

11-14-2003

REI



102600006

TO: The Commissioner of Patents and Trademarks: Please record this document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)
Document ID#
- Correction of PTO Error
Reel # Frame #
- Corrective Document
Reel # Frame #

Conveyance Type

- Assignment
- License
- Security Agreement
- Nunc Pro Tunc Assignment
Effective Date
Month Day Year
- Merger
- Change of Name
- Other

11-14-03

Conveying Party(ies)

Mark if additional names of conveying parties attached

Name Execution Date
Month Day Year

Formerly

- Individual General Partnership Limited Partnership Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of conveying parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City State/Country Zip Code

- Individual General Partnership Limited Partnership
- Corporation Association
- Other
- Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative is attached. (Designation must be a separate document from Assignment)

FOR OFFICE USE ONLY

11/17/2003 6TON11 00000006 1421101

01 FC:8521 40.00 OP
02 FC:8522 400.00 OP

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Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

11-17-1262

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

John J. Kenny, Esq.

Address (line 1)

Otterbourg, Steindler, Houston & Rosen, P.C.

Address (line 2)

230 Park Avenue

Address (line 3)

New York, New York 10169

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

212-661-9100

Name

Joseph Makseyn

Address (line 1)

Otterbourg, Steindler, Houston & Rosen, P.C.

Address (line 2)

230 Park Avenue

Address (line 3)

New York, New York 10169

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments.

12

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

SEE ATTACHED

Registration Number(s)

Number of Properties

Enter the total number of properties involved.

17

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): \$

\$440.00

Method of Payment:

Enclosed Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes No

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. Charges to deposit account are authorized, as indicated herein.

Joseph Makseyn

11/12/03

Name of Person Signing

Signature

Date

**SCHEDULE B TO GRANT OF SECURITY INTEREST IN PATENTS,
TRADEMARKS AND LICENSES**

between

**NURSERY SUPPLIES, INC.
and**

THE CIT GROUP/BUSINESS CREDIT, INC.

U.S. TRADEMARKS

<u>Title or Mark</u>	<u>Registration No.</u>	<u>Registration Date</u>
Classic	1,421,101	December 16, 1986
Arp-Tainer	1,356,702	August 27, 1985
Grip-Lip	1,775,895	June 8, 1993
Dec-Grow	1,963,450	March 19, 1996
AGS	1,981,272	June 18, 1996
Nursericans	768,559	April 28, 1964
Root Right	2,585,589	June 25, 2002
Root-Right	1006045	February 22, 1999
Root-Right	1090125	February 23, 1999
Root-Right	612519	May 31, 1999
Root-Right	370883	April 12, 1999
Root-Right	370882	April 12, 1999
Root-Right	75/380343	October 28, 1997

<u>Title or Mark</u>	<u>Application No.</u>	<u>Application Date</u>
Lerio	76-488,733	February 10, 2003
Phoenix	76-107,015	August 10, 2000
Plant Pouch	76-468,486	November 20, 2002
Intelli Pot	76-468,487	November 20, 2002

**GRANT OF SECURITY INTEREST IN
PATENTS, TRADEMARKS AND LICENSES**

THIS GRANT OF SECURITY INTEREST IN PATENTS, TRADEMARKS AND LICENSES (herein the "Agreement") made as of this 10th day of November, 2003, by **Nursery Supplies, Inc.**, a New Jersey corporation, with its principal place of business at 1415 Orchard Drive, Chambersburg, Pennsylvania 17201 (herein the "Company"), and **The CIT Group/Business Credit, Inc.**, a New York corporation, with offices at 1211 Avenue of the Americas, New York, New York 10036 (herein "CIT").

W I T N E S E T H:

WHEREAS, the Company and CIT are parties to a certain Financing Agreement of even date herewith, as the same may be amended from time to time (herein the "Financing Agreement"), which Financing Agreement provides (i) for CIT to make certain loans, advances and extensions of credit, all to or for the account of the Company and (ii) for the grant by the Company to CIT of a security interest in certain of the Company's assets, including, without limitation, its patents, patent applications and/or registrations, trademarks, trademark applications and/or registrations, tradenames, goodwill and licenses, all as more fully set forth therein;

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

1. Definitions. Capitalized terms used herein and defined in the Financing Agreement shall have the meanings set forth therein unless otherwise specifically defined herein.

