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

04-10-2000

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

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# RECORDATION FORM COVER SHEET
## TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

**Submission Type**

- [X] New
- [ ] Resubmission (Non-Recordation) Document ID #
- [ ] Correction of PTO Error Reel # Frame #
- [ ] Corrective Document Reel # Frame #

**Conveyance Type**

- [ ] Assignment
- [ ] License
- [X] Security Agreement
- [ ] Nunc Pro Tunc Assignment
- [ ] Merger
- Effective Date Month Day Year
- [ ] Change of Name
- [ ] Other

**Conveying Party** [ ] Mark if additional names of conveying parties attached

Name: Orion Industries, Inc.
Execution Date Month Day Year: 01142000
Formerly:

[ ] Individual [ ] General Partnership [ ] Limited Partnership [X] Corporation [ ] Association

[ ] Other

[X] Citizenship/State of Incorporation/Organization: Arizona

**Receiving Party** [ ] Mark if additional names of receiving parties attached

Name: Wells Fargo Business Credit, Inc.
DBA/AKA/TA:
Composed of:
Address (line 1): 100 West Washington Street 7th Floor
Address (line 2): MAC S4101-076
Address (line 3): Phoenix (City) Arizona (State/Country) 85003 (Zip Code)

[ ] Individual [ ] General Partnership [ ] Limited Partnership [X] Corporation [ ] Association

[ ] Other

[ ] If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. *(Designation must be a separate document from Assignment.)*

[X] Citizenship/State of Incorporation/Organization: Minnesota

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01 FC:481 40.00 OP
02 FC:482 225.00 OP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

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

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

Page 2

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## Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

## Correspondent Name and Address

Area Code and Telephone Number 602-257-7422 x7961

Name Carol Dahlberg, Gust Rosenfeld, PLC

Address (line 1) 201 N. Central Avenue, Suite 3300

Address (line 2) Phoenix, Arizona 85073-3300

Address (line 3)

Address (line 4)

## Pages

Enter the total number of pages of the attached conveyance document including any attachments. # 8

## Trademark Application Number(s) or Registration Number(s)

☐ Mark if additional numbers attached

*Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).*

| Trademark Application Number(s) | | | Registration Number(s) | | |
|---|---|---|---|---|---|
| 75085725 | | | 1918036 | 1856633 | 1846616 |
| | | | 1844241 | 1841845 | 1811968 |
| | | | 1769823 | 1769819 | 1595043 |

## Number of Properties

Enter the total number of properties involved. #

## Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): $

Method of Payment: Enclosed ☐ Deposit Account ☐

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number: #

Authorization to charge additional fees: Yes ☐ No ☐

## Statement and Signature

*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.*

| Carol M. Dahlberg | Carol Dahlberg | February 29, 2000 |
|---|---|---|
| Name of Person Signing | Signature | Date Signed |

# PATENT AND TRADEMARK SECURITY AGREEMENT

This Agreement, dated as of January 14, 2000 is made by and between ORION INDUSTRIES, INC., an Arizona corporation whose address and principal place of business is 118 West Julie Drive, Tempe, Arizona 85283 (the "Debtor"), and WELLS FARGO BUSINESS CREDIT, INC., a Minnesota corporation, whose address and principal place of business is 100 West Washington Street, 7th Floor, MAC S4101-076, Phoenix, Arizona 85003 (the "Secured Party").

## Recitals

The Debtor and the Secured Party have entered into a Credit and Security Agreement of even date herewith (as the same may hereafter be amended, supplemented or restated from time to time, the "Credit Agreement") setting forth the terms on which the Secured Party may now or hereafter make certain loans or other financial accommodations to or for the account of the Debtor.

As a further condition to making any loan or other financial accommodation under the Credit Agreement or otherwise, the Secured Party has required the execution and delivery of this Agreement by the Debtor.

ACCORDINGLY, in consideration of the mutual covenants contained in the Credit Agreement and herein, the parties hereby agree as follows:

1. Definitions. All terms defined in the Recitals hereto or in the Credit Agreement that are not otherwise defined herein shall have the meanings given to them therein. In addition, the following terms have the meanings set forth below:

"Obligations" means each and every debt, liability and obligation of every type and description arising under or in connection with any Loan Document (as defined in the Credit Agreement) which the Debtor may now or at any time hereafter owe to the Secured Party, whether such debt, liability or obligation now exists or is hereafter created or incurred and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, independent, joint, several or joint and several, and including specifically, but not limited to, the Obligations (as defined in the Credit Agreement).

