

PATENT ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE:

NEW ASSIGNMENT

NATURE OF CONVEYANCE:

NUNC PRO TUNC ASSIGNMENT

EFFECTIVE DATE:

08/12/2002

CONVEYING PARTY DATA

Name	Execution Date
Wallguard Corporation, a Wisconsin Corporation	08/12/2002

RECEIVING PARTY DATA

Name:	Mr. Michael Garfield
Street Address:	7090 Dogwood Lane
City:	Mentor
State/Country:	OHIO
Postal Code:	44060

Name:	Mr. Paul E. Marshall Jr.
Street Address:	107 Russell Street
City:	Creston
State/Country:	OHIO
Postal Code:	44217

PROPERTY NUMBERS Total: 3

Property Type	Number
Patent Number:	5352531
Patent Number:	5534303
Patent Number:	5534583

CORRESPONDENCE DATA

Fax Number: (330)864-7986

Correspondence will be sent via US Mail when the fax attempt is unsuccessful.

Phone: (330) 864-5550

Email: wcrooks@hahnlaw.com

Correspondent Name: W. Edward Crooks

PATENT

500024966

REEL: 015819 FRAME: 0738

CH \$120.00 5352531

Address Line 1: 1 GOJO Plaza
Address Line 2: Suite 300
Address Line 4: Akron, OHIO 44311-1076

NAME OF SUBMITTER:

W. Edward Crooks

Total Attachments: 15

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Revised 07/29/02
Revised 07/30/02
Revised 08/05/02
Revised 08/08/02

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement is dated as of the 12 day of August, 2002, by and between **WALLGUARD CORPORATION**, a Wisconsin Corporation, 6365 S. 20th Street, No. 15, Oak Creek, Wisconsin 53154, ("Wallguard") and **ROBERT SAWYER**, 6365 S. 20th Street, No. 15, Oak Creek, Wisconsin 53154, ("Sawyer"), and **MICHAEL GARFIELD**, 7090 Dogwood Lane, Mentor, Ohio 44060, and **PAUL E. MARSHALL, JR.**, 107 Russell Street, Creston, Ohio 44217, or their nominee, (collectively "Buyer").

WITNESSETH:

WHEREAS, Wallguard owns and operates a business that manufactures, formulates and sells various materials used in the construction industry and various facets of maintaining structures or impervious surfaces, and

WHEREAS, Wallguard desires to sell to Buyer upon the terms and subject to the conditions hereinafter set forth, substantially all of the properties and assets used in the business at 6395 S. 20th Street, No. 15, Oak Creek, Wisconsin 53154, and

WHEREAS, Buyer desires to acquire from Wallguard upon the terms and conditions hereinafter set forth, the properties and assets of Wallguard currently used in its business as herein detailed, in consideration of certain payments by Buyer.

NOW, THEREFORE, in consideration of the promises and the mutual covenants hereinafter contained and other good and valuable consideration, Buyer and Wallguard on the basis of and in reliance upon the representations, warranties, covenants, obligations and agreements set forth in this Agreement, and upon the terms and subject to the conditions contained herein hereby agree as follows:

ARTICLE I. PURCHASE AND SALE OF ASSETS

1.1 Purchase and Sale of Assets. Except as provided in Section 1.2, Wallguard shall sell, convey, set over, deliver, assign and transfer to Buyer and Buyer shall purchase and acquire from Wallguard at the Closing (as defined in Section 3.1) all of the assets, properties, rights and interest owned by, or used in the business at any location, of Wallguard of every kind and description, tangible or intangible. Sawyer shall set over, deliver, assign and transfer to Buyer the United States patents as owned by Sawyer and all of his shares in Miti-Mite, Inc. The assets shall include the following:

(a) Inventory. All of Wallguard's usable inventory and supplies on hand as of the Closing and other inventory used in the normal day-to-day operation of the business.

(b) Tangible Personal Property. Wallguard's equipment, business machines, furniture, fixtures, leasehold improvements and other tangible personal property listed on Schedule "A" attached hereto and made a part hereof.

(c) Books, Records and Written Materials. All of Wallguard's records (including, without limitation, business records), books, files, invoices, forms, labels, packaging, flow sheets, and other technical and non-technical data and information.

(d) Catalogs and Advertising Materials. All promotional and advertising materials, artwork, catalogs, brochures, plans, customer lists, supplier lists, manuals, handbooks and dealer and distributor lists.

