

09-19-2000

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



HEET

101461997

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

Submission Type

- ☒ New *9.1.00*
- ☐ 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 Effective Date
Month Day Year
06/03/1991
- ☐ Change of Name
- ☒ Other Agreement of Consolidation

Conveying Party

☒ Mark if additional names of conveying parties attached

Name Liberty Distributors, Inc.

Execution Date
Month Day Year

06/03/1991

Formerly

- ☐ Individual ☐ General Partnership ☐ Limited Partnership ☒ Corporation ☐ Association
- ☐ Other
- ☒ Citizenship/State of Incorporation/Organization Delaware

Receiving Party

☐ Mark if additional names of receiving parties attached

Name Liberty-Sentry Hardware Distributors, Inc.

DBA/AKA/TA

Composed of

Address (line 1) 2570 East Devon Avenue

Address (line 2)

Address (line 3) Des Plaines, Illinois 60018-4936, United States of America

- ☐ Individual ☐ General Partnership ☐ Limited Partnership ☐ 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.)
- ☒ Corporation ☐ Association
- ☐ Other
- ☒ Citizenship/State of Incorporation/Organization Delaware

09/18/2000 DNGUYEN 00000619 702118

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

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 312-715-4000

Name Mark R. Galis

Address (line 1) Alzheimer & Gray

Address (line 2) Suite 4000

Address (line 3) 10 South Wacker Drive

Address (line 4) Chicago, Illinois 60606

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

16

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)

702,118

Number of Properties

Enter the total number of properties involved.

1

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$ 40.00

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:

011,156

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.

Mark R. Galis

Name of Person Signing

Mark R. Galis

Signature

8/28/00

Date Signed

Conveying Party☐ Mark if additional names of conveying parties attached

Enter Additional Conveying Party

Execution Date
Month Day Year

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Name Sentry Hardware CorporationFormerly ☐ Individual ☐ General Partnership ☐ Limited Partnership ☒ Corporation ☐ Association☐ Other ☒ Citizenship State of Incorporation/Organization Ohio**Receiving Party**

Enter Additional Receiving Party

☐ Mark if additional names of receiving parties attachedName DBA/AKA/TA Composed of Address (line 1) Address (line 2) Address (line 3) ☐ Individual ☐ General Partnership ☐ Limited Partnership☐ Other ☐ Corporation ☐ Association☐ 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.)

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)

AGREEMENT OF CONSOLIDATION

This Agreement of Consolidation (the "Agreement") is entered into as of June 3, 1991, by and between Liberty Distributors, Inc., a Delaware corporation ("Liberty"), and Sentry Hardware Corporation, an Ohio corporation ("Sentry"). Liberty and Sentry are sometimes referred to collectively as the "constituent corporations."

ARTICLE I

THE CONSOLIDATION

SECTION 1.1 The Consolidation. Subject to the terms and conditions hereof and in accordance with the Delaware General Corporation Law and the Ohio General Corporation Law, Liberty and Sentry will be consolidated (the "Consolidation") into a new corporation formed by the consolidation, which shall be a corporation of the State of Delaware (the "Resulting Corporation") as soon as practicable following the satisfaction or waiver of the conditions set forth in Article V hereof. Upon the effectiveness of the Consolidation, the separate corporate existences of Liberty and Sentry shall cease.

SECTION 1.2 Effective Time. The Consolidation shall become effective at the opening of business on the date on which certificates of consolidation are filed in the offices of the Secretary of State of Delaware and the Secretary of State of Ohio in such form as is required by the General Corporation Law of Delaware and the General Corporation Law of Ohio, respectively (the "Effective Time"). Subject to Article V hereof, the Effective Time shall occur as soon as practicable following approval of the Consolidation by the stockholders of the constituent corporations as provided herein, it being the intent of the parties that the Effective Time be the opening of business on July 1, 1991.

SECTION 1.3 Name. The name of the Resulting Corporation shall be Liberty-Sentry Hardware Distributors, Inc.

SECTION 1.4 Certificate of Incorporation and Bylaws. The Certificate of Incorporation of the Resulting Corporation shall be as set forth in Appendix I hereto. The Bylaws of the Resulting Corporation shall be as set forth in Appendix II hereto.