"Patents" means all of the Debtor's right, title and interest in and to patents or applications for patents, fees or royalties with respect to each, and including without limitation the right to sue for past infringement and damages therefor, and licenses thereunder, all as presently existing or hereafter arising or acquired, including without limitation the patents listed on Exhibit A.

"Trademarks" means all of the Debtor's right, title and interest in and to trademarks, service marks, collective membership marks, the respective goodwill associated with each, and licenses thereunder, all as presently existing or hereafter arising or acquired, including, without limitation, the marks listed on Exhibit B.

2. Security Interest. The Debtor hereby irrevocably pledges and assigns to, and grants the Secured Party a security interest, with power of sale to the extent permitted by law (the "Security Interest"), in the Patents and in the Trademarks to secure payment of the Obligations.

3. Representations, Warranties and Agreements. The Debtor hereby represents, warrants and agrees as follows:

(a) ***Existence; Authority***. The Debtor is a corporation, having full power to and authority to make and deliver this Agreement. The execution, delivery and performance of this Agreement by the Debtor have been duly authorized by all necessary action of the Debtor's board of directors, and if necessary its stockholders, and do not and will not violate the provisions of, or constitute a default under, any presently applicable law or its articles of incorporation or bylaws or any agreement presently binding on it. This Agreement has been duly executed and delivered by the Debtor and constitutes the Debtor's lawful, binding and legally enforceable obligation. The correct name of the Debtor is Orion Industries, Inc. The authorization, execution, delivery and performance of this Agreement do not require notification to, registration with, or consent or approval by, any federal, state or local regulatory body or administrative agency.

(b) ***Patents***. Exhibit A accurately lists all Patents owned or controlled by the Debtor as of the date hereof and accurately reflects the existence and status of registrations pertaining to the Patents as of the date hereof.

(c) ***Trademarks***. Exhibit B accurately lists all Trademarks owned or controlled by the Debtor as of the date hereof and accurately reflects the existence and status of Trademarks and all registrations pertaining thereto as of the date hereof.

(d) ***Title***. Subject to the Permitted Liens as defined in that certain Credit and Security Agreement of even date herewith, the Debtor has absolute title to each Patent and each Trademark listed on Exhibits A and B, free and clear of all security interests, liens and encumbrances, except the Security Interest. Subject to the Permitted Liens as defined in that certain Credit and Security Agreement of even date herewith, the Debtor (i) will have, at the time the Debtor acquires any rights in Patents or Trademarks hereafter arising, absolute title to each such Patent or Trademark free and clear of all security interests, liens and encumbrances, except the Security Interest, and (ii) will keep all Patents and Trademarks free and clear of all security interests, liens and encumbrances except the Security Interest.

(e) ***No Sale***. The Debtor will not sell or otherwise dispose of the Patents or Trademarks, or any interest therein, without the Secured Party's prior written consent.

(f) ***Defense***. The Debtor will at its own expense, and using its best efforts, protect and defend the Patents and Trademarks against all claims or demands of all persons other than the Secured Party.

(g) ***Maintenance***. The Debtor will at its own expense maintain the Patents and the Trademarks to the extent reasonably advisable in its business including, but not limited to, filing all applications to register and all affidavits and renewals possible with respect to issued registrations. The Debtor covenants that it will not abandon nor fail to pay any maintenance fee or annuity due and payable on any Patent or Trademark, nor fail to file any required affidavit in

support thereof, without first providing the Secured Party: (i) sufficient written notice, as provided in the Credit Agreement, to allow the Secured Party to timely pay any such maintenance fees or annuity which may become due on any of said Patents or Trademarks, or to file any affidavit with respect thereto, and (ii) a separate written power of attorney or other authorization to pay such maintenance fees or annuities, or to file such affidavit, should such be necessary or desirable.