(e) Permits and Approvals. All licenses, permits, approvals, variances, waivers or consents (collectively the "Permits") issued to Wallguard by any foreign, federal, state or local governmental entity or municipality or subdivision thereof or any authority, department, commission, board, bureau, agency, court or instrumentality (collectively the "Governmental Authorities") which are transferable to Buyer. With respect to any permits, licenses or provider number referred to herein which are not transferable to Buyer, Wallguard shall allow Buyer to continue the temporary use thereof, to the extent legally permissible, until the Buyer has obtained replacements therefor. For the purpose of workers' compensation and unemployment compensation insurance coverage only, the Buyer shall be considered to be the successor to the Wallguard's on going business. (See Schedule "B".) Buyer will indemnify and hold harmless Wallguard and Sawyer from any claims incurred after the Closing. Wallguard will indemnify and hold harmless Buyer from any claims made prior to the Closing.

(f) All of the rights of Wallguard as lessee under that certain Real Property Lease Agreement between Wallguard and **REDACTED**

1.2 Excluded Assets. Notwithstanding any other provision of this Agreement, the following assets, properties, rights and interests of Wallguard shall not be included in the Assets:

CS AND RICHARDS
ORNEYS AT LAW
CURTIS BOULEVARD
AKE, OHIO 44093
NORTH RIDGE ROAD
SON, OHIO 44057

REDACTED

(a)

ARTICLE II. PURCHASE PRICE

2.1 Purchase Price for Assets. In full consideration for the assets to be sold, conveyed, set over, delivered, assigned and transferred pursuant to Section 1.1 hereto, Buyer shall:

REDACTED

2.2 Payment of Purchase Price. The amounts owed pursuant to Section 2.1(b) hereof shall be payable as follows:

REDACTED

AND RICHARDS
ATTORNEYS AT LAW
1000 BOUTWELL BOULEVARD
COLUMBUS, OHIO 43205
NORTH RIDGE ROAD
COLUMBUS, OHIO 43207

(a) **Leases.** All liabilities and obligations of Wallguard arising under the Personal Property Leases as set forth on Schedule "C" and the Real Property Lease as set forth on Schedule "C".

2.4 **Other Consideration.**

(A) Wallguard grants to Buyer the exclusive right to the use in any manner the name "Wallguard" or "Wallguard Corporation". Wallguard also grants to Buyer exclusive use of any telephone numbers used in connection with the business either at the time of signing of this agreement or at the time of closing.

(B) **REDACTED**

(C) **REDACTED**

2.5 **REDACTED**

(a) **REDACTED**

(b) **REDACTED**

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TORNEYS AT LAW
O CURTIS BOULEVARD
LAKE, OHIO 44095
NORTH RIDGE ROAD
ISON, OHIO 44057

ARTICLE III. CLOSING

3.1 Time and Place. The transfers and deliveries to be made pursuant to this Agreement shall, except as otherwise provided herein, take place at a mutually agreeable location (eastern daylight time on August ____, 2002), or at such other place, time, earlier or later date as may be agreed upon by Buyer and Wallguard (the "Closing Date"). Those transfers and deliveries required to be made hereunder on the Closing Date are referred to in this Agreement as the "Closing" and shall be deemed to be effective as of commencement of business on the Closing Date.

Wallguard and Sawyer shall not do, or cause to be done, any act or suffer, or cause to be suffered, any omission which would cause to be breached, or might result in a breach of, any of the representations, warranties, covenants of Wallguard and Sawyer contained herein if the same were made anew immediately after any such act or omission.

3.2 Conditions Precedent to Buyer's Obligations. Each of the agreements of Buyer and Wallguard and Sawyer to be performed at the Closing pursuant to this Agreement shall be subject to the fulfillment of each of the following conditions:

(a) Each of the representations and warranties of Buyer and Wallguard and Sawyer set forth in Article IV hereof shall be true and correct both on the date hereof and on the date of the Closing as if made at that time, except to the extent waived in writing by Buyer and except insofar as changes shall have occurred after the date hereof which are contemplated by this Agreement.

(b) Wallguard and Sawyer shall have performed and complied with all agreements, undertakings and obligations which are required to be performed by them or

complied with by it at or prior to the Closing, except to the extent waived by Buyer in writing.

