

Form PTO-1595 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings		RECORDATION FORM COVER SHEET PATENTS ONLY		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): Michael Merkel			2. Name and address of receiving party(ies) Name: Merkel Composite Technologies Internal Address:		
Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
3. Nature of conveyance: <input type="checkbox"/> Assignment <input type="checkbox"/> Merger <input checked="" type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input type="checkbox"/> Other			Street Address: 1620 North 48th Street Suite 106 City: Phoenix State: AZ Zip: 85008		
Execution Date: 03/19/2004			Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> 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) 6,117,376 Additional numbers attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
5. Name and address of party to whom correspondence concerning document should be mailed: Name: Ray K. Harris Internal Address: Street Address: Fennemore Craig, P.C. 3003 North Central Ave., Suite 2600 City: Phoenix State: Arizona Zip: 85012			6. Total number of applications and patents involved: 1 7. Total fee (37 CFR 3.41) \$ 40 <input type="checkbox"/> Enclosed <input checked="" type="checkbox"/> Authorized to be charged to deposit account 8. Deposit account number: 060590 (Attach duplicate copy of this page if paying by deposit account)		
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. Ray K. Harris Name of Person Signing Signature 5/6/04 Date Total number of pages including cover sheet, attachments, and documents: 9					

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

CH \$40.00 060590 6117376

PATENT SECURITY AGREEMENT *plb*

This Patent Security Agreement (this "Agreement"), dated as of ~~February~~ ^{MARCH} 19, 2004, is made by and between Merkel Composite Technologies, an Arizona corporation ("Debtor") in favor of Michael Merkel ("Inventor").

RECITALS

WHEREAS, Debtor has agreed to purchase from Inventor U.S. Patent No. 6,117,376 entitled "Method of making foam filled composite products" issued September 12, 2000 (the "376 Patent").

WHEREAS, Debtor is obligated to make certain deferred payments to Inventor, Debtor has agreed to execute and deliver this Agreement for filing with the PTO (as defined below) and with any other relevant recording systems in any jurisdiction, and as further evidence of and to effectuate Inventor's security interests in the '376 Patent.

AGREEMENT

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which is hereby acknowledged, Debtor hereby agrees in favor of the Inventor, as follows:

1. Definitions; Interpretation.

(a) Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Inventor" shall have the meaning ascribed to such term in the preamble to this Agreement.

"Bankruptcy Code" means the United States Bankruptcy Code (11 U.S.C. §101 et seq.), as amended, and any successor statute.

"Debtor" shall have the meaning ascribed to such term in the preamble to this Agreement.

"Event of Default" means any Event of Default under the Purchase and Sale Agreement.

"'376 Patent" has the meaning ascribed to such term in the preamble to this Agreement.

"Proceeds" means whatever is receivable or received from or upon the sale, lease, license, collection, use, exchange or other disposition, whether voluntary or involuntary, of the '376 Patent, including "proceeds" as such term is defined in the UCC, and all proceeds of proceeds. Proceeds shall include (i) any and all accounts, chattel paper, instruments, general intangibles, cash and other proceeds, payable to or for the account of Debtor, from time to time

with respect to the '376 Patent, (ii) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to or for the account of Debtor from time to time with respect to the '376 Patent, (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 the '376 Patent by any Person 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 the '376 Patent or for or on account of any damage or injury to or conversion of the '376 Patent by any Person.

"Purchase and Sale Agreement" means the Agreement between Debtor and Inventor dated on even date herewith regarding sale of the '376 Patent to Debtor.

"PTO" means the United States Patent and Trademark Office and any successor thereto.

"Secured Obligations" shall mean all liabilities, obligations, or undertakings owing by Debtor of any kind or description arising out of or outstanding under, advanced or issued pursuant to, or evidenced by the Purchase and Sale Agreement or this Agreement, irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, voluntary or involuntary, whether now existing or hereafter arising, and including all interest (including interest that accrues after the filing of a case under the Bankruptcy Code) and any and all costs, fees (including attorneys fees), and expenses which Debtor is required to pay pursuant to any of the foregoing, by law, or otherwise.

"UCC" means the Uniform Commercial Code as in effect from time to time in the State of New York.

"United States" and "U.S." each mean the United States of America.

(b) Terms Defined in UCC. Where applicable and except as otherwise defined herein, terms used in this Agreement shall have the meanings ascribed to them in the UCC.

(c) Interpretation. In this Agreement, except to the extent the context otherwise requires:

(i) Any reference to a Section or a Schedule is a reference to a section hereof, or a schedule hereto, respectively, and to a subsection or a clause is, unless otherwise stated, a reference to a subsection or a clause of the section or subsection in which the reference appears.

