

09-11-2003

FORM PTO-1595

COVER SHEET

U.S. DEPARTMENT OF COMMERCE



1/31/92

102547122

TRADEMARKS ONLY

Patent and Trademark Office

To the Director of Patents and Trademarks: Please Record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Skyline Windows, LLC

Entity: Delaware Limited Liability Company

Additional name(s) of conveying party(ies) attached?

Yes  No

9-9-03

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

Name: Merrill Lynch Business Financial Services Inc.

Internal Address: 222 North LaSalle Street

Chicago, Illinois 60601

3. Nature of conveyance:

Assignment  Merger  
 Security Agreement  Change of Name  
 Other

Entity: Delaware Corporation

Additional Name(s) & Address(es) attached  Yes  No

Execution Date August 22, 2003

4. Application or registration number(s): 1

A. Trademark Application No.(s)

B. Trademark Registration No. (s)  
1,161,934

Additional numbers attached?  Yes  No

RECEIVED  
103 SEP -9 PM 2:42  
OPR/FINANCE

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

SCHIFF HARDIN & WAITE  
Chris Bollinger  
P.O. Box 06079  
Chicago, IL 60606-0079  
Telephone: (312) 258-5500  
Customer Number: 27010-0019

6. Total number of applications and patents involved

1

7. Total Fee (37 CFR 3.41)

\$40.00

Enclosed  
 Authorized to be charged to deposit account any Additional fees

8. Deposit Account Number:

19-0409

(Attach duplicate copy of this page if paying by deposit account)

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.

Chris Bollinger

Name of Person Signing

[Signature]  
Signature

9-5-03  
Date

Total number of pages including cover sheet and attached documents 16:

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

Commissioner of Patents and Trademarks  
Box Assignments  
Washington, D.C. 20231

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THIS PATENT, COPYRIGHT, LICENSE AND TRADEMARK SECURITY AGREEMENT ("Agreement") is made as of August 22, 2003 by **Skyline Windows, LLC**, a limited liability company organized and existing under the laws of the State of Delaware ("Customer"), to **Merrill Lynch Business Financial Services Inc.**, a corporation organized and existing under the laws of the State of Delaware ("MLBFS").

**WITNESSETH:**

**WHEREAS**, Customer and MLBFS have entered into (i) that certain Term Loan and Security Agreement dated as of August 22, 2003 regarding a \$2,260,000 term loan, (ii) that certain Term Loan and Security Agreement dated as of August 22, 2003 regarding a \$6,540,000 term loan, and (iii) that certain WCMA Loan and Security Agreement No. 7WD-07548 dated as of August 22, 2003 (collectively, as amended, restated, supplemented or otherwise modified, the "Loan Agreements"); and

**WHEREAS**, it is a condition to the effectiveness of the Loan Agreements that, among other things, Customer execute and deliver to MLBFS this Agreement;

**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, Customer agrees as follows:

1. **Incorporation of Loan Agreements.** The Loan Agreements and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto. Terms used herein which are not defined herein but are defined in the Loan Agreements shall have the meanings ascribed to them therein.

2. **Grant of Security Interest, Etc.** To secure the complete and timely satisfaction of all of the Customer's Obligations:

(A) the Customer hereby grants to the MLBFS a security interest in and to all of the Customer's right, title and interest in, to and under all of the following, whether now existing or hereafter arising:

(i) patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein, and those patents and patent applications listed on Schedule A attached hereto and made a part hereof, and (a) the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing patents and applications, together with the items described in clauses (a) through (d), inclusive, in which the Customer now or hereafter has any right, title or interest are sometimes hereinafter individually and/or collectively referred to as the "Patents");

(ii) all copyrights, copyright registrations and copyright applications including, without limitation, the copyrights and applications listed on Schedule B attached hereto and made a part hereof, and (a) renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing copyrights, copyright registrations and copyright applications, together with the items described in clauses (a) through (d), inclusive, in which the Customer now or hereafter has any right, title or interest are sometimes hereinafter individually and/or collectively referred to as the "Copyrights");

(iii) all the Customer's rights and obligations pursuant to its license agreements with any other Person or Persons with respect to any Patents and Copyrights, whether the Customer is a licensor or licensee under any such license agreements, including, without limitation, the licenses listed on Schedule C attached hereto and made a part hereof, and, subject to the terms of such licenses, the right to prepare for sale, sell and advertise for sale, all Inventory now or hereafter owned by the Customer and now or hereafter covered by such licenses (all of the foregoing is hereinafter referred to collectively as the "Patent and Copyright Licenses");

