

MPD 6-15-98

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Attorney Docket No. 46715-00964

FORM PTO-1594 (Rev. 6-93)

07-10-1998

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U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

OMB No. 0651-0011 (exp. 4/94) Tab settings



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To the Honorable Commissioner of Patents and Trademarks, please record the attached original documents or copy thereof.

1. Name of conveying party(ies): Amcraft Building Products Co., Inc.

Individual(s) General Partnership X Corporation-State Delaware Other

Association Limited Partnership

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

Name: NationsBank, N.A. Internal Address:

Street Address: 901 Main Street, 6th Floor

City: Dallas State: Texas ZIP: 75202

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

Individual(s) citizenship X Association a national banking association General Partnership Limited Partnership Corporation-State Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes X No (Designations must be a separate document from Assignment) Additional name(s) & address(es) attached? Yes X No

3. Nature of conveyance:

Assignment Security Agreement X Other Patent, Trademark and License Mortgage Merger Change of Name

Execution Date: May 18, 1998

Application number(s) or registration number(s):

A. Trademark Application No.(s)

75/324,394 75/357,755 75/425,053 75/276,291

B. Trademark registration No.(s)

1,705,009 2,118,705 2,096,349 1,939,683

Additional numbers attached? Yes X No

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

Name: Andrea Walker Internal Address: Jenkins & Gilchrist, P.C. Street Address: 1445 Ross Avenue, Suite 3200 City: Dallas State: Texas ZIP: 75202-2799

6. Total number of applications and registrations involved: 8

7. Total fee (37 CFR 3.41): \$ 215.00

X Enclosed Authorized to be charged to deposit account

8. Deposit account number: 10-0447

DO NOT USE THIS SPACE

07/10/1998 DNGUYEN 00000016 1705009 9. Statement and signature.

01 FC:481 02 FC:482

I, the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Andrea Walker Name of Person Signing

Andrea Walker Signature

June 11, 1998 Date

Total number of pages including cover sheet, attachments, and document: 12

Mail documents to be recorded with required cover sheet information to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3513, Box Assignments

TRADEMARK

REEL: 1751 FRAME: 0586

## **PATENT, TRADEMARK AND LICENSE MORTGAGE**

THIS PATENT, TRADEMARK AND LICENSE MORTGAGE (the "Mortgage") made as of this 12th day of May, 1998, by Amcraft Building Products Co., Inc., a Delaware corporation having an address at One ABC Parkway, Beloit, Wisconsin 53511 ("Mortgagor"), in favor of NationsBank, N.A., as Agent, having an office at 901 Main Street, 6th Floor, Dallas, Texas 75202 ("Mortgagee").

### **WITNESSETH:**

WHEREAS, American Builders & Contractors Supply Co., Inc. ("Borrower"), certain lenders ("Lenders"), Mortgagee, as agent for the Lenders, and American National Bank and Trust Company, as co-agent for the Lenders, are parties to a certain Second Amended and Restated Loan and Security Agreement (as amended from time to time, the "Loan and Security Agreement") and other related loan documents heretofore or now executed (collectively, with the Loan and Security Agreement, the "Loan Agreements"), which Loan Agreements provide (among other things) for Mortgagee and Lenders to, from time to time, extend credit to or for the account of Borrower. As a condition to the Lenders' obligations under the Loan and Security Agreement, and concurrently herewith, Mortgagor is executing that certain Security Agreement (herein so called), which provides for the grant by Mortgagor to Mortgagee of a security interest in certain of Mortgagor's assets, including, without limitation, its patents, patent applications, trademarks, trademark applications, trade names, service marks, service mark applications, goodwill and licenses.

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

1. Incorporation of Loan Agreements. The Security Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto. All terms capitalized but not otherwise defined herein shall have the same meanings herein as in the Security Agreement.

