

11-27-2002

Nos.: 2,579,729; 2,542,298; 2,447,081; and 1,754,904

FORM PTO 1594  
(Rev. 6-93)

U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office



OMB No. 0651-0011 (exp. 4/94)

102295757

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

1. Name of conveying party(ies): Owen Industries, Inc. **11-25-02**

Individual(s)  Association  
 General Partnership  Limited Partnership  
 Corporation-Iowa  
 Other \_\_\_\_\_

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

2. Name and address of receiving party(ies)  
 Name: Wells Fargo Business Credit, Inc.  
 Street Address: MAC N9312-040 Sixth and Marquette  
 City: Minneapolis State: MN ZIP: 55479

Individual(s) \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 Corporation-Minnesota  
 Other \_\_\_\_\_

3. Nature of conveyance:  
 Assignment  Merger  
 Security Agreement  Change of Name  
 Other \_\_\_\_\_

Execution Date: October 11, 2002

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

4. Application number(s) or patent number(s):  
 A. Trademark Application No.(s)

Additional numbers attached?  Yes  No

B.Trademark Registration No.(s): 2,579,729; 2,542,298; 2,447,081; and 1,754,904

5. Name and address of party to whom correspondence concerning document should be mailed:  
 Name: Jamie Nafziger  
 Internal Address: Dorsey & Whitney LLP  
 Street Address: Suite 1500, 50 South Sixth Street  
 City: Minneapolis State: MN ZIP: 55402-1498

6. Total Number of applications and registrations involved: ..... 4

7. Total fee (37 CFR 3.41)..... \$15.00  
 Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number:  
04-1420  
 (Attach duplicate copy of this page if paying by deposit account)

FINANCE SECTION  
NOV 15 2002

**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.

Jamie Nafziger Jamie Nafziger 11/19/02  
 Name of person Signing Signature Date

Total number of pages comprising cover sheet: 1

OMB No. 0651-0011 (exp. 4/94)

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

11/26/2002 LMUELLER 00000233 2579729  
 01 FC:8521 40.00 OP  
 02 FC:8522 75.00 OP

**BOX ASSIGNMENT**  
 Director - U.S. Patent and Trademark Office  
 Washington, D.C. 20231

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington, D.C. 20503.

## PATENT AND TRADEMARK SECURITY AGREEMENT

This Agreement, dated as of October 11, 2002 is made by and between Owen Industries, Inc., an Iowa corporation having a business location at the address set forth below next to its signature (the "Debtor"), and Wells Fargo Business Credit, Inc., a Minnesota corporation having a business location at the address set forth below next to its signature (the "Secured Party").

### Recitals

The Debtor and the Secured Party are parties to a Credit and Security Agreement of even date herewith (as the same may hereafter be amended, supplemented or restated from time to time, the "Credit Agreement") setting forth the terms on which the Secured Party may now or hereafter extend credit to or for the account of the Debtor.

As a condition to extending credit to or for the account of the Debtor, the Secured Party has required the execution and delivery of this Agreement by the Debtor.

ACCORDINGLY, in consideration of the mutual covenants contained in the Loan Documents and herein, the parties hereby agree as follows:

1. Definitions. All terms defined in the Recitals hereto or in the Credit Agreement that are not otherwise defined herein shall have the meanings given to them therein. In addition, the following terms have the meanings set forth below:

"Obligations" means each and every debt, liability and obligation of every type and description arising under or in connection with any Loan Document (as defined in the Credit Agreement) which the Debtor may now or at any time hereafter owe to the Secured Party, whether such debt, liability or obligation now exists or is hereafter created or incurred and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, independent, joint, several or joint and several, and including specifically, but not limited to, the Obligations (as defined in the Credit Agreement).

"Patents" means all of the Debtor's right, title and interest in and to patents or applications for patents, fees or royalties with respect to each, and including without limitation the right to sue for past infringement and damages therefor, and licenses there under, all as presently existing or hereafter arising or acquired, including without limitation the patents listed on Exhibit A.

"Security Interest" has the meaning given in Section 2.

