAS, on the date hereof, the Debtor is the owner and holder of the United States Patents (as hereinafter defined) listed on Schedule B hereto and made a part hereof;

WHEREAS, on the date hereof, the Debtor is the owner of the United States Copyrights (as hereinafter defined) listed on Schedule C hereto and made a part hereof;

WHEREAS, the Bank provides a credit facility to the Debtor pursuant to the Revolving Credit Agreement dated as of April 18, 1995 (as amended, modified or supplemented from time to time, the "Credit Agreement");

WHEREAS, State Street Bank and Trust Company ("State Street") has issued a letter of credit in favor of Michigan National Bank, as trustee ("Michigan National Bank") in the current principal amount of \$3,150,000 (the "State Street Letter of Credit") for the account of the Debtor, which State Street Letter of Credit was issued in support of, and as security for, the Debtor's obligations under the Loan Agreement dated as of November 1, 1996 by and between the Debtor and the Michigan Strategic Fund, pursuant to which the Michigan Strategic Fund issued \$4,250,000 aggregate principal amount of its Variable Rate Demand Limited Obligation Revenue Bonds, Series 1996, and loaned the proceeds thereof to the Debtor;

WHEREAS, in connection with the issuance of the State Street Letter of Credit, the Debtor entered into a Reimbursement Agreement dated as of November 1, 1996 with State Street (as amended, modified or supplemented from time to time, the "State Street Reimbursement Agreement");

WHEREAS, the Bank has issued a back-up letter of credit in favor of State Street in an amount corresponding to the principal amount of the State Street Letter of Credit (the "Back-up Letter of Credit");

WHEREAS, the Debtor has agreed to use its best efforts to cause the State Street Letter of Credit and the Back-up Letter of Credit to be replaced by a letter of credit issued directly by the Bank to Michigan National Bank (the "Citizens Letter of Credit," and together with the State Street Letter of Credit and the Back-up Letter of Credit, the "IRB Letter of Credit"), in connection with which State Street's rights and obligations under the State Street Reimbursement Agreement shall be assigned to the Bank or, in the alternative, the Debtor shall enter into a new reimbursement agreement with the Bank (as amended, modified or supplemented from time to time, the "Citizens Reimbursement Agreement", and together with the State Street Reimbursement Agreement, the "Reimbursement Agreements"); and



WHEREAS, the security interest granted by the Debtor hereunder secures the prompt and complete payment and performance when due (whether at stated maturity, upon acceleration or otherwise) of all Obligations (as defined in the Credit Agreement), including, without limitation, any and all obligations and liabilities of the Debtor to the Bank under the Credit Agreement and to the Bank and State Street under the IRB Letter of Credit and the Reimbursement Agreements.

NOW, THEREFORE, IT IS AGREED that, for and in consideration of the Bank's agreement to continue to make loans, advances and other financial accommodations under the Credit Agreement, the IRB Letter of Credit and the Reimbursement Agreements, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and as collateral security for the full and prompt payment and performance of all Obligations now or hereafter owing by the Debtor, the Debtor does hereby mortgage and pledge to the Bank a security interest in, all of its right, title and interest in and to, (i) each of the United States Trademarks (as hereinafter defined), together with the goodwill of the business symbolized by each of the Trademarks, all customer lists and other records of the Debtor relating to the distribution of products bearing the Trademarks; (ii) each of the United States Patents (as hereinafter defined); (iii) each of the United States Copyrights (as hereinafter defined); (iv) the right to sue or otherwise recover for any and all past, present and future infringements and misappropriations thereof; (v) all income, royalties, damages and other payments now and hereafter due and/or payable with respect thereto (including, without limitation, payments under all licenses entered into in connection therewith, and damages and payments for past, present or future infringements thereof); (vi) all license agreements with another person in connection with any of the Trademarks, Patents or Copyrights or such other person's names or trademarks, patents or copyrights, whether the Debtor is a licensor or licensee under any such license agreement listed on Schedule D hereto, subject, in each case, to the terms of such license agreements, including, without limitation, terms requiring consent to a grant of a security interest, and any right to prepare for sale, sell and advertise for sale, all inventory now or hereafter owned by the Debtor and now or hereafter covered by such licenses (the "Licenses"); and (vii) all rights corresponding thereto and all other rights of any kind whatsoever of the Debtor accruing thereunder or pertaining thereto, together in each case with the goodwill of the business connected with the use of, and symbolized by, each such trademark, service mark, trade name, trade dress or other indicia of trade origin, and all proceeds and products of the foregoing (all of the foregoing, the "Collateral").

