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RECORDATION FORM COVER SHEET

## PATENTS ONLY

Form PTO-1595

(Rev. 03/01)

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

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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):

CPE Acquisition Co.  
8822 Apison Pike  
Ooltewah, TN 37363

08.08.02

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

Name: Fleet Capital Corporation,  
as Agent

Internal Address: (as assignee of

Fleet National Bank)

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

## 3. Nature of conveyance:

☐ Assignment☐ Merger☒ Security Agreement☐ Change of Name☐ Other

Street Address: One Federal Street

City: Boston State: MA Zip: 02110

Execution Date: February 29, 2000

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) 09/260,977

B. Patent No.(s) \_\_\_\_\_

Additional numbers attached? ☐ Yes ☒ No

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

Name: Michael Hill

Brown Rudnick

Internal Address: Berlack Israels LLP

Street Address: One Financial Center

City: Boston State: MA Zip: 02110

## 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 account

## 8. Deposit account number:

DO NOT USE THIS SPACE

## 9. Signature.

Michael Hill

Name of Person Signing

Michael Hill

Signature

8/2/02

Date

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

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PATENT  
REEL: 013168 FRAME: 0348

## PATENT COLLATERAL AGREEMENT

This PATENT COLLATERAL AGREEMENT (this "Agreement") dated as of February 29<sup>th</sup>, 2000 is by and between CPE Acquisition Co., a Delaware corporation having its principal place of business at 8822 Apison Pike, Ooltewah, TN 37363 (the "Company"), and Fleet National Bank, as agent ("Secured Party") for itself and the other lenders (the "Lenders") identified in the Loan and Security Agreement dated the date hereof (the "Loan Agreement") among the Secured Party, the Lenders, the Company and certain affiliates thereof as co-borrowers.

### Preliminary Statement

Pursuant to the Loan Agreement; capitalized terms used but not defined herein shall have the meanings ascribed to them in the Loan Agreement, the Agent and Lenders have agreed to make Loans and otherwise extend credit to the Company for the purposes described therein, and the Company has granted to the Secured Party a security interest in all of the Company's general intangibles and other personal property assets, including without limitation the patent and patent applications listed on Schedule 1 attached hereto, all to secure the payment and performance of the Obligations. This Agreement is supplemental to the provisions contained in the Loan Agreement.

NOW, THEREFORE, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

§1. To secure the payment and performance in full of all Obligations, the Company hereby grants, assigns, transfers and conveys to the Secured Party, BY WAY OF COLLATERAL SECURITY, the Company's right, title and interest in and to the patent applications and patents listed in Schedule 1 hereto (as the same may be amended pursuant hereto from time to time), including without limitation the right (but not the obligation) to sue and recover for past, present and future infringements in the name of the Company or (in the sole discretion of the Secured Party) the Secured Party, the right (but not the obligation) to prosecute applications for patents, all rights (but not obligations) corresponding thereto throughout the world, all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, all rights and interests pursuant to licensing or other agreements in favor of the Company pertaining to patent applications and patents now or in the future owned or used by third parties, and all proceeds of any of the foregoing (such as, by way of example, license royalties and proceeds of infringement suits) (collectively called the "Patents"). THE SECURED PARTY ASSUMES NO LIABILITY ARISING IN ANY WAY BY REASON OF ITS HOLDING SUCH COLLATERAL SECURITY EXCEPT FOR ITS GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT.

