

07-19-2001

FORM PTO-1594  
COMMERCE

RECO

U.S. DEPARTMENT OF

(7/97)

7.12.01

T



Patent and Trademark Office

101782069

To the Honorable Commissioner of Patents and Trademarks, please record the attached original documents or copy thereof.

1. Name of conveying party(ies):  
 Agri-Fab, Inc.  
 Entity: Delaware Corporation  
 Additional name(s) of conveying party(ies) attached?  
 Yes  No

2. Name and address of receiving party(ies):  
 Name: American National Bank and Trust Company of Chicago  
 Address: 120 S. LaSalle  
Chicago, IL 60603

3. Nature of conveyance:  
 Assignment  Merger  
 Security Agreement  Change of Name  
 Other \_\_\_\_\_  
 Date: June 1, 2001

Entity: National Association  
 If assignee is not domiciled in the United States, an appointment of domestic representative is attached:  Yes  No  
 Additional name(s) & address(es) attached:  Yes  No

4. Application or Registration number(s):  
 A. Trademark Application No.(s) 75/425,804 and 75/614,828  
 B. Trademark Registration No.(s) 2,176,173; 2,170,856; 2,170,857; 1,688,764  
 Additional numbers attached?  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:  
**SCHIFF HARDIN & WAITE**  
 Attn: Trademark Department  
 P.O. Box 06079  
 Chicago, IL 60606-0079  
 Att. Ref. No(s): 06984-0075

6. Total number of trademark applications and registrations involved: 6  
 7. Total Fee (37 CFR 3.41) ..... \$ 165.00  
 Enclosed  
 Any additional fees or credits are authorized to be charged to deposit account.

8. Deposit Account Number:  
19-0409

DO NOT USE THIS SPACE

9. Statement and signature:  
*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*  
 Chris L. Bollinger \_\_\_\_\_  
 Name of Person Signing Signature Date  
 Total number of pages including cover sheet, attachments and document: 17

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

**COLLATERAL PATENT, COPYRIGHT AND LICENSE ASSIGNMENT  
AND TRADEMARK SECURITY AGREEMENT**

This COLLATERAL PATENT, COPYRIGHT AND LICENSE ASSIGNMENT AND TRADEMARK SECURITY AGREEMENT ("Agreement") is made as of June 1, 2001 by **Agri-Fab, Inc.**, a Delaware corporation ("Obligor") in favor of **American National Bank and Trust Company of Chicago**, a national banking association with its chief executive office in Chicago, Illinois ("Lender").

**WITNESSETH:**

**WHEREAS**, Obligor, AF Holding Co., a Delaware corporation, and Clark Pulley Industries, Inc., an Alabama corporation, are, concurrently herewith, entering into that certain Loan and Security Agreement with the Lender (as amended, amended and restated, supplemented or otherwise modified from time to time, the "Loan Agreement"); and

**WHEREAS**, it is a condition to the effectiveness of the Loan Agreement and the Lender's commitment to make certain loans and advances to Borrowers that Obligor enter into this Agreement;

**NOW THEREFORE**, in consideration of the premises, to induce the Lender to enter into the Loan Agreement, to induce the Lender to make any loan or advance to the Borrowers, and for other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties hereto agree as follows:

1. **Incorporation of Loan Agreement.** The Loan Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto. Terms used herein which are not defined herein but are defined in the Loan Agreement shall have the meanings ascribed to them therein.

2. **Grant of Security Interest, Etc.** To secure the complete and timely satisfaction of all of the Obligor's Liabilities:

(A) Obligor hereby grants, conveys and assigns to Lender, the entire right, title and interest of Obligor in and to all of the following, whether now existing or hereafter arising:

(i) patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein, and those patents and patent applications listed on Schedule A attached hereto and made a part hereof, and (a) the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout

the world (all of the foregoing patents and applications, together with the items described in clauses (a) through (d), inclusive, in which Obligor now or hereafter has any right, title or interest are sometimes hereinafter individually and/or collectively referred to as the "Patents");

(ii) all copyrights, copyright registrations and copyright applications including, without limitation, the copyrights and applications listed on Schedule B attached hereto and made a part hereof, and (a) renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing copyrights, copyright registrations and copyright applications, together with the items described in clauses (a) through (d), inclusive, in which Obligor now or hereafter has any right, title or interest are sometimes hereinafter individually and/or collectively referred to as the "Copyrights"); and

