

05-05-2003

Form PTO-1594 (Rev. 10/02) **5-1-03**
OMB No. 0651-0027 (exp. 6/30/2005)
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102438076

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

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

1. Name of conveying party(ies):

Industrial Holdings, Inc.

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

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

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other Asset Purchase Agreement
- Merger
- Change of Name

Execution Date: 10/17/2001

2. Name and address of receiving party(ies)

Name: S.M.S.G., L.L.C.

Internal

Address:

Street Address: 1600 Executive Drive

City: Jackson State: MI Zip: 49203

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

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) 054927

Additional number(s) attached Yes No

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

Name: Nicole M. Walker

Internal Address: Neal, Gerber & Eisenberg

Street Address: Two North LaSalle Street

City: Chicago State: IL Zip: 60602-3801

6. Total number of applications and registrations involved: 12

7. Total fee (37 CFR 3.41).....\$ 315.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Nicole M. Walker
Name of Person Signing

Nicole M. Walker
Signature

May 1, 2003
Date

05/05/2003 BYRME 00000003 054927

Total number of pages including cover sheet, attachments, and document: 13

01 FC:8521
02 FC:8522

40.00 OP
275.00 OP

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

OFFICE OF PUBLIC RECORDS
MAY -1 PM 2:19
FINANCE SECTION

TRADEMARK
REEL: 002724 FRAME: 0273

CONTINUATION SHEET

Sec. 1 - Additional Names of conveying parties:

Rex Machinery Movers, Inc. d/b/a Ideal Products, Texas corporation
Of Acquisition, L.P., Texas limited partnership, d/b/a Orbitform, Inc.
Philform, Inc., Michigan corporation

Sec. 2. Name and address of additional receiving parties:

S.M.S.P., L.L.C., Michigan limited liability company
1600 Executive Drive
Jackson, MI 49203

4(b). Additional registration numbers:

085275
085277
122193
519126
534930
580248
580249
713578
750610
855629
1374876

AFFIDAVIT OF MICHAEL DESANTIS

1. I am Vice President and General Manager of Ideal Products, L.L.C. (“Ideal Products”), a Michigan limited liability company and wholly-owned subsidiary of S.M.S.G., L.L.C. My responsibilities as Vice President and General Manager of Ideal Products include personally overseeing Ideal Products’ business and legal operations, including the distribution and sale of Ideal Products’ numerous branded products. I make the statements in this affidavit based upon my own personal knowledge, and certify under oath that the statements in this affidavit are true to the best of my knowledge, information, and belief.

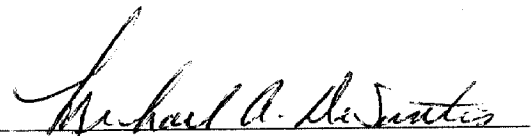
2. Pursuant to an October 17, 2001 Asset Purchase Agreement (the “Agreement”) between Rex Machinery Movers, Inc., Of Acquisition L.P., Orbitform, Inc., Philform, Inc., and Industrial Holdings, Inc., on the one hand, and S.M.S.G., L.L.C. and S.M.S.P., L.L.C., on the other, the relevant pages of which are attached hereto as Exhibit A, S.M.S.G., L.L.C. and S.M.S.P., L.L.C. became the owners of all right, title, and interest in and to the marks identified below, along with all registrations therefor and the goodwill of the business associated therewith:

<u>Mark</u>	<u>Registration No.</u>	<u>Registration Date</u>	<u>Jurisdiction</u>
AUTOMATIC	0,534,930	December 19, 1950	United States
CHROMONIC	0,713,578	April 4, 1961	United States
DEFENDER	0,085,277	February 6, 1912	United States
DEFENDER	0,580,248	September 22, 1953	United States
DEFENDER	1,374,876	December 10, 1985	United States
MOMONIC	0,855,629	August 27, 1968	United States
Red Cross Design	0,054,927	August 7, 1906	United States
ROYAL	0,122,193	July 9, 1918	United States
TREASURE	0,085,275	February 6, 1912	United States

