

FORM PTO-1584 (Rev. 6-93) OMB No. 0651-0011 (exp. 4/94)

MND RECORD 12/21/99 TT

12-29-1999



101233691

005/005 U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

Tab settings

To the Honorable Commissioner of Patents and Trademarks

original documents or copy thereof.

1. Name of conveying party(ies):

EMPLAST, INC., a MINNESOTA CORPORATION

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

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

3. Nature of conveyance:

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

Execution Date: July 14, 1999

2. Name and address of receiving party(ies)

Name: MARQUETTE CAPITAL BANK, N.A.

Internal Address:

Street Address: 4000 DAIN RAUSCHER PLAZA

City: MINNEAPOLIS State: MN ZIP: 55402

- Individual(s) citizenship, Association, General Partnership, Limited Partnership, Corporation-State, Other NATIONAL BANKING ASSOCIATION

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

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s) / SERIAL NO.

2065007 --- 75/097434
2136229 --- 76/097368
2184888 --- 75/209744

Additional numbers attached? Yes No

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

Name: FREDERICK P. ANGST, Esq.

Internal Address: BRIGGS & MORGAN, P.A.

Street Address: 2200 - FIRST NATIONAL BANK BLDG.

332 MINNESOTA STREET

City: ST. PAUL State: MN ZIP: 55101

6. Total number of applications and registrations involved: 3

7. Total fee (37 CFR 3.41) \$90.00

- Enclosed, Authorized to be charged to deposit account

8. Deposit account number:

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

12/29/1999 DNGUYEN 00000053 2065007

DO NOT USE THIS SPACE

01 FC:481 40.00 OP
02 FC:482 50.00 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.

Regina A. Walsh

Name of Person Signing

Regina A. Walsh

Signature

11/18/99

Date

REGINA A. WALSH

Total number of pages including cover sheet, attachments, and document: 17

PARALEGAL

Mail documents to be recorded with required cover sheet information to: Commissioner of Patents & Trademarks, Box Assignments Washington D.C. 20231

**PATENT AND TRADEMARK COLLATERAL ASSIGNMENT  
AND SECURITY AGREEMENT**

PATENT AND TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT ("Agreement") dated as of June 30, 1999, made by EMPLAST, INC., a Minnesota corporation, having its chief executive office at 233 Industrial Boulevard, Waconia, Minnesota 55387 (the "Assignor"), in favor of MARQUETTE CAPITAL BANK, N.A. (the "Bank"), which are parties to the Loan Agreement (as hereinafter defined).

**RECITALS**

**FIRST**, the Bank has entered into a Second Amended and Restated Credit Agreement on June 30, 1999 (said Loan Agreement, as it may be amended, extended, restated, supplemented or otherwise modified, being the "Loan Agreement"; the terms not otherwise defined in this Agreement being used herein as defined in the Loan Agreement) with Assignor.

**SECOND**, as a condition to the extension of credit under the Loan Agreement, the Assignor has agreed to assign to the Bank, certain patents, patent applications, trademark and trademark application of the Assignor.

**AGREEMENT**

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

SECTION 1. Assignment and Grant of Security. To secure the payment and performance of the "Obligations" as defined in Section 2 hereof, the Assignor hereby pledges, grants, sells, transfers, sets over, conveys and assigns to the Bank, and grants a security interest in the entire right, title and interest of the Assignor in and to the following, whether now owned or hereafter acquired:

(a) all United States and foreign patents, patent applications and patentable inventions which the Assignor now or hereafter owns, including, without limitation, the patents and patent applications listed in Schedule A hereto and (i) the inventions and improvements described and claimed therein; (ii) any continuation, division, renewal, extension, substitution or reissue thereof or any legal equivalent in a foreign county for the full term or terms of which the same may be granted; (iii) all rights to income, royalties, profits, awards, damages or other rights relating to said patents, patent applications or

inventions, including the right to sue for past, present or future infringement; and (iv) any other rights and benefits relating to said patents, patent applications or inventions ("Patents");

(b) all trademarks, trademark registrations and trademark applications and the goodwill underlying those trademarks of the Assignor, including but not limited to those set forth in Schedule B and (i) any similar marks or amendments, modifications and renewals thereof and the goodwill represented by those trademarks thereon and any legal equivalent in a foreign country for the full term or terms for which the same may be granted; (ii) all rights to income, royalties, profits, damages, or other rights relating to said trademarks including the right to sue for past, present or future infringement; and (iii) any other rights and benefits relating to said trademarks including any rights as a licensor or licensee of said trademark ("Trademarks");

it being understood and agreed that the Patents and Trademarks assigned hereby shall include, without limitation, the rights and interests pursuant to licensing or other contracts in favor of the Assignor pertaining to patent applications, patents and trademarks presently or in the future owned or used by third parties, but only to the extent permitted by such licensing or other contracts and, if not so permitted, only with the consent of such third parties.

