

04-12-2001



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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 3-28-01

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
03 11 2001

Conveying Party Mark if additional names of conveying parties attached

Name PROTEIN SOLUTIONS, INC. Execution Date
Month Day Year
03 11 2001

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship/State of Incorporation/Organization VIRGINIA

Receiving Party Mark if additional names of receiving parties attached

Name PNC BANK, NATIONAL ASSOCIATION

DBA/AKA/TA

Composed of

Address (line 1) TWO TOWER CENTER

Address (line 2)

Address (line 3) EAST BRUNSWICK NEW JERSEY USA 08816
City State/Country Zip Code

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 NEW JERSEY

04/11/2001 DBYRNE 00000044 2388668

FOR OFFICE USE ONLY

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01 FC:481 40.00 DP
02 FC:482 25.00 DP

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: 002269 FRAME: 0500

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)

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.

CHRISTINE M. RIGNEY, ESQ.

03-27-2001

Name of Person Signing

Signature

Date Signed

Attorney for Receiving Party
PNC Bank, National Association

**PATENTS, TRADEMARKS
AND COPYRIGHTS SECURITY AGREEMENT**

THIS PATENTS, TRADEMARKS AND COPYRIGHTS SECURITY AGREEMENT is made as of the 16 day of March, 2001 between PROTEIN SOLUTIONS, INC., a Virginia corporation, having its principal office at 1224 West Main Street, Suite 777, Charlottesville, Virginia 22901 ("Assignor"), and PNC BANK, NATIONAL ASSOCIATION, having an office at Two Tower Center, East Brunswick, New Jersey 08816, as Agent for the Lenders under the Credit Agreement (such terms are hereinafter defined).

WITNESSETH:

WHEREAS, Assignor has become a party to the Revolving Credit, Term Loan and Security Agreement (as same may be amended, modified or supplemented from time to time, the "Credit Agreement") and other loan documents executed in connection therewith (all of which are collectively referred to as the "Other Documents") to Lenders to secure loans by Lenders to Assignor and others in the aggregate amount of \$14,500,000; and

WHEREAS, the Assignor owns the United States copyrights which have been registered with the United States Copyright Office and has made applications for a United States copyright registration with the United States Copyright Office with respect to applications listed on Schedule A hereto ("Copyrights"), owns the United States patents and the applications for a United States patents listed on Schedule B ("Patents"), and owns the United States trademark applications and trademarks listed Schedule C hereto, along with the good-will of the Assignor to which such trademark applications and trademarks relate ("Trademarks"); and

WHEREAS, pursuant to the Credit Agreement, the Assignor is required to and has conveyed and granted to Lenders a security interest in, among other things, all right, title and interest of the Assignor in, to and under all of the Assignor's Copyrights, Patents and Trademarks, whether presently existing or hereafter arising or acquired, and all products, substitutions, replacements and proceeds thereof to secure all obligations of the Assignor to Lenders, including contingent obligations; and

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, the Assignor does hereby absolutely grant and convey to Lenders a security interest in, all of the Assignor's right, title and interest in, to and under the following, whether presently existing or hereafter arising or acquired:

- (a) Each of the Copyrights which are presently, or in the future may be, owned by the Assignor, in whole or in part, as well as any application for a United States copyright registration now or hereafter made with the United States Copyright Office by the Assignor, as the same may be updated hereafter from time to time;
- (b) Each of the Patents, which are presently, or in the future may be owned by the Assignor, in whole or in part, as well as all applications for United States patents now or hereafter owned by the Assignor, as the same may be updated hereafter from time to time; and

(c) Each of the Trademarks, which presently, or in the future may be owned by the Assignor, in whole or in part, as well as all applications for trademarks now or hereafter owned by the Assignor, as the same may be updated hereafter from time to time.

Said security interest includes, without limitation, all proceeds thereof, the right to sue for past, present, and future infringements thereof, all rights corresponding thereto throughout the world, and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof.