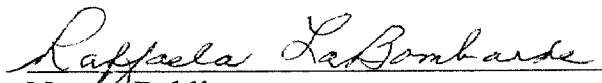
TREASURE	0,580,249	September 22, 1953	United States
TRUPOINT	0,750,610	June 4, 1963	United States
LUBRIFILM	0,519,126	December 20, 1949	United States
TRUPOINT	135,748	May 15, 1964	Canada
TRUPOINT	835689	June 13, 1962	U.K.
TRUPOINT	778832	October 21, 1963	Germany
TRUPOINT	160826	June 30, 1962	Italy

The foregoing trademarks and the corresponding registrations relating thereto are hereinafter collectively referred to as the "Marks."

3. Pursuant to the April 26, 2003 Trademark Assignment attached hereto as Exhibit B, S.M.S.G., L.L.C. and S.M.S.P., L.L.C. then assigned all right, title, and interest in and to the Marks, along with the goodwill of the business associated therewith, to Ideal Products.

By: 
Michael DeSantis

SUBSCRIBED AND SWORN to
before me this 25th day of
April, 2003.


Notary Public
Comm. expires 3/31/2007
New Haven County, Ct.

- D. The Business of the Sellers is conducted at the following premises (the "Premises"):
- (1) The Ideal Products Business is conducted at an owned manufacturing facility in Beacon Falls, Connecticut, consisting of a 174,000 square foot facility on 31 acres of property, commonly known as 158 Pinesbridge Rd., Beacon Falls, Connecticut (the "Ideal Products Real Property");
 - (2) The Orbitform Business is conducted at a manufacturing facility owned by Philform, located in Jackson, Michigan, consisting of a 110,000 square foot facility known as 1600 Executive Drive, Jackson, Michigan (the "Philform Real Property") (the Ideal Products Real Property and the Philform Real Property, collectively, the "Real Property").
- E. Buyers desire to purchase, and Sellers desire to sell to Buyers, the Purchased Assets (as defined in Section 1 below) on the terms and subject to the conditions of this Agreement.
- F. IHI acquired all of the capital stock of Philform in February 1998 from Michael Shirkey ("Shirkey") and certain other selling stockholders and acquired substantially all of the assets of Ideal Products, then operated as the Hardware and Components Division of Kirsch, Inc., in June 1998 from Kirsch, Inc. Before IHI purchased Philform from Shirkey, Philform conducted the Orbitform Business. Shirkey, the Manager of the Buyers, has been the President of the Sellers since June 1, 2000 and the Chief Operating Officer of the Sellers for the past year; in addition, he has been the Chief Executive Officer of Philform or Chief Executive Officer of Philform (d/b/a Orbitform) before IHI acquired Philform in 1997 and General Manager of OF Acquisition (d/b/a Orbitform) after its creation in 1997. The parties therefore hereby acknowledge that Shirkey is in many cases as knowledgeable as, and in some cases more knowledgeable than, the Seller Parties regarding the Business and the Purchased Assets, and that the Buyers are therefore uniquely positioned, having a Manager who formerly owned and operated the Orbitform Business and who currently operates the Orbitform Business and the Ideal Products Business.

AGREEMENTS

NOW, THEREFORE, consistent with the Background and in consideration of the terms and conditions set forth in this Agreement, each of the Seller Parties and Buyers agrees as follows:

1. **Purchased Assets.** At the Closing, Sellers shall sell, assign, convey, transfer, set over, and deliver to Buyers all of the assets, rights, and interests of every conceivable kind or character whatsoever, whether tangible or intangible, that on the Closing Date are owned by Sellers except for the Excluded Assets (as that term is defined in Section 2 below) (the assets being so purchased, the "Purchased Assets"). The Purchased Assets include, without limitation:
 - 1.1 **Equipment.** All machinery, equipment, tools, fixtures, workstations, computers, computer software, office equipment, manufacturing and engineering drawings, and tangible personal property owned by Sellers, and to the extent not otherwise constituting equipment as defined above, all other items of tangible personal property, in each case whether or not capitalized on Sellers' books, and physically located on the Premises (including, without limitation, the items listed on Schedule 1.1) (the "Equipment").

