

03-27-2003

Form PTO-1595 (Rev. 10/02)

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

OMB No. 0651-0027 (exp. 6/30/2005)

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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): BH&H, LLC 3.25.03

2. Name and address of receiving party(ies) Name: Wells Fargo Equipment Finance, Inc. 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: 530 Fifth Avenue  
15th Floor  
City: New York State: NY Zip: 10036

Execution Date: March 14, 2003

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) 6,112,416

Additional numbers attached?  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:  
Name: \_\_\_\_\_  
Inte **RETURN TO: ALM 143022**  
**U.S. CORPORATE SERVICES**  
**P.O. BOX 65607**  
**ST. PAUL, MN 55165-0607**  
**(651) 227-7575** 3/19

6. Total number of applications and patents involved:

7. Total fee (37 CFR 3.41).....\$ 40.00  
 Enclosed  
 Authorized to be charged to deposit account

Street Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

8. Deposit account number: \_\_\_\_\_  
(Attach duplicate copy of this page if paying by deposit account)

FINANCE SECTION  
MAR 25 11 09 AM '03  
RECORDS

DO NOT USE THIS SPACE

9. Statement and signature.  
*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*  
Katheryn M. Francis  
Name of Person Signing Katheryn M. Francis Signature 3/18/03 Date

03/26/2003 DBYRME 00000181 6112416 Total number of pages including cover sheet, attachments, and documents: 10

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

## PATENT SECURITY AGREEMENT

THIS PATENT SECURITY AGREEMENT (this "Agreement") is entered into as of March 14, 2003 by and between BH&H, LLC ("Debtor"), and Wells Fargo Equipment Finance, Inc. ("WFEFI").

### RECITALS

WHEREAS, WFEFI has extended or will hereafter extend credit to Debtor, and to secure its obligations to WFEFI, Debtor has executed or will hereafter execute various agreements, including without limitation, that certain security agreement covering among other items, various proprietary rights, patents and other general intangibles (which security agreement, together with any and all amendments and modifications thereto from time to time entered into, and any security agreements at any time hereafter executed in replacement and/or in substitution thereof and/or in addition thereto, shall be referred to herein as the "Security Agreement"); and

WHEREAS, Debtor and WFEFI wish to supplement the Security Agreement and further clarify their respective rights and obligations with regard to certain collateral in an instrument to be recorded with the United States Patent and Trademark Office and elsewhere as required by WFEFI.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, Debtor and WFEFI hereby agree as follows:

1. **SECURITY INTERESTS.** Pursuant to the Security Agreement and subject to and upon the additional terms, covenants and conditions hereof, Debtor hereby grants to WFEFI a security interest in all of Debtor's now owned or existing and hereafter acquired or arising right, title and interest in the following ("Property"):

(a) all patents, patent applications, and provisional applications and the inventions and improvements described and claimed therein, including, without limitation, those patents and/or patent applications listed on Exhibit A attached hereto and incorporated herein by this reference, 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) all claims, causes of action and rights to sue for past, present and future infringements thereof and all rights arising therefrom and pertaining thereto, (iv) all patented technology and know-how, and (v) all of the Debtor's rights corresponding thereto throughout the world (all of the foregoing patents and applications, together with the items described in clauses (i) through (v) in this Paragraph 1(a) are sometimes hereinafter individually and/or collectively referred to as the "Patents");

(b) all rights under or interest in any patent licenses and patent license agreements with any other party, whether Debtor is a licensee or licensor under any such license agreement, and the right to use the inventions and manufacture or prepare for sale and sell any and all inventory or other property now or hereafter owned by Debtor and now or hereafter covered by such licenses (all of the foregoing are hereinafter referred to collectively as the "Licenses");



(c) all general intangibles and all intangible intellectual or other similar property of the Debtor of any kin or nature, whether now owned or hereafter acquired or developed, associated with or arising out of any of the Patents and not otherwise described above or below; and