SECTION 2. Security for Obligations. This Agreement partially secures the payment of the obligations of the Assignor now or hereafter existing under the Loan Agreement and the other Loan Documents, including any extensions, modifications, substitutions, amendments and renewals thereof, whether for principal, interest, fees, expenses, indemnification or otherwise (all such obligations being the "Obligations").

SECTION 3. Assignor Remains Liable. Anything herein to the contrary notwithstanding, (a) the Assignor shall remain liable under the contracts and agreements included in the Patents and Trademarks to the extent set forth therein to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Bank of any of the rights hereunder shall not release the Assignor from any of its duties or obligations under the contracts and agreements included in the Patents and Trademarks, and (c) the Bank shall not have any obligation or liability under the contracts and agreements included in the Patents and Trademarks by reason of this Agreement, nor shall the Bank be obligated to perform any of the obligations or duties of the Assignor thereunder or to take any action to collect or enforce any claims for payment assigned hereunder.

SECTION 4. Representations and Warranties. The Assignor represents and warrants as follows:

(a) Except as set forth on Schedule C, the Patents and Trademarks are subsisting and have not been adjudged invalid or unenforceable and the Assignor is not aware of any claim by any person that the Patents and Trademarks are invalid or unenforceable.

(b) Except as set forth on Schedule C, to the best of the Assignor's knowledge, each of the Patents (other than patent applications) and each of the Trademarks is valid and enforceable.

(c) Except as set forth on Schedule C, no claim has been made by any person against the Assignor that the use by the Assignor of any of the Patents and Trademarks that is material to the business of the Assignor does or may violate the rights of any Person.

(d) The Assignor is the legal and beneficial owner of the Patents and Trademarks free and clear of any lien, including without limitation, assignments, licenses, shop rights and covenants by Assignor not to sue third persons, except for the security interest and assignment created by this Agreement. No effective financing statement or other instrument similar in effect naming the Assignor as "Debtor" covering all or any part of the Patents or the Trademarks is on file in any recording office, except such as may have been filed in favor of the Bank relating to this Agreement or the Security Agreement or for which duly executed termination statements have been recorded or delivered to the Bank.

(e) The chief executive office of the Assignor is located at the address set forth above for the Assignor.

SECTION 5. No Liens. The Assignor agrees that it will not, without the prior written consent of the Bank assign or transfer, pledge, mortgage, license or allow a security interest or lien to be taken by anyone other than the Bank in said Patents and Trademarks or take any other acts which are contrary to or inconsistent with the rights granted to the Bank in this Agreement and will not cease the use of any Trademark or take any action or fail to take any action which will result in the cancellation or expiration of any of the Patents or Trademark registrations covered by this Agreement without the prior written agreement of the Bank.

SECTION 6. New Patents and Applications. If, during the term of the Loan Agreement, the Assignor shall become entitled to the benefit of any patent application or patent for any reissue, division, continuation, renewal, extension, or continuations-in-part of any Patent or any improvement on any Patent, the provisions of this Agreement shall automatically apply thereto. The Assignor shall give to the Bank prompt notice thereof in writing promptly after it becomes aware of any and all of the foregoing rights or benefits.

