

8-19-2002

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Form PTO-1595
(Rev. 03/01)

RE

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

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

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

1. Name of conveying party(ies):

Pelstar, LLC

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

3. Nature of conveyance:

☐

Assignment

☐

Merger

☒

Security Agreement

☐

Change of Name

☐

Other _____

Execution Date: 01-31-02

2. Name and address of receiving party(ies)

Name: Rocky Mountain Mezzanine Fund II, L.P.

Internal Address: _____

Street Address: 1125 Seventeenth Street

City: Denver State: CO Zip: 80202

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) 09/835,247;
29/140,451B. Patent No.(s) D300,124; D300,517
D331,372; 5,050,694; 5,097,915Additional numbers attached? ☒ Yes ☐ No

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

Name: George M. Borababy, Esq.

Internal Address: _____

Street Address: Patton Boggs LLP

2550 M Street, N.W.

City: Washington State: DC Zip: 20037

6. Total number of applications and patents involved: 13

7. Total fee (37 CFR 3.41).....\$ 520.00

☒

Enclosed

☒

Authorized to be charged to deposit account

8. Deposit account number:

500-709

DO NOT USE THIS SPACE

9. Signature.

George M. Borababy

Name of Person Signing

Signature

8/8/02

Date

Total number of pages including cover sheet, attachments, and documents: 10

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patents & Trademarks, Box Assignments
Washington, D.C. 20231

08/19/2002 6TOM11

00000189 09835247

520.00 DP

01 FC:581

PATENT
REEL: 013193 FRAME: 0069

**RECORDATION FORM COVER SHEET
PATENTS ONLY**

. Continuation of Patent Numbers:

- D313,565
- D307,873
- 4,724,914
- D314,351
- 4,650,015
- D305,993

PATENT SECURITY AGREEMENT

THIS PATENT SECURITY AGREEMENT is dated as of January 31, 2002 (this "**Agreement**"), is between PELSTAR, LLC., an Illinois limited liability company (herein, together with its successors and assigns, called the "**Company**"), and ROCKY MOUNTAIN MEZZANINE FUND II, L.P., a Colorado limited partnership (herein, together with its successors and assigns, called the "**Purchaser**").

RECITALS

WHEREAS Company and Purchaser are, contemporaneously herewith, entering into that certain Note and Security Agreement ("Note Agreement") and other instruments, documents and agreements contemplated thereby or related thereto (collectively, together with the Note Agreement, the "Financing Documents"); and

WHEREAS, to secure the repayment of all amounts under the Note Agreement, the Company has granted to the Purchaser a valid security interest in and to all of its now existing and hereafter acquired general intangibles, including, without limitation, all of its now existing and hereafter arising trade secrets, patents and patent applications, trademarks and use-based trademark applications, trade names and copyrights.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce the Purchaser to make the Loan, the parties hereto agree as follows:

1. Definitions. Capitalized terms used in this Agreement but not otherwise defined herein shall have the meanings ascribed to such terms in the Note Agreement.
2. Grant of Security Interest. To secure the payment and performance of all indebtedness and other obligations and liabilities of the Company to the Purchaser of every kind and description, whether direct or indirect, absolute or contingent, primary or secondary, due or to become due, now existing or hereafter arising under or in connection with the Note Agreement and the Related Documents (as defined in the Note Agreement, the Company hereby grants to the Purchaser a lien and security interest in all of Company's right, title and interest in, to and under the following (all of the following items or types of property being herein collectively referred to as the "**Patent Collateral**"), whether presently existing or hereafter created or acquired:
 - (i) each patent and patent application, including, without limitation, each patent and patent application described in Schedule A annexed hereto, together with any reissues, continuations or extensions thereof;

- (ii) each patent license, including, without limitation, each patent license described in Schedule A annexed hereto; and
- (iii) all products and proceeds of the foregoing, including, without limitation, any claim by the against third parties for past, present or future infringement of any patent, including, without limitation, any patent referred to in Schedule A annexed hereto, any patent issued pursuant to a patent application referred to in Schedule A and any patent licensed under any patent license listed on Schedule A annexed hereto.

3. Representations and Warranties. The Company represents and warrants to and covenants with the Purchaser that:

- (a) The Company is the present owner of the entire right, title and interest in and to the Patent Collateral described in Schedule A hereto and, to the best of its knowledge, Company has good and indefeasible title thereto.
- (b) The Patent Collateral is free and clear of all security interests, liens and encumbrances, except Permitted Liens.
- (c) The Company has not granted any licenses, rights or privileges in or to the Patent Collateral to any party except the Purchaser.
- (d) To the best of the Company's knowledge, the Company may use the Patent Collateral free and clear of the infringement of the rights of others.
- (e) The Company has not commenced and has not threatened to commence against any Person, and there is not pending, any suit or other proceeding seeking to enforce or alleging a violation of any of the Company's rights in the Patent Collateral.
- (f) No Person has commenced or, to the best of the Company's knowledge, has threatened to commence any suit or other proceeding alleging that any of the Patent Collateral is unenforceable or violates any right or interest of such Person.
- (g) The Patent Collateral on Schedule A constitute all of the United States patent and patent applications owned by the Company which are used in the business of the Company.
- (h) The Company has not and will not make any agreement or assignment in conflict with this Agreement.
- (i) To the best of the Company's knowledge, the patent applications set forth in Schedule A have been duly and properly filed and the patents to be issued pursuant thereto will be, upon issuance, valid and enforceable.

