

03-27-2002

Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002)



U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

Tab settings

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

1. Name of conveying party(ies): Brake Pro Systems, Inc. Individual(s) Association General Partnership Limited Partnership Corporation-State Delaware Other Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies) Name: Tenneco Canada Inc. Internal Address: Street Address: 500 North Field Drive City: Lake Forest State: IL Zip: 60045 Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Ontario Other If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance: Assignment Merger Security Agreement Change of Name Other: Assignment, Security Agreement & Mortgage Execution Date: December 11, 2001

4. Application number(s) or registration number(s): A. Trademark Application No.(s) B. Trademark Registration No.(s) 1464502 Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed: Name: Mariann R. Murphy Internal Address: Jenner & Block, LLC Street Address: One IBM Plaza City: Chicago State: IL Zip: 60611

6. Total number of applications and registrations involved: 1 7. Total fee (37 CFR 3.41): \$ 40.00 Enclosed Authorized to be charged to deposit account 8. Deposit account number: 10-0460

DO NOT USE THIS SPACE

9. Signature. Mariann R. Murphy Name of Person Signing Signature March 6, 2002 Date

03/26/2002 AAHMED1 00000180 100460 1464502 01 FC:481 40.00 CH

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

TRADEMARK REEL: 002470 FRAME: 0039

OFFICE OF PATENT RECORDS FINANCE SECTION 2002 MAR 18 PM 1:54

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## ASSIGNMENT, SECURITY AGREEMENT AND MORTGAGE – TRADEMARKS

THIS ASSIGNMENT, SECURITY AGREEMENT AND MORTGAGE – TRADEMARKS (“Assignment”) is made this 11th day of December, 2001, between BRAKE PRO, LTD., an Ontario corporation (“BPL”), BRAKE PRO SYSTEMS, INC., a Delaware corporation (“BP Systems”) and BPS HOLDING CORPORATION, a Delaware corporation (“BPS”) (BPL, BP Systems and BPS individually, jointly and collectively “Debtor”) and TENNECO CANADA INC. (the “Secured Party”). Unless otherwise defined herein, capitalized terms used herein shall have the meanings given to them in the Debt Restructuring Closing Agreement of even date among Secured Party, BPL, BPS, Brake Pro, Inc., and Tenneco Automotive Operating Company, Inc. and 399 Venture, Inc. (the “Closing Agreement”).

WHEREAS, Debtor is the owner and holder of the trademarks listed on Schedule A hereto and made a part hereof;

WHEREAS, BPL is indebted to Secured Party as evidenced by a USD \$5,000,000 Tranche A Note and a US\$2,000,000 Incentive Note (as from time to time amended, supplemented, replaced, restated, extended, renewed or modified, the “Notes”).

WHEREAS, BPL has requested, in connection with the refinancing of BPL’s indebtedness with Congress Financial Corporation (Canada), that Secured Party, among other things, enter into the Closing Agreement;

WHEREAS, Debtor’s entry into this Agreement is a condition to the Secured Party’s entry into the Closing Agreement;

NOW, THEREFORE, IT IS AGREED that, for and in consideration of the Secured Party’s entry into the Closing Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, and as collateral security for the full and prompt payment and performance of all Obligations, as hereinafter defined, Debtor does hereby assign and grant to the Secured Party a security interest in, and mortgage on, all of its right, title and interest in and to (i) each of the Trademarks (as hereinafter defined), the goodwill of the business symbolized by each of the Trademarks, all customer lists and other records of Debtor relating to the distribution of products bearing the Trademarks and each of the registrations described in Schedule A, and any formulas of Debtor used or usable in connection with the Trademarks; and (ii) any and all proceeds of the foregoing, including, without limitation, any claims by Debtor against third parties for past, present and future infringement of the Trademarks (collectively, the “Collateral”).

