

02-20-2004

Form PTO-1594

(Rev. 10/02)

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

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

1. Name of conveying party(ies):

R/D Tech Instruments Inc. 2.17.04

- ☐ 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: 12/31/2003

2. Name and address of receiving party(ies)

Name: HSBC Bank Canada

Internal

Address: _____

Street Address: 2795 blvd. Laurier

QUEBEC, CANADA

City: Sainte-Foy State: _____ Zip: G1V 4M7

- ☐ Individual(s) citizenship _____
☐ Association _____
☐ General Partnership _____
☐ Limited Partnership _____
☐ Corporation-State _____
☒ Other Bank

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) _____
78/319,512B. Trademark Registration No.(s) 1,449,479
1,248,246Additional number(s) attached ☐ Yes ☒ No

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

Name: Paul, Frank & Collins

Internal Address: Attn: Gail Haefner

Street Address: One Church Street

5th Floor

City: Burlington State: VT Zip: 05401

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: _____

204 FEB 17 AM 8:12
OFF/FINANCE

DO NOT USE THIS SPACE

9. Signature.

Gail E. Haefner
Name of Person Signing

Signature

2/17/04

Date

Total number of pages including cover sheet, attachments, and document: 9

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

02/19/2004 MGETACHE 00000092 78319512

01 FC:0521
02 FC:052240.00 OP
50.00 OPTRADEMARK
REEL: 002916 FRAME: 0059



TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "**Agreement**") is dated as of December ~~12~~¹⁹, 2003, by and between **R/D TECH INSTRUMENTS INC.**, a Delaware corporation with its principal place of business located at 221 Crescent Street, Waltham, Massachusetts 02453 (the "**Assignor**") and **HSBC BANK CANADA**, a bank having its principal place of business at 885 West Georgia Street, Suite 300, Vancouver, British Columbia, Canada V6C 3E9 and having an office at 2795 boulevard Laurier, Sainte-Foy, Québec, Canada G1V 4M7 (the "**Assignee**").

WHEREAS, the Assignee is making certain credit and other financial accommodations to R/D Tech Inc. (a Québec corporation, herein referred to as "**R/D Tech Canada**"); and

WHEREAS, R/D Tech Canada owns 100% of the stock in R/D Tech Corp. (a Connecticut corporation), and R/D Tech Corp. owns 100% of the stock in the Assignor; and

WHEREAS, the Assignee has required the guaranty by Assignor of R/D Tech Canada's obligations, and the Assignor has delivered a Limited Guaranty to the Assignee dated as of December 12, 2003 (as amended from time to time, the "**Limited Guaranty**"); and

WHEREAS, the Assignee has required Assignor to grant a security interest in all trademark applications and trademarks of the Assignor, along with a security interest in all other assets of Assignor;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants of the parties hereto and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, it is hereby agreed as follows:

1. Assignment of Marks. To secure the complete and timely payment and satisfaction of all of the Obligations (as such term is defined below), the Assignor hereby grants, assigns and conveys to the Assignee a 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 trade names of the Assignor, including, but not limited to, those listed in Schedule A hereto (as the same may be amended pursuant hereto from time to time), together with 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 the Assignor corresponding thereto throughout the world (all of the foregoing are collectively called the "**Marks**"), together with the goodwill of the business symbolized by each of the Marks and the registrations (if any) thereof. For the purposes hereof, the term "**Obligations**" shall mean any obligation(s) of the Assignor or R/D Tech Canada to the Assignee of every kind and description, whether direct or indirect, absolute or contingent, primary or secondary, joint or several, due or to become due, or now existing or hereafter arising or acquired and whether by way of loan, discount, letter of credit, lease, or otherwise, including without limitation those arising under the Limited Guaranty and those of R/D Tech Canada arising under the following agreements: a certain Letter Agreement dated November 23, 2003, an agreement (Form 8020459) dated on or about December 5, 2003

regarding R/D Tech Canada's ability to draw US\$13,000,000, and a Demand Note dated on or about December 5, 2003 regarding a temporary loan for US\$8,000,000 (the "**Demand Note**").

2. **Warranties and Representations.** The Assignor hereby covenants and warrants that: (a) the Assignor is the sole and exclusive owner(s) of the entire right, title and interest in each of the Marks, free and clear of any liens, pledges, assignments or other encumbrances; (b) the 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) Assignor has not received notice of any claim that the use of any of the Marks does or may violate the rights of any third person; and (e) the Assignor (or its predecessor) has used and, subject to the provisions of Section 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. The Assignor shall, in any event, indemnify and hold the Assignee and its directors, officers, employees and agents (collectively, the "**Assignee Parties**") harmless from all losses, damages, costs and expenses, including reasonable legal costs and counsel fees, incurred by the Assignee Parties as the 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 Inspect.** The Assignor hereby grants to the Assignee and its employees and agents the right to visit the Assignor's plants and facilities where products sold or services provided under any of the Marks are manufactured, inspected, stored, or provided, and to inspect and review the products and quality control records relating thereto during normal business hours upon reasonable prior notice to the Assignor. Prior to or contemporaneously with visiting such plants or facilities of the Assignor, such party shall execute and deliver a confidentiality agreement relating to the intellectual property and trade secrets of the Assignor, upon the request of the Assignor.

