

10-12-2001

Form PTO-1595

(Rev. 03/01)

OMB No. 0651-0027 (exp. 5/31/2002)

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101872435...

U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

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

1. Name of conveying party(ies):

Biggs Manufacturing, Inc.

2. Name and address of receiving party(ies)

Name: Fleet Captial Corporation

Internal Address: _____

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:



Assignment



Merger



Security Agreement



Change of Name



Other _____

One South Wacker Drive, Suite
Street Address: 1400

City: Chicago State: IL Zip: 60606

Execution Date: June, 1, 2001

Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application number(s) or patent number(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)

5,959,263

Additional numbers attached? ☐ Yes ☒ No

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

Name: Tammy S. Settle

Vedder, Price, Kaufman &

Internal Address: Kammholz

Street Address: 222 North LaSalle Street, Ste. 2600

City: Chicago State: IL Zip: 60601

6. Total number of applications and patents involved: 1

7. Total fee (37 CFR 3.41).....\$ 40.00

☒ Enclosed☐ Authorized to be charged to deposit accountCharge any deficiencies or credit any overpayment to:
8. Deposit account number:

22-0259

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

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.

Tammy S. Settle

Name of Person Signing

Signature

October 10, 2001

Date

10/12/2001 DRYRNF 00000177 5959263 Total number of pages including cover sheet, attachments, and documents: 12

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents & Trademarks, Box Assignments
Washington, D.C. 20231

01 FC:581

40.00 DP

PATENT
REEL: 012219 FRAME: 0917

PATENT AND LICENSE SECURITY AGREEMENT

PATENT AND LICENSE SECURITY AGREEMENT ("Agreement") dated as of June 1, 2001, made by Biggs Manufacturing, Inc., an Arizona corporation having its chief executive office at 2605 West First Street, Tempe, Arizona 85281 ("Pledgor") and FLEET CAPITAL CORPORATION, a Rhode Island corporation ("FCC"), as agent (FCC, in such capacity, being "Agent") for Lenders (as hereinafter defined)

W I T N E S S E T H:

WHEREAS, Pledgor has entered into that certain Loan and Security Agreement dated as of December 29, 2000 (as the same may hereafter be amended or otherwise modified from time to time, the "Loan Agreement"), by and among the Pledgor, Holley Performance Products, Inc., a Delaware corporation, Holley Performance Systems, Inc., a Delaware corporation, Weiland Automotive Industries, Inc., a California corporation, Lunati Cams, Inc., a Tennessee corporation, Lunati & Taylor Pistons, Incorporated, a Mississippi corporation, LMT Motor Sports Corporation, a Mississippi corporation, Nitrous Oxide Systems, Inc., a California corporation, Earl's Supply Company, a California corporation, and Hooker Industries, Inc., a California corporation (collectively the "Borrowers"), the lenders who are signatories thereto ("Lenders") and Agent, pursuant to which Lenders have, subject to certain conditions precedent, agreed to make loans, advances and other financial accommodations (collectively, the "Loans") to Borrowers; and

WHEREAS, Lenders have required as a condition, among others, to the making of the Loans to Borrowers, in order to secure the prompt and complete payment, observance and performance of all of Borrowers' obligations and liabilities under the Loan Agreement, and under all of the other instruments, documents and agreements executed and delivered by Borrowers to Agent, for itself and the ratable benefit of Lenders, in connection with the Loan Agreement (all such obligations and liabilities being hereinafter referred to collectively as the "Obligations"), that Pledgor execute and deliver this Agreement to Agent, for itself and the ratable benefit of Lenders;

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

1. Defined Terms.

(i) Unless otherwise defined herein, the capitalized terms used herein which are defined in the Loan Agreement shall have the meanings specified in the Loan Agreement.

(ii) The words "hereof", "herein", and "hereunder" and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section and schedule references are to this Agreement unless otherwise specified.

(iii) All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural, and vice versa unless otherwise specified.

2. Security Interest in Patents. To secure the complete and timely payment, performance and satisfaction of all of the Obligations, Pledgor hereby grants to Agent, for itself and the ratable benefit of Lenders, a first priority security interest, having priority over all other security interests, with power of sale to the extent permitted by applicable law, exercisable after and during the occurrence of an Event of Default, all of Pledgor's now owned or existing and filed and hereafter acquired or arising and filed:

(i) patents and patent applications, and the inventions and improvements described and claimed therein, including, without limitation, those patents and patent applications listed on Schedule A, and (a) the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing patents and applications, together with the items described in the foregoing clauses (a)-(d), being sometimes hereinafter individually and/or collectively referred to as the "Patents"); and

