

09/18/2012

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



103649393

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

1. Name of conveying party(ies)

Landmark Plastic Corporation

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

3. Nature of conveyance/Execution Date(s):

Execution Date(s) August 16, 2012

- ☐ 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: Capital Business Credit LLC

Internal Address: _____

Street Address: 15800 John J. Delaney Drive, Suite 300

City: Charlotte

State: North Carolina

Country: United States Zip: 28277

Additional 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)

11/741,482, 09/299,983, 09/193,561, 09/225,784, 09/154,346,
12/335,313, 11/548,888, 11/549,051, 06/646,798, 06/665,571,
20090151247, 20070256358, 20050223640

B. Patent No.(s)

Additional numbers attached? ☐ Yes ☒ No

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

Name: John M. Flynn

Internal Address: _____

Street Address: 235 N. Edgeworth Street

City: Greensboro

State: North Carolina Zip: 27401

Phone Number: (336) 478-1146

Docket Number: _____

Email Address: jmf@crlaw.com

6. Total number of applications and patents involved: 10

7. Total fee (37 CFR 1.21(h) & 3.41) \$ 520.00

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

8. Payment Information

09/18/2012 AMULLINS 00000041 11/741482
Deposit Account Number 01 FC:0021 400.00 OP

Authorized User Name _____

9. Signature:

Signature

9-13-2012

Date

John M. Flynn

Name of Person Signing

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

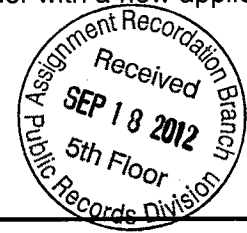
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Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O.Box 1450, Alexandria, V.A. 22313-1450

PATENT

REEL: 029010 FRAME: 0944

9-18-12



PATENT SECURITY AGREEMENT

THIS PATENT SECURITY AGREEMENT (this "Agreement"), is made and entered into this 16th day of August, 2012, between LANDMARK PLASTIC CORPORATION, an Ohio corporation (the "Debtor"), and CAPITAL BUSINESS CREDIT LLC, a Delaware limited liability company (the "Secured Party").

WITNESSETH:

WHEREAS, Debtor and Secured Party are parties to that certain Loan and Security Agreement, dated of even date herewith (such Loan and Security Agreement, as it has heretofore or may hereafter be amended, modified, supplemented or restated from time to time, being herein called the "Loan Agreement"), pursuant to which Secured Party has agreed to make loans and advances and extend credit to Debtor, all as more particularly described therein; and

WHEREAS, pursuant to the Loan Agreement, Debtor has granted Secured Party a security interest in all of its general intangibles, whether now owned or hereafter acquired, including, without limitation, all patents registered in the United States Copyright or Trademark or Patent offices; and

WHEREAS, to better secure Secured Party in respect of the foregoing, Debtor has agreed to execute and deliver this Agreement for recordation in the United States Patent and Trademark Offices, together with the goodwill of the business in connection with which such patents may be used and the royalties and other fees which become due for the use of such patent; and

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Debtor agrees with Secured Party as follows:

1. Defined Terms. All capitalized terms used herein without definition shall have the meaning ascribed to such terms in the Loan Agreement.

2. Grant of Security Interest. As security for the payment and performance of the Obligations, Debtor hereby assigns, grants, transfers and conveys to Secured Party, for security purposes, a security interest in and lien on all of Debtor's right, title and interest in, to and under the following property, in each case whether now existing or hereafter existing or in which the Debtor now has or hereafter acquires or develops an interest wherever the same may be located (the "Patent Collateral"):