(ii) The words "hereof," "herein," "hereto," "hereunder" and the like mean and refer to this Agreement as a whole and not merely to the specific section, subsection, paragraph or clause in which the respective word appears.

(iii) The meaning of defined terms shall be equally applicable to both the singular and plural forms of the terms defined.

(iv) The words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation."

(v) References to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto.

(vi) References to statutes or regulations are to be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation referred to.

(vii) Capitalized words not otherwise defined herein shall have the respective meanings assigned to them in the Financing Agreement.

(viii) Any captions and headings are for convenience of reference only and shall not affect the construction of this Agreement.

(ix) In the event of a direct conflict between the terms and provisions of this Agreement and the Purchase and Sale Agreement, it is the intention of the parties hereto that such documents shall be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict between this Agreement and the Financing Agreement that cannot be resolved as aforesaid, the terms and provisions of the Purchase and Sale Agreement shall control and govern.

2. Security Interest.

(a) Assignment and Grant of Security in Respect of the Secured Obligations.
As security for the prompt payment and performance of the Secured Obligations, Debtor hereby grants, assigns, transfers, and conveys to the Collateral Agent, for the benefit of the Lender Group, continuing security interests in all of Debtor's right, title and interest in, to and under the '376 Patent, including :

(i) all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof and the inventions disclosed therein, and all rights corresponding thereto throughout the world;

(ii) all claims, causes of action and rights to sue for past, present and future infringement or unconsented use the '376 Patent and all rights arising therefrom and pertaining thereto;

(iii) all general intangibles (as defined in the UCC) and all intangible intellectual or other similar property of Debtor of any kind or nature, whether now owned or hereafter acquired or developed, associated with or arising out of the '376 Patent and not otherwise described above; and

(iv) all products and Proceeds of any and all of the foregoing.

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(b) Continuing Security Interests. Debtor hereby agrees that this Agreement shall create continuing security interests in the Collateral which shall remain in effect until terminated in accordance with this Agreement.

3. Further Assurances: Appointment as Attorney-in-Fact. Debtor at its expense shall execute and deliver, or cause to be executed and delivered, to the Inventor any and all documents and instruments, in form and substance reasonably satisfactory to the Inventor, in his reasonable discretion, and take any and all action, which the Inventor may reasonably request from time to time, to perfect and continue perfected, maintain the priority of or provide notice of the security interests in the '376 Patent and to accomplish the purposes of this Agreement. If Debtor refuses to execute and deliver, or fails timely to execute and deliver, any of the documents requested in accordance with the foregoing, the Inventor shall have the right, in the name of Debtor, without notice to or assent by Debtor, and Debtor hereby irrevocably constitutes and appoints Inventor (and any of Inventor's officers or employees or agents designated by Inventor) 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 Inventor deems necessary or advisable in order to perfect or continue perfected, maintain the priority or enforceability of or provide notice of the security interests in the '376 Patent, and (ii) to execute any and all other documents and instruments, and to perform any and all acts and things for and on behalf of Debtor, which Inventor may deem necessary or advisable to maintain, preserve and protect the '376 Patent and to accomplish the purposes of this Agreement, including (A) upon the occurrence and during the continuance of any Event of Default, to defend, settle, adjust or institute any action, suit or proceeding with respect to the '376 Patent, (B) upon the occurrence and during the continuance of any Event of Default, to assert or retain any rights under any license agreement for any of the '376 Patent, including any rights of Debtor arising under Section 365(n) of the Bankruptcy Code, and (C) upon the occurrence and during the continuance of any Event of Default, to execute any and all applications, documents, papers and instruments for Inventor to use the '376 Patent, to grant or issue any exclusive or non-exclusive license with respect to the '376 Patent, and to assign, convey or otherwise transfer title in or dispose of the '376 Patent. The power of attorney set forth in this Section 3, being coupled with an interest, is irrevocable so long as this Agreement shall not have terminated in accordance with its terms.

4. Representations and Warranties. Debtor represents and warrants to Inventor as follows:

(a) Validity. To Debtor's knowledge, the '376 Patent is subsisting and has not been adjudged invalid or unenforceable, in whole or in part, all maintenance fees required to be paid on account of the '376 Patent has been paid for maintaining the '376 Patent in force, and, to Debtor's knowledge, the '376 Patent is valid and enforceable.

(b) Title. (i) Debtor has rights in and good and defensible title to the '376 Patent, (ii) Debtor is the sole and exclusive owner thereof, free and clear of any Liens (other than interest created hereunder).

