

med 9-3-99  
Tab settings → → → ▼



101136231

... attached original documents or copy thereof.

To the Honorable Commissioner of Patent

1. Name of conveying party(ies):

Chemco Industries Inc.

- Individual(s)
- General Partnership
- Corporation-State California
- Other
- Association
- Limited Partnership

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

2. Name and address of receiving party(ies):

Name: The CIT Group/Credit Finance, Inc.

Internal Address: Attn: Corporate Counsel

Street Address: 300 S. Grand Ave., 3rd Floor

City: Los Angeles State: CA ZIP: 90071

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State Delaware
- 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

3. Nature of conveyance:

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

Execution Date: August 31, 1999

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

A. Trademark Application No.(s)

none

B. Trademark registration No.(s)

see attached Schedule 1

Additional numbers attached?  Yes  No

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

Name: Sheppard, Mullin, Richter & Hampton LLP

Internal Address: Attn: J. Cravitz

Street Address: 333 S. Hope St., 48th Floor

City: Los Angeles State: CA ZIP: 90071

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

5

7. Total fee (37 CFR 3.41):..... \$ 140.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. 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.

K. Kristine Dunn, Esq.

Name of Person Signing

Signature

Sept. 1, 1999

Date

Total number of pages comprising cover sheet:

15

OMB No. 0651-0011 (exp. 4/94)

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

09/03/1999 MTHAI1 00000173 2061903

01 FC:481  
02 FC:482

40.00 OP  
100.00 OP

Commissioner of Patents and Trademarks  
Box Assignments  
Washington, D.C. 20231

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington, D.C. 20503.

SCHEDULE 1  
to  
RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY

Trademarks / Service Marks

| <u>Trademark/<br/>Service Mark</u> | <u>Application No./<br/>Registration No.</u> | <u>Filed/<br/>Registered</u> |
|------------------------------------|--|------------------------------|
| Chondr AIS                         | 2061903                                      | 5/13/97                      |
| VMA 25+                            | 2051301                                      | 4/8/97                       |
| GSX 24                             | 2048177                                      | 3/25/97                      |
| Gbe 24/6                           | 2021331                                      | 12/3/96                      |
| Optipure                           | 2175253                                      | 7/21/98                      |

TRADEMARK AND PATENT SECURITY AGREEMENT

(Chemco Industries Inc.)

AGREEMENT made as of the 31st day of August, 1999, between CHEMCO INDUSTRIES INC., a California corporation ("Debtor"), having an office at 6982 Bandini Boulevard, Commerce, California 90040 and THE CIT GROUP/CREDIT FINANCE, INC., having an office at 300 South Grand Avenue, Third Floor, Los Angeles, California 90071 ("Secured Party").

1. SECURITY INTEREST

WHEREAS, Debtor has adopted, used and is using, and is the owner of the entire right, title, and interest in and to the 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; and

WHEREAS, Secured Party has agreed to enter into financing arrangements, pursuant to a Loan and Security Agreement (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 collectively referred to herein as the "Agreements").

NOW, THEREFORE, in order to induce Secured Party to enter into the Agreements and in consideration thereof, 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 said 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 (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; and (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

signed only by Secured Party. Debtor further authorizes Secured Party 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.

E. Debtor will, concurrently with the execution and delivery of this Agreement, execute and deliver to Secured Party five (5) 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 Secured Party's exercise of the rights and remedies granted to Secured Party hereunder. Secured Party agrees it will not exercise the Power of Attorney unless and until there is an Event of Default (defined below).

F. Secured Party may, in its reasonable discretion, pay any amount or do any act which Debtor fails to pay or do as required hereunder or as requested by Secured Party 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 Secured Party for any such payment, which payment shall be deemed a borrowing by Debtor from Secured Party, and shall be payable on demand together with interest at the rate set forth in the Agreements and shall be part of the Obligations secured hereby.

G. 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.

H. Debtor shall notify Secured Party 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 (30) days of such filing. Upon request of Secured Party, Debtor shall execute and deliver to Secured Party any and all assignments, agreements, instruments, documents, and such other papers as may be requested by Secured Party to evidence the security interests of Secured Party in such Trademark or Patent.

I. 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 the Trademarks or Patents that are material to the conduct of Debtor's business may become abandoned, canceled, invalidated, unenforceable, avoided, or avoidable. Debtor shall notify Secured Party promptly if Debtor knows or has reason to know of any reason why any application, registration, or recording that are material to the conduct of Debtor's business may become abandoned, canceled, invalidated, unenforceable, avoided, or avoidable.