(ii) license agreements with any other party in connection with any Patents or such other party's patents or patent applications, whether Pledgor is a licensor or licensee under any such license agreement, including, but not limited to, the license agreements listed on Schedule B, and the right upon the occurrence and during the continuance of an Event of Default to use the foregoing in connection with the enforcement of Agent's rights, for itself and the ratable benefit of Lenders, under the Loan Agreement (all of the foregoing being hereinafter referred to collectively as the "Licenses"). Notwithstanding the foregoing provisions of this Section 2, the Licenses shall not include any license agreement which by its terms prohibits the grant of the security interest contemplated by this Agreement or which requires the consent to such grant of a party other than Pledgor, which consent has not been obtained; provided that Pledgor uses commercially reasonable efforts to obtain such consent.

3. Restrictions on Future Agreements. Except as permitted under the terms of the Loan Agreement or when failure to do so would not have a Material Adverse Effect, Pledgor will not, without Agent's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent in any material respect with this Agreement, and Pledgor further agrees that it will not take any action, and will use its reasonable efforts not to permit any action to be taken by others subject to its control, including licensees, or fail to take any action,

which would in any material respect adversely affect the validity or enforcement of the rights transferred to Agent, for itself and the ratable benefit of Lenders under this Agreement or the rights associated with those Patents, in each case which are necessary or desirable in the operation of Pledgor's business.

4. New Patents. Pledgor represents and warrants that the Patents and Licenses listed on Schedules A and B, respectively, include all of the patents, patent applications and license agreements in connection with patents or patent applications now owned or held by Pledgor. If, prior to the termination of this Agreement, Pledgor shall (i) obtain rights to any new patentable inventions or license agreements in connection with patents or patent applications or (ii) become entitled to the benefit of any patent, patent application or patent for any reissue, division, continuation, renewal, extension or continuation-in-part of any Patent or any improvement on any Patent, and, in Pledgor's sole and absolute judgment, a filing should be made in the Patent and Trademark Office, then in respect to such Property the provisions of Section 2 shall automatically apply thereto and Pledgor shall give to Agent prompt written notice thereof. Pledgor hereby authorizes Agent to modify this Agreement by (a) amending Schedules A or B, as the case may be, to include any future patents, patent applications and license agreements in connection with patents and patent applications that are Patents or Licenses under Section 2 or under this Section 4, and (b) filing in the Patent and Trademark Office, in addition to and not in substitution for, this Agreement, a duplicate original of this Agreement containing on Schedules A or B thereto, as the case may be, such future patents, patent applications and license agreements which are Patents or Licenses, as the case may be, under Section 2 or this Section 4.

5. Royalties. Pledgor hereby agrees that the use by Agent, for itself and the ratable benefit of Lenders, of the Patents and Licenses as authorized hereunder shall be coextensive with Pledgor's rights thereunder and with respect thereto and without any liability for royalties or other related charges from Agent to Pledgor.

6. Nature and Continuation of Agent's Security Interest. This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Patents and the Licenses and shall remain in full force and effect until the Obligations have been paid in full and the Loan Agreement terminated. At such time the rights granted to Agent, for itself and the ratable benefit of Lenders, hereunder shall also terminate.

7. Right to Inspect; Further Assignments and Security Interests. Agent, for itself and the ratable benefit of Lenders, shall have the right, at any reasonable time and from time to time, to inspect Pledgor's premises and to examine Pledgor's books, records and operations relating to the patents; provided, that in conducting such inspections and examinations, Agent shall use its best efforts not to disturb unnecessarily the conduct of Pledgor's ordinary business operations. Pledgor agrees not to sell or assign its respective interests in, or grant any license under, the Patents without the prior written consent of Agent, which consent shall not be unreasonably withheld, delayed or conditioned.

8. Duties of Pledgor. Pledgor shall have the duty to the extent desirable in the normal conduct of Pledgor's business and consistent with Pledgor's current business practices: (i) to prosecute diligently any patent application that is part of the Patents pending as of the date hereof or thereafter until the termination of this Agreement; (ii) to make application on such unpatented but patentable inventions as Pledgor deems appropriate; and (iii) to take reasonable steps to preserve and maintain all of Pledgor's rights in the patent applications and patents that are part of the Patents. Any expenses incurred in connection with the foregoing shall be borne by Pledgor. Pledgor shall not abandon any right to file a patent application or any pending patent application or patent which is or shall be necessary or economically desirable in the operation of Pledgor's business. To the extent that it is commercially reasonable, Pledgor agrees to retain an experienced patent attorney reasonably acceptable to Agent for the filing and prosecution of all such applications and other proceedings. Agent shall not have any duty with respect to the Patents and Licenses. Without limiting the generality of the foregoing, Agent shall not be under any obligation to take any steps necessary to preserve rights in the Patents or Licenses against any other parties, but may do so at its option during the continuance of an Event of Default, and all expenses incurred in connection therewith shall be for the sole account of Pledgor and added to the Obligations secured thereby.

