

PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1
 Stylesheet Version v1.2

EPAS ID: PAT7652173

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
FOCUSED TECHNOLOGY SOLUTIONS, INC.	01/25/2022
RECEIVING PARTY DATA	
Name:	FTS TOOLS, LLC
Street Address:	102 LIBERTY VILLAGE BOULEVARD
City:	LYNCHBURG
State/Country:	VIRGINIA
Postal Code:	24502
PROPERTY NUMBERS Total: 1	
Property Type	Number
Patent Number:	11131067
CORRESPONDENCE DATA	
Fax Number:	(312)463-5001
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>	
Phone:	(312) 463-5000
Email:	bwptopat@bannerwitcoff.com, ananderson@bannerwitcoff.com
Correspondent Name:	BANNER & WITCOFF, LTD.
Address Line 1:	71 SOUTH WACKER DRIVE
Address Line 2:	SUITE 3600
Address Line 4:	CHICAGO, ILLINOIS 60606
ATTORNEY DOCKET NUMBER:	009594.00013\US
NAME OF SUBMITTER:	ANTONIETTA ANDERSON
SIGNATURE:	/Antonietta Anderson/
DATE SIGNED:	11/17/2022
Total Attachments: 11	
source=00013 - Purchase Agreement#page1.tif	
source=00013 - Purchase Agreement#page2.tif	
source=00013 - Purchase Agreement#page3.tif	
source=00013 - Purchase Agreement#page4.tif	
source=00013 - Purchase Agreement#page5.tif	

source=00013 - Purchase Agreement#page6.tif
source=00013 - Purchase Agreement#page7.tif
source=00013 - Purchase Agreement#page8.tif
source=00013 - Purchase Agreement#page9.tif
source=00013 - Purchase Agreement#page10.tif
source=00013 - Purchase Agreement#page11.tif

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "Agreement") is made as of December 31, 2021 (the "Effective Date") by and between Focused Technology Solutions, Inc., a Delaware corporation with a place of business at 428 Sand Shore Road, Unit 11, Hackettstown, NJ 07840 ("Seller"), and FTS Tools, LLC a limited liability company with a place of business at 102 Liberty Village Blvd., Lynchburg, VA 24502 ("Buyer").

WHEREAS, Buyer desires to purchase, and Seller desires to sell, the assets, rights, and interests described in Exhibit A (the "Purchased Assets") pursuant to the terms of this Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual promises in this Agreement, the sufficiency of which they acknowledge, the parties intending to be legally bound agree as follows:

1. Sale and Purchase. Subject to the terms of this Agreement, Seller hereby sells, assigns, conveys, and transfers to Buyer, and Buyer hereby purchases from Seller, as of the Effective Date, all of the rights, titles, benefits, and interests of the Seller in the Purchased Assets.

2. Inspection. Buyer hereby represents and warrants that it has inspected the Purchased Assets and accepts such assets in their current condition, with all faults. Seller hereby represents and warrants that it is the owner of the Purchased Assets, but expressly disclaims any warranties as to the condition or suitability of such Purchased Assets.

3. IP Assets. The patents and patent applications listed in Exhibit A, including all divisions, continuations, and continuations-in-part thereof in the United States and Canada, are collectively referred to in this Agreement as the Patents. The trademarks listed in Exhibit A, including all common law rights, registered rights, and goodwill of those trademarks in the United States and Canada, are collectively referred to in this Agreement as the Marks. The Patents and Marks are collectively referred to in this Agreement as the IP Assets.

a. Seller hereby sells, assigns, conveys, and transfers to Buyer all of Seller's right, title, and interest in and to the Patents, together with all rights of registration, maintenance, and protection thereof in any form, all rights to income, royalties, damages, and payments now due or hereafter due or payable in respect thereto, and all rights of recovery and of legal action for past or future infringements and of interference proceedings and reexaminations involving such Patents. Buyer will, at its sole discretion and expense, decide what enforcement action, if any, to take regarding any infringements involving the Patents.

b. Seller hereby sells, assigns, conveys, and transfers, to Buyer all of Seller's right, title, and interest in and to the Marks, together with all rights of registration, maintenance, and protection thereof in any form, all rights to income, royalties, damages, and payments now due or hereafter due or payable in respect thereto, and all rights of recovery and of legal action for past or future infringements involving such Marks. Buyer will, at its sole

discretion and expense, decide what enforcement action, if any, to take regarding any infringements involving the Marks.

