

08-29-2003

Attorney Docket No. 7747-000030 - 34

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8-25-03



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

PTO-1594

(Rev. 10/02)

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

Tab settings ⇌ ⇌ ⇌ ▼ ▼ ▼ ▼ ▼ ▼ ▼

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

1. Name of conveying party(ies):

NORTH AMERICAN POOL COMPANY

15 Cushman Road

St. Catherines, ONTARIO

☐ Individual(s)☐ Association☐ General Partnership☐ Limited Partnership☐ Corporation-State☒ Other Corporation incorporated under the laws of the Province of Nova ScotiaAdditional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:

☐ Assignment☐ Merger☒ Security Agreement☐ Change of Name☐ Other

Execution Date: 12/11/2002

2. Name and address of receiving party(ies)

Name: BMO CAPITAL CORPORATION

Internal

Address:

Street Address: 302 Bay Street, 7th Floor

City: Toronto, ONTARIO State: Zip: M5X 1A1

☐ Individual(s) citizenship☐ Association☐ General Partnership☐ Limited Partnership☐ Corporation-State☒ Other Corporation incorporated under the laws of CanadaIf 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) 78/190255

B. Trademark Registration No.(s) 1650770, 2577679,
2606779, and 2616784Additional number(s) attached ☐ Yes ☒ No

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

Name: Paul A. Keller

Internal Address: P.O. Box 828

Bloomfield Hills, MI 48303

Street Address: 5445 Corporate Drive

Suite 400

City: Troy State: MI Zip: 48098

6. Total number of applications and registrations involved:

5

7. Total fee (37 CFR 3.41).....\$ 140.00

☒ Enclosed☐ Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Paul A. Keller

Name of Person Signing

Signature

August 20, 2003

Date

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

10

08/28/2003 ECOOPER 00000030 78190255

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 2023101 FC:8521
02 FC:852240.00 DP
100.00 DPTRADEMARK
REEL: 002813 FRAME: 0776

THIS ASSIGNMENT is dated as of the ^{11th} day of December, 2002.

BETWEEN:

NORTH AMERICAN POOL COMPANY, a corporation incorporated under the laws of the Province of Nova Scotia and having an office at 15 Cushman Road, St. Catherines, Ontario (the "Assignor")

OF THE FIRST PART;

- and -

BMO CAPITAL CORPORATION, a corporation incorporated under the laws of Canada and having an office at 302 Bay Street, 7th Floor, Toronto, Ontario, M5X 1A1 ("BMOCC")

OF THE SECOND PART.

WHEREAS:

- A. The Assignor has, is or is about to become indebted to BMOCC (the "Loan") pursuant to an Offer of Finance dated November 12, 2002, as amended (the "Commitment Letter");
- B. The Assignor has agreed to grant or has granted to BMOCC security for the Loan, pursuant to the Commitment Letter, including *inter alia*, a security interest in all of its present and after acquired personal property pursuant to a Debenture (the "Debenture");
- C. The Assignor is the exclusive owner of the right, title and interest of the patents, trade-marks and licences, trade-mark registrations and trade-mark applications, as more particularly described in Schedule "A" hereto (the "Intellectual Property") and the Assignor has the exclusive, uninhibited right to sell, transfer, use and assign the Intellectual Property;
- D. As additional security for the Loan, the Assignor has agreed to specifically assign to BMOCC, at the option of BMOCC and effective upon the occurrence of an event of default under the Commitment Letter or in the event the Assignor is deemed to be in default under the Debenture, all of the Assignor's right, title and interest in and to the Intellectual Property;

THEREFORE in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Assignor agrees as follows:

1. The preamble hereto forms an integral part hereof.
2. Upon an event of default occurring under the Commitment Letter or if the Assignor is in default under the Debenture and upon the exercise by BMOCC of its option to cause this Assignment to become effective, the Assignor does hereby transfer and assign to BMOCC all of its right, title and interest in and to the Intellectual Property and applications or registrations thereof, and all proceeds derived from the Intellectual Property, including without limitation, royalties, license fees, and all rights and claims of action that may exist by reason of the infringement of the Intellectual Property, together with all goodwill symbolized by the Intellectual Property.
3. This Assignment shall take effect upon BMOCC notifying the Assignor that it is in default under the Commitment Letter or the Debenture and that BMOCC intends to exercise its option to cause this Assignment to become effective.
4. The Assignor shall do all things and execute and deliver all documents (including all assignments, affidavits, and other instruments, in a form suitable for filing with all trade-mark offices where the

Intellectual Property is registered and recorded) as may be requested by BMOCC from time to time and at any time, in order to give effect to this Assignment or to perfect or record BMOCC's interest in the Intellectual Property or to maintain the registration or recording of the Intellectual Property.

5. The Assignor represents and warrants as follows:

- (a) the Assignor has sole, full and clear title to the Intellectual Property in Canada and in all other jurisdictions represented by the Assignor to BMOCC;
- (b) the Assignor has not assigned the right to use the Intellectual Property or granted a licence to use the Intellectual Property to any other entity (except as disclosed in Schedule "B" hereto and except for licences to use the Intellectual Property granted to customers in the ordinary course of business) and is duly authorized and has the right to grant this Assignment to BMOCC;
- (c) the Intellectual Property is valid and duly registered in all jurisdictions where it is utilized and all registrations and recordings of the Intellectual Property are valid and subsisting and in full force and effect as of the date of this Assignment;
- (d) the Intellectual Property has not lapsed, been abandoned or dedicated to the public, nor to the best of the knowledge of the Assignor, has the Intellectual Property been infringed by any other person;
- (e) as of the date of this Assignment, neither the Assignor nor any of its subsidiaries has any trademark registered or recorded in or subject to pending applications for registration or recording in Canada, the United States or elsewhere, other than those described in Schedule "A" hereto; and
- (f) the Assignor has no knowledge of any third party claims to the Intellectual Property.

6. The Assignor hereby irrevocably appoints BMOCC or its agent, as the case may be, with full power of substitution, to be the attorney of the Assignor for and in the name of the Assignor, to do, make, sign, endorse or execute under seal or otherwise all deeds, documents, transfers, cheques, instruments, demands, assignments, assurances, consents, acts, matters or things with the right to use the name of the Assignor whenever or wherever it may be necessary or expedient. It is hereby intended that the said power of attorney shall continue in the event of the subsequent legal incapacity of the Assignor, if an individual.

7. Any notice hereunder shall be in writing and shall be effectively given by BMOCC by personal delivery or by mailing such notice by prepaid post to the Assignor at the address set out above, or at such other address as may be given in writing by the Assignor to BMOCC. Delivery by fax transmission is deemed to be personal service and is deemed to be received on the next business day following transmission. Delivery by prepaid mail is deemed to be received three business days after mailing.

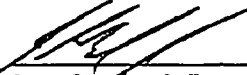
8. This Assignment shall be binding upon the Assignor and its heirs, executors, administrators successors and permitted assigns and it shall enure to the benefit of BMOCC and its successors and assigns. This Agreement may be assigned by BMOCC to any other person (without the consent of any other party hereto) and, if so assigned, the assignee shall have and be entitled to exercise any and all discretions, rights and powers of BMOCC hereunder, and all references herein to BMOCC shall include such assignee.

9. This Assignment shall be governed by and construed in accordance with the laws of the province in which the branch of BMOCC is located as described on page 1.

IN WITNESS WHEREOF the Assignor has hereunto set his hand and seal or has affixed its corporate seal duly attested by the hand(s) of its proper officer(s) in that behalf, on the day and year first above written.