- 1.2 **Inventory.** All raw materials inventory, work-in-process inventory, and finished goods inventory owned by Sellers on the Closing Date (including, without limitation, the items listed on Schedule 1.2) (the "Inventory").
- 1.3 **Receivables.** All accounts, chattel paper, documents, and instruments (all as defined in the Uniform Commercial Code (the "UCC"), and also any security Sellers hold for the payment thereof (including, without limitation, the items described on Schedule 1.3) (the "Receivables"), and all of Sellers' general intangibles (as defined in the UCC) and, to the extent not otherwise constituting general intangibles as defined above, any interest of Sellers in any and all claims by Sellers against any other person, whether now accrued or later to accrue, contingent or otherwise, known or unknown, including, but not limited to, all rights under express or implied warranties from suppliers (except as they may pertain to Sellers' liabilities, other than Assumed Liabilities described in Section 2 below), claims for collection or indemnity, claims in bankruptcy, and choses in action.
- 1.4 **Real Property.** Indefeasible title in fee simple to the Real Property, as further described on Schedule 1.4.
- 1.5 **Goodwill.** All of Sellers' right, title and interest in and to the names "Ideal Products" "Orbitform", or any substantially similar derivations thereof, any other assumed name currently used by Sellers, and all telephone numbers, fax numbers, and websites, and all Sellers' rights and interest in and to inventions, copyrights, patents, trademarks, designs, prototypes, trade secrets, know-how, technology, technical literature, advertising literature, confidential information, intangible property, and all goodwill, going concern value and customer lists, and all records pertinent to Sellers' customers, suppliers, advertising, services, and operations (the "Goodwill").
- 1.6 **Outstanding Customer Purchase Orders.** The full benefit of any and all purchase orders placed with and accepted by Sellers on or before the Closing Date that have not been completely performed by Sellers before the Closing Date, covering the purchase from Sellers of products to be supplied by Sellers, or covering the rendition by Sellers of service on products supplied by Sellers and including all deposits, progress payments, and credits (the "Outstanding Customer Purchase Orders").
- 1.7 **Contracts.** All of the Sellers' right, title and interest in and to and claims and rights under the assumed contracts listed on Schedule 1.7 (the Assumed Contracts").
- 1.8 **Licenses and Permits.** All of Sellers' rights in all permits and licenses necessary for the operation of the Business, but only to the extent the same are transferable.
- 2. **Excluded Assets.** The assets of the Sellers that are not being purchased hereunder are as follows (collectively, the "Excluded Assets"):
- 2.1 **Cash and Cash Equivalents.** All of the Sellers' cash, temporary cash investments and instruments representing the same and all other cash equivalents, including checks, automated clearing house deposits or cash delivered to Comerica Bank-Texas ("Comerica") on the Closing Date or held by Comerica on the Closing Date.

by Ideal Products that would cause the Ideal Products Real Property to become a treatment, storage or disposal facility within the meaning of any Environmental Laws. Ideal Products has not, to its actual knowledge, undertaken any activity that has caused (i) a release or threatened release of any Hazardous Substances; or (ii) the discharge of pollutants or effluents into any water source or system or into the air, or the dredging or filling of any waters, where such action would require a permit under any Environmental Laws. Ideal Products has obtained all permits required by all applicable Environmental Laws, and all such permits are in full force and effect.

(d) Ideal Products has disclosed and delivered to Buyers all environmental reports and investigations that it has ever obtained or ordered with respect to the Ideal Products Real Property.

