

09-07-1999

8-31-99

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



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TRADEMARKS ONLY

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

SHIELD

TO: The Commissioner of Patents and Trademarks: Please record the attached original documents (not 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

661889

**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.)

09/03/1999 DMSUYEN 00000325 661889

FOR OFFICE USE ONLY

01 FC:481

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

**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

860-275-8200

Name

Jacqueline Pennino Scheib, Esq.

Address (line 1)

Robinson & Cole LLP

Address (line 2)

280 Trumbull Street

Address (line 3)

Hartford, CT 06103-3597

Address (line 4)

**Pages**

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

#

11

**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)


661889		

**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:

#

18-1685

Authorization to charge additional fees:

Yes

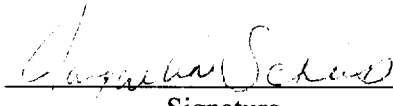
No

**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.

Jacqueline Pennino Scheib

Name of Person Signing



Signature

August 31, 1999

Date Signed

# INTELLECTUAL PROPERTY SECURITY AGREEMENT

Smith's Hammer Holdings, Inc., a Massachusetts corporation, whose address is 730 Lorain Avenue, Dayton, Ohio 45410 ("Assignor"), and Vulcan Tool Corporation, an Ohio corporation, whose address is 1212 Steng Street, Cincinnati, Ohio 45223 ("Assignee"), agree as follows:

1. Assignment and Security Interest. Assignor hereby grants to Assignee a security interest in, all of Assignor's right, title and interest in, to and under the following property, now existing and hereafter arising (collectively "Collateral"):

1.1 Patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein, and those patents listed on Exhibit A attached hereto and hereby made a part hereof, and (a) the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (b) all income, damages and payments now and hereafter due or payable under or with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing patents and applications, together with the items described in clauses (a)-(d) of this subsection 1.1, are sometimes hereinafter referred to individually as a "Patent" and, collectively, as the "Patents");

1.2 All license agreements with respect to any of the Patents or any other patent, inventions, trade secrets, related know-how, including the right to make, use and sell products embodying, prepared with or using any or all of the foregoing or any application or registration thereof, whether Assignor is a licensor or licensee under any such license agreement, including, without limitation, the licenses listed on Exhibit B attached hereto and hereby made a part hereof, and (a) renewals, extensions or amendments thereof, (b) all income damages and payments for past or future infringements thereof, (c) the rights to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing license agreements and Assignor's rights thereunder, together with the terms described in clauses (a)-(d) of this subsection 1.2, are sometimes hereinafter referred to collectively as the "Licenses");

1.3 Intellectual property, contract rights and other general intangibles, which are now owned, including but not limited to (a) all agreements, (b) all judgments, trademarks (including, without limitation, those trademarks listed on Exhibit C attached hereto and made a part hereof), trade or business names, service marks, logos, copyrights, trade secrets, plans, blueprints, licenses, permits, tax or other refunds, programs, inventions, business or technical data, processes, mailing and customer lists, books and records, and goodwill, and (c) all rights, applications, continuations, renewals, substitutions, improvements, modifications and extensions in any manner

related thereto (all of the foregoing contract rights, intellectual property and general intangibles, together with the items described in clauses (a)-(c) of this subsection 1.3, are sometimes hereinafter referred to collectively as the "General Intangibles");

1.4 All books, records, plans, designs and specifications related to the foregoing; and

1.5 All proceeds of the foregoing in whatever form they may be, including but not limited to all License royalties and proceeds of infringement suits and any other suits,

solely for the purpose of securing the payment of all indebtedness, liabilities and obligations of Assignor to Assignee of every kind and description, direct or indirect, absolute or contingent, joint or several, whether as drawer, maker, endorser, guarantor or surety or otherwise, under the Asset Purchase Agreement of even date herewith between Assignor, Assignee and Thomas R. Ruthman, as "Stockholder", and the Promissory Note of the Assignor to the Assignee in the original principal amount of One Million Two Hundred Nineteen Thousand and 00/100 Dollars (\$1,219,000.00), all of even date herewith (all of which indebtedness, liabilities and obligations are hereinafter referred to collectively as the "Obligations").