§2. The Company represents, warrants and covenants that, except as set forth on Schedule 2:

- (a) Schedule 1 sets forth a true and complete list of all rights to patents and patent applications now owned, licensed, controlled or used by the Company;
- (b) The issued Patents are subsisting and have not been adjudged invalid or unenforceable, in whole or in part, and there is no litigation or proceeding pending concerning the validity or enforceability of the issued Patents;
- (c) To the best of the Company's knowledge, each of the issued Patents is valid and enforceable;
- (d) To the best of the Company's knowledge, there is no infringement by others of the issued Patents;
- (e) No claim has been made that the use of any of the Patents does or may violate the rights of any third person, and to the best of the Company's knowledge there is no infringement by the Company of the patent rights of others;
- (f) The Company is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Patents (other than ownership and other rights reserved by third party owners with respect to Patents which the Company is licensed to practice or use), free and clear of any liens, charges, encumbrances and adverse claims, including without limitation pledges, assignments, licenses, shop rights and covenants by the Company not to sue third persons, other than the security interest and mortgage created by the Loan Agreement and this Agreement;
- (g) The Company has the unqualified right to enter into this Agreement and perform its terms and has entered and will enter into written agreements with each of its present and future employees, agents, consultants, licensors and licensees to the extent necessary to comply with the covenants herein contained;
- (h) This Agreement will create in favor of the Secured Party a valid and perfected first priority security interest in the Patents upon making the filings referred to in subsection (i) below; and
- (i) Except for the filing of financing statements under the Uniform Commercial Code (previously filed in connection with the execution and delivery of the Loan Agreement) and the filing with the PTO (as defined and referred to below), no authorization, approval or other action by, and no notice to or filing with, any governmental or regulatory authority, agency or office is required either (x) for the grant by the Company or the effectiveness of the security interest and assignment granted hereby or for the execution, delivery and performance of this Agreement by the Company, or (y) for the perfection of or the exercise by the Secured Party of any of its rights and remedies hereunder. The Company acknowledges that an executed counterpart of this Agreement will also be

recorded by the Secured Party with the U.S. Patent and Trademark Office (the "PTO").

§3. The Company will not enter into any agreement that would violate or cause the Company to violate the terms of this Agreement or constitute a default under the Loan Documents.

§4. If, before the Obligations shall have been finally paid and satisfied in full, the Company shall obtain any right, title or interest in or to any other or new patents, patent applications or patentable inventions, or become entitled to the benefit of any patent application or patent for any reissue, division, continuation, renewal, extension, or continuation-in-part of any Patent or any improvement on any Patent, the provisions of this Agreement shall automatically apply thereto and the Company shall promptly give to the Secured Party notice thereof in writing and execute and deliver to the Secured Party such documents or instruments as the Secured Party may reasonably request further to transfer title thereto to the Secured Party as collateral security.

§5. With notice thereof to the Company, the Company authorizes the Secured Party to modify this Agreement, without the necessity of the Company's further approval or signature, by amending Schedule 1 to include any future patents and patent applications which are Patents under §1 or §4 hereof.

§6. The Company shall assume full and complete responsibility for the prosecution, grant, enforcement or any other necessary or desirable actions in connection with the Patents, in the Company's reasonable business judgment and shall hold the Secured Party harmless from any and all costs, damages, liabilities and expenses which may be incurred by the Secured Party as a result of or in connection with its title to the Patents or any other action or failure to act in connection with this Agreement or the transactions contemplated thereby, except for the Secured Party's gross negligence and intentional misconduct.

§7. The Company shall, in the exercise of its reasonable business judgment, prosecute diligently any patent applications of the Patents pending as of the date of this Agreement or thereafter, to make application for unpatented but reasonably patentable inventions and preserve and maintain all rights in the Patents, including without limitation the payment when due of all maintenance fees and other fees, taxes and other expenses which shall be incurred or which shall accrue with respect to any of the Patents. Any expenses incurred in connection with such applications and actions shall be borne by the Company. The Secured Party hereby appoints the Company as its agent for all matters referred to in the foregoing provisions of this §7 and agrees to execute any documents necessary to confirm such appointment. Upon the occurrence of an Event of Default, the Secured Party may terminate such agency by providing written notice of termination to the Company.

