11-19-2003

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

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

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):
Pacific Consolidated Industries LLC 11-17-03

- ☐ Individual(s)
- ☐ Association
- ☐ General Partnership
- ☐ Limited Partnership
- ☐ Corporation-State
- ☒ Other Limited Liability Company

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

2. Name and address of receiving party(ies)
Name: Bank Of America, N.A.
Internal Address: Mezanine Level, Attn: Jessica Tencza
Street Address: 8300 Greensboro Drive
City: McLean State: VA Zip: 22102

- ☐ Individual(s) citizenship
- ☐ Association
- ☐ General Partnership
- ☐ Limited Partnership
- ☒ 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

3. Nature of conveyance:

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

Execution Date: November 3, 2003

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)
App. No. 76/140,304

B. Trademark Registration No.(s)
Reg. No. 2732728

Additional number(s) attached ☐ Yes ☒ No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Nathaniel R. Wilson
Internal Address:

Street Address: Ober, Kaler, Grimes & Shriver
120 East Baltimore Street
City: Baltimore State: Maryland Zip: 21202

6. Total number of applications and registrations involved: 2

7. Total fee (37 CFR 3.41).....$ 65.00

- ☒ Enclosed
- ☐ Authorized to be charged to deposit account

8. Deposit account number:

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

2003 NOV 17 PM 12:15
OPR/FINANCE

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.

Nathaniel R. Wilson — Name of Person Signing
NRWilson — Signature
11-10-03 — Date

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

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

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01 FC:8521 40.00 OP
02 FC:8522 25.00 OP

TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT (this "Agreement") dated November 3, 2003, is given by PACIFIC CONSOLIDATED INDUSTRIES LLC, a Delaware limited liability company ("Assignor"), in favor of BANK OF AMERICA, N.A., a national banking association ("Assignee").

BACKGROUND

Pursuant to a Credit Agreement dated November 3, 2003 between the Assignor and Assignee (as the same may from time to time be amended, restated, extended, refinanced, replaced, supplemented or otherwise modified, the "Credit Agreement"), the Assignee has agreed to make available to the Assignor (a) a revolving line of credit in the aggregate principal amount not to exceed $12,000,000 at any one time outstanding and (b) an uncommitted guidance facility in the aggregate principal amount not to exceed $1,500,000, the foregoing sometimes hereinafter called collectively the "Credit Facilities." As inducement to Assignee to enter into the Credit Agreement and make the Credit Facilities available to Assignor, Assignor agreed to, among other things, pledge to Assignee and grant Assignee a continuing, first priority security interest in and lien on all trademark applications and trademarks of Assignor.

As used herein, the term "Financing Documents" means collectively the Credit Agreement, and all notes, guarantees, mortgages, security agreements, debentures, and other documents previously, simultaneously or hereafter executed and delivered by Assignor or any party or parties in favor of Assignee to secure or guarantee, or in connection with, the Credit Facilities. All other capitalized terms used herein without definition shall have the meanings ascribed to them in the Credit Agreement.

AGREEMENTS

NOW THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

1. Grant of Security Interest. To secure the complete and timely payment and performance of all of its Obligations under the Credit Agreement and the other Financing Documents, Assignor, to the extent of its interest therein, hereby grants, assigns, conveys and pledges to Assignee a continuing, first priority security interest in and to all trademark applications, trademarks (whether registered, unregistered or for which any application to register has been filed), service mark applications, service marks (whether registered, unregistered or for which any application to register has been filed) and tradenames owned, held or claimed by Assignor, all of which are listed in Schedule A hereto (as the same may be amended from time to time pursuant hereto), including, without limitation, all renewals thereof and all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements, all rights owned by them corresponding thereto throughout the world (all of the foregoing are collectively called

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the "Marks"), together with the goodwill of the business symbolized by each of the Marks and the registrations (if any) thereof.

