

09-23-1999

Docket No.:

299/16224



101152682

Tab settings
To the Honorable Commissioner of Patent

Attached original documents or copy thereof.

1. Name of conveying party(ies):

KHR, Ltd.

- Individual(s)
- General Partnership
- Corporation-State Nebraska
- Other me 09-17-99

- Association
- Limited Partnership

Additional names(s) of conveying party(ies) Yes No

3. Nature of conveyance:

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

Execution Date: 9/3/1999

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

Name: Mercantile Business Credit, Inc.

Internal Address:

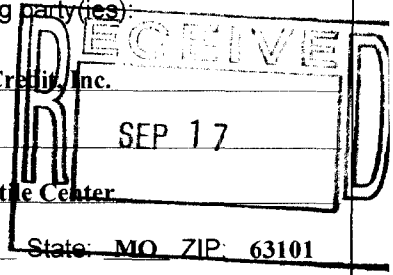
Street Address: One Mercantile Center

City: St. Louis,

State: MO ZIP: 63101

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

If assignee is not domiciled in the United States, a domestic designation is Yes N
(Designations must be a separate document from Additional name(s) & address(es) Yes N



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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,387,123	1,855,432	2,216,733
1,430,640	1,940,747	

Additional numbers

Yes No

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

Name: Mitzi G. Cherry

Internal Address: Thompson Coburn LLP

Street Address: One Mercantile Center

City: St. Louis

State: MO ZIP: 63101

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:

20-0823 (only for insufficient funds)

09/22/1999 NTHAI1 00000272 1387123

DO NOT USE THIS SPACE

01 FC:481	40.00 OP
02 FC:482	100.00 OP

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.

Mitzi G. Cherry

Name of Person Signing

Signature

9/17/99

Date

Total number of pages including cover sheet, attachments, and

15

PATENT, TRADEMARK AND LICENSE
SECURITY AGREEMENT

THIS PATENT, TRADEMARK AND LICENSE SECURITY AGREEMENT (this "Agreement") is made and entered into this 3rd day of September, 1999, by KHR, LTD., a Nebraska corporation ("Borrower"), in favor of MERCANTILE BUSINESS CREDIT INC., a Missouri corporation ("Lender").

WITNESSETH:

WHEREAS, Borrower and the Lender are herewith entering into that certain Loan Agreement dated the date hereof by and between Borrower and Lender, as the same may from time to time be amended, restated, modified, extended or renewed (the "Loan Agreement"); all capitalized terms used and not otherwise defined in this Agreement shall have the respective meanings ascribed to them in the Loan Agreement; and

WHEREAS, as a condition precedent to the Lender entering into the Loan Agreement and otherwise extending credit to Borrower under the Loan Agreement, the Lender has required that Borrower execute and deliver this Agreement to the Lender; and

WHEREAS, in order to induce the Lender to enter into the Loan Agreement and otherwise extend credit to Borrower under the Loan Agreement, Borrower has agreed to execute and deliver this Agreement to the Lender; and

WHEREAS, Borrower and the Lender agree that all of the Secured Obligations (as hereinafter defined) shall be secured by this Agreement; and

WHEREAS, this Agreement is being executed in connection with and in addition to the Security Agreement under which Borrower has granted to the Lender a lien on and security interest in, among other things, all accounts, inventory, general intangibles, machinery, equipment, books, records, goodwill, patents and trademarks now owned or hereafter acquired by Borrower and all proceeds thereof;

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower hereby covenants and agrees with the Lender as follows:

1. Grant of Security Interest. For value received, Borrower hereby collaterally assigns to the Lender, and grants the Lender a security interest in and lien on, all of Borrower's right, title and interest in, to and under the following described property, whether now owned and existing or hereafter created, acquired or arising:

(a) all patents and patent applications, and the inventions and improvements described and claimed therein, including, without limitation, each patent and application listed on Schedules A and B, respectively, attached hereto and incorporated herein by reference (as the same may be amended pursuant hereto from time to time) and (i) the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (ii) all income, damages and payments now and hereafter due or payable under or with respect thereto, including, without limitation, license royalties, damages and payments for past or future infringements thereof, (iii) the right to sue for past, present and future infringements thereof and (iv) all rights corresponding thereto throughout the world (all of the foregoing

patents and applications together with the items described in clauses (i) through (iv) of this subsection (a) are hereinafter collectively referred to herein as the "Patents");

