

MAO 7-29-99

FORM PTO-1618A
Expires 08/30/99
OMB 0651-0027

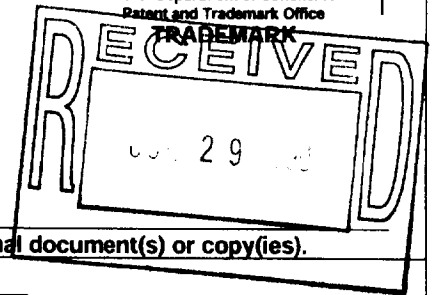
08-03-1999



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**RECORDATION FORM COVER SHEET
TRADEMARKS ONLY**

U.S. Department of Commerce
Patent and Trademark Office



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**

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.)

☐ **Citizenship/State of Incorporation/Organization**

08/02/1999 DNGUYEN 00000153 1555811

FOR OFFICE USE ONLY

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40.00 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: 001938 FRAME: 0251

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

(404) 888-4177

Name Anne B. McCoy

Address (line 1) Hunton & Williams

Address (line 2) 600 Peachtree Street, N.E.

Address (line 3) Suite 4100

Address (line 4) Atlanta, Georgia 30308

Pages

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

#

9

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

<input type="text"/> 1,555,811	<input type="text"/>	<input type="text"/>
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Number of Properties

Enter the total number of properties involved.

#

1

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

40.00

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.

Dana Kull, Esq.

Name of Person Signing

Signature

Date Signed

TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT

THIS TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT dated as of May 28, 1999 executed and delivered by CMI Industries, Inc., a Delaware corporation (the "Borrower"), in favor of BankBoston, N.A. (f/k/a The First National Bank of Boston), as agent (the "Agent") for the benefit of the Lenders (referred to herein as the "Lenders"), under that certain Amended and Restated Loan and Security Agreement dated May 28, 1999 (as the same may be further amended, modified, supplemented or restated from time to time, the "Loan Agreement") by and among the Borrower, the Lenders and the Agent.

WHEREAS, the Agent and the other Lenders have extended and propose to further extend certain loans and other financial accommodations to the Borrower;

WHEREAS, to secure the obligations of the Borrower under such financial accommodations extended to the Borrower, the Borrower desires to collaterally assign, and grant a security interest in, certain trademarks, trademark applications and other rights associated therewith; and

WHEREAS, it is a condition precedent to the Lenders' extension of such financial accommodations that the Borrower execute and deliver this Agreement.

NOW, THEREFORE, in consideration of above premises, the Loans outstanding to the Borrower and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower hereby agrees as follows:

Section 1. Security Interest In Trademarks. (a) To secure the prompt and complete payment, observance and performance of all of the Secured Obligations (as defined in **paragraph (b)** below), the Borrower hereby collaterally assigns to the Agent for the benefit of the Lenders, and grants to the Agent for the benefit of the Lenders, a security interest in, with power of sale to the extent permitted by Applicable Law, all of the Borrower's now owned or existing and hereafter acquired or arising:

(i) trademarks, registered trademarks and trademark applications, and service marks, registered service marks and service mark applications, including without limitation, the registered trademarks and applications listed on **Schedule I** attached hereto and made a part hereof, and (1) all renewals thereof, (2) 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, (3) the right to sue for past, present and future infringements and dilutions thereof, and (4) all of the Borrower's rights corresponding thereto throughout the world;

(ii) the goodwill of the Borrower's business connected with and symbolized by the Trademark Collateral; and

(iii) all books and records relating to any of the foregoing and all products and proceeds relating to any of the foregoing (all of the foregoing hereinafter collectively referred to as the "Trademark Collateral").

(b) Secured Obligations. As used herein, the term "Secured Obligations" shall have the meaning set forth in the Loan Agreement.

(c) License to Use Trademark. During the term of this Agreement, the Agent hereby grants to the Borrower an exclusive, royalty-free license to use the Trademark Collateral in the ordinary course of business of the Borrower in a manner consistent with past practice. However, upon the Agent's exercise of its remedies pursuant to **Section 12.2** of the Loan Agreement with respect to enforcement of the Lenders' rights in the Trademark Collateral ("Foreclosure"), the exclusive nature of the license shall automatically terminate and the Agent has the right to terminate the license granted pursuant to this **paragraph (c)**. Agent's right to terminate this license may be exercised upon written notice to the Borrower following Foreclosure. Agent shall provide Borrower a minimum of 180 days following termination in which to cease use of the Trademark Collateral.