SECTION 7. Further Assurances: Assignor's Covenants. On a continuing basis, the Assignor will make, execute, acknowledge and deliver, and file and record in the proper filing and recording places, all such instruments, including, without limitation, appropriate financing and continuation statements and security agreements, and take all such action as may be deemed necessary in the Bank's reasonable judgment to carry out the intent and purposes of this Agreement, or for assuring and confirming to the Bank the grant or perfection of a security interest in all Patents and Trademarks. Without limiting the generality of the foregoing sentence, the Assignor

(a) will not enter into any agreement which would or might in any way materially impair or conflict with the Assignor's obligations hereunder without the Bank's prior written consent;

(b) upon the written request of the Bank, use its best efforts to obtain any necessary consents of third parties to the grant or perfection of a security interest to the Bank with respect to the Patents and Trademarks;

(c) will promptly, following its becoming aware thereof, notify the Bank of the institution of, or any adverse determination in, any proceeding in the United States Patent and Trademark Office or any United States or foreign court regarding the Bank's claim of ownership in any of the Patents and Trademarks;

(d) concurrently with its filing of an application for any Patent, the Assignor will execute, deliver and record (i) in all places where this Agreement is recorded an appropriate Patent Collateral Assignment and Security Agreement, substantially in the form hereof, with appropriate insertions to the extent of its interest therein and (ii) such appropriate financing statements as may be necessary in order to perfect and preserve the security interest and assignment granted thereby;

(e) to protect such Patents and Trademarks from infringement, unfair competition or dilution or damage by all appropriate actions including the commencement of legal action to prevent and recover damages for said infringement and to defend such Patents and Trademarks from claims of infringement, unfair competition or damage including the defense of any legal actions making such claims.

(f) except as provided in Section 12 hereof, will not sell or contract for sale or otherwise dispose (other than by way of license entered into in the ordinary course of business in an arm's-length transaction) of any Patent (other than any Patents held by the Assignor under a license); and

(g) will promptly notify the Bank of any suspected material infringement of any of the Patents or Trademarks by any third party and of all steps, including the commencement and course of litigation, taken to remedy such infringement.

(h) provide to the Bank at least annually (i) the status of all Patents and Trademarks subject to this Agreement including any new patents, patent applications, trademark registration, trademark applications or related licenses; and (ii) any actions taken by the Assignor pursuant to paragraph 7(e) of this Agreement.

**SECTION 8. Amounts Payable in Respect of the Patents and Trademarks.** Except as otherwise provided in this Section 8 or in the Borrower Security Agreement, the Assignor shall continue to collect, at its own expense, all amounts due or to become due the Assignor in respect of

the Patents and Trademarks. Upon the occurrence and during the continuance of an Event of Default, the Bank is hereby given full power and authority, without notice or demand, (i) to notify any and all obligors with respect to any Patent or Trademark which the Assignor, except for the execution hereof, could ask for, and (ii) to demand, take, collect, sue for and receive for its own use all amounts due or to become due the Assignor in respect of the Patents and Trademarks, and in connection therewith to enforce all rights and remedies with respect to any Patent and Trademark which the Assignor could enforce if this Agreement had not been made; and the Assignor hereby ratifies any action which the Bank shall lawfully take to enforce the Bank's rights hereunder. Whether or not the Bank shall have so notified any obligors, the Assignor shall at its expense render all reasonable assistance to the Bank in enforcing claims against such obligors.

SECTION 9. Bank Appointed Attorney-in-Fact. The Assignor hereby appoints the Bank the Assignor's attorney-in-fact, with full authority in the place and stead of the Assignor and in the name of the Assignor or otherwise upon an Event of Default, (i) to endorse the Assignor's name on all applications, documents, papers and instruments necessary for the Bank in the use or maintenance of the Patents or Trademarks, (ii) to take any other actions with respect to the Patents or Trademarks, including, without limitation, commencement or continuation of any litigation or administrative proceeding, (iii) to grant or issue an exclusive or non-exclusive license to the Patents and/or Trademarks to any Person, (iv) to assign, pledge, convey or otherwise transfer title in or dispose of the Patents and Trademarks to any Person and (v) to take any action and to execute any instrument which the Bank may deem necessary to accomplish the purposes of this Agreement.

SECTION 10. Bank May Perform. If the Assignor fails to perform any agreement contained herein, the Bank may itself perform, or cause performance of, such agreement, and the expenses of the Bank incurred in connection therewith shall be payable by the Assignor.

SECTION 11. Maintenance. Notwithstanding Section 2 hereof, the Assignor shall have the right and obligation to commence and diligently prosecute in its own name, as real party in interest, for its own benefit and at its own expense, such suits, proceedings or other actions for infringement, or other damage or reexamination or reissue proceedings as are reasonable to protect any of the Patents and Trademarks unless the Assignor, in its prudent business judgment, deems any such Patent or Trademark not to have significant commercial value. However, no such suit, proceeding or other action shall be settled or voluntarily dismissed, nor shall any party be released or excused of any claims of, or liability for, infringement, without the prior written consent of the Bank.