(b) all trademarks, service marks, trademark or service mark registrations, trade names, trade styles, trademark or service mark applications, domain names and domain name registrations and brand names, including, without limitation, common law rights and each mark and application listed on Schedules C and D, respectively, attached hereto and incorporated herein by reference; and (i) renewals or extensions thereof, (ii) all income, damages and payments now and hereafter due or payable with respect thereto, including, without limitation, license royalties, damages and payments for past or future infringements thereof, (iii) the right to sue for past, present and future infringements thereof and (iv) all rights corresponding thereto throughout the world (all of the foregoing trademarks, trade names, service marks and applications and registrations thereof together with the items described in clauses (i) through (iv) of this subsection (b) are hereinafter collectively referred to herein as the "Trademarks");

(c) the license(s) listed on Schedule E attached hereto and incorporated herein by reference and all other license agreements (to the extent such license agreements may be assigned without violating the terms of any such license agreement) with respect to any of the Patents or the Trademarks or any other patent, trademark, service mark or any application or registration thereof or any other trade name or trade style between Borrower and any other party, whether Borrower is licensor or licensee (all of the foregoing license agreements and Borrower's rights thereunder are hereinafter collectively referred to as the "Licenses");

(d) the goodwill of Borrower's business connected with and symbolized by the Trademarks; and

(e) all proceeds, including, without limitation, proceeds which constitute property of the types described in (a), (b), (c) and (d) above and any rents and profits of any of the foregoing items, whether cash or noncash, immediate or remote, and insurance proceeds, and all products of (a), (b), (c) and (d) above, and any indemnities, warranties and guaranties payable by reason of loss or damage to or otherwise with respect to any of the foregoing items;

to secure the payment of any and all of the Borrower's Obligations (hereinafter collectively referred to "Secured Obligations").

2. Representations, Warranties and Covenants of Borrower. Borrower hereby represents and warrants to the Lender, and covenants and agrees with the Lender, that:

(a) all of the Patents, Trademarks and Licenses are subsisting and have not been adjudged invalid or unenforceable, in whole or in part, and, to the best of Borrower's knowledge, are not at this time the subject of any challenge to their validity or enforceability;

(b) to the best of Borrower's knowledge, each of the Patents, Trademarks and Licenses is valid and enforceable;

(c) (i) no claim has been made that the use of any of the Patents, Trademarks or Licenses does or may violate the rights of any third person, (ii) no claims for patent infringement have been commenced in connection with any of the Patents and (iii) no claims for trademark infringement have been commenced in connection with any of the Trademarks;

(d) Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Patents, Trademarks and Licenses, free and clear of any and all liens, charges and encumbrances, including, without limitation, any and all pledges, assignments, licenses, registered user agreements, shop rights and covenants by Borrower not to sue third persons, excluding only security interests granted to the Lender;

(e) Borrower has the unqualified right to enter into this Agreement and perform its terms;

(f) Borrower has used, and will continue to use for the duration of this Agreement, proper statutory notice in connection with its use of the Patents, Trademarks and Licenses;

(g) Borrower has the royalty-free right and license to use the Patents, Trademarks and Licenses and agrees not to transfer any rights or interest in any of the Patents, Trademarks or Licenses during the term of this Agreement; and

(h) Borrower has no notice of any suits or actions commenced or threatened with reference to any of the Patents, Trademarks or Licenses.

3. Inspection Rights; Product Quality. Borrower will permit inspection of Borrower's facilities which manufacture, inspect or store products sold under any of the Patents, Trademarks or Licenses and inspection of the products and records relating thereto by the Lender during normal business hours and at other reasonable times. Borrower will reimburse the Lender upon demand for all costs and expenses incurred by Lender in connection with any such inspection conducted by Lender while any Default or Event of Default under the Loan Agreement has occurred and is continuing. A representative of Borrower may be present during any such inspection, provided that a particular representative's availability or unavailability shall not inhibit or delay such inspection. Borrower agrees (i) to maintain the quality of any and all products in connection with which the Trademarks (including licensed trademarks under the Licenses) are used, consistent with commercially reasonable practices, and (ii) to provide the Lender, upon the Lender's request from time to time, with a certificate of any officer of Borrower certifying Borrower's compliance with the foregoing.

4. Further Assurances. Borrower agrees that, until (i) all of the Secured Obligations shall have been paid in full and (ii) the Lender has no further commitment or obligation to make any additional loans or advances or other extensions of credit to Borrower under the Loan Agreement, it will not enter into any agreement (for example, a license or sublicense agreement) which is inconsistent with Borrower's obligations under this Agreement or the Loan Agreement, without the prior written consent of the Lender and Borrower agrees that it shall not take any action or permit any action to be taken by others subject to its control, including licensees, or fail to take any action which would affect the validity or enforcement of the rights transferred to the Lender under this Agreement. Borrower further agrees that at any time and from time to time, at the expense of Borrower, Borrower will promptly execute and deliver to the Lender any and all further instruments and documents and take any and all further action that may be necessary, or that the Lender may reasonably request, in order to perfect and protect the security interest granted hereby with respect to the Patents, Trademarks and Licenses or to enable the Lender to exercise its rights and remedies hereunder with respect to the same.