(iv) all service marks, trademarks, trademark or service mark registrations, trademark or service mark applications and trade names including, without limitation, the trademarks and service marks listed on Schedule D attached hereto and made a part hereof, and (a) renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all the foregoing service marks, trademarks, registrations, applications and trade names, together with the items described in clauses (a) through (d), inclusive, with respect thereto in which the Customer now or hereafter has any right, title or interest are sometimes hereinafter and/or collectively referred to as the "Marks");

(v) all the Customer's rights and obligations pursuant to its license agreements with any other Person or Persons with respect to any Marks, whether the Customer is a licensor or licensee under any such license agreements, including, without limitation, the licenses listed on Schedule E attached hereto and made a part hereof, and, subject to the terms of such licenses, the right to prepare for sale, sell and advertise for sale, all Inventory now or hereafter owned by the Customer and now or hereafter covered by such licenses (all of the foregoing is hereinafter referred to as "Trademark Licenses"; Patent and Copyright Licenses and Trademark Licenses are hereinafter referred to collectively as "Licenses"); and

(vi) the goodwill of the Customer's business connected with and symbolized by the Marks;

provided, however, that there shall be excluded from the foregoing grant of security interest any of the existing Licenses to which the Customer is a licensee (and any Patents, Marks and Copyrights currently licensed by others to the Customer pursuant to such Licenses) in each case to the extent (but only to the extent) that the applicable License lawfully prohibits such grant; provided further, however, that, upon MLBFS's request, the Customer will use its good faith reasonable efforts to obtain any consent needed to subject any such property to this grant of security interest.

**3. Restrictions on Future Agreements.** The Customer agrees and covenants that until the Obligations shall have been satisfied in full and the Loan Agreements shall have been terminated, the Customer will not, without MLBFS's prior written consent (which consent shall not be unreasonably withheld, delayed or conditioned), take any action or enter into any agreement, including, without limitation entering into any license agreement, which is inconsistent with the Customer's obligations under this Agreement, and the Customer further agrees and covenants that, without MLBFS's prior written consent (which consent shall not be unreasonably withheld, delayed or conditioned), it will not take any action, or permit any action to be taken by others subject to its control, including its licensees, or fail to take any action which would affect the validity or enforcement or nature of the rights transferred to MLBFS under this Agreement unless and to the extent that the Customer has concluded in the exercise of reasonable commercial judgment that any such rights are no longer of material importance to the business of the Customer. The Customer agrees and covenants not to sell or assign its interest in, or grant any license under, the Patents, Marks, Copyrights or Licenses, without receiving the prior written consent of MLBFS thereto.

**4. Certain Covenants, Representations and Warranties of the Customer.** The Customer covenants, represents and warrants (to the best of the Customer's knowledge with respect to any Patents, Marks and Copyrights which are licensed by third parties to the Customer) that: (i) the Patents, Marks, Copyrights and Licenses are subsisting, have not been adjudged invalid or unenforceable in whole or in part, and are not currently being challenged in any way; (ii) none of the Patents, Marks, Copyrights and Licenses have lapsed or expired or have been abandoned, whether due to any failure to pay any maintenance or other fees or make any filing or otherwise; (iii) each of the Patents, Marks, Copyrights and Licenses is valid and enforceable and the Customer is unaware of any invalidating prior art (including public uses and sales) relative to the Patents, and is unaware of any impairments to the Patents, Marks, Copyrights or Licenses which would have a material adverse effect on the validity and/or enforceability of the Patents, Marks, Copyrights or Licenses; (iv) to the best of the Customer's knowledge, no claim has been made that the use of any of the Patents, Marks, Copyrights or Licenses constitutes an infringement; (v) the Customer owns the entire right, title and interest in and to each of the Patents, Marks and Copyrights (other than those being licensed to the Customer pursuant to the Licenses) free and clear of any Liens and encumbrances of every kind and nature, and the Licenses are valid and subsisting licenses with respect to the Patents, Marks, Copyrights described therein, free and clear of any Liens and encumbrances of every kind and nature arising by, through or under the Customer, in each case except for (A) rights granted by the Customer pursuant to the applicable licenses listed on Schedules C and E, and (B) Liens and encumbrances in favor of MLBFS pursuant to this Agreement or the other Loan Documents; (vi) the Patents, Marks and Copyrights and Licenses listed on Schedules A, B, C, D and E constitute all such items in which the Customer has any right, title or interest; (vii) the Customer has the unqualified right to enter into this Agreement and perform its terms; (viii) the Customer will continue to use proper statutory notice in connection with its use of the Patents, Marks and Copyrights (except as to any thereof which is no longer material to the Customer's business); and (ix) the Customer will use standards of quality in its manufacture of products sold under the Marks consistent with those currently employed by it.

