

10-09-2002



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Form PTO-1595 (Rev. 03/01)

RECORDATION FORM COVER SHEET

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

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

PATENTS ONLY

Tab settings

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

1. Name of conveying party(ies):

Insulair, Inc.

10-9-02

2. Name and address of receiving party(ies)

Name: General Electric Capital Corp.

Internal Address:

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Street Address: 500 W. Monroe, Suite 2900

City: Chicago State: IL Zip: 60661

Execution Date: September 25, 2002

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)

Please see attached Exhibit A

Please see attached Exhibit A

Additional numbers attached? Yes No

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

Name:

Internal Address:

Federal Research Company, LLC 1030 15th Street, NW, Suite 920 Washington, DC 20005

Street:

City: State: Zip:

6. Total number of applications and patents involved: 10

7. Total fee (37 CFR 3.41).....\$ 400.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Patricia Maillie

Name of Person Signing

Patricia Maillie

Signature

September 25, 2002

Date

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

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

10/10/2002 6TON11 00000027 6422456

01 FC:581

400.00

EXHIBIT A

To

USPTO COVER SHEET

UNITED STATES ISSUED PATENTS AND PATENT APPLICATIONS

Title	Patent/Serial Number	Issue/Filing Date
Three-layered insulated cup and method of manufacture	6,422,456	7/23/02
Insulated cup and method of manufacture	6,378,766	4/30/02
Insulated cup and method of manufacture	6,257,485	07/10/01
Insulated cup and method of manufacture	6,196,454	03/06/01
Insulated cup and method of manufacture	6,085,970	07/11/00
Lid for drinking cup	D 417,845	12/21/99
Multi-layered insulated cup formed from folded sheet	5,964,400	10/12/99
Multi-layered insulated cup formed from folded sheet	5,697,550	12/16/97
Multi-layered insulated cup formed from folded sheet	5,660,326	8/26/97
Multi-layered insulated cup formed of one continuous sheet	RE 35,830	06/30/98

PATENT AND TRADEMARK SECURITY AGREEMENT

PATENT AND TRADEMARK SECURITY AGREEMENT, dated as of September 25, 2002, is between **General Electric Capital Corporation** (together with its successors and assigns, if any, "**Secured Party**") and **Insulair, Inc.** ("**Debtor**"). Secured Party has an office at 500 W. Monroe Suite 2900, Chicago, IL 60661. Debtor is a corporation organized and existing under the laws of the state of California. Debtor's mailing address and chief place of business is 529 Commercial Street, Ste. 200, San Francisco, CA 94111 and Debtor's federal employer's identification number is 94-3236533.

WITNESSETH:

A. Secured Party is willing to make one or more loans to Debtor, but only upon the condition, among others, that Debtor shall have executed and delivered to Secured Party that certain Master Security Agreement dated as of the date herewith (including all addenda, annexes, exhibits or collateral schedules thereto, as from time to time amended, restated, supplemented or otherwise modified, the "**Security Agreement**"), pursuant to which Debtor granted to Secured Party a security interest in substantially all of the personal property of Debtor;

B. Pursuant to the Security Agreement, Debtor is required to execute and deliver to Secured Party this Patent and Trademark Security Agreement;

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Debtor hereby agrees as follows:

1. DEFINED TERMS. All capitalized terms used but not otherwise defined herein have the meanings given to them in the Security Agreement. Specifically, the following terms have the meanings set forth below:

"**Affiliate**" shall mean, with respect to any person or entity, (a) each person or entity that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, five percent (5%) or more of the Stock having ordinary voting power in the election of directors of such persons or entities, (b) each person or entity that controls, is controlled by or is under common control with such person or entity, (c) each of such person's officers, directors, joint venturers and partners and (d) in the case of Debtor, the immediate family members, spouses and lineal descendants of individuals who are Affiliates of Debtor. For the purposes of this definition, "control" of a person or entity shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise; provided, however, that the term "**Affiliate**" shall specifically exclude Secured Party.

"**Code**" shall mean the Uniform Commercial Code as the same may, from time to time, be enacted and in effect in the State of California; provided however, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of the security interest of Secured Party (or any party for which Secured Party is Agent) in any collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of California, the term "**Code**" shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

"**License**" shall mean any Patent License, Trademark License or other license of rights or interests now held or hereafter acquired by Debtor.

