

06-09-2003

Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005)

5-12-03 CO TR



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

Tab settings

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

1. Name of conveying party(ies):

Engel Industries, Inc.

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

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 02/26/2003

2. Name and address of receiving party(ies)

Name: CFB Venture Fund II, L.P.

Internal Address: Suite 1430

Street Address: 11 South Meramec

City: St. Louis State: MO Zip: 63105

- Individual(s) citizenship Association General Partnership Limited Partnership Missouri 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) 0916271, 0922351, 2551796

Additional number(s) attached Yes No

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

Name: Scott L. Hammel

Internal Address: Husch & Eppenberger, LLC Suite 600

Street Address: 190 Carondelet Plaza

City: St. Louis State: MO Zip: 63105

6. Total number of applications and registrations involved: 3

7. Total fee (37 CFR 3.41) \$ 90.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

06/06/2003 08:52:00 00000147 0916271

DO NOT USE THIS SPACE

01 FC:8521 40.00 OP Signature. 02 FC:8522 50.00 OP

Scott L. Hammel Name of Person Signing

Signature

03/28/2003 Date

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

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

TRADEMARK REEL: 002748 FRAME: 0398

## Patent and Trademark Security Agreement

This Patent and Trademark Security Agreement ("Agreement") is made as of the 26<sup>th</sup> day of February, 2003 ("Effective Date"), between Engel Industries, Inc., a Delaware corporation having a mailing address at 8122 Reilly Avenue, St. Louis, Missouri ("Borrower") and CFB Venture Fund II, L.P., a Missouri limited partnership, having a mailing address at Eleven South Meramec, Suite 1430, St. Louis, Missouri 63105 (the "Lender").

WITNESSETH:

WHEREAS, Borrower has executed and delivered its subordinated Secured Note (the "Note") to Lender in the aggregate principal amount of \$422,967.45. In order to induce Lender to advance the principal amount of the Note, Borrower has agreed to grant to Lender a security interest in certain patents and trademarks owned by Borrower.

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, Borrower hereby agrees with Lender as follows:

1. Grant of Security Interest. To secure the complete and timely satisfaction of all obligations of Borrower to Lender under the Note (the "Obligations"), subject to Section 2 below, Borrower hereby grants, assigns and conveys to Lender a security interest with power of sale to the extent permitted by law in Borrower's entire right, title and interest in and to the following:

(a) All now existing and hereafter created or acquired patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein and those patents listed on Schedule A attached hereto and hereby made a part hereof, and (i) the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (ii) all income, fees, royalties, damages and payments now and hereafter due or payable under or with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (iii) the right to sue for past, present and future infringements thereof, and (iv) all licenses and other rights corresponding thereto throughout the world, if any (all of the foregoing patents and applications, together with the items described in the foregoing clauses (i)-(iv) of this Section 1(a), are sometimes hereinafter referred to individually as a "Patent" and, collectively, as the "Patents"); and

(b) All now existing and hereafter created or acquired trademarks, trade names, service marks, collective membership marks, and the registrations and applications for registration thereof listed on Schedule B attached hereto and hereby made a part hereof, and (i) the renewals thereof, (ii) all income, fees, royalties, damages and payments now and hereafter due or payable under or with respect thereto, including, without limitation, all license royalties, damages and payments for past or future infringements thereof, (iii) the right to sue for past, present and future infringements, dilutions and damages thereof, and (iv) all licenses and other rights corresponding thereto throughout the world, if any, and (v) all of the goodwill of Borrower's business connected with and symbolized by the trademarks, trade names, service marks or other items described in the foregoing clauses (i)-(iv) of this Section 1(b) (all of the foregoing trademarks, tradenames, service marks, collective membership marks, and registrations and applications for registration thereof, together with the items described in the foregoing clauses (i)-(v) of this Section 1(b), are sometimes hereinafter referred to individually as a "Trademark" and, collectively, as the "Trademarks").

