

05-13-2004

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



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

102744106

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

1. Name of conveying party(ies): SMART Modular Technologies (MA), Inc., a Delaware corporation. Includes checkboxes for Individual(s), Association, General Partnership, Limited Partnership, Corporation-State (checked), and Other.

2. Name and address of receiving party(ies): Name: Wells Fargo Foothill, Inc. Internal Address: Suite 3000 West. Street Address: 2450 Colorado Avenue. City: Santa Monica State: CA Zip: 90404. Includes checkboxes for citizenship and partnership types.

3. Nature of conveyance: Includes checkboxes for Assignment, Merger, Security Agreement (checked), Change of Name, and Other. Execution Date: 04/16/04.

4. Application number(s) or registration number(s): A. Trademark Application No.(s) B. Trademark Registration No.(s). Both fields contain 'Please see attached Exhibit A'.

Additional number(s) attached [checked] Yes [ ] No

5. Name and address of party to whom correspondence concerning document should be mailed: Name: Federal Research Co., LLC. Internal Address: Suite 920. Street Address: 1030 15th Street, NW. City: Washington State: DC Zip: 20005.

6. Total number of applications and registrations involved: 5. 7. Total fee (37 CFR 3.41): \$ 140.00. Includes checkboxes for Enclosed (checked) and Authorized to be charged to deposit account.

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature. Kimberley A. Lathrop, Name of Person Signing. Kimberley A. Lathrop, Signature. May 12, 2004, Date. Total number of pages including cover sheet, attachments, and document: 12.

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01 FC:8521 40.00 OF 02 FC:8522 100.00 OF

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

TRADEMARK REEL: 002965 FRAME: 0879

**EXHIBIT A**

**Trademarks and Servicemarks:**

**SMART Modular Technologies (MA), Inc.**

<b>Description</b>	<b>Application/Registration No.</b>	<b>Status</b>
Centennial & Design	2,347,687	Registered
Centennial	2,274,265	Registered
CLF	76/109,692	Registered
ISERIES	76/102,533	Registered
CUSTOMER-IZED	2,442,251	Registered

**COLLATERAL ASSIGNMENT OF TRADEMARKS  
(SECURITY AGREEMENT)**

THIS COLLATERAL ASSIGNMENT OF TRADEMARKS (SECURITY AGREEMENT) dated April 16, 2004 (this "Security Agreement"), is made between SMART MODULAR TECHNOLOGIES (MA), INC., a Delaware corporation with an office at 4211 Starboard Drive, Fremont, California 94538 ("Pledgor"), and WELLS FARGO FOOTHILL, INC. a California corporation with an office at 2450 Colorado Avenue, Suite 3000 West, Santa Monica, California 90404 ("Pledgee"), in its capacity as Agent for the Lenders (as defined below).

**W I T N E S S E T H:**

WHEREAS, Pledgee, the lenders from time to time party thereto (the "Lenders"), Pledgor, Modular Merger Corporation, a California corporation ("US Borrower" and after giving effect to the Merger (as defined in the Loan Agreement) "US Borrower" shall mean and include Smart Modular Technologies, Inc., a California corporation), Smart Modular Technologies (Europe) Limited, a company organized under the laws of England and Wales ("UK Borrower"), Smart Modular Technologies (Puerto Rico) Inc., a corporation organized under the laws of the Cayman Islands ("PR Borrower" and together with US Borrower and UK Borrower, collectively referred to herein as "Borrowers") and the other Obligors identified on the signature pages thereto, have entered into that certain Loan and Security Agreement, dated as of the date hereof (as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced, the "Loan Agreement"), pursuant to which, together with the Loan Documents (as defined in the Loan Agreement), the Lenders will provide certain financial accommodations to the Borrowers. Initially capitalized terms used herein without definitions shall have the meanings given in the Loan Agreement.

WHEREAS, Pledgor owns all right, title, and interest in and to, among other things, all the trademarks, United States trademarks and trademark registrations, and the trademark applications and tradenames, set forth on Exhibit A hereto (the "Trademarks").