1. Terms defined in the Credit Agreement and not otherwise defined herein shall have the meanings set forth in the Credit Agreement. As used in this Agreement, unless the context otherwise requires:

"Copyrights" and/or "United States Copyrights" shall mean (i) all original works of authorship fixed in any tangible medium of expression and all registrations and recordings thereof, including, without limitation, applications, registrations and recordings in the United States Copyright Office, all whether now owned or hereafter acquired by the Debtor, including, but not limited to, those described on Schedule C annexed hereto and made a part hereof and (ii) all extensions or renewals thereof.

"Patents" and/or "United States Patents" shall mean (i) all letters patent of the United States and all pending United States patent applications, all right, title and interest therein

and thereto, and all recordations thereof, including, without limitation, applications, registrations and recordations in the United States Patent and Trademark Office, all whether now owned or hereafter acquired by the Debtor, including, but not limited to, those described on Schedule B annexed hereto and made a part hereof and (ii) all reissues, continuations, continuations-in-part or extensions thereof and all of the Debtor's rights as licensor thereof.

"Trademarks" and/or "United States Trademarks" shall mean (i) all trademarks, trade names, trade styles, service marks, trade dress or other indicia of trade origin, prints and labels on which said trademarks, trade names, trade styles, and service marks and trade dress have appeared, appears or which the Debtor has an intent to use, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all right, title and interest therein, and thereto, and all registrations and recordings thereof, including, without limitation, applications, registrations and recordings in the United States Patent and Trademark Office or any similar office or agency of the United States or any state thereof, all whether now owned or hereafter acquired by the Debtor, including but not limited to, those described on Schedule A annexed hereto and made a part hereof, together with the goodwill of the business symbolized by and relating thereto, (ii) all renewals thereof and (iii) all licenses thereof granting licensed rights to third parties to the extent permissible under each license.

2. The Debtor hereby represents, warrants, covenants and agrees as follows:

Trademarks:

(a) The Debtor is the sole, legal and beneficial owner of the entire right, title and interest in and to the Trademarks set forth on Schedule A hereto, free and clear of any Encumbrance except for the security interest created by this Agreement or any other Loan Document and Permitted Encumbrances. No security agreement, effective financing statement or other instrument similar in effect covering all or any part of the Collateral, that has not been terminated or released, is on file in any recording office (including, without limitation, the United States Patent and Trademark Office), except such as may have been filed in favor of the Bank relating to this Agreement or any of the other Loan Documents, and the Debtor has not consented to the filing of any document or notice similar in effect, that has not been released or terminated, with the United States Patent and Trademark Office covering all or any part of the Collateral other than as contemplated hereby and thereby.

(b) The Debtor has made all necessary filings and recordations to protect and maintain its interest in the Trademarks, including, without limitation, all necessary filings and recordings in the United States Patent and Trademark Office. Set forth on Schedule D is a complete and accurate list of the Licenses owned by the Debtor in which the Debtor is a licensor or a licensee, including a notation of any restrictions on the granting of a security interest therein.

(c) Each Trademark registration and application for registration of the Debtor set forth on Schedule A is subsisting and has not been adjudged invalid, unregistrable or unenforceable, in whole or in part, and to the best of the Debtor's knowledge is valid, registrable and enforceable. Each License of the Debtor identified on Schedule D is validly subsisting and has not been adjudged invalid or unenforceable, in whole or in part, and, to the best of the Debtor's knowledge is valid and enforceable in accordance with the terms thereof. The Debtor has

notified the Bank in writing of all uses of any item of Collateral of which the Debtor is aware which could reasonably be expected to lead to such item becoming invalid or unenforceable, including unauthorized uses by third parties and uses which were not supported by the goodwill of the business connected with such Collateral, other than any such uses that would not have a material adverse effect upon the Debtor's business, prospects or financial condition (a "Material Adverse Effect").

(d) The Debtor has not made a previous assignment, sale, transfer or agreement constituting a present or future assignment, sale, transfer or encumbrance of any of the Collateral that has not been terminated or released. The Debtor has not granted any license (other than those listed on Schedule D hereto), release, covenant not to sue, or non-assertion assurance to any Person with respect to any part of the Collateral.

(e) No consent of any other Person and no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body or other third party in the United States is required either (i) for the grant by the Debtor of the security interest granted pursuant hereto or for the execution, delivery or performance of this Agreement by the Debtor, (ii) for the perfection or maintenance of the security interest created hereby (including the first priority nature of such security interest), except for the filing of financing and continuation statements under the Uniform Commercial Code and filings with the United States Patent and Trademark Office or (iii) for the exercise by the Bank of its rights provided for in this Agreement or the remedies in respect of the Collateral pursuant to this Agreement.

