

Form PTO-1594 (Rev. 07/05)  
OMB Collection 0651-0027 (exp. 6/30/2008)

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

### RECORDATION FORM COVER SHEET TRADEMARKS ONLY

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

**1. Name of conveying party(ies):**

Earth Tool Company LLC

- Individual(s)
- General Partnership
- Corporation- State: \_\_\_\_\_
- Other Limited Liability Company
- Association
- Limited Partnership

Citizenship (see guidelines) Wisconsin

Additional names of conveying parties attached?  Yes  No

**2. Name and address of receiving party(ies)**

Additional names, addresses, or citizenship attached?  Yes  No

Name: Roynat Business Capital, Inc.

Internal

Address: \_\_\_\_\_

Street Address: 181 West Madison Street, Suite 3700

City: Chicago

State: Illinois

Country: U.S. Zip: 60602

- Association Citizenship \_\_\_\_\_
- General Partnership Citizenship \_\_\_\_\_
- Limited Partnership Citizenship \_\_\_\_\_
- Corporation Citizenship Delaware
- 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)

**3. Nature of conveyance )/Execution Date(s) :**

Execution Date(s) May 31, 2006

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

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

A. Trademark Application No.(s)  
See Schedule A, attached

B. Trademark Registration No.(s)  
See Schedule A, attached

Additional sheet(s) attached?  Yes  No

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

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

Name: Robert I. Schneider

Internal Address: Chapman and Cutler LLP

Street Address: 111 West Monroe Street

City: Chicago

State: Illinois Zip: 60603

Phone Number: (312) 845-3919

Fax Number: (312) 803-5299

Email Address: rschneid@chapman.com

**6. Total number of applications and registrations involved:**

16

**7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 415.00**

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

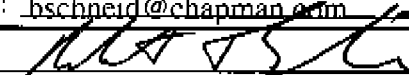
**8. Payment Information:**

a. Credit Card Last 4 Numbers \_\_\_\_\_  
Expiration Date \_\_\_\_\_

b. Deposit Account Number 50-0305

Authorized User Name Robert I. Schneider

**9. Signature:**



Signature

June 30, 2006

Date

Robert I. Schneider

Name of Person Signing

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

15

Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:  
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450

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TRADEMARK  
REEL: 003342 FRAME: 0054

CH \$415.00 500305 78638081

Trademark Security AgreementSchedule A

## Trademarks

<u>PGM File #</u>	<u>Country</u>	<u>Topic Description</u>	<u>Inventor</u>	<u>Filing Date</u>	<u>Serial No.</u>	<u>Status</u>
117798-0141	U.S.	TM: HYDROBURST	N/A	6/4/97	75/303,381	Reg. No. 2,189,148 Issued 09/15/98
117798-0143	U.S.	TM: HAMMERHEAD MOLE	N/A	6/4/97	75/303,382	Reg. No. 2,182,163 Issued 08/18/98
117798-0153	U.S.	TM: PORTABURST	N/A	7/6/98	75/513,993	Reg. No. 2,287,599 Issued 10/19/99
117798-0158	U.S.	TM: SPLINELOK	N/A	12/16/98	75/606,866	Reg. No. 2,349,698 Issued 05/16/00
117798-0159	U.S.	TM: TRIHAWK	N/A	12/16/98	75/606,865	Reg. No. 2,468,773 Issued 07/17/01
117798-0203	U.S.	TM: ACTIVE HEAD	N/A	8/31/00	76/120,491	Reg. No. 2,577,599 Issued 06/11/02
117798-0204	U.S.	TM: POWER PORT	N/A	8/31/00	76/120,490	Reg. No. 2,603,737 Issued 08/06/02
117798-0283	U.S.	TM: IMPACTOR and Design	N/A	6/5/02	76/414,929	Reg. No. 2,790,434 Issued 12/09/03
117798-0284	U.S.	TM: IMPACTOR	N/A	6/12/02	76/419,811	Reg. No. 2,688,675 Issued 02/18/03
117798-0288	U.S.	TM: HAMMERHEAD	N/A	12/9/02	78/192,797	Reg. No. 2,860,029 Issued 07/06/04