- c. Buyer shall, at its sole expense, continue to maintain all of the issued Patents and registered Marks at least through December 31, 2031. Buyer may, at its sole discretion and expense, and to the extent permitted under the law, continue to prosecute any of the pending patent applications, but Buyer is not obligated to continue to prosecute any of the pending patent applications. Seller agrees to cooperate with Buyer to obtain or maintain the Patents and Marks at the Buyers expenses.
- d. This Agreement transfers the IP Assets to Buyer as set forth in this Agreement. Post-closing, Buyer is not obligated to incur any legal fees related to the transfer, but Buyer may elect, at its sole expense, to record the assignment of IP Assets in this Agreement with the U.S. Patent and Trademark Office.

4. Inventory of Physical Tools. Buyer hereby assumes all right, title, interest, ownership, and responsibility for the existing inventory of physical Purchased Assets at the IPC warehouse as of the Effective Date (the "Existing Inventory"), the value of which will be estimated by the parties at closing.

5. Purchase Price. Buyer shall pay Seller as follows:

- a. ██████████ at closing; and
- b. ██████ per physical tool Buyer sells from the Existing Inventory for SpikeEase, LagEase, and DrillEase, tools; and
- c. The dollar value of the sale per physical product Buyer sells from the Existing Inventory for all products other than SpikeEase, LagEase, and DrillEase; and
- d. From the Effective Date through December 31, 2027, a royalty of ██████ of the net selling price for each product Buyer sells. For purposes of this paragraph, "net selling price" means the amount invoiced by Buyer with respect to a product, f.o.b. Buyer's distribution point, exclusive of freight and delivery charges, taxes, duties, and allowances for returns.
- e. Individual accessories that are sold separate and apart from a tool and that are not part of the functionality of a tool are not subject to paragraphs 5(b), 5(c), and 5(d) above. By way of example, a standalone battery and/or impact drill that is not sold with a tool and that is not sold as a replacement battery and/or impact drill for a tool is not subject to paragraphs 5(b), 5(c), and 5(d) above. But a battery and/or impact drill sold with a tool, or a battery and/or

impact drill sold as a replacement battery and/or impact drill for a tool, is subject to paragraphs 5(b), 5(c), and 5(d) above.

- f. At the closing of this agreement the total inventory value of SpikeEase, LagEase, and DrillEase, defined under items 5(b) [REDACTED]

At the closing of this agreement the total inventory value defined under 5(e) is [REDACTED]

6. Royalty Payments and Minimum Annual Royalties. Buyer shall pay Seller the royalty payments pursuant to paragraphs 5(b), 5(c), and 5(d) on a quarterly basis, with payment due within 15 days after the end of each quarter. The minimum annual royalty Buyer must pay Seller pursuant to Paragraph 5(c) is as follows:

- a. Year 1 (January 1, 2022 - December 31, 2022): [REDACTED]
- b. Year 2 (January 1, 2023 - December 31, 2023): [REDACTED] and
- c. Year 3 (January 1, 2024 - December 31, 2024): [REDACTED]

7. Records and Audits.

- a. Buyer shall keep accurate and complete records sufficient to determine the amounts due under paragraphs 5 and 6 above. The records shall identify, at a minimum, the number and type of tools Buyer has sold from the Existing Inventory, the number of tools Buyer has sold that are not from the Existing Inventory, the gross selling price for each tool Buyer has sold that is not from the Existing Inventory, the net selling price for each tool Buyer has sold that is not from the Existing Inventory, and the deductions Buyer used to arrive at the net selling price for each such tool.
- b. For each calendar quarter, Buyer shall deliver to Seller a full and complete report on a form designated by Seller (which form may be amended by Seller from time to time) showing, at a minimum, the number and type of tools Buyer has sold from the Existing Inventory, the number of tools Buyer has sold that are not from the Existing Inventory, the gross selling price for each tool Buyer has sold that is not from the Existing Inventory, the net selling price for each tool Buyer has sold that is not from the Existing Inventory, and the deductions Buyer used to arrive at the net selling price for each such tool. Buyer shall deliver the report before the fifteenth (15th) day of the month following the end of the calendar quarter for which the report is made. Each such report shall be accompanied by the payment due under paragraphs 5 and 6 above for that quarter.

- c. Buyer shall retain all records and reports required under this Agreement for not less than three (3) years. All such records and reports shall be open to examination at Seller's expense at all reasonable times by an independent outside certified public accountant designated by Seller.
- d. Any failure by Buyer to keep and maintain such records and reports, or to provide records, reports, or payments to Seller as required by this Agreement, shall constitute a material breach of this Agreement.

