

06-03-1999



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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

☐ Merger

Effective Date
Month Day Year

☐ Change of Name

☐ Other

Conveying Party

☐ Mark if additional names of conveying parties attached

Name

Execution Date
Month Day Year

Formerly

☐ 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

☐ Corporation ☐ Association

☒ Other

☒ Citizenship/State of Incorporation/Organization

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.)

06/01/1999 DNGUYEN 00000070 75597166

FOR OFFICE USE ONLY

01 FC:481
02 FC:482

40.00 DP
325.00 DP

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: 001905 FRAME: 0920

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)

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)

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

(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.

WILLIAM L. WORDEN

Name of Person Signing

Signature

Date Signed

PATENT AND TRADEMARK SECURITY AGREEMENT

THIS PATENT AND TRADEMARK SECURITY AGREEMENT ("Agreement") dated as of March 16, 1999, by and between The Talaria Company, LLC, a Delaware limited liability company with an address in care of Bain, Willard, Companies, LLC, Two International Place, Boston, Massachusetts 02110 (the "Debtor"), and KeyBank National Association ("KeyBank"), a national banking association with a mailing address of One Canal Plaza, Portland, Maine 04101, both in its capacity as a Lender (as defined in that certain Amended and Restated Loan Agreement of even date herewith (the "Loan Agreement")) by and among KeyBank, the Debtor, The Hinckley Company, Talaria Holdings, Inc. and Talaria Holdings, LLC) and as Agent (as defined in the Loan Agreement) for itself and the other Lenders (the "Secured Party").

WITNESSETH:

WHEREAS, pursuant to the Loan Agreement, the Lenders have agreed to make loans and financial accommodations to the Debtor aggregating approximately Forty Million Dollars (\$40,000,000.00);

WHEREAS, the obligations of the Lenders to make the Loans are subject to the condition, among others, that the Debtor shall execute and deliver this Agreement and grant the security interests hereinafter described;

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

1. **Defined Terms.**

- (a) Capitalized terms used herein and not otherwise defined herein have the respective meanings set forth in the Loan Agreement.
- (b) The words "hereof," "herein" and "hereunder" and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section references are to this Agreement unless otherwise specified.
- (c) All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural, and vice versa, unless otherwise specified.

2. **Incorporation of Premises.** The premises set forth above are incorporated into this Agreement by this reference hereto and are made a part hereof.

3. **Incorporation of the Loan Agreement.** The Loan Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto.

4. **Security Interest in Patents, Trademarks and Service Marks.** To secure the complete and timely payment, performance and satisfaction of all of the Obligations, Debtor hereby grants to Secured Party, for the benefit of the Lenders, a security interest in, as and by way of a first security interest having priority over all other security interests, with power of sale to the extent permitted by applicable law, (a) all of Debtor's trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications listed on Schedule A attached hereto and made a part hereof, together with any goodwill connected with and symbolized by any such trademarks, trademark applications, service marks, registered service marks, service mark applications, and (i) all renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (iii) the right to sue for past, present and future infringements and dilutions thereof, and (iv) all of Debtor's rights corresponding thereto throughout the world (all of the foregoing trademarks, registered trademarks and trademark applications, and service marks, registered service marks and service mark applications, together with the items described in clauses (i) - (iv) in this paragraph 4(a), are sometimes hereinafter individually and/or collectively referred to as the "Trademarks"); and (b) all of Debtor's patent applications and patents listed on Schedule A attached hereto and made a part hereof, including without limitation (i) all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), (ii) the right to sue for past, present and future infringements, (iii) all rights corresponding thereto throughout the world and (iv) all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof (all of the foregoing patent applications and patents, together with the items described in clauses (i) - (iv) in this paragraph 4(b), are sometimes hereinafter individually and/or collectively referred to as the "Patents").

5. **Restrictions on Future Agreements.** Debtor will not, without Secured Party's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with this Agreement, and Debtor further agrees that it will not take any action, and will use its best efforts not to permit any action to be taken by others, including, without limitation, licensees, or fail to take any action, which would in any respect adversely affect the validity or enforcement of the rights transferred to Secured Party under this Agreement, or the rights associated with the Trademarks or the Patents.

6. **No Other Liens.** Debtor represents and warrants that no other liens, claims or security interests have been granted by Debtor to any other Person in the Trademarks or the Patents.