## Trademarks Pending

PGM File #	Country	Topic Description	Inventor	Filing Date	Serial No.	Status
117798-0140	U.S.	TM: HYDROGUIDE	N/A	5/26/05	78/638,081	Pending
117798-0335	U.S.	TM: HAMMERHEAD MOLE (Design)	N/A	5/25/05	78/637,372	Pending
117798-0336	U.S.	TM: QUICK GRIP	N/A	5/26/05	78/638,125	Pending
117798-0341	U.S.	TM: PB30	N/A	9/14/05	78/712,916	Pending
117798-0342	U.S.	TM: SMART HAMMER	N/A	9/22/05	78/647,369	Pending
117798-0343	U.S.	TM: FOR CONTRACTORS PAID BY THE FOOT... NOT BY THE HOUR	N/A	9/23/05	78/647,419	Pending

TRADEMARK

REEL: 003342 FRAME: 0056

## TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT (this "*Agreement*") is made as of May 31, 2006, by and between EARTH TOOL COMPANY LLC, a Wisconsin limited liability company (the "*Borrower*"), and ROYNAT BUSINESS CAPITAL, INC., a Delaware corporation ("*Purchaser*").

### RECITALS

A. Pursuant to that certain Note Purchase Agreement, dated as of May 31, 2006 (the "*Note Purchase Agreement*"), between the Borrower and Purchaser, Purchaser purchased from the Borrower a Senior Secured Subordinated Promissory Note in the principal amount of Four Million Five Hundred Thousand Dollars (\$4,500,000.00) (the "*Note*").

B. The Borrower intends to grant the security interest to Purchaser hereunder to secure (i) all of the obligations of Borrower to Purchaser, whenever arising, under the Note Purchase Agreement, the Note or any of the other Operative Documents (including, but not limited to, any interest accruing after the occurrence of an Act of Bankruptcy with respect to Borrower, regardless of whether such interest is an allowed claim under the bankruptcy code), whether now existing or hereafter arising, due or to become due, direct or indirect, absolute or contingent, liquidated or unliquidated, determined or undetermined howsoever evidenced, created, held or acquired, whether primary, secondary, direct, contingent, or joint and several, as such obligations may be amended, modified, increased, extended, renewed or replaced from time to time, and (ii) all costs and expenses incurred in connection with enforcement and collection of the obligations described in the foregoing clause (i), including reasonable attorneys' fees (collectively, the "*Obligations*"). All capitalized terms used herein without definition shall have the meanings set forth in the Note Purchase Agreement.

C. As a condition to Purchaser entering into the Note Purchase Agreement and purchasing the Note, this Agreement is required to be executed and delivered to Purchaser by the Borrower.

NOW THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### AGREEMENTS

1. *Grant of Security Interest.* To secure the complete and timely payment, performance and satisfaction of all of the Obligations, the Borrower hereby grants to Purchaser a security interest in, with power of sale to the extent permitted by applicable law, all of the

Borrower's right, title, and interest in, to, and under the following, whether now owned or existing or hereafter acquired or arising:

(a) trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, including, without limitation, the trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications listed on *Schedule A* attached hereto and made a part hereof, and (i) all trademark and service mark renewals, (ii) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (iii) the right to sue for past, present and future infringements and dilutions thereof, (iv) the goodwill of the Borrower's business symbolized by the foregoing and connected therewith, and (v) all of the Borrower's rights corresponding thereto throughout the world (all of the foregoing trademarks, registered trademarks and trademark applications, and service marks, registered service marks and service mark applications, together with the items described in clauses (i)-(v) in this paragraph 1(a), are sometimes hereinafter individually and/or collectively referred to as the "*Trademarks*"); and

(b) rights under or interest in any trademark license agreements or service mark license agreements with any other party, whether the Borrower is a licensee or licensor under any such license agreement, including, without limitation, those trademark license agreements and service mark license agreements listed on *Schedule B* attached hereto and made a part hereof, together with any goodwill connected with and symbolized by any such trademark license agreements or service mark license agreements, and the right to prepare for sale and sell any and all Inventory now or hereafter owned by the Borrower and now or hereafter covered by such licenses (all of the foregoing are hereinafter referred to collectively as the "*Trademark Licenses*").