8. Failure to Maintain IP Assets or Make Required Payments. If Buyer fails to make any of the payments required by paragraphs 5 and 6, Buyer hereby assigns to Marmon Holdings, Inc. (i.e., Seller's parent as of the Effective Date), at no additional consideration from Marmon Holdings, Inc., all right, title, and interest in and to all of the IP Assets. If Buyer fails to maintain any of the IP Assets as required by paragraph 3(c), Buyer hereby assigns to Marmon Holdings, Inc. (i.e., Seller's parent as of the Effective Date), at no additional consideration from Marmon Holdings, Inc., all right, title, and interest in and to all of the IP Assets.

9. Seller shall pay all required federal and state taxes for orders that shipped prior to closing. After closing, Buyer shall take over all orders not shipped and shall pay all required federal and state taxes to include [REDACTED] royalties and [REDACTED] per tool as stated in paragraph 5 above

10. Termination of Buyer's Business.

- a. If at any time from the Effective Date through December 31, 2027, Buyer sells all or any portion of its business to another entity, Buyer shall pay Seller any balance of Inventory including [REDACTED] of the selling price less any applicable taxes.
- b. Buyer shall permanently assign to Marmon Holdings, Inc. (i.e., Seller's parent as of the Effective Date), at no additional consideration from Marmon Holdings, Inc., all right, title, and interest in and to all of the IP Assets prior to any of the following events occurring from the Effective Date through December 31, 2031:
 - i. Buyer files a voluntary petition in bankruptcy, files a petition seeking any reorganization, arrangement, composition, or similar relief under any applicable law regarding insolvency or relief for debtors, or makes an assignment for the benefit of creditors; or
 - ii. A receiver, trustee, or similar officer is appointed for the business or property of Buyer; or
 - iii. Any involuntary petition or proceeding under bankruptcy or insolvency laws is instituted against Buyer; or
 - iv. Buyer ceases business operations or adopts a resolution for discontinuance of its business or for dissolution.

11. Liabilities & Indemnification. Buyer hereby assumes all liabilities and obligations whether accrued, contingent, or otherwise, of Seller related to the Purchased Assets (the "Assumed Obligations"). Buyer hereby agrees to indemnify and hold Seller, its affiliates, subsidiaries, and respective directors and employees (the "Indemnified Seller Parties") harmless from and against any and all claims, losses, liabilities, damages, expenses and costs (including reasonable legal fees and court costs) which the Indemnified Seller Parties may sustain or incur as a result of, in respect of, connected with or arising out of (i) any failure of Buyer to perform or fulfill any covenant under this Agreement, at any time, (ii) any breach or inaccuracy of any warranty given by Buyer under this Agreement, (iii) the Assumed Obligations, and/or (iv) the Purchased Assets. In the event a claim is made by a third party against Buyer or Seller which may give rise to a right or indemnity under this paragraph, the Buyer or Seller, as the case may be, agree to promptly notify the other in writing.

12. Miscellaneous:

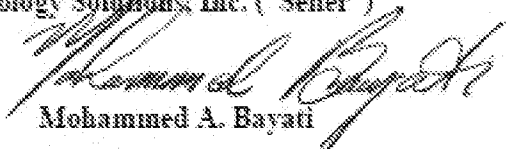
- a. Except as otherwise provided in this Agreement, each of the parties hereto shall pay its own expenses in connection with the transactions contemplated by this Agreement.
- b. The parties hereto agree to execute and deliver all such further instruments and take such other further action as may be reasonably necessary or appropriate to carry out the provisions of this Agreement and the intention the parties as expressed herein.
- c. This instrument contains the entire Agreement between the parties with respect to the transactions contemplated herein. The parties expressly agree that this Agreement supersedes and rescinds any prior written agreement between them pertaining to the sale of the Purchased Assets. This Agreement may not be amended, modified or discharged orally or otherwise than in writing, executed by all the parties or the respective successors or assigns.
- d. This Agreement and the transactions and other instruments provided for herein shall be governed as to their validity, interpretation and effect by the laws of the State of Virginia, and may only be judicially enforced in any court of competent jurisdiction sitting in Illinois. This Agreement will be binding upon the respective successors and assigns of the parties.
- e. In the event any term, condition, covenant or agreement herein shall be deemed or declared to be invalid or unenforceable by any court of competent jurisdiction, such invalid or unenforceable term, etc., shall be severed from the remaining valid terms of this Agreement and shall not affect the validity or enforceability of such valid terms.
- f. The Buyer will take full quality responsibility of Focus Technologies Solution Inc open purchase order Number 1108 valued at [REDACTED] with

IPC Rail Industrial Products Company of Lynchburg VA and will resolve any issues related to the deliveries of this order that is on the Seller inventory that will arrive in June/July 2022.