J. Debtor will render any assistance, as Secured Party may reasonably determine is necessary, to Secured Party 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 to maintain such application and registration of the Trademarks or Patents 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.

K. Debtor will promptly notify Secured Party 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 any person of any other process or product which infringes upon any Patent or Trademark. If reasonably requested by Secured Party, Debtor, at Debtor's expense, shall join with Secured Party in such action as Secured Party, in Secured Party's reasonable discretion, may deem advisable for the protection of Secured Party's interest in and to the Trademarks or Patents.

L. Debtor assumes all responsibility and liability arising from the use of the Trademarks or Patents by Debtor, and Debtor hereby indemnities and holds Secured Party harmless from and against any claim, suit, loss, damage, or expense (including reasonable attorneys' fees) arising out of any alleged defect in any product manufactured, promoted, or sold by Debtor (or any affiliate or subsidiary thereof) in connection with any Trademark and Patent or out of the manufacture, promotion, labeling, sale or advertisement of any such product by Debtor (or any affiliate or subsidiary thereof).

M. In any action or proceeding instituted by Secured Party in connection with any matters arising at any time out of or with respect to this Agreement, Debtor will not interpose any counterclaim of any nature.

N. Prior to an Event of Default, Secured Party hereby grants to Debtor the exclusive nontransferable right and license to use the Collateral and the goodwill of the business symbolized by the marks for Debtor's own benefit. 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 will not change the quality of the products associated with the Trademarks without the Secured Party's prior written consent. Debtor hereby grants to Secured Party 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 with prior notice during regular business hours, provided that such inspection shall not interfere with Debtor's business.

#### 4. EVENTS OF DEFAULT

All Obligations shall, at Secured Party's option, become immediately due and payable without notice or demand upon the occurrence of any of the following events of default ("Events of Default"):

A. Debtor fails to pay or perform any Obligations when due.

B. Debtor defaults in the observance or performance of any agreements, covenants or conditions contained herein or in any of the Agreements or in any other document or instrument referred to herein or therein.

C. Any present or future representation or warranty made by or on behalf of the Debtor, whether contained herein or in any of the other Agreements or in any other document or instrument referred to herein or therein in connection with any of the transactions contemplated herein or therein, shall be false or incorrect in any material respect.

D. Any other event of default pursuant to the Agreements shall have occurred, including, but not limited to, any event of default under the Loan Agreement.

## 5. RIGHTS AND REMEDIES

Upon the occurrence of any such Event of Default and at any time thereafter, in addition to all other rights and remedies of Secured Party, whether provided under law, the Agreements 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.

A. Secured Party may require that neither Debtor nor any affiliate or subsidiary of Debtor make any use of the Trademarks or any marks similar thereto or any Patent for any purpose whatsoever. Secured Party 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. Secured Party may grant such license or licenses relating to the Collateral for such term or terms, on such conditions, and in such manner, as Secured Party 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. Secured Party may assign, sell, or otherwise dispose of the Collateral or any part thereof, either with or without special conditions or stipulations, except that Secured Party agrees to provide Debtor with ten (10) days prior written notice of any proposed disposition of the Collateral. Secured Party shall have the power to buy the Collateral or any part thereof in accordance with applicable law, and Secured Party shall also have the power to execute assurances and perform all other acts which Secured Party may, in Secured Party'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 5C hereof, Secured Party may at any time execute and deliver on behalf of Debtor, pursuant to the authority granted in the Powers of Attorney described in subparagraph 3E 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 Secured Party 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. Secured Party 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 Secured Party. Thereafter, Secured Party may apply any remaining proceeds to such of the Obligations as Secured Party 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 Secured Party 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 of an Event of Default, Debtor shall supply to Secured Party or Secured Party'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 Secured Party 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.

