

12-23-2003

12-23-02

Form PTO-1594  
(Rev. 10/02)  
OMB No. 0651-01



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M COVER SHEET  
TKS ONLY

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

Tab settings ⇨ ⇨ ⇨

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

1. Name of conveying party(ies):

Keeco, LLC

- Individual(s)
- General Partnership
- Corporation-State
- Other limited liability co.
- Association
- Limited Partnership

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

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other \_\_\_\_\_
- Merger
- Change of Name

Execution Date: 01/01/2003

2. Name and address of receiving party(ies)

Name: Fleet Capital Corporation, as Agent

Internal Address: Loan Administration Manager

Street Address: 15260 Ventura Blvd., Ste 400

City: Sherman Oaks State: CA Zip: 91304

- Individual(s) citizenship \_\_\_\_\_
- Association \_\_\_\_\_
- General Partnership \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Corporation-State Rhode Island
- Other \_\_\_\_\_

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from assignment)

Additional name(s) & address(es) attached?  Yes  No

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

A. Trademark Application No.(s) \_\_\_\_\_  
78/232667

B. Trademark Registration No.(s) \_\_\_\_\_  
n/a

Additional number(s) attached  Yes  No

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

Name: Federal Research Co., LLC

Internal Address: \_\_\_\_\_

Street Address: 1030 15th St., NW, Suite 920

City: Washington State: DC Zip: 20005

6. Total number of applications and registrations involved: \_\_\_\_\_

1

7. Total fee (37 CFR 3.41).....\$ 40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: \_\_\_\_\_

DO NOT USE THIS SPACE

9. Signature.

Julie Cravitz  
Name of Person Signing

Julie Cravitz  
Signature

Dec. 22, 2003  
Date

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

Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patent & Trademarks, Box Assignments  
Washington, D.C. 20231

12/24/2003 LHWELLER 00000052 78232667

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40.00 BP

TRADEMARK  
REEL: 002884 FRAME: 0252

## TRADEMARK AND PATENT SECURITY AGREEMENT

THIS TRADEMARK AND PATENT SECURITY AGREEMENT (this "Agreement"), dated as of January 1, 2003, is entered into by and between KEECO, LLC, a California limited liability company ("Debtor"), and FLEET CAPITAL CORPORATION, a Rhode Island corporation, in its capacity as agent for itself, the Bank (as defined in the Loan Agreement) and the Lenders referred to below ("Agent"), having an office at 15260 Ventura Boulevard, Suite 400, Sherman Oaks, California 91403, with reference to the following facts:

### RECITALS

A. The lenders party thereto (collectively, the "Lenders", and together with Agent and the Bank, "Secured Party") and Agent, as agent for the Lenders, have entered into financing arrangements with Debtor, pursuant to a Loan and Security Agreement of even date herewith (the "Loan Agreement") (the Loan Agreement, together with this Agreement, and all other related documents, agreements, instruments or notes, as the same may now exist or may hereafter be amended or supplemented, are referred to herein collectively as the "Loan Documents").

B. Pursuant to the Loan Agreement, Debtor has agreed to grant to Secured Party a security interest in its trademarks, trade names, terms, designs and applications therefor described in Schedule A annexed hereto, and the patents and applications therefor described in Schedule B annexed hereto and made a part hereof.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Debtor and Agent agree as follows:

#### 1. SECURITY INTEREST

Debtor hereby grants to Secured Party a security interest in:

a. All of Debtor's now existing or hereafter acquired right, title, and interest in and to: all of Debtor's trademarks, trade names, trade styles and service marks; all prints and labels on which such trademarks, trade names, trade styles and service marks appear, have appeared or will appear, and all designs and general intangibles of a like nature; all applications, registrations and recordings relating to the foregoing in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, any political subdivision thereof or in any other countries, and all reissues, extensions and renewals thereof including those trademarks, terms, design and applications described in Schedule A hereto (collectively, the "Trademarks");

b. The goodwill of the business symbolized by each of the Trademarks, including, without limitation, all customer lists and other records relating to the distribution of products or services bearing the Trademarks;

c. All of Debtor's now existing or hereafter acquired right, title and interest in and to: all of Debtor's interests in any patents, whether foreign or domestic; all applications, registrations and recordings relating to such patents in the United States Patent and Trademark Office or in any similar office or agency of the United States, any state thereof, any political subdivision thereof and all reissues, extensions and renewals thereof, including, without limitation, those patents, applications, registrations and recordings described in Schedule B hereto (the "Patents"); and

d. Any and all proceeds of any of the foregoing, including, without limitation, any claims by Debtor against third parties for infringement of the Trademarks, Patents or of any licenses with respect thereto (all of the foregoing are collectively referred to herein as the "Collateral").