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

5. **Future Marks.** The Assignor authorizes the Assignee to modify this Agreement by amending Schedule A to include any future trademarks, service marks or trade names which are Marks under Section 1 or Section 4 hereof.

6. **Default.** The term "**Default**," as used herein, shall mean: (a) any Event of Default under the Limited Guaranty; and (b) any violation by the Assignor of any obligation, agreement, representation, warranty or covenant contained in this Agreement and any modification or amendment hereof which is not waived or cured and remedied within thirty (30) calendar days after notice thereof to the Assignor.

7. **Assignor's Right to Use Marks.** Unless and until a Default shall occur and be continuing, the Assignor shall retain the legal and equitable title to the Marks and shall have the right to use (including the right to license) 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; provided, however, that nothing herein contained shall prohibit the Assignor from failing to renew or otherwise abandoning any item included within the Marks if, in the Assignor's good judgment, the retention of such item is not material to the proper conduct of its business;

provided, however, that the Assignor shall give the Assignee ten (10) days' prior written notice of any abandonment or failure to renew of any item included within the Marks.

8. Assignee's Rights as Secured Party. If a Default shall have occurred and be continuing, the Assignee shall have, in addition to all other rights and remedies given it by this Agreement, the Limited Guaranty and any other agreement between the Assignor and the Assignee, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in Delaware (whether or not such Uniform Commercial Code applies to security interests in trademarks) and, without limiting the generality of the foregoing, the Assignee may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to the Assignor, all of which are hereby expressly waived, may sell at public or private sale or otherwise realize upon, the whole or from time to time any part of the Marks and the goodwill associated therewith, or any interest which the Assignor have 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 residue of such proceeds to the payment of the Obligations. Notice of any sale or other disposition of the Marks shall be given to the Assignor at least fifteen (15) calendar days before the time of any intended public or private sale or other disposition of the Marks is to be made, which the Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, the 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 the Assignor, which right is hereby waived and released.

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

10. Termination. At such time as the Obligations shall have been completely satisfied, the Assignee shall execute and deliver to the Assignor all deeds, assignments and other instruments as may be necessary or proper to re-vest in the Assignor the full unencumbered title to the Marks and the goodwill associated therewith, subject to any disposition thereof which may have been made by the Assignee pursuant hereto.

11. 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 reasonable attorneys' fees and legal expenses, incurred by the Assignee Parties 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 the Assignor on demand by the Assignee, and until so paid shall be added to the principal amount of the Obligations and shall bear interest at a rate equal to 4% per annum in excess of the interest rate otherwise in effect on the Demand Note.

12. Protection of Marks. Except as otherwise provided in Section 7 hereof, the Assignor shall take all actions reasonably necessary to protect and defend the Marks and shall institute such proceedings to enforce the Marks as it, in its reasonable business judgment, deems appropriate. The Assignee shall, upon the reasonable request of the Assignor, do any and all lawful acts and execute all proper documents in aid of such protection, defense and enforcement, and the Assignor shall promptly, upon demand, reimburse and indemnify the Assignee Parties for all costs and expenses incurred by the Assignee in connection therewith.

If a Default shall have occurred and be continuing, the 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 the Assignor shall at the request of the Assignee do any and all lawful acts and execute any and all proper documents required by the Assignee in aid of such enforcement, and the Assignor shall promptly, upon demand, reimburse and indemnify the Assignee Parties for all costs and expenses incurred by the Assignee in the exercise of its rights under this Section 12.

13. No Waiver. No course of dealing between the Assignor and the Assignee nor any failure to exercise, nor any delay in exercising, on the part of the Assignee, any right, power or privilege hereunder or under the Limited Guaranty or any other agreement between the Assignor and the Assignee 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.

14. Cumulative Rights. All of the Assignee's rights and remedies with respect to the Marks, whether established hereby or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently.

15. Severability. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid or 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.

16. Manufacture and Sale. The parties understand and agree that the collateral security assignment of the Marks as provided for in this Agreement, together with other collateral provided to the Assignee pursuant to other documents executed in connection with the Limited Guaranty, will permit the Assignee, upon the happening of a Default, to make use of all rights to the Marks and the goodwill associated therewith, all of which will permit the Assignee to manufacture and sell the products for which the use of the Marks is associated and maintain substantially the same product specifications and quality as maintained by the Assignor.