SECTION 1.5 Directors. The Board of Directors of the Resulting Corporation shall consist of the following persons, who shall serve for the term provided in the bylaws:

E. H. White, Jr.
David G. Cook
Raymond L. Thomas
R. Joseph Wildman
William M. Fondren, Jr.
Michael S. Jensen
William F. Hooten

John Lize, Jr.
Terrence L. Smith
Neil Marglous
Louis R. Davis
Edwin R. Masback, Jr.
Mack Stout

SECTION 1.6 Officers. The officers of the Resulting Corporation shall be the following persons:

Chairman of the Board	-	John Lize, Jr.
Vice Chairman of the Board	-	E. H. White, Jr.
President	-	William F. Hooten
Secretary	-	[name to be inserted prior to June 11]

SECTION 1.7 Stockholders Meeting. Each of the constituent corporations will take all action necessary to convene a meeting of its stockholders as promptly as practicable to consider and vote upon the Consolidation.

ARTICLE II

TREATMENT OF SHARES

At the Effective Time, each issued and outstanding share of common stock of Liberty, and each issued and outstanding share of common stock of Sentry, shall, by virtue of the Consolidation and without any action on the part of the holder thereof, be converted into one fully paid and non-assessable share of common stock of the Resulting Corporation. Each holder of a certificate representing prior to the Effective Time a share or shares of common stock of Liberty or of Sentry shall surrender the same to the Resulting Corporation and shall be entitled to receive in exchange therefor a certificate representing the number of shares of common stock of the Resulting Corporation into which the shares of common stock of Liberty or Sentry theretofore represented by the certificate or certificates so surrendered have been converted by virtue of the Consolidation.

ARTICLE III

OTHER TERMS OF THE CONSOLIDATION

SECTION 3.1 Delaware Registered Office and Agent. The registered office and registered agent of the Resulting Corporation shall be as set forth in its Certificate of Incorporation attached hereto as Appendix I.

SECTION 3.2 Ohio Qualification. The Resulting Corporation is not obtaining a license to transact business as a foreign corporation in the State of Ohio.

SECTION 3.3 Consent to Service. The Resulting Corporation consents to be sued and served with process in the State of Ohio and irrevocably appoints the Secretary of State of the State of Ohio as its agent to accept service of process in any proceeding in the State of Ohio to enforce against the Resulting Corporation any obligation of Sentry, or to enforce the right of a dissenting shareholder, if any, of Sentry.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

Liberty. SECTION 4.1 Representations and Warranties of
Liberty represents and warrants as follows:

(a) Liberty is a corporation duly incorporated and validly existing in good standing under the laws of the State of Delaware. It is licensed to transact business as a foreign corporation in the State of Illinois.

(b) Liberty's authorized capital stock consists solely of 500 shares of common stock, par value \$1.00 per share, of which 17 shares are issued and outstanding and none are held in its treasury. There are no outstanding options, warrants or rights to acquire shares of common stock of Liberty or securities convertible into or exchangeable for common stock of Liberty. Liberty has 17 members, each of which owns one share of common stock.

(c) The information furnished in writing by Liberty to Sentry in connection with the Consolidation, and the information supplied by Liberty for inclusion in the joint proxy statement relating to the meetings of stockholders of the constituent corporations to consider and vote upon the Consolidation, contains no untrue statement of a material fact and does not omit to state any material fact necessary to make the statements so contained not misleading.

(d) Liberty has the requisite corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by Liberty's Board of Directors and, except for the approval of its stockholders, no other corporate proceedings on the part of Liberty are necessary to authorize this Agreement and the transaction contemplated hereby. This Agreement constitutes a valid and

binding agreement of Liberty, enforceable against Liberty in accordance with its terms. Liberty is not subject to or obligated under any charter, bylaw or contract provision or any license, franchise, permit, order or decree, which would be breached or violated or in respect of which a right of acceleration would be created by its execution and performance of this Agreement.

SECTION 4.2 Representations and warranties of

Sentry.

(a) Sentry is a corporation duly incorporated and validly existing in good standing under the laws of the State of Ohio. It is licensed to transact business as a foreign corporation in the State of Illinois.

(b) Sentry's authorized capital stock consists solely of 500 shares of common stock, par value \$1.00 per share, of which 11 shares are issued and outstanding and none are held in its treasury. There are no outstanding options, warrants or rights to acquire shares of common stock of Sentry or securities convertible into or exchangeable for common stock of Sentry. Sentry has 11 members, each of which owns one share of common stock.

