

04-05-2006

Form PTO-1595

(Rev. 10/02)

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

RECORD

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DEPARTMENT OF COMMERCE

U.S. Patent and Trademark Office

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):

HEATMASTER, LLC

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

## 3. Nature of conveyance:

☐

Assignment

☐

Merger

☒

Security Agreement

☐

Change of Name

☐

Other

Execution Date: 03/01/06

## 2. Name and address of receiving party(ies)

Name: Wachovia Bank, National Association

Internal Address: 31 Pharr Road, 2nd Floor

GA-9071

Street Address: 31 Pharr Road, 2nd Floor

City: Atlanta State: GA Zip: 30305

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) 6,155,249

Additional numbers attached? ☐ Yes ☐ No

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

Name: Bradley E. Wahl, Esq.

Internal Address: Nelson Mullins Riley &amp;

Scarborough, LLP

Street Address: 999 Peachtree Street, NE

Suite 1400

City: Atlanta State: GA Zip: 30309

## 6. Total number of applications and patents involved: 1

7. Total fee (37 CFR 3.41).....\$ 40.00

☒

Enclosed

☐

Authorized to be charged to deposit account

## 8. Deposit account number:

DO NOT USE THIS SPACE

## 9. Signature.

Bradley E. Wahl, Esq.

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments, and documents: 10

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents & Trademarks, Box Assignments  
Washington, D.C. 20231

PATENT

REEL: 017730 FRAME: 0371

# PATENT SECURITY AGREEMENT

This PATENT SECURITY AGREEMENT (this "Agreement") is made as of March 1, 2006 by HEATMASTER, LLC ("Debtor") and WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association ("Bank")

## WITNESSETH:

WHEREAS, Bank and Debtor have made and entered into a certain Loan and Security Agreement, dated of even date herewith (as amended, modified, supplemented, restated and renewed from time to time, the "Loan Agreement"; capitalized terms used herein and not defined herein shall have the meanings ascribed thereto in the Loan Agreement); and

WHEREAS, the financial accommodations to be extended to the Debtor under the Loan Agreement will inure to the benefit of Debtor; and

WHEREAS, Bank has required, as a condition to the extension of financial accommodations to be extended to Debtor under the Loan Agreement, that Debtor pledges to Bank and grants to Bank a Lien on and in its "Patents" (as defined herein) as security for the Obligations; and

WHEREAS, Debtor is willing to execute and deliver this Agreement in order to induce Bank to make financial accommodations set forth in the Loan Agreement;

NOW, THEREFORE, for and in consideration of the premises set forth above and for other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Debtor hereby agrees as follows:

1. Defined Terms; Incorporations. Unless otherwise defined herein, each capitalized term used herein that is defined in the Loan Agreement shall have the meaning specified for such term in the Loan Agreement. The premises set forth above are incorporated into this Agreement by this reference thereto and are made a part hereof. The Loan Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto.

2. Security Interest in Patents. To secure the complete and timely payment, performance and satisfaction of all of the Obligations, Debtor hereby grants, assigns, transfers and pledges to the Bank, a security interest in and lien on as and by way of a first mortgage and security interest having priority over all other security interests, with power of sale, to the extent permitted by law, upon the occurrence and during the continuation of an Event of Default, all of Debtor's right, title and interest in and to the following, whether, now existing or hereafter acquired: patents and patent applications, including, without limitation, the patents, and patent applications listed on Schedule I attached hereto and made a part hereof, and (a) all renewals thereof, (b) 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, (c) the right to sue or otherwise recover for past, present and future infringements thereof, (d) all of Debtor's rights corresponding thereto throughout the world, and (e) all other proceeds and products of the foregoing, including (without limitation) any rights pursuant to its agreements with any other party relating thereto (all of the foregoing patents, registered patents and patent applications, together with the items described in clauses (a)-(e) in this Section 2 are sometimes hereinafter individually and/or collectively referred to as the "Patents").

3. Restrictions on Future Agreements. Debtor agrees that it will not, without the Bank's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with this Agreement, and Debtor further agrees that it will not take any action, and will use commercially reasonable efforts not to permit any action to be taken by others subject to its control, including, without limitation, licensees, or fail to take any action, which would affect the validity or enforcement of the rights transferred to the Bank under this Agreement or the rights associated with the Patents, except (with respect to Debtor's right associated with the Patents) to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect.