7. **Royalties.** Debtor hereby agrees that the use by Secured Party of the Trademarks and/or the Patents as authorized hereunder in connection with the exercise of its remedies under

paragraph 15 shall be coextensive with Debtor's rights thereunder and with respect thereto and without any liability for royalties or other related charges from Secured Party to Debtor.

8. **Right to Inspect; Further Assignment and Security Interests.** Secured Party may at all reasonable times (and at any time when a Default or Event of Default exists) have access to, examine, audit, make copies (at Debtor's expense) and extracts from and inspect Debtor's premises and examine Debtor's books, records and operations relating to the Trademarks or Patents, including, without limitation, Debtor's quality control processes; provided that, in conducting such inspections and examinations, Secured Party shall use reasonable efforts not to unnecessarily disturb the conduct of Debtor's ordinary business operations. From and after the occurrence of an Event of Default, Debtor agrees that Secured Party, or a conservator appointed by Secured Party, shall have the right to establish such reasonable additional product quality controls as Secured Party or such conservator, in its sole and absolute judgment, may deem necessary to assure maintenance of the quality of products sold by Debtor under the Trademarks. Debtor agrees (a) not to sell or assign its interest in, or grant any license under, the Trademarks or Patents without the prior and express written consent of Secured Party, (b) to maintain the quality of said products as of the date hereof, and (c) not to change the quality of such products in any material adverse respect without Secured Party's prior and express written consent.

9. **Termination of Secured Party's Security Interest.** This Agreement is made for collateral security purposes only. This Agreement and Secured Party's security interest in the Trademarks and Patents shall continue in full force and effect as long as any Obligations shall be owed to Secured Party and (even if there shall be no Obligations outstanding) so long as the Loan Agreement has not be terminated. Upon payment in full of the Obligations and termination of the Loan Agreement, this Agreement shall terminate and Secured Party shall promptly execute and deliver to Debtor, at Debtor's expense, all termination statements and other instruments as may be necessary or proper to terminate Secured Party's security interest in the Trademarks and Patents, subject to any disposition thereof which may have been made by Secured Party pursuant to this Agreement or the Loan Agreement.

10. **Duties of Debtor.** Debtor shall have the duty, to the extent desirable in the normal conduct of Debtor's business, to: prosecute diligently any trademark application or service mark application that is part of the Trademarks pending as of the date hereof or thereafter until the termination of this Agreement and make application for trademarks or service marks. Debtor further agrees not to abandon any Trademark without the prior written consent of Secured Party, to file renewals of all Trademarks when required, file all instruments and documents required to register any Trademark in other jurisdictions when the nature of its business so requires and to use its best efforts to maintain in full force and effect the Trademarks that are or shall be necessary or, in Debtor's commercial judgment, economically desirable in the operation of Debtor's business. Debtor shall further have the duty to prosecute diligently any and all patent applications of the Patents pending as of the date hereof or thereafter until the Obligations shall have been fully and indefeasibly paid and satisfied, to make application on unpatented but patentable inventions, and to preserve and maintain all rights in patent applications and patents of the Patents, including without limitation the payment of all maintenance fees, except as

otherwise in accordance with the Loan Agreement. Debtor shall not abandon any right to file a patent application or any pending patent application or patent except as otherwise in accordance with the Loan Agreement. Any expenses incurred in connection with the foregoing shall be borne by Debtor.

11. **Secured Party's Right to Sue.** From and after the occurrence of an Event of Default, Secured Party shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Trademarks or Patents and, if Secured Party shall commence any such suit, Debtor shall, at the request of Secured Party, do any and all lawful acts and execute any and all proper documents required by Secured Party in aid of such enforcement. Debtor shall, upon demand, promptly reimburse Secured Party for all costs and expenses incurred by Secured Party in the exercise of its rights under this paragraph 11 (including, without limitation, reasonable fees and expenses of attorneys and paralegals for Secured Party).

12. **Waivers.** Secured Party's failure, at any time or times hereafter, to require strict performance by Debtor of any provision of this Agreement shall not waive, affect or diminish any right of Secured Party thereafter to demand strict compliance and performance therewith, nor shall any course of dealing between Debtor and Secured Party have such effect. No single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. None of the undertakings, agreements, warranties, covenants and representations of Debtor contained in this Agreement shall be deemed to have been suspended or waived by Secured Party unless such suspension or waiver is in writing signed by an officer of Secured Party and directed to Debtor specifying such suspension or waiver.