(c) The information furnished in writing by Sentry to Liberty in connection with the Consolidation, and the information supplied by Sentry for inclusion in the joint proxy statement relating to the meetings of stockholders of the constituent corporations to consider and vote upon the Consolidation, contains no untrue statement of a material fact and does not omit to state any fact necessary to make the information furnished not misleading.

(d) Sentry has the requisite corporate power and authority to enter into this Agreement and to carry out its obligations hereunder. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by Sentry's Board of Directors and, except for the approval of all of its stockholders, no other corporate proceedings on the part of Sentry are necessary to authorize this Agreement and the transactions contemplated hereby. This Agreement constitutes a valid and binding agreement of Sentry, enforceable against Sentry in accordance with its terms. Sentry is not subject to or obligated under any charter,

bylaw or contract provision or any license, franchise, permit, order or decree, which would be breached or violated or in respect of which a right of acceleration would be created by its execution and performance of this agreement.

ARTICLE V

CONDITIONS

SECTION 5.1 Conditions to Each Party's Obligation to Effect the Consolidation. The respective obligations of Liberty and Sentry to effect the Consolidation shall be subject to the fulfillment or waiver at or prior to the Effective Time of the following conditions:

(a) this Agreement and the transactions contemplated hereby shall have been approved and adopted by the requisite vote of the holders of the common stock of Liberty and Sentry in accordance with the General Corporation Law of Delaware and the General Corporation Law of Ohio, respectively;

(b) no shareholder of either Liberty or Sentry (except Worthington Hardware or General Hardware) shall immediately prior to the Effective Time have perfected its right to dissent and demand payment in cash for its common stock of Liberty or Sentry pursuant to the applicable provisions of the Delaware General Corporation Law or the Ohio General Corporation Law;

(c) each shareholder of the constituent corporations shall have executed the Stockholders Agreement Relating to Consolidation of Liberty Distributors, Inc. and Sentry Hardware, Inc., dated as of the date of this Agreement and an Indemnification and Contribution Agreement describing the manner in which indemnification payments payable by or receivable by them are to be allocated;

(d) Liberty and Sentry shall have completed their due diligence reviews to their satisfaction;

(e) there shall have been no challenges to the consolidation filed or threatened by federal or state antitrust enforcement authorities, and no investigations commenced;

(f) there shall have been no notice of income tax audit or liability issued to Sentry or Liberty after the date hereof;

(g) there shall have been no litigation commenced against Sentry or Liberty after the date hereof seeking damages in excess of \$10,000 for which there is no insurance in place, or seeking to enjoin the consolidation or the continued operation of the Resulting Corporation;

(h) each constituent corporation shall have provided the other with financial statements as of a date reasonably proximate to the Effective Time;

(i) the constituent corporations shall have agreed on a formula and mechanism to equalize the equity contributions of the stockholders of each to the Resulting Corporation; and

(j) there shall have been no material change in the financial or operating status of Sentry or Liberty since the date hereof (provided that the addition of new stockholders shall not constitute such a material change).

SECTION 5.2 Conditions to Obligations of Liberty.

The obligation of Liberty to effect the Consolidation shall be subject, at the option of Liberty, to the fulfillment at or prior to the Effective Time of the following conditions:

(a) Sentry shall have performed in all material respects its agreements contained in this Agreement required to be performed on or prior to the Effective Time; and

(b) the representations and warranties of Sentry set forth in Article IV of this Agreement shall be true and correct in all material respects as of the Effective Time as if made as of such time, except as contemplated or permitted by this Agreement.

SECTION 5.3 Conditions to Obligations of Sentry.

The obligations of Sentry to effect the Consolidation shall be subject, at the option of Sentry, to the fulfillment at or prior to the Effective Time of the following conditions:

(a) Liberty shall have performed in all material respects its agreements contained in this Agreement required to be performed on or prior to the Effective Time; and

(b) the representations and warranties of Liberty set forth in Article IV of this Agreement shall be true and correct in all material respects as of the Effective Time as if made as of such

time, except as contemplated or permitted by this Agreement.

ARTICLE VI

INDEMNIFICATION

SECTION 6.1 Indemnification by Liberty. Liberty (and its shareholders immediately prior to the Effective Time, in the proportions in which such costs and expenses are apportioned by agreement of Liberty stockholders) agrees to indemnify and hold harmless the Resulting Corporation and each shareholder of Sentry immediately prior to the Effective Time against (a) all Liberty's liabilities arising prior to the Effective Time, and (b) any and all losses, claims, damages and liabilities arising out of or based upon (1) any breach of any of the representations and warranties of Liberty set forth in Article IV hereof or (2) any breach by Liberty of any agreement by it set forth in this Agreement.

