

04-09-2003

Form PTO-1594

(Rev. 10/02)

OMB No. 0651-0027 (exp. 6/30/2005)

4-7-03 RECOI TR



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

Tab settings

102413747

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

1. Name of conveying party(ies):

Smith Equipment Manufacturing Company LLC  
2601 Lockheed Avenue  
Watertown, SD 57201

- Individual(s)
- General Partnership
- Corporation-State
- Other DE Limited Liability Company
- Association
- Limited Partnership

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

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other Correction of recordal @ Reel/Frame
- Merger
- Change of Name

Execution Date: 10/06/1995 1442/0335

2. Name and address of receiving party(ies)

Name: Seidler Capital Partners L.P.

Internal Address:

Street Address: 3030 Plaza VII

City: Minneapolis State: MN Zip: 55402

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State
- 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

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

See Attachment 1

Additional number(s) attached  Yes  No

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

Name: Eric O. Madson, Esq.

Internal Address: Robins, Kaplan, Miller &

Ciresi L.L.P

Street Address: 2800 LaSalle Plaza

800 LaSalle Avenue

City: Minneapolis State: MN Zip: 55402

6. Total number of applications and registrations involved:

6

7. Total fee (37 CFR 3.41).....\$ 165.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

RECEIVED  
TRADEMARK SECTION  
NOV 11 2003  
10:00 AM

DO NOT USE THIS SPACE

9. Signature.

Eric O. Madson, Esq.

Name of Person Signing

Signature

03/31/2003

Date

Total number of pages including cover sheet, attachments, and document: 16

04/08/2003 LMBELLER 00000107 240296

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

01 FC:85P1  
02 FC:85P2

40.00 OP  
125.00 OP

TRADEMARK  
REEL: 002707 FRAME: 0707

# ATTACHMENT 1

**Conveying Party:** Smith Equipment Manufacturing Company LLC

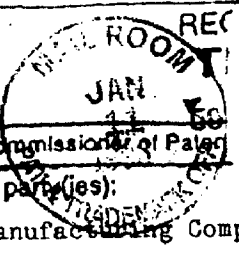
**Receiving Party:** Seidler Capital Partners L.P.

## **Continuation of Item 3 – Nature of Conveyance**

On January 30, 1996, a recordal was made at Reel 1442, Frames 0335 – 0347. A copy of cover sheet and document as previously recorded is attached hereto. The cover sheet for that recordal incorrectly indicated that the Nature of Conveyance was an Assignment and a Security Agreement, when in fact the Nature of Conveyance was a Security Agreement only. This Recordation Form is being filed to correct such typographical error, and to show that the Nature of Conveyance is a Security Agreement only.

## **Continuation of Item 4.B – Trademark Registration Nos.**

Registration No. 240,296	SMITH'S (stylized)
Registration No. 240,297	SMITH'S (stylized)
Registration No. 824,886	VISARC (stylized)
Registration No. 734,177	REDI-SET
Registration No. 1,262,851	TRADESMAN
Registration No. 1,595,885	AIR PRODUCTS



01-30-1996



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300-482

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To the Honorable Commissioner of Patents

checked original documents or copy thereof.

1. Name of conveying party(ies):

Smith Equipment Manufacturing Company LLC  
2601 Lockheed Avenue  
Watertown, SD 57201

2. Name and address of receiving party(ies):

Name: Seidler Capital Partners L.P.

Internal Address:

Street Address: 3030 Plaza VII

City: Minneapolis State: MN ZIP: 55402

- Individual(s)
- General Partnership
- Corporation-State
- Other Limited liability company

- Association
- Limited Partnership

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

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State
- 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
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: October 6, 1995

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

A. Trademark Application No.(s)

74-592,361

B. Trademark registration No.(s)

240,926	824,886	802,657
240,927	667,610	1,066,069
667,433	667,742	1,262,851
667,435	734,177	1,595,885

Additional numbers attached?  Yes  No

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

Name: Denise S. Mollen

Internal Address: Robins, Kaplan, Miller & Ciresi

Street Address: 2800 LaSalle Plaza

800 LaSalle Avenue

City: Minneapolis State: MN ZIP: 55402

6. Total number of applications and registrations involved: 13

7. Total fee (37 CFR 3.41): \$ 340.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit acc

090 UW 01/29/96 240926  
090 UW 01/29/96 240926

DO NOT USE THIS SPACE

0 481 40.00 CK  
0 482 300.00 CK

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.

