

09-06-2000

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



101450368

**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

☒ New

☐ Resubmission (Non-Recordation)
Document ID #

☐ Correction of PTO Error
Reel # Frame #

☐ Corrective Document
Reel # Frame #

Conveyance Type

☐ Assignment

☐ License

☒ Security Agreement

☐ Nunc Pro Tunc Assignment

☐ Merger

☐ Change of Name

☐ Other

Effective Date
Month Day Year

Conveying Party

☐ Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name

Formerly

☐ Individual ☐ General Partnership ☐ Limited Partnership ☒ Corporation ☐ Association

☐ Other

☒ Citizenship/State of Incorporation/Organization

Receiving Party

☐ Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

☐ Individual ☐ General Partnership ☐ Limited Partnership

☐ Corporation ☐ Association

☒ Other

☒ Citizenship/State of Incorporation/Organization

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.)

08/31/2000 MTHA11 00000281 1692396

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40.00 DP

FOR OFFICE USE ONLY

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

TRADEMARK
REEL: 002129 FRAME: 0470

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

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

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

#

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)

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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.

Gail E. Haefner

Name of Person Signing



Signature

August 1, 2000

Date Signed

RECORDATION FORM COVER SHEET
CONTINUATION
TRADEMARKS ONLY

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

Conveying Party

Enter Additional Conveying Party

☐ Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name

Formerly

☐ Individual ☐ General Partnership ☐ Limited Partnership ☐ Corporation ☐ Association

☐ Other

☐ Citizenship State of Incorporation/Organization

Receiving Party

Enter Additional Receiving Party

☐ Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

☐ Individual ☐ General Partnership ☐ Limited Partnership

☐ Corporation ☐ Association

☐ Other

☐ Citizenship/State of Incorporation/Organization

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Trademark Application Number(s)

Registration Number(s)

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TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "Agreement") is dated as of July 31, 2000, by and between FAB-TECH, INC., a Vermont corporation, with its principal place of business located at 21 Hercules Drive, Colchester, Vermont 05446 (the "Assignor"), and KEYBANK NATIONAL ASSOCIATION, a national banking association with its principal place of business located at 127 Public Square, Cleveland, Ohio 44114 and having an office at 149 Bank Street, Burlington, Vermont 05401 (the "Assignee").

RECITALS

Pursuant to and subject to the terms and conditions of that certain Loan Agreement of even date herewith (as the same may from time to time be amended, supplemented or otherwise modified, the "Loan Agreement"), between PSP Holding, Inc. ("PSP"), the Assignor and the Assignee, the Assignee has made or agreed to make certain Loans to PSP and the Assignor.

PSP has entered into a Stock Purchase Agreement dated as of June 21, 2000, with the Sellers (as defined in said Stock Purchase Agreement), pursuant to which PSP has agreed to purchase from the Sellers, and the Sellers have agreed to sell to PSP, the stock of the Assignor. Contemporaneously with the consummation of said purchase, PSP will merge into the Assignor, with the Assignor being the surviving entity. Simultaneously therewith, by operation of law the Assignor shall assume and become liable for all obligations, indebtedness and liabilities of PSP to the Assignee of any kind or nature and whenever arising.

As an inducement to the Assignee to enter into the Loan Agreement and make Loans pursuant thereto, the Assignor has agreed to pledge to the Assignee and grant to the Assignee a first position security interest in and lien on, among other things, all trademark applications and trademarks of the Assignor as security for the payment and performance of all Obligations (as such term is defined in the Loan Agreement) including, without limitation, payment of a Commercial Promissory Note (Term Note) in the principal amount of \$7,000,000 and a Line of Credit Commercial Promissory Note in the maximum principal amount of \$6,000,000 (as they may be amended or extended).

Capitalized terms used herein without definition shall have the meanings ascribed to them in the Loan Agreement.

NOW THEREFORE, in consideration of the premises and of the mutual covenants of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, it is hereby agreed as follows:

1. Assignment of Marks. To secure the complete and timely payment and satisfaction of all of the Obligations, the Assignor hereby grants, assigns and conveys to the Assignee a security interest in and to all trademark applications, trademarks (whether registered, unregistered or for which any application

to register has been filed), service mark applications, service marks (whether registered, unregistered or for which any application to register has been filed) and tradenames of the Assignor, including, but not limited to, those listed in Schedule A hereto (as the same may be amended pursuant hereto from time to time), together with all renewals thereof and all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements, all rights owned by the Assignor corresponding thereto throughout the world (all of the foregoing are collectively called the “Marks”; provided, however, that all such rights relating to, or arising out of, the registered trademark “Tool Vault”, U.S. Registration No. 1,647,192, shall be excluded from the definition of “Marks”), together with the goodwill of the business symbolized by each of the Marks and the registrations (if any) thereof.