§8. The Company shall have the right to bring suit or other action in the Company's own name to enforce the Patents and any licenses thereof. The Secured Party shall be required to join in such suit or action as may be necessary to assure the Company's ability to bring and maintain any such suit or action in any proper forum so long as the Secured Party is satisfied that

such joinder will not subject the Secured Party to any risk of liability for which it would not be indemnified in full. The Company shall promptly, upon demand, reimburse and indemnify the Secured Party for all damages, costs and expenses, including legal fees, incurred by the Secured Party pursuant to this §8.

§9. In general, the Company shall take any and all such actions (including but not limited to institution and maintenance of suits, proceedings or actions) as may be necessary or appropriate in the Company's reasonable business judgment to properly maintain, protect, preserve, care for and enforce the Patents. The Company shall not take or fail to take any reasonable action, nor permit any reasonable action to be taken or not taken by others under its control, which would materially affect the validity, grant or enforcement of the Patents.

§10. Promptly upon obtaining knowledge thereof, the Company will notify the Secured Party in writing of the institution of, or and final adverse determination in, any proceeding in the PTO or any similar office or agency of the United States or any foreign country, or any court, regarding the validity of any of the patents or the Company's rights, title or interests in and to the Patents, and of any event which does or reasonably could materially adversely affect the value of any of the Patents, the ability of the Company or the Secured Party to dispose of any of the Patents or the rights and remedies of the Secured Party in relation thereto (including but not limited to the levy of any legal process against any of the Patents).

§11. Except as otherwise permitted herein or in the Loan Agreement, without the Secured Party's prior written approval, which shall not be unreasonably withheld, the Company shall not mortgage, pledge, assign, encumber, grant a security interest in, transfer, license or alienate any of the Patents.

§12. Unless and until there shall have occurred and be continuing an Event of Default and the Secured Party has notified the Company that the license granted hereunder is terminated, the Secured Party hereby grants to the Company the sole and exclusive, nontransferable, royalty-free, worldwide right and license under the Patents to make, have made for it, use, sell and otherwise practice the inventions disclosed and claimed in the Patents for the Company's own benefit and account and for none other; provided, however, that the foregoing right and license shall be no greater in scope than, and limited by, the rights assigned to the Secured Party by the Company hereby.

§13. If any Event of Default shall have occurred and be continuing, then upon notice by the Secured Party to the Company: the Company's license with respect to the Patents as set forth in shall terminate; the Company shall immediately cease and desist from the practice, manufacture, use and sale of the inventions claimed, disclosed or covered by the Patents; and the Secured Party shall have, in addition to all other rights and remedies given it by this Agreement, the Agreement and the other Loan Documents, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in Massachusetts and without limiting the generality of the foregoing, the Secured Party may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to the Company, all of which are hereby expressly waived, and without advertisement, sell or

license at public or private sale or otherwise in a commercially reasonable manner realize upon the whole or from time to time any part of the Patents, or any interest which the Company may have therein, and after deducting from the proceeds of sale or other disposition of the Patents all expenses (including all reasonable expenses for broker's fees and legal services), shall apply the residue of such proceeds toward the payment of the Obligations as set forth in §14. Notice of any sale, license or other disposition of the Patents shall be given to the Company at least ten (10) days before the time that and intended public sale or other disposition of the Patents is to be made or after which any private sale or other disposition of any of the Patents may be made, which the Company hereby agrees shall be reasonable notice of such public or private sale or other disposition. At any such sale or disposition, the Secured Party may, to the extent permitted under applicable law, purchase or license the whole or any part of the Patents or interests therein sold or licensed.

§14. The costs, fees and expenses of the Secured Party in preserving or enforcing its rights hereunder and all other claims hereunder of the Secured Party to reimbursement and indemnification from the Company shall constitute a just claim on the Patents and be entitled to priority over all other Obligations in respect of all distributions of any proceeds of collection, sale, license or other disposition of any portion of the Patents. Except as otherwise provided in this §14, the Secured Party shall apply the residue of any proceeds of collection, sale, license or other disposition of the Patents pursuant to the provisions of the Loan Agreement with any excess to be paid over to the Company.