2. Grant of Security Interest. To secure the payment of the "Obligations" (as defined in the Financing Agreement), the Company hereby grants to CIT a security interest, effective immediately, in all of the Company's right, title and interest in and to all of the following described property, whether now owned or hereafter acquired (collectively herein the "Intellectual Property Collateral"):

(i) Patents and patent applications and/or registrations together with the inventions and improvements described and claimed therein including, without limitation, the patents and applications, if any, listed on Schedule A, attached hereto and made a part hereof, and any and all reissues and renewals thereof and all income, royalties, damages and payments now and hereafter due and/or payable in connection therewith including, without limitation, damages and payments for past or future infringements thereof (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Patent Collateral");

(ii) Trademarks, trademark registrations and/or applications and tradenames including, without limitation, the trademarks and applications, if any, listed on Schedule B attached hereto and made a part hereof, and any and all reissues and/or renewals thereof, and all income, royalties, damages and payments now and hereafter due and/or payable in connection therewith including, without limitation, damages and payments for past or future infringements thereof (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Trademark Collateral");

(iii) Any license agreement in which the Company is or becomes licensed to use any patents and/or trademarks owned by a third party including, without limitation, the licenses, if any, listed on Schedule C attached hereto and made a part hereof (all of the foregoing are sometimes referred to herein individually and/or collectively as the "License Collateral");

(iv) The goodwill of the Company's business connected with and symbolized by the Intellectual Property Collateral; and

(v) All cash and non-cash proceeds of the foregoing.

3. CIT's Rights. Upon the occurrence of any Event of Default hereunder, CIT shall have all the rights and remedies of a secured party under the Uniform Commercial Code and any other applicable state or federal laws. CIT will give the Company reasonable notice of the time and place of any public sale of the Intellectual Property Collateral or the time after which any private sale of the Intellectual Property Collateral or any other intended disposition thereof is to be made. Unless otherwise provided by law, the requirement of reasonable notice shall be met if such notice is mailed, postage prepaid to the address of the Company set forth above at least ten (10) days before the date of such sale or disposition. In addition to the foregoing and all other rights and remedies of CIT upon the occurrence of any Event of Default hereunder, CIT shall thereupon have the immediate right to transfer to itself or to sell, assign and transfer to any other person all right, title and interest in and to all or any part of the Intellectual Property Collateral. A formal irrevocable power of attorney (in the form annexed hereto) is being executed and delivered by the Company to CIT concurrently with this Agreement to enable such rights to be carried out. The Company agrees that, in the event CIT exercises its rights hereunder and/or pursuant to said power of attorney in accordance with its terms, after written notification of such exercise from CIT to the Company, the Company shall never thereafter, without the prior written authorization of the owner or owners of such Intellectual Property Collateral, use any of such Intellectual Property Collateral. The condition of the foregoing provision is such that unless and until there occurs an Event of Default under this Agreement, the Company shall continue to own and use the Intellectual Property Collateral in the normal course of its business and to enjoy the benefits, royalties and profits therefrom provided, however, that from and after the occurrence of an Event of Default such right will, upon the exercise by CIT of the rights provided by this Agreement, be revoked and the right of the Company to enjoy the uses, benefits, royalties and profits of said Intellectual Property Collateral will wholly cease, whereupon CIT or its transferee(s) shall be entitled to all of the Company's right, title and interest in and to the Intellectual Property Collateral hereby so assigned. This Agreement will not operate to place upon CIT any duty or responsibility to maintain the Intellectual Property Collateral.

4. Fees. The Company will pay all filing fees with respect to the security interest created hereby which CIT may deem necessary or advisable in order to perfect and maintain the perfection of its security interest in the Intellectual Property Collateral.

5. Representations and Warranties. The Company represents and warrants: that the Company lawfully possesses and owns the Intellectual Property Collateral and that except for the security interest granted hereby and Permitted Encumbrances (as defined in the Financing Agreement), the Intellectual Property Collateral will be kept free from all liens, security interests, claims and encumbrances whatsoever; that the Company has not made or given any prior assignment, transfer or security interest in the Intellectual Property Collateral or any of the proceeds thereof; that the Intellectual Property Collateral is and will continue to be, in all respects, in full force and effect; and that there are no known infringements of the Intellectual Property Collateral.

6. Application of Proceeds. The proceeds of any sale, transfer or disposition of the Intellectual Property Collateral shall be applied first to all costs and expenses, including, but not limited to, reasonable attorneys' fees and expenses and court costs, incurred by CIT in connection with such sale and the exercise of CIT's rights and remedies hereunder and under the Financing Agreement; next, such proceeds shall be applied to the payment, in whole or in part, of the Obligations due CIT in such order as CIT may elect; and the balance, if any, shall be paid to the Company or as a court of competent jurisdiction may direct.

7. Defense of Claims. The Company will defend at its own cost and expense any action, claim or proceeding affecting the Intellectual Property Collateral or the interest of CIT therein. The Company agrees to reimburse CIT for all costs and expenses incurred by CIT in defending any such action, claim or proceeding.