"**Patent**" or "**Patents**" shall mean all of the following in which Debtor now holds or hereafter acquires any interest: (a) all letters patent of the United States or any other country, all registrations and recordings thereof, and all applications for letters patent of the United States or any other country, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state or territory thereof, or any other country, and (b) all reissues, continuations, continuations-in-part, re-examinations, divisions, renewals or extensions of the foregoing.

"Patent License" shall mean any and all rights under any written agreement now owned or hereafter acquired by Debtor granting any right with respect to any invention on which a Patent is in existence.

"Proceeds" shall mean "proceeds," as such term is defined in the Code and, in any event, shall include (i) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to Debtor from time to time with respect to any of the property described in this Agreement, (ii) any and all payments (in any form whatsoever) made or due and payable to Debtor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the property described in this Agreement by any nation or government, any state or other political subdivision thereof, and any agency, department or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government (or any person acting under color of governmental authority), (iii) any claim of Debtor against third parties (a) for past, present or future infringement of any Patent or Patent License or (b) for past, present or future infringement or dilution of any Trademark or Trademark License, or for injury to the goodwill associated with any Trademark or Trademark License, (iv) any recoveries by Debtor against third parties with respect to any litigation or dispute concerning any of the property described in this Agreement and (v) any and all other amounts from time to time paid or payable under or in connection with any of the property described in this Agreement, upon disposition or otherwise.

"Trademark License" shall mean rights under any written agreement now owned or hereafter acquired by Debtor granting any right to use any Trademark.

"Trademark" or **"Trademarks"** shall mean all of the following now owned or hereafter acquired by Debtor: (a) all trademarks, trade names, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature (whether registered or unregistered), now owned or existing or hereafter adopted or acquired, all registrations and recordings thereof, and all applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof; (b) all reissues, extensions or renewals thereof; and (c) all goodwill associated with or symbolized by any of the foregoing.

2. **GRANT OF SECURITY INTEREST IN PATENT AND TRADEMARK COLLATERAL**. To secure the payment and performance of all debts, obligations and liabilities of any kind whatsoever of Debtor to Secured Party, now existing or arising in the future, including but not limited to the payment and performance of certain Promissory Notes from time to time identified on any Collateral Schedule (collectively "**Notes**" and each a "**Note**") to the Security Agreement, and any renewals, extensions and modifications of such debts, obligations and liabilities (such Notes, debts, obligations and liabilities are called the "**Obligations**"),

(a) Debtor hereby grants to Secured Party a continuing security interest in all of Debtor's right, title and interest in, to and under the following, whether presently existing or hereafter created or acquired (collectively, the "**Patent Collateral**")

i) all of its Patents and Patent Licenses to which it is a party including those referred to on **Schedule I** hereto;

ii) all reissues, continuations, continuations-in-part, re-examinations, divisions, renewals or extensions of the foregoing;

iii) to the extent not otherwise included, all Proceeds (defined below) and products of the foregoing and all accessions to, substitutions and replacements for, and licenses, rents, profits, and royalties of, each of the foregoing; and

(b) Debtor hereby grants to Secured Party a continuing security interest in all of Debtor's right, title and interest in, to and under the following, whether presently existing or hereafter created or acquired (collectively, the "**Trademark Collateral**"):

i) all of its Trademarks and Trademark Licenses to which it is a party including those referred to on Schedule I hereto;

ii) to the extent not otherwise included, all Proceeds (defined below) and products of the foregoing and all accessions to, substitutions and replacements for, and licenses, rents, profits, and royalties of, each of the foregoing.

3. **SECURITY AGREEMENT.** The security interests granted pursuant to this Patent and Trademark Security Agreement are granted in conjunction with the security interests granted to Secured Party pursuant to the Security Agreement in substantially all of the personal property of Debtor. Debtor hereby acknowledges and affirms that the rights and remedies of Secured Party with respect to the security interest in the Patent Collateral and the Trademark Collateral made and granted hereby are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated by reference herein as if fully set forth herein.