2. *New Trademarks.* If, before the Obligations shall have been satisfied in full, the Borrower shall obtain rights to any new Trademarks or Licenses, the provisions of Section 1 shall automatically apply thereto and the Borrower shall give to Purchaser prompt notice thereof in writing. The Borrower authorizes Purchaser to modify this Agreement by amending *Schedule A* to include any future Trademarks and *Schedule B* to include any future Licenses.

3. *Attorney-In-Fact.* The Borrower hereby irrevocably designates, constitutes and appoints Purchaser (and all Persons designated by Purchaser in its sole and absolute discretion) as the Borrower's true and lawful attorney-in-fact, and authorizes Purchaser and any of Purchaser's designees, in the Borrower's or Purchaser's name, to take any action and execute any instrument which Purchaser may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, from and after the occurrence of an Event of Default and the giving by Purchaser of notice to the Borrower of Purchaser's intention to enforce its rights and claims against the Borrower, to (i) endorse the Borrower's name on all applications, documents, papers and instruments necessary or desirable for Purchaser in the use of the Trademarks or the Licenses, (ii) assign, pledge, convey or otherwise transfer title in or

dispose of the Trademarks or the Licenses to anyone on commercially reasonable terms, (iii) grant or issue any exclusive or nonexclusive license under the Trademarks or, to the extent permitted, under the Licenses, to anyone on commercially reasonable terms, and (iv) take any other actions with respect to the Trademarks or the Licenses as Purchaser deems in its best interest. The Borrower hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until all of the Obligations shall have been paid in full in cash. The Borrower acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of Purchaser under the Note Purchase Agreement, the Note or the other Operative Documents, but rather is intended to facilitate the exercise of such rights and remedies.

The Borrower agrees that upon occurrence of an Event of Default, the use by Purchaser of all Trademarks shall be without any liability for royalties or other related charges from Purchaser to the Borrower.

4. *Duties of Borrower.* The Borrower shall have the duty diligently (as may be commercially reasonable), through counsel acceptable to Purchaser, to prosecute any trademark application of the Trademarks pending as of the date of this Agreement or thereafter until the Obligations shall have been paid in full, to make federal application on registerable but unregistered Trademarks, to file and prosecute opposition and cancellation proceedings, and to do any and all acts that are necessary to desirable to preserve and maintain all rights in the Trademarks. Any expenses incurred in connection with the Trademarks shall be borne by the Borrower. The Borrower shall not abandon any Trademark without the consent of Purchaser, which consent shall not be unreasonably withheld.

5. *Purchaser's Right to Sue.* The Borrower shall have the right, with the prior written consent of Purchaser, which will not be unreasonably withheld, to bring any opposition proceedings, cancellation proceedings, or lawsuit in its own name to enforce or protect the Trademarks, in which event Purchaser may, if necessary, be joined as a nominal party to such suit if Purchaser shall have been satisfied that it is not thereby incurring any risk of liability because of such joinder. The Borrower shall promptly, upon demand, reimburse and indemnify Purchaser for all damages, costs, and expenses, including attorneys' fees, incurred by Purchaser in the fulfillment of the provisions of this Section 5.

6. *Purchaser's Right to Act.* If the Borrower fails to comply with any of its obligations hereunder, Purchaser may do so in the Borrower's name or in Purchaser's name, but at the Borrower's expense, and the Borrower hereby agrees to reimburse Purchaser in full for all expenses, including reasonable attorney's fees, incurred by Purchaser in protecting, defending, and maintaining the Trademarks.