8. Rights Cumulative. This Agreement shall be in addition to the Financing Agreement and shall not be deemed to affect, modify or limit the Financing Agreement or any rights that CIT has under the Financing Agreement. The Company agrees to execute and deliver to CIT (at the Company's expense) any further documentation or papers necessary to carry out the intent or purpose of this Agreement including, but not limited to, financing statements under the Uniform Commercial Code.

9. Construction and Invalidity. Any provisions hereof contrary to, prohibited by or invalid under any laws or regulations shall be inapplicable and deemed omitted herefrom, but shall not invalidate the remaining provisions hereof.

10. **CHOICE OF LAW**. **THE COMPANY AGREES THAT THE VALIDITY, INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT AND ALL RIGHTS HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. THIS AGREEMENT TOGETHER WITH THE FINANCING AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT OF THE COMPANY AND CIT WITH RESPECT TO THE INTELLECTUAL PROPERTY COLLATERAL, CAN ONLY BE CHANGED OR MODIFIED IN WRITING AND SHALL BIND AND BENEFIT THE COMPANY, CIT AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS. THE**

COMPANY AND CIT EACH HEREBY EXPRESSLY WAIVES ANY RIGHT OF TRIAL BY JURY ON ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING HEREUNDER.

11. Events of Default. Any of the following constitutes an Event of Default under this Agreement:

(i) The Company fails to perform or observe any agreement, covenant or condition required under this Agreement;

(ii) Any warranty or representation made by Company, in this Agreement shall be or becomes false or misleading in any material respect; or

(iii) The occurrence of any Event of Default under the Financing Agreement which is not waived in writing by CIT.

12. Notices. The Company covenants and agrees that, with respect to the Intellectual Property Collateral, it will give CIT written notice in the manner provided in the Financing Agreement of:

(i) any claim by a third party that the Company has infringed on the rights of a third party;

(ii) any suspected infringement by a third party on the rights of the Company; or

(iii) any Intellectual Property Collateral created, arising or acquired by the Company after the date hereof.

13. Further Assurances. The Company will take any such action as CIT may reasonably require to further confirm or protect CIT's rights under this Agreement in the Intellectual Property Collateral. In furtherance thereof, the Company hereby grants to CIT a power of attorney coupled with an interest which shall be irrevocable during the term of this Agreement to execute any documentation or take any action in the Company's behalf required to effectuate the terms, provisions and conditions of this Agreement.

14. Termination. This Agreement shall terminate upon termination of the Financing Agreement and full, final and indefeasible payment of all Obligations of the Company thereunder. Upon the Company's request, CIT shall within a reasonable time after any such termination execute and deliver to the Company (at the Company's expense) such documents and instruments as are reasonably necessary to evidence such termination and release of the security interest granted herein on any applicable public record.

10th IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the
10th day of November, 2003.

NURSERY SUPPLIES, INC. (the "Company")

By: Henry J. Guarriello
Name: Henry J. Guarriello, Sr.
Title: Chairman

Agreed and Accepted this
10th day of November, 2003

THE CIT GROUP/BUSINESS CREDIT, INC.

By: Robert E. Chimenti
Name: ROBERT E. CHIMENTI
Title: Asst. Vice President

IRREVOCABLE POWER OF ATTORNEY

Nursery Supplies, Inc., a New Jersey corporation, with its principal place of business at 1415 Orchard Drive, Chambersburg, Pennsylvania 17201 (hereinafter referred to as the "Company"), hereby grants to **The CIT Group/Business Credit, Inc.**, a New York corporation, with offices at 1211 Avenue of the Americas, New York, New York 10036 (hereinafter referred to as "CIT"), the exclusive Irrevocable Power of Attorney to transfer to CIT or to any designee of CIT all Intellectual Property Collateral listed on the Schedules attached to the Grant of Security Interest in Patents, Trademarks and Licenses (the "Agreement"), dated as of the date hereof, between the Company and CIT including, without limitation, all patents, patent applications and/or registrations, trademarks, trademark applications and/or registrations, and licenses together with the goodwill of the business connected with or symbolized by such Intellectual Property Collateral and the Company's entire inventory of labels and decals bearing any trademarks not affixed to its products, and the right to operate and control, sell, assign, and transfer the business under those trademarks under the following terms and conditions:

1. The Power of Attorney granted hereunder shall be effective as of the date hereof and shall last for as long as any now existing or hereafter arising indebtedness, liabilities or obligations of the Company to CIT are outstanding under the Financing Agreement, dated on or about the date hereof, between the Company and CIT.