2. Location of Books and Records. Assignor now keeps and will continue to keep its place of business and its books, records and documents concerning the License and the Collateral at its address set forth above. Assignor will not change the location of its place of business or its books, records and documents relating to the Collateral without the prior written consent of Assignee. Assignee and its agents may examine and make extracts from the books, records and documents of Assignor relating to the Collateral at any time.

3. Affirmative Covenants. Assignor (a) at the sole cost and expense of Assignor, will do all things reasonably requested by Assignee to enforce, preserve and maintain its rights in the Collateral and (b) appear in and defend any action growing out of, or in any manner connected with, the Patents or Licenses or the obligations or liabilities of Assignor thereunder and (c) will allow Assignee by its agents reasonable access to the books and records of Assignee relating to the Collateral.

4. Negative Covenants. Assignor will not without the prior written consent of Assignee (a) sell, assign, pledge or otherwise transfer or encumber its interest in any of the Collateral, or (b) enter into any agreement which is inconsistent with Assignor's obligations under this Assignment.

5. Payments. Assignee at anytime after the occurrence of an Event of Default, immediately upon giving written notice to Assignor, may direct any person to

make payments under the Licenses or the proceeds of Collateral directly to Assignee. Upon the occurrence of an Event of Default, all payments under the Licenses or proceeds of the Collateral received by Assignor will be held in trust for Assignee and Assignor forthwith will deliver the same to Assignee in the form received without commingling such payments or proceeds with any funds belonging to Assignor. Assignor authorizes Assignee, or any employee thereof, to endorse the name of Assignor upon any checks, negotiable instruments or other items which are received from any person as payments under the Licenses or proceeds of the Collateral and to do all things necessary to reduce the same to cash. All amounts received by Assignee representing such payments or proceeds may be applied by Assignee to the payment of the Obligations in such order of preference as Assignee from time to time may determine.

6. Financing Statements; Documents. At the request of Assignee, Assignor will join the Assignee in executing one or more financing statements pursuant to the Ohio version of the Uniform Commercial Code in form satisfactory to Assignee and will pay the cost of filing and/or recording this Assignment and all financing, continuation and termination statements in all public offices where filing or recording is deemed necessary or desirable by Assignee. At Assignee's request, Assignor will execute and deliver to Assignee from time to time such supplemental assignments or other instruments as Assignee may require for the purpose of confirming Assignee's interest in the Patents, Licenses or the other Collateral.

7. Defaults. The occurrence of any of the following events will constitute a default (an "Event of Default") hereunder: (a) the failure of Assignor to pay, when due, any of the Obligations; (b) the failure of Assignor to substantially observe or perform any of the provisions of this Agreement or of any instrument pertaining to any Obligation to which Assignor is a party; (c) the making or furnishing by Assignor to the Assignee of any representation, warranty, financial statement or other information which Assignor knows is materially false; (d) a general assignment by Assignor for the benefit of creditors; (e) a default by Assignor in any other obligation to Assignee; or (f) the filing by or against Assignor or a petition in bankruptcy, for a reorganization or an arrangement, or for a receiver, trustee or similar creditors' representative for the property or assets of Assignor or any part thereof, or any other proceeding under any federal or state insolvency law. Upon the occurrence of any such event of default, Assignee in its discretion may declare any or all of the Obligations to be immediately due and payable without demand or notice to Assignor and may exercise any one or more of the rights and remedies granted pursuant to this Agreement or given to a secured party under the Ohio version of the Uniform Commercial Code, including without limitation the right upon default (i) to succeed to Assignor's rights and obligations under the License, (ii) in its discretion, to cure any default under the License (iii) exercise any rights of Assignor in the Collateral, and (iv) if the patents have been assigned to Assignor, then to take possession of and sell or otherwise dispose of all or