2. Warranties and Representations. Assignor hereby covenants with, and warrants to, Assignee that: (a) Assignor is the sole and exclusive owner of each of the Marks and all rights therein, free and clear of any liens, pledges, assignments or other encumbrances; (b) Assignor has the unqualified right to enter into this Agreement and perform its terms; (c) the Marks are subsisting and have not been adjudged invalid or unenforceable; (d) each of the Marks is valid and enforceable; (e) no claim has been made that the use of any of the Marks does or may violate the rights of any third person; (f) Assignor has used, and, subject to the provisions of Paragraph 7 below, will continue to use for the duration of this Agreement, proper statutory notice in connection with its use of the Marks; and (g) Assignor has used, and, subject to the provisions of Paragraph 7 below, will continue to use for the duration of this Agreement, consistent standards of quality in its manufacture of products and delivery of services sold or provided under the Marks. Assignor shall, in any event, indemnify and hold Assignee harmless from all losses, damages, costs and expenses, including legal costs and counsel fees, incurred by Assignee as the direct or indirect result of any action, claim or demand, whether or not groundless, alleging that the Marks infringe any trademarks held by third parties.

3. Right to Benefits. If, before the Obligations shall have been satisfied in full, Assignor shall become entitled to the benefit of any additional trademark or service mark registration, or any renewal or affidavit of any Mark, the provisions of Paragraph 1 shall automatically apply thereto and Assignor shall give Assignee prompt written notice thereof.

4. Future Marks. Assignor hereby authorizes Assignee to modify this Agreement by amending Schedule A hereto to include any future trademarks, service marks or tradenames which are Marks under Paragraph 1 or Paragraph 4 hereof. Assignee shall deliver a true and correct copy of any such amended Schedule A to Assignor promptly following Assignee's completion thereof.

5. Default. The term "Default", as used herein, shall mean any Event of Default under the Credit Agreement or a default under any of the other Financing Documents.

6. ssignor's Right to Use Marks. Unless and until a Default shall occur and be continuing, Assignor shall retain the legal and equitable title to the Marks and shall have the right to use the Marks in the ordinary course of its business but shall not be permitted to sell, assign, transfer or otherwise encumber the Marks or any part thereof without the prior written consent of Assignee; provided, however, that nothing herein contained shall prohibit Assignor from failing to renew or otherwise abandoning any item included within the Marks if, in Assignor's good faith judgment, the retention of such item is not material to the proper conduct of its business; provided, however, that Assignor shall give Assignee ten (10) days' prior written notice of its intention to abandon or of its failure to renew any item included within the Marks.

7. Assignee's Rights As Secured Party. If a Default shall have occurred and be continuing, Assignee shall have, in addition to all other rights and remedies given to it by this Agreement, the Credit Agreement and the other Financing Documents, those 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 Marks may be located or used and, without limiting the generality of the foregoing, Assignee may immediately, without demand of performance and without advertisement, sell at public or private sale or otherwise realize upon, the whole or any part, of the Marks, the goodwill and equipment associated therewith, or any interest which Assignor has therein, and after deducting from the proceeds of said sale or other disposition of the Marks all expenses (including all reasonable expenses for brokers' fees and legal services), shall apply the balance of such proceeds towards payment of the Obligations. Notice of any sale or other disposition of the Marks shall be given to Assignor at least ten (10) calendar days before the time of any intended public or private sale or other disposition of the Marks is to be made, which Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, Assignee may, to the extent permissible under applicable law, purchase the whole or any part of the Marks sold, free from any right of redemption on the part of Assignor, which right Assignor hereby waives and releases.

8. Power of Attorney. If a Default shall have occurred and be continuing, Assignor hereby authorizes and empowers Assignee to make, constitute and appoint any officer or agent of Assignee as Assignee may select in its exclusive discretion, as Assignor's true and lawful attorney-in-fact, with the power (a) to endorse Assignor's name on all applications, documents, papers and instruments necessary for Assignee to use the Marks, or (b) to grant or issue any exclusive or non-exclusive license under the Marks to any third person, or (c) necessary for Assignee to assign, pledge, convey or otherwise transfer title in or dispose of the Marks, the goodwill and equipment associated therewith, to any third person. Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue of such power of attorney. This power of attorney shall be irrevocable for the life of this Agreement and be coupled with an interest.