2. Warranties and Representations. The Assignor hereby covenants and warrants that: (a) the Assignor is the sole and exclusive owner(s) of the entire right, title and interest in each of the Marks, free and clear of any liens, pledges, assignments or other encumbrances, other than a junior lien in favor of Parkway Capital Investors, LLC and Midwest Mezzanine Fund II, L.P.; (b) the Assignor has the unqualified right to enter into this Agreement and perform its terms; (c) the Marks are subsisting and have not been adjudged invalid or unenforceable; (d) each of the Marks is valid and enforceable; (e) Assignor has not received notice of any claim that the use of any of the Marks does or may violate the rights of any third person; and (f) the Assignor has used, and, subject to the provisions of Section 7 below, will continue to use for the duration of this Agreement, consistent standards of quality in its manufacture of products and delivery of services sold or provided under the Marks. The Assignor shall, in any event, indemnify and hold the Assignee and its directors, officers, employees and agents (collectively, the “Assignee Parties”) harmless from all losses, damages, costs and expenses, including reasonable legal costs and counsel fees, incurred by the Assignee Parties as the direct or indirect result of any action, claim or demand, whether or not groundless, alleging that the Marks infringe any trademarks held by third parties.

3. Right To Inspect. The Assignor hereby grants to the Assignee and its employees and agents the right to visit the Assignor’s plants and facilities where products sold or services provided under any of the Marks are manufactured, inspected, stored, or provided, and to inspect and review the products and quality control records relating thereto during normal business hours upon reasonable prior notice to the Assignor. Prior to or contemporaneously with visiting such plants or facilities of the Assignor, such party shall execute and deliver a confidentiality agreement relating to the intellectual property and trade secrets of the Assignor, upon the request of the Assignor. The Assignor shall do any and all acts reasonably required by the Assignee to ensure the Assignor’s compliance with Section 2(f) above.

4. Right to Benefits. If, before the Obligations shall have been satisfied in full, the Assignor shall become entitled to the benefit of any additional trademark or service mark registration, or any renewal or affidavit of any Mark, the provisions of Section 1 hereof shall automatically apply thereto, and the Assignor shall give the Assignee prompt written notice thereof.

5. Future Marks. The Assignor authorizes the Assignee to modify this Agreement by amending Schedule A to include any future trademarks, service marks or tradenames which are Marks under Section 1 or Section 4 hereof.

6. Default. The term “Default”, as used herein, shall mean: (a) any Event of Default under the Loan Agreement; and (b) any violation by the Assignor of any obligation, agreement, representation, warranty or covenant contained in this Agreement and any modification or amendment hereof which is not waived or cured and remedied within thirty (30) calendar days after notice thereof to the Assignor.

7. Assignor’s Right to Use Marks. Unless a Default shall occur and be continuing, the Assignor shall retain the legal and equitable title to the Marks and shall have the right to use the Marks in the ordinary course of its business but shall not be permitted to sell, assign, transfer or otherwise encumber the Marks or any part thereof; provided, however, that nothing herein contained shall prohibit the Assignor from failing to renew or otherwise abandoning any item included within the Marks if, in the Assignor’s good judgment, the retention of such item is not material to the proper conduct of its business; provided, however, that the Assignor shall give the Assignee ten (10) days’ prior written notice of any abandonment or failure to renew of any item included within the Marks.

8. Assignee’s Rights as Secured Party. If a Default shall have occurred and be continuing, the Assignee shall have, in addition to all other rights and remedies given it by this Agreement and the Loan Agreement and other Loan Documents, 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 Marks may be located (whether or not such Uniform Commercial Code applies to security interests in trademarks) and, without limiting the generality of the foregoing, the Assignee may immediately, without demand of performance and without advertisement, sell at public or private sale or otherwise realize upon, in Vermont or elsewhere, the whole or from time to time any part of the Marks and the goodwill associated therewith, or any interest which the Assignor have therein, and after deducting from the proceeds of said sale or other disposition of the Marks all expenses (including all reasonable expenses for brokers’ fees and legal services), shall apply the residue of such proceeds to the payment of the Obligations. Notice of any sale or other disposition of the Marks shall be given to the Assignor at least fifteen (15) calendar days before the time of any intended public or private sale or other disposition of the Marks is to be made, which the Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, the Assignee may, to the extent permissible under applicable law, purchase the whole or any part of the Marks sold, free from any right of redemption on the part of the Assignor, which right is hereby waived and released.

9. Power of Attorney. If a Default shall have occurred and be continuing, the Assignor hereby authorizes and empowers the Assignee to make, constitute and appoint any officer or agent of the Assignee as the Assignee may select in its exclusive discretion, as the Assignor’s true and lawful attorney-in-fact, with the power to endorse the Assignor’s name on all applications, documents, papers and instruments necessary for the Assignee to use the Marks, or to grant or issue any exclusive or non-exclusive license under the Marks to any third person, or necessary for the Assignee to assign, pledge, convey or otherwise transfer title in or dispose of the Marks and the goodwill associated therewith, to any third person. The Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable for the life of this Agreement and coupled with an interest.

