08-21-2002

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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 ⇨⇨⇨ ▼ ▼ ▼ ▼ ▼ ▼ ▼

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

1. Name of conveying party(ies):

Perfect Fit Industries, Inc.

- ☐ Individual(s)
- ☐ Association
- ☐ General Partnership
- ☐ Limited Partnership
- ☒ Corporation-State
- ☐ Other

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

2. Name and address of receiving party(ies)

Name: The CIT Group/Commercial Services, Inc.

Internal Address:

Street Address: 301 South Tryon Street

City: Charlotte State: NC Zip: 28202

- ☐ Individual(s) citizenship
- ☐ Association
- ☐ General Partnership
- ☐ Limited Partnership
- ☒ Corporation-State New York
- ☐ 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

Execution Date: August 2, 2002

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)
75,934,804
76/352,663
76,368,459

B. Trademark Registration No.(s)
2,574,673

Additional number(s) attached ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: Deborah L. Scudder

Internal Address:

Street Address: 235 N. Edgeworth Street

City: Greensboro State: NC Zip: 27401

6. Total number of applications and registrations involved: 4

7. Total fee (37 CFR 3.41).....$ 115.00

- ☒ Enclosed
- ☐ Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

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.

CARRUTHERS & ROTH, P.A.

Deborah L. Scudder — Name of Person Signing

By: [signature] — Signature

August 14, 2002 — Date

Total number of pages including cover sheet, attachments, and document: 12

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

08/21/2002 TDIAZ1 00000041 75934804

01 FC:481 40.00 OP
02 FC:482 75.00 OP

TRADEMARK SECURITY AGREEMENT

THIS **TRADEMARK SECURITY AGREEMENT** ("Agreement"), is made and entered into this 2nd day of August, 2002, between **PERFECT FIT INDUSTRIES, INC.**, a Delaware corporation ("**Company**"), and **THE CIT GROUP/COMMERCIAL SERVICES, INC.**, a New York corporation ("**Lender**").

WITNESSETH:

WHEREAS, Company and Thomas Hodgson & Sons, Inc., a Delaware corporation ("**Hodgson**"; Company and Hodgson being collectively called the "**Borrowers**" and, individually, a "**Borrower**"), and Lender are parties to a certain Amended and Restated Loan and Security Agreement, dated April 3, 1998, as amended (the Amended and Restated Loan and Security Agreement, as it has heretofore and may hereafter be amended, modified, supplemented or restated from time to time, being herein called the "**Loan Agreement**"), pursuant to which Lender has agreed to make loans and extend credit to Borrowers, all as more particularly described therein; and

WHEREAS, as a condition precedent to Lender's continuing to extend credit to Borrowers pursuant to the Loan Agreement, Lender has required the execution of this Agreement by Company in favor of Lender.

NOW, THEREFORE, in consideration of the premises and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Company agrees with Lender as follows:

1. **Defined Terms.** All capitalized terms used herein without definition shall have the meaning ascribed to such terms in the Loan Agreement.

2. **Grant of Security Interest.** As security for the payment and performance of the Obligations, Company hereby assigns, grants, transfers and conveys to Lender, for security purposes, all of Company's right, title and interest in, to and under the following property, in each case whether now existing or hereafter acquired or arising and whether registered and unregistered and wherever the same may be located (the "**Trademark Collateral**"):

(a) all state (including common law), federal and foreign trademarks, service marks and trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, domain names, designs and general intangibles of like natures, now existing or hereafter adopted or acquired, together with and including all licenses therefor held by Company (unless otherwise prohibited by any license or related licensing agreement under circumstances where the granting of the security interest would have the effect under applicable law of the termination or permitting termination of the license for breach and where the licensor has elected such termination remedy), and all registrations and

recordings thereof, and all applications filed or to be filed in connection therewith, including registrations and applications in the United States Patent and Trademark Office, any State of the United States or any other country or any political subdivision thereof, and all extensions or renewals thereof, including any of the foregoing identified on **Schedule A** hereto (as the same may be amended, modified or supplemented from time to time), and the right (but not the obligation) to register claims under any state or federal trademark law or regulation or any trademark law or regulation of any foreign country and to apply for, renew and extend any of the same, to sue or bring opposition or cancellation proceedings in the name of Company or in the name of Lender for past, present or future infringement or unconsented use thereof, and all rights arising therefrom throughout the world (collectively, the "**Trademarks**");

(b) all claims, causes of action and rights to sue for past, present or future infringement or unconsented use of any Trademarks and all rights arising therefrom and pertaining thereto;

(c) all general intangibles related to or arising out of any of the Trademarks and all the goodwill of Company's business symbolized by the Trademarks or associated therewith; and

(d) all proceeds of any and all of the foregoing Trademark Collateral, including, without limitation, license royalties, rights to payment, accounts receivable, proceeds of infringement suits and all payments under insurance or any indemnity, warranty or guaranty payable by reason of loss or damage to or otherwise with respect to the foregoing Trademark Collateral.