any part of the Collateral. In exercising any foreclosure upon default, the Assignee shall comply with all procedures required by the Uniform Commercial Code. Whenever notice is required by law to be sent by Assignee to Assignor of any disposition of Collateral, five (5) days' written notice sent by certified mail, return receipt requested, to Assignor at the address set forth below, or at such other address as Assignor may furnish Assignee in writing from time to time for this purpose, will be reasonable. The net proceeds arising from any disposition of the Collateral, after deducting Assignee's expenses, will be applied to the Obligations in the order determined by Assignee. If any excess remains after the discharge of all of the Obligations and the payment of all such expenses, it will be paid to Assignor.

8. Enforcement Actions. Assignee may but shall in no way be obligated to bring suit in its own name to enforce its rights in the Patents, Licenses or the other Collateral. In the event Assignee elects to bring any such suit in its own name, Assignor will at the request of Assignee do any and all lawful acts and execute any and all proper documents required by Assignee in aid of such enforcement and Assignor will promptly upon demand, reimburse and indemnify Assignee for all costs and expenses incurred by Assignee in the exercise of its rights under this Section.

9. Expenses. To the extent that Assignee incurs any costs or expenses in protecting or enforcing its rights in the Patents, Licenses or the other Collateral or observing or performing any of the conditions or obligations of Assignor thereunder, including but not limited to reasonable attorneys' fees and the costs and expenses of reasonable attorneys' fees and the costs and expenses litigation, such costs and expenses will be due on demand and will be included in the indebtedness secured hereby. Assignor will indemnify and hold Assignee harmless against all claims and demands whatsoever that may be asserted against Assignee by reason of this Agreement or any act of Assignee under this Assignment, under the Patents, Licenses or under any of the other Collateral.

10. Invalidity. 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 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 Agreement in any jurisdiction.

11. Notices. All notices required or permitted to be given pursuant to this Agreement shall be given by certified mail, postage prepaid, addressed as follows:

To Assignor: Smith's Hammer Holdings, Inc.  
730 Lorain Avenue  
Dayton, Ohio 45410  
Attention: \_\_\_\_\_

With a copy to: Robinson & Cole LLP  
One Boston Place  
Boston, MA 02108-4404  
Attention: Samuel S. Mullin, Esq.

To Assignee: Vulcan Tool Corporation  
1212 Streng Street  
Cincinnati, Ohio 45223  
Attention: Mr. Thomas R. Ruthman

With a copy to: Katz, Teller, Brant & Hild  
2400 Chemed Center  
255 East Fifth Street  
Cincinnati, Ohio 45202  
Attention: Mark J. Jahnke, Esq.

12. Waiver. No waiver by Assignee of any default shall be effective unless in writing, nor operate as a waiver of any other default or of the same default on a future occasion.

13. Survival of Representations and Warranties. All representations and warranties contained herein will survive the execution of this Agreement.

14. Security. This Agreement is entered into in order to provide security for the Obligations and in no event will Assignee be deemed to be the licensee or owner of the Collateral unless Assignee shall have exercised its rights under the default provisions hereof.

15. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Ohio. It will be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns. Any action arising out of this Agreement shall only be brought in a court of competent jurisdiction located in Montgomery County, Ohio and the parties hereto hereby consent to proper jurisdiction and venue lying in such forum.

Signed at Cincinnati, Ohio on February 12, 1999.

Witnesses:

SMITH'S HAMMER HOLDINGS, INC.

