

03-14-2007

RE



2007 MAR 12 PM 4:12

To the Director of the U. S. Patent and T

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nents or the new address(es) below

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

Burnham Services, Inc.

- ☐ Individual(s) ☐ Association  
☐ General Partnership ☐ Limited Partnership  
☒ Corporation- State: Delaware  
☐ Other \_\_\_\_\_

Citizenship (see guidelines) \_\_\_\_\_

Additional names of conveying parties attached? ☐ Yes ☒ No

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

Execution Date(s) March 1, 2007

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

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

Additional names, addresses, or citizenship attached? ☐ Yes ☒ No

Name: Manufacturers and Traders Trust Company

Internal

Address: General Counsel

Street Address: One M&T Plaza

City: Buffalo

State: New York

Country: USA Zip: 14203

- ☐ Association Citizenship \_\_\_\_\_  
☐ General Partnership Citizenship \_\_\_\_\_  
☐ Limited Partnership Citizenship \_\_\_\_\_  
☒ Corporation Citizenship New York  
☐ 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)

1725393

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: Dan A. Blakinger, Esquire

Internal Address: Blakinger Byler & Thomas

Street Address: 28 Penn Square

City: Lancaster

State: PA Zip: 17603

Phone Number: 717-509-7272

Fax Number: 717-299-9529

Email Address: DAB@bbtlaw.com

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

44

**7. Total fee (37 CFR 2.6(b)(6) & 3.41) \$ 1,115.00**

- ☐ 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:**

Wesley R. Kelso  
Signature

March 6, 2007

Date

40.00 OP  
1075.00 OP  
Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 3

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

TRADEMARK  
REEL: 003501 FRAME: 0597

Continuation Page to Recordation Form Cover Sheet  
for Burnham Services, Inc. Trademarks

Trademark/ Service Mark Trade Name	Registration No. or Serial No. if an Application is Pending	Registration Date or Filing Date if an Application is Pending	Renewal Date
America's Boiler Company	1725393	Oct. 20, 1992	Oct. 20, 2012
America's Home Heating Team	1707987	Aug. 18, 1992	Aug. 18, 2012
B (fanciful)	3131795	Aug. 22, 2006	Aug. 22, 2016
Base-Ray	1685200	May 5, 1992	May 5, 2012
Bryan	2683009	Feb. 4, 2003	Feb. 4, 2013
Burnham	1652229	July 30, 1991	July 30, 2011
Burnham Commercial	2865550	July 20, 2004	July 20, 2014
Burnham Foundry	2927300	Feb. 22, 2005	Feb. 22, 2015
Burnham Hydronics	2865551	July 20, 2004	July 20, 2014
CABO	2935863	March 29, 2005	March 29, 2015
Circle and Flame design	2929423	March 1, 2005	March 1, 2015
Compliance Plus	1919559	Sep. 19, 1995	Sep. 19, 2015
Crown	2842794	May 18, 2004	May 18, 2014
Design of a Flame	1681048	March 31, 1992	March 31, 2012
DesignPro	2591586	July 9, 2002	July 9, 2012
Duo-Rad	1724611	Oct. 13, 1992	Oct. 13, 2012
Evolution	2293040	Nov. 16, 1999	Nov. 16, 2009
Flame Designs	2362507	June 27, 2000	June 27, 2010
Flexible-Tube	2883899	Sep. 14, 2004	Sep. 14, 2014
Governale	1807332	Nov. 30, 1993	Nov. 30, 2013
Hydrosorce and design	3125568	Aug. 8, 2006	Aug. 8, 2016
Independence	1832113	April 19, 1994	April 19, 2014
Le	2922367	Feb. 1, 2005	Feb. 1, 2015
Mega-Stor	2567800	May 7, 2002	May 7, 2012
Minuteman	1832112	April 19, 1994	April 19, 2014
MPO	3152701	Oct. 10, 2006	Oct. 10, 2016
New Yorker	1741143	Dec. 22, 1992	Dec. 22, 2012
Opus	2612612	Aug. 27, 2002	Aug. 27, 2012
Revolution	2191275	Sep. 22, 1998	Sep. 22, 2008
Series 2	2954411	May 24, 2005	May 24, 2015
Serpentine Design	2217652	Jan. 5, 1999	Jan 5, 2009

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Solaris	3184227	Dec. 12, 2006	Dec. 12, 2016
Spacemaster	2951187	May 17, 2005	May 17, 2015
The New Yorker & Design	1347572	July 9, 1985	July 9, 2015
Thermal Solutions	2343871	April 18, 2000	April 18, 2010
Thermo-Pride	791826	June 29, 1965	June 29, 2015
Thermo-Pride and design	780326	Nov. 17, 1964	Nov. 17, 2014
Torch Design	2635161	Oct. 15, 2002	Oct. 15, 2012
True Blue Limited Warranty	1764865	April 13, 1993	April 13, 2013
V8	2922366	Feb. 1, 2005	Feb. 1, 2015
Valpro	2759898	Sep. 2, 2003	Sep. 2, 2013
Valpro and Design	2683395	Feb. 4, 2003	Feb. 4, 2013
Wendland	2909889	Dec. 14, 2004	Dec. 14, 2014
Winter Warmth Assurance	1763254	April 6, 1993	April 6, 2013

# TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (the "Agreement") is made and entered into this 1<sup>st</sup> day of March, 2007, between **BURNHAM SERVICES, INC.**, a Delaware corporation (the "Assignor"), and **MANUFACTURERS AND TRADERS TRUST COMPANY** (the "Assignee").