1. As used in this Agreement, unless the context otherwise requires:

“Trademarks” shall mean (i) all trademarks, trade names, trade styles, service marks, prints and labels on which said trademarks, trade names, trade styles and

service marks have appeared or appear, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, all right, title and interest therein and thereto acquired under common law or statute, and whether by use or registration, and all registrations and recordings thereof, and applications therefore, including without limitation, applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof, all whether now owned or hereafter acquired by Debtor, including, but not limited to, those described in Schedule A annexed hereto and made a part hereof, and (ii) all reissues, divisions, continuations, continuations-in-part or extensions thereof and all licenses thereof.

“Obligations” shall mean all indebtedness, obligations, liabilities and agreements of any kind of BPL to Secured Party, including without limitation the Notes, now existing or hereafter arising, direct or indirect (including participations or any interest of Secured Party in obligations of BPL to others), acquired outright, conditionally, or as collateral security from another, absolute or contingent, joint or several, secured or unsecured, due or not, contractual or tortious, liquidated or unliquidated, arising by operation of law or otherwise, and all loan agreements, documents and instruments evidencing any of the foregoing obligations or under which any of the foregoing obligations may have been issued, created, assumed or guaranteed, and all extensions, renewals, refundings, replacements and modifications of the foregoing, (collectively, the “Note Documents”).

2. Debtor hereby represents, warrants, covenants and agrees that, subject to the rights of Congress Financial Corporation (Canada) while the Subordination Agreement is in effect:

- (a) Debtor has the sole, full and clear title to the Trademarks in the United States and all other countries for the goods and services on which they are used by Debtor, and the registrations thereof are valid and subsisting and in full force and effect.
- (b) Debtor will perform all acts and execute all documents, including, without limitation, assignments for security in form suitable for filing with the United States Patent and Trademark Office and state and local governments in the United States and in other countries, substantially in the forms of Exhibit 1 hereof, respectively, requested by the Secured Party at any time to evidence, perfect, maintain, record and enforce the Secured Party’s interest in the Collateral or otherwise in furtherance of the provisions of this Agreement, and Debtor hereby authorizes the Secured Party to execute and file one or more financing statements (and similar documents) or copies thereof or of this Security Agreement with respect to the Collateral signed only by the Secured Party.
- (c) Except to the extent that the Secured Party, upon prior written notice by Debtor, shall consent, Debtor (either itself or through licensees) will

continue to use the Trademarks on all services and goods applicable to its current line as reflected in its current catalogs, brochures and price lists in order to maintain the Trademarks and their registrations in full force free from any claim of abandonment for nonuse and Debtor will not (and will not permit any licensee thereof to) do any act or knowingly omit to do any act whereby any Trademark or its registration may become invalidated.

- (d) Debtor will promptly pay the Secured Party for any and all sums, costs, and expenses which the Secured Party may pay or incur pursuant to the provisions of this Agreement or in enforcing the Obligations, the Collateral or the security interest granted hereunder, including, but not limited to, all filing or recording fees, court costs, collection charges, travel, and reasonable attorneys' fees, all of which together with interest at the highest rate then payable on the Obligations shall be part of the Obligations and be payable on demand.
- (e) In no event shall Debtor, either itself or through any agent, employee, licensee or designee, file an application for any Trademark registration with the United States Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof, unless it will promptly inform the Secured Party, and, upon request of the Secured Party, execute and deliver any and all assignments, agreements, instruments, documents and papers as the Secured Party may request to evidence the Secured Party's interest in such Trademark and the goodwill and general intangibles of Debtor relating thereto or represented thereby and Debtor hereby constitutes the Secured Party its attorney-in-fact to execute and file all such writings for the foregoing purposes, all acts of such attorney being hereby ratified and confirmed; such power being coupled with an interest is irrevocable until the Obligations are paid in full.
- (f) Debtor has the right and power to make the assignment and to grant the security interest herein granted; and the Collateral is not now, and at all times will not be, subject to any liens, mortgages, assignments, security interests or encumbrances of any nature whatsoever, except for the Assignment, and except in favor of the Secured Party and to the best knowledge of Debtor none of the Collateral is subject to any claim.
- (g) Except to the extent that the Secured Party, upon prior written notice of Debtor, shall consent, Debtor will not assign, sell, mortgage, lease, transfer, pledge, hypothecate, grant a security interest in or lien upon, encumber, grant an exclusive or non-exclusive license, or otherwise dispose of any of the Collateral, and nothing in this Agreement shall be deemed a consent by the Secured Party to any such action except as expressly permitted herein.
- (h) As of the date hereof Debtor has no Trademark registrations in, or the subject of pending applications in, the United States Patent and Trademark

Office or any similar office or agency in any other country or any political subdivision thereof other than those described in Schedule A hereto.