3. **Representations, Warranties and Covenants of Company.** Company represents, warrants and covenants that:

(a) The Trademark Collateral is, to the best of its knowledge, subsisting and has not been judged invalid or unenforceable; provided, however, the foregoing representation, warranty and covenant shall not apply to the trademark applications identified on **Schedule A** hereto;

(b) Company is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to the Trademark Collateral; provided, however, the foregoing representation, warranty and covenant shall not apply to the trademark applications identified on **Schedule A** hereto;

(c) Company has used, and will continue to use for the duration of this Agreement, proper statutory notice in connection with its use of the Trademark Collateral; provided, however, the foregoing representation, warranty and covenant shall not apply to the trademark applications identified on **Schedule A** hereto;

(d) Company will maintain the quality of the products associated with the Trademark Collateral, generally at a level consistent with the quality as of the effective date of this Agreement, subject to the introduction of new products from time to time, and product modifications in the ordinary course of business; and

(e) Company has the unqualified right to enter into this Agreement and perform its terms and has entered and will enter into written agreements with each of its present and future employees, agents and consultants which will enable it to comply with the covenants herein contained.

4. **Visits and Inspections.** Company hereby grants to Lender and its employees and agents the right without prior notice to either Borrower to visit each Borrower's plants and facilities which manufacture, inspect or store products sold under any of the Trademarks, and to inspect the products and quality control records relating thereto at reasonable times during regular business hours. Company shall do any and all acts required by Lender to ensure Company's compliance with paragraph 3(d) of this Agreement.

5. **Restrictions on Future Agreements.** Company agrees that, until all of the Obligations have been satisfied in full and the Loan Agreement has been terminated in writing, it will not without Lender's prior written consent, enter into any agreement which is inconsistent with Company's duties under this Agreement, and Company further agrees that it will not take any action, or permit any action to be taken by others subject to its control, including licensees, or fail to take any action, which would affect the validity and enforcement of the rights granted to Lender under this Agreement.

6. **After-Acquired Trademark Rights.** If, before the Obligations have been satisfied in full, Company shall obtain rights to any new trademarks, or become entitled to the benefit of any trademark application or trademark for any renewal of any Trademark, the provisions of paragraph 1 hereof shall automatically apply thereto, and Company shall give to Lender prompt notice thereof in writing. Company authorizes Lender to modify this Agreement by amending Schedule A to include any future trademarks and trademark applications which are Trademark Collateral under paragraph 1 hereof or this paragraph 6.

7. **Company's Rights Prior to Event of Default.** Unless and until there shall have occurred and be continuing an Event of Default (as defined in the Loan Agreement), Company shall continue to own, and may use and enjoy the Trademark Collateral in connection with its business operations, but only in a manner consistent with the preservation of their current substance, validity and registration.

8. **Remedies Upon Event of Default.** If an Event of Default shall have occurred and be continuing, Lender shall have, in addition to all other rights and remedies given it by this Agreement, those allowed by law and, specifically, those of a Lender under the Code. Notice of any sale or other disposition of the Trademark Collateral shall be deemed reasonable and sufficient

TRADEMARK
REEL: 002566 FRAME: 0564

if given the Company at least ten (10) days before the time of any intended public or private sale or other disposition of any of the Trademark Collateral is to be made.

9. **Power of Attorney.** Company hereby makes, constitutes and appoints Lender and any officer or agent of Lender as Lender may select as Company's true and lawful attorney-in-fact, with full power to do any or all of the following if an Event of Default shall occur and be continuing: to endorse Company's name on all applications, documents, papers and instruments necessary for Lender to use the Trademark Collateral, or to grant or issue any exclusive or nonexclusive license under the Trademark Collateral to anyone else as necessary for Lender to assign, pledge, convey or otherwise transfer title in or dispose of the Trademark Collateral to anyone else. Company 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 all of the Obligations shall have been satisfied in full and the Loan Agreement shall have been terminated in writing.

10. **Release of Security Interest.** At such time as all of the Obligations shall have been satisfied and paid in full, Lender shall execute and deliver to Company all releases, termination statements, and other instruments as may be necessary or proper to release or reflect the release of Lender's security interest in the Trademark Collateral, including all documentation necessary to reflect such release in the United States Patent and Trademark Office.

11. **Costs and Expenses.** Any and all fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and legal expenses, incurred by Lender 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 Trademark Collateral, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademark Collateral, shall be borne and paid by Company on demand by Lender and until so paid shall be added to the amount of the Obligations and shall bear interest at the rate prescribed in the Loan Agreement.