- 9.20 **Compliance with Laws.** Ideal Products has, and, to the Seller Parties' actual knowledge, Orbiform has, complied with all laws, orders, regulations, rules, decrees, and ordinances affecting to any material extent or manner any aspects of the Business or the Purchased Assets.
- 9.21 **No Brokers.** Sellers have not engaged, and are not responsible for any payment to, any finder, broker, or consultant in connection with the transactions contemplated by this Agreement, except as set forth on **Schedule 9.21.**
- 9.22 **Intellectual Property.** **Schedule 9.22** lists all patents, processes, trademarks, trade names, copyrights, service marks, logos, trade secrets and all applications and registrations therefor that are used in the Business, and licenses thereof under which the Sellers have any right to the use or benefit of, or other rights with respect to, any of the foregoing ("Intellectual Property"). Except as set forth in **Schedule 9.22,** the identified Seller is, to the Seller Parties' actual knowledge, the sole and exclusive owner of the Intellectual Property, free and clear of all Encumbrances. To the Seller Parties' actual knowledge, none of the Sellers' Intellectual Property infringes on any other person's intellectual property, and, to the Seller Parties' actual knowledge, no activity of any other person infringes on any of the Intellectual Property. To the Seller Parties' actual knowledge, the Sellers have been and are now conducting the Business in a manner that has not been and is not now in violation of any other person's intellectual property, and Sellers do not require a license or other proprietary right to so operate the Business.
- 9.23 **Disclosure.** No representation or warranty of the Seller Parties in this Agreement and no statement in any of the Schedules of Sellers hereto contains any untrue statement of, or omits to state, a material fact necessary to make statements herein or therein, in light of the circumstances in which they were made, not misleading.
10. **Buyers' Representations and Warranties.** Buyers jointly and severally represent and warrant to each Seller Party that, as of the date hereof (except to the extent any representation or warranty is made as of another date, which are in such case made as of such other date):
- 10.1 **Organization and Standing.** Buyers are limited liability companies duly organized and validly existing under the laws of the State of Michigan, and Buyers have all the requisite

- (e) The arbitration shall be held at the office of AAA located in Detroit, Michigan (as the same may be from time to time relocated), or at another place the parties agree on.
- (f) In any arbitration proceeding under this Section 16.7, subject to the award of the arbitrator(s), each party shall pay all its own expenses, an equal share of the fees and expenses of the arbitrator, and, if applicable, the fees and expenses of its own appointed arbitrator. The arbitrator(s) shall have the power to award recovery of costs and fees (including reasonable attorney fees, administrative and AAA fees, and arbitrators' fees) among the parties as the arbitrators determine to be equitable under the circumstances.
- (g) The interpretation and construction of this Section 16.7, including, but not limited to, its validity and enforceability, shall be governed by Title 9 of the U.S. Code, notwithstanding the choice of law set forth in Section 16.4 of this Agreement.

16.8 **Public Announcements.** The parties agree to advise and confer with each other prior to the issuance of any public reports, statements or press releases pertaining to this Agreement and the transactions contemplated hereby. Each party will use its best efforts to maintain in strict confidence the existence and terms of this Agreement and the transactions contemplated hereby. Unless otherwise required by law or as set forth above, no party shall make any public announcement or disclosure concerning this Agreement, except as mutually agreed. The financial terms of the Agreement are to be kept confidential, except to the extent that the disclosure is required under law. Nothing in the foregoing is intended to prevent IHI from making any filings required with the Securities and Exchange Commission.

16.9 **Facsimile Signatures.** The parties acknowledge that signatures on this Agreement may be delivered by facsimile in lieu of an original signature and the parties agree to treat such signatures as original signatures and shall be bound thereby.

The parties have executed this Agreement on the date set forth on the first page of this Agreement.

SELLER PARTIES:

Rex Machinery Movers, Inc. d/b/a Ideal Products

By: Chantene Arnold

[Name of authorized signer]

Its: Vice President

Philform, Inc.

By: Chantene Smith

[Name of authorized signer]

Its: VICE PRESIDENT

OF Acquisition, L.P., d/b/a Orbitform

By: Chantene Smith

[Name of authorized signer]

Its: Executive Vice President of Industrial Holdings, Inc. its sole general partner

Industrial Holdings, Inc.