(d) First Priority Lien. It is the intent of the Borrower that this Agreement create a valid first priority security interest in, and collateral assignment of, the Trademark Collateral.

Section 2. Restrictions on Future Agreements. The Borrower shall not, without the Agent's prior written consent, enter into any agreement, including, without limitation, any license or royalty agreement, which purports to transfer or assign any interest in the Trademark Collateral to any other person other than in the ordinary course of business and consistent with past practices. Further, the Borrower shall not, without the Agent's prior written consent (which may be withheld in its sole and absolute discretion), grant to any Person any exclusive license or exclusive right to use or enjoy any Trademark Collateral. The Borrower will not take any action or fail to take any action, and will use its best efforts to prevent any action by other persons subject to its control which would adversely affect the validity or enforceability of the rights transferred to the Agent under this Agreement or the rights associated with any of the Trademark Collateral.

Section 3. New Trademark Collateral. The Borrower represents and warrants that **Schedule I** sets forth all of the trademarks and trademark applications of the Borrower. If, prior to the termination of this Agreement, the Borrower shall obtain rights to any new or other trademarks and trademark applications (or other Trademark Collateral associated therewith), the Borrower shall promptly so notify the Agent in writing. Upon such occurrence, the Borrower shall, at the request of the Agent, execute and deliver any and all agreements, instruments, documents, and papers as the Agent may request to evidence the Agent's interest in such new, additional Trademark Collateral and general intangibles of the Borrower relating thereto or represented thereby, and the Borrower hereby appoints the Agent its attorney-in-fact to execute and file on behalf of the Borrower all such writings for the foregoing purposes; such power of attorney being coupled with an interest and is irrevocable until the Secured Obligations are indefeasibly paid in full and the Loan Documents have terminated. In this connection, the Borrower hereby authorizes the Agent to unilaterally file a new trademark security agreement

containing the same terms and conditions as this Agreement to include such new or other Trademark Collateral on **Schedule I**, and all such acts of the Agent are hereby ratified and confirmed.

Section 4. Royalties. The Agent's interest in the Trademark Collateral as granted and authorized by the Borrower hereunder shall be coextensive with the Borrower's interest in the Trademark Collateral and shall not create any liability for the payment of royalties or other charges from the Agent to the Borrower.

Section 5. Right to Inspect; Further Assignments and Security Interests. The Agent shall have the right, at any reasonable time and from time to time, to inspect the Borrower's premises and to examine the Borrower's books, records and operations relating to the Trademark Collateral; provided, however, that in conducting such inspections and examinations, the Agent shall use its best efforts to keep all information relating to any Trademark Collateral gleaned in any such inspection or examination confidential and shall not divulge any such information to any Person other than the Agent or their officers, directors, employees, professional consultants and other designated agents; provided, further, that (A) the Agent may disclose any such confidential information as required by Applicable Law or (B) subject to any bona fide written confidentiality agreement with any Person not an Affiliate of the Borrower to which the Borrower is a party (whether now in existence or hereafter entered into by the Borrower in the ordinary course of its business), the Agent may disclose any such confidential information to any Person in connection with the sale, license or transfer of any Trademark Collateral by the Agent after the occurrence and during the continuance of an Event of Default. After the occurrence and during the continuance of an Event of Default, the Borrower agrees that the Agent shall have the right to take any and all actions to preserve the Trademark Collateral and any and all infringements thereon. The obligation of the Agent to keep such information confidential as provided herein shall survive the termination of this Agreement.

Section 6. Termination of the Agent's Collateral Assignment and Security Interest. This Agreement is made for collateral security purposes only. Upon the indefeasible payment in full of all of the Secured Obligations and termination of all financing arrangements among the Agent, the Lenders and the Borrower, this Agreement shall terminate and the Agent shall promptly execute and deliver to the Borrower, at the Borrower's expense, all termination statements and other instruments as may be necessary or proper to terminate the Agent's security interest in, and collateral assignment to the Agent of, the Trademark Collateral.