(iii) all of Obligor's rights and obligations pursuant to its license agreements with any other Person or Persons with respect to any Patents and Copyrights, whether Obligor is a licensor or licensee under any such license agreements, including, without limitation, the licenses listed on Schedule C attached hereto and made a part hereof, and, subject to the terms of such licenses, the right to prepare for sale, sell and advertise for sale, all Inventory now or hereafter owned by Obligor and now or hereafter covered by such licenses (all of the foregoing is hereinafter referred to collectively as the "Patent and Copyright Licenses");

(B) Obligor hereby grants a security interest in all of Obligor's right, title and interest in, to and under:

(i) all service marks, trademarks, trademark or service mark registrations, trademark or service mark applications and trade names including, without limitation, the trademarks and service marks listed on Schedule D attached hereto and made a part hereof, and (a) renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all the foregoing service marks, trademarks, registrations, applications and trade names, together with the items described in clauses (a) through (d), inclusive, with respect thereto in which Obligor now or hereafter has any right, title or interest are sometimes hereinafter and/or collectively referred to as the "Marks"); and

(ii) all of Obligor's rights and obligations pursuant to its license agreements with any other Person or Persons with respect to any Marks, whether Obligor is a licensor or licensee under any such license agreements, including, without limitation, the licenses listed on Schedule E attached hereto and made a part hereof, and, subject to the terms of such licenses, the right to prepare for sale, sell and advertise for sale, all Inventory now or hereafter owned by Obligor and now or hereafter covered by such licenses (all of the foregoing is hereinafter referred to as "Trademark

Licenses"; Patent and Copyright Licenses and Trademark Licenses are hereinafter referred to collectively as "Licenses").

(iii) the goodwill of Obligor's business connected with and symbolized by the Marks;

provided, however, that there shall be excluded from the foregoing assignment and grant of security interest any of the existing Licenses to which Obligor is a licensee (and any Patents, Marks and Copyrights currently licensed by others to Obligor pursuant to such Licenses) in each case to the extent (but only to the extent) that the applicable License lawfully prohibits such assignment or grant; provided further, however, that, upon Lender's request, Obligor will use its good faith reasonable efforts to obtain any consent needed to subject any such property to this assignment and grant of a security interest.

**3. Restrictions on Future Agreements.** Obligor agrees and covenants that until the Liabilities shall have been satisfied in full and the Loan Agreement shall have been terminated, Obligor will not, without Lender's prior written consent, take any action or enter into any agreement, including, without limitation entering into any license agreement, which is inconsistent with Obligor's obligations under this Agreement, and Obligor further agrees and covenants that without Lender's prior written consent it will not take any action, or permit any action to be taken by others subject to its control, including its licensees, or fail to take any action which would affect the validity or enforcement or nature of the rights transferred to Lender under this Agreement unless and to the extent that Obligor has concluded in the exercise of reasonable commercial judgment that any such rights are no longer of material importance to the business of Obligor. Obligor agrees and covenants not to sell or assign its interest in, or grant any license under, the Patents, Marks, Copyrights or Licenses, without receiving the prior written consent of Lender thereto.

**4. Certain Covenants, Representations and Warranties of Obligor.** Obligor covenants, represents and warrants (to the best of Obligor's knowledge with respect to any Patents, Marks and Copyrights which are licensed by third parties to Obligor) that: (i) the Patents, Marks, Copyrights and Licenses are subsisting, have not been adjudged invalid or unenforceable in whole or in part, and are not currently being challenged in any way; (ii) none of the Patents, Marks, Copyrights and Licenses have lapsed or expired or have been abandoned, whether due to any failure to pay any maintenance or other fees or make any filing or otherwise; (iii) each of the Patents, Marks, Copyrights and Licenses is valid and enforceable and Obligor is unaware of any invalidating prior art (including public uses and sales) relative to the Patents, and is unaware of any impairments to the Patents, Marks, Copyrights or Licenses which would have a material adverse effect on the validity and/or enforceability of the Patents, Marks, Copyrights or Licenses; (iv) to the best of Obligor's knowledge, no claim has been made that the use of any of the Patents, Marks, Copyrights or Licenses constitutes an infringement; (v) Obligor owns the entire right, title and interest in and to each of the Patents, Marks and Copyrights (other than those being licensed to Obligor pursuant to the Licenses) free and clear of any Liens and encumbrances of every kind and nature, and the Licenses are valid and subsisting licenses with respect to the Patents, Marks, Copyrights described therein, free and

clear of any Liens and encumbrances of every kind and nature arising by, through or under Obligor, in each case except for (A) rights granted by Obligor pursuant to the applicable licenses listed on Schedules C and E, and (B) Liens and encumbrances in favor of Lender pursuant to this Agreement or the other Financing Agreements; (vi) the Patents, Marks and Copyrights and Licenses listed on Schedules A, B, C, D and E respectively, constitute all such items in which Obligor has any right, title or interest; (vii) Obligor has the unqualified right to enter into this Agreement and perform its terms; (viii) Obligor will continue to use proper statutory notice in connection with its use of the Patents, Marks and Copyrights (except as to any thereof which is no longer material to Obligor's business); and (ix) Obligor will use standards of quality in its manufacture of products sold under the Marks consistent with those currently employed by it.

