

06-01-2005

DEPARTMENT OF COMMERCE
Patent and Trademark Office

RECORD
TRADE



103012327

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

5/24/05

1. Name of conveying party(ies)/Execution Date(s):

Donald A. Hoffend

- Individual(s)
- General Partnership
- Corporation-State
- Other
- Association
- Limited Partnership

Citizenship (see guidelines)

Execution Date(s) February 24, 2005

Additional names of conveying parties attached? Yes No

3. Nature of conveyance:

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

2. Name and address of receiving party(ies)

Additional names, addresses, or citizenship attached? Yes No

Name: Cephaz Capital Partners, L.P.

Internal Address: 57 Monroe Avenue

Street Address: Suite D

City: Pittsford

State: NY

Country: Zip: 14534

Association Citizenship

General Partnership Citizenship

Limited Partnership Citizenship New York

Corporation Citizenship

Other Citizenship

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)

4. Application number(s) or registration number(s) and identification or description of the Trademark.

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,833,249

Additional sheet(s) attached? Yes No

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

VORTEK

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

Name: Neal L. Slifkin

Internal Address: Harris Beach PLLC

Street Address: 99 Garnsey Road

City: Pittsford

State: NY Zip: 14534

Phone Number: (585) 419-8636

Fax Number: (585) 419-8813

Email Address:

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$40.00

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers Expiration Date

b. Deposit Account Number

Authorized User Name

9. Signature:

Neal L. Slifkin
Signature

5/20/05
Date

Neal L. Slifkin

Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 12

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to: Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

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05-24-2005

U.S. Patent & TMO/TM Mail Rcpt Dt. #74

TRADEMARK
REEL: 003167 FRAME: 0347

COLLATERAL PATENT, TRADEMARK, AND LICENSE ASSIGNMENT

THIS COLLATERAL PATENT, TRADEMARK, AND LICENSE ASSIGNMENT (“*Assignment*”) is made by DONALD A. HOFFEND, JR. having an address at 66 School Street, Victor, New York 14564 (“*Assignor*”), in favor of CEPHAS CAPITAL PARTNERS, L.P., a New York limited partnership having its principal office and place of business at 57 Monroe Avenue, Suite D, Pittsford, New York 14534 (“*Assignee*”):

THIS AGREEMENT IS SUBJECT TO THE TERMS OF AN
INTERCREDITOR AGREEMENT DATED FEBRUARY 24,
2005 MADE AMONG ASSIGNOR, ASSIGNEE, KELTIC
FINANCIAL PARTNERS, LP, AND STERLING SOUTH BANK
AND TRUST COMPANY

WITNESSETH:

WHEREAS, Assignor is the guarantor pursuant to a Guaranty and Indemnity Agreement dated February 24, 2005 (the “*Guaranty*”) of obligations of Hoffend & Sons, Inc. (the “*Company*”) of a certain Note Purchase Agreement of even date herewith between the Company and Assignee (as the same may hereafter be amended, supplemented, amended and restated, renewed or otherwise modified from time to time, the “*Purchase Agreement*”), which Purchase Agreement provides (i) for the Assignee to, from time to time, extend credit to or for the account of Assignor and (ii) for the grant to Assignee of a security interest in certain patents, patent applications, service marks, service mark applications, service names, trademarks, trademark applications, trade names, goodwill and licenses, and

WHEREAS, capitalized terms not otherwise defined herein shall have the meanings given to them in the Purchase 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, Assignor agrees as follows:

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THIS ASSIGNMENT IS INTENDED TO BE A CONTINGENT COLLATERAL ASSIGNMENT AND ASSIGNEE SHALL HAVE NO RIGHTS TO THE ASSIGNMENT MADE HEREBY UNLESS AND UNTIL AN EVENT OF DEFAULT HAS OCCURRED UNDER THE PURCHASE AGREEMENT, AND THEN SUCH RIGHTS SHALL BE LIMITED AS AND TO THE EXTENT PROVIDED IN THE INTERCREDITOR AGREEMENT.

1. Assignment of Patents. To secure the complete and timely satisfaction of all of the liabilities and obligations of every kind or nature of Assignor and Company to Assignee under or related to the Purchase Agreement and all notes, agreements, and documents delivered in connection therewith, including the Guaranty, and in each case as extended, modified, or replaced from time to time (the “*Obligations*”), subject to the Intercreditor Agreement Assignor hereby grants a lien and security interest in, and assigns and conveys to Assignee, as collateral for and in order to secure repayment of the Obligations, all of the Assignor’s right, title and

interest in and to all of its now owned or existing and filed and hereafter acquired or arising and filed patents and patent applications, and the inventions and improvements described and claimed therein, including those 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)-(d), are sometimes hereinafter individually and/or collectively referred to as the "*Patents*").