(c) No Infringement. To Debtor's knowledge, (i) no material infringement or unauthorized use presently is being made of any of the '376 Patent by any Person, and (ii) the

past, present and contemplated future use of the '376 Patent by Debtor has not, does not and will not infringe upon or violate any right or privilege of any other Person.

(d) Powers. Debtor has the unqualified right, power and authority to pledge and to grant to Inventor a security interest in the '376 Patent pursuant to this Agreement, and to execute, deliver and perform its obligations in accordance with the terms of this Agreement, without the consent or approval of any other Person except as already obtained.

5. Covenants. Debtor covenants that so long as this Agreement shall be in effect, Debtor shall:

(a) comply with all of the covenants, terms and provisions of this Agreement, the Purchase and Sale Agreement to which Debtor is a party;

(b) on a continuing basis, make, execute, acknowledge and deliver, and file and record in the proper filing and recording places, all such instruments and documents, including appropriate financing and continuation statements and security agreements, and take all such action as may be necessary or may be requested by Inventor, in its discretion, to carry out the intent and purposes of this Agreement, or for assuring, confirming or protecting the grant or perfection of the security interests granted or purported to be granted hereby, to ensure Debtor's compliance with this Agreement or to enable Inventor to exercise and enforce its rights and remedies hereunder with respect to the '376 Patent.

(c) comply, in all material respects, with all applicable statutory and regulatory requirements in connection with the '376 Patent and do all other acts and take all other measures which, in Debtor's reasonable business judgment, may be necessary to preserve, protect and maintain the '376 Patent and all of Debtor's rights therein; and

(d) comply with each of the terms and provisions of this Agreement and the Purchase and Sale Agreement.

6. Events of Default. The occurrence of any "Event of Default" under the Purchase and Sale Agreement shall constitute an Event of Default hereunder.

7. Remedies. Upon the occurrence and during the continuance of an Event of Default, the Inventor shall have all rights and remedies available to it under applicable law (which rights and remedies are cumulative) with respect to the security interests in the '376 Patent or any other Collateral. Debtor agrees that such rights and remedies include the right of Inventor as a secured party to sell or otherwise dispose of its Collateral after default, pursuant to UCC. Debtor agrees that Inventor shall at all times have such royalty free licenses, to the extent permitted by law, as may be reasonably necessary to permit the exercise of any of Inventor's rights or remedies upon or after the occurrence and during the continuation of an Event of Default with respect to (among other things) any tangible asset of Debtor in which Inventor has a security interest. In addition to and without limiting any of the foregoing, upon the occurrence and during the continuance of an Event of Default, Inventor shall have the right but shall in no way be obligated to bring suit, or to take such other action as Inventor deems necessary or advisable, in the name of Debtor or Inventor, to enforce or protect any of the Collateral, in which event Debtor shall, at the request of Inventor, do any and all lawful acts and execute any and all

documents required by Inventor in aid of such enforcement. To the extent that Inventor shall elect not to bring suit to enforce the '376 Patent, in the exercise of its reasonable business judgment, Debtor agrees to use all reasonable measures and its diligent efforts, whether by action, suit, proceeding or otherwise, to prevent the infringement, misappropriation or violation thereof by others and for that purpose agrees diligently to maintain any action, suit or proceeding against any Person necessary to prevent such infringement, misappropriation or violation.

8. Binding Effect. This Agreement shall be binding upon, inure to the benefit of and be enforceable by Debtor and Inventor and their respective successors and assigns.

9. Notices. All notices and other communications hereunder shall be in writing and shall be mailed, sent or delivered in accordance with the Purchase and Sale Agreement.

10. Governing Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Arizona, except to the extent that the validity or perfection of the security interests hereunder in respect of the '376 Patent are governed by federal law.

11. Entire Agreement; Amendment. This Agreement contains the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior drafts and communications relating to such subject matter. Neither this Agreement nor any provision hereof may be modified, amended or waived except by the written agreement of the parties to this Agreement.

12. Termination. Upon the indefeasible payment in full in cash of the Secured Obligations this Agreement and the security interests granted hereunder shall terminate and Inventor shall execute and deliver such documents and instruments and take such further action reasonably requested by Debtor and at Debtor's expense as shall be necessary to evidence termination of the security interests granted by Debtor to Inventor hereunder.

[Signature page follows]

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

MERKEL COMPOSITE TECHNOLOGIES,
an Arizona corporation

By: 


Name:

RAYMOND L. BACALA

Title:

PRESIDENT

MICHAEL MERKEL

By: 
Name: _____
Title: _____

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