## 6. MISCELLANEOUS

A. Any failure or delay by Secured Party 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 default shall not waive or affect any other 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 Secured Party 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 (3) 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: | Chemco Industries Inc.<br>6982 Bandini Boulevard<br>Los Angeles, California 90040<br>Attn: Hiroshi Kishimoto<br>Facsimile: (323) 721-9600<br>Telephone: (323) 721-8300 |
|---------------|--|

If to Secured Party:

The CIT Group/Credit Finance, Inc.  
300 South Grand Avenue, Third Floor  
Los Angeles, California 90071  
Attn: Corporate Counsel  
Facsimile: (213) 613-2566  
Telephone: (213) 613-2500

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 for 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 and the Collateral will be reassigned to Debtor, at Debtor's sole expense, upon termination of the Loan Agreement and indefeasible payment in full to Secured Party of all Obligations thereunder.

G. THE VALIDITY, INTERPRETATION AND EFFECT OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE UNITED STATES OF AMERICA AND THE LAWS OF THE STATE OF CALIFORNIA. DEBTOR HEREBY IRREVOCABLY CONSENTS AND SUBMITS IN ADVANCE TO THE NON-EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN THE CENTRAL DISTRICT OF CALIFORNIA TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES PERTAINING DIRECTLY OR INDIRECTLY TO THIS AGREEMENT, THE OTHER AGREEMENTS OR TO ANY MATTER ARISING THEREFROM IN ANY SUCH ACTION OR PROCEEDING. DEBTOR AGREES THAT SERVICE OF SUMMONS AND COMPLAINT OR OTHER PROCESS OR PAPERS MAY BE MADE OUTSIDE THE CENTRAL DISTRICT OF CALIFORNIA BY REGISTERED OR CERTIFIED MAIL, ADDRESSED TO THE DEBTOR AT THE ADDRESS SET FORTH HEREIN OR IN SUCH OTHER MANNER AS MAY BE PERMISSIBLE UNDER THE RULES OF SAID COURTS.

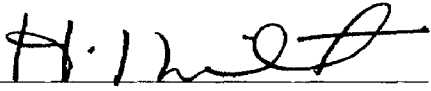
H. THE PARTIES HERETO WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING OF ANY KIND OR NATURE IN ANY COURT WHETHER ARISING OUT OF, UNDER OR BY REASON OF THIS AGREEMENT, THE OTHER AGREEMENTS OR ANY MATTER OR PROCEEDING RELATING THERETO.



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


DEBTOR:

CHEMCO INDUSTRIES INC.,  
a California corporation

By:   
Hiroshi Kishimoto  
Secretary

SECURED PARTY:

THE CIT GROUP/CREDIT FINANCE, INC.

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

State of California )  
 )  
County of Los Angeles )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,

personally appeared \_\_\_\_\_,

personally known to me or  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

---

State of California )  
 )  
County of Los Angeles )

On \_\_\_\_\_ before me, \_\_\_\_\_, Notary Public,

personally appeared \_\_\_\_\_,

personally known to me or  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

---

EXHIBIT I

SPECIAL POWER OF ATTORNEY

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

KNOW ALL MEN BY THESE PRESENTS, that CHEMCO INDUSTRIES INC., a California corporation, (hereinafter "Debtor"), hereby appoints and constitutes THE CIT GROUP/CREDIT FINANCE, INC. ("Secured Party"), 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 Secured Party, 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 Secured Party, in its sole discretion, deems necessary or advisable to further the purposes described in subparagraph 1 hereof.

This Special Power of Attorney is made pursuant to a Trademark and Patent Security Agreement between Debtor and Secured Party 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.

Dated as of August 31, 1999.

CHEMCO INDUSTRIES INC.,  
a California corporation

By: \_\_\_\_\_  
Hiroshi Kishimoto  
Secretary

SCHEDULE A  
to  
TRADEMARK AND PATENT SECURITY AGREEMENT

Trademarks / Service Marks

| <u>Trademark/<br/>Service Mark</u> | <u>Application No./<br/>Registration No.</u> | <u>Filed/<br/>Registered</u> |
|------------------------------------|--|------------------------------|
| Chondr AIS                         | 2061903                                      | 5/13/97                      |
| VMA 25+                            | 2051301                                      | 4/8/97                       |
| GSX 24                             | 2048177                                      | 3/25/97                      |
| Gbe 24/6                           | 2021331                                      | 12/3/96                      |
| Optipure                           | 2175253                                      | 7/21/98                      |

SCHEDULE B  
to  
TRADEMARK AND PATENT SECURITY AGREEMENT

Patents and Applications

| <u>Title</u> | <u>Application No./<br/>Patent No.</u> | <u>Filed/<br/>Issued</u> |
|--------------|--|--------------------------|
|              | None                                   |                          |