2. Security Interest in Trademarks, Goodwill, and Licenses. To secure the complete and timely satisfaction of all of the Obligations, subject to the Intercreditor Agreement Assignor grants a lien and security interest in, and assigns and conveys to Assignee, as collateral for and in order to secure repayment of the Obligations, all of the Assignor's right, title and interest in and to all of its now owned or existing and filed and hereafter acquired or arising and filed:

(a) trademarks, trademark registrations, trade names and trademark applications, service marks, service mark registrations, service names and service mark applications, including, without limitation, the trademarks, trademark registrations, trade names and trademark applications, service marks, service mark registrations, service names and service mark applications listed on Schedule B, attached hereto and made a part thereof, 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 payment 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 which foregoing trademarks, service marks, trademark and service mark registrations, trade names, service names and applications, together with the items described in clauses (a)-(d), are sometimes hereinafter individually and/or collectively referred to as the "*Trademarks*");

(b) the goodwill of Assignor's business including but not by way of limitation such goodwill connected with and symbolized by the Trademarks (the "*Goodwill*"); and

(c) license agreements with any other party relating to intellectual property or proprietary rights of any kind or nature, whether Assignor is a licensor or licensee under any such license agreement, including, without limitation, the licenses listed on Schedule C attached hereto (the "*Licenses*").

3. Restrictions on Future Assignments. Assignor agrees that until the Obligations shall have been satisfied in full and the Purchase Agreement shall have been terminated, Assignor will not, without Assignee's prior written consent, enter into any agreement relating to the Patents, Trademarks, Goodwill, or Licenses which would limit or restrict the rights of Assignee hereunder and Assignor further agrees that it will not take any action, or permit any action to be taken by others subject to its control, including licensees, or fail to take any action which would affect the validity or enforcement of the rights granted to Assignee under this Assignment. Notwithstanding the foregoing, Assignor may enter into any and all agreements with holders of Senior Indebtedness as defined in the Purchase Agreement, and may assign his

rights in the Patents, Trademarks, and Licenses to the Company provided the Company enters into an agreement of substantially like tenor to that of this Agreement in favor of Assignee.

4. New Patents and Trademarks. Assignor represents and warrants that the Patents, Trademarks, and Licenses listed on Schedule A, Schedule B, and Schedule C, respectively, constitute all of the patents, service marks, trademarks, applications and licenses now owned by or in which Assignor has an interest. If, before the Obligations shall have been satisfied in full, Assignor shall (i) obtain rights to any new patentable inventions, trademarks, trademark registrations, trade names, service marks, service mark registrations, service names, or licenses, or (ii) become entitled to the benefit of any patent, service mark or trademark application, service mark, service mark registration, trademark, trademark registration, 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 this Assignment shall automatically apply thereto and Assignor shall give to Assignee prompt written notice thereof. Assignor hereby authorizes Assignee as attorney in fact to modify this Assignment by amending Schedule A, Schedule B, and Schedule C, as applicable, to include any future patents, patent applications, service marks, service mark registrations, service mark applications, service names, trademarks, trademark registrations, trademark applications, trade names and licenses which are Patents, Trademarks or Licenses, as applicable, under Sections 1 and 2 above or under this Section 4, and to file or refile this Assignment with the United States Patent and Trademark Office.

5. Representations and Warranties. Assignor represents and warrants to and agrees with Assignee that:

- (a) the Patents (to the extent issued), Trademarks, and Licenses are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;
- (b) to the best knowledge of Assignor, each of the Patents, Trademarks, and Licenses is valid and enforceable;
- (c) Assignor is the owner of the Patents, Trademarks, and to the extent indicated therein, Licenses, and has the power and authority to make, and will continue to have authority to perform, this Assignment according to its terms;
- (d) to the best knowledge of Assignor, this Assignment does not violate and is not in contravention of any other agreement to which Assignor is a party or any judgment or decree by which Assignor is bound and does not require any consent under any other agreement to which Assignor is a party or by which Assignor is bound; and
- (e) there has been no prior sale, pledge, encumbrance, assignment or other transfer or disposition of any of the Patents, Trademarks, or Licenses or any part thereof, and the same are free from all liens, charges and encumbrances of any kind, including but not limited to licenses, shop rights and covenants not to sue third persons, other than liens permitted by the Purchase Agreement and a license made in favor of the Company.