7. *Waivers.* No course of dealing between the Borrower and Purchaser, nor any failure to exercise, nor any delay in exercising, on the part of Purchaser, any right, power, or privilege hereunder or under the Note 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.

8. *Cumulative Remedies.* All of Purchaser's rights and remedies with respect to the Trademarks, whether established hereby, by the Security Agreement, or by the Note Purchase Agreement or by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrently.

9. *Notices.* Any notices required or permitted to be sent hereunder shall be delivered personally or mailed, certified mail, return receipt requested and postage prepaid, or delivered by commercial overnight courier service, with charges prepaid, to the following addresses, or such other address as any party hereto designates by written notice, and shall be deemed to have been given upon delivery, if delivered personally, three days after mailing, if mailed, or one business day after delivery to the courier, if delivered by overnight courier service:

If to the Borrower, to:

Earth Tool Company LLC  
1300 Capital Drive  
Oconomowoc, WI 53066  
Attn: President

with copies to:

Champlain Capital Partners  
One Market Street  
Steuart Tower, Suite 2675  
San Francisco, CA 94108  
Attn: Eric Menke

Latham & Watkins LLP  
505 Montgomery Street  
Suite 2000  
San Francisco, CA 94111  
Attn: Kim Wilkinson

If to Purchaser, to:

Roynat Business Capital, Inc.  
181 West Madison Street  
Suite 3700  
Chicago, Illinois 60602  
Attention: Wayne DeClerq

with a copy to:

Chapman and Cutler LLP  
111 West Monroe Street  
Chicago, Illinois 60603  
Attention: Van E. Holkeboer

Any party may change the address to which notices to it are to be sent by written notice given to the other parties hereto.

10. *Severability.* If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic and legal substance of the transactions contemplated herein are not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement may be consummated as originally contemplated to the fullest extent possible.

11. *Modification.* Except as provided in Section 5, none of the terms and provisions of this Agreement may be modified or amended in any way except by an instrument in writing executed by the party to be bound thereby.

12. *Binding Agreement; Successors and Assigns.* This Agreement shall (a) remain in full force and effect until payment and satisfaction in full of all Obligations; (b) be binding upon the Borrower and its successors and assigns; and (c) inure to the benefit of Purchaser and its successors and assigns. This Agreement and the rights with respect to the Trademarks and Licenses may be assigned and transferred by Purchaser at any time, and the assignee shall thereupon have such rights, remedies, powers and duties with respect hereto and thereto as Purchaser had prior to such assignment and transfer, and Purchaser shall thereupon be relieved and discharged of any responsibility with respect to this Agreement and the Trademarks and Licenses.



13. *Governing Law; Construction.* This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois applicable to agreements made and to be performed in the State of Illinois and in accordance with applicable federal law and shall be construed without regard to any presumption or other rule requiring the construction of an agreement against the party causing it to be drafted.


14. *Entire Agreement.* This Agreement, together with the Note Purchase Agreement, the Note and the other Operative Documents constitutes the entire agreement and understanding among the parties relating to the subject matter hereof, and supersedes all prior proposals, negotiations, agreements and understandings relating to such subject matter.

15. *Further Assurances.* The Borrower agrees to execute and deliver such further agreements, instruments and documents, and to perform such further acts, as Purchaser shall reasonably request from time to time in order to carry out the purposes of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.  
SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties hereto have duly executed this Trademark Security Agreement as of the day and year first above written.

EARTH TOOL COMPANY LLC

By:   
Name: Eric R. Menke  
Title: Manager

HAMMERHEAD TOOL COMPANY, LLC

By:   
Name: Eric R. Menke  
Title: President

ACCEPTED AND AGREED TO AS OF THE DAY AND YEAR FIRST ABOVE WRITTEN.

ROYNAT BUSINESS CAPITAL, INC.

By: \_\_\_\_\_  
Wayne DeClerq, Managing Director

IN WITNESS WHEREOF, the parties hereto have duly executed this Trademark Security Agreement as of the day and year first above written.