(d) whatever is receivable or received from or upon the sale, license, collection, use, exchange or other disposition, whether voluntary or involuntary, of any of the foregoing, including without limitation (i) any and all accounts, deposit accounts, chattel paper (whether electronic or tangible), instruments, promissory notes, documents, general intangibles, cash, and other rights to payment or proceeds payable to or for the account of Debtor from time to time in respect of any of the foregoing, (ii) any and all proceeds of any insurance, guaranty, indemnity or warranty payable to or for the account of Debtor from time to time with respect to any of the foregoing, (iii) any and all claims and 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 foregoing by any person or entity acting under color of governmental authority, and (iv) any and all other amounts from time to time paid or payable under or in connection with any of the foregoing or for or on account of any damage or injury to or conversion of any of the foregoing by any person or entity.

2. **OBLIGATIONS SECURED.** The obligations secured hereby are the payment and performance of: (a) all present and future Indebtedness of Debtor to WFEFI; (b) all obligations of Debtor and rights of WFEFI under this Agreement; and (c) all present and future obligations of Debtor to WFEFI of other kinds. The word "Indebtedness" is used herein in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities of Debtor, or any of them, heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether Debtor may be liable individually or jointly with others, or whether recovery upon such Indebtedness may be or hereafter becomes unenforceable.

3. **TERMINATION.** This Agreement will terminate upon the performance of all obligations of Debtor to WFEFI, including without limitation, the payment of all Indebtedness of Debtor to WFEFI, and the termination of all commitments of WFEFI to extend credit to Debtor, existing at the time WFEFI receives written notice from Debtor of the termination of this Agreement.

4. **RESTRICTIONS ON FUTURE AGREEMENTS.** Debtor will not, without WFEFI's prior written consent enter into any agreement that is inconsistent with this Agreement, and Debtor further agrees that it will not take any action, and will use its best 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 respect affect the validity or enforcement of the rights transferred to WFEFI under this Agreement or the rights associated with any Property.

5. **NEW PATENT RIGHTS.** If, prior to the termination of this Agreement, Debtor 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, Debtor shall give to WFEFI prompt notice thereof in writing and the provisions of Paragraph 1 above shall automatically apply thereto. Debtor agrees that it shall at its expense record concurrently with the filing of any Patent application or



the acquisition of any interest in or to any Patent hereafter in the United States Patent and Trademark Office (and in any other governmental office as WFEFI may require) a Patent Security Agreement Amendment executed by it and WFEFI in substantially in the form of Exhibit B attached hereto, with such Patent Security Agreement Amendment to reference the additional Patents and Patent applications which have not been previously recorded as subject to WFEFI's security interest.

6. **RIGHT TO INSPECT.** WFEFI may at all reasonable times (and at any time when any Event of Default (as defined below) exists) have access to, examine, audit, make copies (at Debtor's expense) and extracts from and inspect Debtor's premises and examine Debtor's books, records and operations relating to any of the Property; provided, that in conducting such inspections and examinations, WFEFI shall use reasonable efforts not to disturb unnecessarily the conduct of Debtor's ordinary business operations.

7. **ASSIGNMENTS AND LICENSES.** Debtor agrees neither to sell or assign its interest in, nor grant any license under, the Property, without the prior written consent of WFEFI; provided however, that so long as no Event of Default exists, Debtor may grant such bona fide licenses for good and valuable consideration as are necessary and usual in the ordinary course of Debtor's business as it is presently conducted and as it may be legally expanded, on the condition that such licenses so granted shall be subject to the terms and conditions of this Agreement and the Security Agreement. Debtor shall provide to WFEFI, promptly upon execution of the same, copies of all material license agreements hereafter entered into by Debtor (whether as a licensor or licensee) relating to or constituting now existing or hereafter acquired Property, and, further Debtor shall provide to WFEFI, from time to time at WFEFI's request, an updated list and description of license agreements in form and detail satisfactory to WFEFI. If required by WFEFI, Debtor shall obtain consents from the licensors of any and all Patents in which Debtor now or hereafter derives its rights as a licensee, which consents shall be in form and substance reasonably satisfactory to WFEFI, and include, without limitation, provisions whereby the licensors of such Patents shall recognize WFEFI's interest in their respective license agreements, provide WFEFI with notice and an opportunity to cure any defaults by Debtor thereunder, permit WFEFI to utilize and/or exercise Debtor's rights thereunder, and permit WFEFI to enforce its rights and remedies against Debtor in connection therewith (including, without limitation, assigning the rights of Debtor in connection with a foreclosure or other exercise of WFEFI's rights and remedies).