4. **REPRESENTATIONS, WARRANTIES AND AGREEMENTS.** The Debtor represents, warrants and agrees as follows:

(a) **Existence; Authority.** The Debtor is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, and this Agreement has been duly and validly authorized by all necessary corporate action on the part of the Debtor.

(b) **Patents.** Schedule I accurately lists all Patents and Patent Licenses owned or controlled by the Debtor as of the date hereof, or to which the Debtor has a right as of the date hereof to have assigned to it, and accurately reflects the existence and status of applications and letters patent pertaining to the Patents as of the date hereof. If after the date hereof, the Debtor owns, controls or has a right to have assigned to it any Patents not listed on Schedule I, or if Schedule I ceases to accurately reflect the existence and status of applications and letters patent pertaining to the Patents, then the Debtor shall within sixty (60) days provide written notice to the Secured Party with a replacement Schedule I, which upon acceptance by the Secured Party shall become part of this Agreement.

(c) **Trademarks.** Schedule I accurately lists all Trademarks and Trademark Licenses owned or controlled by the Debtor as of the date hereof and accurately reflects the existence and status of Trademarks and all applications and registrations pertaining thereto as of the date hereof; provided, however, that Schedule I need not list common law marks (i.e., Trademarks for which there are no applications or registrations) which are not material to the Debtor's or any Affiliate's business(es). If after the date hereof, the Debtor owns or controls any Trademarks not listed on Schedule I (other than common law marks which are not material to the Debtor's or any Affiliate's business(es)), or if Schedule I ceases to accurately reflect the existence and status of applications and registrations pertaining to the Trademarks, then the Debtor shall promptly provide written notice to the Secured Party with a replacement Schedule I which upon acceptance by the Secured Party shall become part of this Agreement.

(d) **Affiliates.** As of the date hereof, no Affiliate owns, controls, or has a right to have assigned to it any items that would, if such item were owned by the Debtor, constitute Patents or Trademarks. If after the date hereof any Affiliate owns, controls, or has a right to have assigned to it any such items, then the Debtor shall promptly either: (i) cause such Affiliate to assign all of its rights in such item(s) to the Debtor; or (ii) notify the Secured Party of such item(s) and cause such Affiliate to execute and deliver to the Secured Party a patent and trademark security agreement substantially in the form of this Agreement.

(e) **Title.** The Debtor has absolute title to each Patent and each Trademark listed on Schedule I, free and clear of all Liens except Permitted Liens. The Debtor (i) will have, at the time the Debtor acquires any rights in Patents or Trademarks hereafter arising, absolute title to each such Patent or Trademark free and clear of all Liens except Permitted Liens, and (ii) will keep all Patents and Trademarks free and clear of all Liens except Permitted Liens.

(f) **No Sale.** Except as permitted in the Security Agreement, the Debtor will not assign, transfer, encumber or otherwise dispose of the Patents or Trademarks, or any interest therein, without the Secured Party's prior written consent.

(g) **Defense.** The Debtor will at its own expense and using commercially reasonable efforts, protect and defend the Patents and Trademarks against all claims or demands of all Persons other than those holding Permitted Liens.

(h) **Maintenance.** The Debtor will at its own expense maintain the Patents and the Trademarks to the extent reasonably advisable in its business including, but not limited to, filing all applications to obtain letters patent or trademark registrations and all affidavits, maintenance fees, annuities, and renewals possible with respect to letters patent, trademark registrations and applications therefor. The Debtor covenants that it will not abandon nor fail to pay any maintenance fee or annuity due and payable on any Patent or Trademark, nor fail to file any required affidavit or renewal in support thereof.

(i) **Secured Party's Right to Take Action.** If the Debtor fails to perform or observe any of its covenants or agreements set forth in this Section 3, and if such failure continues for a period of ten (10) calendar days after the Secured Party gives the Debtor written notice thereof (or, in the case of the agreements contained in subsection (h), immediately upon the occurrence of such failure, without notice or lapse of time), or if the Debtor notifies the Secured Party that it intends to abandon a Patent or Trademark, the Secured Party may (but need not) perform or observe such covenant or agreement or take steps to prevent such intended abandonment on behalf and in the name, place and stead of the Debtor (or, at the Secured Party's option, in the Secured Party's own name) and may (but need not) take any and all other actions which the Secured Party may reasonably deem necessary to cure or correct such failure or prevent such intended abandonment.