9. Termination. At such time as Assignor shall completely satisfy all of the Obligations and all other liabilities of Assignor to Assignee under the Credit Agreement and the other Financing Documents, Assignee shall execute and deliver to Assignor, at Assignor's sole cost and expense, all deeds, assignments and other instruments as may be necessary or proper to terminate the liens and security interests granted hereby and to re-vest in Assignor the full unencumbered title to the Marks, and the goodwill associated therewith, subject to any disposition thereof which may have been made by Assignee in accordance with the provisions hereof.

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10. Fees and Expenses of Assignee. If a Default shall have occurred and be continuing, any and all fees, costs and expenses, of whatever kind or nature, including, without limitation, reasonable attorneys' fees and expenses, incurred by Assignee in connection with the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving the Marks, or in defending or prosecuting any actions or proceedings arising out of or related to the Marks, shall be borne and paid by Assignor on demand by Assignee, and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the highest rate prescribed in the Credit Agreement.

11. Protection of Marks.

(a) Subject only to the first proviso in Section 7 hereof, Assignor shall take all actions reasonably necessary to protect and defend the Marks to the extent that the Borrower determines that such Marks have value to the business of the Borrower and shall institute such proceedings to enforce the Marks as it, in its reasonable business judgment, deems appropriate. Assignee shall, upon the reasonable request of Assignor, do any and all lawful acts and execute any and all proper documents in aid of such protection, defense and enforcement, and Assignor shall promptly, upon demand, reimburse and indemnify Assignee for all costs and expenses incurred by Assignee in connection therewith.

(b) If a Default shall have occurred and be continuing, Assignee shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Marks, in which event Assignor shall, at the request of Assignee, do any and all lawful acts and execute any and all proper documents required by Assignee in aid of such enforcement, and Assignor shall promptly, upon demand, reimburse and indemnify Assignee for all costs and expenses incurred by Assignee in the exercise of its rights under this Paragraph 12.

12. No Waiver. No course of dealing between Assignor and Assignee nor any failure to exercise, nor any delay in exercising, on the part of Assignee, any right, power or privilege hereunder or under the Credit Agreement or the other Financing Documents 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 or the exercise of any other right, power or privilege.

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. Use of Marks. The parties understand and agree that the collateral security assignment of the Marks as provided for in this Agreement, together with other collateral

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provided to Assignee pursuant to the Credit Agreement and the other Financing Documents, will permit Assignee, upon the happening and during the continuation of a Default as provided herein or an Event of Default as provided in the Credit Agreement or the other Financing Documents, to make use of all rights to the Marks and the goodwill associated therewith.

15. Amendment. This Agreement is subject to modification only by a writing signed by the parties hereto, except as provided in Paragraph 5 hereof.

16. Successors and Assigns. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties.

17. Governing Law. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by, and construed in accordance with, the laws of the State of New York.

