

08-26-2002

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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): Wilbert Funeral Services, Inc. 8-21-02 Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies) Name: Bank of America, N.A. Internal Address: Street Address: 231 South LaSalle Street City: Chicago State: IL Zip: 60697 Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance: [ ] Assignment [ ] Merger [x] Security Agreement [ ] Change of Name [ ] Other Execution Date: 08/15/02

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) 10/093583 B. Patent No.(s) 4413390; D446901; D454420; D454676; D455885 Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed: Name: Nicole M. Walker Internal Address: Neal, Gerber & Eisenberg Street Address: Two North LaSalle Street City: Chicago State: IL Zip: 60602-3801

6. Total number of applications and patents involved: 6 7. Total fee (37 CFR 3.41) \$ 240.00 [x] Enclosed [ ] Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature. Nicole M. Walker Name of Person Signing Signature Date August 20, 2002

Total number of pages including cover sheet, attachments, and documents: 11

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240.00 DP

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

PATENT REEL: 013203 FRAME: 0895

## PATENT SECURITY AGREEMENT

**THIS PATENT SECURITY AGREEMENT** ("Agreement") made as of August 15, 2002 by and between **WILBERT FUNERAL SERVICES, INC.**, an Illinois corporation (the "Grantor"), and **BANK OF AMERICA, N.A.** (the "Bank").

### W I T N E S S E T H:

WHEREAS, Wilbert, Inc., an Illinois corporation (the "Borrower") and the Bank are parties to that certain Credit Agreement dated of even date herewith (as amended, modified, restated and supplemented from time to time, the "Credit Agreement"), pursuant to which the Bank has agreed to make loans and other extensions of credit to the Borrower;

WHEREAS, all liabilities and obligations of the Borrower under the Credit Agreement are (i) guaranteed by the Grantor pursuant to a Joint and Several Guaranty dated of even date herewith (as amended, modified, restated or supplemented from time to time, the "Guaranty") and (ii) secured by the Grantor pursuant to a Security Agreement dated of even date herewith (as amended, modified, restated or supplemented from time to time, the "Security Agreement");

WHEREAS, Grantor has agreed to execute and deliver this Agreement (i) in order to secure the prompt and complete payment, observance and performance of all of the "Secured Liabilities" (as defined in the Security Agreement) and (ii) as a condition precedent to the Bank entering into the Credit Agreement;

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, the Grantor agrees as follows:

1. Defined Terms.

(a) Unless otherwise defined herein, each capitalized term used herein that is defined in the Credit Agreement or the Security Agreement shall have the meaning specified for such term in the Credit Agreement or the Security Agreement.

(b) 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 references are to this Agreement unless otherwise specified.

(c) 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. Incorporation of Premises. The premises set forth above are incorporated into this Agreement by this reference hereto and are made a part hereof

3. Incorporation of the Security Agreement. The Security Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto.

4. Security Interest in Patents. To secure the complete and timely payment, performance and satisfaction of all of the Secured Liabilities, the Grantor hereby grants to Bank, a security interest in, as and by way of a first mortgage and security interest having priority over all other security interests, other than Liens permitted by the Credit Agreement, with power of sale to the extent permitted by applicable law, all of the Grantor's:

(a) now owned or existing and hereafter acquired or arising patents and patent applications, and the inventions and improvements described and claimed therein, including, without limitation, those patents listed on Schedule A attached hereto and made a part hereof, and (i) the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (ii) 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, (iii) the right to sue for past, present and future infringements thereof, and (iv) all of the Grantor's rights corresponding thereto throughout the world (all of the foregoing patents and applications, together with the items described in clauses (i)-(iv) in this paragraph 4(a) are sometimes hereinafter individually and/or collectively referred to as the "Patents"); and

(b) rights under or interest in any patent license agreements with any other party to the extent permitted by and subject to such other agreements, whether the Grantor is a licensee or licensor under any such license agreement, including, without limitation, those patent license agreements listed on Schedule B attached hereto and made a part hereof, and the right to prepare for sale and sell any and all Inventory now or hereafter owned by the Grantor and now or hereafter covered by such licenses (all of the foregoing are hereinafter referred to collectively as the "Licenses").