SECTION 6.2 Indemnification by Sentry. Sentry (and its stockholders immediately prior to the Effective Time, in the proportions in which such costs and expenses are apportioned by agreement of Sentry stockholders) agrees to indemnify and hold harmless the Resulting Corporation and each shareholder of Liberty immediately prior to the Effective Time against (a) all Sentry's liabilities arising prior to the Effective Time; (b) any and all losses, claims, damages and liabilities arising out of or based upon (1) any breach of any of the representations and warranties of Sentry set forth in Article IV hereof or (2) any breach by Sentry of any agreement by it set forth in this Agreement; and (c) any amounts paid to Worthington Hardware or General Hardware in connection with assertion of dissenter's rights.

SECTION 6.3 Payment and Recourse. The Resulting Corporation shall pay all valid obligations assumed from the constituent corporations. If the shareholders of either constituent corporation become entitled to indemnification pursuant to this Article, the amounts to which they become entitled shall be paid only by (a) reducing the amounts that become due to the indemnifying shareholders from the Resulting Corporation and/or (b) increasing the amounts that become due to the indemnified shareholders from the Resulting Corporation (subject to Section 6.5 below).

SECTION 6.4 Elements of Indemnification. Indemnification shall include amounts due pursuant to the foregoing Sections of this Article VI plus all judgments, penalties, fines, interest and reasonable costs, expenses and attorneys' fees incurred in connection with obtaining compliance therewith.

SECTION 6.5 Individual Liability. If a stockholder is or would have been personally liable for payment of any obli-

gation asserted against and paid by the Resulting Corporation, such stockholder will remain liable therefor and indemnify and hold harmless the Resulting Corporation and all other stockholders from same.

ARTICLE VII

TERMINATION, AMENDMENT AND WAIVER

SECTION 7.1 Termination. This agreement may be terminated at any time prior to the Effective Time, whether before or after the approval by the stockholders of either constituent corporation:

(a) by mutual consent of the Boards of Directors of Liberty and Sentry;

(b) by either constituent corporation if at the meeting of the stockholders of either constituent corporation (including an adjournment or postponement thereof) called pursuant to Section 1.6 hereof, the vote on the Consolidation shall have occurred and the requisite vote of the stockholders of either constituent corporation in favor of the Consolidation shall not have been obtained;

(c) by either constituent corporation if the Consolidation shall not have been consummated on or before July 1, 1991; and

(d) by either constituent corporation if the conditions of Section 5.1 and the conditions imposed on the other constituent corporation have not been satisfied.

SECTION 7.2 Effect of Termination. In the event of termination of this Agreement as provided above, this Agreement shall forthwith become void and have no effect, and there shall be no liability on the part of either constituent corporation (other than Section 8.2 and except for any willful breach hereof).

SECTION 7.3 Amendment. This Agreement may be amended by the parties hereto by action taken by or on behalf of their respective Boards of Directors at any time before or after approval hereof by the stockholders of either constituent corporation. This Agreement may not be amended except by an instrument in writing signed on behalf of each of the parties hereto.

SECTION 7.4 Waiver. At any time prior to the Effective Time, either party hereto, by action taken by its Board of Directors, may (i) extend the time for the performance of any of the obligations or other acts of the other party hereto, (ii) waive any inaccuracies in the representation and warranties of

the other party contained herein or in any document delivered pursuant hereto and (iii) waive compliance by the other party with any of the agreements or conditions contained herein. Any agreement on the part of a party hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

ARTICLE VIII

GENERAL PROVISIONS

SECTION 8.1 Notices. All notices and other communications hereunder shall be in writing and shall be deemed given if delivered personally or mailed by registered or certified mail (return receipt requested) to the parties at the following addresses (or at such other address for a party as shall be specified by like notice):

If to Liberty:

2570 East Devon Avenue
Des Plaines, Illinois 60018
Attn: William F. Hooten

and

Robert T. Johnson, Jr.
Bell, Boyd & Lloyd
Three First National Plaza
70 West Madison Street, Suite 3200
Chicago, Illinois 60602-207

If to Sentry:

2700 River Road, Suite 200
Des Plaines, Illinois 60018
Attn: Ron Pink

and

John C. Stiefel
Alzheimer & Gray
Suite 4000
10 South Wacker Drive
Chicago, Illinois 60606