5. Additional Patents, Trademarks and Licenses. If Borrower shall (i) become aware of any existing Patents, Trademarks or Licenses of which Borrower has not previously informed the Lender, (ii) obtain rights to any new patentable inventions, Patents, Trademarks or Licenses or (iii) become entitled to the benefit of any Patents, Trademarks or Licenses which benefit is not in existence on

the date hereof, the provisions of this Agreement shall automatically apply thereto and Borrower shall give the Lender prompt written notice thereof.

6. Modification by Lender. Borrower authorizes the Lender to modify this Agreement by amending Schedules A, B, C, D and E to include any future patents and patent applications, any future trademarks, service marks, trademark or service mark registrations, trade names, and trademark or service applications, and any future licenses, covered by Paragraphs 1 and 5 hereof, without the signature of Borrower if permitted by applicable law.

7. Use of Patents, Trademarks and Licenses. So long as no Event of Default has occurred and is continuing, Borrower may use the Patents and Trademarks and exercise its rights under the Licenses in any lawful manner not inconsistent with this Agreement on and in connection with products sold by Borrower, for Borrower's own benefit and account and for none other.

8. Default. If any Event of Default shall have occurred and be continuing, the Lender shall have, in addition to all other rights and remedies given it by this Agreement, those 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 Patents, Trademarks and Licenses may be located and, without limiting the generality of the foregoing, the Lender may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to Borrower, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon, all or from time to time any of the Patents, Trademarks (together with the goodwill of Borrower associated therewith) or Licenses, or any interest which Borrower may have therein, and after deducting from the proceeds of sale or other disposition of the Patents, Trademarks or Licenses all expenses (including, without limitation, all expenses for brokers' fees and legal services), shall apply the residue of such proceeds toward the payment of the Secured Obligations in the order and manner as is set forth in the Loan Agreement. Notice of any sale or other disposition of any of the Patents, Trademarks or Licenses shall be given to Borrower at least five (5) Business Days before the time of any intended public or private sale or other disposition of such Patents, Trademarks and/or Licenses is to be made, which Borrower hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, the Lender or any holder of any of the Secured Obligations may, to the extent permissible under applicable law, purchase the whole or any part of the Patents, Trademarks or Licenses sold, free from any right of redemption on the part of Borrower, which right is hereby waived and released. Borrower agrees that upon the occurrence and continuance of any Event of Default, the use by the Lender of the Patents, Trademarks and Licenses shall be worldwide, and without any liability for royalties or other related charges from the Lender to Borrower. If an Event of Default shall occur and be continuing, the Lender shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce any and all of the Patents, Trademarks and Licenses, and, if the Lender shall commence any such suit, Borrower shall, at the request of the Lender, do any and all lawful acts and execute any and all proper documents required by the Lender in aid of such enforcement and the Borrower shall promptly, upon demand, reimburse and indemnify the Lender for all costs and expenses incurred by the Lender in the exercise of its rights under this Agreement. All of Lender's rights and remedies with respect to the Patents, Trademarks and Licenses, whether established hereby, by the Security Agreement or by any other agreement or by law shall be cumulative and may be exercised singularly or concurrently.

9. Termination of Agreement. At such time as (i) Borrower shall pay all of the Secured Obligations in full, (ii) the Lender shall have no further commitment or obligation to make any additional loans or advances or other extensions of credit to Borrower under the Loan Agreement and (iii) the Loan Agreement shall be terminated, this Agreement shall terminate and the Lender shall execute and deliver to Borrower all instruments as may be necessary or proper to extinguish the Lender's security

interest therein, subject to any disposition thereof which may have been made by the Lender pursuant hereto.

10. Expenses. Any and all fees, costs and expenses of whatever kind or nature, including, without limitation, the reasonable attorneys' fees and expenses incurred by the Lender in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or other amounts in connection with protecting, maintaining or preserving the Patents, Trademarks and/or Licenses, or in defending or prosecuting any actions or proceedings arising out of or related to the Patents, Trademarks and/or Licenses, shall be borne and paid by Borrower on demand by the Lender and until so paid shall be added to the principal amount of the Secured Obligations and shall bear interest at a rate per annum equal to the lesser of the default rate under the Loan Agreement (fluctuating as set forth therein) or the highest rate of interest allowed by law from the date incurred until reimbursed by Borrower.