12. **Litigation and Proceedings.**

(a) Company shall have the duty, through counsel acceptable to Lender, to prosecute diligently any trademark application of the Trademarks pending as of the date of this Agreement or thereafter, other than those discontinued or abandoned in the ordinary course of business, until the Obligations shall have been paid in full and to preserve and maintain all rights in trademark applications and trademarks of the Trademarks in the ordinary course of business. Any expenses incurred in connection with such an application shall be borne by Company. Company shall not abandon any right to file a trademark application, or any pending trademark application or trademark, other than those discontinued or abandoned in the ordinary course of business without the consent of Lender, which consent shall not be unreasonably withheld.

TRADEMARK
REEL: 002566 FRAME: 0565

(b) Lender shall have the right, but shall in no way be obligated, to bring suit in its own name, as the holder of a security interest in the Trademark Collateral, to enforce the Trademarks, and any license thereunder, in which event Company shall at the request of Lender do any and all lawful acts (including bringing suit) and execute any and all proper documents required by Lender in aid of such enforcement and Company shall promptly, upon demand, reimburse and indemnify the Lender for all costs and expenses incurred in the exercise of its rights under this paragraph 12. Nothing herein shall be deemed to prohibit Company from bringing any such suit in its own name at any time that an Event of Default does not exist.

13. **Lender May Perform.** If Company fails to comply with any of its obligations hereunder, Lender may do so in Company's name or in Lender's name, but at Borrowers' expense, and Company agrees to reimburse Lender in full for all expenses, including reasonable attorney's fees, incurred by Lender in prosecuting, defending or maintaining the Trademarks or Lender's interest therein pursuant to this Agreement.

14. **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.

15. **Modification.** This Agreement is subject to modification only by a writing signed by the parties, except as provided in paragraph 6 hereof.

16. **Binding Effect; Benefits.** 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.

17. **Notices.** All notices, requests and demands to or upon a party hereto, to be effective, shall be in writing and shall be sent by certified or registered mail, return receipt requested, by personal delivery against receipt, by overnight courier or by facsimile transmission and, unless otherwise expressly provided herein, shall be deemed to have been validly served, given or delivered immediately when delivered against receipt, three (3) Business Days after deposit in the mail, postage prepaid, or, in the case of facsimile transmission, when received (if on a Business Day and, if not received on a Business Day, then on the next Business Day after receipt), addressed as follows:

If to Lender: The CIT Group/Commercial Services, Inc.
Two First Union Center, 25th Floor
301 South Tryon Street
Charlotte, North Carolina 28202
Attention: Loan Administration Manager
Facsimile No. 704-339-2250

TRADEMARK
REEL: 002566 FRAME: 0566

with a copy to:	Carruthers & Roth, P.A. 235 North Edgeworth Street Greensboro, North Carolina 27401 Attention: June L. Basden, Esq. Facsimile No. 336-273-7885
If to Company:	Perfect Fit Industries, Inc. 8501 Tower Point Drive Charlotte, North Carolina 28277 Attention: President Facsimile No. 704-815-2461
With a copy to:	Morrison Cohen Singer & Weinstein, LLP 750 Lexington Avenue New York, New York 10022 Attention: Salomon R. Sassoon, Esq. Facsimile No. 212-735-8708

or to such other address as each party may designate for itself by notice given in accordance with this Section 17. Any written notice or demand that is not sent in conformity with the provisions hereof shall nevertheless be effective on the date that such notice is actually received by the noticed party.

18. **Construction of Agreement.** Whenever the term "reasonable attorneys' fees" or "attorneys' fees" is used in this Agreement or the other Loan Documents, such term shall refer to the fees of counsel based upon usual and customary hourly rates and not upon any fixed percentage of the Obligations.

19. **Governing Law; Consent to Forum.** THIS AGREEMENT HAS BEEN NEGOTIATED, EXECUTED AND DELIVERED AT AND SHALL BE DEEMED TO HAVE BEEN MADE IN THE STATE OF NORTH CAROLINA. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NORTH CAROLINA. AS PART OF THE CONSIDERATION FOR NEW VALUE RECEIVED, AND REGARDLESS OF ANY PRESENT OR FUTURE DOMICILE OR PRINCIPAL PLACE OF BUSINESS OF THE COMPANY OR THE LENDER, THE COMPANY HEREBY CONSENTS AND AGREES THAT THE SUPERIOR COURT OF MECKLENBURG COUNTY, NORTH CAROLINA, OR, AT THE LENDER'S OPTION, THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF NORTH CAROLINA, CHARLOTTE DIVISION, SHALL HAVE EXCLUSIVE JURISDICTION TO HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THE COMPANY AND THE LENDER PERTAINING TO THIS AGREEMENT OR TO ANY MATTER ARISING OUT OF OR RELATED TO THIS AGREEMENT. THE COMPANY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT

TRADEMARK
REEL: 002566 FRAME: 0567

COMMENCED IN ANY SUCH COURT, AND THE COMPANY HEREBY WAIVES ANY OBJECTION WHICH THE COMPANY MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. THE COMPANY HEREBY WAIVES PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINT AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO THE COMPANY AT THE ADDRESS SET FORTH IN THIS AGREEMENT AND THAT SERVICE SO MADE SHALL BE DEEMED COMPLETED UPON THE EARLIER OF THE COMPANY'S ACTUAL RECEIPT THEREOF OR 3 DAYS AFTER DEPOSIT IN THE U.S. MAILS, PROPER POSTAGE PREPAID. NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO AFFECT THE RIGHT OF THE LENDER TO SERVE LEGAL PROCESS IN ANY OTHER MANNER PERMITTED BY LAW, OR TO PRECLUDE THE ENFORCEMENT BY THE LENDER OF ANY JUDGMENT OR ORDER OBTAINED IN SUCH FORUM OR THE TAKING OF ANY ACTION UNDER THIS AGREEMENT TO ENFORCE THIS AGREEMENT IN ANY OTHER APPROPRIATE FORUM OR JURISDICTION.

20. Waiver of Jury Trial. THE COMPANY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE RIGHT TO TRIAL BY JURY (WHICH THE LENDER HEREBY ALSO WAIVES) IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM OF ANY KIND ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OF THE LOAN DOCUMENTS, THE OBLIGATIONS OR THE COLLATERAL. THE COMPANY ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO THE LENDER'S ENTERING INTO THE LOAN AGREEMENT AND EXTENDING CREDIT TO THE COMPANY THEREUNDER AND THAT THE LENDER IS RELYING UPON THIS WAIVER IN ITS FUTURE DEALINGS WITH THE COMPANY. THE COMPANY WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THE FOREGOING WAIVER WITH ITS LEGAL COUNSEL AND HAS KNOWINGLY AND VOLUNTARILY WAIVED ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

WITNESS the execution hereof on the day and year first above written.

PERFECT FIT INDUSTRIES, INC.
("Company")

By: _____
Title: Sr. V.P. Finance

TRADEMARK
REEL: 002566 FRAME: 0568

THE CIT GROUP/COMMERCIAL SERVICES, INC.
("Lender")

By: _____
Title: VICE PRESIDENT

STATE OF NC

COUNTY OF Union

I, Linda B. Webb, a Notary Public of the State and County aforesaid, certify that David J. Kennedy personally appeared before me this day and acknowledged that (s)he is Sr. Vice - President of **PERFECT FIT INDUSTRIES, INC.**, a Delaware corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed by him/her in the corporation's name.

WITNESS my hand and official stamp or seal, this 2 day of August, 2002.

Linda B. Webb
Notary Public

My Commission Expires: MY COMMISSION EXPIRES AUGUST 1, 2003

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public of the State and County aforesaid, certify that _____ personally appeared before me this day and acknowledged that (s)he is _____ President of **THE CIT GROUP/COMMERCIAL SERVICES, INC.**, a New York corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed by him/her in the corporation's name.

WITNESS my hand and official stamp or seal, this _____ day of August, 2002.

_____
Notary Public

My Commission Expires:_____

TRADEMARK
REEL: 002566 FRAME: 0570

STATE OF _____

COUNTY OF _____

I, _____, a Notary Public of the State and County aforesaid, certify that _____ personally appeared before me this day and acknowledged that (s)he is _____ President of **PERFECT FIT INDUSTRIES, INC.**, a Delaware corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed by him/her in the corporation's name.

WITNESS my hand and official stamp or seal, this _____ day of August, 2002.

_____
Notary Public

My Commission Expires:_____

STATE OF North Carolina

COUNTY OF Mecklenburg

I, Vickie Nash, a Notary Public of the State and County aforesaid, certify that M. Kim Carpenter personally appeared before me this day and acknowledged that (~~s~~)he is Vice President of **THE CIT GROUP/COMMERCIAL SERVICES, INC.**, a New York corporation, and that by authority duly given and as the act of the corporation, the foregoing instrument was signed by him/her in the corporation's name.

WITNESS my hand and official stamp or seal, this 2nd day of August, 2002.

VICKIE NASH
NOTARY
My Comm. Exp.
2/10/2003
PUBLIC
MECKLENBURG COUNTY, N.C.

Vickie Nash
Notary Public

My Commission Expires: 2-10-2003

TRADEMARK
REEL: 002566 FRAME: 0571

SCHEDULE A TO
TRADEMARK SECURITY AGREEMENT

Description	Registration Number
California Feather Co.	2,574,673

Description	Serial Number
California Clean	75/934,804
Down In A Bag	76/352,663
Down In a Box	76/368,459