

MRS

01-11-2000

FORM PTO-1594
(Rev 5-93)

12-28-99



EET

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

To the Honorable Comm.

101242023

Attached original documents or copy thereof.

1. Name of conveying party(ies):

TUBETRONICS, INC.

Individual(s) citizenship:

Association:

General Partnership:

Limited Partnership:

Corporation - State: DELAWARE

Other:

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

3. Nature of Conveyance:

Assignment

Merger

Security Agreement

Change of Name

Other

Execution Date: December 13, 1999

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

Name: FINOVA CAPITAL CORPORATION

Address: 355 SOUTH GRAND STREET, SUITE 2400

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

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

A. Trademark Application No.(s)

74/036,906

75/486,569

B. Trademark Registration No.(s)

Additional numbers attached? Yes No

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

Name: Erin O'Brien

Internal Address: GRAY CARY WARE & FREIDENRICH

401 B Street, Suite 1700

San Diego, California 92101-4297

6 Total number of applications and registrations involved: 2

7. Total fee (37 CFR 3.41) \$65.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number: 07-1907

(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.

Erin O'Brien

Name of Person Signing

Signature

December 27, 1999

Date

Total number of pages comprising cover sheet: [10]

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

U.S. Patent and Trademark Office, Office of Public Records

1213 Jefferson Davis Highway, 3rd Floor

Arlington, VA 22202

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02 FC:482

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TRADEMARK
REEL: 002008 FRAME: 0494

INTELLECTUAL PROPERTY SECURITY AGREEMENT

THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT (the "Agreement") is made as of December 13, 1999, by and between TUBETRONICS, INC., a California corporation ("Grantor"), and FINOVA CAPITAL CORPORATION, a Delaware corporation ("Secured Party").

RECITALS

A. Secured Party has agreed to make a term loan to Grantor pursuant to the terms of the Loan and Security Agreement, dated as of the date hereof (the "Loan Agreement"; all capitalized terms used herein without definition shall have the meanings ascribed to them in the Loan Agreement).

B. In order to induce Secured Party to enter into the Loan Agreement, Grantor has agreed to grant a security interest in certain intangible property to Secured Party for purposes of securing the obligations of Grantor to Secured Party.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Grant of Security Interest. As collateral security for the prompt and complete payment and performance of all Obligations, Grantor hereby grants a security interest and mortgage to Secured Party, as security, in and to Grantor's entire right, title and interest in, to and under the following (all of which shall collectively be called the "Collateral"):

(a) All copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held, including, without limitation, those set forth on Exhibit "A" attached hereto (collectively, the "Copyrights");

(b) All trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held;

(c) All design rights which may be owned, created or acquired by Grantor now or hereafter existing, created, acquired or held;

(d) All patents, patent applications and like protections including, without limitation, improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, including, without limitation, the patents and patent applications set forth on Exhibit "B" attached hereto (collectively, the "Patents");

(e) All trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Grantor connected with and symbolized by such trademarks, including, without limitation, those set forth on Exhibit "C" attached hereto (collectively, the "Trademarks");

(f) All claims for damages by way of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

(g) All licenses or other rights to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use to the extent permitted by such license or rights;

(h) All amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents; and

(i) All proceeds and products of the foregoing, including, without limitation, all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

2. Authorization and Request. Grantor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this Agreement.

3. Covenants and Warranties. Grantor represents, warrants, covenants and agrees as follows:

(a) Grantor is now the sole owner of the Collateral, except for non-exclusive licenses granted by Grantor to its customers in the ordinary course of business;

(b) Performance of this Agreement does not conflict with or result in a breach of any agreement to which Grantor is party or by which Grantor is bound, except to the extent that certain intellectual property agreements prohibit the assignment of the rights thereunder to a third party without the licensor's or other party's consent and this Agreement constitutes an assignment;

(c) During the term of this Agreement, Grantor will not transfer or otherwise encumber any interest in the Collateral, except for non-exclusive licenses granted by Grantor in the ordinary course of business or as set forth in this Agreement;

(d) To its knowledge, each of the Patents is valid and enforceable, and no part of the Collateral has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Collateral violates the rights of any third party;

(e) Grantor shall promptly advise Secured Party of any material change in the composition of the Collateral, including, but not limited to, any subsequent ownership right of the Grantor in or to any Trademark, Patent or Copyright not specified in this Agreement;

(f) Grantor shall (i) protect, defend and maintain the validity and enforceability of the Trademarks, Patents and Copyrights, (ii) use its best efforts to detect infringements of the Trademarks, Patents and Copyrights and promptly advise Secured Party in writing of material infringements detected and (iii) not allow any Trademarks, Patents or Copyrights to be abandoned, forfeited or dedicated to the public without the written consent of Secured Party, which shall not be unreasonably withheld, unless Grantor determines that reasonable business practices suggest that abandonment is appropriate;

