

03-14-2007

Form PTO-1595 (Rev. 07/05)
OMB No. 0651-0027 (exp. 6/30/2008)U.S. DEPARTMENT OF COMMERCE
United States Patent and Trademark Office

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2007 MAR 12 PM 4:00

To the Director of the U.S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

FINANCE SECTION

1. Name of conveying party(ies)

Burnham Services, Inc.

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No**3. Nature of conveyance/Execution Date(s):**Execution Date(s) March 1, 2007

- ☐ Assignment ☐ Merger
☒ Security Agreement ☐ Change of Name
☐ Joint Research Agreement
☐ Government Interest Assignment
☐ Executive Order 9424, Confirmatory License
☐ Other _____

2. Name and address of receiving party(ies)Name: Manufacturers and Traders Trust CompanyInternal Address: General CounselStreet Address: One M&T PlazaCity: BuffaloState: New YorkCountry: USA Zip: 14203Additional name(s) & address(es) attached? ☐ Yes ☒ No**4. Application or patent number(s):**☐ This document is being filed together with a new application.

A. Patent Application No.(s)

B. Patent No.(s)

4838210

Additional numbers attached? ☒ Yes ☐ No**5. Name and address to whom correspondence concerning document should be mailed:**Name: Dan A. Blakinger, EsquireInternal Address: Blakinger Byler & ThomasStreet Address: 28 Penn SquareCity: LancasterState: PA Zip: 17603Phone Number: 717-509-7272Fax Number: 717-299-9529Email Address: DAB@bbtlaw.com**6. Total number of applications and patents involved: 7****7. Total fee (37 CFR 1.21(h) & 3.41) \$ 280.00**

- ☐ Authorized to be charged by credit card
☐ Authorized to be charged to deposit account
☒ Enclosed
☐ None required (government interest not affecting title)

8. Payment Informationa. Credit Card Last 4 Numbers _____
Expiration Date _____

b. Deposit Account Number _____

Authorized User Name _____

9. Signature:Wesley R. Kelso
SignatureMarch 6, 2007
Date

03/13/2007 DBYRNE 00000029 4838210

01 FC:8021 280.00 US Wesley R. Kelso
Name of Person Signing

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

2

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O.Box 1450, Alexandria, V.A. 22313-1450PATENT
REEL: 019019 FRAME: 0390

CONTINUATION PAGE TO RECORDATION FORM
FOR BURNHAM SERVICES, INC.

<u>Patent Number</u>		<u>Issue Date</u>	<u>Status</u>	<u>Expiration Date</u>
4838210		June 13, 1989	Granted	July 7, 2008
5511974		April 30, 1996	Granted	
<u>Application Number</u>		<u>Filing Date</u>	<u>Status</u>	<u>Date Published</u>
11/380456		April 27, 2006	Pending	
11/106047		April 14, 2005	Published	Oct. 19, 2006

PATENT ASSIGNMENT

THIS PATENT ASSIGNMENT (the "Assignment") made and entered into this March 1, 2007, by and between **BURNHAM SERVICES, INC.**, a Delaware corporation with an address at 103 Foulk Road, Suite 202, Wilmington, Delaware 19803 (the "Assignor"), and **MANUFACTURERS AND TRADERS TRUST COMPANY**, a New York banking corporation, One M&T Plaza, Buffalo, New York 14203, Attention: Office of the General Counsel (the "Assignee").

BACKGROUND

A. Burnham Financial, LLC (the "Borrower") and Assignor have entered into a Loan Agreement dated the date hereof (which, together with any future amendments, modifications, or supplements thereto or restatements thereof, is referred to herein as the "Loan Agreement"), pursuant to which the Assignee agreed to make certain credit facilities available to the Borrower, on the terms and subject to the conditions set forth therein. Assignor has executed a Guaranty and Suretyship Agreement dated the date hereof wherein Assignor has agreed to act as a surety for the Obligations (the "Guaranty").

B. As a condition to the Assignee's agreement to provide credit facilities to the Borrower, the Assignor has agreed to grant to the Assignee a security interest in all existing and future Patents.

C. The parties hereto have agreed to enter into this Assignment to set forth the terms and conditions upon which such security interests will be granted.