4. Maintenance and Enforcement of Patent Collateral. The Company agrees to provide the Purchaser with supplemental documentation necessary to record and perfect this Agreement with the relevant offices in the countries in which the Company has patents and patent applications as set forth in Schedule A. The Company shall not take any action, nor permit any action to be taken by others subject to the Company's control, including licensees, or fail to take any action regarding any matter of which the Company has knowledge, which would affect the validity and enforcement of any of the Patent Collateral, or impair the value of any of the Patent Collateral. Subject to the other provisions of this Agreement, the Company shall assume and continue, at its own cost and expense, through counsel of its own choice and acceptable to the Purchaser, full and complete responsibility for the prosecution, issuance, enforcement, maintenance, renewal or any other actions in connection with the Patent Collateral.

5. Notice of Proceedings. The Company promptly shall notify the Purchaser, in writing, of any suit, action or proceeding which relates to, is concerned with or affects any of the Patent Collateral or alleges infringement of another patent by any of the Patent Collateral, if in either case an adverse decision could reasonably be expected to have a material adverse effect on any of the Patent Collateral or on the Company's rights therein, and the Company shall, on written request of the Purchaser, deliver to the Purchaser a copy of all pleadings, papers, orders and decrees heretofore and hereafter filed in any such suit, action or proceeding, and shall keep the Purchaser fully advised in writing of the progress of any such suit or proceeding.

6. Issuance of Patent; New Applications. The Company shall promptly notify the Purchaser of (i) the filing of any new patent application by the Company with respect to an invention or innovation which is used by the Company in its business and (ii) the issuance of any patent pursuant to any previously filed application including, without limitation, the patent applications set forth in **Schedule A** hereto. Each of such new applications and each newly issued patent shall be subject to the terms and conditions of this Agreement and come within the term "Patent Collateral" as set forth herein. In addition, the Company shall provide the Purchaser, on request, such documents and instruments, each in a form acceptable to counsel for the Purchaser, as may be necessary to grant to the Purchaser, and to perfect, a valid enforceable security interest in such new applications and patents.

7. Documents Relating to Patent Collateral. Upon written request by the Purchaser, the Company shall deliver to the Purchaser copies of any patent applications and other documents concerned with or related to the adoption, use, prosecution, protection, maintenance, renewal, enforcement or issuance of any patent which is a part of the Patent Collateral.

8. Events of Default. The occurrence of any of the following shall constitute an Event of Default under this Agreement:

(a) if the Company fails to perform, keep or observe any term, provision, condition or covenant contained in this Agreement which the Company is required to be performed, kept or observed and such failure is not cured within 15 days after written notice thereof from the Purchaser to the Company;

(b) if any representation or warranty made by the Company herein is breached or is false or misleading in any material respect; or

(c) the occurrence of an "Event of Default" under the Note Agreement.

9. Remedies. After the occurrence of and during the continuance of an Event of Default, the Purchaser shall have all of the rights, remedies and benefits of a secured party under applicable law, including without limitation, all of the rights, remedies and benefits of a secured party under the Uniform Commercial Code, whether or not the Uniform Commercial Code is applicable, and, in addition, the Purchaser may grant licenses, rights or other privileges in, or otherwise take whatever action with respect to, the Patent Collateral that the Purchaser deems necessary or appropriate under the circumstances. The Company hereby appoints and designates the Purchaser as its attorney to take, during the continuance of an Event of Default, in the name of either the Company or the Purchaser, such action as the Purchaser, in its sole discretion, deems necessary or appropriate under the circumstances to protect the Patent Collateral and the security interest of the Purchaser therein, but the Purchaser shall not be required to take any such action.

10. Fees and Expenses. The Company agrees to pay on demand any and all costs, charges, fees and other expenses incurred by the Purchaser in connection with this Agreement and the enforcement thereof including, without limitation, the fees and expenses of counsel employed by the Purchaser (i) with respect to the amendment or enforcement of this Agreement or with respect to the any of the Patent Collateral, (ii) to represent the Purchaser in any litigation, contest, dispute, suit or proceeding or to commence, defend or intervene or to take any other action in or with respect to any litigation, contest, dispute, suit or proceeding (whether instituted by the Purchaser, the Company or any other Person) in any way or respect relating to this Agreement or any of the Patent Collateral or (iii) to enforce any of the Purchaser's rights hereunder including, without limitation, any action to protect, collect, sell, liquidate or otherwise dispose of any of the Patent Collateral.