2. Mortgage of Patents, Trademarks and Licenses. To secure the complete and timely satisfaction of all of the Obligations (as defined in the Security Agreement), Mortgagor hereby makes a collateral assignment and grants to Mortgagee a security interest having priority over all other security interests, with power of sale, to the extent permitted by law, upon the occurrence of an Event of Default (as defined in the Loan Agreements), in all of Mortgagor's right, title and interest in and to all of its now existing and hereafter created or acquired:

(i) patents and patent applications, including, without limitation, the inventions and improvements described and claimed herein, and those patents and patent applications listed on Exhibit A attached hereto and hereby made a part hereof, and (a) the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (b) all income, damages and payments now and

hereafter due or payable under or with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing, together with the times described in clauses (a)-(d) of this subsection 2(i), are sometimes hereinafter referred to individually as a "Patent" and, collectively, as the "Patents");

(ii) trademarks, trademark registrations, trademark applications, trade names and tradestyles, service marks, service mark registrations, service mark applications and brand names, including without limitation those trademarks, trade names, service marks and applications and registrations thereof listed on Exhibit B attached hereto and hereby made a part hereof, and (a) renewals or extensions, thereof, (b) all income, damages and payments now and hereafter due or payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing, together with the items described in clauses (a)-(d) of this subsection 2(ii), are sometimes hereinafter referred to individually as a "Trademark", and, collectively, as the "Trademarks");

(iii) all license agreements with respect to any of the Patents or the Trademarks or any other patent, trademark, service mark or any application or registration thereof or any other tradename or tradestyle between Mortgagor and any other party, whether Mortgagor is a licensor or licensee under any such license agreement, including, without limitation, the licenses listed on Exhibit C attached hereto and hereby made a part hereof (all of the foregoing license agreements and Mortgagor's rights thereunder are referred to collectively as the "Licenses"); and

(iv) the goodwill of Mortgagor's business connected with and symbolized by the Trademarks.

3. Warranties and Representations. Mortgagor warrants and represents to Mortgagee that:

(i) no Patent, Trademark or License has been adjudged invalid or unenforceable nor has any such Patent, Trademark or License been cancelled, in whole or in part;

(ii) Mortgagor has adopted, used and is currently using all of the Trademarks;

(iii) Mortgagor has no notice of any suits or actions commenced or threatened with reference to the Patents, Trademarks or Licenses, except as otherwise disclosed to Mortgagee in writing; and

(iv) Mortgagor has the unqualified right to execute and deliver this Mortgage and perform its terms and has entered into or will enter into written agreements with each of its present and future employees, agents and consultants to the extent necessary to enable it to comply with the covenants contained herein.

4. Restrictions on Future Agreements. Except as set forth on Exhibit B, Mortgagor agrees that until the Obligations shall have been satisfied in full and the Security Agreement shall have been terminated, Mortgagor shall not sell or assign its interest in, or grant any license under, the Patents, Trademarks or Licenses, or enter into any other agreement with respect to the Patents, Trademarks or Licenses and Mortgagor further agrees that it shall not knowingly take any action (other than infringement suits against others), or knowingly permit any action to be taken by others subject to its control, including licensees, or knowingly fail to take any action, which would affect the validity or enforcement of the rights transferred to Mortgagee under this Mortgage.

5. New Patents, Trademarks, and Licenses. Mortgagor represents and warrants that, to the best of Mortgagor's knowledge, the Patents, Trademarks and Licenses listed on Exhibits A, B and C, respectively, constitute all of the Patents, Trademarks, and Licenses now owned by Mortgagor. If, before Mortgagor's Liabilities shall have been satisfied in full or before the Loan Agreements have been terminated, Mortgagor shall (i) become aware of any existing Patents, Trademarks, or Licenses of which Mortgagor has not previously informed Mortgagee, (ii) obtain rights to any new patentable inventions, Patents, Trademarks or Licenses, or (iii) become entitled to the benefit of any Patents, Trademarks, or Licenses or any improvement on any Patent, the provisions of this Mortgage above shall automatically apply thereto and Mortgagor shall to the extent that it is aware thereof give to Mortgagee prompt written notice thereof to the extent material to the continued operations of Mortgagor. Mortgagor hereby authorizes Mortgagee to modify this Mortgage by amending Exhibits A, B and C, as applicable, to include any such Patents, Trademarks and Licenses.