WHEREAS, in order to secure Pledgor's obligations to the Lender Group under the Loan Documents and the Bank Product Providers under the Bank Product Agreements, Pledgor has agreed to grant to Pledgee a security interest in the Trademarks and the goodwill and certain other assets with respect to the Trademarks, as further set forth herein and in the Loan Documents, and Pledgee has requested Pledgor to enter into this Security Agreement to further evidence such security interest.

NOW THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that for valuable consideration received and to be received, as security for the full payment and performance of Pledgor's obligations under the Loan Documents and the Bank Product Agreements, and to induce the Lenders to make loans, advances and other financial accommodations to Borrowers and to induce the Bank Product Providers to provide such services, Pledgor hereby grants, transfers and assigns to Pledgee, for the benefit of Pledgee, the Lender Group, and the Bank Product Providers (collectively, the "Secured Parties" and each a "Secured Party"), a continuing security interest in all of Pledgor's right, title and interest in and to:

(a) the Trademarks;

(b) all registrations of the Trademarks in any State of the United States and any foreign countries and localities;

(c) all tradenames, trademarks and trademark registrations hereafter adopted or acquired and used, including, but not limited to, those which are based upon or derived from the Trademarks or any variations thereof (the "Future Trademarks");

(d) all extensions, renewals, and continuations of the Trademarks and Future Trademarks and the registrations referred to in clause (b) above;

(e) all rights to sue for past, present and future infringements of the Trademarks and Future Trademarks;

(f) all packaging, labeling, trade names, service marks, logos, and trade dress including or containing the Trademarks and Future Trademarks, or a representation thereof, or any variation thereof;

(g) all licenses and other agreements under which Pledgor is licensor, and all fees, rents, royalties, proceeds or monies thereunder, relating to the Trademarks and Future Trademarks and the use thereof; and

(h) all goodwill of Pledgor's business connected with, symbolized by or in any way related to the items set forth in clauses (a) through (g) above.

All of the foregoing items set forth in clauses (a) through (h) are hereinafter referred to collectively as the "Collateral."

AND Pledgor hereby covenants with Pledgee as follows:

1. Pledgor's Obligations. Pledgor agrees that, notwithstanding this Security Agreement, it will perform and discharge and remain liable for all its covenants, duties, and obligations arising in connection with the Collateral and any licenses and agreements related thereto except to the extent any failure to so perform, discharge or remain liable would not have a material impact on the overall value of all the Collateral or the enforcement, perfection or priority of the security interests therein. No Secured Party shall have any obligation or liability in connection with the Collateral or any licenses or agreements relating thereto by reason of this Security Agreement or any payment received any Secured Party relating to the Collateral, nor shall any Secured Party be required to perform any covenant, duty or obligation of Pledgor arising in connection with the Collateral or any license or agreement related thereto or to take any other action regarding the Collateral or any such licenses or agreement.

2. Representations and Warranties. Pledgor represents and warrants to Pledgee that:

(a) Pledgor is the owner of the Collateral, and no adverse claims are currently outstanding with respect to its title to or the validity of the Collateral except as would not

have a material impact on the overall value of all the Collateral or the enforcement, perfection or priority of the security interests therein;

(b) the trademarks listed on Schedule 5.16 of the Loan Agreement (as updated from time to time) are the only material trademarks, trademark registrations, trademark applications and trade names in which Pledgor has any or all ownership right, title and interest;

(c) none of the Collateral is subject to any mortgage, pledge, lien, security interest, lease, charge, encumbrance or license (by Pledgor as licensor), except for Pledgee's interests granted hereunder and Permitted Liens; and

(d) when this Security Agreement is filed in the United States Patent and Trademark Office (the "Trademark Office") and Pledgee has taken the other actions contemplated in this Security Agreement and by the Loan Documents, this Security Agreement will create a legal and valid perfected and continuing lien on and security interest in the Collateral, subject to any limitations permitted under the Loan Agreement, in favor of Pledgee, enforceable against Pledgor and all third parties, subject to no other mortgage, lien, charge, encumbrance, or security or other interest other than Permitted Liens.