- (i) Debtor will take all necessary steps in any proceeding before the United States Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof, to maintain each application and registration of the Trademarks, including, without limitation, if applicable, paying of maintenance fees, applications for reissues or extensions, filing of renewals, affidavits of use, affidavits of incontestability and opposition, interference and cancellation proceedings (except to the extent that dedication, abandonment or invalidation is permitted under paragraph 2(b) hereof).

3. Upon the occurrence of an Event of Default (as defined in the Notes), in addition to all other rights and remedies of the Secured Party, whether under law, the Notes and related security documents or otherwise, all such rights and remedies being cumulative, not exclusive and enforceable alternatively, successively or concurrently, without (except as provided herein) notice to, or consent by, Debtor, the Secured Party shall have the following rights and remedies: (a) Debtor shall not make any use of the Trademarks or any mark similar thereto for any purpose; (b) the Secured Party may, at any time and from time to time, upon ten (10) days' prior notice to Debtor, license, whether on an exclusive or nonexclusive basis, any of the Trademarks, anywhere in the world for such term or terms, on such conditions, and in such manner, as the Secured Party shall in its sole discretion determine; (c) the Secured Party may (without assuming any obligations or liability thereunder), at any time, enforce (and shall have the exclusive right to enforce) against any licensee or sublicensee all rights and remedies of Debtor in, to and under any one or more license agreements with respect to the Collateral, and take or refrain from taking any action under any thereof, and Debtor hereby releases the Secured Party from, and agrees to hold the Secured Party free and harmless from and against any claims arising out of, any action taken or omitted to be taken with respect to any such license agreement except for Secured Party's gross negligence or wilfull misconduct; (d) the Secured Party may, at any time and from time to time, upon ten (10) days' prior notice to Debtor, assign, sell, buy, or otherwise dispose of, the Collateral or any of it, either with or without special or other conditions or stipulations, and with power also to execute assurances, and do all other acts and things for completing the assignment, sale or disposition which the Secured Party shall, in its sole discretion, deem appropriate or proper; and (e) in addition to the foregoing, in order to implement the assignment, sale or other disposal of any of the Collateral pursuant to subparagraph 3(d) hereof, the Secured Party may, at any time, pursuant to the authority granted in the Power(s) of Attorney described in paragraph 4 hereof (such authority becoming effective on the occurrence or continuation as hereinabove provided of an Event of Default), execute and deliver on behalf of Debtor, one or more instruments of assignment of the Trademarks, in form suitable for filing, recording or registration in any country. Debtor agrees to pay when due all reasonable costs incurred in any such transfer of the Trademarks, including any taxes, fees and reasonable attorneys' fees, and all such costs shall be added to the Obligations. The Secured Party may apply the proceeds actually received from any such license,

assignment, sale or other disposition to the reasonable costs and expenses thereof, including, without limitation, reasonable attorneys' fees and all legal, travel and other expenses which may be incurred by the Secured Party, and then to the Obligations, in such order as to principal or interest as the Secured Party may desire; and BPL (and none of the other Debtors) shall remain liable and will pay the Secured Party on demand any deficiency remaining, together with interest thereon at a rate equal to the highest rate then payable on the Obligations and the balance of any expenses unpaid. Nothing herein contained shall be construed as requiring the Secured Party to take any such action at any time. In the event of any such license, assignment, sale or other disposition of the Collateral, or any of it, after the occurrence or continuation as hereinabove provided of an Event of Default, Debtor shall supply its tooling, know-how and expertise relating to the manufacture and sale of the products covered by the Trademarks, and its customer lists and other records relating to the Trademarks and to the distribution of said products, to the Secured Party or its designee.

