

11-21-2000

FORM PTO-1618A  
Expires 06/30/99  
OMB 0651-0027



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U.S. Department of Commerce  
Patent and Trademark Office  
TRADEMARK

KE 10.10.00

### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

#### Submission Type

- New
- Resubmission (Non-Recordation)  
Document ID #
- Correction of PTO Error  
Reel #  Frame #
- Corrective Document  
Reel #  Frame #

#### Conveyance Type

- Assignment  License
- Security Agreement  Nunc Pro Tunc Assignment  
Effective Date  
Month Day Year
- Merger
- Change of Name
- Other

#### Conveying Party

Mark if additional names of conveying parties attached

Name

Execution Date  
Month Day Year

Formerly

SP9750

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other
- Citizenship/State of Incorporation/Organization

#### Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

- Individual  General Partnership  Limited Partnership  If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

- Corporation  Association

Other

- Citizenship/State of Incorporation/Organization

#### FOR OFFICE USE ONLY

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK  
REEL: 002180 FRAME: 0346

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

1-516-739-8300

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments.

#

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

**Trademark Application Number(s)**

**Registration Number(s)**

<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="589750"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**Number of Properties**

Enter the total number of properties involved.

#

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed \*

Deposit Account

Deposit Account

\*submitted with original filing and not returned with paperwork

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

No

**Statement and Signature**

To 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. Charges to deposit account are authorized, as indicated herein.

Allen R. Morganstern, Esq.

October 2, 2000

Name of Person Signing

Signature

Date Signed

08-07-2000



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MAD  
7-14-00

### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

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#### Conveyance Type

Assignment  License

Security Agreement  Nunc Pro Tunc Assignment  
Effective Date  
Month Day Year

Merger

Change of Name

Other TRADEMARK MORTGAGE

#### Conveying Party

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name

Formerly

Individual  General Partnership  Limited Partnership  Corporation  Association

Other

Citizenship/State of Incorporation/Organization

#### Receiving Party

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Name

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Zip Code

Individual  General Partnership  Limited Partnership

Corporation  Association

Other

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If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

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Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK

REEL: 002180 FRAME: 0348

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

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Authorization to charge additional fees:

Yes

No

**Statement and Signature**

*To 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. Charges to deposit account are authorized, as indicated herein.*

Allen R. Morganstern, Esq.

Name of Person Signing

Signature

July 11, 2000

Date Signed

## TRADEMARK MORTGAGE

**THIS TRADEMARK MORTGAGE** ("Mortgage") made as of this 15<sup>th</sup> day of June, 2000, by **NEWTON TOOL & MFG. COMPANY, INC.**, a Delaware corporation, with its principal place of business at 500 Pedricktown Road, Swedesboro, New Jersey 08085 ("Mortgagor"), in favor of **LASALLE BUSINESS CREDIT, INC.**, with an office at 135 South LaSalle Street, Chicago, Illinois 60603 ("Mortgagee"):

### WITNESSETH:

**WHEREAS**, Mortgagor and Mortgagee are parties to a certain Loan and Security Agreement ("Security Agreement") and other related loan documents of even date herewith (collectively, with the Security Agreement, "Loan Agreements"), which Loan Agreements provide (i) for Mortgagee to, from time to time, extend credit to or for the account of Mortgagor and (ii) for the grant by Mortgagor to Mortgagee of a security interest in certain of Mortgagor's assets including, without limitation, its trademarks, tradenames, service marks, registrations thereof, service mark applications and goodwill;

**WHEREAS**, Mortgagor has acquired the trademark registration listed hereto in Exhibit A and all of the rights in the trademark referred to therein from Newton Tool & Mfg. Company, Inc., a New Jersey corporation, who in turn has acquired the trademark registration listed hereto in Exhibit A and all of the rights in the trademark referred to therein from Monarch Manufacturing Works, Inc., a Delaware corporation;

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

1. Capitalized Terms. All terms capitalized but not otherwise defined herein shall have the same meanings herein as in the Loan Agreements.