Section 7. Duties of the Borrower. The Borrower shall, to the extent desirable in the normal conduct of the Borrower's business and consistent with the Borrower's current business practices: (a) prosecute diligently any trademark application that is part of the Trademark Collateral and (b) take all reasonable and necessary action to preserve and maintain all of the Borrower's rights in the Trademark Collateral, including without limitation, making timely filings with the United States Patent and Trademark Office for renewals and extensions and diligently monitoring unauthorized use thereof. Any expenses incurred in connection with the foregoing shall be borne by the Borrower.

Section 8. The Agent's Right to Sue. After the occurrence and during the continuance of an Event of Default, the Agent shall have the right, but not the obligation, to bring suit in its own name to enforce any rights pertaining to the Trademark Collateral and, if the Agent shall commence any such suit, the Borrower shall, at the request of the Agent, cooperate fully to the extent requested by the Agent in aid of such enforcement. The Borrower shall, upon demand, promptly reimburse the Agent for all reasonable costs and expenses incurred by the Agent in the exercise of such enforcement (including, without limitation, the reasonable fees and expenses of attorneys, paralegals, accountants, and other experts actually incurred).

Section 9. The Agent's Exercise of Rights and Remedies upon an Event of Default. Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that, upon the occurrence and during the continuance of an Event of Default, the Agent may exercise any of the rights and remedies provided in this Agreement and in any of the Loan Documents. As used herein, the term "Event of Default" shall mean the occurrence of an Event of Default under the Loan Agreement.

Section 10. Severability. 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.

Section 11. Cumulative Remedies; Power of Attorney. All of the Agent's rights and remedies with respect to the Trademark Collateral, whether established hereby, by any other agreements or by Applicable Law, shall be cumulative and may be exercised singularly or concurrently. The Borrower hereby appoints the Agent and all Persons designated by the Agent, in its sole and absolute discretion, as the Borrower's attorney-in-fact, with full authority in the place and stead of the Borrower and in the name of the Borrower or otherwise, from time to time after the occurrence and during the continuance of an Event of Default, in the Agent's discretion, to take any action and to execute any instrument which the Agent may reasonably deem necessary or advisable to accomplish the purposes of this Agreement, including without limitation, (a) endorsement of the Borrower's name on all applications, documents, papers and instruments related to the Trademark Collateral, (b) the grant or issuance of any exclusive or non-exclusive license under any of the Trademark Collateral or (c) the assignment, pledge, conveyance or other disposition of any of the Trademark Collateral. This power of attorney being coupled with an interest, shall be irrevocable for the term of this Agreement and thereafter until all of the Secured Obligations shall have been indefeasibly paid in full and all financing arrangements among the Agent, the Lenders and the Borrower shall have been terminated. The Borrower acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of the Agent under the Loan Documents, but rather is intended to facilitate the exercise of such rights and remedies. The Agent shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies allowed by Applicable Law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which any of the Trademark Collateral may be located or deemed located.

Section 12. Binding Effect; Benefits. This Agreement shall be binding upon the Borrower and its successors and assigns, and shall inure to the benefit of the Agent and its successors and assigns. The Borrower's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession of or for the Borrower. The Borrower shall not voluntarily assign its obligations hereunder.

Section 13. Governing Law. **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF GEORGIA (WITHOUT REFERENCE TO ITS PRINCIPLES OF CONFLICT OF LAWS).**

Section 14. Notices. Unless otherwise provided herein, communications provided for hereunder shall be in writing and shall be mailed, telecopied or delivered, if to the Borrower at the following address: 1301 Gervais Street, Columbia, SC 29201; Attention: James A. Ovenden; if to the Agent, at its address at BankBoston, N.A., 500 Perimeter Center Place, Suite 500, Atlanta, Georgia 30346, Attn: Roger N. Arsham, telecopy number (770) 393-4166, or, as to each party, at such other address as shall be designated by such party in a written notice to the other parties. All such notices and other communications shall be effective (i) if mailed, when received or three business days after mailing, whichever is earlier; (ii) if telecopied, when transmitted; or (iii) if hand delivered, when delivered.

Section 15. The Agent's Duty The Agent shall not be liable for any acts, omissions, errors of judgment or mistakes of fact or law with respect to the Trademark Collateral except for those arising out of or in connection with the Agent's gross negligence or willful misconduct. Without limiting the generality of the foregoing, the Agent shall be under no obligation to take any action necessary to preserve rights in the Trademark Collateral against any other persons but may do so at its option, and all expenses incurred in connection therewith shall be for the sole account of the Borrower and shall be added to the Secured Obligations secured hereby.