Denise S. Mollen

Name of Person Signing

*Denise Mollen*  
Signature

Jan. 8, 1996

Date

Total number of pages comprising cover sheet: 1

TRADEMARK

REEL: 1442 FRAME: 0335

1-11-96  
MS

# **COLLATERAL PATENT, TRADEMARK AND LICENSE ASSIGNMENT**

This COLLATERAL PATENT, TRADEMARK AND LICENSE ASSIGNMENT ("Assignment"), made as of this 6<sup>th</sup> day of October, 1995, by SMITH EQUIPMENT MANUFACTURING COMPANY LLC, a Delaware limited liability company ("Assignor"), with its principal place of business at 2601 Lockheed Avenue, Watertown, SD 57201, and SEIDLER CAPITAL PARTNERS L.P., a Delaware limited partnership ("Assignee"), at 3030 Plaza VII, 45 South Seventh Street, Minneapolis, Minnesota 55402.

## **BACKGROUND**

Assignor and Assignee are parties to a certain Note Purchase Agreement dated as of the date hereof, as may be amended, supplemented and modified from time to time (the "Note Purchase Agreement"), which Note Purchase Agreement provides for, among other things (i) a term loan to the Assignor of Three Million Five Hundred Thousand Dollars and no/100ths (\$3,500,000.00) in the aggregate and (ii) the execution and delivery by Assignor to Assignee of the Other Agreements, including without limitation, agreements which grant by Assignor to Assignee a security interest in all of Assignor's assets, including, without limitation, its patents, patent applications, trademarks, trademark applications, trade names, service marks, goodwill and licenses;

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor agrees as follows:

1. **Incorporation of Note Purchase Agreement.** The terms and provisions of the Note Purchase Agreement are incorporated herein in their entirety by this reference thereto. Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Note Purchase Agreement.
2. **Collateral Assignment of Patents, Trademarks and Licenses.** To secure the complete and timely satisfaction of all of Assignor's Obligations (as defined in the Note Purchase Agreement) to Assignee (the "Obligations"), Assignor hereby grants a security interest to Assignee, as and by way of a first mortgage and security interest having priority over all other security interests (except the lien of the Senior Creditor pursuant to the terms of the Subordination Agreement), with power of sale, to the extent permitted by law, and assigns to Assignee, upon the occurrence of an "Event of Default" (as defined in the Note Purchase Agreement) which has not been waived, in writing, by the Assignee, all of Assignor's right, title and interest in and to all of its now owned or existing and filed and hereafter acquired or arising and filed:

- (i) U.S. and foreign patents and U.S. and foreign patent applications, including, without limitation, the inventions and improvements described and claimed therein, and those U.S. and foreign patents listed on Schedule A attached hereto and made a part hereof, and the reissues and renewals thereof and all income, royalties, damages and payments now and hereafter due and/or payable under and with respect to all U.S. and foreign patents and U.S. and foreign patent applications, including, without limitation, damages and payments for past or future infringements thereof (all of the foregoing hereinafter individually and/or collectively referred to as the "Patents");
- (ii) trademarks, trademark registrations, trade names, service marks, service mark registrations, service mark applications and trademark applications, including, without limitation, those listed on Schedule B attached hereto and made a part hereof, if any, and (a) renewals thereof, (b) all income, royalties, damages and payments now or hereafter due and/or payable with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements thereof, (c) the rights to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing trademarks, trademark registrations, trade names and applications, service marks, service mark registrations and applications, together with the items described in clauses (a) through (d), are sometimes hereinafter individually and/or collectively referred to as the "Trademarks");
- (iii) any license agreement in which Assignor is or becomes licensed to use a patent, trade name, trademark or service mark including, without limitation, the licenses listed on Schedule C attached hereto and made a part hereof, if any (the "Licenses"); and
- (iv) the goodwill of Assignor's business connected with and symbolized by the Trademarks.

3. **Restrictions on Future Agreements.** Assignor agrees that until the Obligations shall have been satisfied in full and the Note Purchase Agreement shall have been terminated and cancelled, Assignor will not, without Assignee's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with Assignor's obligations under this Assignment, and Assignor 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 or enforcement of the rights transferred to Assignee under this Assignment. This Section 3 shall not prohibit Assignor from entering into any non-exclusive license agreements on an arms-length basis

with one or more third parties relating to the Patents, Trademarks or Licenses, subject to the Assignee's collateral assignment thereof.