1) Assignor covenants and warrants that:

(a) it is the true and lawful exclusive owner of all the Copyrights listed on Schedule A and that said Copyrights constitute all the United States Copyrights registered in the United States Copyright Office and applications for United States Copyrights that the Assignor now owns;

(b) it is the true and lawful exclusive owner of all the Patents listed on Schedule B and that said Patents constitute all the United States Patents registered in the United States Patent and Trademark Office and applications for United States Patents that the Assignor now owns;

(c) it is the true and exclusive owner of all the Trademarks listed on Schedule C and that said Trademarks constitute all the United States Trademarks registered in the United States Patent and Trademark Office and applications for Trademarks that the Assignor now owns;

(d) The Assignor agrees, at Lenders' request, on a semi-annual basis to execute such additional agreements with respect any new Patent, Trademark and/or Copyright in which the Assignor hereinafter obtains rights. The Assignor further warrants that it is not aware of any third party claim that any of the aspects the Assignor's present or contemplated business operations infringe or will infringe on any Patent, Trademark or Copyright. The Assignor grants to Lenders an absolute power of attorney to sign any document which will be required by the United States Copyright Office or the United States Patent and Trademark Office in order to record the security interest in the Patents, Trademarks and Copyrights;

(e) The Patents, Trademarks and Copyrights are subsisting and have not been adjudged invalid or unenforceable;

(f) Each of the Patents, Trademarks and Copyrights is valid and enforceable;

(g) Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Patents, Trademarks and Copyrights, free and clear of any liens, charges and encumbrances, including without limitation pledges, assignments, licenses, registered user agreements, and covenants by Assignor not to sue third persons, other than the assignment to Lenders pursuant to this Agreement;

(h) Assignor has the unqualified right to enter into this Agreement and perform its terms;

(i) Assignor has used, and will continue to use for the duration of this Agreement, proper statutory notice in connection with its use of the Patents, Trademarks and Copyrights;

(j) Assignor has used, and will continue to use for the duration of this Agreement, consistent standards of quality in its manufacture or use of products sold under the Trademarks;

(k) At its own expense, the Assignor shall make timely payment of all post-issuance fees required pursuant to 35 U.S.C. Sec. 41 to maintain in force rights under each Patent, to the extent that Assignor, in the exercise of its reasonable business judgment, deems advisable;

(l) The Assignor hereby agrees not to divest itself of any right under any Copyright, Trademark and/or Patent, which divestiture could have a material adverse effect on Assignor's business, its properties, or its ability perform its obligations under the Credit Agreement; and

(m) The Assignor agrees to promptly, upon learning thereof, furnish Lenders in writing all pertinent information available to the Assignor with respect to any infringement or other violation of the Assignor's rights in any Copyright, Trademark and/or Patent, which infringement or violation could have a material adverse effect on the Assignor, its properties or its ability to perform its obligations under the Credit Agreement and other Loan Documents (as defined in the Credit Agreement). To the extent that the Assignor in the exercise of its reasonable business judgment deems advisable, the Assignor further agrees to prosecute any Persons infringing upon any Copyright, Trademark and/or Patent to the extent such infringement could have a material adverse affect on the Assignor, its properties or its ability to perform its obligations under the Credit Agreement or other Loan Documents.

- 2) Assignor hereby grants to Lenders and its employees and agents the right to visit Assignor's facilities (during normal business hours and upon reasonable notice) which maintain or store products sold under any of the Patents, Trademarks, or Copyrights, and to inspect the products and quality control records relating thereto. Assignor shall do any and all acts reasonably required by Lenders to ensure Assignor's compliance herewith.
- 3) Assignor agrees that, until all of the Obligations shall have been satisfied in full, it will not enter into any agreement which is inconsistent with Assignor's obligations under this Agreement, without Lenders' prior written consent, such consent not to be unreasonably withheld.
- 4) If, before the Obligations have been satisfied in full, Assignor shall obtain rights to any new Trademark, any new Copyright, or any new patentable inventions, or become entitled to the benefit of any patent application or patent for reissue, division, continuation, renewal, extension, or continuation-in-part of any Patent or any

improvement on any Patent, the provisions hereof shall automatically apply thereto and Assignor shall give to Lenders prompt notice thereof in writing.