8. **WARRANTIES.** In addition to the representations and warranties made by Debtor in the Security Agreement, Debtor represents and warrants that:

(a) the Patents listed on Exhibit A to this Agreement and in any other patent security agreement or amendment executed by Debtor in favor of and delivered to WFEFI represent all of the patents and patent applications owned or held by Debtor, and the information set forth in such Exhibit A is entirely correct;

(b) with respect to any and all Property for which Debtor is a licensor or licensee, Debtor has provided WFEFI with true, correct, and complete list and copies of the related license agreements;

(c) Debtor has rights in and good title to the existing Property, and is the sole and exclusive owner of the Patents listed on Exhibit A, free and clear of any liens, claims, charges, encumbrances, security interests, and rights of others (other than the rights of any party to Licenses and other than the security interests and rights of WFEFI), including, without limitation,

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Settings\Temporary Internet Files\OLK2\PATENT  
SECURITY AGREEMENT -bhh.doc



pledges, assignments, shop rights and covenants by Debtor not to sue others; and the past, present and contemplated future use of the Property by the Debtor has not, does not and will not infringe upon or violate any right, privilege or license agreement of or with any other person or entity.

(d) to the best of Debtor's knowledge, each of the Patents is valid and enforceable; and

(e) Debtor has the unqualified right to enter into this Agreement and perform its terms.

9. **DUTIES AND COVENANTS.** Debtor shall have the duty, to the extent desirable in the normal conduct of Debtor's business, to, and Debtor shall:

(a) prepare and execute (at Debtor's expense) all petitions, oaths, specification, declarations or other papers that may be necessary or which WFEFI may deem necessary or appropriate for prosecuting any Patents and for prosecuting interference proceedings involving any such Patents;

(b) prosecute any legal actions or other proceedings involving any Patents, including without limitation, oppositions, cancellation proceedings, priority contests, public use proceedings and court actions alleging infringement or any other cause of action;

(c) make application on unpatented but patentable inventions;

(d) not abandon any material Patent or License without the prior written consent of WFEFI; and

(e) maintain in full force and effect the Property that are or shall be necessary or economically desirable in the operation of Debtor's business.

Any fees, costs, and expenses incurred in connection with the foregoing shall be borne by Debtor.

10. **DEFENSE OF PROPERTY; INDEMNITY.** Debtor hereby covenants and agrees promptly upon request of WFEFI to defend the Property and WFEFI's rights and interests therein and to promptly notify WFEFI of any event, occurrence or legal action which affects the Property or the rights of the parties in relation thereto. Debtor acknowledges that WFEFI may, but shall have no obligation whatsoever to, commence any legal action or other proceeding to defend the Property or to contest the use by any other party of the Property or any portion thereof. Debtor shall unconditionally indemnify WFEFI and hold WFEFI harmless from and against all claims, causes of action, damages, liability, costs and expenses, including reasonable attorneys' fees, that WFEFI may be subject to in connection with this Agreement, including without limitation, any patent infringement and contributory patent suits that may be brought against WFEFI.