5. **New Patents, Marks, Copyrights and Licenses.** If, before the Liabilities shall have been satisfied in full and the Loan Agreement shall have been terminated, Obligor shall (i) obtain rights to any new patentable inventions, trademarks, service marks, trademark or service mark registrations, copyrights, copyright registrations, trade names or licenses, or (ii) become entitled to the benefit of any patent, trademark or service mark application, trademark, service mark, trademark or service mark registration, copyrights, copyright registrations, license or license renewal, or patent for any reissue, division, continuation, renewal, extension, or continuation-in-part of any Patent or any improvement on any Patent, the provisions of Section 2 above shall automatically apply thereto and Obligor shall give to Lender prompt written notice thereof. Obligor hereby authorizes Lender to modify this Agreement by noting any future acquired Patents, Marks, Copyrights on Schedule A, B or D and any Licenses and licensed Patents, Marks or Copyrights on Schedules C or E, as applicable; provided, however, that the failure of Lender to make any such notation shall not limit or affect the obligations of Obligor or rights of Lender hereunder.

6. **Royalties; Terms.** Obligor hereby agrees that the use by or security interest of Lender of or in all Patents, Marks, Copyrights and Licenses as described above shall be worldwide (or in the case of the Patents, Marks and Copyrights licensed to Obligor such smaller geographic location if any is specified for Obligor's use in the applicable License) and, without any liability for royalties or other related charges from Lender to Obligor. The term of the assignments and security interest granted herein shall extend until the earlier of (i) the expiration of each of the respective Patents, Marks, Copyrights and Licenses assigned hereunder, or (ii) satisfaction in full of the Liabilities and termination of the Loan Agreement.

7. **Grant of License to the Obligor.** Except at any time a Default shall have occurred and be continuing and notice given as provided in the following sentence, Lender hereby grants to Obligor (but only to the extent the same was lawfully granted to Lender by Obligor pursuant to this Agreement) the royalty-free, exclusive, nontransferable right and license for Obligor's own benefit and account and no other to use the Marks, reproduce, adopt, distribute, perform and display all works and all materials covered by the Copyrights, to exercise Lender's rights under the Licenses, and to make, have made, use and sell products conforming to the inventions, or made by a process, disclosed and claimed in the Patents for Obligor's own benefit and account and for none other. Obligor agrees not to sell or assign its interest in, or grant any sublicense under, the license granted

to Obligor in this Section 7 without the prior written consent of Lender. At any time after the occurrence and during the continuance of a Default and notice to such effect from the Lender to Obligor, Obligor's license with respect to the Patents, Copyrights and Licenses as set forth in this Section 7 shall terminate forthwith.

8. **Inspection.** Lender shall have the right at any time and from time to time, upon two Business Days' prior written notice, at Lender's expense, to inspect Obligor's premises and to examine Obligor's books, records and operations, including, without limitation, Obligor's quality control processes. From and after the occurrence and during the continuance of a Default and notice by Lender to Obligor of Lender's intention to enforce its rights and claims against any of the Patents, Marks, Copyrights and Licenses, Obligor agrees that Lender, or a conservator appointed by Lender, shall have the right to establish such additional product quality controls as Lender or said conservator, in its reasonable judgment, may deem necessary to assure maintenance of the quality of products sold by Obligor under the Marks consistent with the quality of products now manufactured by Obligor.

9. **Termination of Obligor's Interest.** This Agreement is made for collateral purposes only. Upon satisfaction in full of the Liabilities and termination of the Loan Agreement, subject to any disposition thereof which may have been made by Lender pursuant hereto or pursuant to any of the other Financing Agreements, title to the Patents, Copyrights and Patent and Copyright Licenses shall automatically revert to Obligor and the security interest in the Marks and the Trademark Licenses shall automatically be extinguished. Lender shall, at the Obligor's expense, execute and deliver to Obligor, all termination statements and other instruments as may be necessary or proper to terminate Lender's interest in, and to revest in Obligor all right, title and interest in and to, the Patents, Marks, Copyrights, and Licenses transferred to Lender pursuant to this Agreement, subject to any disposition thereof which may have been made by Lender pursuant hereto or pursuant to any of the other Financing Agreements. Any such termination statements and instruments shall be without recourse upon or warranty by Lender.