4. New Patents. Debtor represents and warrants that, from and after the Agreement Date, (a) the Patents listed on Schedule 1 are a true, accurate and complete list of all of Debtor's registered Patents, and (b) no Liens in such Patents have been granted by Debtor to any Person, other than the Bank and except as permitted in the Loan Agreement. If, prior to payment in full of the Obligations and the termination of this Agreement, Debtor shall (i) obtain rights to any new Patents or (ii) become entitled to the benefit of any Patents, the provisions of Section 2 above shall automatically apply thereto. Debtor shall give to the Bank written notice of the acquisition of new Patents promptly after the occurrence thereof. Debtor may, and hereby authorizes the Bank to, modify this Agreement unilaterally upon Debtor's notice to the Bank (i) by amending Schedule I to include any future Patents and (ii) by filing, in addition to and not in substitution for this Agreement, a duplicate original of this Agreement containing on Schedule I thereto, as the case may be, such future Patents.

5. Covenants and Warranties. Debtor represents, warrants, and covenants that to the best of its knowledge: (i) the Patents are subsisting, have not been adjudged invalid or unenforceable in whole or in part, and are not currently being challenged in any material respect; (ii) none of the Patents has lapsed or expired; (iii) no claim has been made that the use of any of the Patents in the conduct of Debtor's business constitutes an infringement of any senior or dominant U.S. patent or other intellectual property right; (iv) Debtor owns the entire right, title, and interest in and to each of the Patents free and clear of any liens and encumbrances of every kind and nature, except for the rights granted by Debtor pursuant to this Agreement; and (v) Debtor shall continue to use, until the Obligations shall have been satisfied in full and the Loan Agreement shall have been terminated, proper statutory notice in connection with its exercise of the Patents.

6. Grant of License. Debtor hereby grants to Bank the royalty-free, exclusive, nontransferable right and license to make, have made, use, and sell the inventions disclosed and claimed in the Patents for Bank's own benefit and account and for none other. Such right and license shall be exercisable by Bank only after the occurrence and during the continuation of an

Event of Default. Except as otherwise permitted by Loan Agreement, Debtor agrees not to sell or assign its interest in, or grant any sublicense under, any Patent without the prior written consent of Bank.

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

8. Nature and Continuation of the Bank's Security Interest. This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Patents and shall terminate only when the Obligations have been paid in full and the Loan Agreement has been terminated.

9. Duties of the Debtor. Debtor shall have the duty, to the extent desirable in the normal conduct of its business, to (a) prosecute diligently any Patent application that is part of the Patents pending as of the date hereof or hereafter until the termination of this Agreement, (b) make application on unpatented but patentable inventions, as appropriate, giving due consideration to value, importance, cost, and opinion of counsel as to patentability, and (c) preserve, maintain, and enforce against infringement all Patents (other than nonpayment of maintenance fees on patents which are not necessary or useful in the conduct of Debtor's business or operations, if so consented to by Bank). Debtor further agrees (i) not to abandon any Patent without the prior written consent of the Bank, and (ii) to maintain in full force and effect the Patents, except to the extent that the failure to do so could not reasonably be expected to have a Material Adverse Effect. Any reasonable expenses incurred by the Bank in connection with the foregoing shall be borne by the Debtor. The Bank shall not have any duty, other than any duty imposed by law, with respect to the Patents. Without limiting the generality of the foregoing, the Bank shall be under no obligation to take any steps necessary to preserve rights in the Patents against any other parties, but the Bank may do so at its option from and after the occurrence of an Event of Default, and all expenses incurred in connection therewith shall be for the account of Debtor and shall be added to the Obligations secured hereby.

10. The Bank's Right to Sue. After the occurrence and during the continuation of an Event of Default, the Bank shall have the right, but shall not be obligated, to bring suit in its own name to enforce the Patents and, if the Bank shall commence any such suit, Debtor shall, at the request of the Bank, do any and all lawful acts and execute any and all proper documents reasonably required by the Bank in aid of such enforcement, including joining in any litigation involving the Patents as a party thereto. Debtor shall, upon demand, promptly reimburse the Bank for all reasonable costs and expenses incurred by the Bank in the exercise of its rights under this Section (including, without limitation, fees and expenses of attorneys and paralegals for the Bank).