SECTION 8.2 Confidentiality. Each constituent corporation will treat and will cause its accountants, counsel and other representatives to treat confidentially all documents and information concerning the other constituent corporation furnished to it in connection with the transactions contemplated by this Agreement, except to the extent that such information or documents (i) become generally available to the public other than

as a result of a disclosure by the constituent corporation receiving such information or its representative, (ii) were available to the constituent corporation receiving such information on a nonconfidential basis prior to disclosure to it by the other constituent corporation or its representative, or (iii) become available to the constituent corporation receiving such information on a nonconfidential basis from a source other than the other constituent corporation or its representatives, provided that such source is not known, and by reasonable effort could not be known, by the constituent corporation receiving such information or its representatives to be bound by a confidentiality agreement with the other constituent corporation or its representatives or otherwise prohibited from transmitting the information to the constituent corporation receiving such information by a contractual, legal or fiduciary obligation.

SECTION 8.3 Liberty Real Estate. If the land and improvements owned by Liberty at 2570 East Devon Avenue, Des Plaines, Illinois 60018 are not sold prior to the Effective Time and are subsequently sold by the Resulting Corporation, the net proceeds thereof shall be paid to the persons who at the Effective Time are (i) stockholders of Liberty or (ii) "Affiliates" of Liberty as defined in Liberty's bylaws, as their interests shall appear. The net proceeds are defined as the amount remaining or distributable after the payment of all expenses and liabilities, including any income or other taxes payable by the Resulting Corporation in connection with the sale, exchange, lease, or distribution of such real estate. All accruals including to the former Liberty stockholders and affiliates will be charged with all expenses of maintaining, operating, insuring, selling, and any other indebtedness attributable to the ownership of such real estate by the Resulting Corporation, including income tax, real estate and other taxes attributable thereto. Such former Liberty stockholders and affiliates will also be entitled to receive whatever income is received from leasing the real estate.

SECTION 8.4 Survival. No claim for breach of a representation or warranty contained herein may be filed after thirty-six months following the Effective Time.

SECTION 8.5 Miscellaneous. This Agreement (i) constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, among the parties, or any of them, with respect to the subject matter hereof; (ii) is not intended to confer upon any person other than the constituent corporations and their shareholders any rights or remedies hereunder; and (iii) shall be governed in all respects, including validity, interpretation and effect by the laws of the State of Illinois. This Agreement may be executed in two or more counterparts which together shall constitute a single agreement.

IN WITNESS WHEREOF, Liberty and Sentry have caused this Agreement to be signed as of the date first written above.

LIBERTY DISTRIBUTORS, INC.

By *William J. Weston*
resident

SENTRY HARDWARE CORPORATION

By *Ronald J. Link*
~~President~~
Managing Director

CERTIFICATE OF INCORPORATION

OF

LIBERTY-SENTRY HARDWARE DISTRIBUTORS, INC.

FIRST. The name of the corporation is

Liberty-Sentry Hardware Distributors, Inc.

SECOND. The address of its registered office in the State of Delaware is 32 Loockerman Square, Suite L-100, City of Dover, County of Kent. The name of its registered agent at such address is The Prentice-Hall Corporation System, Inc.

THIRD. The nature of the business or purposes to be conducted or promoted is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of Delaware.

FOURTH. The total number of shares of all classes of stock which the corporation shall have authority to issue is five hundred (500), all of which are to have a par value of \$1.00 each and are to be of a class designated common stock.

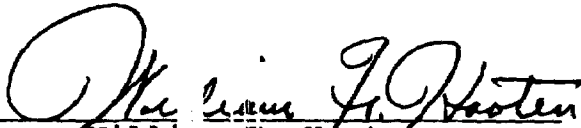
FIFTH. The corporation was formed by the consolidation of Liberty Distributors, Inc., a Delaware corporation, and Sentry Hardware Corporation, an Ohio corporation.

SIXTH. The name and mailing address of the incorporator is William F. Hooten, 2570 East Devon Avenue, Des Plaines, Illinois 60018-4936.

SEVENTH. The corporation reserves the right to amend, alter, change or repeal any provision contained in this certificate of incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

EIGHTH. No director of the corporation shall be liable to the corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the Delaware General Corporation Law, or (iv) for any transaction from which the director derived an improper personal benefit.

The undersigned, being the sole incorporator, hereby declares that the facts stated herein are true and accordingly has hereunto set his hand this _____ day of _____, 1991.


William F. Hooten