IN WITNESS WHEREOF the parties have caused this Agreement to be duly executed as of the Effective Date.

Focused Technology Solutions, Inc. ("Seller")

Signature



Name

Mohammed A. Bayati

Title

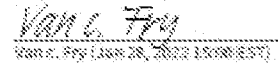
Sr VP Innovation and Strategy
Marmou Rail, Leasing, and Crane
Services

Date

1/25/2022

FIS Tools LLC ("Buyer")

Signature


Van C. Fry (Last Name, First Initial)

Name

Van C. Fry

Title

President

Date

1/25/2022

EXHIBIT A


Tools

- PowerForce
- PowerExtender
- Power Force for Rail Drill
- SpikeEae
- DrillEase
- LagEase
- SpikeForce
- EclipEase (Un-finished)

Patents

Country	Title	App. No.	App. Date	Reg. No.
SpikeEase				
United States of America	RAIL SPIKE REMOVER	15/175,900	6/7/2016	10,597,826
United States of America	RAILROAD SPIKE REMOVER	16/784,068	2/6/2020	11,131,967
United States of America	RAILROAD SPIKE REMOVER	16/784,129	2/6/2020	11,208,767
United States of America	RAILROAD SPIKE REMOVER	17/365,098	7/1/2021	
United States of America	RAILROAD SPIKE REMOVER	17/486,896	9/27/2021	
Canada	RAIL SPIKE REMOVER	2969795	6/6/2017	
Canada	RAIL SPIKE REMOVER			
SpikeEase - Updated				
United States of America	RAILROAD SPIKE REMOVER	62/786,925	1/6/2019	
United States of America	RAIL SPIKE REMOVER	16/734,125	1/3/2020	11,131,966
United States of America	RAIL SPIKE REMOVER	17/486,900	9/27/2021	
Canada	RAIL SPIKE REMOVER	3066556	1/6/2020	3066556
DrillEase / LagEase				
United States of America	TIE DRILL AND LAG SCREW INSERTER DEVICE FOR THE RAIL INDUSTRY	62/938,772	11/21/2019	
United States of America	TIE DRILL AND LAG SCREW INSERTER DEVICE FOR THE RAIL INDUSTRY	17/100,649	11/20/2020	
DrillEase / LagEase Updated				
United States of America	TIE DRILL AND LAG SCREW INSERTER DEVICE FOR THE RAIL INDUSTRY	63/037,825	6/11/2020	
United States of America	TIE DRILL AND LAG SCREW INSERTER DEVICE FOR THE RAIL INDUSTRY	17/342,979	6/9/2021	
Eclipse				
United States of America	RAILWAY CLIP POSITIONING, SETTING, AND INSERTION SYSTEM	63/024,087	5/13/2020	
United States of America	RAILWAY CLIP POSITIONING, SETTING, AND INSERTION SYSTEM	17/320,058	5/13/2021	
SpikeForce / PowerForce / PowerExtender				
United States of America	BATTERY-OPERATED SPIKE DRIVER	63/092,317	10/15/2020	

Trademarks

Country	Title	App. No.	App. Date	Reg. No.	Case Status	Classes
United States of America	SPIKE EASE	88/669568	10/25/2019	6068158	Registered	Class 07: Power-operated spike pullers
United States of America	SPIKE EASE Logo	88/910153	2/26/2020	6152030	Registered	Class 07: Power-operated spike pullers
United States of America	DRILLEASE	89903309	5/6/2020	6412530	Registered	Class 07: Battery-operated tie drill for the nail industry
United States of America		88376343	4/9/2019	6011568	Registered	Class 07: Hand-held power-operated tools, namely, spike pullers.






FTS Tools LLC Agreement (1-19-2022) C

Final Audit Report

2022-01-28

Created:	2022-01-28
By:	mohammed.bayati@marron.com
Status:	Signed
Transaction ID:	CBJCHSCAABAA4h6HgP8Zw8FVvEYJ4zxDLpEHf98Lxv

"FTS Tools LLC Agreement (1-19-2022) C" History

-  Document created by mohammed.bayati@marron.com
2022-01-28 - 7:39:06 PM GMT
-  Document emailed to Van c. Fry (vanf@ftrail.com) for signature
2022-01-28 - 7:39:48 PM GMT
-  Email viewed by Van c. Fry (vanf@ftrail.com)
2022-01-28 - 7:41:08 PM GMT
-  Document e-signed by Van c. Fry (vanf@ftrail.com)
Signature Date: 2022-01-28 - 8:00:19 PM GMT - Time Source: server
-  Agreement completed.
2022-01-28 - 8:00:19 PM GMT