- 5) Assignor authorizes Lenders to modify this Agreement by amending Schedules A, B, and C to include any future Patents, Trademarks, or Copyrights covered hereby.
- 6) Upon and during the occurrence of any Event of Default:
 - (a) Lenders shall have, in addition to all other rights and remedies given to it by this Agreement, the Credit Agreement, and the Loan Documents, those rights and remedies 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 Patents, Trademarks, or Copyrights may be located; and
 - (b) Lenders may, in addition to any other remedies which may be available to Lenders, without being deemed to have made an election of remedies, and without the assignment hereunder being deemed to be anything less than an absolute assignment, immediately, without demand of performance and without other notice (except as may be set forth below) or demand whatsoever to Assignor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale (or, to the extent required by law, otherwise realize upon in a commercially reasonable manner), all or from time to time, any of the Patents, Trademarks, or Copyrights, or any interest which the Assignor may have therein, and after deducting from the proceeds of sale or other disposition of the Patents, Trademarks, or Copyrights all reasonable expenses (including all reasonable expenses for broker's fees and legal services), may apply the residue of such proceeds to the payment of the Obligations. Any remainder of the proceeds after payment in full of the Obligations shall be paid over to the Assignor. Notice of any sale or other disposition of the Patents, Trademarks, or Copyrights shall be given to Assignor at least five (5) business days before the time of any intended public or private sale or other disposition of the Patents, Trademarks, or Copyrights is to be made, which notice Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, Lenders may, to the extent permissible under applicable law, purchase the whole or any part of the Patents, Trademarks, or Copyrights sold, free from any right or equity of redemption on the part of Assignor, which right and equity of redemption are hereby waived and released.
- 7) At such time as Assignor shall completely satisfy all of the Obligations, this Agreement shall terminate and Lenders shall execute and deliver to Assignor at Assignor's expense all releases and other instruments as may be necessary or proper to release the security interest in and to the Patents, Trademarks, or Copyrights, subject to any disposition thereof which may have been made by Lenders pursuant hereto and in accordance with the terms hereof.

- 8) Any and all reasonable fees, costs and expenses, of whatever kind or nature, including reasonable attorney fees and legal expenses incurred by Lenders in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving the Patents, Trademarks, or Copyrights, in defending or prosecuting any actions or proceedings arising out of or related to the Patents, Trademarks, or Copyrights, or in the enforcement by Lenders of any of their rights or remedies under this Agreement, the Credit Agreement of any Loan Document shall be borne and paid by Assignor on demand by Lenders and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the rate of interest chargeable pursuant to the Credit Agreement upon an Event of Default.
- 9) To the extent that Assignor in the exercise of its reasonable business judgment deems it advisable, Assignor shall have the duty, through counsel reasonably acceptable to Lenders, to prosecute diligently any actions for or of the Patents, Trademarks, or Copyrights pending as of the date of this Agreement or thereafter until the Obligations shall have been paid in full, to make federal application on registrable but unregistered Trademarks, to file and prosecute opposition and cancellation proceedings and to do any and all acts which are reasonably necessary or desirable to preserve and maintain all rights in the Patents, Trademarks, or Copyrights. Any expenses incurred in connection with the Patents, Trademarks, and Copyrights shall be borne by Assignor. The Assignor shall not abandon any Patent, Trademarks, or Copyrights other than in the ordinary course of business without the consent of Lenders, which consent shall not be unreasonably withheld.
- 10) Assignor shall have the right to bring any opposition proceedings, cancellation proceedings or lawsuit in its own name to enforce or protect the Patents, Trademarks, or Copyrights, in which event Lenders may, if necessary, be joined as a nominal party to such suit if Lenders shall have been satisfied that Lenders are not incurring any risk of liability because of such joinder. Assignor shall promptly, upon demand, reimburse and indemnify Lenders for all damages, costs and expenses, including attorney fees, incurred by Lenders in the fulfillment of the provisions of this paragraph. The obligations of the Assignor under this paragraph shall survive the termination of this Agreement.
- 11) In the event of the occurrence and continuance of a Default or an Event of Default, Assignor hereby authorizes and empowers Lenders to make, constitute and appoint any officer or agent of Lenders as Lenders may select, in its sole discretion, as Assignor's true and lawful attorney-in-fact, with the power to endorse Assignor's name on all applications, documents, papers and instruments necessary for Lenders to use the Patents, Trademarks, or Copyrights, or to grant or issue any exclusive or nonexclusive license under the Patents, Trademarks, or Copyrights to anyone else, or necessary for Lenders to assign, pledge, convey or otherwise transfer title in or dispose of the Patents, Trademarks, or Copyrights to anyone else. 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.