11. Preservation of Patents, Trademarks and Licenses. Borrower shall have the duty (i) to file and prosecute diligently any patent, trademark or service mark applications pending as of the date hereof or hereafter, (ii) to make application on unpatented but patentable inventions and on trademarks and service marks, as commercially reasonable and (iii) to preserve and maintain all rights in the Patents, Trademarks and Licenses, as commercially reasonable. Any expenses incurred in connection with Borrower's obligations under this Section 11 shall be borne by Borrower.

12. Lender Appointed Attorney-In-Fact. If any Event of Default shall have occurred and be continuing, Borrower hereby authorizes and empowers the Lender to make, constitute and appoint any officer or agent of the Lender as the Lender may select, in its sole discretion, as Borrower's true and lawful attorney-in-fact, with the power to endorse Borrower's name on all applications, documents, papers and instruments necessary for the Lender to use the Patents, Trademarks and Licenses, or to grant or issue any exclusive or non-exclusive license under the Patents, Trademarks and Licenses to anyone else, or necessary for the Lender to assign, pledge, convey or otherwise transfer title to or dispose of the Patents, Trademarks and Licenses to anyone else. Borrower 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 for the duration of this Agreement.

13. No Waiver. No course of dealing between Borrower and the Lender, nor any failure to exercise, nor any delay in exercising, on the part of the Lender, any right, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

14. 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 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.

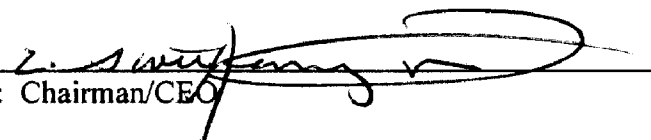
15. Amendments. This Agreement is subject to amendment or modification only by a writing signed by Borrower and the Lender, except as provided in Paragraph 6 above.

16. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that Borrower may not assign or delegate any of its rights of obligations under this Agreement.

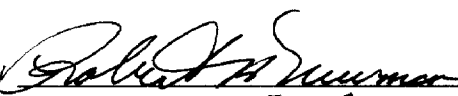
17. Governing Law. The validity and interpretation of this Agreement and the rights and obligations of the parties hereto shall be governed by and construed in accordance with the substantive laws of the State of Missouri (without reference to conflict of law principles).

IN WITNESS WHEREOF, Borrower and the Lender have executed this Patent, Trademark and License Security Agreement this 3rd day of September, 1999.

KHR, LTD. ("Borrower")

By 
Title: Chairman/CEO

MERCANTILE BUSINESS CREDIT INC.
(the "Lender")

By 
Title: Senior Vice President

CERTIFICATE OF ACKNOWLEDGMENT

STATE OF MISSOURI)
)
CITY OF ST. LOUIS)

On this 3rd day of September, 1999, before me personally appeared C. Scott Remington, to me personally known, who, being by me duly sworn, did say that she/he is the Chairman/CEO of KHR, LTD., a Nebraska corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and said C. Scott Remington acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

(Seal) CHRISTINE BLISSENBACH
Notary Public — Notary Seal
STATE OF MISSOURI
City of St. Louis
My Commission Expires: November 11, 2000

Christine Blissenbach
Notary Public

My Commission Expires: 11/11/2000

STATE OF MISSOURI)
)
CITY OF ST. LOUIS)

On this 3rd day of September, 1999, before me personally appeared Robert H. Newman, to me personally known, who, being by me duly sworn, did say that she/he is a Service President of MERCANTILE BUSINESS CREDIT INC., a Missouri corporation, and that said instrument was signed on behalf of said corporation by authority of its Board of Directors; and said Robert H. Newman acknowledged said instrument to be the free act and deed of said association.

IN TESTIMONY WHEREOF, I have hereunto set my hand, and affixed my official seal in the County and State aforesaid, the day and year first above written.

(Seal) CHRISTINE BLISSENBACH
Notary Public — Notary Seal
STATE OF MISSOURI
City of St. Louis
My Commission Expires: November 11, 2000

Christine Blissenbach
Notary Public

My Commission Expires: 11/11/2000

SCHEDULE A

United States Patents

Patent No.

Date
Issued

Inventor

Description

SCHEDULE B

United States Patent Applications

Appl. or Ser. #

Country

Patents in Process

SCHEDULE C

United States Trademarks

<u>Registration No.</u>	<u>Date Issued</u>	<u>Description</u>
1,387,123	3/18/96	First Place
1,940,747	12/12/95	Cattle Tattle Monthly
1,855,432	9/20/94	Your Animal's Best Care
1,430,640	2/24/87	Best Care
2,216,733	1/5/99	Structure

SCHEDULE D

United States Trademark Applications

Serial No.

Date Filed

Mark

SCHEDULE E

LICENSES