18. **ARBITRATION.**

(a) ANY CONTROVERSY OR CLAIM BETWEEN OR AMONG THE PARTIES HERETO (FOR THE PURPOSES OF THIS ARBITRATION PROVISION ONLY, THE TERM "PARTIES" SHALL INCLUDE ANY PARENT CORPORATION, SUBSIDIARY OR AFFILIATE OF THE ASSIGNEE INVOLVED IN THE SERVICING, MANAGEMENT OR ADMINISTRATION OF ANY OBLIGATION DESCRIBED IN THIS AGREEMENT) INCLUDING BUT NOT LIMITED TO THOSE ARISING OUT OF OR RELATING TO THIS INSTRUMENT, AGREEMENT OR DOCUMENT OR ANY RELATED INSTRUMENTS, AGREEMENTS OR DOCUMENTS, INCLUDING ANY CLAIM BASED ON OR ARISING FROM AN ALLEGED TORT, SHALL BE DETERMINED BY BINDING ARBITRATION IN ACCORDANCE WITH THE FEDERAL ARBITRATION ACT (OR IF NOT APPLICABLE, THE APPLICABLE STATE LAW), THE RULES OF PRACTICE AND PROCEDURE FOR THE ARBITRATION OF COMMERCIAL DISPUTES OF J.A.M.S./ENDISPUTE OR ANY SUCCESSOR THEREOF ("J.A.M.S."), AND THE "SPECIAL RULES" SET FORTH BELOW. IN THE EVENT OF ANY INCONSISTENCY, THE SPECIAL RULES SHALL CONTROL. JUDGMENT UPON ANY ARBITRATION AWARD MAY BE ENTERED IN ANY COURT HAVING JURISDICTION. ANY PARTY TO THIS INSTRUMENT, AGREEMENT OR DOCUMENT MAY BRING AN ACTION, INCLUDING A SUMMARY OR EXPEDITED PROCEEDING, TO COMPEL ARBITRATION OF ANY CONTROVERSY OR CLAIM TO WHICH THIS AGREEMENT APPLIES IN ANY COURT HAVING JURISDICTION OVER SUCH ACTION.

(b) SPECIAL RULES. THE ARBITRATION SHALL BE CONDUCTED IN WASHINGTON, D.C. AND ADMINISTERED BY J.A.M.S. WHO WILL APPOINT AN ARBITRATOR; IF J.A.M.S. IS UNABLE OR LEGALLY PRECLUDED FROM ADMINISTERING THE ARBITRATION, THEN THE AMERICAN ARBITRATION ASSOCIATION WILL SERVE. ALL ARBITRATION HEARINGS WILL BE

COMMENCED WITHIN 90 DAYS OF THE DEMAND FOR ARBITRATION; FURTHER, THE ARBITRATOR SHALL ONLY, UPON A SHOWING OF CAUSE, BE PERMITTED TO EXTEND THE COMMENCEMENT OF SUCH HEARING FOR UP TO AN ADDITIONAL 60 DAYS.

(c) RESERVATION OF RIGHTS. NOTHING IN THIS ARBITRATION PROVISION SHALL BE DEEMED TO (I) LIMIT THE APPLICABILITY OF ANY OTHERWISE APPLICABLE STATUTES OF LIMITATION OR REPOSE AND ANY WAIVERS CONTAINED IN THIS INSTRUMENT, AGREEMENT OR DOCUMENT; OR (II) BE A WAIVER BY ASSIGNEE OF THE PROTECTION AFFORDED TO IT BY 12 U.S.C. SEC. 91 OR ANY SUBSTANTIALLY EQUIVALENT STATE LAW; OR (III) LIMIT THE RIGHT OF ASSIGNEE HERETO (A) TO EXERCISE SELF HELP REMEDIES SUCH AS (BUT NOT LIMITED TO) SETOFF, OR (B) TO FORECLOSE AGAINST ANY REAL OR PERSONAL PROPERTY COLLATERAL, OR (C) TO OBTAIN FROM A COURT PROVISIONAL OR ANCILLARY REMEDIES SUCH AS (BUT NOT LIMITED TO) INJUNCTIVE RELIEF, WRIT OF POSSESSION OR THE APPOINTMENT OF A RECEIVER. ASSIGNEE MAY EXERCISE SUCH SELF HELP RIGHTS, FORECLOSE UPON SUCH PROPERTY, OR OBTAIN SUCH PROVISIONAL OR ANCILLARY REMEDIES BEFORE, DURING OR AFTER THE PENDENCY OF ANY ARBITRATION PROCEEDING BROUGHT PURSUANT TO THIS INSTRUMENT, AGREEMENT OR DOCUMENT. NEITHER THIS EXERCISE OF SELF HELP REMEDIES NOR THE INSTITUTION OR MAINTENANCE OF AN ACTION FOR FORECLOSURE OR PROVISIONAL OR ANCILLARY REMEDIES SHALL CONSTITUTE A WAIVER OF THE RIGHT OF ANY PARTY, INCLUDING THE CLAIMANT IN ANY SUCH ACTION, TO ARBITRATE THE MERITS OF THE CONTROVERSY OR CLAIM OCCASIONING RESORT TO SUCH REMEDIES.