9. Pledgor's Right to Sue. From and during the occurrence and during the continuance of an Event of Default, and subject to the terms of the Loan Agreement, Agent, for itself and the ratable benefit of Lenders, shall have the right, but shall not be obligated, to bring suit to enforce the Patents and the Licenses, and, if Agent shall commence any such suit, Pledgor shall, at the request of Agent, do any and all lawful acts and execute any and all proper documents required by Agent in aid of such enforcement. Pledgor shall, upon demand, promptly reimburse and indemnify Agent for all costs and reasonable expenses incurred by Agent in the exercise of its rights under this Section 9 (including, without limitation, all attorneys' and paralegals' fees). If, for any reason whatsoever, Agent is not reimbursed with respect to the costs and expenses referred to in the preceding sentence, such costs and expenses shall be added to the Obligations secured hereby.

10. Waivers. No course of dealing between Pledgor and Agent, and no failure to exercise or delay in exercising on the part of Agent any right, power or privilege hereunder or under the Loan Agreement shall operate as a waiver or any of Agent's or Lenders' rights, powers or privileges. No single or partial exercise of any right, power or privilege hereunder or under the Loan Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

11. Agent's Exercise of Rights and Remedies Upon Default. Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence and during the continuance of an Event of Default, Agent may exercise any of the rights and remedies provided in this Agreement, the Loan Agreement, or any other agreement executed in connection therewith. Without limiting the generality of the foregoing, Pledgor acknowledges and agrees that (i) the Patents and Licenses comprise a portion of the Collateral and Agent, for itself and the ratable benefit of Lenders, shall have the right to exercise its rights and the rights of Lenders under the Loan Agreement with respect to the Patents and Licenses to the same extent as with respect to all other items of Collateral described therein, and (ii) during the continuance of an Event of Default, Agent

or its nominee may use the Patents and Licenses in connection with the conduct of Pledgor's business.

12. Severability. 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.

13. Modification. This Agreement cannot be altered, amended or modified in any way, except as specifically provided in Section 4 hereof or by a writing signed by the parties hereto.

14. Cumulative Remedies; Power of Attorney. All of Agent's rights and remedies, for itself and the ratable benefit of Lenders, with respect to the Patents and the Licenses, whether established hereby, by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently. Pledgor hereby irrevocably appoints Agent as Pledgor's attorney-in-fact, with full authority in the place and stead of Pledgor and in the name of Pledgor or otherwise exercisable during an Event of Default to carry out the acts described below. Subject to the terms of the Loan Agreement and except as prohibited by any contractual provisions other than such as may have been entered into for the purpose of evading such section, upon the occurrence and during the continuance of an Event of Default, Pledgor hereby authorizes Agent to, in its sole discretion, (i) endorse Pledgor's name on all applications, documents, papers and instruments necessary or desirable for Agent in the use of the Patents and the Licenses, (ii) take any other actions with respect to the Patents and the Licenses as Agent deems is in the best interest of Agent, for itself and the ratable benefit of Lenders, (iii) grant or issue any exclusive or non-exclusive license with respect to the Patents to anyone on commercially reasonable terms, and (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Patents and the Licenses to anyone on commercially reasonable terms. Pledgor hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until this Agreement shall have been terminated pursuant to Section 6. Pledgor acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of Agent or Lenders under the Loan Agreement, but rather is intended to facilitate the exercise of such rights and remedies. Agent, for itself and the ratable benefit of Lenders, shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Patents may be located or deemed located.

15. Binding Effect; Benefits. This Agreement shall be binding upon Pledgor and its successors and assigns, and shall inure to the benefit of Agent and Lenders, and their respective nominees, successors and assigns. Pledgor's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession of or for Pledgor; provided, however, that Pledgor shall not voluntarily assign its obligations hereunder without the prior written consent of Agent.

16. Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws (as distinguished from the conflicts of law provisions) and decisions of the State of Illinois.

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

18. Section Headings. The section headings herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.


19. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

20. Right of Recordal of Security Interest. Agent shall have the right, but not the obligation, at the expense of Pledgor, to record this Agreement in the United States Patent Office and with such other recording authorities deemed reasonable and proper by Agent, and Agent shall advise Pledgor of such recordals. Upon satisfaction in full of the Obligations and termination of the Loan Agreement, Pledgor shall have the right to effect recordal of such satisfaction or termination at the expense of Pledgor in the United States Patent Office and with such other recording authorities deemed reasonable and proper by Pledgor. Agent and Pledgor shall cooperate to effect all such recordals hereunder.