(a) all letters patent of the U.S. or any other country, all registrations and recordings thereof, and all applications for letters patent of the U.S. or any other country, owned, held (whether pursuant to a license or otherwise) or used by Debtor in whole or in part, including all existing U.S. patents and patent applications of Debtor which are described in Schedule A attached hereto, as the same may be amended or supplemented

pursuant hereto from time to time, and including all patent licenses held by Debtor (unless otherwise prohibited by any license or related licensing agreement under circumstances where the granting of the security interest would have the effect under applicable law of the termination or permitting termination of the license for breach and where the licensor, other than any affiliate of Debtor, has elected such termination remedy), together with all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof and the inventions disclosed therein, and all rights corresponding thereto throughout the world, including the right to make, use, lease, sell and otherwise transfer the inventions disclosed therein, and all proceeds thereof, including without limitation all license royalties and proceeds of infringement suits (collectively, the "Patents");

(b) all claims, causes of action and rights to sue for past, present and future infringement or unconsented use of any of the Patents and all rights arising therefrom and pertaining thereto;

(c) all general intangibles (as defined in the Uniform Commercial Code as enacted in the State of New York) and all intangible intellectual or other similar property of the Debtor of any kind 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; and

(d) all proceeds of any and all of the foregoing Patent Collateral, including, without limitation, license royalties, rights to payment, accounts receivable, proceeds of infringement suits and all payments under insurance or any indemnity, warranty or guaranty payable by reason or loss or damage to or otherwise with respect to the foregoing Patent Collateral.

3. Representations, Warranties and Covenants of Debtor. Debtor represents, warrants and covenants that:

(a) The Patent Collateral is, to the best of its knowledge, subsisting and has not been judged invalid or unenforceable;

(b) Debtor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to the Patent Collateral, free and clear of any liens, charges and encumbrances; and

(c) Debtor has the unqualified right to enter into this Agreement and perform its terms and has entered and will enter into written agreements with each of its present and future employees, agents and consultants which will enable it to comply with the covenants herein contained.

4. Visits and Inspections. Debtor hereby grants to Secured Party and its employees and agents the right on prior notice to Debtor to visit Debtor's plants and facilities which manufacture, inspect or store products sold under any of the Patents, and to inspect the products and quality control records relating thereto at reasonable times during regular business hours. Debtor shall do any and all acts required by Secured Party to ensure Debtor's compliance with paragraph 2(d) of this Agreement.

5. Restrictions on Future Agreements. Debtor agrees that, until all of the Obligations have been satisfied in full and the Loan Agreement has been terminated in writing, it will not without Secured Party's prior written consent, enter into any agreement which is inconsistent with Debtor's duties under this Agreement, and Debtor further agrees that it will not take any action, or permit any action to be taken by others subject to its control, including licensees, or fail to take any action, which would affect the validity and enforcement of the rights granted to Secured Party under this Agreement.

6. After-Acquired Patent Rights. If, before the Obligations have been satisfied in full, Debtor shall obtain rights to any new patentable inventions, or become entitled to the benefit of any patent application or any patent for any reissue, division, continuation, renewal, extension or continuation-in-part of any Patent or any improvement on any Patent, the provisions of paragraph 1 hereof shall automatically apply thereto, and Debtor shall give to Secured Party prompt notice thereof in writing. Debtor authorizes Secured Party to modify this Agreement by amending Schedule A to include any future patents and patent applications which are Patent Collateral under paragraph 1 hereof or this paragraph 5.

7. Debtor's Rights Prior to Event of Default. Unless and until there shall have occurred and be continuing an Event of Default, Debtor shall continue to own, and may use and enjoy the Patent Collateral in connection with its business operations, but only in a manner consistent with the presentation of their current substance, validity and registration.

8. Remedies Upon Event of Default. If an Event of Default shall have occurred and be continuing, Secured Party shall have, in addition to all other rights and remedies given it by this Agreement, those allowed by law and, specifically, those of a Secured Party under the Uniform Commercial Code as enacted in the State of New York. Notice of any sale or other disposition of the Patent Collateral shall be deemed reasonable and sufficient if given the Debtor at least ten (10) days before the time of any intended public or private sale or other disposition of any of the Patent Collateral is to be made.