(h) ***Secured Party's Right to Take Action.*** If the Debtor fails to perform or observe any of its covenants or agreements set forth in this Section 3, and if such failure continues for a period of ten (10) calendar days after the Secured Party gives the Debtor written notice thereof (or, in the case of the agreements contained in subsection (g), immediately upon the occurrence of such failure, without notice or lapse of time), or if the Debtor notifies the Secured Party that it intends to abandon a Patent or Trademark, the Secured Party may (but need not) perform or observe such covenant or agreement on behalf and in the name, place and stead of the Debtor (or, at the Secured Party's option, in the Secured Party's own name) and may (but need not) take any and all other actions which the Secured Party may reasonably deem necessary to cure or correct such failure.

(i) ***Costs and Expenses.*** Except to the extent that the effect of such payment would be to render any loan or forbearance of money usurious or otherwise illegal under any applicable law, the Debtor shall pay the Secured Party on demand the amount of all moneys expended and all costs and expenses (including reasonable attorneys' fees) incurred by the Secured Party in connection with or as a result of the Secured Party's taking action under subsection (h) or exercising its rights under Section 6, together with interest thereon from the date expended or incurred by the Secured Party at the highest rate then applicable to any of the Obligations.

(j) ***Power of Attorney.*** To facilitate the Secured Party's taking action under subsection (h) and exercising its rights under Section 6, the Debtor hereby irrevocably appoints (which appointment is coupled with an interest) the Secured Party, or its delegate, as the attorney-in-fact of the Debtor with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of the Debtor, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by the Debtor under this Section 3, or, necessary for the Secured Party, after an Event of Default, to enforce or use the Patents or Trademarks or to grant or issue any exclusive or non-exclusive license under the Patents or Trademarks to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Patents or Trademarks to any third party. The Debtor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein shall terminate upon the termination of the Credit Agreement as provided therein and the payment and performance of all Obligations (as defined therein).

(k) ***Intent to Use Applications.*** Debtor has or may have in the future considered the adoption of trademarks or service marks for which it has or will file applications for registration with the United States Patent and Trademark Office under Section 1 (b) of the Trademark Act ("intent to use"). The trademarks for which applications are so filed, and the applications filed in connection therewith are not Trademarks and are not subject to the security



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interest created herein. Debtor agrees that it will be an Event of Default under this Agreement if at any time any other person acquires any interest, including a security interest, in the trademarks or the applications. Debtor further agrees that upon issuance by the United States Patent and Trademark Office of any registration of any such marks, the marks so registered at that time shall become Trademarks under this Agreement and shall be subject to the security interest granted hereunder. Debtor shall notify Secured Party of the issuance of any such registration, and shall execute any document required at that time to perfect the security interest in such marks, and failure to do so shall be an Act of Default under this Agreement.

4. Debtor's Use of the Patents and Trademarks. The Debtor shall be permitted to control and manage the Patents and Trademarks, including the right to exclude others from making, using or selling items covered by the Patents and Trademarks and any licenses thereunder, in the same manner and with the same effect as if this Agreement had not been entered into, so long as no Event of Default occurs and remains uncured.

5. Events of Default. Each of the following occurrences shall constitute an event of default under this Agreement (herein called "Event of Default"): (a) an Event of Default, as defined in the Credit Agreement, shall occur; or (b) the Debtor shall fail promptly to observe or perform any covenant or agreement herein binding on it; or (c) any of the representations or warranties contained in Section 3 shall prove to have been incorrect in any material respect when made.

6. Remedies. Upon the occurrence of an Event of Default and at any time thereafter, the Secured Party may, at its option, take any or all of the following actions:

(a) The Secured Party may exercise any or all remedies available under the Credit Agreement.

(b) The Secured Party may sell, assign, transfer, pledge, encumber or otherwise dispose of the Patents and Trademarks.

(c) The Secured Party may enforce the Patents and Trademarks and any licenses thereunder, and if Secured Party shall commence any suit for such enforcement, the Debtor shall, at the request of Secured Party, do any and all lawful acts and execute any and all proper documents required by Secured Party in aid of such enforcement.