SECTION 12. License to Assignor. Unless and until there shall have occurred and be continuing an Event of Default, the Bank hereby grants to the Assignor and its Subsidiaries the exclusive, non-transferable right and license under the Patents and Trademarks to make, have made for it, use and sell the inventions disclosed and claimed in the Patents and Trademarks for the Assignor's own benefit and account and for the account and benefit of its Subsidiaries and none other. The Assignor agrees not to sell or assign or in any way transfer its interest in, or grant any

sublicense under, the license granted to the Assignor under this Section 12, without the prior written consent of the Bank.

SECTION 13. Remedies. Upon the occurrence and during the continuation of an Event of Default:

(a) The Assignor's license under the Patents and Trademarks as set forth in Section 12 hereof shall terminate forthwith, and the Bank shall have the sole right but shall in no way be obligated to bring suit to enforce the Patents and Trademarks and any license thereunder, in which event the Assignor shall at the request of the Bank do any and all lawful acts and execute any and all proper documents required by the Bank in aid of such enforcement and the Assignor shall promptly, upon demand, reimburse and indemnify the Bank for all costs and expenses incurred by the Bank in the reasonable exercise of its rights under this Section 13.

(b) Without in any way limiting the remedies set forth in (a) above, the Bank may exercise in respect of the Patents and Trademarks, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party on default under the UCC in effect in the State of Minnesota (the "Code") at that time (whether or not the UCC applies to the affected Patents and Trademarks). The Bank shall not be obligated to make any sale of the Patents regardless of notice of sale having been given. The Bank may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

(c) All cash proceeds received by the Bank in respect of any sale of, collection from, or other realization upon all or any part of the Patents and Trademarks may, in the discretion of the Bank, be held by the Bank as collateral for, and/or then or at any time thereafter applied in whole or in part by the Bank for its benefit. Any surplus of such cash or cash proceeds held by the Bank and remaining after payment in full of all the Obligations shall be paid over to the Assignor or to whomsoever may be lawfully entitled to receive such surplus.

SECTION 14. Amendments, Etc, No amendment or waiver of any provision of this Agreement nor consent to any departure by the Assignor herefrom, shall in any event be effective unless the same shall be in writing and signed by the Assignor and the Bank, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given, except as provided in Section 5 hereof, in which case the writing need only be signed by the Assignor.

SECTION 15. Continuing Assignment: Transfer of Advances. This Agreement shall (a) create a continuing assignment of the Patents and of the Trademarks and shall remain in full force and effect until payment in full of the Obligations, (b) be binding upon the Assignor, its successors

and assigns and (c) inure to the benefit of the Bank, and its respective successors, transferees and assigns. Upon payment in full of the Obligations, the assignment hereunder shall terminate and all rights to the Patents and Trademarks shall revert to the Assignor, subject to any disposition thereof which may have been made by the Bank pursuant hereto or pursuant to the Agreement to which Assignor is a party. Upon any such termination, the Bank will, at the Assignor's expense, execute and deliver to the Assignor such documents as the Assignor shall reasonably request to evidence such termination.

SECTION 16. Cumulative Remedies; Effect on Borrower Security Agreement. All of the Bank's or the Bank's rights and remedies with respect to the Patents, whether established hereby, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. The Assignor hereby acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of the Bank under the Borrower Security Agreement but rather is intended to facilitate the exercise of such rights and remedies.

SECTION 17. Counterparts. This Agreement may be executed in any number of counterparts, each of which when so executed and delivered shall be deemed an original, but all such counterparts together shall constitute but one and the same instrument.

SECTION 18. Severability. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid or 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.


SECTION 19. GOVERNING LAW; TERMS. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF MINNESOTA WITHOUT REFERENCE TO PRINCIPLES OF CONFLICTS OF LAWS, EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF MINNESOTA.

[Remainder of page left intentionally blank]




IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by its officers thereunder duly authorized, as of the date first above written.