(c) All consents and approvals of third parties with respect to any of the Assets to be conveyed hereunder which are material to the business and operations of Wallguard (financial or otherwise) (specifically including the consents and approvals necessary to effect the assignment to Buyer of the interests listed in Schedule "A" hereto) shall have been obtained, or, to the satisfaction of Buyer and its counsel, such consents and approvals are reasonably certain to be obtained within a reasonable time after the closing.

(d) The Real Property Lease shall have been assigned or amended in form and substance satisfactory to Buyer to permit Buyer to be substituted as lessee.

(e) An assignment of the following United States Patents:

1. Patent No. 5,534,583;
2. Patent No. 5,352,531;
3. Patent No. 5,534,303.

The Assignment will transfer 100% ownership in the patents to Wallguard Corporation of Ohio, Inc., subject to the following: Wallguard has granted R.P.C., Inc., a Georgia corporation, a non-exclusive license to use Patent 5,352,531, which assignment shall be subject to the R.P.C., Inc.'s non-exclusive license. The non-exclusive license is set forth in Schedule "F".

3.3 **REDACTED**

AND RICHARDS
ATTORNEYS AT LAW
COURTIS BOULEVARD
COLUMBUS, OHIO 44095
NORTH RIDGE ROAD
COLUMBUS, OHIO 44057

(a) **REDACTED**

(b) **REDACTED**

3.4 Documents to be Delivered by Wallguard. In addition to any other documents specifically required to be delivered pursuant to this Agreement, Wallguard shall deliver to Buyer, in form and substance reasonably satisfactory to Buyer and its counsel:

(a) A bill of sale transferring to Buyer the Assets.

(b) Such other deeds, bills of sale, certificates of title, endorsements, assignments, affidavits, and other good and sufficient instruments of sale, assignment, conveyance and transfer, in form and substance reasonably satisfactory to Buyer and its counsel, as shall be required to effectively vest in Buyer all of Wallguard's right, title and interest in and to all of the Assets, free and clear of any and all liens, equities, claims, mortgages, charges, security interests, encroachments, restrictions or encumbrances whatsoever (collectively "Liens").

(c) A fully executed assignment of the lease set forth in Section 1.1(f).

(d) A fully executed assignment of United States Patent Nos. 5,352,531; 5,534,303; and 5,534,588.

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ATTORNEYS AT LAW
CURTIS BOULEVARD
LAKE, OHIO 44095
NORTH RIDGE ROAD
OHIO 44057

(e) All consents to the assignment to Buyer of each lease, contract, agreement, commitment or other undertaking comprising a part of the Assets that require such consent.

(f) **REDACTED**

(g) **REDACTED**

3.5 **REDACTED**

ARTICLE IV. REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of Wallguard. Wallguard represents and warrants to Buyer that:

(a) Organization and Standing; Power and Authority; Approvals.

Wallguard is a corporation who has full power and authority to: (i) own, lease or operate properties and assets, (ii) carry on business as now being conducted, (iii) make and perform this Agreement and (iv) perform the transactions.

(b) Sawyer is an individual that has full power and authority to transfer the patents subject to Section 3(27)(c).

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ORNEYS AT LAW
COURTIS BOULEVARD
AKE OHIO 44095
NORTH RIDGE ROAD
N OHIO 44057

(c) Brokers, Finders and Agents. Wallguard is not directly or indirectly obligated to anyone acting as a broker, finder or in any other similar capacity in connection with this Agreement or the transactions contemplated herein.

(d) Permits. Schedule "B" hereto contains a true, correct and complete list of all Permits and Patents issued to Wallguard and which are currently used by it in the operation of its business. Wallguard has not failed to comply with any law or other requirement of any Governmental Authority that would prevent Wallguard from conducting its business on substantially the same terms as it is currently being operated where applicable, Buyer will secure all permits that are necessary to operate the business that are non-transferable.

(e) Real Property Lease. Schedule "C" contains a true and correct copy of the real property lease fo **REDACTED**

(f) Accuracy of Representations and Warranties. None of the information contained in the representations or warranties of Wallguard set forth in this Agreement, or in any of the certificates, schedules, lists, documents, exhibits or other instruments delivered or to be delivered by Wallguard as contemplated by any provision of this Agreement, contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

4.2 Representations and Warranties of Buyer. Buyer represents and warrants to Wallguard that:

S AND RICHARDS
ORNEYS AT LAW
CURTIS BOULEVARD
AKE, OHIO 44095
NORTH RIDGE ROAD
ON, OHIO 44057

(a) Accuracy of Representations and Warranties. All representations and warranties of Buyer in this Agreement are true, accurate and complete in all material respects as of the date hereof.