Notwithstanding anything to the contrary contained herein, however, Assignor has or may grant rights to holders of Senior Indebtedness as defined in the Purchase Agreement and the

rights of Assignee and such holders shall be subject to the Intercreditor Agreement described in the Purchase Agreement.

6. Term. The term of the assignments granted herein shall extend until the earlier of (i) the expiration of each of the respective Patents, Trademarks and Licenses assigned hereunder, or (ii) the Obligations have been paid in full and the Purchase Agreement has been terminated.

7. Grants to Assignee. Unless and until an Event of Default shall have occurred and subject to the terms of this Assignment, Assignor shall retain the right to use the Trademarks and Licenses. From and after the occurrence of an Event of Default, Assignor's rights and interests in and with respect to Patents, Trademarks, and Licenses as set forth in this Section 7 shall terminate forthwith, and Assignee shall have the right to make, have made, use and sell the inventions disclosed and claimed in the Patents for Assignor's own benefit and account and the right to sell or assign its interest in, or grant any sublicense under, the Patents, Trademarks, and Licenses without the prior written consent of Assignor (subject, however, to the rights of holders of the Senior Indebtedness as defined in the Purchase Agreement). In addition to all other rights and remedies given it by this Assignment, the Assignee shall have 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 Patents, Trademarks, and Licenses may be located, including, but not by way of limitation, the location of Assignee's headquarters.

8. Reassignment to Assignor. Upon payment in full of the obligations and termination of the Purchase Agreement, Assignee shall execute and deliver to Assignor all assignments and other instruments as may be necessary or proper to re-vest in Assignor full title to the Patents and Trademarks, subject to any disposition thereof which may have been made by Assignee pursuant hereto or pursuant to the Purchase Agreement.

9. Duties of Assignor. Assignor shall have the duty to (i) prosecute diligently any patent application of the Patents made by it and any trademark or service mark application of the Trademarks made by it pending as of the date hereof or thereafter until the Obligations shall have been paid in full, (ii) make application on unpatented but patentable inventions and on trademarks and service marks, as appropriate, and (iii) preserve and maintain all of its rights in patent applications and patents of the Patents and in trademark applications, trademarks, trademark registrations, service mark applications, service marks, and service mark registrations of the Trademarks. Any expenses incurred in connection with such applications shall be borne by Assignor. Assignor shall not abandon any right to file a Patent application or Trademark application, or any pending Patent application, Trademark application, Patent, nor Trademark without the consent of Assignee which will not be unreasonably withheld.

10. Financing Statements; Documents. Assignor authorizes the Assignee to execute and file, and at the request of Assignee, Assignor will join with Assignee in executing one or more financing statements pursuant to the New York version of the Uniform Commercial Code in form satisfactory to Assignee, and will pay the costs of filing and/or recording this Assignment and all financing, continuation and termination statements in all public offices where filing or recording is deemed necessary or desirable by Assignee. Assignor will execute and deliver to Assignee from time to time such supplemental assignments or other instruments, including, but not by way of limitation, additional assignments to be filed with the United States

Patent and Trademark office, as Assignee may require for the purpose of confirming Assignee's interest in the Patents, Trademarks and Licenses. After an Event of Default (a certificate by Assignee being deemed conclusive evidence of same which may be relied upon by any third party or registrar), Assignor hereby authorizes the Commissioner of Patents and Trademarks to issue any and all Patents on said inventions and any and all certificates of registration on all Trademarks to Assignee as assignee of Assignor's entire interest.

11. Assignee's Right to Sue. Assignee shall have the same rights, if any, as Assignor has, but shall in no way be obligated, to bring suit in its own name to enforce the Patents, Trademarks, and Licenses, and, if Assignee shall commence any such suit, 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 and as a part of the obligations, reimburse and indemnify Assignee for all costs and expenses incurred by Assignee in the exercise of its rights under this Section 11. After first giving Assignee a reasonable opportunity to bring suit in its own name to enforce the Patents, Trademarks, and Licenses, Assignor may bring such suit in its own name.

12. Waivers. 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 Purchase Agreement 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 thereof or the exercise of any other right, power or privilege.

13. Severability. The provisions of this Assignment 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 Assignment in any jurisdiction.

14. Modification. This Assignment cannot be altered, amended or modified in any way, except as specifically provided in Section 4 hereof or by a writing signed by the parties hereto.