2. Mortgage of Trademarks. To secure the complete and timely satisfaction of all of Mortgagor's "Liabilities" (as defined in the Security Agreement), Mortgagor hereby grants, bargains, assigns, mortgages, pledges, sells, creates a security interest in, transfers and conveys to Mortgagee, 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 of an "Event of Default" (as defined in the Security Agreement) all of Mortgagor's right, title and interest in and to all of its now existing and hereafter created or acquired:

(i) trademarks, trademark registrations, trademark applications, tradenames and tradestyles, service marks, service mark registrations and service mark applications including, without limitation, the trademarks, tradenames, service marks and

applications and registrations thereof listed on Exhibit A 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 trademarks, tradenames and tradestyles, service marks and applications and registrations thereof, together with the items described in clauses (a)-(d) of this subsection 2(ii), are sometimes hereinafter referred individually as a "Trademark" and, collectively, as "Trademarks");

(ii) 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) The Trademarks and have not been adjudged invalid or unenforceable and have not been cancelled, in whole or in part, and are presently subsisting;

(ii) Each of the Trademarks is valid and enforceable;

(iii) Mortgagor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, free and clear of any liens, charges and encumbrances including, without limitation, shop rights and covenants by Mortgagor not to sue third persons;

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

(v) Mortgagor has no notice of any suits or actions commenced or threatened with reference to the Trademarks; and

(vi) Mortgagor has the 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 which will enable it to comply with the covenants contained herein.

4. Restrictions on Future Agreements. Mortgagor agrees that until Mortgagor's Liabilities shall have been satisfied in full and the Loan Agreements shall have been terminated, Mortgagor shall not sell or assign its interest in Trademarks or enter into any other agreement with respect to the Trademarks which is inconsistent with Mortgagor's obligations under this Mortgage, without the prior written consent of Mortgagee, and Mortgagor further agrees that it shall not take any action, or permit any action to be taken by others subject to its control or fail to take any action (solely with

respect to the Tradenames), which would affect the validity or enforcement of the rights transferred to Mortgagee under this Mortgage.

5. New Trademarks. Mortgagor represents and warrants that, to the best of Mortgagor's knowledge, the Trademarks listed on Exhibit A constitute all of the Trademarks 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 Trademarks of which Mortgagor has not previously informed Mortgagee, (ii) obtain rights to any new Trademarks, or (iii) become entitled to the benefit of any Trademarks, the provisions of this Mortgage above shall automatically apply thereto and Mortgagor shall give to Mortgagee prompt written notice thereof. Mortgagor hereby authorizes Mortgagee to modify this Mortgage by amending Exhibit A, as applicable, to include any such Trademarks.

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

7. Grant of License to Mortgagor. Unless and until an Event of Default shall have occurred, Mortgagee hereby grants to Mortgagor the exclusive, nontransferable right and license to use the Trademarks in the ordinary course of its business. Mortgagor shall use the Trademarks only on goods of at least as high quality as the goods on which Mortgagor or its predecessor used the goods prior to the date hereof. From and after the occurrence of an Event of Default, Mortgagor's license with respect to the Trademarks set forth in this Section 7 shall terminate forthwith, and Mortgagee shall have, in addition to all other rights and remedies given it by this Mortgage, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any of the jurisdictions in which the Trademarks may be located.

8. Mortgagee's Right to Inspect. Mortgagee shall have the right, at any time and from time to time during normal business hours and prior to payment in full of Mortgagor's Liabilities and termination of the Loan Agreements, to inspect Mortgagor's premises and to examine Mortgagor's books, records and operations, including, without limitation, Mortgagor's quality control processes. Mortgagor agrees (i) to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with the quality of said products as of the date hereof and (ii) to provide Mortgagee, upon Mortgagee's request from time to time, with a certificate of an officer of Mortgagor certifying Mortgagor's compliance with the foregoing. 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 additional product quality controls as Mortgagee, or said conservator, in its sole judgment, may deem necessary to assure maintenance of the quality of products sold by Mortgagor under the Trademarks.

9. Release of Mortgage. This Mortgage is made for collateral purposes only. Upon payment in full of Mortgagor's Liabilities 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 Trademarks subject to any disposition thereof which may have been made by Mortgagee pursuant hereto or pursuant to the Loan Agreements.

10. Expenses. All expenses incurred in connection with the performance of any of the agreements set forth herein shall be borne by Mortgagor. All fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' and paralegals' fees and legal expenses, incurred by Mortgagee in connection with 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 in protecting, maintaining or preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, shall be borne by and paid by Mortgagor on demand by Mortgagee and until so paid shall be added to the principal amount of Mortgagor's Liabilities and shall bear interest at the rate for "Revolving Loans" (as defined in the Security Agreement).

11. Duties of Mortgagor. Mortgagor shall have the duty (i) to prosecute diligently any trademark or service mark applications pending as of the date hereof or thereafter until Mortgagor's Liabilities shall have been paid in full, (ii) to make application on trademarks and service marks, as appropriate, and to the extent commercially reasonable, (iii) to preserve and maintain all rights in the Trademarks, and (iv) to ensure that the Trademarks are and remain enforceable. Any expenses incurred in connection with Mortgagor's obligations under this Section 11 shall be borne by Mortgagor. Mortgagor shall not abandon any right to file a trademark or service mark application, or abandon any Trademark without the consent of Mortgagee.