## 2. OBLIGATIONS SECURED

The security interests granted to Secured Party in this Agreement shall secure the prompt and indefeasible payment and performance of the "Obligations" as defined in the Loan Agreement (all the foregoing hereinafter referred to as the "Obligations").

## 3. WARRANTIES AND COVENANTS

Debtor hereby covenants, represents and warrants that (all of such covenants, representations and warranties being continuing in nature so long as any of the Obligations are outstanding):

a. All of the existing Collateral is valid and subsisting in full force and effect to Debtor's knowledge, and Debtor owns sole, full, and clear title thereto, and has the right and power to grant the security interests granted hereunder. Debtor will, at Debtor's expense, perform all acts and execute all documents reasonably necessary to maintain the existence of the Collateral as valid, subsisting and registered trademarks and patents, including, without limitation, the filing of any renewal affidavits and applications. The Collateral is not subject to any lien, security interest, claim or encumbrance ("Lien"), except the security interest granted hereunder, the licenses, if any, which are specifically described in Schedule C hereto and Permitted Liens (as defined in the Loan Agreement).

b. Debtor will not assign, sell, mortgage, lease, transfer, pledge, hypothecate, grant a security interest in or Lien upon, encumber, grant an exclusive or non-exclusive license relating thereto (other than licenses in the ordinary course of business to customers of Debtor), except to Secured Party, or otherwise dispose of any of the Collateral without the prior written consent of Agent.

c. Debtor will, at Debtor's expense, perform all acts and execute all documents reasonably requested at any time by Agent to evidence, perfect, maintain, record, or enforce the security interest in the Collateral granted hereunder or to otherwise further the provisions of this Agreement. Debtor hereby authorizes Agent to file one or more financing statements (or similar documents) with respect to the Collateral. Debtor further authorizes Agent to have this or any other similar Security Agreement filed with

the Commissioner of Patents and Trademarks or other appropriate federal, state or government office and shall pay any associated filing fees.

d. Debtor will, concurrently with the execution and delivery of this Agreement, execute and deliver to Agent five originals of a Power of Attorney in the form of Exhibit 1 annexed hereto for the implementation of the assignment, sale or other disposition of the Collateral pursuant to Agent's exercise of the rights and remedies granted to Agent hereunder. Agent agrees it will only exercise the Power of Attorney upon the occurrence and during the continuation of an Event of Default under (and as defined in) the Loan Agreement.

e. Agent may, in its sole discretion, pay any amount or do any act which Debtor fails to pay or do as required hereunder or as requested by Agent to maintain and preserve the Collateral, defend, protect, record, amend or enforce the Obligations, the Collateral, or the security interest granted hereunder including but not limited to, all filing or recording fees, court costs, collection charges and reasonable attorneys' fees. Debtor will be liable to Agent for any such payment, which payment shall be deemed a borrowing by Debtor from the Lenders, and shall be payable on demand together with interest at the rate set forth in the Loan Documents and shall be part of the Obligations secured hereby.

f. As of the date hereof, Debtor does not have any Trademarks or Patents registered, or subject to pending applications, in the United States Patent and Trademark Office or any similar office or agency in the United States other than those described in Schedules A and B annexed hereto.

g. Debtor shall notify Agent in writing of the filing of any application for the registration of a Trademark or Patent with the United States Patent and Trademark Office or any similar office or agency in the United States or any state therein within thirty days of such filing. Upon request of Agent, Debtor shall execute and deliver to Agent any and all amendments to this Agreement as may be requested by Agent to evidence the security interests of Agent in such Trademark or Patent.

h. Debtor has not abandoned any of the Trademarks or Patents material to the conduct of the business and Debtor will not do any act, nor omit to do any act, whereby such Trademarks or Patents may become abandoned, canceled, invalidated, unenforceable, avoided, or avoidable. Debtor shall notify Agent immediately if Debtor knows or has reason to know of any reason why any such application, registration, or recording may become abandoned, canceled, invalidated, unenforceable, avoided, or avoidable.

i. Debtor will take such actions in any proceeding before the United States Patent and Trademark Office, any federal or state court, or any similar office or agency in the United States or any state therein or any other country as are necessary to maintain such application and registration of the Trademarks or Patents material to the conduct of the business as Debtor's exclusive property and to protect Secured Party's

interest therein, including, without limitation, filing of renewals, affidavits of use, affidavits of incontestability and opposition, interference, and cancellation proceedings.

j. Debtor will promptly notify Agent if Debtor (or any affiliate or subsidiary thereof) learns of any use by any person of any term or design likely to cause confusion with any Trademark or of any use by any person of any other process or product which infringes upon any Patent or Trademark. If requested by Agent, Debtor, at Debtor's expense, shall take such action as Agent, in Agent's reasonable discretion, may deem advisable for the protection of Secured Party's interest in and to the Trademarks or Patents material to the conduct of the business.

k. Debtor will maintain the quality of the products associated with the Trademarks at a level consistent with the quality at the time of this Agreement. Debtor hereby grants to Agent the right to visit Debtor's plant and facilities which manufacture or store products sold under any of the Trademarks and to inspect the products and quality-control records relating thereto at such times as permitted in the Loan Agreement.