**5. New Patents, Marks, Copyrights and Licenses.** If, before the Obligations shall have been satisfied in full and the Loan Agreements shall have been terminated, the Customer shall (i) obtain rights to any new patentable inventions, trademarks, service marks, trademark or service mark registrations, copyrights, copyright registrations, trade names or licenses, or (ii) become entitled to the benefit of any patent, trademark or service mark application, trademark, service mark, trademark or service mark registration, copyrights, copyright registrations, license or license renewal, or patent for any reissue,

division, continuation, renewal, extension, or continuation-in-part of any Patent or any improvement on any Patent, the provisions of Section 2 above shall automatically apply thereto and the Customer shall give to MLBFS prompt written notice thereof. The Customer hereby authorizes MLBFS to modify this Agreement by noting any future acquired Patents, Marks, Copyrights on Schedule A, B or D and any Licenses and licensed Patents, Marks or Copyrights on Schedules C or E, as applicable; provided, however, that the failure of MLBFS to make any such notation shall not limit or affect the obligations of the Customer or rights of MLBFS hereunder.

**6. Royalties; Terms.** The Customer hereby agrees that the security interest of MLBFS in all Patents, Marks, Copyrights and Licenses as described above shall be worldwide (or in the case of the Patents, Marks and Copyrights licensed to the Customer such smaller geographic location if any is specified for the Customer's use in the applicable License) and, without any liability for royalties or other related charges from MLBFS to the Customer. The term of the security interest granted herein shall extend until the earlier of (i) the expiration of each of the respective Patents, Marks, Copyrights and Licenses assigned hereunder, or (ii) satisfaction in full of the Obligations and termination of the Loan Agreements.

**7. Inspection.** MLBFS shall have the right, upon reasonable prior written notice to the Customer, to inspect the Customer's premises and to examine the Customer's books, records and operations, including, without limitation, the Customer's quality control processes. From and after the occurrence and during the continuance of a Default and notice by MLBFS to the Customer of MLBFS's intention to enforce its rights and claims against any of the Patents, Marks, Copyrights and Licenses, the Customer agrees that MLBFS, or a conservator appointed by MLBFS, shall have the right to establish such additional product quality controls as MLBFS or said conservator, in its sole judgment, may deem necessary to assure maintenance of the quality of products sold by the Customer under the Marks consistent with the quality of products now manufactured by the Customer.

**8. Termination of the Customer's Interest.** This Agreement is made for collateral purposes only. Upon satisfaction in full of the Obligations and termination of the Loan Agreements, subject to any disposition thereof which may have been made by MLBFS pursuant hereto or pursuant to any of the other Loan Documents, the security interest granted hereunder shall automatically be extinguished. MLBFS shall, at the Customer's reasonable expense, execute and deliver to the Customer, all termination statements and other instruments as may be necessary or proper to evidence the termination of MLBFS's security interest granted to MLBFS pursuant to this Agreement, subject to any disposition thereof which may have been made by MLBFS pursuant hereto or pursuant to any of the other Loan Documents. Any such termination statements and instruments shall be without recourse upon or warranty by MLBFS.

**9. Duties of the Customer.** Except to the extent the same is no longer material to the Customer's business, the Customer shall have the duty (i) to prosecute diligently any patent application of the Patents, any application respecting the Marks, and any copyright application of the Copyrights pending as of the date hereof or thereafter, (ii) to make application on unpatented but patentable inventions and on registerable but unregistered trademarks, service marks and copyrights, and (iii) to preserve, maintain and enforce against infringement all rights in patent applications and patents constituting the Patents, in trademark or service mark applications, trademarks, service marks, and trademark or service mark registrations constituting the Marks, and in copyright applications, copyrights and copyright registrations constituting the Copyrights. Any expenses incurred in connection with the foregoing (including, but not limited to, maintenance or renewal fees) shall be borne by the Customer. Except to the extent the same is no longer material to the Customer's business, the Customer shall not abandon any pending patent

hereof. This power of attorney shall be irrevocable until the Obligations shall have been satisfied in full and the Loan Agreements shall have been terminated. The Customer acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of MLBFS under the Loan Agreements or any of the Loan Documents but rather is intended to facilitate the exercise of such rights and remedies. MLBFS shall have, in addition to all other rights and remedies given it by the terms of this Agreement, 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, Marks, Copyrights or Licenses may be enforced. The Customer hereby releases the MLBFS from any and all claims, causes of action and demands at any time arising out of or with respect to any actions taken or omitted to be taken by the MLBFS under the powers of attorney granted herein.