2. The Power of Attorney granted herein shall be irrevocable throughout the duration of its life as specified in Paragraph 1 hereinabove;

3. The Power of Attorney granted herein shall only be exercisable by CIT after the occurrence of an Event of Default under the Agreement between CIT and the Company; and

4. CIT shall give the Company ten (10) days prior written notice of the exercise of this power, and the waiver by CIT of any particular Event of Default as set forth in Paragraph 3 hereinabove shall have no force or effect unless in writing and signed by an authorized officer of CIT. Even then such waiver shall not constitute or be considered a waiver of any other Event of Default then existing or thereafter arising whether similar or not.

IN WITNESS WHEREOF, the Company has caused this Power of Attorney to be executed as of the _____ day of November, 2003.

NURSERY SUPPLIES, INC.
(the "Company")

By: _____
Name: Henry J. Guarriello, Sr.
Title: Chairman

STATE OF NEW YORK)
)
COUNTY OF NEW YORK)

On November ____, 2003, before me, the undersigned, a notary public in and for said State, personally appeared Henry J. Guarriello, Sr. known to me to be the Chairman of Nursery Supplies, Inc., the corporation that executed the within instrument, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws and a resolution of its board of directors.

WITNESS my hand and official seal.

Notary Public

**SCHEDULE A TO GRANT OF SECURITY INTEREST IN PATENTS,
TRADEMARKS AND LICENSES**

between

**NURSERY SUPPLIES, INC.
and**

THE CIT GROUP/BUSINESS CREDIT, INC.

U.S. PATENTS

<u>Title</u>	<u>Patent No.</u>	<u>Issue Date</u>
Container and Tag Assembly	6,463,696	October 15, 2002
Method and Apparatus for Controlling Root Growth	6,038,813	March 21, 2000
Molded Article	5,954,223	September 21, 1999
Nursery Container with Attachment Device	5,941,019	August 24, 1999
Reverse Lip Blow Molding	5,503,886	April 2, 1996
Reverse Lip Blow Molded Article	5,364,675	November 15, 1994
Ebb and Flood Irrigation System	5,307,589	May 3, 1994
Apparatus for Manufacturing Containers with Thickened Flanges	5,282,736	February 1, 1994
Apparatus for Manufacturing Containers with Thickened Flanges	5,253,996	October 19, 1993
Process for Manufacturing Containers with Thickened Flanges	5,227,114	July 13, 1993
Reverse Lip Blow Molding	5,208,891	May 11, 1993
Process and Apparatus for Manufacturing Containers with Thickened Flanges and Longitudinal Reinforcing Ribs and Containers Thereby	5,202,078	April 13, 1993
Protector for Plant Growing Receptacle	5,113,618	May 19, 1992
Plant Growing Receptacle	5,099,603	March 31, 1992
Reverse Lip Blow Molding Apparatus	5,051,084	September 24, 1991

Apparatus for Blow Molding an Article with Compression Molded Areas	5,026,268	June 25, 1991
Apparatus for Dispensing Containers	5,024,048	June 18, 1991
Plant Growing Receptacle	5,007,135	April 16, 1991
Blow Molded Article with Reverse Lip	4,972,963	November 27, 1990
Reverse Lip Blow Molding Apparatus	4,938,680	July 3, 1990
Plant Container with Concavoconvex Ribs	4,715,144	December 29, 1987
Nursery Container Upper Portion	Des. 413,835	September 14, 1999
Container	Des. 364,564	November 28, 1995
Plant Container	Des. 361,956	September 5, 1995
Container	Des. 338,636	August 24, 1993
Plant Container	Des. 325,181	April 7, 1992
Plant Container	Des. 298,303	November 1, 1998

**SCHEDULE B TO GRANT OF SECURITY INTEREST IN PATENTS,
TRADEMARKS AND LICENSES**

between

**NURSERY SUPPLIES, INC.
and**

THE CIT GROUP/BUSINESS CREDIT, INC.

U.S. TRADEMARKS

<u>Title or Mark</u>	<u>Registration No.</u>	<u>Registration Date</u>
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Root-Right	1006045	February 22, 1999
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Root-Right	370883	April 12, 1999
Root-Right	370882	April 12, 1999
Root-Right	75/380343	October 28, 1997

<u>Title or Mark</u>	<u>Application No.</u>	<u>Application Date</u>
Lerio	76-488,733	February 10, 2003
Phoenix	76-107,015	August 10, 2000
Plant Pouch	76-468,486	November 20, 2002
Intelli Pot	76-468,487	November 20, 2002

**SCHEDULE C TO GRANT OF SECURITY INTEREST IN PATENTS,
TRADEMARKS AND LICENSES**

between

NURSERY SUPPLIES, INC.

and

THE CIT GROUP/BUSINESS CREDIT, INC.

U.S. LICENSES

<u>Name</u>	<u>Registration No.</u>	<u>Registration Date</u>
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NONE