- 12) If Assignor fails to comply with any of its obligations hereunder, Lenders may do so in Assignor's name or in Lenders' name, but at Assignor's expense, and Assignor hereby agrees to reimburse Lenders in full for all expenses, including reasonable attorney's fees, incurred by Lenders in protecting, defending and maintaining the Patents, Trademarks, or Copyrights.
- 13) No course of dealing between Assignor and Lenders, nor any failure to exercise, nor any delay in exercising, on the part of Lenders, any right, power or privilege hereunder or under the Credit Agreement, or under any Loan Document 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 thereof or the exercise of any other right, power or privilege.
- 14) All of Lenders' rights and remedies with respect to the Patents, Trademarks, or Copyrights, whether established hereby or by the Credit Agreement, or by any other agreement(s) or by law, shall be cumulative and may be exercised singly or concurrently.
- 15) The provisions of this Agreement are severable, and if any clause or provision shall be held invalid and 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.
- 16) This Agreement is subject to modification only by a writing signed by the parties, except as provided elsewhere herein.
- 17) The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.
- 18) 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 New Jersey.
- 19) THE PARTIES HERETO AGREE TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN NEW JERSEY IN CONNECTION WITH ANY MATTER ARISING HEREUNDER, INCLUDING THE COLLECTION AND ENFORCEMENT HEREOF. THE ASSIGNOR AND LENDERS EACH HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE ACTIONS OF LENDERS. THIS WAIVER IS MADE KNOWINGLY AND IN CONSIDERATION OF THE ADVANCES MADE UNDER THE CREDIT AGREEMENT.
- 20) This Agreement, the Credit Agreement and the Loan Documents embody the entire agreement and understanding between the Assignor, the Lenders and the Agent and supersedes all prior agreements and understandings relating to the subject matter hereof and thereof.

WITNESS the execution hereof under seal as of the day and year first above written.

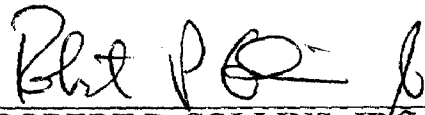
ATTEST:



JOSEPH MUSANTI, Assistant Secretary

[SEAL]

PROTEIN SOLUTIONS, INC.

By: 

ROBERT P. COLLINS, JR.
Vice President

PNC BANK, NATIONAL ASSOCIATION

By: 

~~FREDERICK BARDON~~, Vice President
MICHELLE STANLEY-NURSE

STATE OF Virginia :
City :SS:
~~COUNTY OF~~ :
Charlottesville

I CERTIFY that on ~~February~~ March 6, 2001, ROBERT P. COLLINS, JR., personally came before me and stated under oath to my satisfaction that:

- (a) this person is the Vice President of Protein Solutions, Inc., the corporation named in this Agreement; and
- (b) this Agreement was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors.

Signed and sworn to before me on
~~February 6~~, 2001

March
Rhonda Buckhead
Notary Public

My Comm. Exps. Jan 2004

STATE OF NEW JERSEY :
:SS:
COUNTY OF MIDDLESEX :

I CERTIFY that on ~~February~~ March 16, 2001, ~~XXXXXXXXXXXXXXXXXXXX~~ MICHELLE STANLEY-NURSE personally came before me and stated under oath to my satisfaction that:

- (a) this person is the Vice President of PNC Bank, a National Association, the corporation named in this Agreement; and
- (b) this Agreement was signed and delivered by the corporation as its voluntary act duly authorized by a proper resolution of its Board of Directors.

Signed and sworn to before me on March
~~February 16~~, 2001

Joyce M. Yunkes
Notary Public
JOYCE M. YUNCKES
Notary Public of New Jersey
My Commission Expires February 28, 2002

PATENTS, TRADEMARKS AND COPYRIGHTS SECURITY AGREEMENT

SCHEDULE A

U.S. COPYRIGHT REGISTRATIONS AND APPLICATIONS

None

SCHEDULE B

U.S. PATENTS AND PATENT APPLICATIONS

Title

Date Issued/Filed

Patent No.

NONE

SCHEDULE C

U.S. TRADEMARK REGISTRATIONS AND APPLICATIONS

Mark

Serial /Registration No.

Date Registered

“You’ll Discover We’re
Listening”

75-641,377/2,388,668

9/19/00