EMPLAST, INC., a Minnesota corporation

By   
\_\_\_\_\_  
Leon Korkowski  
Its Chief Financial Officer

MARQUETTE CAPITAL BANK, N.A., a  
national banking association

By   
\_\_\_\_\_  
Ryan McKinney  
Its Vice President

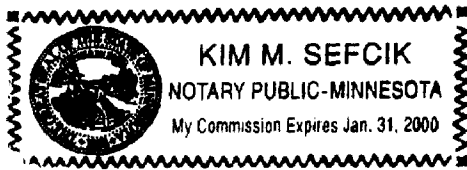
[Signature Page to Patent and Trademark Collateral  
Assignment and Security Agreement]

STATE OF MINNESOTA            )  
  ) ss.  
COUNTY OF HENNEPIN        )

On July 13, 1999 before me, the undersigned, a Notary Public in and for said State, personally appeared Ryan McKinney, known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the Vice President of Marquette Capital Bank, N.A., a national banking association, on behalf of the association.

WITNESS my hand and official Seal.

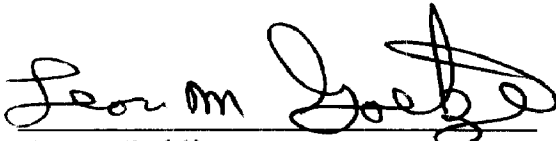
Kim M. Sefcik  
Notary Public  
My Commission expires:

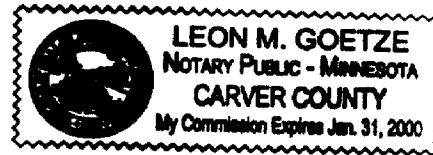


STATE OF MINNESOTA )  
 ) ss.:  
COUNTY OF CARVER )

On July 14, 1999, before me, the undersigned, a Notary Public in and for said State, personally appeared Leon Korkowski known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument as the CEO of Emplast, Inc., a Minnesota corporation, on behalf of the corporation.

WITNESS my hand and official Seal.

  
Notary Public  
My Commission expires:



SCHEDULE A  
PATENT AND TRADEMARK COLLATERAL  
ASSIGNMENT AND SECURITY AGREEMENT

Patents and Patent Applications Owned By Assignor

See attached.

# Emplast Patents

TITLE	PATENT NO	COUNTRY	PATENT DATE
storage box having resilient fastening means	4582219	US	04/15/1986
security package with rotatable locking channel	4885190	US	09/12/1989
data storage container	4838422	US	06/13/1989
storage box	4709834	US	12/01/1987
can crusher	0323171	US	01/14/1982
compact disk package	0328584	US	09/22/1982
opener for security package with spring loaded keying mechanism	5255543	US	10/26/1993
sawhorse	0344347	US	02/15/1994
stackable composite lid and container arrangement	5156275	US	10/20/1992
security package	0343356	US	01/18/1994
tackle tote	5428866	US	05/27/1995
can crusher with crimping member	5638877	US	08/13/1991
liquid saver funnel system	5385180	US	01/31/1995
reusable hard clear package for video games	6375708	US	12/27/1994
storage system for refrigerators	5626407	US	09/06/1997
security package with internal pocket for a surveillance tag	5601188	US	02/11/1997
freezer shelf	0378821	US	04/15/1997
lazy susan	0378792	US	04/15/1997
baking soda holder for use in a refrigerator	0385267	US	10/21/1997
container for holding a variety of condiments	0381982	US	07/20/1997
beverage can holder	0402837	US	12/22/1998
security package for displaying merchandise in a retail store	6844173	US	08/31/1999

# *Emplast's Pending Patent Applications*

*COUNTRY FILING DATE SERIAL NO PATENT NO PATENT DATE*

*TITLE*

*security package with asymmetric lock*

US

09/03/1999 09/30/97

25 October, 1999

SCHEDULE B  
PATENT AND TRADEMARK COLLATERAL  
ASSIGNMENT AND SECURITY AGREEMENT

Trademarks Owned by Assignor

See attached.

# Emplast Trademark Registrations

TRADE MARK	COUNTRY	SERIAL NO	FILING DATE	REG NO	REG DATE
EMPLAST	US	75087434	05/01/1996	2065007	07/29/1997
EMPLAST	US	75087388	05/01/1996	2136228	02/10/1998
WHERE TO PUT IT	US	75208744	12/09/1996	2184888	08/25/1998

3



SCHEDULE C

PATENT AND TRADEMARK COLLATERAL  
ASSIGNMENT AND SECURITY AGREEMENT

Litigation

None.