2. Nature and Priority of Security Interest. This Agreement is made for collateral security purposes only. Lender acknowledges and agrees that the security interest granted by Borrower to Lender under this Agreement shall be subordinate and junior to any security interest granted by Borrower to Southwest Bank of St. Louis (the "Southwest Security Agreement") in the Patents and Trademarks. Lender acknowledges that under any Southwest Security Agreement, Borrower will have assigned to Southwest Bank of St. Louis, all of Borrower's rights, titles, and interests in and to its Patents and Trademarks.

3. Covenants. The Borrower agrees as follows:

(a) Defense. The Borrower 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 liens as expressly permitted hereunder.

(b) Lender's Right to Take Action. If the Borrower fails to perform or observe any of its covenants or agreements set forth in this Agreement or there occurs default in the payment when due of any of the Obligations whether at Maturity or upon acceleration or the Borrower's breach of any of its covenants under this Agreement (collectively an "Event of Default"), and in the case of such a failure hereunder if such failure continues for a period of ten (10) calendar days after the Lender gives the Borrower written notice thereof or if the Borrower notifies the Lender that it intends to abandon a Patent or Trademark, the Lender 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 Borrower, subject to the power of attorney granted to Lender in subclause (d) below, and may (but need not) take any and all other actions which the Lender may reasonably deem necessary to cure or correct such failure or prevent such intended abandonment.

(c) 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 Borrower shall pay the Lender on demand the amount of all moneys reasonably expended and all reasonable costs and expenses (including reasonable attorneys' fees and disbursements) incurred by the Lender in connection with or as a result of the Lender's taking action under this Section 3 or exercising its rights under Section 8, together with interest thereon from the date expended or incurred by the Lender at the Default Rate.

(d) Power of Attorney. Only in connection with and to facilitate the Lender's taking action under Section 4 and exercising its rights under Section 9, the Borrower hereby irrevocably appoints (which appointment is coupled with an interest) the Lender, or its delegate, as the attorney-in-fact of the Borrower 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 Borrower, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by the Borrower under Section 9 of this Agreement, including those for the Lender, 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 Borrower 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 payment in full of the Obligations.

4. Further Assurances. Borrower agrees that, until all of the Obligations shall have been satisfied in full, it will not enter into any agreement (for example, a license agreement or any agreement purporting to assign, transfer, encumber or otherwise dispose of the Patents or Trademarks) that is inconsistent in any material respect with Borrower's obligations under this Agreement, without Lender's prior written consent (which consent shall not be unreasonably withheld, conditioned or delayed). Borrower agrees that at any time and from time to time during the term of this Agreement, at the expense of Borrower, Borrower will promptly execute and deliver all further instruments and documents, and take all further action, that may be reasonably necessary or desirable, or that the Lender may reasonably request, to perfect and protect the security interest granted under this Agreement or to enable the Lender to exercise its rights and remedies hereunder. Lender agrees to execute and deliver such further agreements, instruments and documents, and to perform such further acts, as Borrower shall reasonably request from time to time during the

term of this Agreement in order to carry out the purpose of this Agreement, or to enable Borrower to exercise its rights and remedies hereunder.

5. Modification. The parties may modify this Agreement by amending Schedules A or B, as applicable, to include any new Patents and/or Trademarks, such amendment to be in writing and signed by Lender and Borrower.