3. Covenants. Except as would not have a material impact on the overall value of all the Collateral or the enforcement, perfection or priority of the security interests therein, Pledgor will maintain the Collateral, defend the Collateral against the claims of all persons, and will maintain and renew all registrations of the Collateral; provided, however, that Pledgor will not be required to maintain any Collateral which no longer has any significant economic value and which is no longer used or useful in the business of Pledgor. Pledgor will maintain the same standard of quality (which Pledgee has reviewed) for the goods and services in connection with which the Trademarks are used as Pledgor maintained for such goods and services prior to entered into this Security Agreement except as would not have a material impact on the overall value of all the Collateral or the enforcement, perfection or priority of the security interests therein. To the extent permitted by, and subject to Pledgee's compliance with Section 4.6 of the Loan Agreement, Pledgee shall have the right to enter upon Pledgor's premises at all reasonable times to monitor such quality standards. Without limiting the generality of the foregoing, and so long as any Trademark or Future Trademark has any significant economic value or is used by or useful to the business of Pledgor, Pledgor shall not permit the expiration, termination or abandonment of such Trademark or Future Trademark without the prior written consent of Pledgee. If, before the Pledgor's obligations under the Loan Documents have been satisfied in full (other than unmatured contingent obligations) and the Loan Documents have been terminated, Pledgor shall obtain rights to or be licensed to use any new trademark, or become entitled to the benefit of any trademark application or trademark registration, the provisions of Section 1 hereof shall automatically apply thereto and Pledgor shall comply with Section 4.4 of the Loan Agreement, if applicable.

4. Use Prior to Default. Effective until Pledgee's exercise of its rights and remedies upon the occurrence and during the continuance of an Event of Default under and as defined in

the Loan Documents (an “Event of Default”), Pledgor shall be entitled to use the Collateral, subject to the terms and covenants of the Loan Documents and this Security Agreement.

5. Remedies Upon Default. Whenever any Event of Default shall have occurred and be continuing, Pledgee shall have all the rights and remedies granted to it in such event by the Loan Documents, which rights and remedies are specifically incorporated herein by reference and made a part hereof, and, subject to any limitations set forth in the Loan Agreement or any other Loan Document, any and all rights and remedies of law available to Pledgee or any Lender. Pledgee in such event may collect directly any payments due to Pledgor in respect of the Collateral and may sell, license, lease, assign, or otherwise dispose of the Collateral in the manner set forth in the Loan Documents. Pledgor hereby agrees that Pledgee shall at all times have such royalty-free licenses, to the extent permitted by law and the Loan Documents, to use any Collateral that is reasonably necessary to permit the exercise of any of Pledgee’s rights or remedies upon or after the occurrence and during the continuance of an Event of Default with respect to (among other things) any Collateral (as defined in the Loan Agreement), including Pledgee’s rights to sell inventory, tooling or packaging which is acquired by Pledgor or any of its Affiliates (or is successor, assignee or trustee in bankruptcy). Pledgor agrees that, in the event of any disposition of the Collateral upon and during the continuance of any such Event of Default, it will duly execute, acknowledge, and deliver all documents necessary or advisable (as determined by Agent in its Permitted Discretion) to record title to the Collateral in any transferee or transferees thereof, including, without limitation, valid, recordable assignments of the Trademarks or Future Trademarks. In the event Pledgor fails or refuses to execute and deliver such documents, Pledgor hereby irrevocably appoints Pledgee as its attorney-in-fact, with power of substitution, to execute, deliver, and record any such documents on Pledgor’s behalf. Notwithstanding any provision hereof to the contrary, during the continuance of an Event of Default, Pledgor may sell any merchandise or services bearing the Trademarks and Future Trademarks to the extent permitted by the Loan Agreement until it receives written notice from Pledgee to the contrary. The preceding sentence shall not limit any right or remedy granted to Pledgee with respect to Pledgor’s inventory under any Loan Document now or hereinafter in effect.