6. Royalties; Terms. The term of the mortgages granted herein shall extend until the earlier of (i) the expiration of each of the respective Patents, Trademarks and Licenses assigned hereunder, and (ii) the date the Obligations shall have been paid in full and the Loan Agreements have been terminated. Mortgagor agrees that upon the occurrence of an Event of Default, the use by Mortgagee of all Patents, Trademarks and Licenses shall be worldwide and without any liability for royalties or other related charges from Mortgagee to Mortgagor.

7. Product Quality. Upon the occurrence of an Event of Default, Mortgagor agrees that Mortgagee, or a conservator appointed by Mortgagee, shall have the right to establish such product quality controls as Mortgagee, or said conservator, in its reasonable judgment, may deem necessary to assure maintenance of the quality of products sold by Mortgagor under the Trademarks.

8. Release of Mortgage. This Mortgage is made for collateral purposes only. Upon payment in full of the Obligations and termination of the Loan Agreements, Mortgagee shall execute and deliver to Mortgagor all deeds, assignments and other instruments, and shall take such other actions, as may be necessary or proper to re-vest in Mortgagor full title to the Patents,

Trademarks and Licenses, subject to any disposition thereof which may have been made by Mortgagee pursuant to the Security Agreement.

9. Duties of Mortgagor. Where commercially reasonable and cost effective as to Mortgagor, unless otherwise consented to by Mortgagee in writing, Mortgagor shall have the duty (i) to file and prosecute any trademark or service mark applications pending as of the date hereof or hereafter until Mortgagor's Liabilities shall have been paid in full, and (ii) to preserve and maintain all rights in the Patents, Trademarks and Licenses. Any expenses incurred in connection with Mortgagor's obligations under this Section 9 shall be borne by Mortgagor. Except as set forth on Exhibit B, Mortgagor shall not abandon any right to file a patent, trademark or service mark application, or abandon any pending patent, trademark or service mark application or any other Patent, Trademark or License.

10. Mortgagee's Right to Sue. Upon the occurrence of an Event of Default, Mortgagee shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Patents, Trademarks and Licenses, and, if Mortgagee shall commence any such suit, Mortgagor shall, at the request of Mortgagee, do any and all lawful acts and execute any and all proper documents required by Mortgagee in aid of such enforcement and Mortgagor shall promptly, upon demand, reimburse and indemnify Mortgagee for all reasonable costs and expenses incurred by Mortgagee in the exercise of its rights under this Section 10.

11. Waivers. No course of dealing between Mortgagor and Mortgagee, nor any failure to exercise, nor any delay in exercising, on the part of Mortgagee, any right, power or privilege thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

12. Severability. The provisions of this Mortgage 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 Mortgage in any jurisdiction.

13. Modification. This Mortgage cannot be altered, amended or modified in any way, except as specifically provided in Section 5 hereof or by a writing signed by the parties hereto.

14. Cumulative Remedies; Power of Attorney; Effect on Loan Agreements. All of Mortgagee's rights and remedies with respect to the Patents, Trademarks and Licenses, whether established hereby or by any Security Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Mortgagor hereby authorizes Mortgagee upon the occurrence of an Event of Default, to make, constitute and appoint any officer or agent of Mortgagee, as Mortgagee may select in its reasonable discretion, as Mortgagor's true and lawful attorney-in-fact, with power to (i) endorse Mortgagor's name on all applications, documents, papers and instruments necessary or desirable for Mortgagee in the use of the Patents, Trademarks and Licenses, or Mortgagee in the use of the Patents, Trademarks and Licenses, or

(ii) take any other actions with respect to the Patents, Trademarks and Licenses as Mortgagee deems to be in the best interest of Mortgagee, or (iii) grant or issue any exclusive or non-exclusive license under the Patents, Trademarks or Licenses to anyone, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Patents, Trademarks or Licenses to anyone. Mortgagee 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 Mortgagor's Liabilities shall have been paid in full and the Loan Agreements, including any amendments thereto, have been terminated. Mortgagor acknowledges and agrees that this Mortgage is not intended to limit or restrict in any way the rights and remedies of Mortgagee under the Loan Agreements but rather is intended to facilitate the exercise of such rights and remedies. Mortgagee shall have, in addition to all other rights and remedies given it by the terms of this Mortgage and the Loan Agreements, 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, Trademarks or Licenses may be located.