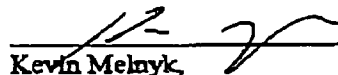
NORTH AMERICAN POOL COMPANY

By:



Sam Southard, Jr.
Executive Vice President

By:



Kevin Melnyk,
Secretary

SCHEDULE "A"
DETAILED DESCRIPTION OF INTELLECTUAL PROPERTY

Canadian Industrial Design Applications and Registrations:

Canadian Patent Application and Canadian Patents:

United States Design Application and Design Registrations:

United States Letter Patents and Patent Application:

Canadian Trade-Marks:

U.S. Trade-Marks:

CANADA
UNDER LICENSE TO NORTH AMERICAN POOL COMPANY

PATENTS

DESIGNS

UNITED STATES
UNDER LICENSE TO NORTH AMERICAN POOL COMPANY

PATENTS

DESIGNS

DESCRIPTION OR ILLUSTRATION OF INTELLECTUAL PROPERTY:

SCHEDULE "B"
LICENSED USERS OF INTELLECTUAL PROPERTY

LICENSE PARTICULARS (NAME OF LICENSEE, DATE AND TERM OF LICENSE):

OTHER RELEVANT INFORMATION:

Schedule 2.1(ab)
Description of Intellectual Property Rights

North American Pool Company

Patents:

- 1) Pool Liner Perimeter
Canadian Patent #2,363,805 (pending), filed November 26, 2001, as amended October 29, 2002
- 2) Narrow Buttress System
Canadian Patent #2,363,809 (pending), filed November 26, 2001, replaced by Canadian application filed November 25, 2002
- 3) Narrow Buttress System Structure for Swimming Pools
Canadian application filed 25 November 2002. Gowlings IRN 08893381CA1.
US application filed 25 November 2002. Gowlings IRN 08893381US.
- 4) Earth Brace System (assigned directly from Kerry Cornelius):
US Patent #5,522,188, dated June 4, 1996
- 5) Pool Liner Perimeter (assigned directly from Kerry Cornelius and Josephine Cosgrove)
US patent application no. 09/994,474, filed November 26, 2001
- 3) Above Ground Pool Components(assigned directly from Kerry Cornelius):
US Patent #5,425,144, dated June 20, 1995
- 4) Improved Pool Wall Construction (assigned directly from Kerry Cornelius) :
US Patent #5,325,644, Pool Wall Construction, dated July 5, 1994
Canadian Patent #2,066,339, filing dated April 16, 1992

Trademarks:

- 1) CORNELIUS & WAVE Design
US registration no. 1,650,770, dated July 16, 1991
Canadian Trademark No TMA403,800, dated October 23, 1992
- 2) HOME OASIS
US registration no. 2,577,679
Canadian application no. 1,063,141

- 3) HOME OASIS & Design
US registration no. 2,606,779
Canadian application no. 1,063,142
- 4) CORNELIUS THE OFFICIAL POOL OF SUMMER & design
US registration no. 2,616,784
Canadian trademark TMA563,471
- 5) AQUARIAN
US registration no. 1,108,542, originally filed on Aug 19, 1975. Note:
not renewed (see #6 below)
Canadian trademark TMA178,805, originally filed on August 10, 1970
- 6) AQUARIAN POOLS & Design
US trademark applied for but not yet registered, Gowlings IRN
06660578US.

Industrial Designs:

- 1) Wall Panel for an Above-the-Ground Swimming Pool
Canadian Industrial Design No. 76144

Domain Name

- 1) Homeoasis.ca – expires April 20, 2003
- 2) Corneliuspools.com – expires March 28, 2011- owned by Cornelius Pools

Licensed Intellectual Property

- 1) Microsoft Windows 2000 Server CAL English, 20 copies
- 2) Symantec I/O NAV Desktop/File Server UPG INS, 20 copies
- 3) Symantec Norton Anti-Virus Corporate Edition, 20 copies.
- 4) CMS License, dated March 7th 2000

Other (unregistered items that are not actively protected)

- Various unregistered design elements of Products such as decorative patterns, post, cap, and ledge shapes
- Web site design

- Individual model names for Products

Third Party Rights

- Distributors are permitted to use trademarks in their advertising and promotional materials, but no persons are licensed to manufacture products under contract

Business Style

- Cornelius Pools, has a business style "Acquarian Pools" in the State of New York