11. 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.

12. Modification. This Agreement cannot be altered, amended or modified in any way, except as specifically provided above or by a writing signed by the parties hereto.

13. Power of Attorney; Cumulative Remedies. Debtor hereby irrevocably designates, constitutes and appoints the Bank (and all officers and Banks of the Bank designated by the Bank in its sole and absolute discretion ) as Debtor's true and lawful attorney-in-fact, and authorizes the Bank and any of the Bank's designees, in Debtor's or the Bank's name, upon the occurrence and during the continuation of an Event of Default to take any action and execute any instrument necessary or reasonably advisable to accomplish the purposes of this Agreement, and consistent with existing license agreements, including, without limitation, to (i) endorse Debtor's name on all applications, documents, papers and instruments necessary or reasonably desirable for the Bank in the use of the Patents, (ii) assign, pledge, convey or otherwise transfer title in or dispose of the Patents to anyone, (iii) grant or issue any exclusive or nonexclusive license under the Patents to anyone, and (iv) take any other actions with respect to the Patents as the Bank deems in its best interest. Debtor 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 this Agreement is terminated. Debtor acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of the Bank under the Loan Agreement or any other Loan Document, but rather is intended to facilitate the exercise of such rights and remedies.

The 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 may be located or deemed located. Upon the occurrence of an Event of Default and following the expiration of any applicable notice and/or cure periods and the election by the Bank to exercise any of its remedies under the Uniform Commercial Code as in effect in the State of Georgia with respect to the Patents, Debtor agrees to assign, convey and otherwise transfer title in and to the Patents to the Bank or any transferee of the Bank and to execute and deliver to the Bank or any such transferee all such agreements, documents and instruments as may be necessary, in the Bank's sole discretion, to effect such assignment, conveyance and transfer. All of the Bank's rights and remedies with respect to the Patents, whether established hereby, by the Loan Agreement or by any other agreements or by law, shall be cumulative and may be exercised separately or concurrently. Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence of an Event of Default and following the expiration of any applicable notice and/or cure periods, the Bank may exercise any of the rights and remedies provided in this Agreement, the Loan Agreement or any of the other Loan Documents. Debtor hereby acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of Bank under the Loan Agreement, but rather is intended to facilitate the exercise of such rights and remedies.

Debtor agrees that any notification of intended disposition of any of the Patents required by law shall be deemed reasonably and properly given if given at least ten (10) days before such disposition; provided, however, that the Bank may give any shorter notice that is commercially reasonable under the circumstances.

14. Successors and Assigns. This Agreement shall be binding upon Debtor and its successors and assigns, and shall inure to the benefit of Bank and its nominees, successors and assigns. Debtor's successors and assigns shall include, without limitation, a receiver or a trustee of Debtor; provided, however, that Debtor shall not voluntarily assign or transfer its rights or obligations hereunder without the Bank's prior written consent.

15. 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 laws and decisions of the State of Georgia, without reference to the conflicts or choice of law principles thereof.

16. Notices. All notices or other communications hereunder shall be given in the manner and to the addresses set forth in the Loan Agreement.

17. Continuing Lien, Transfers by Bank. This Agreement shall create a continuing security interest and collateral assignment of the Patents and shall (i) remain in full force and effect until payment in full of the Obligations and the termination of the Bank's lending commitments to Debtor, (ii) be binding upon Debtor, its successors and assigns, and (iii) inure to the benefit of Bank and its successors, transferees and assigns. Without limiting the generality of the foregoing clause (iii), Bank may assign or otherwise transfer any Obligations held by it, and such other benefits in respect thereof granted to the Bank herein or otherwise, to any other Person, except, prior to a Default or Event of Default, Bank will not transfer the same to known competitors of Debtor. Upon the payment in full of the Obligations, and the termination of the Loan Agreement, the assignment hereunder shall terminate and all rights to the Patents shall revert to the Debtor or to any other Person as may be designated by the Debtor, subject to any disposition thereof which may have been made by the Bank pursuant hereto or pursuant to the Loan Agreement. Upon any such termination, the Bank shall, at Debtor's expense, execute and deliver to Debtor such documents as Debtor shall reasonably request to evidence such termination.