(b) Brokers, Finders and Agents. Buyer is not directly or indirectly obligated to anyone as a broker, finder or in any other similar capacity in connection with this Agreement or the transactions contemplated herein.

ARTICLE V. CERTAIN ADDITIONAL COVENANTS

5.1 Expenses. Each party hereto will bear the legal, accounting and other expenses incurred by such party in connection with this Agreement and the other agreements and transactions contemplated hereby.

ARTICLE VI. MISCELLANEOUS

6.1 Survival of Representations and Warranties. The representations of the parties hereto made in this Agreement shall not be affected by any information furnished to, or any investigation conducted by, any of them or their representatives in connection with the subject matter of this Agreement, and such representations and warranties shall survive for a period of eighteen (18) months after the Closing.

6.2 Amendments. This Agreement may be amended only by a writing executed by all of the parties hereto that refers to this Agreement.

6.3 Entire Agreement. This Agreement and the other agreements expressly provided for herein set forth the entire understanding of the parties hereto and supersede all prior contracts, agreements, arrangements, communications, discussions, representations and warranties, whether oral or written, between the parties.

S AND RICHARDS
ORNEYS AT LAW
CURTIS BOULEVARD
AKE, OHIO 44095
NORTH RIDGE ROAD
ON, OHIO 44057

6.4 Governing Law. This Agreement shall in all respects be governed by and construed in accordance with the laws of the State of Ohio. Each party agrees to submit to the personal jurisdiction of the federal and state courts located in Summit County, State of Ohio.

6.5 Notices. Any notice, request or other communication required or permitted hereunder shall be in writing and shall be deemed to have been duly given if sent by registered or certified mail, return receipt requested, postage prepaid, to the parties (and to the individuals to whom copies shall be sent) at their respective addresses set forth below.

To Seller: **REDACTED**

Copy To: **REDACTED**

To Buyer: **REDACTED**

Copy To: **REDACTED**

Any party by written notice to the other party may change the address or the persons to whom notices or copies thereof shall be directed.

6.6 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, and all of which together will constitute one and the same instrument.

6.7 **Assignment.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of each party hereto. No rights, obligations or liabilities hereunder shall be assumed by any party without the prior written consent of the other parties.

6.8 **Severability.** Each section, subsection and lesser section of this Agreement constitutes a separate and distinct undertaking, covenant or provision hereof. In the event that any provision of this Agreement shall be determined to be unenforceable because of the scope, duration or area of its applicability, the court making such a determination shall have the power to modify such scope, duration or area or all of them, and such provision shall then be applicable in such modified form, but every other provision of this Agreement shall remain in full force and effect.

6.9 **Waivers.** Any waiver by any party of the violation of, breach of or default under any provision of this Agreement, or any other agreements provided for herein, shall not be construed as, or constitute, a continuing waiver of such provision, or waiver of any other violation of, breach of or default under any other provision of this Agreement or any other agreements provided for herein.

6.10 **Third Parties.** Nothing expressed or implied in this Agreement is intended, or shall be construed, to confer upon or give any person or entity other than Buyer, Wallguard any rights or remedies under or by reason of this Agreement.

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CURTIS BOULEVARD
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NORTH RIDGE ROAD
ON, OHIO 44057

6.11 **Schedules.** The Schedules attached to this Agreement are incorporated herein and shall be part of this Agreement for all purposes.

6.12 **Headings.** The headings in this Agreement are solely for the convenience of reference and shall not be given any effect in the construction or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have executed, or have caused their duly authorized representatives to execute, this Agreement on the date first written above.

Date: August 9, 2002

Date: _____

WALLGUARD CORPORATION

By: Robert D. Sawyer
owner & president

ROBERT D. SAWYER
ROBERT SAWYER

Date: 8/12/02

Date: 8-12-02

BUYER:

Michael Garfield
MICHAEL GARFIELD

Paul E. Marshall Jr.
PAUL E. MARSHALL, JR.

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