4. Concurrently with the execution and delivery hereof, Debtor is executing and delivering to the Secured Party, in the form of Exhibit 2 hereto, four (4) originals of a Power of Attorney, coupled with an interest, for the implementation of the assignment, sale or other disposal of the Trademarks pursuant to paragraphs 3(d) and (e) hereof and Debtor hereby releases the Secured Party from any 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 Secured Party, under the powers of attorney granted herein other than actions taken or omitted to be taken through the gross negligence or willful misconduct of the Secured Party.


5. No provision hereof shall be modified, altered or limited except by a written instrument expressly referring to this Agreement and executed by the party to be charged. The execution and delivery of this Agreement has been authorized by the Board of Directors of Debtor and by any necessary vote or consent of stockholders thereof. This Agreement shall be binding upon the successors, assigns or other legal representatives of Debtor, and shall, together with the rights and remedies of the Secured Party hereunder, inure to the benefit of the Secured Party, its successors, assigns or other legal representatives. This Agreement, the Obligations and the Collateral shall be governed in all respects by the laws of the United States and the laws of the State of Illinois. Debtor hereby submits to the nonexclusive jurisdiction of the state courts of the State of Illinois and the federal courts of the United States of America located in such State in any action or proceeding arising under this Security Agreement. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of all other terms hereof shall in no way be affected thereby.

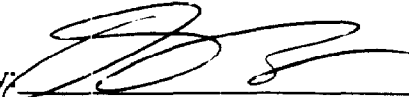
6. Secured Party shall reassign without warranties all of the Collateral to Debtor upon the repayment of the Obligations and the termination of the Note Documents.

[Remainder of page left intentionally blank]

IN WITNESS WHEREOF, Debtor and the Secured Party have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

BRAKE PRO, LTD.

Seal 

By:   
Title: \_\_\_\_\_

(CORPORATE SEAL)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

BRAKE PRO SYSTEMS, INC.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

(CORPORATE SEAL)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

BPS HOLDING CORPORATION

By: \_\_\_\_\_  
Title: \_\_\_\_\_

(CORPORATE SEAL)

By: \_\_\_\_\_

IN WITNESS WHEREOF, Debtor and the Secured Party have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the day and year first above written.

BRAKE PRO, LTD.

By: \_\_\_\_\_  
Title: \_\_\_\_\_

(CORPORATE SEAL)

By: \_\_\_\_\_  
Title: \_\_\_\_\_

BRAKE PRO SYSTEMS, INC.

By: *Russell H. Conroy*  
Title: *Pres. ICEO*

(CORPORATE SEAL)

By: *Sara H. McDaniel*  
Title: *Secretary*

BPS HOLDING CORPORATION

By: *Russell H. Conroy*  
Title: *Pres. ICEO*

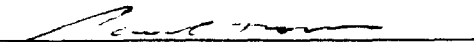
(CORPORATE SEAL)

By: *Sara H. McDaniel*  
Title: *Secretary*



Accepted:

TENNECO CANADA, INC.

By:   
Title: Vice President and Treasurer

SCHEDULE A TO SECURITY AGREEMENT

TRADEMARKS

BRAKE PRO TRADEMARKS

TRADEMARK APPLICATIONS

<u>App./Registration Number</u>	<u>Description of Mark</u>	<u>Date of Registration</u>	<u>State or Country</u>	<u>Reg. Owner</u>
(App.) 06055743	Integrablok	Pending/Filed May 21, 2000	U.S.	BPL
(App.) 05529820	Canadian Metallic	Pending/Filed February 28, 2000	U.S.	BPL
(Reg.) 1,807,355	CM 18	November 30, 1993	U.S.	BPL
(Reg.) 1,809,026	CM	December 7, 1993	U.S.	BPL
(Reg.) 1,807,354	Integrablok	November 30, 1993	U.S.	BPL
(Reg.) 1,464,502	Brake Pro Systems	November 10, 1987	U.S.	BP Systems
(Reg.) 1,464,501	Brake Pro	November 10, 1987	U.S.	BPS Holding