NOW, THEREFORE, the parties, INTENDING TO BE LEGALLY BOUND, agree:

SECTION 1. INTERPRETATION

1.1 General Provisions. Unless expressly provided in this Assignment, or unless the context requires otherwise, any capitalized terms used in this Assignment which are not so defined, but which are defined in the Loan Agreement, shall have the meanings given to such terms in the Loan Agreement.

1.2 Defined Terms. As used in this Assignment or the Background provisions hereof, the following terms shall have the following meanings:

Event of Default. As that term is defined in the Loan Agreement.

Obligations. As that term is defined in the Loan Agreement.

Patents. Collectively, the Letters Patent of the United States or other Country or Territory, more specifically described on Schedule A attached hereto and made a part hereof, all future improvements to such Letters Patent, inventions and any Letters Patent of the United States or other Country or Territory hereafter acquired by Assignor including, without limitation, all proceeds thereof including, without limitation, license fees and royalties and proceeds of infringement suits, and all rights corresponding to such Letters of Patent or inventions throughout the world, and all re-issues, divisions, continuations, renewals, extensions and continuations in part thereof.

SECTION 2. ASSIGNMENT AND CREATION OF SECURITY INTERESTS

2.1 Grant. To secure the prompt payment and performance of the Obligations and the payment and performance by the Assignor of its obligations under the Guaranty, Assignor pledges all of its right, title and interest in and to the Patents including, without limitation, any income derived from the licensing thereof, to the Assignee, and grants a security interest to the Assignee in the Patents. Additionally, effective upon the occurrence of an Event of Default, Assignor grants to the Assignee an absolute assignment of all of its right, title and interest in the Patents, which assignment shall be automatic without any requirement by Assignor to execute and/or deliver any additional documents, instruments, or agreements.

2.2 Recordation. Assignor agrees that an original of this Assignment shall, at Assignor's expense, be recorded in the United States Patent and Trademark Office and any other offices which the Assignee deems necessary and/or appropriate to perfect the security interests and other rights granted herein.

2.3 Waivers. Except for notices expressly required by the Loan Agreement or the Guaranty, the Assignor waives all notices of any character whatsoever with respect to this Assignment and the Obligations including, but not limited to, notice of the acceptance hereof and reliance hereon, notice of the present existence or future incurring of any of the Obligations, notice of the amount, terms and conditions thereof, and notice of any defaults thereon. Assignor waives the benefit of all laws now or hereafter in effect in any way limiting or restricting the validity or effectiveness of this Assignment, including without limitation, all defenses whatsoever hereto, except the defense of irrevocable payment in full of the Obligations.

2.4 Perfection.

(a) Assignor shall execute and deliver to the Assignee, concurrently with the execution of this Assignment and at any future time or times at the reasonable request of the Assignee, all additional assignments, certificates of title, conveyances, assignment statements, financing statements, renewal financing statements, security agreements, affidavits, notices and all other agreements, instruments and documents in form satisfactory to the Assignee. Assignor hereby authorizes the Assignee to file any and all financing statement, renewal financing statements and other documents that Assignee deems necessary to perfect or maintain the perfection of the security interests and liens granted in this Assignment

(b) Assignor shall take all other steps reasonably requested by the Assignee in order to: (i) perfect and maintain the security interests and liens granted in this Assignment;

(ii) fully consummate all of the transactions contemplated in the Loan Agreement and the Loan Documents; and (iii) ensure that, upon an Event of Default, title and ownership to the Patents shall immediately, automatically, and absolutely vest in the Assignee or its nominee.

2.5 Power of Attorney.

(a) Upon acceleration of the Obligations by the Assignee pursuant to the Loan Agreement or otherwise or upon the Assignor's failure to perform any covenant or agreement contained herein, Assignor irrevocably appoints the Assignee and any of the Assignee's officers, employees or agents as Assignor's true and lawful attorneys with power to:

(i) Sign the name of Assignor on any financing statement, renewal financing statements, notice, assignment or other similar document which in the Assignee's opinion, must be filed in order to perfect or continue perfected the security interests granted herein or, upon the occurrence of an Event of Default, vest title to the Patents in the Assignee or its nominee;

(ii) Receive, endorse, assign and deliver, in the name of Assignor or in the name of the Assignee, all royalty and other payments with respect to the Patents and all checks, notes, drafts and other instruments relating to the Patents including, but not limited to, receiving, opening and properly disposing of all mail addressed to Assignor concerning the foregoing, and notify postal authorities to change the address for delivery of mail to such address as the Assignee may designate;