20. Counterparts. This Agreement may be executed in any number of duplicate originals or counterparts, each of such duplicate originals or counterparts shall be deemed to be an original and all taken together shall constitute one and the same instrument.

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

PACIFIC CONSOLIDATED INDUSTRIES LLC

By: _____ (SEAL)
Charles Cherington
President

Address for All Notices:
Pacific Consolidated Industries LLC
3430 West Carriage Drive
Santa Ana, California 72704-6412
Attention: Lee Smith, President
Telephone: (714) 979-9200
Telecopy: (714) 436-9150

BANK OF AMERICA, N.A.

By: _____
Name:

Title:

Notice Address:

8300 Greensboro Drive
Mezzanine Level
McLean, Virginia 22102
Attn: Jessica L. Tencza, Vice President

ACKNOWLEDGMENTS

COMMONWEALTH OF MASSACHUSSETTS, COUNTY OF SUFFOLK, TO WIT:

I HEREBY CERTIFY, that on November 3, 2003, before me, the undersigned Notary Public of said jurisdiction, personally appeared Charles Cherington, who acknowledged himself to be the President of PACIFIC CONSOLIDATED INDUSTRIES LLC, a Delaware limited liability company, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as the duly authorized President of said limited liability company for and on behalf of such limited liability company.

WITNESS my Hand and Notarial Seal.

STEVEN RYAN BLACK, Notary Public
My Commission Expires: July 9, 2010

Notary Public

My commission expires:_____.

COMMONWEALTH OF VIRGINIA, COUNTY OF FAIRFAX, TO WIT:

I HEREBY CERTIFY, that on November ~~3~~ 4 KFC, 2003, before me, the undersigned Notary Public of said State, personally appeared Jessica L. Tencza, who acknowledged herself to be a Vice President of BANK OF AMERICA, N.A., a national banking association, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within document, and acknowledged that she executed the same for the purposes therein contained as one of the duly authorized signatories of said bank by herself as Vice President.

WITNESS my hand and Notarial Seal.

Kay Finlaw Creel

Notary Public

My commission expires: Feb. 28, 2005

SCHEDULE A
TO THE
TRADEMARK SECURITY AGREEMENT
DATED NOVEMBER 3, 2003
BY PACIFIC CONSOLIDATION INDUSTRIES, LLC
IN FAVOR OF
BANK OF AMERICA, N.A.

LIST OF TRADEMARK REGISTRATIONS AND TRADEMARK APPLICATIONS

1. **Federal Registered Trademarks.**

Mark	Classes/Goods and Services	Registrant/ Applicant	Country	Status	Application No.	Filing Date	Reg. No.	Reg. Date	Renewal Date
NITROGENIE	7/ Gas generating equipment, namely, gas separating mechanical machines 40/ Rental of gas generating equipment	Seller	U.S.A.	Registered	76/140,738	10/04/00	2732728	07/01/03	07/01/13
OXYGENIE	7/ Gas generating equipment 40/ Rental of gas generating equipment	Seller	U.S.A.	Allowed	76/140,304	10/04/00	N/A	N/A	N/A

2. **Federal Trademark Applications.**

Mark	Serial Number	Filing Date
None		

3. **Abandoned, Cancelled and Expired Federal Trademarks.**

Mark	Registration Number	Abandonment, Cancellation or Expiration Date
None		