15. Cumulative Remedies; Limitation of Remedies; Effect on Purchase Agreement. All of Assignee's rights and remedies with respect to the Patents and Trademarks, whether established hereby or by the Purchase Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Assignor acknowledges and agrees that this Assignment is not intended to limit or restrict in any way the rights and remedies of Assignee under the Purchase Agreement but rather is intended to facilitate the exercise of such rights and remedies.

Notwithstanding anything to the contrary contained herein, Investor agrees that unless earlier terminated as provided in subsections (a), (b), and (c) below, for a period of seventy five (75) consecutive calendar days following the occurrence of a Default or Event of Default (such period called the "*Standstill Period*"), Investor will take no action, directly or indirectly, to foreclose upon or take possession of the Trademark Collateral or otherwise enforce the security interests in the Trademark Collateral granted to Investor pursuant to the terms hereof. Grantor

and Investor hereby acknowledge and agree, however, that the Standstill Period will terminate immediately and without notice to Grantor, and Investor shall be permitted to enforce any and all rights and take any and all actions permitted to be taken by Investor following the occurrence of a Default or Event of Default upon the earliest to occur of:

(a) the commencement of any action, suit, or proceeding or administrative action before any court or administrative body having jurisdiction with respect to such action, suit, or proceeding or administrative action (a "*Proceeding*") which directly or indirectly seeks to terminate, make subordinate (except as provided in the Intercreditor Agreement), or otherwise impair Grantor's security interest in the Trademark Collateral;

(b) the commencement of an Proceeding by Grantor or any successor in interest of Grantor which directly or indirectly seeks to challenge the enforceability or binding effect of this Agreement or any terms or conditions hereof; and

(c) the filing of any agreement, document, or instrument with the United States Patent and Trademark Office ("*USPTO*") or the Secretary of State of the State ("*NYSS*") of New York other than with Investor's prior consent which purports to terminate, modify, or amend any agreement, document, or instrument filed by Investor with the USPTO or NYSS to perfect or otherwise evidence Investor's security interests in the Trademark Collateral, or make subordinate (other than as provided in the Intercreditor Agreement) or otherwise adversely impair Investor's security interests in the Trademark Collateral.

Grantor hereby acknowledges and agrees that upon termination of the Standstill Period, subject to the Intercreditor Agreement Investor shall have full authority to enforce all rights and take all actions following a Default or Event of default granted to Lender by the terms of this Agreement.

16. Binding Effect/Benefits. This Assignment shall be binding upon the Assignor and its respective successors and assigns, and shall inure to the benefit of Assignee, its successors and assigns.

17. Governing Law. This Assignment has been delivered and accepted in, and shall be governed by and construed in accordance with the laws of, the State of New York without giving effect to principles of conflicts of laws.

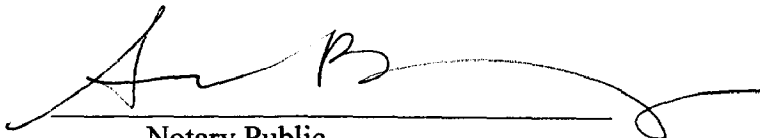
[Signature Pages Follow]

IN WITNESS WHEREOF, the Assignor, by its duly authorized officer, has executed this Assignment as of February 25, 2005.


DONALD A. HOFFEND, JR.

STATE OF NEW YORK)
)SS.:
COUNTY OF MONROE)

On the 24th day of February in the year 2005 before me, the undersigned, a notary public in and for said state, personally appeared Donald A. Hoffend, Jr., personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.

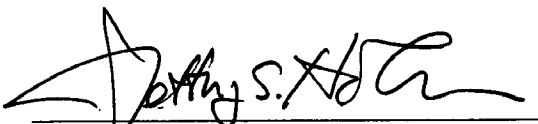

Notary Public

AMBER M. BARNEY
Notary Public, State of New York
Monroe County
Reg. #02BA6020971
Commission Expires March 8, 2007

Accepted as of February 24, 2005.

CEPHAS CAPITAL PARTNERS, L.P.

By: Chephas LLC, Its General Partner

By: 

Managing Member

Schedule A
(Patents)

Patent No. 6,691,986 issued February 17, 2004 entitled "Modular Lift Assembly"

Patent No. 6,634,622 issued on October 21, 2003 entitled "Modular Lift Assembly"
(for Vortek)

Schedule B
(Trademarks)

Trademark Registration No. 2833249 for "Vortek" registered on April 13, 2004

SCHEDULE C
(Licenses)

Patent Nos. 6,691,986 and 6,634,622 for Vortek is licensed to the Borrower by Donald A. Hoffend, Jr.