(f) Except for those pending opposition and cancellation proceedings listed on Schedule E hereto and the Licenses listed on Schedule D hereto, the Debtor has no knowledge of the existence of any right or any claim of any ownership interest or right to use that is likely to be made with respect to any item of Collateral contained on Schedule A.

(g) To Debtor's knowledge, no claim has been made and is continuing or threatened that the use by the Debtor of any item of Collateral is invalid or unenforceable or that the use by the Debtor of any Collateral does or may violate the rights of any Person, other than as listed on Schedule E hereto. To the best of the Debtor's knowledge, there is currently no material infringement or unauthorized use of any item of Collateral contained on Schedule A.

(h) The Debtor uses adequate standards of quality in all material respects in the manufacture, distribution and sale of all products sold and provision of all services provided under or in connection with any item of Collateral contained on Schedule A and has taken all action necessary to ensure that all licensed users of any item of Collateral contained on Schedule A use such consistent standards of quality.

(i) The Debtor has no knowledge of the existence of any Trademark or License held or claimed by any other Person that would preclude the Debtor from distributing, marketing, selling or providing any product or service currently distributed, marketed, sold or provided by it, as the case may be, under or in connection with any of the Collateral in the United States (except, in each case, to the extent that the Debtor has granted an exclusive license to another person) or that would interfere with the business of the Debtor as currently carried on under any of the Collateral in the United States.

(j) The Debtor will execute and take steps from time to time to record in the United States Patent and Trademark Office and the United States Copyright Office (so as to grant a security interest to the Bank in the Collateral) the Notices of Security Interest, attached hereto as Exhibits 1, 2 and 3. The Debtor hereby authorizes the Bank to execute in the name of the Debtor and to file one or more financing statements, notices of security interests or similar documents, or of this Agreement with respect to the Collateral. At any time that the Bank may reasonably request, the Debtor shall cooperate with the Bank by executing all other or further documents necessary to effect, at that time, a grant of a security interest in the Collateral, as secured hereunder.

(k) Consistent with the terms and conditions of the Credit Agreement, and except to the extent that the Bank, upon prior written notice of the Debtor, shall consent in writing, the Debtor (either itself or through licensees) will continue to use each Trademark on Schedule A on each and every Trademark class of goods applicable to its current line as reflected in its current catalogs, brochures and price lists in order to maintain each Trademark (so long as each shall remain such) in full force, free from any claim of abandonment for nonuse, and the Debtor will not (and will not knowingly permit any licensee thereof to) do any act or knowingly omit to do any act whereby any Trademark may become invalidated unless such act or omission shall be, in the good faith exercise of its best business judgment, in the Debtor's best commercial interests; provided that all such acts or omissions shall be subject to the prior approval of the Bank.

Patents:

(l) The Debtor has the sole and full ownership of the entire right, title and interest to each of its Patents shown on Schedule B, which Patents are valid and subsisting and in full force and effect and free and clear of any Encumbrance except for the security interest created by this Agreement or any other Loan Document and Permitted Encumbrances. To the best of the Debtor's knowledge, none of the Patents has been abandoned, dedicated to the public or rendered invalid, and, except to the extent that the Bank upon prior written notice by the Debtor, shall consent in writing, the Debtor will not do any act, or omit to any do act, whereby any Patent may become abandoned or dedicated to the public and shall notify the Bank immediately if it knows of any reason or has reason to know that any application or letters Patent may become abandoned or dedicated to the public.

(m) Consistent with the exercise of its best business judgment, the Debtor will use its best efforts to prosecute to issuance the applications listed on Schedule B.

(n) There has been no decision adverse to the Debtor's claim of ownership of the Patents, and there is no proceeding involving such claim threatened or pending in the United States Patent and Trademark Office or any similar office or agency of the United States or any state thereof, or any court, except as listed on Schedule E.

(o) The Debtor shall promptly notify the Bank of the institution of, and any adverse determination in, any proceeding in the United States Patent and Trademark Office or any similar office or agency of the United States or any state thereof, or any court, regarding the Debtor's claim of ownership or validity of any of the Patents.

(p) The Debtor is not aware of any claim that would interfere with the right to the exclusive use of or practice of the inventions covered by the Patents, subject only to the Licenses and to Permitted Encumbrances.