4. **New Patents, Trademarks and Licenses.** Assignor represents and warrants that the Patents, Trademarks and Licenses listed on Schedules A, B and C, respectively, constitute all of the Patents, Trademarks, service marks, registrations, Licenses and applications now owned by Assignor. If, before the Obligations shall have been satisfied in full, Assignor shall (i) obtain rights to any new patentable inventions, trademarks, trademark registrations, service marks, service mark registrations or trade names or licenses, or (ii) become entitled to the benefit of any patent, license or trademark applications, trademark, trademark registrations, service marks, service mark registrations, renewal, extension or continuation-in-part of any Patent or any improvement on any Patent or License, the provisions of paragraph 2 above shall automatically apply thereto and Assignor shall give to Assignee prompt written notice thereof. Assignor hereby authorizes Assignee to modify this Assignment by amending Schedule A, B and/or C as applicable to include any future patents, patent applications, trademarks, trademark registrations, trademark applications, service marks, service mark registrations, service mark applications, trade names, licenses or other intellectual property which are Patents or Trademarks or Licenses, as applicable, under paragraph 2 above, or under this paragraph 4.
  
5. **Royalties: Terms.** Assignor hereby agrees that the use by Assignee of all Patents, Trademarks and Licenses as described above shall be worldwide to the extent Assignor has such rights, and without any liability for royalties or other related charges from Assignee to Assignor. The term of the assignments granted herein shall extend until the earlier of (i) the expiration of each of the respective Patents, Trademarks and Licenses assigned hereunder, or (ii) the Obligations have been paid in full and the Note Purchase Agreement has been terminated and cancelled.
  
6. **Assignee's Right to Inspect.** Assignee shall have the right, at any time and from time to time, to inspect Assignor's premises and to examine Assignor's books, records and operations, including, without limitation, Assignor's quality control processes. From and after the occurrence of an Event of Default, Assignor agrees that Assignee, or a conservator appointed by Assignee, shall have the right to establish such additional product quality controls as Assignee, or said conservator, in its sole judgment, may deem necessary to assure maintenance of the quality of products sold by Assignor under the Patents, Trademarks or Licenses. Assignor agrees (i) not to sell or assign its interest in, or grant any license under, the Patents, Trademarks and/or Licenses without the prior written consent of Assignee; and (ii) to maintain the quality of any and all products in connection with which the Patents, Trademarks and/or Licenses are used, consistent with the quality of said products as of the date hereof.

other than in  
the ordinary  
course of  
business  
CS

7. **Termination of Assignee's Security Interest.** This Assignment is made for collateral purposes only. Upon payment in full of the Obligations and termination and cancellation of the Note Purchase Agreement, Assignee shall, upon Assignor's request, execute and deliver to Assignor all termination statements and other instruments in acceptable form provided to the Assignee by the Assignor as may be necessary or proper to terminate Assignee's security interest in the Patents, Trademarks and Licenses, subject to any disposition thereof, which may have been made by Assignee pursuant to paragraph 14 or any other provision hereof or pursuant to the Note Purchase Agreement.
8. **Duties of Assignor.** To the extent appropriate and in accordance with Assignor's sound business practices, Assignor shall (i) prosecute diligently any patent application that is part of the Patents and any trademark or service mark application that is part of the Trademarks pending as of the date hereof or thereafter until the Obligations shall have been paid in full, (ii) make application on unpatented but patentable inventions and on trademarks or service marks, as appropriate, and (iii) preserve and maintain all rights in patent applications and patents that are part of the Patents and in trademark applications, trademarks, and trademark registrations, and service mark applications, service marks, and service mark registrations that are part of the Trademarks, and to any Licenses. Any expenses incurred in connection with such applications shall be borne by Assignor. Assignor shall not abandon any right to file a patent application, trademark application, or service mark application, or any pending patent application, trademark application, service mark application, patent, trademark or service mark, or License, without the consent of Assignee, which consent shall not be unreasonably withheld.
9. **Assignee's Right to Sue.** From and after the occurrence of an Event of Default, Assignee shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Patents, Licenses and Trademarks, and any other licenses thereunder, and, if Assignee shall commence any such suit, Assignor shall, at the request of Assignee, do any and all lawful acts and execute any and all proper documents required by Assignee in aid of such enforcement and Assignor shall promptly, upon demand, reimburse and indemnify Assignee for all costs and expenses incurred by Assignee in the exercise of its rights under this paragraph 9.
10. **Waivers.** No course of dealing between Assignor and Assignee, nor any failure to exercise, nor any delay in exercising, on the part of Assignee, any right, power or privilege hereunder or under the Note Purchase Agreement 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.
11. **Severability.** The provisions of this Assignment 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 Assignment in any jurisdiction.