6. Borrower's Rights and Obligations Regarding the Patents and Trademarks. Subject to the security interest granted to Lender under Section 1 above, Borrower retains its ownership and all of its exclusive right, title and interest in and to the Patents and Trademarks. Until all of the Obligations shall have been satisfied in full, Borrower agrees to undertake all necessary acts to maintain and preserve the Patents and Trademarks, including, but not limited to, (i) initiating opposition or cancellation proceedings or litigation against users of the same or confusingly similar marks who, in the reasonable discretion of Borrower, infringe upon or seriously threaten the rights of Borrower in or the validity of the Patents or Trademarks, (ii) prosecuting diligently any patent application of the Patents and any application for registration of any Trademark pending as of the Effective Date or thereafter, (iii) filing patent applications on Borrower's unpatented but patentable inventions and trademark applications for Borrower's unregistered but registrable Trademarks, as is appropriate in Borrower's good faith judgment, and (iv) using its diligent efforts to preserve and maintain all rights in patent applications of the Patents and trademark applications of the Trademarks; provided, however, that Borrower shall not be required to undertake any act with respect to any of the Patents or Trademarks if, in Borrower's reasonable business judgment, such act or the Patent or Trademark at issue is not necessary or desirable in the operation of Borrower's business. Any expenses incurred in connection with any Patent or Trademark applications described in this Section 6 shall be borne by the Borrower. In any suit to enforce any Patent or Trademark, Lender agrees to join, at the expense and request of Borrower and only to the extent necessary, as a plaintiff and do any and all lawful acts and execute any and all proper documents reasonably required by Borrower in connection with such suit. The Borrower 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 Lender: (i) sufficient written notice, of at least 30 days, to allow the Lender 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.

7. Event of Default; Borrower's Right to Cure. If any or Event of Default shall occur before all of the Obligations shall have been satisfied in full, and such Default or Event of Default continues for the cure period, if any, specified herein for Event of Default without cure by Borrower or waiver by Lender ("Uncured Event of Default"), Lender shall have, only for so long as Borrower fails to substantially cure or obtain a waiver from Lender regarding such Uncured Event of Default and in addition to all other rights and remedies given it by this Agreement, those rights allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which Borrower's records concerning the Patents and Trademarks may be located.

8. Remedies. Upon the occurrence of an Event of Default and at any time thereafter, the Lender may, at its option, take any or all of the following actions (subject, however, to the effect of the Subordination described in Section 2):

(a) The Lender may sell, assign, transfer, pledge, encumber or otherwise dispose of the Patents and Trademarks.

(b) The Lender may enforce the Patents and Trademarks and any licenses thereunder, and if Lender shall commence any suit for such enforcement, the Borrower shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents required by Lender in aid of such enforcement.

9. Term and Termination; Release of Security Interest. The term of the security interests granted by Borrower to Lender in this Agreement shall commence as of the Effective Date and shall extend until the earlier of (a) the expiration, abandonment or disclaimer, as the case may be, of each of the respective Patents and Trademarks described in Sections 1 and 5 of this Agreement, or (b) the date on which Borrower shall completely satisfy all of the Obligations. Upon satisfaction in full of the Obligations, this Agreement shall terminate automatically without further

action by the parties, and Lender shall promptly execute and deliver to Borrower all termination statements and other instruments as may be necessary or proper to terminate Lender's security interest in the Patents and Trademarks, subject to any undisputed disposition thereof which may have been made by Lender pursuant to this Agreement after an Uncured Event of Default. Lender agrees to execute and deliver such termination statements and other instruments to Borrower as promptly as possible within thirty (30) days of the satisfaction in full of the Obligations ("Security Interest Termination Period"). Lender hereby designates, appoints and constitutes Borrower as Lender's true and lawful attorney-in-fact, and authorizes Borrower, in Lender's name, to take any and all appropriate action and to execute any agreement or instrument necessary or proper to terminate Lender's security interest in the Patents and Trademarks in the event Lender fails to deliver such termination statements and other instruments to Borrower within the Security Interest Termination Period.

10. Lender's Right to Sue. Upon and subject to the occurrence and only during the continuance of an Uncured Event of Default, Lender shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Patents and Trademarks. Lender shall provide Borrower with prior written notice that it intends to commence any such suit and, if Lender shall commence any such suit, Borrower shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents reasonably required by Lender in aid of such enforcement. Borrower agrees to reimburse and indemnify Lender for all reasonable costs and expenses incurred by Lender in the exercise of its rights under this Section 10; provided, however, that Borrower shall be obligated to reimburse and indemnify Lender under this Section 10 only if Borrower consents in writing in advance to Lender bringing suit under this Section 10 (which consent may be granted or withheld in Borrower's good faith reasonable business judgment).