#### 4. RIGHTS AND REMEDIES

Upon the occurrence of and during the continuance of an Event of Default, in addition to all other rights and remedies of Secured Party, whether provided under applicable law, the Loan Documents or otherwise, and after expiration of any grace period, Secured Party shall have the following rights and remedies which may be exercised without notice to, or consent by, Debtor, except as such notice or consent is expressly provided for hereunder or under the Loan Agreement and except as otherwise provided by applicable law.

a. Agent may make use of any Trademarks or Patents for the sale of goods or rendering of services in connection with enforcing any other security interest granted to Secured Party by Debtor or any subsidiary of Debtor.

b. Agent may grant such license or licenses relating to the Collateral for such term or terms, on such conditions, and in such manner as Agent shall in its sole discretion deem appropriate. Such license or licenses may be general, special, or otherwise and may be granted on an exclusive or non-exclusive basis throughout all or any part of the United States of America, its territories and possessions, and all foreign countries.

c. Agent may assign, sell, or otherwise dispose of the Collateral or any part thereof, either with or without special conditions or stipulations, except that Agent agrees to provide Debtor with ten days prior written notice of any proposed disposition of the Collateral. Agent shall have the power to buy the Collateral or any part thereof, and Agent shall also have the power to execute assurances and perform all other acts which Agent may, in Agent's sole discretion, deem appropriate or proper to complete such assignment, sale or disposition. In any such event, Debtor shall be liable for any deficiency.

d. In addition to the foregoing, in order to implement the assignment, sale, or other disposition of any of the Collateral pursuant to subparagraph 4C hereof,

Agent may at any time execute and deliver on behalf of Debtor, pursuant to the authority granted in the Powers of Attorney described in subparagraph 3(d) hereof, one or more instruments of assignment of the Trademarks or Patents (or any application, registration, or recording relating thereto), in form suitable for filing, recording or registration. Debtor agrees to pay Agent on demand all costs incurred in any such transfer of the Collateral, including, but not limited to, any taxes, fees, and reasonable attorneys' fees.

e. Agent may apply the proceeds actually received from any such license, assignment, sale or other disposition of Collateral first to the reasonable costs and expenses thereof, including, without limitation, reasonable attorneys' fees and all legal, travel, and other expenses which may be incurred by Agent. Thereafter, Agent may apply any remaining proceeds to such of the Obligations as Agent may in its sole discretion determine. Debtor shall remain liable to Secured Party for any expenses or obligations remaining unpaid after the application of such proceeds, and Debtor will pay Agent on demand any such unpaid amount, together with interest at the default rate set forth in the Loan Agreement.

f. In the event that any such license, assignment, sale or disposition of the Collateral (or any part thereof) is made after the occurrence and during the continuance of an Event of Default, Debtor shall supply to Agent or Agent's designee Debtor's knowledge and expertise relating to the manufacture and sale of the products and services bearing the Trademarks or to which the Patents relate and Debtor's customer lists and other records relating to the Trademarks and Patents and the distribution thereof.

Nothing contained herein shall be construed as requiring Agent to take any such action at any time. All of Secured Party's rights and remedies, whether provided under law, the Agreements, this Agreement, or otherwise, shall be cumulative and none is exclusive. Such rights and remedies may be enforced alternatively, successively, or concurrently.