(j) **Costs and Expenses.** Except to the extent that the effect of such payment would be to render any loan or forbearance of money usurious or otherwise illegal under any applicable law, the Debtor shall pay the Secured Party on demand the amount of all moneys expended and all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by the Secured Party in connection with or as a result of the Secured Party's taking action under subsection (i) or exercising its rights under Section 7, together with interest thereon from the date expended or incurred by the Secured Party at the Default Rate.

(k) **Power of Attorney.** To facilitate the Secured Party's taking action under subsection (i) and exercising its rights under Section 6, the Debtor hereby irrevocably appoints (which appointment is coupled with an interest) the Secured Party, or its delegate, as the attorney-in-fact of the Debtor with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of the Debtor, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by the Debtor under this Section 4, or, necessary for the Secured Party, after an Event of Default, to enforce or use the Patents or Trademarks or to grant or issue any exclusive or non-exclusive license under the Patents or Trademarks to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Patents or Trademarks to any third party. The Debtor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein shall terminate upon the termination of the Security Agreement as provided therein and the payment and performance of all Obligations.

5. **DEBTOR'S USE OF THE PATENTS AND TRADEMARKS.** The Debtor shall be permitted to control and manage the Patents and Trademarks, including the right to exclude others from making, using or selling items covered by the Patents and Trademarks and any licenses thereunder, in the same manner and with the same effect as if this Agreement had not been entered into, so long as no Event of Default occurs and remains uncured.

6. **EVENTS OF DEFAULT.** Each of the following occurrences shall constitute an event of default under this Agreement (herein called "Event of Default"): (a) an Event of Default, as defined in the Security Agreement, shall occur; or (b) the Debtor shall fail promptly to observe or perform any covenant or agreement herein binding on it; or (c) any of the representations or warranties contained in Section 4 shall prove to have been incorrect in any material respect when made.

7. **REMEDIES.** Upon the occurrence of an Event of Default and at any time thereafter, the Secured Party may, at its option, take any or all of the following actions:

(a) The Secured Party may exercise any or all remedies available under the Security Agreement.

(b) The Secured Party may sell, assign, transfer, pledge, encumber or otherwise dispose of the Patents and Trademarks after providing Debtor forty five (45) day's written notice of Secured Party's intent of such disposition.

(c) The Secured Party may enforce the Patents and Trademarks and any licenses thereunder, and if Secured Party shall commence any suit for such enforcement, the Debtor shall, at the request of Secured Party, do any and all lawful acts and execute any and all proper documents required by Secured Party in aid of such enforcement.

8. **Miscellaneous.** This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by the Secured Party. A waiver signed by the Secured Party shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Secured Party's rights or remedies. All rights and remedies of the Secured Party shall be cumulative and may be exercised singularly or concurrently, at the Secured Party's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other. All notices to be given to Debtor under this Agreement shall be given in the manner and with the effect provided in the Credit Agreement. The Secured Party shall not be obligated to preserve any rights the Debtor may have against prior parties, to realize on the Patents and Trademarks at all or in any particular manner or order, or to apply any cash proceeds of Patents and Trademarks in any particular order of application. This Agreement shall be binding upon and inure to the benefit of the Debtor and the Secured Party and their respective participants, successors and assigns and shall take effect when signed by the Debtor and delivered to the Secured Party, and the Debtor waives notice of the Secured Party's acceptance hereof. The Secured Party may execute this Agreement if appropriate for the purpose of filing, but the failure of the Secured Party to execute this Agreement shall not affect or impair the validity or effectiveness of this Agreement. A carbon, photographic or other reproduction of this Agreement or of any financing statement signed by the Debtor shall have the same force and effect as the original for all purposes of a financing statement. This Agreement shall be governed by the internal law of the State of California without regard to conflicts of law provisions. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Obligations.