11. **POWER OF ATTORNEY.** WFEFI shall have the right to, in the name of Debtor, or in the name of WFEFI or otherwise, without notice to or assent by Debtor, and Debtor hereby irrevocably constitutes and appoints WFEFI (and any of WFEFI's officers or employees or agents designated by WFEFI) as Debtor's true and lawful attorney-in-fact with full power and authority, (i) to sign the name of Debtor on all or any of such documents or instruments and

perform all other acts that WFEFI deems necessary or advisable in order to perfect or continue perfected, maintain the priority or enforceability of, provide notice of WFEFI's security interest in, or otherwise protect WFEFI's interests in the Property, (ii) execute any and all other documents and instruments, and perform any and all acts and things for and on behalf of Debtor, which WFEFI may deem necessary or advisable to use, maintain, preserve, or protect the Property and to accomplish the purposes of this Agreement, including without limitation (A) to assert or retain any rights under any license agreement for any of the Property, including, without limitation, any rights of Debtor arising under Section 365(n) of the U.S. Bankruptcy Code (11 U.S.C. Section 101 et seq.), (B) after the occurrence of any Event of Default, to defend, settle, adjust or institute any action, suit or proceeding with respect to the Property, and (C) after the occurrence of any Event of Default, to execute any and all applications, documents, papers and instruments for WFEFI to use the Property, to grant or issue any exclusive or non-exclusive license with respect to any Property, and to assign, convey or otherwise transfer title in or dispose of any of the Property; provided, however, that in no event shall WFEFI have the unilateral power, prior to the occurrence of an Event of Default, to assign any of the Property to any person, including itself, without Debtor's written consent. The foregoing shall in no way limit WFEFI's rights and remedies upon or after the occurrence of an Event of Default. This power of attorney, being coupled with an interest, is irrevocable.

12. LICENSE. Debtor hereby grants to WFEFI such irrevocable, worldwide, fully paid, royalty-free, non-exclusive, sublicensable and assignable licenses in such of its general intangibles and other property, exercisable without payment or royalty or other compensation to Debtor, to the full extent permitted by law, as may be reasonably necessary to permit the exercise of any of WFEFI's rights or remedies hereunder or to effectuate the purposes of this Agreement. Such licenses shall enable, without limitation, WFEFI to use, license or sublicense any general intangibles of Debtor and to make, sell or use any tangible asset of Debtor in which WFEFI has a security interest, including, without limitation, inventory, tooling or packaging owned or acquired by Debtor (or its successor, assignee or trustee in bankruptcy).

13. DEFAULTS. The occurrence of any of the following shall constitute an "Event of Default" under this Agreement: (a) any representation or warranty made by Debtor herein shall prove to be or become incorrect, false or misleading in any material respect; (b) Debtor shall fail to observe or perform any obligation or agreement contained herein; or (c) any default in the payment or performance of any obligation, or any defined event of default (including, without limitation any "Event of Default" defined in the Security Agreement) under any contract, instrument or agreement evidencing or relating to any Indebtedness of Debtor to WFEFI (in which case, subject to applicable cure provisions, if any, WFEFI shall have the rights and remedies available to a secured party under law and/or expressly provided in any such other contract, instrument or agreement and hereunder).