Copyrights:

(q) The Debtor is the sole and exclusive owner of the entire right, title and interest to all Copyrights shown on Schedule C and said Copyrights are now valid, subsisting and in full, force and effect, free and clear of any Encumbrance except for the security interest created by this Agreement or any other Loan Document and Permitted Encumbrances.

(r) There has been no decision adverse to the Debtor's claim of ownership of the Copyrights, and there is no proceeding involving such claim threatened or pending in the United States Copyright Office or any similar office or agency of the United States or any state thereof, or any court, except as listed on Schedule E.

(s) The Debtor shall promptly notify the Bank of the institution of, and any adverse determination in, any proceeding in the United States Copyright Office or any similar office or agency of the United States of America or any state thereof or any court, regarding the Debtor's claim of ownership or validity of any of the Copyrights.

(t) The Debtor is not aware of any claim on the Debtor's right to the exclusive use of or practice of the works covered by the Copyrights, subject only to the Licenses and Permitted Encumbrances.

(u) The Debtor will not do any act, or omit to do any act, whereby any of the Copyrights may become abandoned or dedicated to the public, or the remedies available against potential infringers weakened, and shall notify the Bank immediately if it knows of any reason or has reason to know that any Copyright may become abandoned or dedicated to the public unless such act or omission shall be, in the good faith exercise of its best business judgment, in the Debtor's best commercial interests; provided that all such acts or omissions shall be subject to the prior approval of the Bank.

General:

(v) In the event the Debtor, either itself or through any agent, employee, licensee or designee, (i) files an application for the registration of any Trademark, Patent or Copyright with the United States Patent and Trademark Office or the United States Copyright Office or (ii) files any notice of security interest on any Trademark, Patent or Copyright the Debtor may acquire from a third party, with the United States Patent and Trademark Office or the United States Copyright Office, the Debtor shall, within five (5) Business Days after such filing, notify the Bank thereof, and, upon request of the Bank, execute and deliver or cause to be delivered any and all instruments, documents, opinions of counsel, certificates and papers as the Bank may request to evidence the Bank's security interest in such Trademark, Patent or Copyright and the goodwill and general intangibles of the Debtor relating thereto or represented thereby, and the Debtor hereby constitutes the Bank its attorney-in-fact to execute and file all such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed, such power being coupled with an interest and irrevocable until all Obligations are paid in full in cash and

the Credit Agreement, the IRB Letter of Credit and the Reimbursement Agreements are terminated.

(w) The Debtor has the exclusive right and power to grant the security interest herein granted and the Collateral is not now, and at all times hereafter will not be, subject to any liens, mortgages, assignments, security interests or encumbrances of any nature whatsoever except in favor of the Bank and except for Permitted Encumbrances and rights of licensees. None of the Collateral is subject to any other claim other than those identified herein. No consent of any other Person and no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body or other third party in the United States is required either (i) for the grant by the Debtor of the security interest granted hereby or for the execution, delivery or performance of this Agreement by the Debtor, (ii) for the perfection or maintenance of the security interest created hereby (including the first priority nature of such security interest), except for the filing of financing and continuation statements under the Uniform Commercial Code and notices of security interests with the United States Patent and Trademark Office or United States Copyright Office or (iii) for the exercise by the Bank of its rights provided for in this Agreement or the remedies in respect of the Collateral pursuant to this Agreement.

(x) The Debtor will not assign, sell, mortgage, lease, transfer, pledge, hypothecate, grant a security interest in or lien upon, encumber, grant an exclusive or non-exclusive license, or otherwise dispose of any of the Collateral, except for Licenses existing as of the date hereof and set forth on Schedule D hereto and except as expressly permitted hereunder or under the Credit Agreement, and nothing in this Agreement shall be deemed a consent by the Bank to any such action except as expressly permitted herein.

(y) As of the date hereof, the Debtor does not own any Trademarks, Patents or Copyrights or have any Trademarks, Patents or Copyrights registered in, or the subject of pending applications in, the United States Patent and Trademark Office or the United States Copyright Office, other than those described in Schedules A, B, and C hereto. In the event there are any changes to the Trademarks, Patents or Copyrights which would result in an addition or deletion of an item contained on Schedule A, B or C, the Debtor shall promptly deliver updated Schedules A, B and C showing any such changes in the Trademarks, Patents or Copyrights owned by the Debtor.