5. Restrictions on Future Agreements. The Grantor will not, without Bank's prior written consent, take any action, and will use its commercially reasonable efforts not to permit any action to be taken by others, including, without limitation, licensees, or fail to take any action, which would in any material respect affect the validity or enforcement of the Bank's security interest in the Patents and Licenses.

6. New Patents and Licenses. The Grantor represents and warrants as of the date hereof that (a) the Patents listed on Schedule A include all of the active patents and patent applications now owned by the Grantor, (b) the Licenses listed on Schedule B include all of the patent license agreements now owned by the Grantor and (c) no other liens, claims or security interests have been granted by the Grantor to any other Person in such Patents and Licenses. If, prior to the termination of this Agreement, the Grantor shall (i) obtain rights to any new patentable inventions, (ii) become entitled to the benefit of any patent, patent application, license or any reissue, division, continuation, renewal, extension or continuation-in-part of any Patent or any improvement on any Patent or License, or (iii) enter into any new patent license agreement, the provisions of paragraph 4 above shall automatically apply thereto. The Grantor shall give to Bank written notice of events described in clauses (i), (ii) and (iii) of the preceding sentence on a quarterly basis. The Grantor hereby authorizes Bank to modify this Agreement by amending Schedule A to include any future patents and patent applications, and by amending Schedule B to

include any future patent license agreements, which are Patents or Licenses under paragraph 4 above or under this paragraph 6.

7. Royalties. The Grantor hereby agrees that the use by Bank of the Patents and the Licenses as authorized hereunder in connection with the exercise of its remedies under paragraph 16 shall be coextensive with the Grantor's rights thereunder and with respect thereto and without any liability for royalties or other related charges from Bank to the Grantor.

8. Right to Inspect; Further Assignments and Security Interests. The Bank may at all reasonable times upon reasonable prior notice to Grantor (and at any time when an Event of Default or Unmatured Event of Default exists) have access to, examine, audit, make copies (at the Grantor's expense) and extracts from and inspect the Grantor's premises and examine the Grantor's books, records and operations relating to the Patents and the Licenses, including, without limitation, the Grantor's quality control processes; provided, that in conducting such inspections and examinations, Bank shall use reasonable efforts not to disturb the conduct of the Grantor's ordinary business operations. From and after the occurrence of an Event of Default, the Grantor agrees that Bank, or a conservator appointed by Bank, shall have the right to establish such reasonable additional product and service quality controls as Bank or such conservator, in its commercially reasonable judgment, may deem reasonably necessary to assure maintenance of the quality of products and services sold by the Grantor under the Patents and the Licenses. The Grantor agrees (a) not to sell or assign its interest in the Patents or the Licenses without the prior and express written consent of Bank which consent will not be unreasonably withheld, (b) to maintain the quality of said products and services in all material respects as of the date hereof, and (c) not to change the quality of such products or services in any material respect without Bank's prior and express written consent which consent will not be unreasonably withheld.

9. Termination of Bank's Security Interest. This Agreement is made for collateral security purposes only. Upon payment in full of all of the Secured Liabilities, this Agreement shall terminate and Bank shall promptly execute and deliver to the Grantor, at the Grantor's expense, all termination statements and other instruments as may be necessary or proper to terminate Bank's security interest in the Patents and the Licenses (including, without limitation, a Release in the form attached hereto as Exhibit A), subject to any disposition thereof which may have been made by Bank pursuant to this Agreement or the Credit Agreement.

10. Duties of the Grantor. The Grantor shall have the duty, to the extent desirable in the normal conduct of the Grantor's business and at Grantor's commercially reasonable discretion, to: (a) 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, and (b) make application on unpatented but patentable inventions. The Grantor further agrees (i) not to abandon any Patent or License necessary in the operation of Grantor's business without the prior written consent of Bank and (ii) to use its best efforts to maintain in full force and effect the Patents and the Licenses that are or shall be necessary in the operation of the Grantor's business. Any expenses incurred in connection with the foregoing shall be borne by the Grantor. Grantor has no obligation to patent any invention.