9. Power of Attorney. Debtor hereby makes, constitutes and appoints Secured Party and any officer or agent of Secured Party as Secured Party may select as Debtor's true and lawful attorney-in-fact, with full power to do any or all of the following if an Event of Default shall occur and be continuing: to endorse Debtor's name on all applications, documents, papers and instruments necessary for Secured Party to use the Patent Collateral, or to grant or issue any exclusive or nonexclusive license under the Patent Collateral to anyone else as necessary for Secured Party to assign, pledge, convey or otherwise transfer title in or dispose of the Patent

Collateral to anyone else. Debtor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until all of the Obligations shall have been satisfied in full and the Loan Agreement shall have been terminated in writing.

10. Release of Security Interest. At such time as all of the Obligations shall have been satisfied and paid in full, Secured Party shall execute and deliver to Debtor all releases, termination statements, and other instruments as may be necessary or proper to release or reflect the release of Secured Party's security interest in the Patent Collateral.

11. Costs and Expenses. Any and all fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and legal expenses, incurred by Secured Party in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining, or preserving the Patent Collateral, or in defending or prosecuting any actions or proceedings arising out of or related to the Patent Collateral, shall be borne and paid by Debtor on demand by Secured Party and until so paid shall be added to the amount of the Obligations and shall bear interest at the rate prescribed in the Loan Agreement.

12. Litigation and Proceedings.

(a) Debtor shall have the duty, through counsel acceptable to Secured Party, to prosecute diligently any patent application of the Patents pending as of the date of this Agreement or thereafter, other than those discontinued or abandoned in the ordinary course of business, until the Obligations shall have been paid in full, to make application on unpatented but patentable inventions, and to preserve and maintain all rights in patent applications and patents of the Patents in the ordinary course of business. Any expenses incurred in connection with such an application shall be borne by Debtor. Debtor shall not abandon any right to file a patent application, or any pending patent application or patent, other than those discontinued or abandoned in the ordinary course of business without the consent of Secured Party, which consent shall not be unreasonably withheld.

(b) Secured Party shall have the right, but shall in no way be obligated, to bring suit in its own name, as the holder of a security interest in the Patent Collateral, to enforce the Patents, and any license thereunder, in which event Debtor shall at the request of Secured Party do any and all lawful acts (including bringing suit) and execute any and all proper documents required by Secured Party in aid of such enforcement and Debtor shall promptly, upon demand, reimburse and indemnify the Secured Party for all costs and expenses incurred in the exercise of its rights under this paragraph 11. Nothing herein shall be deemed to prohibit Debtor from bringing any such suit in its own name at any time that an Event of Default does not exist, if Secured Party declines to institute suit.

13. Secured Party May Perform. If Debtor fails to comply with any of its obligations hereunder, Secured Party may do so in Debtor's name or in Secured Party's name, but at Debtor's expense, and Debtor agrees to reimburse Secured Party in full for all expenses, including reasonable attorney's fees, incurred by Secured Party in prosecuting, defending or maintaining the Patents or Secured Party's interest therein pursuant to this Agreement.

14. Severability. 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 thereof, 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.

15. Modification. This Agreement is subject to modification only by a writing signed by the parties, except as provided in paragraph 5 hereof.

16. Binding Effect; Benefits. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

17. Notices. All notices, requests and demands to or upon a party hereto, to be effective, shall be in writing and shall be sent by certified or registered mail, return receipt requested, by personal delivery against receipt, or by overnight courier, and, unless expressly provided herein, shall be deemed to have been validly served, given or delivered immediately when delivered against receipt, or three (3) Business Days after deposit in the mail, postage prepaid, addressed as follows:

- (i) If to the Secured Party, at: Capital Business Credit, LLC
15800 John J. Delaney Drive, Suite 300
Charlotte, North Carolina 28277
Attention: Landmark Plastic Account Manager
- (ii) If to Debtor, at: Landmark Plastic Corporation
1331 Kelly Ave. Akron, Ohio 44306
Attention: Robert G. Merzweiler, President

or to such other address as each party may designate for itself by notice given in accordance with this Section 17. Any written notice or demand that is not sent in conformity with the provisions hereof shall nevertheless be effective on the date that such notice is actually received by the noticed party.