(z) The Debtor will take all necessary steps in any proceeding before the United States Patent and Trademark Office, the United States Copyright Office or, with respect to Trademarks, in any similar office or agency of the United States or any state thereof, to maintain each application and registration of the Trademarks, Patents and Copyrights including, without limitation, filing of renewals, affidavits of use, affidavits of incontestability and opposition, interference and cancellation proceedings (except to the extent that dedication to the public, abandonment or invalidation is permitted hereunder or under the Credit Agreement).

(aa) The Debtor assumes all responsibility and liability arising from the use of the Trademarks, Patents and Copyrights and the Debtor hereby indemnifies and holds the Bank harmless from and against any claim, suit, loss, damage or expense (including reasonable attorneys' fees) arising out of any alleged defect in any product manufactured, promoted or sold

by the Debtor (or any affiliate or subsidiary thereof) in connection with any Trademark or Patent or out of the manufacture, promotion, labeling, sale or advertisement of any such product by the Debtor (or any affiliate or subsidiary thereof). The Debtor agrees that the Bank has not assumed any responsibility for the payment of any sums due or to become due under any agreement or contract included in the Collateral or the performance of any obligations to be performed under or with respect to any such agreement or contract, and the Debtor hereby agrees to indemnify and hold the Bank harmless with respect to any and all claims by any Person relating thereto.

(bb) The Bank may, in its sole discretion, pay any amount or do any act required of the Debtor hereunder or requested by the Bank to preserve, defend, protect, maintain, record or enforce the Debtor's obligations contained herein, the Obligations, the Collateral, or the right, title and interest granted to the Bank herein, and which the Debtor fails to do or pay, and any such payments shall be deemed an advance by the Bank to the Debtor, and shall be payable on demand together with interest at the highest rate then payable on the Obligations.

(cc) Unless an Event of Default shall have occurred and be continuing, the Debtor shall have sole discretion in making the decision to commence and prosecute in its own name, as real party in interest, for its own benefit and at its own expense, such suits, proceedings or other actions for patent infringement, trademark or service mark infringement, unfair competition, dilution, copyright infringement, oppositions or cancellations or other damages, as are in the good faith exercise of its best business judgment necessary to protect the Trademarks, Patents or Copyrights and registrations therefor, including, with respect to the Debtor, those set forth in Schedules A, B and C. The Debtor shall promptly notify the Bank in writing as to the commencement and prosecution of any such actions or proceedings relating to the Trademarks, Patents or Copyrights and the registrations therefor and shall provide to the Bank such information with respect thereto as the Bank may request. The Debtor shall not approve any settlement of any such actions or proceedings unless such settlement shall be, in the good faith exercise of its best business judgment, in the Debtor's best commercial interests; provided that upon and during the continuance of a Default or Event of Default, all such settlements shall be subject to the prior approval of the Bank.

(dd) All Licenses which the Debtor has granted to third parties as of the date hereof are set forth on Schedule D hereto.

(ee) The Debtor shall, to the extent it deems reasonable in its best business judgment, use proper statutory notice in connection with its use of each of its Trademarks, Patents and Copyrights.

(ff) If any event occurs with respect to the Collateral which could be reasonably likely to have a Material Adverse Effect, the Debtor shall take all steps which it and the Bank deem appropriate under the circumstances to preserve and protect the Collateral, including, without limitation, maintaining the quality of any and all products or services used or provided in connection with the Collateral at a level consistent with the quality and services as of the date hereof, and taking all steps necessary to ensure that all licensed users of any of said Collateral use consistent standards of quality.

(gg) In the event that the Debtor becomes aware that any item of the Collateral is materially infringed or misappropriated by a third party, the Debtor shall promptly notify the Bank and shall take such actions as the Debtor and the Bank deem appropriate under the circumstances to protect such Collateral, including, without limitation, suing for infringement or misappropriation and for an injunction against such infringement or misappropriation. Any expense incurred in connection with such activities shall be borne by the Debtor.