“Trademarks” means all of the Debtor’s right, title and interest in and to: (i) trademarks, service marks, collective membership marks, including all common law rights, registrations and applications for registration for each, and the respective goodwill associated with each, (ii) licenses, fees or royalties with respect to each, (iii) the right to sue for past, present and future infringement, dilution and damages therefor, (iv) and licenses there under, all as presently existing or hereafter arising or acquired, including, without limitation, the marks listed on Exhibit B.

2. Security Interest. The Debtor hereby irrevocably pledges and grants the Secured Party a security interest (the “Security Interest”), with the power of sale to the extent permitted by law, in the Patents and in the Trademarks to secure payment of the Obligations, and together with the goodwill of the business associated with said Trademarks, said Patents and Trademarks to be held and enjoyed by the Secured Party or its designee for its use and behalf, and for the legal representatives, successors and assigns of the Secured Party or its designee, as fully and entirely as the same would have been held by the Debtor had this Agreement not been made. As set forth in the Credit Agreement, the Security Interest is coupled with a security interest in substantially all of the personal property of the Debtor.

(a) After the occurrence and continuation of an Event of Default under the Credit Agreement or this Agreement, the Secured Party shall receive transfer of the Patents and Trademarks from the Debtor pursuant to an Assignment of Patents and Trademarks substantially in the form of Exhibit C.

(b) The Debtor hereby irrevocably authorizes the Secured Party to date undated Assignments of Patents and Trademarks and otherwise complete such Assignments at the time of transfer.

(c) Notwithstanding the foregoing provisions of this Section 2, the Secured Party acquires no security interest or other rights in the United States for any Trademark that is the subject of an intent-to-use application before the U.S. Patent and Trademark Office until such time as a verified amendment to allege use or statement of use is filed for such application or the Secured Party arranges for an assignment of such Trademarks from the Secured Party to a purchaser that would satisfy the requirements of Section 10 of the Lanham Act, 15 U.S.C. Section 1060. At the time the Secured Party seeks to transfer all other Trademarks pursuant to Exhibit C, it may also transfer any U.S. intent-to-use applications provided that such applications satisfy the conditions of the preceding sentence.

(d) Notwithstanding the foregoing provisions of this Section 2, the foregoing assignment shall be effective only upon the occurrence of an “Event of Default” under the Security Agreement and upon written notice by the Secured Party to the Debtor of the acceptance of the Secured Party of this Assignment; unless and until the acceptance of this Assignment, this Assignment shall have no effect. After the occurrence and continuation of an Event of Default under the Security Agreement,

the Secured Party shall be entitled to transfer the Trademarks and Patents pursuant to the Assignment of Patents and Trademarks attached hereto as Exhibit C.

3. Representations, Warranties and Agreements. The Debtor represents, warrants and agrees as follows:

(a) ***Existence; Authority.*** The Debtor is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, and this Agreement has been duly and validly authorized by all necessary corporate action on the part of the Debtor.

(b) ***Patents.*** Exhibit A accurately lists all Patents owned or controlled by the Debtor, either wholly or partially, as of the date hereof, or to which the Debtor has a right as of the date hereof to have assigned to it, either wholly or partially, and accurately reflects the existence and status of applications and letters patent pertaining to the Patents as of the date hereof. If after the date hereof, the Debtor owns, controls, either wholly or partially, or has a right to have assigned to it any Patents not listed on Exhibit A, or if Exhibit A ceases to accurately reflect the existence and status of applications and letters patent pertaining to the Patents, then the Debtor shall within sixty (60) days provide written notice to the Secured Party with a replacement Exhibit A, which upon acceptance by the Secured Party shall become part of this Agreement.

(c) ***Trademarks.*** Exhibit B accurately lists all Trademarks owned or controlled by the Debtor as of the date hereof and accurately reflects the existence and status of the Trademarks and all applications and registrations pertaining thereto as of the date hereof; provided, however, that Exhibit B need not list common law marks (i.e., Trademarks for which there are no applications or registrations) which are not material to the Debtor's or any Affiliate's business(es). If after the date hereof, the Debtor owns or controls any Trademarks not listed on Exhibit B (other than common law marks which are not material to the Debtor's or any Affiliate's business(es)), or if Exhibit B ceases to accurately reflect the existence and status of applications and registrations pertaining to the Trademarks, then the Debtor shall promptly provide written notice to the Secured Party with a replacement Exhibit B, which upon acceptance by the Secured Party shall become part of this Agreement. The Debtor has marked with an asterisk each U.S. intent-to-use trademark application listed on Exhibit B for which a verified amendment to allege use or statement of use has not been filed.