6. Cumulative Remedies. The rights and remedies provided herein are cumulative and not exclusive of any other rights or remedies provided by law. The rights and remedies provided herein are intended to be in addition to and not in substitution of the rights and remedies provided by the Loan Documents.

7. Waiver of Rights. No course of dealing between the parties to this Security Agreement or any failure or delay on the part of any such party in exercising any rights or remedies hereunder shall operate as a waiver of any rights or remedies of such party or any other party, and no single or partial exercise of any rights or remedies by one party hereunder shall operate as a waiver or preclude the exercise of any other rights or remedies of such party or any other party. No waiver by Pledgee or any Lender of any breach or default by Pledgor shall be deemed a waiver of any other previous breach or default or of any breach or default occurring thereafter.

8. Future Acts. Until all of the Obligations (other than unmatured contingent obligations) shall have been paid in full in cash and the Commitments shall have been terminated, except as would not have a material impact on the overall value of all the Collateral or the enforcement, perfection or priority of the security interests therein, Pledgor shall have the duty to make applications on material unregistered but registrable as trademarks in any location where Pledgor does business, to prosecute such applications diligently, and to preserve and maintain all rights in the Trademarks and the other Collateral. Any expenses incurred in connection with such applications and other actions shall be borne by Pledgor. Pledgor shall not abandon any right to file a trademark application or registration for any trademark, or abandon any such pending trademark application or registration, without the consent of Pledgee, except to the extent that such abandonment would not have a material impact on the overall value of all the Collateral or the enforcement, perfection or priority of the security interests therein.

9. Enforcement. Upon Pledgor's failure to do so after Pledgee's demand, or upon the continuance and during the continuance of an Event of Default, Pledgee shall have the right but shall in no way be obligated to bring suit in its own name (as agent for the Secured Parties) to enforce the Trademarks and Future Trademarks and any license thereunder, in which event Pledgor shall at the request of Pledgee do any and all lawful acts and execute any and all proper documents required by Pledgee in aid of such enforcement and Pledgor shall promptly, upon demand, reimburse and indemnify Pledgee, each Lender and their respective agents for all costs and expenses incurred by each such Person in the exercise of its rights under this Section 9.

10. Release. Upon (i) the consummation of a Permitted Disposition of the Pledgor or all (or any portion) of the Collateral or (ii) such time as or at any time after all of the Obligations (other than unmatured contingent Obligations) shall have been paid in full in cash and satisfied, and the Commitments shall have been terminated, other than upon enforcement of Pledgee's remedies under the Loan Documents upon the occurrence and during the continuance of an Event of Default, the obligations of Pledgor hereunder and the Liens created hereby shall automatically terminate (provided that, in the case of any disposition of a portion of the Collateral, such termination and release shall only apply to the Collateral disposed of), and Pledgee, as agent for the Secured Parties, will execute and deliver to Pledgor all releases or other instruments or take any such other actions as may be necessary or evidence such releases.

11. Notices. All notices, requests and demands to or upon Pledgor or Pledgee under this Security Agreement shall be given in the manner prescribed by the Loan Agreement.

12. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.

(a) THIS SECURITY AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS CONFLICT OF LAW PROVISIONS (OTHER THAN SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW), AND THE OBLIGATIONS, RIGHTS AND REMEDIES OF THE PARTIES HEREUNDER SHALL BE DETERMINED IN ACCORDANCE WITH SUCH LAWS.

(b) TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF PLEDGOR AND PLEDGEE HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF

ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS SECURITY AGREEMENT OR ANY OTHER LOAN DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH OF PLEDGOR AND PLEDGEE REPRESENTS THAT IT HAS REVIEWED THIS WAIVER AND KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS SECURITY AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

13. Successors. This Security Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties hereto; provided, however, that, except in connection with any transaction permitted under the Loan Agreement, Pledgor may not assign this Security Agreement or any rights or duties hereunder, or any interest in or to the Collateral, without Pledgee's prior written consent and any prohibited assignment shall be absolutely void ab initio. Except as permitted under the Loan Agreement, no consent to assignment by Pledgee or any Lender shall release Pledgor from its obligations hereunder. Pledgee and Lenders may assign this Security Agreement and their respective rights and duties hereunder pursuant to and to the extent permitted by the terms of the Loan Agreement and, except as expressly required pursuant to the terms thereof, no consent or approval by Pledgor is required in connection with any such assignment.