EARTH TOOL COMPANY LLC

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

HAMMERHEAD TOOL COMPANY, LLC

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

ACCEPTED AND AGREED TO AS OF THE DAY AND  
YEAR FIRST ABOVE WRITTEN.

ROYNAT BUSINESS CAPITAL, INC.

By:   
Wayne DeClercq, Managing Director

**Trademark Security Agreement****Schedule B****a. Licensed IP Rights.**

- i. Pursuant to the Consplit Equipment License Agreement (the "Consplit Agreement") by and between Borrower and Advantica Technologies Limited ("ATL"), ATL granted to Borrower a non-exclusive license under the Consplit Patents (as defined in the Consplit Agreement) and Consplit Technology (as defined in the Consplit Agreement) to Manufacture (as defined in the Consplit Agreement) and Supply (as defined in the Consplit Agreement) the Licensed Equipment (as defined in the Consplit Agreement); to use the Licensed Equipment to carry out the Licensed Method (as defined in the Consplit Agreement); to supply or offer to supply equipment, the supply of which would constitute an inducement to infringe or a contributory infringement of the Consplit Patents in the Territory (as defined in the Consplit Agreement); and to use the Trade Mark (as set out in Schedule 3 of the Consplit Agreement). While this agreement has not been executed by either of the parties, the parties are generally operating pursuant to its terms. Borrower has not yet derived any income from this license and does not foresee deriving any income from this license in the future.

**b. Outbound License Agreements.**

1. Pursuant to Section 4(f) of Borrower's agreement with Vermeer Manufacturing, Borrower permits Vermeer to use certain trademarks in Vermeer's advertising materials regarding the products Vermeer sells pursuant to the agreement.

STATE OF California )  
 )  
COUNTY OF San Francisco )

Eric Menke

The undersigned, a Notary Public within and for said County, in the State aforesaid, duly commissioned and acting, do hereby certify that on this 30 day of May, 2006, personally appeared before me Michelle Lee Jeffers the President, of Earth Tool Company LLC ("Borrower") to me personally well known and known to be the person who signed the foregoing instrument, and who, being by me duly sworn, stated and acknowledged that he is the President of said Borrower and that he has signed and delivered the same on behalf of said Borrower, with authority, as his and its free and voluntary act and deed for the uses and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public the day and year in this certificate above written.



Michelle Lee Jeffers  
Notary Public  
My commission expires: 2/6/2009

STATE OF California )  
 )  
COUNTY OF San Francisco )

Eric Menke

The undersigned, a Notary Public within and for said County, in the State aforesaid, duly commissioned and acting, do hereby certify that on this 30 day of May, 2006, personally appeared before me ~~Michelle Lee Jeffers~~, the President, of HammerHead Tool Company, LLC ("HammerHead") to me personally well known and known to be the person who signed the foregoing instrument, and who, being by me duly sworn, stated and acknowledged that he is the President of said HammerHead and that he has signed and delivered the same on behalf of said HammerHead, with authority, as his and its free and voluntary act and deed for the uses and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public the day and year in this certificate above written.

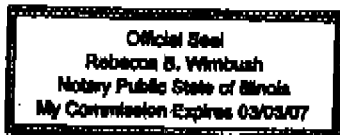


Michelle Lee Jeffers  
Notary Public  
My commission expires: 2/6/2009

STATE OF ILLINOIS )  
 )  
COUNTY OF COOK )

The undersigned, a Notary Public within and for said County, in the State aforesaid, duly commissioned and acting, do hereby certify that on this 31<sup>st</sup> day of May, 2006, personally appeared before me Wayne DeClercq, the Managing Director of Roynat Business Capital, Inc. to me personally well known and known to be the person who signed the foregoing instrument, and who, being by me duly sworn, stated and acknowledged that he is the Managing Director and that he signed and delivered the same on behalf of said Borrower, with authority, as his and its free and voluntary act and deed for the uses and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public the day and year in this certificate above written.



Rebecca B. Winbush  
Notary Public  
My commission expires: 3/3/07

[Trademark Security Agreement]