(g) Grantor shall register or cause to be registered (to the extent not already registered) with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, those intellectual property rights listed on Exhibits "A", "B" and "C" hereto within thirty (30) days of the date of this Agreement. Grantor shall register or cause to be registered with the United States Patent and Trademark Office or the United States Copyright Office, as applicable, those additional intellectual property rights developed or acquired by Grantor from time to time in connection with any product prior to the sale or licensing of such product to any third party (including, without limitation, revisions or additions to the intellectual property rights listed on such Exhibits "A", "B" and "C"). Grantor shall, from time to time, execute and file such other instruments, and take such further actions as Secured Party may reasonably request from time to time to perfect or continue the perfection of Secured Party's interest in the Collateral;

(h) This Agreement creates, and in the case of after acquired Collateral this Agreement will create at the time Grantor first has rights in such after acquired Collateral, in favor of Secured Party a valid and perfected first priority security interest in the Collateral in the United States securing the payment and performance of the Obligations upon making the filings referred to in clause (i) below;

(i) To its knowledge, except for, and upon, the filing with the United States Patent and Trademark office with respect to the Patents and Trademarks and the Register of Copyrights with respect to the Copyrights necessary to perfect the security interests created hereunder, and except as has been already made or obtained, no authorization, approval or other action by, and no notice to or filing with, any U.S. governmental

authority or U.S. regulatory body is required either (i) for the grant by Grantor of the security interest granted hereby or for the execution, delivery or performance of this Agreement by Grantor in the U.S. or (ii) for the perfection in the United States, or the exercise by Secured Party, of its rights and remedies hereunder;

(j) All information heretofore, herein or hereafter supplied to Secured Party by or on behalf of Grantor with respect to the Collateral is accurate and complete in all material respects;

(k) Grantor shall not enter into any agreement that would materially impair or conflict with Grantor's obligations hereunder without Secured Party's prior written consent, which consent shall not be unreasonably withheld. Grantor shall not permit the inclusion in any material contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a security interest in Grantor's rights and interests in any property included within the definition of the Collateral acquired under such contracts, except that certain contracts may contain anti-assignment provisions that could in effect prohibit the creation of a security interest in such contracts if Grantor is required, in its commercially reasonable judgment, to accept such provisions; and

(l) Upon any executive officer of Grantor obtaining actual knowledge thereof, Grantor will promptly notify Secured Party in writing of any event that materially adversely affects the value of any Collateral, the ability of Grantor to dispose of any Collateral or the rights and remedies of Secured Party in relation thereto, including the levy of any legal process against any of the Collateral.

4. Secured Party's Rights. Secured Party shall have the right, but not the obligation, to take, at Grantor's sole expense, any actions that Grantor is required under this Agreement to take but which Grantor fails to take, after fifteen (15) days' notice to Grantor. Grantor shall reimburse and indemnify Secured Party for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this section, which expenses shall constitute Obligations and shall accrue interest at the interest rate for the Term Loan if not paid within ten (10) days of demand of payment therefor. Secured Party shall use reasonable efforts to ensure the confidentiality of the information provided under this Agreement with respect to the Copyrights, Patents and Trademarks.

5. Inspection Rights. Grantor hereby grants to Secured Party and its employees, representatives and agents the right to visit, during reasonable hours upon prior reasonable written notice to Grantor, any of Grantor's plants and facilities that manufacture, install or store products (or that have done so during the prior six-month period) that are sold utilizing any of the Collateral, and to inspect the products and quality control records relating thereto upon reasonable written notice to Grantor and as often as may be reasonably requested.

6. Further Assurances; Attorney in Fact.

(a) On a continuing basis, Grantor will make, execute, acknowledge and deliver, and file and record in the proper filing and recording places in the United States, all such instruments, including appropriate financing and continuation statements and collateral agreements and filings with the United States Patent and Trademark Office and the Register of Copyrights, and take all such action as may reasonably be deemed necessary or advisable, or as requested by Secured Party, to perfect Secured Party's security interest in all Copyrights, Patents and Trademarks and otherwise to carry out the intent and purposes of this Agreement, or for assuring and confirming to Secured Party the grant or perfection of a security interest in all Collateral.

(b) Grantor hereby irrevocably appoints Secured Party as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor, from time to time in Secured Party's discretion, to take any action and to execute any instrument which Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement, including (i) to modify, in its sole discretion, this Agreement without first obtaining Grantor's approval of or signature to such modification by amending Exhibit "A", Exhibit "B" and Exhibit "C" hereof, as appropriate, to include reference to any right, title or interest in any Copyrights, Patents or Trademarks acquired by Grantor after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents or Trademarks in which Grantor no longer has or claims any right, title or interest, (ii) to file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any

of the Collateral without the signature of Grantor where permitted by law and (iii) after the occurrence of an Event of Default, to transfer the Collateral into the name of Grantor or a third party to the extent permitted under the Code.

7. Remedies. Upon the occurrence and continuance of an Event of Default, Secured Party shall have the right to exercise all the remedies of a secured party under the Code, including, without limitation, the right to require Grantor to assemble the Collateral and any tangible property in which Secured Party has a security interest and to make it available to Secured Party at a place designated by Secured Party. Secured Party shall have a nonexclusive, royalty free license to use the Copyrights, Patents and Trademarks to the extent reasonably necessary to permit Secured Party to exercise its rights and remedies upon the occurrence of an Event of Default. All of Secured Party's rights and remedies with respect to the Collateral shall be cumulative.