(iii) Take or bring at Assignor's cost, in its name or in the name of the Assignee, all steps, actions and suits considered by the Assignee necessary or desirable to effect collections of any of the items described in clause (ii), to enforce payment of any of the items described in clause (ii), to settle, compromise, sell, assign, discharge or release, in whole or in part, any amounts owing on any of the items described in clause (ii), to prosecute any action or proceeding with respect to such items, to extend the time of payment of any and all such items, and to make allowances and adjustments with respect to such items; and

(iv) Do all other things necessary to carry out the transactions contemplated by this Assignment, the Loan Agreement, and the Loan Documents.

(b) This power, being coupled with an interest, is irrevocable so long as any of the Obligations remain unpaid.

2.6 Future Patents. The Assignor authorizes the Assignee to modify this Assignment by amending Schedule A to include any future Patents. The security interests granted herein as to future Patents shall be valid and effective whether or not such Schedule A is amended. Nothing contained in this Agreement shall impose an obligation on the Assignee to amend such Schedule A.

2.7 Assignor's Right to Use Patents. Unless and until an Event of Default shall have occurred, the Assignor shall retain the legal and equitable title to the Patents and shall have

the right to use the Patents in the ordinary course of its business, but shall not be permitted to sell, assign, transfer, license, or otherwise encumber the Patents.

SECTION 3. REPRESENTATIONS, WARRANTIES

Assignor represents and warrants to the Assignee that:

3.1 Title. Assignor is the sole owner of the Patents as set forth on Schedule A hereto and all rights to the Patents, free from the obligation of any license or encumbrance, except for encumbrances in favor of the Assignee. There are no lawsuits threatened or pending relating to the Patents or Assignor's title thereto.

3.2 Assignments Contrary. Assignor has the right to assign the Patents to Assignee and has not entered into any assignment, license, contract or understanding in conflict with this Assignment.

3.3 Authority Authorization.

(a) Assignor has the corporate power to execute and deliver this Assignment.

(b) No consent of any other party, and no consent, license, approval, authorization of, or registration or declaration with, any domestic or foreign governmental authority, bureau or agency is required in connection with the execution, delivery, performance, validity or enforceability of this Assignment, except for the filing of this Assignment with the United States Patent and Trademark Office, which may be required in order to perfect the Assignee's assignment hereunder.

SECTION 4. DEFAULT AND REMEDIES

4.1 Default. Upon the occurrence of an Event of Default, Assignor agrees to deliver to the Assignee or its nominee all original United States and other Letters Patents and copies thereof, and all technical and descriptive materials, information and manuals related to the Patents. Assignor also agrees to deliver to the Assignee or its nominee copies of all contracts, licenses and other arrangements relating to the Patents.

4.2 Remedies. Upon the occurrence of an Event of Default, the Assignee, in addition to any other rights and remedies contained in the Loan Agreement and the Loan Documents, shall have all the rights and remedies permitted to it under Federal or other applicable law as an assignee of a patent, and to the extent applicable, shall have all the rights and remedies of a secured party under the Pennsylvania Uniform Commercial Code, all of which shall be cumulative to the extent permitted by law.

4.3 Application of Proceeds.

(a) Upon the occurrence of an Event of Default, Assignor irrevocably waives the right to direct the application of all payments (including proceeds of the licensing of the Patents) which may be received by the Assignee for the benefit of Assignor.

(b) The proceeds of any sale or other disposition of all or any part of the Patents shall be applied by the Assignee in the following order:

(i) First, as to payment of all costs and expenses due under the Loan Agreement and related documents, including, without limitation, all costs and expenses of collecting the Obligations and reasonable attorneys' fees;

(ii) Second, to the payment in full of the Obligations, in such order and amounts as the Assignee, in its sole discretion, shall determine; and

(iii) Third, to Assignor to the extent of any surplus.

The Assignor shall be liable to the Assignee for any deficiency.