(d) ***Validity.*** None of the Patents or Trademarks have been adjudged invalid or unenforceable in whole or in part.

(e) ***Affiliates.*** As of the date hereof, no Affiliate owns, controls, or has a right to have assigned to it any items that would, if such item were owned by the Debtor, constitute Patents or Trademarks. If after the date hereof any Affiliate owns, controls, or has a right to have assigned to it any such items, then the Debtor shall

promptly either: (i) cause such Affiliate to assign all of its rights in such item(s) to the Debtor; or (ii) notify the Secured Party of such item(s) and cause such Affiliate to execute and deliver to the Secured Party a patent and trademark security agreement substantially in the form of this Agreement.

(f) **Title.** Except as otherwise indicated, the Debtor has absolute title to each Patent and each Trademark listed on Exhibits A and B, free and clear of all Liens except Permitted Liens. Except as otherwise indicated, the Debtor (i) will have, at the time the Debtor acquires any rights in Patents or Trademarks hereafter arising, absolute title to each such Patent or Trademark free and clear of all Liens except Permitted Liens, and (ii) will keep all Patents and Trademarks free and clear of all Liens except Permitted Liens.

(g) **No Sale.** Except as permitted in the Credit Agreement, the Debtor will not assign, transfer, encumber or otherwise dispose of, or enter into any agreement that is in conflict with its obligations under this Agreement with respect to, the Patents or Trademarks, or any interest therein, without the Secured Party's prior written consent.

(h) **Defense.** The Debtor will at its own expense and using commercially reasonable efforts, protect and defend the Patents and Trademarks against all claims or demands of all Persons other than those holding Permitted Liens.

(i) **Maintenance.** The Debtor will at its own expense maintain the Patents and the Trademarks to the extent reasonably advisable in its business including, but not limited to, filing all applications to obtain letters patent or trademark registrations and all affidavits, maintenance fees, annuities, and renewals possible with respect to letters patent, trademark registrations and applications therefor. The Debtor covenants that it will not abandon nor fail to pay any maintenance fee or annuity due and payable on any Patent or Trademark, nor fail to file any required affidavit or renewal in support thereof, without first providing the Secured Party: (i) sufficient written notice, of at least thirty (30) days, to allow the Secured Party to timely pay any such maintenance fees or annuities which may become due on any Patents or Trademarks, or to file any affidavit or renewal with respect thereto, and (ii) a separate written power of attorney or other authorization to pay such maintenance fees or annuities, or to file such affidavit or renewal, should such be necessary or desirable.

(j) **Secured Party's Right to Take Action.** If the Debtor fails to perform or observe any of its covenants or agreements set forth in this Section 3, and if such failure continues for a period of ten (10) calendar days after the Secured Party gives the Debtor written notice thereof (or, in the case of the agreements contained in subsection (h), immediately upon the occurrence of such failure, without notice or lapse of time), or if the Debtor notifies the Secured Party that it intends to abandon a Patent or Trademark, the Secured Party may (but need not) perform or observe such covenant or agreement or take steps to prevent such intended abandonment on behalf

and in the name, place and stead of the Debtor (or, at the Secured Party's option, in the Secured Party's own name) and may (but need not) take any and all other actions which the Secured Party may reasonably deem necessary to cure or correct such failure or prevent such intended abandonment.

(k) **Costs and Expenses.** Except to the extent that the effect of such payment would be to render any loan or forbearance of money usurious or otherwise illegal under any applicable law, the Debtor shall pay the Secured Party on demand the amount of all moneys expended and all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by the Secured Party in connection with or as a result of the Secured Party's taking action under subsection (i) or exercising its rights under Section 6, together with interest thereon from the date expended or incurred by the Secured Party at the Default Rate.