## BACKGROUND

A. In order to induce the Assignee to make certain letter of credit facilities available to Burnham Financial, LLC pursuant to a Loan Agreement dated the date hereof between Burnham Financial, LLC and the Assignee (as modified, amended, supplemented, and restated from time to time, the "Loan Agreement") and to secure its obligations with respect to such credit facilities, the Assignor desires to assign to the Assignee and grant to the Assignee a lien upon and security interest in all of its trademarks, service marks, tradenames, and the goodwill associated therewith.

B. Such assignment, lien, and security interest shall be effected pursuant to and in accordance with the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the premises and intending to be legally bound hereby, it is hereby agreed as follows:

1. Defined Terms. Any capitalized terms used in this Agreement which are not so defined, but which are defined in the Loan Agreement, shall have the meanings given to those terms in the Loan Agreement.

2. Assignment of Marks. To secure the complete and timely payment and satisfaction of all of the Obligations, the Assignor hereby grants, assigns and conveys to the Assignee a lien upon and security interest in all of Assignor's trademark applications, trademarks (whether registered, unregistered or for which any application to register has been filed), service mark applications, service marks (whether registered, unregistered or for which any application to register has been filed) and tradenames, all of which are listed on Schedule A attached hereto (as the same may be modified and amended pursuant hereto from time to time), including, without limitation, all renewals thereof and all proceeds thereof (such as, by way of example, but not limited to, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements, all rights owned by Assignor corresponding thereto throughout the world (all of the foregoing are collectively referred to herein as the "Marks"), together with all Marks of Assignor which may be acquired, used or which may otherwise arise hereafter, which shall be deemed to be included in the "Marks" as used herein, as well as the goodwill of the business to which each of the Marks relates.

3. Representations and Warranties. The Assignor covenants, represents, and warrants that: (a) it is the sole and exclusive owner of the entire right, title and interest in each of the Marks, free and clear of any liens, pledges, assignments, claims or other encumbrances, subject only to existing licenses (if any) described on Schedule A; (b) it 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) to the best of Assignor's knowledge, each of the Marks is valid and enforceable; (e) no claim has been made that the use of any of the Marks does or may violate the rights of any third person; (f) Assignor has used, and will continue to use for the duration of this Agreement, proper statutory notice in connection with its use of the Marks; and (g) Assignor has used, and will continue to use for the duration of this Agreement, consistent standards of quality in the manufacture of products and delivery of services sold or provided under the Marks. The Assignor shall, in any event, indemnify, defend and hold the Assignee harmless from and against all losses, damages, costs and expenses, including legal costs and counsel fees, incurred by Assignee as the direct or indirect result of any action, claim or demand, whether or not groundless, alleging that any of the Marks infringe any trademarks held by or other rights of third parties.

4. Right To Inspect. Without limiting the generality of any right which the Assignee may have under the Loan Agreement or related Loan Documents, the Assignor hereby grants to Assignee and its employees and agents the right to visit any 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 at reasonable times. Assignor shall do any and all acts required by Assignee to ensure Assignor's compliance with Section 3(g) hereof.

5. Right to Benefits. If, before the Obligations shall have been irrevocably satisfied in full, the Assignor shall become entitled to the benefit of any trademark or service mark registration, or any renewal or affidavit of any Mark, the provisions of Section 2 hereof shall immediately and automatically apply thereto.

6. Future Marks. The Assignor authorizes the Assignee to modify this Agreement by amending Schedule A to include any future trademarks, service marks or tradenames which are Marks under Sections 2 or 5 hereof. The security interest granted herein as to future Marks shall be valid and effective whether or not such Schedule A is amended. Nothing in this Agreement shall create an obligation on Assignee to amend such Schedule A.

7. Events of Default. The term "Event of Default", as used herein, shall mean: (a) any Event of Default under and as defined in the Loan Agreement; and (b) any violation by the Assignor of any representation, warranty or covenant contained in this Agreement and any modification or amendment hereof *provided* that such violation shall continue for a period of fifteen (15) days after the earlier of (i) an officer of Burnham Holdings, Inc. knew or should have known of such violation, or (ii) written notice thereto from the Assignee to Burnham Holdings, Inc.; *and provided further* that if the Assignor shall have instituted steps to cure such violation within said fifteen-day period and be diligently pursuing the same, then the Assignor shall have 30 days in which to complete such cure.

8. Assignor's Right to Use Marks. Unless and until an Event of Default shall occur, the Assignor shall retain the legal and equitable title to the Marks and shall have the right to use the Marks in the ordinary course of its business, but shall not be permitted to sell, assign, transfer or otherwise encumber the Marks or any part thereof; *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 reasonable judgment, the retention of such item is not material to the proper conduct of its business; *provided, however*, that Assignor shall give the Assignee thirty (30) days' prior written notice of any abandonment or failure to renew of any item included within the Marks.