10. **Duties of the Obligor.** Except to the extent the same is no longer material to Obligor's business, Obligor shall have the duty, in its reasonable judgment, (i) to prosecute diligently any patent application of the Patents, any application respecting the Marks, and any copyright application of the Copyrights pending as of the date hereof or thereafter, (ii) to make application on unpatented but patentable inventions and on registerable but unregistered trademarks, service marks and copyrights, and (iii) to preserve, maintain and enforce against infringement all rights in patent applications and patents constituting the Patents, in trademark or service mark applications, trademarks, service marks, and trademark or service mark registrations constituting the Marks, and in copyright applications, copyrights and copyright registrations constituting the Copyrights. Any expenses incurred in connection with the foregoing shall be borne by the Obligor. Except to the extent the same is no longer material to Obligor's business, Obligor shall not abandon any pending patent application, trademark application, copyright application, service mark application, patent, trademark, service mark or copyright without the written consent of Lender (which consent shall not be unreasonably withheld).

11. **Lender's Right to Sue.** From and after the occurrence and during the continuance of a Default, Lender shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Patents, the Marks, the Copyrights and the Licenses, and any licenses thereunder, and, if Lender shall commence any such suit, Obligor shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents reasonably required by Lender in aid of such enforcement, and Obligor shall promptly, upon demand, reimburse and indemnify Lender for all reasonable costs and expenses incurred by Lender in the exercise of its rights under this Section 11.

12. **Waivers.** No course of dealing between Obligor and Lender, nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or privilege hereunder 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.

13. **Severability.** 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.

14. **Modification.** This Agreement cannot be altered, amended or modified in any way, except as specifically provided in Section 5 hereof or by a writing signed by the parties hereto.

15. **Further Assurances.** Obligor shall execute and deliver to Lender, at any time or times hereafter at the reasonable request of Lender, all papers (including, without limitation, any as may be deemed desirable by Lender for filing or recording with any Patent and Trademark Office, and any successor thereto) and take all such actions (including, without limitation, paying the cost of filing or recording any of the foregoing in all public offices reasonably deemed desirable by Lender), as Lender may reasonably request, to evidence Lender's interest in the Patents, Marks, Copyrights and Licenses and the goodwill associated therewith and enforce Lender's rights under this Agreement.

16. **Cumulative Remedies; Power of Attorney; Effect on Financing Agreements.** All of Lender's rights and remedies with respect to the Patents, Marks, Copyrights and Licenses, whether established hereby, by any of the Financing Agreements or otherwise, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Obligor hereby constitutes and appoints Lender as Obligor's true and lawful attorney-in-fact, with full power of substitution in the premises, with power at any time after the occurrence and during the continuance of a Default, to (i) endorse Obligor's name on all applications, documents, papers and instruments determined by Lender in its sole discretion as necessary or desirable for Lender in the use of the Patents, Marks, Copyrights and Licenses, (ii) take any other actions with respect to the Patents, Marks, Copyrights and Licenses as Lender deems in good faith to be in the best interest of Lender,

(iii) grant or issue any exclusive or non-exclusive license under the Patents, Marks or Copyrights to any Person, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Patents, Marks, Copyrights or Licenses to any Person. Obligor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until the Liabilities shall have been satisfied in full and the Loan Agreement shall have been terminated. Obligor acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of Lender under the Loan Agreement or any of the Financing Agreements but rather is intended to facilitate the exercise of such rights and remedies. Lender shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all 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, Marks, Copyrights or Licenses may be enforced. Obligor hereby releases the Lender from any and all claims, causes of action and demands at any time arising out of or with respect to any actions taken or omitted to be taken by the Lender under the powers of attorney granted herein, except such claims, causes of action and demands resulting from the gross negligence or willful misconduct of Lender.

17. **Binding Effect; Benefits.** This Agreement shall be binding upon Obligor and its respective successors and assigns and shall inure to the benefit of Lender and its respective successors, assigns and nominees.

18. **Governing Law.** This Agreement shall be deemed to have been executed and delivered in Chicago, Illinois, and shall be governed by and construed in accordance with the internal laws (as opposed to conflicts of law provisions) of Illinois.



IN WITNESS WHEREOF, the parties hereto have entered into this Collateral Patent, Copyright and License Assignment and Trademark Security Agreement as of the date first above written.

AGRI-FAB, INC.