18. Governing Law. THE VALIDITY, INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY DISPUTE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS, WHETHER SOUNDING IN CONTRACT,

TORT OR EQUITY OR OTHERWISE, SHALL BE GOVERNED BY THE INTERNAL LAWS (AS OPPOSED TO THE CONFLICTS OF LAW PROVISIONS OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW) AND DECISIONS OF THE STATE OF NEW YORK.

19. Submission To Jurisdiction. ALL DISPUTES BETWEEN DEBTOR AND SECURED PARTY BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO (A) THIS AGREEMENT; (B) ANY OTHER LOAN DOCUMENT OR OTHER PRESENT OR FUTURE INSTRUMENT OR AGREEMENT BETWEEN DEBTOR AND SECURED PARTY; OR (C) ANY CONDUCT, ACT OR OMISSION OF DEBTOR, SECURED PARTY OR ANY OF THEIR DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES, AGENTS, ATTORNEYS OR OTHER AFFILIATES, IN EACH CASE WHETHER SOUNDING IN CONTRACT, TORT OR EQUITY OR OTHERWISE, SHALL BE RESOLVED ONLY BY STATE AND FEDERAL COURTS LOCATED IN NEW YORK, NEW YORK AND THE COURTS TO WHICH AN APPEAL THEREFROM MAY BE TAKEN; PROVIDED, HOWEVER, THAT SECURED PARTY SHALL HAVE THE RIGHT, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, TO PROCEED AGAINST DEBTOR OR ITS PROPERTY IN (A) ANY COURTS OF COMPETENT JURISDICTION AND VENUE AND (B) ANY LOCATION SELECTED BY THE SECURED PARTY TO ENABLE THE SECURED PARTY TO REALIZE ON SUCH PROPERTY, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF SECURED PARTY. DEBTOR AGREES THAT IT WILL NOT ASSERT ANY PERMISSIVE COUNTERCLAIMS, SETOFFS OR CROSS-CLAIMS IN ANY PROCEEDING BROUGHT BY SECURED PARTY. DEBTOR WAIVES ANY OBJECTION THAT IT MAY HAVE TO THE LOCATION OF THE COURT IN WHICH SECURED PARTY HAS COMMENCED A PROCEEDING, INCLUDING, WITHOUT LIMITATION, ANY OBJECTION TO THE LAYING OF VENUE OR BASED ON FORUM NON CONVENIENS.

20. Service Of Process. DEBTOR HEREBY IRREVOCABLY DESIGNATES CORPORATION SERVICES COMPANY, 1133 AVENUE OF THE AMERICAS, NEW YORK, NEW YORK 10036-6710 OR ITS SUCCESSOR AS THE DESIGNEE AND AGENT OF DEBTOR TO RECEIVE, FOR AND ON BEHALF OF DEBTOR, SERVICE OF PROCESS IN ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT. IT IS UNDERSTOOD THAT A COPY OF SUCH PROCESS SERVED ON SUCH AGENT AT ITS ADDRESS WILL BE PROMPTLY FORWARDED BY MAIL TO DEBTOR, BUT THE FAILURE OF DEBTOR TO RECEIVE SUCH COPY SHALL NOT AFFECT IN ANY WAY THE SERVICE OF SUCH PROCESS. NOTHING HEREIN SHALL AFFECT THE RIGHT OF SECURED PARTY TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW.