14. Amendments and Waivers. No amendment or waiver of any provision of this Security Agreement, and no consent with respect to any departure by Pledgor therefrom, shall be effective unless the same shall be in writing and signed by Pledgee and Pledgor and made in compliance with the terms of the Loan Agreement, and then any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. Pledgor hereby authorizes Pledgee to modify this Security Agreement by amending Exhibit A hereto to include any Future Trademarks.

15. Effectiveness. This Security Agreement shall be binding and deemed effective when executed and delivered by Pledgor and Pledgee and the Closing Date under the Loan Agreement shall have occurred.

16. Section Headings. Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

17. Severability of Provisions. Each provision of this Security Agreement shall be severable from every other provision of this Security Agreement for the purpose of determining the legal enforceability of any specific provision.

18. Counterparts; Telefacsimile Execution. This Security Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same agreement. Delivery of an executed counterpart



of this Security Agreement by telefacsimile shall be equally as effective as delivery of an original executed counterpart of this Security Agreement. Any party delivering an executed counterpart of this Security Agreement by telefacsimile also shall deliver an original executed counterpart of this Security Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Security Agreement.

19. Jurisdiction, Service of Process and Venue.

(a) Each party hereto irrevocably and unconditionally submits, to the extent permitted by applicable law, to any suit, action or proceeding with respect to this Security Agreement or any other Loan Document or any judgment entered by any court in respect thereof to the jurisdiction of (i) the United States District Court for the Southern District of New York or the Supreme Court of the State of New York, County of New York, and any appellate court from any thereof, and (ii) to the courts of its own corporate domicile, at the election of the plaintiff, in respect of actions brought against it as a defendant, and irrevocably submits, to the extent permitted by applicable law, to the non-exclusive jurisdiction of each such court for the purpose of any such suit, action, proceeding or judgment.

(b) Nothing herein shall in any way be deemed to limit the ability of Pledgee or any Lender to serve any such process or summons in any other manner permitted by applicable law.

20. Entire Agreement. This Security Agreement, in conjunction with the other Loan Documents, represents the entire agreement and understanding of the parties concerning the subject matter hereof, and supersedes all other prior agreements, understandings, negotiations and discussions, representations, warranties, commitments, proposals, offers and contracts concerning the subject matter hereof, whether oral or written.

21. Supplement. This Security Agreement is one of the Loan Documents referred to in the Loan Agreement.

IN WITNESS WHEREOF, the parties have entered into this Security Agreement as of the date first above written.

PLEDGOR

SMART MODULAR TECHNOLOGIES (MA),  
INC.,  
a Delaware corporation

By: \_\_\_\_\_

Title: \_\_\_\_\_



PLEDGEE

WELLS FARGO FOOTHILL, INC.,  
a California corporation, as Agent

By: \_\_\_\_\_

Title: \_\_\_\_\_

Trademark Security Agreement (Smart Modular MA)

**TRADEMARK**  
**REEL: 002965 FRAME: 0888**

IN WITNESS WHEREOF, the parties have entered into this Security Agreement as of the date first above written.

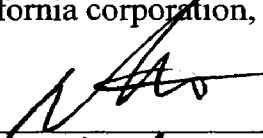
PLEDGOR

SMART MODULAR TECHNOLOGIES (MA),  
INC.,  
a Delaware corporation

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

PLEDGEE

WELLS FARGO FOOTHILL, INC.,  
a California corporation, as Agent

By:  \_\_\_\_\_  
Title: Vice. Pres. Int

**EXHIBIT A**

**Trademarks and Servicemarks:**

**SMART Modular Technologies (MA), Inc.**

<b>Description</b>	<b>Application/Registration No.</b>	<b>Status</b>
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