18. Interpretation. In the event of an irreconcilable conflict between the terms of this Agreement and the terms of the Loan Agreement, the Loan Agreement shall govern.

19. Bank. The powers conferred on the Bank hereunder are solely to protect its interest in the Patents and shall not impose any duty upon the Bank to exercise any such powers. Except for the safe custody of any Patents in its actual possession and the accounting for moneys actually received by it hereunder, the Bank shall have no duty as to any Patent or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Patent. The Bank shall be deemed to have exercised reasonable care in the custody and preservation of any Patent in its actual possession if such Patent is accorded treatment substantially equal to that which the Bank accords its own property.

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

DEBTOR:

HEATMASTER, LLC

By: 

Title: MANAGER

[SEAL]

Agreed and Accepted as of this March \_\_, 2006

WACHOVIA BANK, NATIONAL ASSOCIATION

By: \_\_\_\_\_

Title: Vice President

Patent Security Agreement

PATENT  
REEL: 017730 FRAME: 0377

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

DEBTOR:

HEATMASTER, LLC

By: \_\_\_\_\_  
Title: \_\_\_\_\_

[SEAL]

Agreed and Accepted as of this March 1, 2006

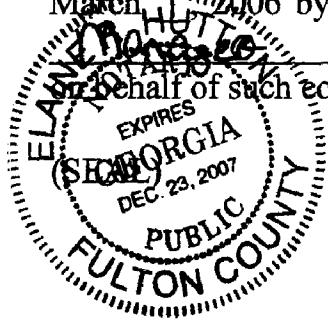
WACHOVIA BANK, NATIONAL ASSOCIATION

By: Sally Coloway  
Title: Vice President



STATE OF GEORGIA           )  
  )ss.:  
COUNTY OF FULTON        )

The foregoing Patent Security Agreement as executed and acknowledged before me this  
March 17, 2006 by Scott Michaels, personally known to me to be  
of HEATMASTER, LLC, a Georgia limited liability company,  
on behalf of such company.



Celline R. Hutton  
Notary Public  
My Commission expires:  
Dec. 23, 2007

STATE OF GEORGIA           )  
  )ss.:  
COUNTY OF FULTON        )

The foregoing Patent Security Agreement as executed and acknowledged before me this  
March   , 2006 by Tiffany Calloway, personally known to me to be a Vice President of  
WACHOVIA BANK, NATIONAL ASSOCIATION, a national bank, on behalf of said Bank.

(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission expires:

Patent Security Agreement

STATE OF GEORGIA        )  
                                  )ss.:  
COUNTY OF FULTON     )

The foregoing Patent Security Agreement as executed and acknowledged before me this  
March \_\_, 2006 by \_\_\_\_\_, personally known to me to be  
\_\_\_\_\_ of HEATMASTER, LLC, a Georgia limited liability  
company, on behalf of such company.

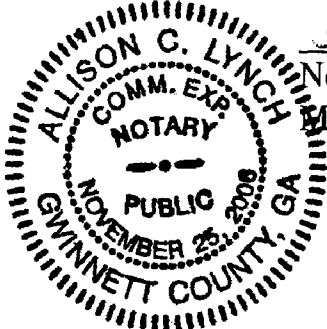
(SEAL)

\_\_\_\_\_  
Notary Public  
My Commission expires: \_\_\_\_\_

STATE OF GEORGIA        )  
                                  )ss.:  
COUNTY OF FULTON     )

The foregoing Patent Security Agreement as executed and acknowledged before me this  
March 1, 2006 by Tiffany Calloway, personally known to me to be a Vice President of  
WACHOVIA BANK, NATIONAL ASSOCIATION, a national bank, on behalf of said Bank.

(SEAL)

 \_\_\_\_\_  
Notary Public  
My Commission expires: 11-25-2008

Schedule 1  
To  
Patent Security Agreement

Dated as of March 1, 2006

**Current Patents**

<u>Name</u>	<u>Record Owner</u>	<u>Patent No.</u>	<u>Date</u>
Patent for a Gas Log Set	Heatmaster, LLC	6,155,249	Dec. 5, 2000