13. **Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but 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 hereof, 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.

14. **Modification.** This Agreement cannot be altered, amended or modified in any way, except by a writing signed by the parties hereto.

15. **Cumulative Remedies: Power of Attorney.** All of Secured Party's rights and remedies with respect to the Trademarks or Patents, whether established hereby, by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently. From and after the occurrence of an Event of Default and the giving of written notice by Secured Party to Debtor of Secured Party's intention to enforce its rights and claims against Debtor, Debtor hereby irrevocably designates, constitutes and appoints Secured Party (and all persons designated by Secured Party in its sole and absolute discretion) as Debtor's true and lawful attorneyin fact, and authorizes Secured Party and any of Secured Party's designees, in Debtor's or Secured Party's name, from and after the occurrence of an Event of Default, to (a) endorse Debtor's name on all applications, documents, papers and instruments necessary or desirable for

Secured Party in the use of the Trademarks or Patents, (b) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks or Patents to anyone on commercially reasonable terms, (c) grant or issue any exclusive or nonexclusive license under the Trademarks or Patents to anyone on commercially reasonable terms, and (d) take any other action with respect to the Trademarks or Patents as Secured Party in good faith deems in its best interest. Debtor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until this Agreement is terminated in accordance with Paragraph 9. Debtor acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of Secured Party under the Loan Agreement, but rather is intended to facilitate the exercise of such rights and remedies. Secured Party shall have, in addition to all other rights and remedies given it by the terms of this Agreement, 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 or Patents may be located or deemed located.

16. **Successors and Assigns.** This Agreement shall be binding upon Debtor and its successors and assigns, and shall inure to the benefit of Secured Party and its successors and assigns. Debtor's successors and assigns shall include, without limitation, a receiver, trustee or debtor in possession; provided, however, that Debtor shall not voluntarily assign or transfer its rights or obligations hereunder without Secured Party's prior written consent.

17. **Governing Law.** This Agreement shall be construed and enforced and the rights and duties of the parties shall be governed by in all respects in accordance with the internal laws (as opposed to conflicts of law provisions) and decisions of the State of Maine.

18. **Notices.** All notices or other communications hereunder shall be given in the manner and to the addresses set forth in the Loan Agreement.

19. **Secured Party's Duty.** Secured Party shall not have any duty with respect to the Trademarks or Patents. Without limiting the generality of the foregoing, Secured Party shall not be under any obligation to take any steps necessary to preserve rights in the Trademarks or Patents against any other parties, but may do so at its option, and all expenses incurred in connection therewith shall be for the sole account of Debtor and added to the Obligations secured hereby.

20. **Waiver of Jury Trial.** Each of the parties hereto waives trial by jury in any action or proceeding arising out of or relating to this Agreement.

21. **Paragraph Titles.** The paragraph titles herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.

22. **Counterparts.** This Agreement may be executed in any number of counterparts, and by the parties hereto in separate counterparts, each of which shall together constitute one and the same agreement.

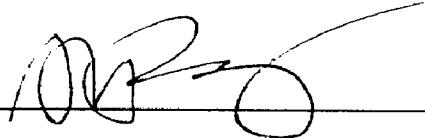
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first set forth above.

THE TALARIA COMPANY, LLC

By: _____

Name: _____

Title: _____

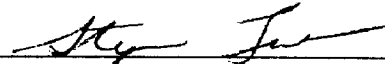

Manager

KEYBANK NATIONAL ASSOCIATION,
AS AGENT

By: _____

Name: _____

Title: _____


SVP

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK, SS.

March 16, 1999

Then personally appeared the above-named Alexander H. Spaulding, as Manager of The Talaria Company, LLC, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity, and the free act and deed of The Talaria Company, LLC.

Before me,

Marjorie J. Lawson
Notary Public
Printed Name: MARJORIE J. LAWSON
My Commission Expires: NOTARY PUBLIC
My Commission Expires Nov. 23, 2001

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF SUFFOLK, SS.

March 16, 1999

Then personally appeared the above-named Stephen Lubelczyk, as Senior Vice President of KeyBank National Association, and acknowledged the foregoing instrument to be his/her free act and deed in his/her said capacity, and the free act and deed of KeyBank National Association.

Before me,

Marjorie J. Lawson
Notary Public
Printed Name: MARJORIE J. LAWSON
My Commission Expires: NOTARY PUBLIC
My Commission Expires Nov. 23, 2001

A. Talaria Holdings, Inc.

None.