12. **Modification.** This Assignment cannot be altered, amended or modified in any way, except as specifically provided in paragraph 4 hereof, or by a writing signed by the parties hereto.
  
13. **Cumulative Remedies; Power of Attorneys; Effect on Note Purchase Agreement.** All of Assignee's rights and remedies with respect to the Patents, Licenses and Trademarks, whether established hereby, by the Note Purchase Agreement, by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently. From and after the occurrence of an Event of Default, Assignor hereby constitutes and appoints Assignee, with full power of substitution in its sole discretion, as Assignor's true and lawful attorney-in-fact, with power to (i) endorse Assignor's name on all applications, documents, papers and instruments necessary or desirable for the Assignee in the use of the Patents, Licenses and Trademarks, (ii) take any other actions with respect to the Patents, Licenses and Trademarks as the Assignee deems in the best interest of the Assignee, (iii) grant or issue any exclusive or non-exclusive license under the Patents, Licenses or Trademarks to anyone, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Patents, Licenses or Trademarks to anyone. Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until the Obligations shall have been paid in full and the Note Purchase Agreement has been terminated and cancelled. Assignor acknowledges and agrees that this Assignment is not intended to limit or restrict in any way the rights and remedies of Assignee under the Note Purchase Agreement, but rather, is intended to facilitate the exercise of such rights and remedies. Assignee shall have, in addition to all other rights and remedies given it by the terms of this Assignment, 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, License or Trademarks may be located. The rights of the Assignee hereunder are subject to the rights of the Senior Creditor pursuant to the terms of the Senior Subordination Agreement, but such agreement shall not affect Assignor's obligations hereunder.
  
14. **Retention of Patents and Trademarks in Satisfaction of the Liabilities.** Upon the occurrence of an Event of Default and the election by Assignee to retain the Collateral in satisfaction of the Obligations in accordance with the provisions of Section 9-505 of the Uniform Commercial Code as adopted by the State of Minnesota, Assignor agrees to assign, convey and otherwise transfer title in and to the Patent, Licenses and Trademarks to Assignee and to execute and deliver to Assignee all such agreements, documents and instruments as may be necessary, in Assignee's determination, to effect such assignment, conveyance and transfer.





The foregoing Collateral Patent, Trademark and License Assignment was executed and acknowledged before me this <sup>6<sup>th</sup></sup> day of October, 1995, by Kurt B. K. <sup>is John K. Kelly</sup> personally known to me to be the Chairman <sup>President/Secretary</sup> of SMITH EQUIPMENT MANUFACTURING COMPANY LLC, a Delaware limited liability company, on behalf of such company.

Theresa R. Humann  
Notary Public

1003767-1

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TRADEMARK  
REEL: 1442 FRAME: 0342


TRADEMARK  
REEL: 002707 FRAME: 0716

**ACCEPTANCE**

The undersigned, Seidler Capital Partners L.P., accepts the foregoing Collateral Patent, Trademark and License Assignment.

**SEIDLER CAPITAL PARTNERS L.P.**

By: Seidler Capital, Ltd.,  
Its: General Partner

By:   
Charles L. Schroeder, partner

**SCHEDULE A**

**PATENTS AND PATENT APPLICATIONS**

<u>Patent Number</u>	<u>Patent Title</u>	<u>Expiration Date</u>
4,353,395	Cutting and Welding Torch Valve Apparatus	October 12, 1999
5,039,837	Plasma Torch Head, Body, Handle and Control Circuitry	February 13, 2008
5,235,162	Plasma Pilot Arc Ignition System	?
4,383,648	Torch Apparatus, Three Piece Tip	May 12, 2000
4,457,329	Safety Pressure Regulator	July 3, 2001
5,345,376	Circuitry for Electronic Switching Power Supply	February 19, 2013