15. Binding Effect; Benefits. This Mortgage shall be binding upon Mortgagor and its respective successors and assigns, and shall inure to the benefit of Mortgagee, its successors, nominees and assigns.

16. Governing Law. This Mortgage shall be governed by and construed in accordance with the laws of the State of Texas.

17. Headings. Paragraph headings used herein are for convenience only and shall not modify the provisions which they precede.

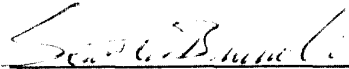
18. Further Assurances. Mortgagor agrees to execute and deliver such further agreements, instruments and documents, and to perform such further acts, as Mortgagee shall request from time to time in order to carry out the purpose of this Mortgage and agreements set forth herein.


19. Survival of Representations. All representations and warranties of Mortgagor contained in this Mortgage shall survive the execution and delivery of this Mortgage and shall be remade on the date of each borrowing under the Loan Agreements.

IN WITNESS WHEREOF, Mortgagor has duly executed this Mortgage in favor of Mortgagee, as Agent.

AMCRAFT BUILDING PRODUCTS CO., INC.

ATTEST:

  
Title: T. W. Rice

By:   
Name: Kendra A. Steyer  
Title: CFO

STATE OF Wisconsin )  
                                  ) §.  
COUNTY OF Rock )  
                                  ) COOK

The foregoing Patent, Trademark and License Mortgage was executed and acknowledge before me this 18th day of May, 1998, by Kendra A. Storg and Scott Bianchini, personally known to me to be the C.F.O. and Tax Director, respectively, of Amcraft Building Products Co., Inc., a Delaware corporation, on behalf of such corporation.

Carl L. Drake  
\_\_\_\_\_  
Notary Public

My Commission expires:

April 18th, 1999  
\_\_\_\_\_

Agreed and Accepted this 12th  
day of May, 1998

NATIONSBANK, N.A., as Agent

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

STATE OF \_\_\_\_\_ )  
 ) §.  
COUNTY OF COOK )

The foregoing Patent, Trademark and License Mortgage was executed and acknowledged before me this \_\_\_\_ day of May, 1998, by \_\_\_\_\_ and \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ and \_\_\_\_\_, respectively, of Amcraft Building Products Co., Inc., a Delaware corporation, on behalf of such corporation.

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

Agreed and Accepted this 12th  
day of May, 1998

NATIONSBANK, N.A., as Agent

By: Virginia H. Brown  
Name: VIRGINIA H. BROWN  
Title: SVP



**EXHIBITS**

Exhibit A	Patents and Patent Applications
Exhibit B	Trademarks and Trademark Registrations
Exhibit C	License Agreements

**EXHIBIT A**

**Patents and Patent Applications**

None

**EXHIBIT B**

**Trademarks and Trademark Registrations**

<u>Federal Service Mark/Trademark Registration</u>	<u>Registration or Serial (as applicable) Number</u>	<u>Registration Date</u>
Amcraft	1,705,009	August 4, 1992
Amcraft (color design)	2,096,349	September 16, 1997
Regency Wood Series	2,118,705	December 9, 1997
Timber Select	1,939,683	December 5, 1995
Landmark (pending application)	75/324,394	--
ProGuard (pending ITU application)	75/357,755	--
Riverwood (pending ITU application)	75/425,053	--
Grand Visions (pending ITU application)	75/276,291	(to be abandoned pursuant to settlement agreement with Weather Shield Mfg. Co.)
Grand Horizons (pending ITU application)		--