11. Bank's Right to Sue. From and after the occurrence of an Event of Default, Bank shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Patents and the Licenses and, if Bank shall commence any such suit, the Grantor shall, at the request of Bank, do any and all lawful acts and execute any and all proper documents required by Bank in aid of such enforcement. The Grantor shall, upon demand, promptly reimburse Bank for all costs and expenses incurred by Bank in the exercise of its rights under this paragraph 11 (including, without limitation, reasonable fees and expenses of attorneys and paralegals for Bank).

12. Waivers. Bank's failure, at any time or times hereafter, to require strict performance by the Grantor of any provision of this Agreement shall not waive, affect or diminish any right of Bank thereafter to demand strict compliance and performance therewith nor shall any course of dealing between the Grantor and Bank have such effect. No single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. None of the undertakings, agreements, warranties, covenants and representations of the Grantor contained in this Agreement shall be deemed to have been suspended or waived by Bank unless such suspension or waiver is in writing signed by an officer of Bank and directed to the Grantor specifying such suspension or waiver.

13. Bank's Exercise of Rights and Remedies Upon an Event of Default. Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence of an Event of Default, Bank may exercise any of the rights and remedies provided in this Agreement, the Credit Agreement, the Security Agreement and any Loan Document.

14. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but 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 hereof, 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.

15. Modification. This Agreement (including its Schedules) cannot be altered, amended or modified in any way, except as specifically provided in paragraphs 4 and 6 hereof or by a writing signed by the parties hereto.

16. Cumulative Remedies; Power of Attorney. All of Bank's rights and remedies 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. From and after an uncured Event of Default and the giving of written notice to Grantor, the Grantor hereby irrevocably designates, constitutes and appoints Bank as the Grantor's true and lawful attorney-in-fact, and authorizes Bank and any of Bank's designees, in the Grantor's or Bank's name, from and after the occurrence of an Event of Default, to (a) endorse the Grantor's name on all applications, documents, papers and instruments necessary or desirable for Bank in the use of the Patents or the Licenses, (b) assign, pledge, convey or otherwise transfer title in or dispose of the Patents or the Licenses to anyone on commercially reasonable terms, (c) grant or

issue any exclusive or nonexclusive license under the Patents or, to the extent permitted, under the Licenses, to anyone on commercially reasonable terms, and (d) take any other actions with respect to the Patents or the Licenses as Bank deems in its best interest. The Grantor hereby ratifies all that such attorney 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 all of the Secured Liabilities shall have been paid in full and the Credit Agreement shall have been terminated. The Grantor acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of Bank under the Credit Agreement, but rather is intended to facilitate the exercise of such rights and remedies. Bank 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 or the Licenses may be located or deemed located.

17. Successors and Assigns. This Agreement shall be binding upon the Grantor and its successors and assigns, and shall inure to the benefit of Bank and its successors and assigns. The Grantor's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession to the extent that any of the foregoing are considered to be a successor or assign of or for the Grantor; provided, however that the Grantor shall not voluntarily assign or transfer its rights or obligations hereunder without Bank's prior written consent.

18. Governing Law. This Agreement shall be construed and enforced and the rights and duties of the parties shall be governed by in all respects in accordance with the internal laws of the State of Illinois.

19. Notices. All notices or other communications hereunder shall be given care of the Borrower, in the manner and to the addresses set forth in the Credit Agreement.

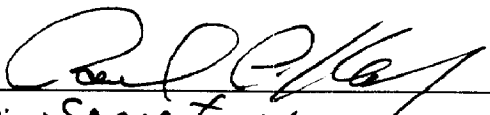
20. Bank's Duty. Bank shall not have any duty with respect to the Patents or the Licenses. Without limiting the generality of the foregoing, Bank shall not be under any obligation to take any steps necessary to preserve rights in the Patents or the Licenses against any other parties, but may do so at its option, and all expenses incurred in connection therewith shall be for the sole account of the Borrower and added to the Obligations secured hereby.