From and after the occurrence of an Event of Default, WFEFI shall have the right, but shall not be obligated, to bring suit in its own name to enforce the Property and, if WFEFI shall commence any such suit, Debtor shall, at the request of WFEFI, do any and all lawful acts and execute any and all proper documents required by WFEFI in aid of such enforcement. Debtor shall, upon demand, promptly reimburse WFEFI for all costs and expenses incurred by WFEFI in the exercise of its rights under this Paragraph 13 (including, without limitation, reasonable fees and expenses of attorneys for WFEFI). Further, if any Event of Default shall have occurred and be continuing, WFEFI shall have the right to sue for past infringement of the Property and to collect all damages and profits for past infringements and, following the giving of any notices required hereby, WFEFI shall have, in addition to all other rights and remedies given it by this Agreement and the Security Agreement, those 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 Property may be located and, without limiting the generality of the foregoing, WFEFI may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to Debtor, all of which are expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon the whole or from time to time any part of the Property or any interest which the Debtor may have therein, and after deducting from the proceeds of sale or other disposition of the Property all expenses (including all reasonable expenses for brokers' fees and legal services), shall apply the residue of such proceeds toward the payment of the indebtedness secured hereby. Any remainder of the proceeds after payment in full of such obligations shall be paid over to the Debtor or to such other party who may be entitled to such remaining proceeds. Notice of any sale or other disposition of the Property shall be given to Debtor at least five (5) days before the time of any intended public or private sale or other disposition of the Property is to be made, which Debtor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, any holder of any indebtedness or WFEFI may, to the extent permissible under applicable law, purchase the whole or any part thereof. WFEFI shall not be obligated to preserve any rights Debtor may have against prior parties, to liquidate or realize on the Property at all or in any particular manner or order, or apply any cash proceeds of Property in any particular order.

14. **RELATION TO SECURITY AGREEMENT.** This Agreement is a supplement to the Security Agreement, and WFEFI's rights and remedies, and Debtor's obligations and waivers, under the Security Agreement, and the interpretive principles stated in the Security Agreement shall be applicable hereunder; provided however, that this Agreement and the Security Agreement shall be construed together so as to grant WFEFI the greatest rights and remedies with regard to the Property; and provided further, that WFEFI's rights and remedies hereunder may be expressly modified by amendments to the Security Agreement from time to time.

15. **MODIFICATION.** This Agreement cannot be altered, amended or modified in any way, except as specifically permitted by the terms hereof or by a writing signed by the parties hereto.

16. **HEADINGS.** The headings used herein are for descriptive purposes only and shall not be deemed a part of the provisions hereof.

17. **SUCCESSORS; ASSIGNS.** This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties; provided however, that Debtor may not assign this Agreement or any interest herein without WFEFI's prior written consent.

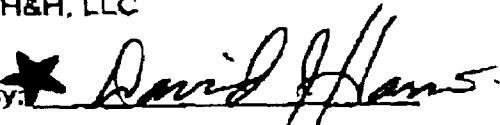
18. **SEVERABILITY OF PROVISIONS.** If any provision of this Agreement shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or any remaining provisions of this Agreement.

19. **GOVERNING LAW.** Except to the extent that Federal law preempts, this Agreement shall be governed by and construed in accordance with the laws of the State of Minnesota.




IN WITNESS WHEREOF, Debtor and WFEFI hereby have executed this Agreement as of the date first written above.

BH&H, LLC

By:   
Title: Manager

Wells Fargo Equipment Finance, Inc.

By:   
Title: Assistant Vice President



**EXHIBIT A**  
**to**  
**PATENT SECURITY AGREEMENT**  
**between**  
**BH&H, LLC**  
**and**  
**WELLS FARGO EQUIPMENT FINANCE, INC.**  
**Dated as of March 14, 2003**

**A. PATENTS:**

<u>Patent Number</u>	<u>Title</u>	<u>Issue Date</u>
6,112,416	Weed and Grass Trimmer Attachment Head	9/5/00

**B. PATENT APPLICATIONS:**

<u>Application Number</u>	<u>Title</u>	<u>Filing Date</u>
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**C. PATENT COOPERATION TREATY APPLICATIONS:**

<u>Application Number</u>	<u>Title</u>	<u>Filing Date</u>
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SECURITY AGREEMENT exhibit A - BHH LLC1.doc



**EXHIBIT B  
to  
PATENT SECURITY AGREEMENT  
between**

\_\_\_\_\_ **and**

**Dated as of** \_\_\_\_\_

**(Form of PATENT SECURITY AGREEMENT AMENDMENT)**

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SECURITY AGREEMENT exhibit A - Newspring.doc

**RECORDED: 03/25/2003**

**PATENT  
REEL: 013879 FRAME: 0053**