[SIGNATURE PAGE FOLLOWS]


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

BIGGS MANUFACTURING, INC.,
an Arizona corporation

By: 
Name: A. B. Reynolds
Title: VP & CO

Accepted and agreed to as of this 19 day of
June, 2001

FLEET CAPITAL CORPORATION,
a Rhode Island corporation, as Agent

By: 
Name: Edward M. Bartholomew
Title: SVP

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

The foregoing Patent and License Security Agreement was executed and acknowledged before me this 12th day of June, 2001, by Bruce Reynolds, personally known to me to be the VP / CFO of Biggs Manufacturing, Inc., an Arizona corporation, on behalf of such corporation.

(SEAL)

Debra B. Varner
Notary Public
My commission expires 5-14-2004

SCHEDULE A
to Patent and License Security Agreement

Patents

(Biggs Manufacturing, Inc.

Title:	Bypass Muffler
Application No.:	074350
File Date:	05/07/98
Patent No.:	5959263
Issue Date:	09/28/99

VPCHI01/#772194.1

SCHEDULE B
to Patent and License Security Agreement

Licenses

None

6 2

VPCHI01/#772194.1

PATENT
REEL: 012219 FRAME: 0927

VEDDER PRICE

VEDDER, PRICE, KAUFMAN & KAMMHOLZ

222 NORTH LASALLE STREET

CHICAGO, ILLINOIS 60601

312-609-7500

FACSIMILE: 312-609-5005

A PARTNERSHIP INCLUDING VEDDER, PRICE, KAUFMAN & KAMMHOLZ, P.C.

WITH OFFICES IN CHICAGO, NEW YORK CITY, AND LIVINGSTON, NEW JERSEY

October 10, 2001

VIA FEDERAL EXPRESS

Assistant Commissioner of Patents & Trademarks
Office of Public Records
1213 Jefferson Davis Highway, Third Floor
Arlington, Virginia 22202
Attn: Customer Service Counter

Re: Patent and License Security Agreement
Reference No. 02795.00.0116

Dear Sir:

Attached please find the Patent and License Security Agreement between Biggs Manufacturing, Inc. and Fleet Capital Corporation for recordation in the Assignment Branch of the United States Patent and Trademark Office along with a check in the amount of \$40.00 for the required filing fee.

Any additional fees should be charged to our Deposit Account No. 22-0259.

Please direct all correspondence regarding this matter to:

Tammy S. Settle
Vedder, Price, Kaufman & Kammholz
North LaSalle Street
Chicago, Illinois 60601
(312) 609-7838

Respectfully submitted,

Tammy S. Settle
Tammy S. Settle
Legal Assistant

RECORDED
2001 OCT 12 AM 11:21
ASSIGNMENT SERVICES
DIVISION

Enclosures

VEDDER PRICE

VEDDER, PRICE, KAUFMAN & KAMMHOLZ

222 NORTH LASALLE STREET

CHICAGO, ILLINOIS 60601

312-609-7500

FACSIMILE: 312-609-5005

A PARTNERSHIP INCLUDING VEDDER, PRICE, KAUFMAN & KAMMHOLZ, P.C.

WITH OFFICES IN CHICAGO, NEW YORK CITY, AND LIVINGSTON, NEW JERSEY

October 10, 2001

VIA FEDERAL EXPRESS

Assistant Commissioner of Patents & Trademarks
Office of Public Records
1213 Jefferson Davis Highway, Third Floor
Arlington, Virginia 22202
Attn: Customer Service Counter

Re: Patent and License Security Agreement
Reference No. 02795.00.0116

Dear Sir:

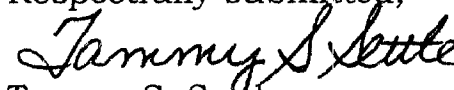
Attached please find the Patent and License Security Agreement between Biggs Manufacturing, Inc. and Fleet Capital Corporation for recordation in the Assignment Branch of the United States Patent and Trademark Office along with a check in the amount of \$40.00 for the required filing fee.

Any additional fees should be charged to our Deposit Account No. 22-0259.

Please direct all correspondence regarding this matter to:

Tammy S. Settle
Vedder, Price, Kaufman & Kammholz
North LaSalle Street
Chicago, Illinois 60601
(312) 609-7838

Respectfully submitted,


Tammy S. Settle
Legal Assistant

Enclosures