§15. If any Event of Default shall have occurred and be continuing, the Company hereby authorizes and empowers the Secured Party to make, constitute and appoint the Secured Party (and any officer or agent of the Secured Party as the Secured Party may select in its exclusive discretion) as the Company's true and lawful attorney-in-fact, with the power to endorse the Company's name on all applications, documents, papers and instruments necessary for the Secured Party to use the Patents, to practice, make, use or sell the inventions disclosed or claimed in the Patents, to grant or issue any exclusive or nonexclusive license under the Patents to any third person, or necessary for the Secured Party to assign, pledge, convey or otherwise transfer title in or dispose of the Patents or any part thereof or interest therein to any third person (all to the extent legally or contractually permitted), and, in general, to execute and deliver any instruments or documents and do all other acts which the Company is obligated to execute and do hereunder. The Company hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof, and releases the Secured Party from any claims, liabilities, causes of action or demands arising out of or in connection with any action taken or omitted to be taken by the Secured Party under this power of attorney (except for the Secured Party's gross negligence or willful misconduct). This power of attorney shall be irrevocable for the duration of this Agreement.

§16. At such time as the Loan Agreement is terminated in accordance with the terms thereof and all of the Obligations have been finally paid and satisfied in full, this Agreement shall terminate and the Secured Party shall upon the written request of the Company and at the Company's expense, execute and deliver to the Company all deeds, assignments and other instruments as may be necessary or proper to reassign and reconvey to and re-vest in the

Company the entire right, title and interest to the Patents previously granted, assigned, transferred and conveyed to the Secured Party by the Company pursuant to this Agreement, as fully as if this Assignment had not been made, subject to any transactions or developments in or relating to the Patents during the term hereof and to any disposition of all or any part thereof which may have been made by the Secured Party pursuant hereto or the Loan Agreement.

§17. Any and all fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by the Secured Party in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of the transactions contemplated hereby, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, reasonable counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving the Patents, or in defending or prosecuting any actions or proceedings arising out of or related to the Patents, shall be borne and paid by the Company on demand by the Secured Party.

§18. In general, the Company shall, at any time and from time to time, and at its expense, make, execute, acknowledge and deliver, and file and record as necessary or appropriate with governmental or regulatory authorities, agencies or offices, such agreements, assignments, documents and instruments, and do such other and further acts and things, as the Secured Party may reasonably request or as may be reasonably necessary or appropriate in order to implement and effect fully the intentions, purposes and provisions of this Agreement, or to assure and confirm to the Secured Party the grant and perfection of a security interest in the Patents.

§19. If the Company shall fail to do any material act which it has covenanted to do hereunder, or if any representation or warranty of the Company shall be materially breached, the Secured Party, in its own name or that of the Company (in the sole discretion of the Secured Party), may (but shall not be obligated to) do such act or remedy such breach (or cause such act to be done or such breach to be remedied), and any cost or expense incurred by the Secured Party in so doing shall be added to the principal amount of the Obligations and shall bear interest at the Default Rate set forth in the Loan Agreement. The Company shall cooperate with the Secured Party in any such act or remedy.

§20. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE SECURED PARTY ASSUMES NO LIABILITIES OF THE COMPANY WITH RESPECT TO ANY CLAIM OR CLAIMS REGARDING THE COMPANY'S OWNERSHIP OR PURPORTED OWNERSHIP OF, OR RIGHTS OR PURPORTED RIGHTS ARISING FROM, THE PATENTS OR ANY PRACTICE, USE, LICENSE OR SUBLICENSE THEREOF, OR ANY PRACTICE, MANUFACTURE, USE OR SALE OF ANY OF THE INVENTIONS DISCLOSED OR CLAIMED THEREIN, WHETHER ARISING OUT OF ANY PAST, CURRENT OR FUTURE EVENT, CIRCUMSTANCE, ACT OR OMISSION OR OTHERWISE ALL OF SUCH LIABILITIES SHALL BE EXCLUSIVELY BORNE BY THE COMPANY.