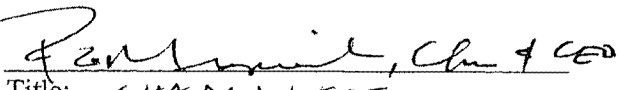
21. Jury Trial. EACH OF THE PARTIES HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED UPON, ARISING OUT OF, OR IN ANY WAY RELATING TO (A) THIS AGREEMENT; (B) ANY OTHER LOAN DOCUMENT OR

OTHER PRESENT OR FUTURE INSTRUMENT OR AGREEMENT BETWEEN DEBTOR AND SECURED PARTY; OR (C) ANY CONDUCT, ACT OR OMISSION OF DEBTOR, SECURED PARTY OR ANY OF THEIR DIRECTORS, OFFICERS, MEMBERS, MANAGERS, EMPLOYEES, AGENTS, ATTORNEYS OR OTHER AFFILIATES, IN EACH CASE WHETHER SOUNDING IN CONTRACT, TORT OR EQUITY OR OTHERWISE.

[Signatures Appear On Next Page]

WITNESS the execution hereof on the day and year first above written.

LANDMARK PLASTIC CORPORATION
("Debtor")

By: 
Title: CHAIRMAN & CEO

CAPITAL BUSINESS CREDIT LLC
("Secured Party")

By: _____
Title: _____

WITNESS the execution hereof on the day and year first above written.

LANDMARK PLASTIC CORPORATION
("Debtor")

By: _____
Title: _____

CAPITAL BUSINESS CREDIT LLC
("Secured Party")

By: Malcolm K. Hagan
Title: EVP

STATE OF OHIO

COUNTY OF SUMMIT

I, Karen E Thomas, a Notary Public of the State and County aforesaid, certify that Robert Merzweiler personally appeared before me this day and acknowledged that he is Chairman/CEO of LANDMARK PLASTIC CORPORATION, an Ohio corporation, and that by authority duly given and as the act of the company, the foregoing instrument was signed by him/her in the company's name.

WITNESS my hand and official stamp or seal, this _____ day of August, 2012.

Karen E Thomas
Notary Public

My Commission Expires: **KAREN E. THOMAS**
Notary Public
In and for the State of Ohio
My Commission Expires
March 9, 2015

STATE OF North Carolina

COUNTY OF Mecklenburg

I, Mary E. Rushing, a Notary Public of the State and County aforesaid, certify that Malcolm Ferguson personally appeared before me this day and acknowledged that he is VP of CAPITAL BUSINESS CREDIT LLC, a Delaware limited liability company, and that by authority duly given and as the act of the company, the foregoing instrument was signed by him/her in the company's name.

WITNESS my hand and official stamp or seal, this 9th day of August, 2012.

Mary E. Rushing
Notary Public

My Commission Expires: 11/10/2013

SCHEDULE A TO
PATENT SECURITY AGREEMENT

<u>Title</u>	<u>Patent No.</u>	<u>Application No.</u>	<u>Filing Date</u>
Interconnectable plant tray	7,845,114	12/335,313	December 15, 2008
Container with plant identification tag slot	7,624,536	11/741,482	April 27, 2007
Nest and stack plant pot	6,134,832	09/299,983	April 27, 1999
Drainage disk and reservoir system for a planter	6,125,579	09/193,561	November 17, 1998
Container for shipping young plants or seedlings	6,050,027	09/225,784	January 5, 1999
Interconnectable plant tray	None	20090151247	December 15, 2008
Container with plant identification tag slot	None	20070256358	April 27, 2007
Plant marking tag	None	20050223640	March 23, 2005
Plant flat handle	US20070124996	11/548,888	October 12, 2006
Ultrasonic or heat staking attachment or plant tag	US20070079536	11/549,051	October 12, 2006
Multiple section hanging planter	4,592,166	06/646,798	September 4, 1984
Tray for potted plants	6,125,577	09/154,346	September 16, 1998
Hanging planter	D283,992	06/665,571	October 29, 1984