(l) **Power of Attorney.** To facilitate the Secured Party's taking action under subsection (i) and exercising its rights under Section 6, the Debtor hereby irrevocably appoints (which appointment is coupled with an interest) the Secured Party, or its delegate, as the attorney-in-fact of the Debtor with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of the Debtor, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by the Debtor under this Section 3, or, necessary for the Secured Party, after an Event of Default, to enforce or use the Patents or Trademarks or to grant or issue any exclusive or non-exclusive license under the Patents or Trademarks to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Patents or Trademarks to any third party. The Debtor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein shall terminate upon the termination of the Credit Agreement as provided therein and the payment and performance of all Obligations.

4. **Debtor's Use of the Patents and Trademarks.** The Debtor shall be permitted to control and manage the Patents and Trademarks, including the right to exclude others from making, using or selling items covered by the Patents and Trademarks and any licenses there under, in the same manner and with the same effect as if this Agreement had not been entered into, so long as no Event of Default occurs and remains uncured.

5. **Events of Default.** Each of the following occurrences shall constitute an event of default under this Agreement (herein called "Event of Default"): (a) an Event of Default, as defined in the Credit Agreement, shall occur; or (b) the Debtor shall fail promptly to observe or perform any covenant or agreement herein binding on it; or (c) any of the representations or warranties contained in Section 3 shall prove to have been incorrect in any material respect when made.

6. Remedies. Upon the occurrence of an Event of Default and at any time thereafter, the Secured Party may, at its option, take any or all of the following actions:

(a) The Secured Party may exercise any or all remedies available under the Credit Agreement.

(b) The Secured Party may sell, assign, transfer, pledge, encumber or otherwise dispose of the Patents and Trademarks.

(c) The Secured Party may enforce the Patents and Trademarks and any licenses there under, and if Secured Party shall commence any suit for such enforcement, the Debtor shall, at the request of Secured Party, do any and all lawful acts and execute any and all proper documents required by Secured Party in aid of such enforcement.

7. Miscellaneous. This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by the Secured Party. A waiver signed by the Secured Party shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Secured Party's rights or remedies. All rights and remedies of the Secured Party shall be cumulative and may be exercised singularly or concurrently, at the Secured Party's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other. All notices to be given to Debtor under this Agreement shall be given in the manner and with the effect provided in the Credit Agreement. The Secured Party shall not be obligated to preserve any rights the Debtor may have against prior parties, to realize on the Patents and Trademarks at all or in any particular manner or order, or to apply any cash proceeds of Patents and Trademarks in any particular order of application. This Agreement shall be binding upon and inure to the benefit of the Debtor and the Secured Party and their respective participants, successors and assigns and shall take effect when signed by the Debtor and delivered to the Secured Party, and the Debtor waives notice of the Secured Party's acceptance hereof. The Secured Party may execute this Agreement if appropriate for the purpose of filing, but the failure of the Secured Party to execute this Agreement shall not affect or impair the validity or effectiveness of this Agreement. A carbon, photographic or other reproduction of this Agreement or of any financing statement signed by the Debtor shall have the same force and effect as the original for all purposes of a financing statement. This Agreement shall be governed by the internal law of Minnesota without regard to conflicts of law provisions. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Obligations.

**THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR PERTAINING TO THIS AGREEMENT.**

IN WITNESS WHEREOF, the parties have executed this Patent and Trademark Security Agreement as of the date written above.

OWEN INDUSTRIES, INC.

Owen Industries, Inc.  
501 Avenue H  
Carter Lake, Iowa 51510

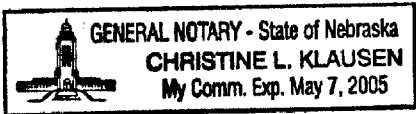
By *John R. Sunderman*  
Its Senior Vice President

Wells Fargo Business Credit, Inc.  
Wells Fargo Center  
MAC N9312-040  
Sixth and Marquette  
Minneapolis, Minnesota 55479

WELLS FARGO BUSINESS CREDIT, INC.  
By *Troy Jefferson*  
Its Vice President *Officer T.J.*

STATE OF NEBRASKA )  
  )  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me this 27 day of June, 2002, by John R. Sunderman, the Senior Vice President of Owen Industries, Inc., an Iowa corporation, on behalf of the corporation.