10. Termination. At such time as the Assignor shall completely satisfy all of the Obligations, the Assignee shall execute and deliver to the Assignor all deeds, assignments and other instruments as may be necessary or proper to re-vest in the Assignor the full unencumbered title to the Marks and the goodwill associated therewith, subject to any disposition thereof which may have been made by the Assignee pursuant hereto.

11. Fees and Expenses of Assignee. If a Default shall have occurred and be continuing, any and all fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and legal expenses, incurred by the Assignee Parties in connection with the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving the Marks, or in defending or prosecuting any actions or proceedings arising out of or related to the Marks, shall be borne and paid by the Assignor on demand by the Assignee, and until so paid shall be added to the principal amount of the Obligations and shall bear interest at a rate equal to 4% per annum in excess of the interest rate otherwise in effect on the Term Note.

12. Protection of Marks. Subject only to the first proviso in Section 7 hereof, the Assignor shall take all actions reasonably necessary to protect and defend the Marks and shall institute such proceedings to enforce the Marks as it, in its reasonable business judgment, deems appropriate. The Assignee shall, upon the reasonable request of the Assignor, do any and all lawful acts and execute all proper documents in aid of such protection, defense and enforcement, and the Assignor shall promptly, upon demand, reimburse and indemnify the Assignee Parties for all costs and expenses incurred by the Assignee in connection therewith.

If a Default shall have occurred and be continuing, the Assignee shall have the right but shall in no way be obligated to bring suit in its own name to enforce the Marks, in which event the Assignor shall at the request of the Assignee do any and all lawful acts and execute any and all proper documents required by the Assignee in aid of such enforcement, and the Assignor shall promptly, upon demand, reimburse and indemnify the Assignee Parties for all costs and expenses incurred by the Assignee in the exercise of its rights under this Section 12.

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

15. Manufacture and Sale. The parties understand and agree that the collateral security assignment of the Marks as provided for in this Agreement, together with other collateral provided to the Assignee pursuant to the Loan Agreement and the other Loan Documents, will permit the Assignee, upon the happening of a Default, to make use of all rights to the Marks and the goodwill associated therewith, all of which will permit the Assignee to manufacture and sell the products for which the use of the Marks is associated and maintain substantially the same product specifications and quality as maintained by the Assignor.

16. Amendment. This Agreement is subject to modification only by a writing signed by the parties, except as provided in Section 5 hereof.

17. Successors and Assigns. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties.

18. Governing Law. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Vermont.

19. Judicial Proceedings. EACH PARTY TO THIS AGREEMENT AGREES THAT ANY SUIT, ACTION, OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT OR INSTITUTED BY ANY PARTY HERETO OR ANY SUCCESSOR OR ASSIGN OF ANY PARTY, ON OR WITH RESPECT TO THIS AGREEMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, THE ASSIGNOR WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. THE ASSIGNOR ACKNOWLEDGES AND AGREES THAT THIS SECTION IS A SPECIFIC AND MATERIAL ASPECT OF THIS AGREEMENT.

20. Counterparts. This Agreement may be executed in any number of duplicate originals or counterparts, each of such duplicate originals or counterparts shall be deemed to be an original and all taken together shall constitute one and the same instrument.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have executed this Agreement the day and year first above written.

WITNESS:

FAB-TECH, INC.

Gail E. Harper

By: Andrew D. Frost
Andrew D. Frost
Chairman

STATE OF VERMONT
CHITTENDEN COUNTY, ss.

At Burlington, in said County, this 28th day of July, 2000, personally appeared Andrew D. Frost, the Chairman and duly authorized agent of Fab-Tech, Inc., and he acknowledged this instrument, by him signed, to be his free act and deed and the free act and deed of Fab-Tech, Inc.

Before me, Gail Harper
Notary Public

My Commission Expires: February 10, 2003

WITNESS:

KEYBANK NATIONAL ASSOCIATION

Gail Harper

By: John W. Kingston
John W. Kingston
Senior Vice President

STATE OF VERMONT
CHITTENDEN COUNTY, ss.

At Burlington, in said County, this 28th day of July, 2000, personally appeared John W. Kingston, the Senior Vice President and duly authorized agent of KeyBank National Association and he acknowledged this instrument, by him signed, to be his free act and deed and the free act and deed of KeyBank National Association.

Before me, Gail Harper
Notary Public

My Commission Expires: February 10, 2003

**LIST OF TRADEMARK REGISTRATIONS
AND PENDING APPLICATIONS**

| <u>MARK</u> | <u>REG. NUMBER</u> | <u>REG. DATE</u> |
|-------------|--------------------|------------------|
| PSP | 1,692,396 | 06/09/1992 |

Clients:213535_v2: 1438-00061