Section 16. Waiver of Notice and Bond THE BORROWER WAIVES (a) ANY NOTICE PRIOR TO THE TAKING OF POSSESSION OR CONTROL OF ANY OF THE TRADEMARK COLLATERAL OR ANY POSTING OF ANY BOND OR SECURITY WHICH MIGHT BE REQUIRED BY ANY COURT PRIOR TO ALLOWING THE AGENT TO EXERCISE ANY OF THE REMEDIES SET FORTH HEREIN, INCLUDING THE ISSUANCE OF AN IMMEDIATE WRIT OF POSSESSION AND (b) THE BENEFIT OF ALL LAWS REQUIRING A VALUATION OR APPRAISAL OF ANY TRADEMARK COLLATERAL BEFORE THE AGENT MAY EXERCISE ANY RIGHTS OR REMEDIES AGAINST THE TRADEMARK COLLATERAL OR BEFORE SUCH EXERCISE SHALL BE DEEMED TO BE REASONABLE AND ALL LAWS WHICH EXEMPT PROPERTY FROM THE DEFINITION OF TRADEMARK COLLATERAL OR FROM THE EXERCISE BY THE AGENT OF ITS RIGHTS AND REMEDIES HEREUNDER.

Section 17. Waivers. No course of dealing between the Borrower and the Agent, and no failure or delay on the part of the Agent to exercise any right, power or privilege hereunder, under the Loan Agreement or any other related document shall operate as a waiver of any of the Agent's rights, powers or privileges. No single or partial exercise of any right, power or privilege

hereunder, under the Loan Agreement or under any other document shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

Section 18. Modification. This Agreement cannot be altered, amended or modified in any way, except as specifically provided in **Sections 1 and 3** hereof or by a writing signed by the parties hereto.

Section 19. Section Headings. The section headings herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.

Section 20. Defined Terms. Terms used herein and not defined herein have their meanings as set forth in the Loan Agreement.

IN WITNESS WHEREOF, the Borrower has duly executed and delivered this Trademark Collateral Assignment and Security Agreement under seal as of the date and year first written above.

CMI INDUSTRIES, INC.

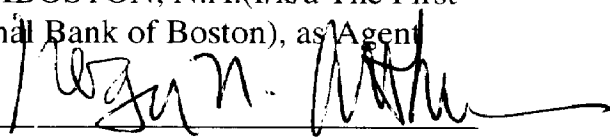
By: _____

Title: _____

Accepted and agreed to as of

June 1, 1999 by:

BANKBOSTON, N.A.(f/k/a The First
National Bank of Boston), as Agent

By:  _____

Title: _____

ROGER N. ARSHAM
VICE PRESIDENT

hereunder, under the Loan Agreement or under any other document shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

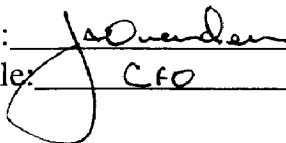
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IN WITNESS WHEREOF, the Borrower has duly executed and delivered this Trademark Collateral Assignment and Security Agreement under seal as of the date and year first written above.

CMI INDUSTRIES, INC.

By: 
Title: CFO

Accepted and agreed to as of
_____, 1999 by:

BANKBOSTON, N.A.(f/k/a The First
National Bank of Boston), as Agent

By: _____
Title: _____

STATE OF SOUTH CAROLINA)
) ss
COUNTY OF RICHLAND)

On this 1st day of June, 1999 before me personally came James A. Ovenden, to me known, who, being by me duly sworn, did depose and say that he is the CFO, of CMI Industries, Inc., the corporation described herein and which executed the foregoing instrument; that he knows the seal of said corporation; that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation and that he signed his name thereto by like order.

Given under my hand and official seal this 1st day of June 1999.

Notary Public:

Martha H. McLure

Name: Martha H. McLure
(Print or type)

My commission expires:

April 14, 2003

[NOTARIAL SEAL]

SCHEDULE I
CMI INDUSTRIES, INC.
SCHEDULE OF U.S. TRADEMARKS

<u>Mark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>
"DOVE DESIGN"	1,555,811	9/12/89