7. Miscellaneous. This Agreement has been duly and validly authorized by all necessary action, corporate or otherwise. This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by the Secured Party. A waiver signed by the Secured Party shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Secured Party's rights or remedies. All rights and remedies of the Secured Party shall be cumulative and may be exercised singularly or concurrently, at the Secured Party's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other. The Secured Party shall not be obligated to preserve any rights the Debtor may have against prior parties, to realize on the Patents and Trademarks at all or in any particular manner or order, or to

apply any cash proceeds of Patents and Trademarks in any particular order of application. This Agreement shall be binding upon and inure to the benefit of the Debtor and the Secured Party and their respective participants, successors and assigns and shall take effect when signed by the Debtor and delivered to the Secured Party, and the Debtor waives notice of the Secured Party's acceptance hereof. The Secured Party may execute this Agreement if appropriate for the purpose of filing, but the failure of the Secured Party to execute this Agreement shall not affect or impair the validity or effectiveness of this Agreement. A carbon, photographic or other reproduction of this Agreement or of any financing statement signed by the Debtor shall have the same force and effect as the original for all purposes of a financing statement. This Agreement shall be governed by the internal law of Arizona without regard to conflicts of law provisions. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Obligations.

**THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR PERTAINING TO THIS AGREEMENT.**

IN WITNESS WHEREOF, the parties have executed this Patent and Trademark Security Agreement as of the date written above.

ORION INDUSTRIES, INC.

By_____

Its President, CEO

WELLS FARGO BUSINESS CREDIT, INC.

By_____

Its Vice President



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STATE OF ARIZONA

COUNTY OF MARICOPA

The foregoing instrument was acknowledged before me this 14 day of JANUARY, 2000, by KURIEN JACOB, the CHIEF EXECUTIVE OFFICER of Orion Industries, Inc., an Arizona corporation, on behalf of the corporation.

(Seal and Expiration Date)

Patricia A. Foote
Notary Public

OFFICIAL SEAL
PATRICIA A. FOOTE
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires March 20, 2002

STATE OF Arizona

COUNTY OF Maricopa

The foregoing instrument was acknowledged before me this 19th day of January, 2000, by Dara Della Flora, a Vice President of Wells Fargo Business Credit, Inc., a Minnesota corporation, on behalf of the corporation.

(Seal and Expiration Date)

Mary E. Pischner
Notary Public

OFFICIAL SEAL
MARY E. PISCHNER
Notary Public - State of Arizona
MARICOPA COUNTY
My Comm. Expires Feb. 7, 2003



TEH: seb 334382.02 01/13/2000

# EXHIBIT A

## UNITED STATES ISSUED PATENTS

| Title | Patent Number | Issue Date |
|---|---|---|
| Circuitry with Means to Reduce Quantization Noise Ribbon Speaker System | 4,550,228 | October 29, 1986 |
| Adaptive Digital Audio Interpolation System | 5,888,221 | February 7, 1995 |
| Very Low Jitter Clock Recovery from Serial Audio Data | 5,598,423 | January 28, 1997 |
| Very Low Jitter Clock Recovery from Serial Audio Data | 5,404,362 | April 4, 1996 |
| Point Source Speaker System | 5,829,556 | |
| Retrofitable CD Player System | Application 08/754,764 | Application filed November 21, 1996 |

## FOREIGN ISSUED PATENTS

| Title | Country | Patent Number | Issue Date |
|---|---|---|---|
| Point Source Speaker System | Canada | 599976 | |

TEH: seb 334382.02 01/13/2000

EXHIBIT B

UNITED STATES ISSUED TRADEMARKS, SERVICE MARKS AND COLLECTIVE MEMBERSHIP MARKS

REGISTRATIONS

| Mark | Registration Number | Registration Date |
|---|---|---|
| Orion Team Extreme and design | 1,918,036 | September 12, 1995 |
| XTR and design | 1,856,633 | October 4, 1994 |
| Xtreme | 1,846,616 | July 26, 1994 |
| Design only | 1,844,241 | July 12, 1994 |
| Silencer | 1,841,845 | June 28, 1994 |
| Solus | 1,811,968 | December 21, 1993 |
| Colbalt | 1,769,823 | May 11, 1993 |
| Xtreme | 1,769,819 | May 11, 1993 |
| The Hott Set-Up | 1,595,043 | May 8, 1990 |

APPLICATIONS

| | | |
|---|---|---|
| Wired | 75/085,725 | Filed April 9, 1996 |

COLLECTIVE MEMBERSHIP MARKS

**NONE**

UNREGISTERED MARKS

**NONE**

TEH: seb 334382.02 01/13/2000