4.4 Choice of Remedies. To the extent that any of the Obligations are secured at any time by property other than the Patents, or by a guaranty, endorsement or property of any other person, the Assignee in its sole discretion may:

(a) Determine which rights, security, liens, security interests or remedies the Assignee at any time shall pursue, relinquish, subordinate, modify or take any other action upon; and

(b) Proceed against such other property, guaranty or endorsement upon and after the occurrence of an Event of Default, without in any way modifying or affecting the Assignee's rights, security, liens, security interests or remedies, or the Obligations, or the validity of this Assignment.

SECTION 5. MISCELLANEOUS

5.1 Duration. This Assignment shall be effective for the full term for which the Patents were granted and for the term or terms of any extension thereof, except that this Assignment shall be sooner terminated by Assignee, at Assignor's expense, if the Obligations and all other sums required to be paid under the terms of the Loan Agreement and the Loan Documents have been irrevocably paid in full.

5.2 Payment of Costs. Assignor agrees to pay the Assignee all reasonable costs and expenses (including reasonable attorney's fees and legal expenses) which may be incurred in the enforcement of this Assignment.

5.3 Infringement. Assignor agrees to defend, indemnify and hold the Assignee harmless from and against any loss, cost, expense, damage or liability relating to any claim or action brought or threatened against Assignee based on an allegation that the Patents or any part thereof infringe a United States or foreign patent, copyright or other proprietary right of a third party or constitutes misuse or misappropriation of a trade secret. This Section 5.3 shall survive the termination of this Assignment, the Loan Documents and the Loan Agreement.

5.4 Enforcement By Assignee. Assignee shall have the right, but shall in no way be obligated, to bring suit to enforce the Patents and any license or other agreement related

thereto, in which event Assignor shall, at the request of Assignee, do all lawful acts and execute all documents required by Assignee in aid of such enforcement. Assignor shall promptly upon demand reimburse and indemnify the Assignee for all costs and expenses incurred in connection with any actions taken by Assignee pursuant to this Section 5.4.

5.5 Successors and Assigns. This Assignment shall inure to the benefit of and be binding upon the respective successors or assigns of the parties hereto.


5.6 Severability. In the event that any part of this Assignment is deemed unenforceable under the law of any state or federal law, such unenforceability shall not affect any other provision and this Assignment shall be construed to achieve the intent of the parties as if such unenforceable provision(s) had never been contained herein.

5.7 Governing Law. All issues arising hereunder shall be governed by the laws (but not the law of conflict of laws) of the Commonwealth of Pennsylvania to the extent Federal law does not apply.


[Signature page to follow]

EXECUTED this March 1, 2007.

BURNHAM SERVICES, INC.

By 
William R. Frantz, President

**MANUFACTURERS AND TRADERS TRUST
COMPANY**

By 
Michele A. Criste, Vice President

DAB:slb:esp #435613.2 (08851.329)

STATE OF *Pennsylvania*
COUNTY OF *Lancaster*

:
:SS.
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On this 1st day of March, 2007, before me, a notary public, the undersigned officer, personally appeared WILLIAM R. FRANTZ, who acknowledged himself to be the President of BURNHAM SERVICES, INC., a Delaware corporation, and that he as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



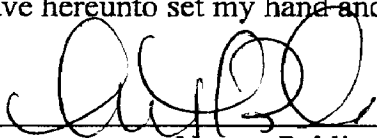
Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Audrey Behr, Notary Public
Manheim Twp., Lancaster County
My Commission Expires Mar. 9, 2010
Member, Pennsylvania Association of Notaries

COMMONWEALTH OF PENNSYLVANIA :
COUNTY OF LANCASTER :SS.
:

On this 1st day of March, 2007, before me, a notary public, the undersigned officer, personally appeared MICHELE A. CRISTE, who acknowledged herself to be a Vice President of MANUFACTURERS AND TRADERS TRUST COMPANY, a New York banking corporation, and that she as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by herself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
AMY L. BUCHER, Notary Public
City of Lancaster, Lancaster County
My Commission Expires October 26, 2009

SCHEDULE A

<u>Patent Number</u>		<u>Issue Date</u>	<u>Status</u>	<u>Expiration Date</u>
4838210		June 13, 1989	Granted	July 7, 2008
5511974		April 30, 1996	Granted	
<u>Application Number</u>		<u>Filing Date</u>	<u>Status</u>	<u>Date Published</u>
11/380456		April 27, 2006	Pending	
11/106047		April 14, 2005	Published	Oct. 19, 2006