§21. No course of dealing between the Company and the Secured Party, nor any failure to exercise, nor any delay in exercising, on the part of the Secured Party, any right, power or

privilege hereunder or under the Loan Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or future exercise thereof or the exercise of any other right, power or privilege.

§22. All of the Secured Party's rights and remedies with respect to Patents, whether established hereby or by the Loan Agreement or by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently. This Agreement is supplemental to the Loan Agreement, and nothing contained herein shall in any way derogate from any of the rights or remedies of the Secured Party contained therein. Nothing contained in this Agreement shall be deemed to extend the time of attachment or perfection of or otherwise impair the security interest in the Patents granted to the Secured Party under the Loan Agreement.

§23. 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 clause or provision of this Agreement in any jurisdiction.

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

§25. 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, provided that the Company may not assign its rights and obligations hereunder without the prior consent of the Secured Party.

§26. THE VALIDITY AND INTERPRETATION OF THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE COMMONWEALTH OF MASSACHUSETTS (WITHOUT REFERENCE TO CONFLICTS OF LAWS OR PRINCIPLES). THIS AGREEMENT IS INTENDED TO TAKE EFFECT AS A SEALED INSTRUMENT.

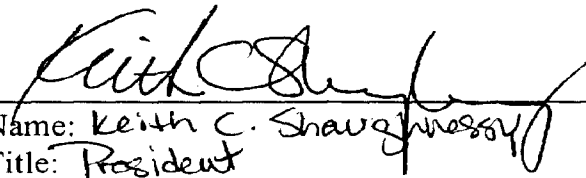
§27. This Agreement and any amendment hereof may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original, and all of which together shall constitute one instrument.

§28. Any notice given hereunder shall be deemed duly given if given to the parties and in the manner provided in §14.9 of the Loan Agreement.

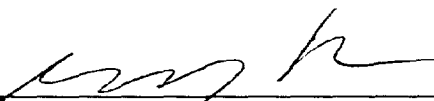


IN WITNESS WHEREOF, this Agreement has been executed as of the date first above written.

CPE ACQUISITION CO.

By:   
Name: Keith C. Shaughnessy  
Title: President

FLEET NATIONAL BANK, AS AGENT

By:   
Name: Gregory A. Kress  
Title: Assistant Vice President

CERTIFICATE OF ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS )

SS

, COUNTY OF Suffolk )

Before me, the undersigned, a Notary Public in and for the county aforesaid, on this 29th day of February, 2000, personally appeared Kerth C. Shaughnessy to me known personally, and who, being by me duly sworn, deposes and says that he is the President of CPE Acquisition Co. and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said President acknowledged said instrument to be the free act and deed of said corporation.

Jane R. Henderson  
Notary Public  
My commission expires: 7/9/04

CERTIFICATE OF ACKNOWLEDGEMENT

COMMONWEALTH OF MASSACHUSETTS )

SS

COUNTY OF Suffolk )

Before me, the undersigned, a Notary Public in and for the county aforesaid, on this 29th day of February, 2000, personally appeared Gregory A. Kress to me known personally, and who, being by me duly sworn, deposes and says that he is a Assistant Vice President of Fleet National Bank and that said instrument was signed on behalf of said corporation by authority of its Board of Directors, and said Gregory A. Kress acknowledged said instrument to be the free act and deed of said corporation.

Marjorie S. Spiel

Notary Public

My commission expires:

**MARJORIE S. SPIEL**  
**NOTARY PUBLIC**

\*My Commission Expires Sept. 20, 2002

Schedule 1

Patents

<u>Nature of Interest</u> (e.g. owner, licensee)	<u>Registered Patent No.</u>	<u>Issue Date</u>	<u>Country</u>
Excavator Coupling	09/260,977	3/3/99 (Pending)	United States

Patent Applications

<u>Nature of Interest</u>	<u>Serial Number</u>	<u>Filing Date</u>	<u>Country</u>
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