11. Notices. Any notice to be given to Lender or Borrower under this Agreement shall be given by certified mail or delivery to the addresses provided in the first paragraph of this Agreement.

12. Waivers. No course of dealing between Borrower and Lender, nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or privilege hereunder 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. The observance of any provision of this Agreement may be waived (either generally or in any particular instance and either retroactively or prospectively) only with the written consent of both parties.

13. 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.

14. Modification. This Agreement is subject to alteration, amendment, or modification only by a writing signed by the parties, except as specifically provided in Section 5 hereof.

15. Binding Effect; Benefits. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and permitted assigns.


16. Governing Law. The validity and interpretation of this Agreement and the rights and obligations of the parties hereunder shall be governed by the laws of the State of Missouri.

17. Headings. Section headings used herein are for convenience only and shall not modify the provisions that they precede.

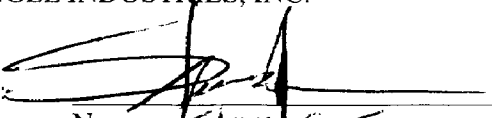
18. Counterparts. This Agreement may be executed in any number of identical counterparts, which shall constitute an original and collectively and separately constitute a single instrument or agreement.

WITNESS the execution hereof under seal as of the day and year first above written.

ATTEST:

  
Secretary

ENGEL INDUSTRIES, INC.

By:   
Name: *Steven C. Johnson*  
Title: *V. P. of Finance*

CFB VENTURE FUND II, L.P.

By: CFB Partners, Inc., its General Partner

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

WITNESS the execution hereof under seal as of the day and year first above written.

ATTEST:

ENGEL INDUSTRIES, INC.

\_\_\_\_\_  
Secretary


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

Name:  
Title:

CFB VENTURE FUND II, L.P.

By: CFB Partners, Inc., its General Partner

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

  
Name: Stephen B. Brown  
Title: SR. VICE PRESIDENT

CERTIFICATE OF ACKNOWLEDGEMENT

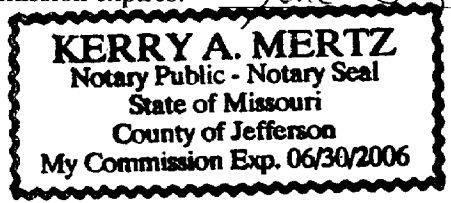
STATE OF Missouri )  
 ) SS  
COUNTY OF St Louis )

Before me, the undersigned, a Notary Public in and for the county and state aforesaid, on this 26 day of February, 2003, personally appeared Steven C. Johnson to me known personally, and who, being by me duly sworn, deposes and says that he is the V.P. + Finance of Engel Industries, a Missouri corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said Mike Zimmer acknowledged said instrument to be the free act and deed of said corporation.

**KERRY A. MERTZ**  
Notary Public - State of Missouri  
County of Jefferson  
My Commission Expires Jun. 30, 2006

Kerry A Mertz  
Notary Public

My commission expires: June 30, 2006



STATE OF MISSOURI )  
 ) SS.  
COUNTY OF ST. LOUIS )

On this \_\_\_\_\_ day of February, 2003, before me, a Notary Public in and for said State, personally appeared \_\_\_\_\_, to me personally known, who, being by me duly sworn, did say that he is the \_\_\_\_\_ of CFB Partners, Inc., the general partner of CFB Venture Fund II, L.P., a Missouri limited partnership and that the seal affixed to the foregoing instrument is the corporate seal of said CFB Partners, Inc., acting on behalf of said corporation and limited partnership and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and he acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year first above written, in the County and State aforesaid.