3. Upon the occurrence and during the continuance of an Event of Default, in addition to all other rights and remedies of the Bank, whether under law, the Credit Agreement, any other Loan Documents, the IRB Letter of Credit, the Reimbursement Agreements or otherwise, all such rights and remedies being cumulative, not exclusive and enforceable alternatively, successively or concurrently, without (except as provided herein) notice to, or consent by, the Debtor, the Bank shall have the following rights and remedies: (a) upon ten (10) Business Days' prior notice to the Debtor, the Debtor shall not make any further use of the Trademarks, Patents or Copyrights or any mark similar thereto for any purposes; (b) the Bank may, at any time and from time to time, upon ten (10) Business Days prior notice to the Debtor, license, whether general, special or otherwise, and whether on an exclusive or nonexclusive basis, any of the Trademarks, Patents or Copyrights throughout the world for such term or terms, on such conditions, and in such manner, as the Bank shall in its sole discretion determine; (c) the Bank may (without assuming any obligations or liability thereunder), at any time, enforce (and shall have the exclusive right to enforce) against any licensee or sublicensee all rights and remedies of the Debtor in, to and under any one or more license agreements with respect to the Collateral, and take or refrain from taking any action under any license agreement thereof, and the Debtor hereby releases the Bank from, and agrees to hold the Bank free and harmless from and against any claims arising out of any action taken or omitted to be taken with respect to any such license agreement; (d) the Bank may, at any time and from time to time, upon ten (10) Business Days' prior notice to the Debtor, assign, sell or otherwise dispose of the Collateral or any of it, either with or without special or other conditions or stipulations, with power to buy the Collateral or any part of it, and with power also to execute assurances, and do all other acts and things for completing the assignment, sale or disposition which the Bank shall, in its sole discretion, deem appropriate or proper; and (e) in addition to the foregoing, in order to implement the assignment, sale or other disposal of any of the Collateral pursuant to subparagraph 3(d) hereof, the Bank may, at any time, pursuant to the authority granted in the Power of Attorney described in paragraph 4 hereof (such authority becoming effective only on the occurrence and continuation as hereinabove provided of an Event of Default), execute and deliver on behalf of the Debtor, one or more instruments of assignment of the Trademarks, Patents or Copyrights, if any (or any application or registration thereof), in form suitable for filing, recording or registration in the United States Patent and Trademark Office and United States Copyright Office. The Debtor agrees to pay when due all reasonable costs incurred in any such transfer of the Trademarks, Patents or Copyrights, including any taxes, fees and reasonable attorneys' fees, and all such costs shall be added to the Obligations. The Bank may apply the proceeds actually received from any such license, assignment, sale or other disposition to the reasonable costs and expenses thereof, including, without limitation, reasonable attorneys' fees and all legal, travel and other expenses which may be incurred by the Bank, and then to the Obligations, in such order as the Bank may determine in its sole discretion; and the Debtor shall remain liable and will pay the Bank on demand any deficiency remaining, together with interest thereon at a rate equal to the highest rate then payable on the Obligations and the balance of any expenses unpaid. Nothing herein



contained shall be construed as requiring the Bank to take any such action at any time. In the event of any such license, assignment, sale or other disposition of the Collateral, or any of it, after the occurrence or continuation as hereinabove provided of an Event of Default, the Debtor shall supply its know-how and expertise relating to the manufacture and sale of the products bearing or in connection with the Trademarks, Patents or Copyrights, and its customer lists and other records relating to the Trademarks, Patents or Copyrights and to the distribution of said products, to the Bank or its designee.

4. Concurrently with the execution and delivery hereof, the Debtor is executing and delivering to the Bank (in the form of Exhibit 4 hereto) five (5) originals of a Power of Attorney for the implementation of the assignment, sale or other disposal of the Trademarks and related goodwill, Patents and Copyrights pursuant to paragraphs 3(d) and (e) hereof and the Debtor hereby releases the Bank from any claims, causes of action and demands at any time arising out of or with respect to any actions taken or omitted to be taken by the Bank under the Power of Attorney granted herein, other than actions taken or omitted to be taken through the gross negligence or willful misconduct of the Bank.

5. No provision hereof shall be modified, altered or limited except by a written instrument expressly referring to this Agreement and executed by the parties hereto to the extent permitted by Subsection 8.6 of the Credit Agreement. The execution and delivery of this Agreement has been authorized by the Board of Directors of the Debtor and by any necessary vote or consent of stockholders thereof. This Agreement shall be binding upon the successors, assigns or other legal representatives of the Debtor, and shall, together with the rights and remedies of the Bank hereunder, inure to the benefit of the Bank, its respective successors, assigns or other legal representatives. This Agreement, the Obligations and the Collateral shall be governed in all respects by the laws of the United States and the laws of The Commonwealth of Massachusetts. The Debtor hereby submits to the nonexclusive jurisdiction of the courts of The Commonwealth of Massachusetts and the federal courts of the United States of America located in such state in any action or proceeding arising under this Agreement. If any term of this Agreement shall be held invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby.

6. THE DEBTOR HEREBY IRREVOCABLY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTIONS OF THE BANK IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

IN WITNESS WHEREOF, the Debtor and the Bank have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date first above written.

R.H. WYNER ASSOCIATES, INC.