## 5. MISCELLANEOUS

a. Any failure or delay by Agent to require strict performance by Debtor of any of the provisions, warranties, terms and conditions contained herein or in any other agreement, document, or instrument, shall not affect Secured Party's right to demand strict compliance and performance therewith, and any waiver of any Event of Default shall not waive or affect any other Event of Default, whether prior or subsequent thereto, and whether of the same or of a different type. None of the warranties, conditions, provisions, and terms contained herein or in any other agreement, document, or instrument shall be deemed to have been waived by any act or knowledge of Secured Party, its agents, officers, or employees, but only by an instrument in writing, signed by an officer of Agent and directed to Debtor, specifying such waiver.

b. All notices, requests and demands to or upon the respective parties hereto shall be deemed to have been duly given or made: if by hand, immediately upon delivery; if by facsimile (fax), telex or telegram, immediately upon sending; if by any overnight delivery service, one day after dispatch; and if mailed by first class or certified mail, three days after mailing. All notices, requests and demands are to be given or made

to the respective parties at the following addresses (or to such other addresses as either party may designate by notice in accordance with the provisions of this paragraph):

If to Debtor:                      Keeco, LLC  
543 Forbes Boulevard  
South San Francisco, California 94080-2019  
Attention: Andrew Cuthill  
Facsimile No.: (650) 871-0625

Arter & Hadden LLP  
1717 Main Street, Suite 4100  
Dallas, Texas 75201  
Attention: Victor B. Zanetti  
Facsimile: (214) 741-7139

If to Secured Party:              Fleet Capital Corporation  
15260 Ventura Boulevard, Suite 400  
Sherman Oaks, California 91403  
Attn: Loan Administration Manager  
Facsimile (818) 382-4291

c.        In the event any term or provision of this Agreement conflicts with any term or provision of the Loan Agreement, the term or provision of the Loan Agreement shall control.

d.        In the event that any provision hereof shall be deemed to be invalid by any court, such invalidity shall not affect the remainder of this Agreement.

e.        This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective legal representatives, successors and assigns. No provision hereof shall be modified, altered or limited except by a written instrument expressly referring to this Agreement signed by the party to be charged thereby.

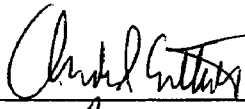
f.        The security interest granted to Secured Party shall terminate upon termination of the Loan Agreement and payment in full to the Secured Party of all Obligations thereunder as provided in the Loan Agreement.

[THIS SPACE INTENTIONALLY LEFT BLANK-  
SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, Debtor and Secured Party have executed this Agreement as of the day and year first above written.

DEBTOR:

KEECO, LLC,  
a California limited liability company

By:   
Name: Andrew I. Cuthill  
Title: Secretary & CFO

SECURED PARTY:

FLEET CAPITAL CORPORATION,  
a Rhode Island corporation,  
as Agent for itself, the Bank and the Lenders,  
as Secured Party


By:   
Name: Leslie Reuter  
Title: Senior Vice President



EXHIBIT 1

SPECIAL POWER OF ATTORNEY

STATE OF CALIFORNIA        )  
  )  
COUNTY OF LOS ANGELES    )        ss.:

KNOW ALL MEN BY THESE PRESENTS, that KEECO, LLC (hereinafter "Debtor") hereby appoints and constitutes FLEET CAPITAL CORPORATION ("Agent"), and each officer thereof, its true and lawful attorney, with full power of substitution and with full power and authority to perform the following acts on behalf of Debtor:

1. Execution and delivery of any and all agreements, documents, instruments of assignment, or other papers which Agent, in its sole discretion, deems necessary or advisable for the purpose of assigning, selling, or otherwise disposing of all of right, title, and interest of Debtor in and to any trademarks or patents and all registrations, recordings, reissues, extensions, and renewals thereof, or for the purpose of recording, registering and filing of, or accomplishing any other formality with respect to, the foregoing.

2. Execution and delivery of any and all documents, statements, certificates or other papers which Agent, in its sole discretion, deems necessary or advisable to further the purposes described in paragraph 1 hereof.

This Power of Attorney is made pursuant to a Trademark and Patent Security Agreement between Debtor and Agent of even date herewith (the "Security Agreement") and may not be revoked until indefeasible payment in full of all Debtor's "Obligations", as such term is defined in the Security Agreement. Agent agrees that it will exercise its rights with respect to this Special Power of Attorney only after the occurrence and during the continuation of an Event of Default (as defined in the Loan Agreement referred to in the Security Agreement).

Dated as of January 1, 2003

DEBTOR:

KEECO, LLC,  
a California limited liability company

By: \_\_\_\_\_

Title: \_\_\_\_\_

SCHEDULE A  
to  
TRADEMARK AND PATENT SECURITY AGREEMENT

Trademarks / Service Marks

Trademark/  
Service Mark

Registration No.

Registration  
Date

I Initials by Keeco (mark  
and design)

78/232667

04/01/2003

SCHEDULE B  
to  
TRADEMARK AND PATENT SECURITY AGREEMENT

Patents and Applications

Title

Patent No./Application No.

Filing Issue Date

NONE

SCHEDULE C  
to  
TRADEMARK AND PATENT SECURITY AGREEMENT

Permitted Licenses

NONE