12. Mortgagee's Right to Sue. After 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 Trademarks 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 12.

13. Recordation of Title. Mortgagor shall have the obligation to insure that the transfers of title in and to the trademark registrations listed in Exhibit A shall be promptly and properly filed for recordation in the United States Patent and Trademark Office.

14. 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 hereunder or under the Loan Agreements shall operate as a waiver 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.

15. 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.

16. 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.

17. Cumulative Remedies; Power of Attorney; Effect on Financing Agreement. All of Mortgagee's rights and remedies with respect to the Trademarks, whether established hereby or by the Loan Agreements, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Upon the occurrence of an Event of Default, Mortgagor hereby authorizes Mortgagee to make, constitute and appoint any officer or agent of Mortgagee as Mortgagee may select, in its sole 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 Trademarks, or (ii) take any other actions with respect to the Trademarks as Mortgagee deems to be in the best interest of Mortgagee, or (iii) grant or issue any exclusive or non-exclusive license under the Trademarks to anyone, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks 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 Security Agreement, including any amendments thereto, has 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 Trademarks may be located.

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

19. Governing Law. This Mortgage shall be governed by and construed in accordance with the internal laws of the State of Illinois.

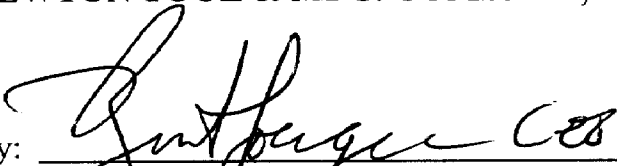
20. Headings. Paragraph headings used herein are for convenience only and shall not modify the provisions which they precede.

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

22. 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.

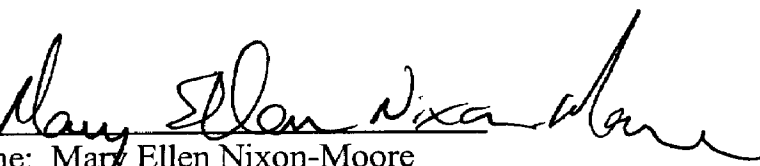
**IN WITNESS WHEREOF**, Mortgagor has duly executed this Mortgage in favor of Mortgagee as of the date first written above.

**NEWTON TOOL & MFG. COMPANY, INC.**

By:   
Name: Kurt Joerger  
Title: Chief Executive Officer

**AGREED AND ACCEPTED** this 15<sup>th</sup> day  
of June, 2000

**LASALLE BUSINESS CREDIT, INC.**

By:   
Name: Mary Ellen Nixon-Moore  
Title: Vice President

THIS INSTRUMENT PREPARED BY AND  
AFTER FILING RETURN TO:

Steven D. Fleissig Esq.  
Herrick, Feinstein LLP  
Seven Becker Farm Road  
Roseland, New Jersey 07068

**ACKNOWLEDGMENT**

STATE OF NEW JERSEY    )  
  )  
COUNTY OF ~~GLOUCESTER~~    )    SS  
  Cumberland

The foregoing Trademark Mortgage was executed and acknowledged before me this 15<sup>th</sup> day of June, 2000, by Kurt Joerger, personally known to me to be the Chief Executive Officer of NEWTON TOOL & MFG. COMPANY, INC., a Delaware corporation, on behalf of such corporation.

Mae E Peterson  
Notary Public

**MAE E. PETERSON**  
**NOTARY PUBLIC OF NEW JERSEY**  
My commission expires March 19, 2005

**ACKNOWLEDGMENT**

STATE OF NEW JERSEY    )  
  )  
COUNTY OF ~~GLOUCESTER~~    )    SS  
  Cumberland

The foregoing Trademark Mortgage was executed and acknowledged before me this 15<sup>th</sup> day of June, 2000, by Mary Ellen Nixon-Moore, personally known to me to be the Vice President of LaSalle Business Credit, Inc., on behalf of such corporation.

Mae E Peterson  
Notary Public

**MAE E. PETERSON**  
**NOTARY PUBLIC OF NEW JERSEY**  
My commission expires March 19, 2005

**EXHIBIT A**

**Trademarks**

<b>APPLICANT</b>	<b>MARK</b>	<b>SERIAL NO.</b>	<b>FILED</b>
Newton Tool & Mfg. Company, Inc., a Delaware corporation	MONARCH	71-650636	7/22/1953

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