21. Section Titles. The section titles herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.

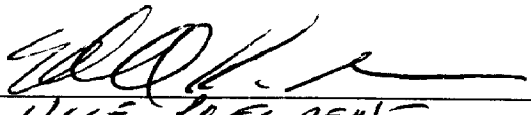
[signature page follows]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date set forth above.

WILBERT FUNERAL SERVICES, INC.,  
an Illinois corporation

By:   
Title: Secretary

BANK OF AMERICA, N.A.

By:   
Title: VICE PRESIDENT

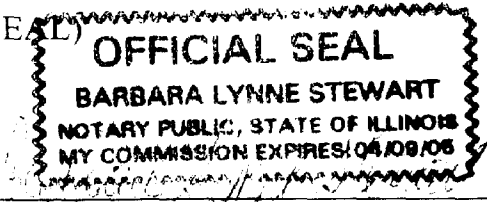
STATE OF Illinois)

) SS

COUNTY OF Cook)

The foregoing Patent Security Agreement was executed and acknowledged before me this 13<sup>th</sup> day of August, 2002, by Raymond P. Kolodziej, personally known to me to be the Secretary of WILBERT FUNERAL SERVICES, INC., on behalf of such corporation.

(SEAL)



Notary Public Barbara Lynne Stewart

County, Cook

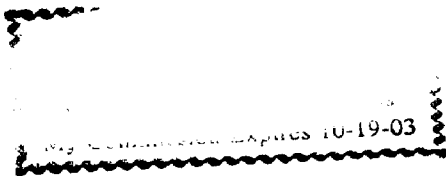
My commission expires: April 9, 2005



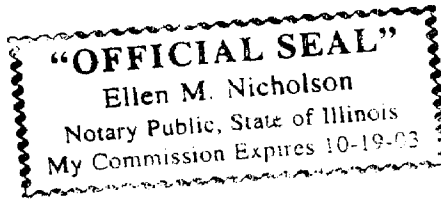
STATE OF ILLINOIS )  
 ) SS  
COUNTY OF COOK )

The foregoing Patent Security Agreement was executed and acknowledged before me this 15th day of August, 2002, by Edward R. Sleeper, personally known to me to be the Vice President of BANK OF AMERICA, N.A., on behalf of such corporation.

(SEAL)



Ellen M. Nicholson  
Notary Public Ellen M. Nicholson  
County, COOK  
My commission expires: 10-19-03



**Schedule A**  
to  
**Patent Security Agreement**

**Dated as of August 15, 2002**

Patents

CTRY	SERIALNO	PATNO	(INVENTOR) TITLE	FILE	ISSUE
US	06/374,100	4,413,390	(Blaese) CASKET-PLACER AND CASKET-LOWERING APPARATUS	05/03/1982	11/08/1983
CA	409715	1182990	(Blaese) CASKET-PLACER AND CASKET-LOWERING APPARATUS	08/18/1982	02/26/1985
US	29/129,312	D446,901	(Izzi) CREMEATION URN LID WITH EMBLEM	09/12/2000	08/21/2001
US	29/144,272	D454,420	(Izzi) CREMATION URN LID WITH GOLF EMBLEM	06/27/2001	03/12/2002
US	29/144,273	D454,676	(Izzi) CREMATION URN LID WITH DRAGON EMBLEM	06/27/2001	03/19/2002
US	29/144,256	D455,885	(Izzi) CREMATION URN LID WITH PEACOCK EMBLEM	06/27/2001	04/16/2002
CA	2001-0633		(Izzi) CREMATION URN LID WITH EMBLEM	03/12/2001	
US	10/093583		(Pazar) RECORD RECEPTACLE FOR BURIAL VAULT	03/08/2002	
CA	Not yet assigned		(Izzi) CREMATION URN LID WITH EMBLEM	03/12/2001	
CA	Not yet assigned		(Izzi) CREMATION URN LID WITH EMBLEM	03/12/2001	
CA	Not yet assigned		(Izzi) CREMATION URN LID WITH EMBLEM	03/12/2001	

**Schedule B  
to  
Patent Security Agreement**

**Dated as of August 15, 2002**

Licenses

None.