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

18. 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.

19. Governing Law. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the laws of the Commonwealth of Massachusetts, without giving effect to the conflict of law rules of the Commonwealth of Massachusetts.

20. Judicial Proceedings. EACH PARTY TO THIS AGREEMENT AGREES THAT ANY SUIT, ACTION, OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT OR INSTITUTED BY ANY PARTY HERETO OR ANY SUCCESSOR OR ASSIGN OF ANY PARTY, ON OR WITH RESPECT TO THIS AGREEMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, THE ASSIGNOR WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. THE ASSIGNOR ACKNOWLEDGES AND AGREES THAT THIS SECTION IS A SPECIFIC AND MATERIAL ASPECT OF THIS AGREEMENT.

21. 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.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have executed this Agreement the day and year first above written.

WITNESS:

R/D TECH INSTRUMENTS INC.

By:

Alain Allard
President

Name and Title

STATE OF New York
New York COUNTY, ss.

At King + Spalding, in said County, this 17th day of December, 2003, personally appeared Alain Allard, the President and duly authorized agent of R/D Tech Instruments Inc., and he acknowledged this instrument, by him signed, to be his free act and deed and the free act and deed of R/D Tech Instruments Inc.

JUDY ZISHOLTZ
Notary Public, State of New York
No. 4794801
Qualified in Suffolk County
Certificate Filed in New York County
Commission Expires 12/31/05

Before me,

Judy Zisholtz
Notary Public

My Commission Expires: Dec - 31, 2005

WITNESS:

HSBC BANK CANADA

By:

Eric Parent
ERIC PARENT, ACCOUNT MGR.
Name and Title

State of New York
New York County, ss.

At King + Spalding, in said County, this 17th day of December, 2003, personally appeared ERIC PARENT, the ACCOUNT MGR. and duly authorized agent of HSBC Bank Canada, and he acknowledged this instrument, by him signed, to be his free act and deed and the free act and deed of HSBC Bank Canada.

Before me,

Judy Zisholtz
Notary Public

My Commission Expires: Dec - 31, 2005

JUDY ZISHOLTZ
Notary Public, State of New York
No. 4794801
Qualified in Suffolk County
Certificate Filed in New York County
Commission Expires 12/31/05
350789-v2-4509-00010

SCHEDULE A

LIST OF TRADEMARK REGISTRATIONS AND PENDING APPLICATIONS

<u>MARK</u>	<u>REG. NUMBER</u>	<u>REG. DATE</u>
MAGNA-MIKE	1,449,479	July 28, 1987
SONOPEN	1,248,246	August 16, 1983
THRU-COAT	To be filed	

LIST OF UNREGISTERED MARKS

<u>MARK</u>	<u>PRODUCT DESCRIPTION</u>
D790	Transducers
EPOCH	Flaw Detectors
SERIES 25 and 26	Thickness Gages
36DL PLUS	Corrosion Thickness Gages
37DL PLUS	Corrosion Thickness Gages
NDT-FreeScanner	Portable Scanning
ScanView Plus	Software System
ARGUS	Scanning System
28 Series	New Family of Corrosion Gages - In Development
45 DL PLUS	New Portable Thickness Precision Gage
MODEL 9100	High Speed Portable Flaw Detector
TGM	Thickness Gage Module for ScanView Plus
LSC	Standard Imaging and Scanning System
UT-MUX 8	High Speed Ultrasonic Multiplexer
25 DL	Precision Thickness Gage
25 HP	High Penetration Precision Thickness Gage
25 MULTIPLUS	Multi-Measurement Precision Thickness Gage
25 MX PLUS	Multi-Channel Precision Thickness Gage
500 PR	Pulser/Receiver
5800PR	Pulser/Receiver 35MHz BW
5900	Pulser/Receiver 200MHz BW

<u>MARK</u>	<u>PRODUCT DESCRIPTION</u>
5910	Pulser/Receiver 400MHz BW
VIDEOSCAN	Transducer
ACCUSCAN	Transducer
CENTRASCAN	Transducer
MICROSCAN	Transducer
25DL Plus Model 25	
25HP Plus	
25 HPV	
26XTDI	
26MG-XT	
26MG	
EPOCH 4	
EPOCH 4B	
EPOCH III	
EPOCH III B	
Snail Wedge	
Accupath	
5660B	
5660C	
5662	
5670	
5676	
5678	
O.P. Wedge	
Oil Patch Wedge	
Model 5627 RPP-1	
Model 5077PR	
Model 5073PR	
Model 5072PR	
Model 5058PR	
Model 500 PR	