WAIVER OF RIGHT TO JURY TRIAL. DEBTOR AND SECURED PARTY UNCONDITIONALLY WAIVE THEIR RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, ANY OF THE OTHER DEBT DOCUMENTS, ANY OF THE OBLIGATIONS SECURED HEREBY, ANY DEALINGS BETWEEN DEBTOR AND SECURED PARTY RELATING TO THE SUBJECT MATTER OF THIS TRANSACTION OR ANY RELATED TRANSACTIONS, AND/OR THE RELATIONSHIP THAT IS BEING ESTABLISHED BETWEEN DEBTOR AND SECURED PARTY. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT. THIS WAIVER IS IRREVOCABLE. THIS WAIVER MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING. THE WAIVER ALSO SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR

MODIFICATIONS TO THIS AGREEMENT, ANY OTHER DEBT DOCUMENTS, OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THIS TRANSACTION OR ANY RELATED TRANSACTION. THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

[signature page follows]

IN WITNESS WHEREOF, Debtor has caused this Patent and Trademark Security Agreement to be executed and delivered by its duly authorized officer as of the date first set forth above.

INSULAIR, INC.

By: [Signature]
Name: Claus Sadler
Title: President of CEO

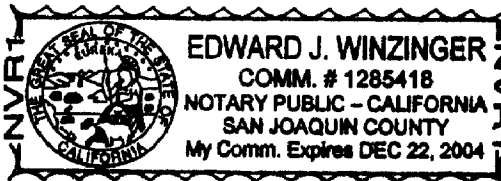
ACCEPTED AND ACKNOWLEDGED BY:
GENERAL ELECTRIC CAPITAL CORPORATION,
as Secured Party

By: [Signature]
Name: JOSEPH B. WILLIAMS
Title: SR. RISK MANAGER

ACKNOWLEDGMENT OF DEBTOR
STATE OF California)
COUNTY OF San Joaquin) ss.

On this 26th day of September 2002 before me personally appeared Claus E. Sadler III, proved to me on the basis of satisfactory evidence to be the person who executed the foregoing instrument on behalf of Insulair, INC, who being by me duly sworn did depose and say that he is an authorized officer of said corporation, that the said instrument was signed on behalf of said corporation as authorized by its Board of Directors and that he acknowledged said instrument to be the free act and deed of said corporation.

[Signature: Edward J. Winzinger]
{seal} Notary Public



SCHEDULE I
to
PATENT AND TRADEMARK SECURITY AGREEMENT

PATENTS:

UNITED STATES ISSUED PATENTS AND PATENT APPLICATIONS

Title	Patent/Serial Number	Issue/Filing Date
Three-layered insulated cup and method of manufacture	6,422,456	7/23/02
Insulated cup and method of manufacture	6,378,766	4/30/02
Insulated cup and method of manufacture	6,257,485	07/10/01
Insulated cup and method of manufacture	6,196,454	03/06/01
Insulated cup and method of manufacture	6,085,970	07/11/00
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Multi-layered insulated cup formed from folded sheet	5,964,400	10/12/99
Multi-layered insulated cup formed from folded sheet	5,697,550	12/16/97
Multi-layered insulated cup formed from folded sheet	5,660,326	8/26/97
Multi-layered insulated cup formed of one continuous sheet	RE 35,830	06/30/98

PATENT LICENSES: [to be added, if applicable]

PATENT LICENSES

Name of Agreement	Parties	Date of Agreement
License and Settlement Agreement	Insulair, Inc. and Design By US Company	4/21/98

TRADEMARKS:

UNITED STATES ISSUED TRADEMARKS, SERVICE MARKS
AND COLLECTIVE MEMBERSHIP MARKS

REGISTRATIONS

Mark	Registration Number	Registration Date
I (stylized)	2,139,778	02/24/98
INSULAIR	2,139,779	02/24/98
INSULAIR	2,127,523	01/06/98

APPLICATIONS

Mark	Serial Number	Filing Date
INSU-LOC	78/162241	9/9/02
FOOD-LOC	78/162238	9/9/02

COLLECTIVE MEMBERSHIP MARKS

Mark	Serial Number	Filing Date
NONE		

UNREGISTERED MARKS

Mark	Serial Number	Filing Date
NONE		

TRADEMARK LICENSES: [to be added, if applicable]

TRADEMARK LICENSES

Name of Agreement	Parties	Date of Agreement