J. A. Smith  
Walter G. Galt

By: Angela Crowell

VULCAN TOOL CORPORATION

Thomas A. Gora  
Elaine M. Gora

By: Thomas R. Ruthman  
Thomas R. Ruthman, President



ACKNOWLEDGMENT OF LICENSEE

The undersigned Licensee hereby acknowledges notification of the foregoing Assignment and receipt of a copy thereof; acknowledges that such Assignment is in a form satisfactory to it; consents to such Assignment, agrees to give Assignee written notice of any default by Assignor under the License and an opportunity to cure any such default at its option as provided in such License; represents that such Assignment will be honored by it (provided, however, that the undersigned has no general obligation for the payment of any obligations of Assignor to Assignee); and represents that it has no notice of and has no knowledge of, any other assignment or license of any or all of the patents subject to the foregoing Assignment.

\_\_\_\_\_  
Licensee

Dated: February \_\_, 1999


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

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

STATE OF OHIO )  
 ) SS:  
COUNTY OF HAMILTON )

BE IT REMEMBERED that on this 12 day of February, 1999, before me, the subscriber, a notary public in and for said State, personally appeared Angelo CIAVARELLA, Vice President of Smith's Hammer Holdings, Inc., who executed the foregoing instrument and acknowledged the signing thereof to be his and its voluntary act and deed for the uses and purposes set forth therein, thereunto duly authorized by resolution of its Board of Directors.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal, on the day and year last aforesaid.

  
\_\_\_\_\_  
Notary Public

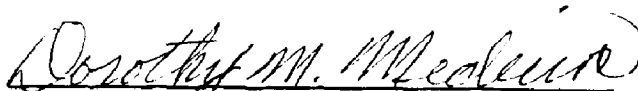
~~STATE OF OHIO~~ )  
~~COUNTY OF HAMILTON~~ )  
FLORIDA )  
STATE OF OHIO ) SS:  
~~COUNTY OF HAMILTON~~ )



**MARK J. JAHNKE, ATTORNEY AT LAW**  
Notary Public - State of Ohio  
My Commission has no expiration date. Section 147.03 O.R.C.

BE IT REMEMBERED that on this 11<sup>th</sup> day of February, 1999, before me, the subscriber, a notary public in and for said State, personally appeared Thomas R. Ruthman, President of Vulcan Tool Corporation, who executed the foregoing instrument and acknowledged the signing thereof to be his and its voluntary act and deed for the uses and purposes set forth therein, thereunto duly authorized by resolution of its Board of Directors.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal, on the day and year last aforesaid.

  
\_\_\_\_\_  
Notary Public

KTBH: 393501.2

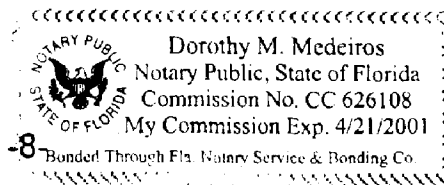


Exhibit A

**U.S. Patents**

<b>Title</b>	<b>Patent No.</b>	<b>Issue Date</b>
Bundle unscrambler	5,641,263	June 24, 1997
Method and apparatus for cutting tubing	5,406,870	April 18, 1995
Machine for cold forming small tubular elements	4,709,574	December 1, 1987
System and apparatus for use in fabricating small tubular articles	4,684,309	August 4, 1987

**Canadian Patent Applications**

<b>Title</b>	<b>Appl. No.</b>	<b>Application Date</b>
Bundle unscrambler	02195377	January 17, 1997
Tube cutter comprising a die having both reciprocating and oscillating motion	00673319	October 29, 1963
Cup trimming apparatus	00621269	May 30, 1961
Pneumatic Grinder	00518107	November 1, 1955

EXHIBIT B

**None**

**U.S. Federal Trademarks**

<b>Trademark</b>	<b>Reg. No.</b>	<b>Reg. Date</b>
RINGMASTER	1,122,172	July 17, 1979
BREHM	653,393	October 22, 1957
VULCAN SUPERKUT	661,889	May 20, 1958
VULCANAIRE	570,856	February 24, 1953
SHIMMY and Stylized	373,060	November 21, 1939