*Christine L. Klausen*  
Notary Public

STATE OF MINNESOTA)  
  )  
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of ~~June~~ OCTOBER 2002, by TROY F. JEFFERSON, AN OFFICER, a Vice President of Wells Fargo Business Credit, Inc., a Minnesota corporation, on behalf of the CORPORATION.

*Jean M. Biermann*  
Notary Public



**Patent and Trademark Security Agreement  
Exhibit A**

**Patents**

6,039,915	March 21, 2000	Minter, et al.	Burn Table
6,165,410	December 26, 2000	Crees, et al.	Downdraft Exhaust Cutting Table
6,055,693	May 2, 2000	Lehr, et al.	Railway Short Span Trestle Bridge

**Patent and Trademark Security Agreement  
Exhibit B**

**Trademarks**

SLAGGER	2,447,081	April 24, 2001	007, 020	Motor powered scraper blade
LINCBOLT	2,579,729	June 11, 2002	035	Wholesale and retail store services, featuring mechanical fasteners
LINCOLN STRUCTURAL BOLT	2,542,298	February 26, 2002	035	Wholesale and retail store services, featuring mechanical fasteners
CLECO	1,754,904	March 2, 1993	007	Material handling equipment; namely, sideloader and stackercranes

**Patent and Trademark Security Agreement  
Exhibit C**

**Assignment of Patents and Trademarks**

This Assignment having an effective date of \_\_\_\_\_, \_\_\_ is made by and between \_\_\_\_\_, a \_\_\_\_\_, located and doing business at \_\_\_\_\_, (“Assignor”) and Wells Fargo Business Credit, Inc., a Minnesota corporation, located and doing business at Wells Fargo Center, MAC N9312-040, Sixth and Marquette, Minneapolis, Minnesota 55479 (“Assignee”).

WHEREAS, Assignor has adopted and owns certain trademarks and patents as defined in that certain Patent and Trademark Security Agreement dated \_\_\_\_\_, and identified in Exhibits A and B thereto. The definitions of “Patents” and “Trademarks” in said Patent and Trademark Security Agreement are expressly incorporated herein as are said Exhibits A and B, and said Exhibits A and B are attached hereto.

WHEREAS, Assignee pursuant to the terms of said Patent and Trademark Security Agreement and the Credit Agreement, as defined therein, is desirous of acquiring the Patents and Trademarks.

NOW THEREFORE, in consideration of and in exchange for good and valuable consideration, the receipt of which is hereby acknowledged, Assignor does hereby sell, assign and transfer unto Assignee, and its successors and assigns, all of its right, title and interest in and to the Patents and Trademarks, and the registrations and applications therefor, and all rights corresponding thereto throughout the world and all renewals and extension thereof, together with that part of the good will of the business connected with the use of and symbolized by the Marks. Assignor hereby covenants that it has full right to convey the entire interest herein assigned, and that it has not executed, and will not execute, any agreements inconsistent herewith.

Those Trademarks identified on Exhibit B with an asterisk are the subject of pending intent-to-use applications in the U.S. Patent and Trademark Office, (the “ITU Marks”). Each ITU Marks is the subject of a verified allegation of use under § 1(c) or 1(d) of the Lanham Act that has been filed with the U.S. Patent and Trademark Office, or it is hereby assigned as part of a transfer of the entire business or portion thereof to which the ITU Marks pertain as required by § 10 of the Lanham Act.

Assignor hereby irrevocably authorizes Assignee to date this undated Assignment and otherwise complete this Assignment at the time of transfer.

IN WITNESS WHEREOF, the parties have executed this Assignment of Patents and Trademarks as of the dates identified below.

\_\_\_\_\_ (Assignor)

Date: \_\_\_\_\_

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

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

WELLS FARGO BUSINESS CREDIT, INC. (Assignee)

Date: \_\_\_\_\_

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

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