TRADEMARK  
REEL: 1442 FRAME: 0344

TRADEMARK  
REEL: 002707 FRAME: 0718

**SCHEDULE B**

**TRADEMARK AND TRADEMARK APPLICATIONS**

(a) **U.S. Registered Trademarks**

<u>Registration No.</u>	<u>Mark</u>	<u>Expiration Date</u>
240,926	Smith's (Stylized)	April 10, 2008
240,927	Smith's (Stylized)	April 10, 2008
667,433	Silver Star	September 12, 1998
667,435	VISARC	September 23, 1998
824,886	VISARC (Stylized)	February 28, 2007
667,610	FLO-TROL	September 30, 1998
667,742	HANDI-Heet	September 30, 1998
734,177	REDI-SET	July 10, 2002
802,657	VISA-Blend	January 25, 2006
1,066,069	Smith's (and Design)	May 24, 1997
1,262,851	Tradesman	January 3, 2004

(b) **U.S. Pending Trademarks**

<u>Serial No.</u>	<u>Mark</u>
74-592,361	Phaser Powered (Stylized)

(c) **Foreign Trademarks (Panama)**

<u>Serial No.</u>	<u>Mark</u>	<u>Date Renewed</u>
035528	Smith's (and Design)	1/4/95
035529	Smith's (and Design)	1/4/95
035530	Smith's (and Design)	1/4/95

(d) **Foreign Trademarks (Mexico)**

<u>Serial No.</u>	<u>Mark</u>	<u>Date Renewed</u>
216,539	Smith	Application filed 10/27/94*

TRADEMARK  
REEL: 1442 FRAME: 0345

TRADEMARK  
REEL: 002707 FRAME: 0719

\* Tescom has been informed that this application was not approved due to a filing by Smith de Mexico. Tescom has authorized Mexican trademark counsel to undertake an action to cancel the filing by Smith de Mexico for an estimated cost of approximately \$4,000. The action must be commenced in July 1995 and Tescom is preparing the necessary affidavits. Tescom has agreed to pay up to \$4,000 to Mexican counsel with respect to such cancellation action.

#### UNREGISTERED OR REGISTRATIONS THAT HAVE EXPIRED

##### TRADEMARK

Airline	No prior registration or pending application found
Big 98	Tescom prior registration expired
Cavalier	No prior registration or pending application found
Cyclone	No prior registration or pending application found
Graf-Tite	No prior registration or pending application found
Hard Hat	Tescom prior registration expired
Pipeliner	No prior registration or pending application found
Power Pro	No prior registration or pending application found
Quickfire	No prior registration or pending application found
Selec-O-Gas	No prior registration or pending application found
Star 98	No prior registration or pending application found
Star Cutter	Tescom prior registration expired
The Little Torch	No prior registration or pending application found
Toughcut	No prior registration or pending application found
Versa Torch	No prior registration or pending application found

TRADEMARK  
REEL: 1442 FRAME: 0346

TRADEMARK  
REEL: 002707 FRAME: 0720

**SCHEDULE C**

**LICENSES**

<u>Registration No.</u>	<u>Mark</u>	<u>Expiration Date</u>
1,595,885	Air Products	September 1996

Tescom is currently negotiating a license agreement for certain Air Products Canada Trademarks.

RECORDED: 01/11/1996

TRADEMARK  
REEL: 1442 FRAME: 0347

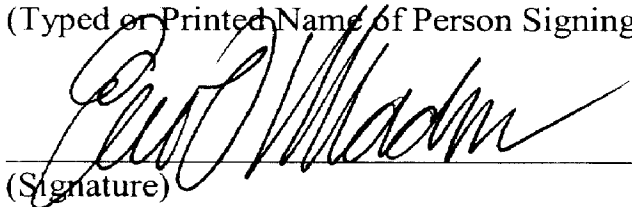
TRADEMARK  
REEL: 002707 FRAME: 0721

**CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: U.S. Patent and Trademark Office - Assignment Division, Box Assignments - CG-4, 1213 Jefferson Davis Hwy, Suite 320, Washington, D.C. 20231 on the date shown below:

Eric O. Madson

(Typed or Printed Name of Person Signing Certificate)

  
(Signature)

(Date) March 31, 2003