By: Edward D. Kahn  
Name: Edward D. Kahn  
Title Vice President - Finance

CITIZENS BANK OF MASSACHUSETTS

By: Shawn R. Foster  
Name: Shawn R. Foster  
Title Vice President

SCHEDULE A

TRADEMARKS

Trademarks

Trademark Registrations

SCHEDULE B

PATENTS

<u>Patent Number</u>	<u>Description</u>
5677048	Coated skived foam and fabric article containing energy absorbing phase change material
5950264	Bedding articles enclosed in elastic laminated waterproof moisture-permeable allergen barriers
4761324	Elastic, laminated, waterproof, moisture-permeable fabric
5507902	Multi-layered sheet
5955188	Skived foam article containing energy absorbing phase change material
5851338	Skived foam article containing energy absorbing phase change material
5874140	Sheet material with adhesive

SCHEDULE C

COPYRIGHTS

SCHEDULE D

LICENSE AGREEMENTS

SCHEDULE E

PENDING OPPOSITIONS AND  
CANCELLATION PROCEEDINGS

EXHIBIT 1

NOTICE OF SECURITY INTEREST

(IN U.S. TRADEMARKS)

WHEREAS, R.H. WYNER ASSOCIATES, INC., a Massachusetts corporation (herein referred to as "Assignor"), has adopted, used and is using the trademarks listed on the annexed Schedule 1, which trademarks are registered in the United States Patent and Trademark Office, or are applications pending in the United States Patent and Trademark Office (the "Trademarks");

WHEREAS, Assignor is obligated to CITIZENS BANK OF MASSACHUSETTS (herein referred to as "Assignee") pursuant to that certain Revolving Credit Agreement dated as of April 18, 1995 (as amended, the "Credit Agreement") and has entered into a Trademark, Patent and Copyright Security Agreement dated the date hereof (the "Agreement") with Assignee; and

WHEREAS, pursuant to the Agreement, Assignor has granted to Assignee a security interest in, and mortgage on, all right, title and interest of Assignor in and to the Trademarks, together with the goodwill of the business symbolized by the Trademarks and the applications and registrations thereof, and all proceeds thereof, including, without limitation, any and all causes of action which may exist by reason of infringement thereof for the full term of the Trademarks (the "Collateral"), to secure the payment, performance and observance of all Obligations (as defined in the Credit Agreement), including, without limitation, any and all obligations and liabilities of the Assignor to the Assignee under the Credit Agreement and to the Assignee and State Street Bank and Trust Company under the IRB Letter of Credit and the Reimbursement Agreements (as defined in the Agreement), now or hereafter owing by the Assignor.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Assignor does hereby grant to Assignee a security interest in, and mortgage on,



the Collateral to secure the prompt payment, performance and observance of the Obligations now or hereafter owing by the Assignor.

Assignor does hereby further acknowledge and affirm that the rights and remedies of Assignee with respect to the grant of security interest in, and mortgage on, the Collateral made and granted hereby are more fully set forth in the Agreement, the terms and provisions of which are hereby incorporated herein by reference as if fully set forth herein.

Assignee's address is 28 State Street, Boston, Massachusetts 02109.

IN WITNESS WHEREOF, Assignor has caused this Notice of Security Interest to be duly executed by its officer thereunto duly authorized as of the \_\_\_ day of \_\_\_\_\_, 2001.

[SEAL]

R.H. WYNER ASSOCIATES, INC.

By: \_\_\_\_\_  
Name:  
Title:

COMMONWEALTH OF MASSACHUSETTS )  
  ) ss  
COUNTY OF SUFFOLK                                  )

On this \_\_\_ day of \_\_\_\_\_, 2001, before me appeared \_\_\_\_\_ to me personally known, who, being by me duly sworn, did depose and say that he is the \_\_\_\_\_ of R.H. WYNER ASSOCIATES, INC., the corporation named in and which executed the foregoing instrument; that being duly authorized he did execute the foregoing instrument on behalf of the corporation therein named; and that the foregoing instrument is the free and authorized act and deed of said corporation.

Notary Public \_\_\_\_\_  
My commission expires:  
(Seal)

SCHEDULE 1

R.H. WYNER ASSOCIATES, INC.