\_\_\_\_\_  
Notary Public

[SEAL]  
My Commission expires:  
\_\_\_\_\_



CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF \_\_\_\_\_ )  
 ) SS  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned, a Notary Public in and for the county and state aforesaid, on this \_\_\_\_\_ day of February, 2003, personally appeared \_\_\_\_\_ to me known personally, and who, being by me duly sworn, deposes and says that he is the \_\_\_\_\_ of Engel Industries, a Missouri corporation, and that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and said \_\_\_\_\_ acknowledged said instrument to be the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_

STATE OF MISSOURI )  
 ) SS.  
COUNTY OF ST. LOUIS )

On this 26 day of February, 2003, before me, a Notary Public in and for said State, personally appeared STEPHEN B. BROWN, to me personally known, who, being by me duly sworn, did say that he is the SR. VICE PRES of CFB Partners, Inc., the general partner of CFB Venture Fund II, L.P., a Missouri limited partnership and that the seal affixed to the foregoing instrument is the corporate seal of said CFB Partners, Inc., acting on behalf of said corporation and limited partnership and that said instrument was signed and sealed on behalf of said corporation by authority of its board of directors, and he acknowledged said instrument to be the free act and deed of said corporation.

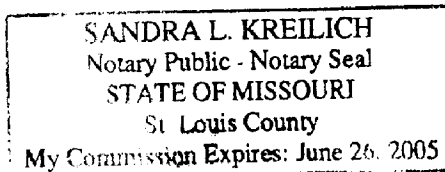
IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year first above written, in the County and State aforesaid.

Sandra L Kreilich  
Notary Public

[SEAL]

My Commission expires:

June 26, 2005



Schedule A  
to  
Patent and Trademark Security Agreement  
dated as of February 26, 2003, between  
Engel Industries, Inc. and CFB Venture Fund II, L.P.

PATENTS

<u>Company</u>	<u>Patent</u>	<u>Country</u>	<u>Registration No.</u>	<u>Date</u>
Engel Industries, Inc.	Sheet metal duct system having integral transverse flanges	USA	4,579,375	4/1/86
Engel Industries, Inc.	Rollformer for variable width edge profiles	USA	5,163,311	11/17/92
Engel Industries, Inc.	Pittsburgh seam closer having single seaming roll	USA	5,353,616	10/11/94
Engel Industries, Inc.	Deflection-resistant safety for integrally-flanged duct sections	USA	5,358,013	10/25/94
Engel Industries, Inc.	Sheet metal duct construction providing preliminary support for corner crimping.	USA	5,462,089	10/31/95
Engel Industries, Inc.	Method of inserting corner members in channel-shaped flanges of a duct	USA	6,081,985	7/4/00
Engel Industries, Inc.	Apparatus and method for inserting angle plates in channel shaped flanges of a duct	USA	6,047,466	4/11/00
Engel Industries, Inc.	Companion duct flanges	USA	6,471,256 B1	10/29/02
Engel Industries, Inc.	Companion duct system	USA	6,460,573 B1	10/8/02
Engel Industries, Inc.	Rotatable head assembly for sheet metal coil straightener device	USA	6,345,524	2/12/02
Engel Industries, Inc.	Apparatus and method for inserting angle plates in channel shaped flanges of a duct	USA	6,263,557	7/24/01
Engel Industries, Inc.	Apparatus and method for inserting corner members in channel-shaped flanges of a duct	USA	6,292,991	9/25/01
Engel Industries, Inc.	Curling device for forming circular and other flanged shaped connectors and other members for use in joining duct work and other industrial applications.	USA	Patent Pending Serial No. 60/248,105	

Schedule B  
to  
Patent and Trademark Security Agreement  
dated as of February 26, 2003, between  
Engel Industries, Inc. and CFB Venture Fund II, L.P.

TRADEMARKS

<u>Company</u>	<u>Mark</u>	<u>Country</u>	<u>Application (A) Registration (R) or Series (S) No.</u>	<u>Registration or Filing Date</u>
Engel Industries, Inc.	"Engel"	USA	"R" 0916271	7/13/71
Engel Industries, Inc.	"Coiline"	USA	"R" 922,351	10/19/71
Engel Industries, Inc.	"Companion Duct System"	USA	"R" 2,551,796	3/26/02