8. Indemnity. Grantor agrees to defend, indemnify and hold harmless Secured Party and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement, and (b) all losses or expenses in any way suffered, incurred, or paid by Secured Party as a result of or in any way arising out of, following or consequential to transactions between Secured Party and Grantor, whether under this Agreement or otherwise (including, without limitation, reasonable attorneys' fees and reasonable expenses), except for losses arising from or out of Secured Party's gross negligence or willful misconduct.

9. Notices. All notices, requests, demands and other communications required or permitted under this Agreement or by law shall be in writing and shall be deemed to have been duly given, made and received only when delivered against receipt or when deposited in the United States mails, certified or registered mail, return receipt requested, postage prepaid, addressed as set forth below, and actually presented at the address of the notice party.

If to Secured Party:

FINOVA Capital Corporation
355 South Grand Street, Suite 2400
Los Angeles, California 90071
Attention: Account Executive

If to Grantor:

TUBETRONICS, INC.
303 Twin Dolphin Drive, Suite 600
Redwood Shores, CA 94065
Attention: President

Either addressee may alter the address to which communications are to be sent by giving notice of such change of address in conformity with the provisions of this section for the giving of notice.

10. Course of Dealing. No course of dealing, nor any failure to exercise, nor any delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

11. Amendments. This Agreement may be amended only by a written instrument signed by both parties hereto.

12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.

13. Governing Law. THE VALIDITY, CONSTRUCTION AND ENFORCEMENT OF THIS AGREEMENT SHALL BE GOVERNED BY THE INTERNAL LAWS OF THE STATE OF ARIZONA. SECURED PARTY AND GRANTOR HEREBY AGREE THAT ALL ACTIONS OR PROCEEDINGS INITIATED BY THE OTHER AND ARISING DIRECTLY OR INDIRECTLY OUT OF THIS AGREEMENT SHALL BE LITIGATED IN A MARICOPA COUNTY, ARIZONA SUPERIOR COURT OR THE UNITED


STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA OR, IF SECURED PARTY INITIATES SUCH ACTION, IN ADDITION TO THE FOREGOING COURTS, ANY COURT IN WHICH SECURED PARTY SHALL INITIATE SUCH ACTION, TO THE EXTENT SUCH COURT HAS JURISDICTION. GRANTOR HEREBY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR PROCEEDING COMMENCED BY SECURED PARTY AND HEREBY WAIVES ANY CLAIM THAT SUCH COURTS ARE AN INCONVENIENT FORUM OR AN IMPROPER FORUM BASED UPON LACK OF VENUE. THE EXCLUSIVE CHOICE OF FORUM AS SET FORTH IN THIS SECTION SHALL NOT BE DEEMED TO PRECLUDE THE ENFORCEMENT, BY SECURED PARTY, OF ANY JUDGMENT OBTAINED IN ANY OTHER FORUM OR THE TAKING, BY SECURED PARTY, OF ANY ACTION TO ENFORCE THE SAME IN ANY OTHER APPROPRIATE JURISDICTION, AND GRANTOR HEREBY WAIVES THE RIGHT TO COLLATERALLY ATTACK SUCH JUDGMENT OR ACTION.

14. Jury Trial. GRANTOR AND SECURED PARTY WAIVE TRIAL BY JURY IN ANY DISPUTE ARISING FROM, UNDER OR IN CONNECTION WITH THIS AGREEMENT.

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

GRANTOR:
TUBETRONICS, INC.,
a California corporation

By: 
Title: PRESIDENT

SECURED PARTY:
FINOVA CAPITAL CORPORATION,
a Delaware corporation


By: 
Title: AVP

EXHIBIT "A"
COPYRIGHTS

None

EXHIBIT "B"

PATENTS

Tubetronics

<u>Patent Number</u>	<u>Description</u>	<u>Issue Date</u>
4631094	Method of processing a nickel/titanium-based shape memory alloy and article produced therefrom	12/23/1986
4740253	Method for preassembling a composite coupling	04/26/1988
4770725	Nickel/Titanium/Niobium Shape memory alloy and article	09/13/1988
5662362	Swage coupling including disposable shape memory alloy actuator	09/02/1997
1259826 (Canada)	Nickel/Titanium/Niobium Shape memory alloy and articles	09/26/1989
2539786 (Japan)	Nickel/Titanium/Niobium Shape memory alloy and articles	07/08/1989
1269915 (Canada)	Nickel/Titanium/Niobium Shape memory alloy and article	06/05/1990

EXHIBIT "C"
TRADEMARKS

Tubetronics

<u>Application/ Registration Number</u>	<u>Title</u>	<u>Application/ Registration Date</u>
1712595/ S.n. 74/036,906	Tubetronics	09/01/1992
S.N. 75/486,569	Cryomed	05/18/1998

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