TRADEMARKS

<u>Mark</u>	<u>Registration No.</u>	<u>Registration or Filing Date</u>	<u>Expiration Date</u>
-------------	-------------------------	--	----------------------------

EXHIBIT 2

NOTICE OF SECURITY INTEREST

(IN U.S. PATENTS)

WHEREAS, R.H. WYNER ASSOCIATES, INC. , a Massachusetts corporation (herein referred to as "Assignor"), owns the letters patent and/or applications for letters patent of the United States, more particularly described on Schedule 1 annexed hereto as part hereof (the "Patents");

WHEREAS, Assignor is obligated to CITIZENS BANK OF MASSACHUSETTS (herein referred to as "Assignee") pursuant to that certain Revolving Credit Agreement dated as of April 18, 1995 (as amended, the "Credit Agreement") and has entered into a Trademark, Patent and Copyright Security Agreement dated the date hereof (the "Agreement") with Assignee; and

WHEREAS, pursuant to the Agreement, Assignor has granted to Assignee a security interest in, and mortgage on, all right, title and interest of Assignor in and to the Patents, together with any reissue, continuation, continuation-in-part or extension thereof, and all proceeds thereof, including, without limitation, any and all causes of action which may exist by reason of infringement thereof for the full term of the Patents (the "Collateral"), to secure the prompt payment, performance and observance of all Obligations (as defined in the Credit Agreement), including, without limitation, any and all obligations and liabilities of the Assignor to the Assignee under the Credit Agreement and to the Assignee and State Street Bank and Trust Company under the IRB Letter of Credit and the Reimbursement Agreements (as defined in the Agreement), now or hereafter owing by the Assignor.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Assignor does hereby grant to Assignee a security interest in, and mortgage on,

the Collateral to secure the prompt payment, performance and observance of the Obligations now or hereafter owing by the Assignor.

Assignor does hereby further acknowledge and affirm that the rights and remedies of Assignee with respect to the security interest in, and mortgage on, the Collateral made and granted hereby are more fully set forth in the Agreement, the terms and provisions of which are hereby incorporated herein by reference as is fully set forth herein.

Assignee's address is 28 State Street, Boston, MA 02109.



SCHEDULE 1

R.H. WYNER ASSOCIATES, INC.

PATENTS

<u>Patent Number</u>	<u>Description</u>
5677048	Coated skived foam and fabric article containing energy absorbing phase change material
5950264	Bedding articles enclosed in elastic laminated waterproof moisture-permeable allergen barriers
4761324	Elastic, laminated, waterproof, moisture-permeable fabric
5507902	Multi-layered sheet
5955188	Skived foam article containing energy absorbing phase change material
5851338	Skived foam article containing energy absorbing phase change material
5874140	Sheet material with adhesive

EXHIBIT 3

NOTICE OF SECURITY INTEREST

(IN U.S. COPYRIGHTS)

WHEREAS, R.H. WYNER ASSOCIATES, INC., a Massachusetts corporation (herein referred to as "Assignor"), has adopted, used and is using the copyrights listed on the annexed Schedule 1, which copyrights are registered in the United States Copyright Office, or are applications pending in the United States Copyright Office (the "Copyrights");

WHEREAS, Assignor is obligated to CITIZENS BANK OF MASSACHUSETTS (herein referred to as "Assignee") pursuant to that certain Revolving Credit Agreement dated as of April 18, 1995 (as amended, the "Credit Agreement") and has entered into a Trademark, Patent and Copyright Security Agreement dated the date hereof (the "Agreement") with Assignee; and

WHEREAS, pursuant to the Agreement, Assignor has granted to Assignee a security interest in, and mortgage on, all right, title and interest of Assignor in and to the Copyrights and the applications and registrations thereof, and all proceeds thereof, including, without limitation, any and all causes of action which may exist by reason of infringement thereof for the full term of the Copyrights (the "Collateral"), to secure the prompt payment, performance and observance of all Obligations (as defined in the Credit Agreement), including, without limitation, any and all obligations and liabilities of the Assignor to the Assignee under the Credit Agreement to the Assignee and State Street Bank and Trust Company under the IRB Letter of Credit and the Reimbursement Agreements (as defined in the Agreement), now or hereafter owing by the Assignor.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, Assignor does hereby grant to Assignee a security interest in, and mortgage on,



the Collateral to secure the prompt payment, performance and observance of the Obligations now or hereafter owing by the Assignor.

Assignor does hereby further acknowledge and affirm that the rights and remedies of Assignee with respect to the grant of security interest in, and mortgage on, the Collateral made and granted hereby are more fully set forth in the Agreement, the terms and provisions of which are hereby incorporated herein by reference as if fully set forth herein.

Assignee's address is 28 State Street, Boston, MA 02109.



SCHEDULE 1

R. H. WYNER ASSOCIATES, INC.

COPYRIGHTS

Owner

Registration No.

Effective Date  
Of Registration