9. Assignee's Rights As Secured Party. If any Event of Default shall have occurred, the Assignee shall have, in addition to all other rights and remedies provided to it by this Agreement and the Loan Agreement, those rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Marks may be located and, without limiting the generality of the foregoing, the Assignee may immediately, without demand of performance and without advertisement, sell at public or private sale or otherwise realize upon, in Pennsylvania or elsewhere, the whole or from time to time any part of the Marks, the goodwill, and equipment associated therewith, or any interest which the Assignor has therein, and after deducting from the proceeds of such 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 for the payment of the Obligations. Notice of any sale or other disposition of the Marks shall be given to Burnham Holdings, Inc. at least five (5) 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.

10. Power of Attorney. If any Event of Default shall have occurred, 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, the goodwill and equipment 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, being coupled with an interest, shall be irrevocable for the term of this Agreement.

11. Termination. At such time as the Assignor shall completely and irrevocably satisfy all of the Obligations and the Assignee has no further duty or obligation to make credit facilities available to Burnham Financial, LLC, this Agreement shall terminate and the Assignee shall execute and deliver to the Assignor, at the cost and expense of 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.

12. Fees and Expenses of Assignee. If an Event of Default shall have occurred, any and all fees, costs and expenses, of whatever kind or nature, including attorneys' fees and legal expenses, incurred by the Assignee in connection with the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving the Marks, or in defending or prosecuting any actions or proceedings arising out of or related to the Marks, shall be borne and paid by 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 the Default Rate.

13. Protection of Marks. Assignee 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. If an Event of Default shall have occurred, 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 for all costs and expenses incurred by the Assignee in the exercise of its rights under this Section 13.

14. 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 Loan 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 or the exercise of any other right, power or privilege.

15. Severability. The provisions of this Agreement are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

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 the Loan Agreement and the other Loan Documents, will permit the Assignee, upon the occurrence of an Event of Default as provided herein, to make use of all rights to the Marks, the goodwill associated therewith and certain equipment and machinery as set forth in the Loan Documents, 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 Assignor.

17. Amendment. This Agreement is subject to modification only by a writing signed by the parties, except as provided in Section 6 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 (but not the law or principles of conflict of laws) of the Commonwealth of Pennsylvania.

20. Recording Permitted. This Agreement, or any financing statements or security documents authorized or delivered pursuant hereto, or a memorandum or outline hereof or thereof, may be recorded in and/or registered with the United States Patent and Trademark Office and with any state or local agencies or offices that Assignee deems appropriate.

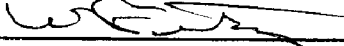
[Signature page to follow]



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


“ASSIGNOR”

**BURNHAM SERVICES, INC.**

By:   
William R. Frantz, President

“ASSIGNEE”

**MANUFACTURERS AND TRADERS  
TRUST COMPANY**

By:   
Michele A. Criste, Vice President

DAB:slb #435482.2 (08851.329)

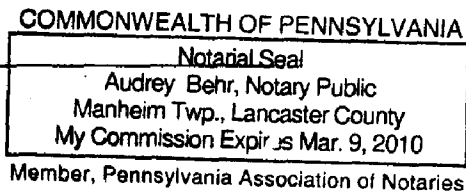
CERTIFICATE OF ACKNOWLEDGEMENT

STATE OF Pennsylvania :  
COUNTY OF Lancaster : ss.  
:

Before me, the undersigned, a Notary Public in and for the county aforesaid, on this 1st day of March, 2007 personally appeared WILLIAM R. FRANTZ, to me known personally, and who, being by that he is the President of BURNHAM SERVICES, INC., a Delaware corporation, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and that said instrument was signed and sealed on behalf of the said corporation by authority of its Board of Directors, and that he acknowledged said instrument to be the free act and deed of said corporation.

Audrey Behr  
Notary Public

March 9, 2010  
My Commission Expires:



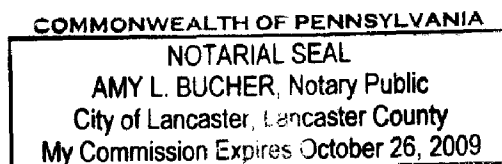
CERTIFICATE OF ACKNOWLEDGEMENT

COMMONWEALTH OF PENNSYLVANIA :  
COUNTY OF LANCASTER : ss.  
:

Before me, the undersigned, a Notary Public in and for the county aforesaid, on this 1st day of March, 2007, personally appeared MICHELE A. CRISTE to me known personally, and who, being by me duly sworn, deposes and says that she is a Vice President of MANUFACTURERS AND TRADERS TRUST COMPANY, a New York banking corporation, and that the seal affixed to the foregoing instrument is the seal of said association, and that said instrument was signed and sealed on behalf of said association by authority of its Board of Directors, and that she acknowledged said instrument to be the free act and deed of said corporation.

Amy L. Bucher  
Notary Public

Oct. 26, 2009  
My Commission Expires:



**SCHEDULE A**

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