By: Ronald D. Harshman  
Name: Ronald D. Harshman  
Title: Chairman & CEO

Attest:

By: John R. Orick  
Title: Asst. Secretary

The undersigned accepts and agrees to the foregoing Collateral Patent, Copyright and License Assignment and Trademark Security Agreement in Chicago, Illinois as of the date first written above.

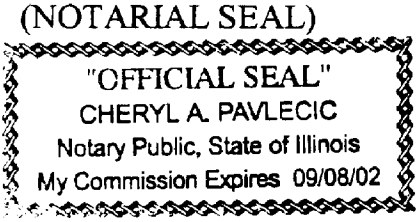
AMERICAN NATIONAL BANK AND TRUST  
COMPANY OF CHICAGO

By: [Signature]  
Name: Scott C. Swanson  
Title: FIRST VICE PRESIDENT

STATE OF Illinois )  
 ) SS.  
COUNTY OF Cook )

I, the undersigned, a Notary Public in and for said State and County do hereby certify that SCOTT L. SWANSON, personally known to me to be the FIRST VICE PRESIDENT of American National Bank and Trust Company of Chicago, personally known to me to be the same person whose name is subscribed to the foregoing Collateral Patent, Copyright and License Assignment and Trademark Security Agreement, appeared before me this day and acknowledged that he/she signed and delivered said agreement as an officer of said bank and caused the seal of said bank to be affixed thereto, pursuant to authority given by the Board of Directors of said bank, as his/her free and voluntary act and as the free and voluntary act and deed of said bank, for the uses and purposes therein set forth.

GIVEN under my hand and official seal as of the 11<sup>th</sup> day of June, 2001.



[Signature]  
Notary Public

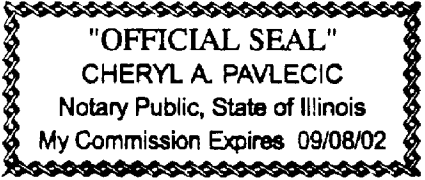
My Commission Expires: 9/8/02

STATE OF Illinois )  
 ) SS.  
COUNTY OF Cook )

I, the undersigned, a Notary Public in and for said State and County do hereby certify that RONALD J. HARRISMAN personally known to me to be the CHAIRMAN & CEO of Agri-Fab, Inc., a Delaware corporation, and personally known to me to be the same person whose name is subscribed to the foregoing Collateral Patent, Copyright and License Assignment and Trademark Security Agreement, appeared before me this day and acknowledged that he/she signed and delivered said agreement as an officer of said corporations and caused the seal of said corporations to be affixed thereto, pursuant to authority given by the Boards of Directors of said corporations, as his/her free and voluntary act and as the free and voluntary act and deed of said corporations, for the uses and purposes therein set forth.

GIVEN under my hand and official seal as of the 29<sup>th</sup> day of June, 2001.

(NOTARIAL SEAL)



[Signature]  
Notary Public

My Commission Expires: 9/8/02

**SCHEDULE A**

**PATENTS AND PATENT APPLICATIONS**

<u>Patent Number</u>	<u>Description</u>	<u>Date of Patent</u>
4,862,767	Hydrostatic Transaxle	Sept. 5, 1989
506,558*	"VST" Variable Speed Transaxle	Dec. 30, 1988**
317,779*	"ZT" Drive Axle	Mar. 2, 1989**
541,327*	H.D. Hydrostatic Transaxle	Aug. 10, 1989**

\* Application

\*\* Filing Date

Note that the above patents are licensed to Hydro-Gear Limited Partnership pursuant to the Technology License Agreement referred to in Exhibit C.

**SCHEDULE B**  
**COPYRIGHTS**

None

**SCHEDULE C**

**PATENT AND COPYRIGHT LICENSES**

Technology License Agreement dated as of December 31, 1990 between Agri-Fab, Inc. and Hydro-Gear Limited Partnership

## SCHEDULE D

### TRADEMARKS; SERVICE MARKS

<u>Trademark</u>	<u>Registration Number</u>	<u>Date of Filing</u>
Agri-Fab	2,176,173	July 28, 1998
The Heavyweights	2,170,856	July 7, 1998
Agri-Fab	2,170,857	July 7, 1998
Wisker	1,688,764	May 26, 1992

### Trademark Application

Lawnrafter	75/425,804
Maurauder	75/614,828 filed January 4, 1999*

\* This application was assigned to Agri-Fab, Inc. by Haban Manufacturing, Inc. pursuant to that certain Asset Purchase Agreement dated as of December 22, 1998 between Agri-Fab, Inc. and Haban Manufacturing, Inc.

**SCHEDULE E**

**TRADEMARK LICENSES**

None