16. **Binding Effect; Benefits.** This Agreement shall be binding upon the Customer and its respective successors and assigns and shall inure to the benefit of MLBFS and its respective successors, assigns and nominees.

17. **Governing Law.** This Agreement shall be deemed to have been executed and delivered in Chicago, Illinois, and shall be governed by and construed in accordance with the internal laws (as opposed to conflicts of law provisions) of Illinois.

IN WITNESS WHEREOF, the parties hereto have entered into this Patent, Copyright, License and Trademark Security Agreement as of the date first above written.

**SKYLINE WINDOWS, LLC**

By: Barbara M. Henagon  
Name: Barbara M. Henagon  
Title: Secretary

The undersigned accepts and agrees to the foregoing Patent, Copyright, License and Trademark Security Agreement as of the \_\_\_ day of August, 2003 in Chicago, Illinois.

**MERRILL LYNCH BUSINESS FINANCIAL SERVICES INC.**

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

**IN WITNESS WHEREOF**, the parties hereto have entered into this Patent, Copyright, License and Trademark Security Agreement as of the date first above written.

**SKYLINE WINDOWS, LLC**

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

The undersigned accepts and agrees to the foregoing Patent, Copyright, License and Trademark Security Agreement as of the \_\_\_\_ day of August, 2003 in Chicago, Illinois.

**MERRILL LYNCH BUSINESS FINANCIAL SERVICES INC.**

By: Timothy G Beh  
Name: Timothy G Beh  
Title: Vice President

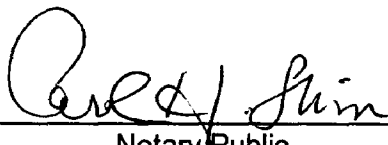


STATE OF PENNSYLVANIA )  
 ) SS.  
COUNTY OF PHILADELPHIA )

I, the undersigned, a Notary Public in and for said State and County, do hereby certify that Barbara M. Henagan, personally known to me to be the Secretary of **Skyline Windows, LLC** (the "Company"), and personally known to me to be the same person whose name is subscribed to the foregoing Patent, Copyright, License and Trademark Security Agreement, appeared before me this day and acknowledged that he/she signed and delivered said assignment as an officer of the Company and caused the seal of the Company to be affixed thereto, pursuant to authority given by the board of directors of the Company, as his/her free and voluntary act and as the free and voluntary act and deed of the Company, for the uses and purposes therein set forth.

GIVEN under my hand and official seal as of the \_\_\_\_ day of August, 2003.

(NOTARIAL SEAL)

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

My Commission Expires: \_\_\_\_\_

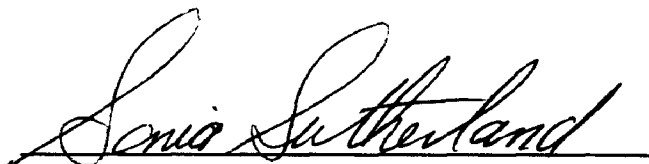
Notarial Seal  
Carol H. Thim, Notary Public  
City Of Philadelphia, Philadelphia County  
My Commission Expires May 12, 2007  
Member, Pennsylvania Association Of Notaries

STATE OF New Jersey )  
COUNTY OF Hudson ) SS.

Timothy C. Boh, I, the undersigned, a Notary Public in and for said State and County do hereby certify that VP, personally known to me to be the VP of **Merrill Lynch Business Financial Services Inc.** (Chicago), personally known to me to be the same person whose name is subscribed to the foregoing Patent, Copyright, License and Trademark Security Agreement, appeared before me this day and acknowledged that he/she signed and delivered said agreement as an officer of said MLBFS and caused the seal of said MLBFS to be affixed thereto, pursuant to authority given by the Board of Directors of said MLBFS, as his/her free and voluntary act and as the free and voluntary act and deed of said MLBFS, for the uses and purposes therein set forth.

GIVEN under my hand and official seal as of the \_\_\_\_ day of August, 2003.

(NOTARIAL SEAL)

  
Notary Public

My Commission Expires: \_\_\_\_\_ **SONIA C. SUTHERLAND**  
**NOTARY PUBLIC OF NEW JERSEY**  
Commission Expires 9/24/2004

**SCHEDULE A**

**PATENTS AND PATENT APPLICATIONS**

None

**SCHEDULE B**

**COPYRIGHTS**

None

**SCHEDULE C**

**PATENT AND COPYRIGHT LICENSES**

None

**SCHEDULE D**

**TRADEMARKS, SERVICE MARKS**

U.S. Trademark Registration No. 1,161,934; Skyline Windows and design; Registration Date August 21, 1981

**SCHEDULE E**

**TRADEMARK LICENSES**

None