**Unregistered Trademarks**

Williamsburg Colonial Beaded

Ultra

**EXHIBIT C**

**License Agreements**

None

# Jenkins & Gilchrist

A PROFESSIONAL CORPORATION

FOUNTAIN PLACE  
1445 ROSS AVENUE, SUITE 3200  
DALLAS, TX 75202

(214) 855-4500  
TELECOPIER (214) 855-4300

AUSTIN, TEXAS  
(512) 499-3800

HOUSTON, TEXAS  
(713) 951-3300

SAN ANTONIO, TEXAS  
(210) 246-5000

WASHINGTON, D.C.  
(202) 326-1500

WRITER'S DIRECT DIAL NUMBER

Andrea Walker  
(214) 855-4775

Box Assignments  
Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

CERTIFICATE OF MAILING

I hereby certify that this paper or fee is being deposited with the U.S. Postal Service as First Class Mail addressed to the Assistant Commissioner for Trademarks 2900 Crystal Drive, Box Assignments Arlington VA 22202-3513

on 6/11/98 LA JEANNA WILLARD  
Signature *LaJeanna Willard*

Re: Conveying Party: Amcraft Building Products Co., Inc.  
Registration Nos.: 1,705,009; 2,096,349; 2,118,705; 1,939,683  
Serial Nos.: 75/324,394; 75/357,755; 75/425,053; 75/276,291  
Docket No.: 46715-00964

Dear Sir:

Transmitted for filing in the Patent and Trademark Office are the following documents for the above-referenced marks:

1. Recordation Form Cover Sheet (Form PTO-1594);
2. Patent, Trademark and License Mortgage;
3. A check in the amount of \$215.00 for the filing fee; and
4. An acknowledgment postcard.

Please address all communications related to this to:

Andrea Walker  
Jenkins & Gilchrist, P.C.  
1445 Ross Avenue, Ste. 3200  
Dallas, Texas 75202-2799  
Phone (214) 855-4775

IPDAL:167317.1 46715-00964

TRADEMARK  
REEL: 1751 FRAME: 0598

Assistant Commissioner for Trademarks  
June 8, 1998  
Page 2

In the event there is an under or overpayment, please debit or credit our Deposit Account #10-0447. This letter is being filed in duplicate to facilitate processing.

Respectfully submitted,

*Andrea Walker*

Andrea Walker

Dated: June 11, 1998

cc: Scott H. Thompson, Esq. - Firm

**Jenkins & Gilchrist**  
A PROFESSIONAL CORPORATION

FOUNTAIN PLACE  
1445 ROSS AVENUE, SUITE 3200  
DALLAS, TX 75202

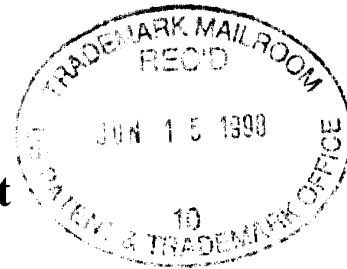
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SAN ANTONIO, TEXAS  
(210) 246-5000

WASHINGTON, D.C.  
(202) 326-1500



WRITER'S DIRECT DIAL NUMBER

Andrea Walker  
(214) 855-4775

Box Assignments  
Assistant Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, Virginia 22202-3513

CERTIFICATE OF MAILING

I hereby certify that this paper or fee is being deposited with the U.S. Postal Service as First Class Mail addressed to the Assistant Commissioner for Trademarks 2900 Crystal Drive, Box Assignments Arlington VA 22202-3513

on 6/11/98 LAJEANNA WILLARD  
Signature *LaJenna Willard*

Re: Conveying Party: Amcraft Building Products Co., Inc.  
Registration Nos.: 1,705,009; 2,096,349; 2,118,705; 1,939,683  
Serial Nos.: 75/324,394; 75/357,755; 75/425,053; 75/276,291  
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1445 Ross Avenue, Ste. 3200  
Dallas, Texas 75202-2799  
Phone (214) 855-4775

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TRADEMARK  
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Assistant Commissioner for Trademarks  
June 8, 1998  
Page 2

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Respectfully submitted,

*Andrea Walker*

Andrea Walker

Dated: June 11, 1998

cc: Scott H. Thompson, Esq. - Firm

IPIDAL:167317.1 46715-00964

RECORDED: 06/15/1998

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REEL: 1751 FRAME: 0601