B. Talaria Holdings, LLC

None.

C. The Talaria Company, LLC*Hinckley Division (as of March 12, 1999):*1. U.S. Patent Registrations:

None.

2. U.S. Patent Applications:

<u>Title</u>	<u>Application No.</u>	<u>Filing Date</u>
Stick Control for Waterjet Boat	09/146,596	9/3/98

3. Foreign Patent Registrations:

None.

4. Foreign Patent Applications:

<u>Title</u>	<u>Application No.</u>	<u>Filing Date</u>
Stick Control for Waterjet Boat	332407	10/20/98

5. Patent Rights or Licenses:

SCRIMP-Resin Infusion License granted by Seemann/TPI, LLC to The Hinckley Company (this license is in the process of being superseded and replaced by a new license that will run from TPI Technology, Inc., Seemann's successor, to The Talaria Company, LLC as of the closing).
Software License Agreement and Support Agreement dated as of July 15, 1994

for the "Dockmaster" software program.

6. U.S. Trademark Registrations:

<u>Mark</u>	<u>Registration No.</u>	<u>Reg. Date</u>
HINCKLEY	1,502,956	9/6/88
HINCKLEY	1,376,769	1/7/86
HINCKLEY	888,178	3/24/70
Talaria Design	838,262	11/7/67
H and Design	843,134	1/30/68
SOU'WESTER	440,163	8/17/48

7. U.S. Trademark Applications:

<u>Mark</u>	<u>Application No.</u>	<u>Filing Date</u>
HINCKLEY	75/597,166	11/30/98
HINCKLEY	75/597,845	11/30/98
JETSTICK	75/511,195	6/30/98
PICNIC BOAT	75/490,297	5/22/98
TALARIA	75/602,772	12/8/98

8. Foreign Trademark Registrations:

None.

9. Foreign Trademark Applications:

<u>Country</u>	<u>Mark</u>	<u>Application No.</u>	<u>Filing Date</u>
Australia	PICNIC BOAT	778840	11/19/98
CTM (European Union)	PICNIC BOAT	993170	11/19/98
New Zealand	PICNIC BOAT	301598	11/20/98

10. Trade Names:

Hinckley Yacht Management Company
Hinckley Yacht Service Company
Hinckley Yacht Sales Company
Hinckley Yacht Brokerage, Inc.

Hood Division:

1. U.S. Patent Registrations:

None.

2. U.S. Patent Applications:

None.

3. Foreign Patent Registrations:

None.

4. Foreign Patent Applications:

None.

5. Patent Rights or Licenses:

- a. License to use boat design granted by Hunt Associates in the Design and Know-How Agreement dated March 16, 1987 regarding the Black Watch 30 powerboat and the Design and Know-How Agreement dated March 17, 1987 regarding the Black Watch 26 powerboat, and as both agreements are amended by the Agreement dated April 9, 1991, and related documents.
- b. License to use "Hood" name for limited purposes granted in the Non-Competition Agreement dated March 11, 1994 between Hood Enterprises, Inc. and Pompanette, Inc.

6. U.S. Trademark Registrations:

<u>Mark</u>	<u>Registration No.</u>	<u>Reg. Date</u>
BLACK WATCH	1,646,781	6/4/91
LITTLE HARBOR	1,646,782	6/4/91
WHISPERJET	2,114,506	11/18/97

7. U.S. Trademark Applications:

None.

8. Foreign Trademark Registrations:

<u>Country</u>	<u>Mark</u>	<u>Registration No.</u>	<u>Reg. Date</u>
Japan	BLACK WATCH	2603239	11/30/93

9. Foreign Trademark Applications:

None.

10. Trade Names:

Ted Hood Companies

Ted Hood Design Group

Ted Hood Yacht Builders

Little Harbor Marine

Little Harbor Custom Yachts

Little Harbor Yacht Sales

Black Watch

11. Limitations: The rights of The Talaria Company, LLC to use the name "Hood" are limited pursuant to an agreement between Hood Enterprises, Inc. and Hood Sailmakers dated 1983 and the Non-Competition Agreement dated March 11, 1994 between Hood Enterprises, Inc. and Pompanette, Inc..

D. The Hinckley Company:

Prior to March 12, 1999: All Items listed above under The Talaria Company, LLC - Hinckley Division.

As of March 12, 1999: None.