By: Chantene Smith

[Name of authorized signer]

Its: Executive Vice President

BUYERS:

SMSG, L.L.C.

By: [Signature]

[Name of authorized signer]

Its: Manager

S MSP, L.L.C.

By: [Signature]

[Name of authorized signer]

Its: Manager

**SCHEDULE 9.22
TO
ASSET PURCHASE AGREEMENT
(IDEAL PRODUCTS)**

Intellectual Property

I. Ideal Products, Inc.: See Attached

II. Orbitform, Inc.:

Trademarks and d/b/a names:

Orbitform
Arbor Automation
Wipcon
Defender
Trupoint

Schedule 9.22 Intangibles

File No./ (Old and New)	Serial No.	Filing Date	Mark/Talis	Application Type	Reg. No. Serial No.	Reg. Date Issue Date	Status
625.01	71/568,875	10-14-1948	AUTOMATIC (STYLIZED)	US TRADEMARK	0534930	12-19-1950	Closed per effmt 05-03-2001
625.02	72/087,406	05-03-1960	CHROMONIC	US TRADEMARK	0713578	04-04-1961	Application for Renewal accepted 09-08-01; Next renewal due 04-04-11
625.03	71/058,157	08-11-1911	DEFENDER	US SERVICE MARK	0086277	02-08-1912	Application for Renewal accepted 09-22-82; Next Renewal due 02-06-02
625.04	71/828,523	05-10-1952	DEFENDER (STYLIZED)	US TRADEMARK	0580248	09-22-1963	Application for Renewal accepted 11-09-83; Next Renewal due 09-22-03
625.05	72/187,885	08-04-1984	DEFENDER	US TRADEMARK	1374876	12-10-1985	Renewal due 12-10-05
625.06	72/268,704	03-14-1987	MONOMIC	US TRADEMARK	0855679	08-27-1988	Application for Renewal accepted 07-24-88; Next Renewal due 08-27-08
625.07	71/018,587	03-31-1908	RED CROSS DESIGN	US TRADEMARK	0054827	09-07-1908	Application for Renewal accepted 04-27-87; Next Renewal due 08-07-08
625.08	71/08,054	12-13-1917	ROYAL	US TRADEMARK	0122193	07-09-1918	Application for Renewal accepted 07-13-88; Next Renewal due 07-09-08
625.09	71/058,155	08-11-1911	TREASURE (STYLIZED)	US TRADEMARK	0085275	02-08-1912	Application for Renewal accepted 07-15-82; Next Renewal due 02-08-02
625.10	71/629,524	05-10-1962	TREASURE	US TRADEMARK	0580248	08-22-1963	Next Renewal due 08-22-03
625.11	72/148,128	06-04-1962	TRUPOINT	US TRADEMARK	0750610	06-04-1963	Next Renewal due 06-04-03
625.12	71/572,608	01-22-1949	LUBRIFLUX	US TRADEMARK	0618188	12-23-1949	Regist. cancelled 12-30-89
625.13	289,943	08-14-1982	TRUPOINT	CANADIAN TRADEMARK	135,743	03-14-84	Next Renewal due 03-15-09
625.14			TRUPOINT	UK TRADEMARK	9865889	08-19-1982	Next Renewal due 08-19-07
625.15	W10798-K		TRUPOINT	GERMAN TRADEMARK	778832	08-22-1972	Next Renewal due 08-22-02
625.16	414,801	03-22-1986	TRUPOINT	ITALIAN TRADEMARK	150828	04-30-1992	Next Renewal due 04-30-02

Schedule 9.22 - ~~patents~~ - cont'd

Patents

Country	Patent Title	Type	Pat. No.	Issue Date	Status
USA	Fastener	Design	D306,875	3/27/90	Granted

Trade Name - Ideal Products, Inc.

In addition to the trademarks and patents owned by Rex Machinery Movers, Inc. it should be noted that certain fasteners produced by the Beacon Falls facility are covered by patents held by the Camcar Division of Textron Inc. and produced under a licensing agreement held by Landreth Engineering.