11. Governing Law; Jury Trial; Severability. This Agreement shall be a contract made under and governed by the laws of the State of Illinois, without regard to conflict of laws principles. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. All obligations of the Company and rights of the Purchaser shall be in addition to and not in limitation of those provided by applicable law.

THE BORROWER HEREBY IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (I) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR (II) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE COMPANY IRREVOCABLY AGREES THAT, SUBJECT TO THE PURCHASER'S SOLE AND ABSOLUTE ELECTION, ANY ACTION OR PROCEEDING IN ANY WAY, MANNER OR

RESPECT ARISING OUT OF THIS AGREEMENT, OR ARISING FROM ANY DISPUTE OR CONTROVERSY ARISING IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, SHALL BE LITIGATED ONLY IN THE COURTS HAVING SITUS WITHIN THE CITY OF CHICAGO, THE STATE OF ILLINOIS, AND THE COMPANY HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SUCH CITY AND STATE. THE COMPANY HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST THE COMPANY BY THE PURCHASER IN ACCORDANCE WITH THIS SECTION.

12. Notices. All notices and other communications hereunder shall be sent in the manner and to the persons set forth in Section 8.6 of the Note Agreement and when so sent, shall be deemed given at the times provided in said Section.


14. Release of Security Interest. Upon payment in full of all obligations of the Company arising under or in connection with the Note Agreement and the termination of the Revolving Credit Commitment thereunder, the Purchaser agrees to release and take such further action as may be necessary or advisable to evidence such release and termination of its security interest set forth herein.

[BALANCE OF THIS PAGE IS BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

ROCKY MOUNTAIN MEZZANINE FUND II, L.P.

By: ROCKY MOUNTAIN CAPITAL
PARTNERS LLP,
its General Partner

By: 
Edward C. Brown
Managing Partner

PELSTAR, L.L.C.,
an Illinois limited liability company

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

ROCKY MOUNTAIN MEZZANINE FUND II, L.P.

By: **ROCKY MOUNTAIN CAPITAL
PARTNERS LLP,
its General Partner**

By: _____
Edward C. Brown
Managing Partner

PELSTAR, LLC,
an Illinois limited liability company

By: Paul Nizzarelli
Name: Paul Nizzarelli
Title: Pres / CEO

EXHIBIT A

Postal & Food Scales Patents

I MATTER NO	TYPE	SERIALNO	PATENTNO	TITLE	COUNTRY	STATUS	FILE	ISSUE
Sunhom-2-1195	DES	06/756,593	D 300,124	Weigh Scale	United States	Issued	7/19/1985	3/ 7/1989
Sunhom-2-1196	DES	06/893,499	D300,517	Dieting Scale Or The Like	United States	Issued	8/ 6/1986	4/ 4/1989
Sunhom-2-1211	DES	07/733,260	D 331,372	Weigh Scale	United States	Issued	7/22/1991	12/ 1/1992
Sunhom-2-1231	UTL	07/484,939	5,050,694	Adjustable Platform Stand For A Weigh Scale	United States	Issued	2/26/1990	9/24/1991
Sunhom-2-1232	UTL	07/604,573	5,097,915	Postal Rate Device	United States	Issued	10/26/1990	3/24/1992
Sunhah-2-2406	DES	07/452,976	D313,565	Weight Display Module	United States	Issued	1/16/1990	1/ 8/1991
Sunhah-2-2907	DES	420,401	D307,873	Domestic Scale Weight Display Module	United States	Issued	10/12/1989	5/15/1990
Sunhah-1-1229	UTL	86,353	4,724,914	Weighing Scale	United States	Issued	8/18/1987	2/16/1988

Medical/Beam Scales Patents:

MATTERNO	TYP	SERIALNO	PATENTNO	TITLE	COUNTR	STATUS	FILE	ISSUE
Sunhah-2-1651	UTL	517,580	1,254,591	Balance Beam Scale Having Digital Display	Canada	Issued	9/ 5/1986	5/23/1989
Sunhom-2-1197	DES	07/230,152	D 314,351	Pediatric Scale	United	Issued	8/ 8/1988	2/ 5/1991
Sunhah-2-1652	UTL	06/837,420	4,650,015	Balance Beam Scale Having Digital Display	United States	Issued	3/ 7/1986	3/17/1987
Sunhah-2-2882	DES	33,988	D305,993	Beam Scale	United	Issued	4/ 2/1987	2/13/1990
Sunhom-2-3502	UTL	09/000,000		Transparent Weight Finder	United	Pending	4/13/2001	
Sunhom-2-3503	DES	29/140,451		Medical Scale Design	United States	Pending	4/18/2001	