

01-24-2000



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RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY

NRD 12.22.99

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)  
Document ID # \_\_\_\_\_
- Correction of PTO Error  
Reel # \_\_\_\_\_ Frame # \_\_\_\_\_
- Corrective Document  
Reel # \_\_\_\_\_ Frame # \_\_\_\_\_

Conveyance Type

- Assignment  License
- Security Agreement  Nunc Pro Tunc Assignment  
Effective Date  
Month Day Year  
\_\_\_\_\_
- Merger
- Change of Name
- Other \_\_\_\_\_

Conveying Party

Mark if additional names of conveying parties attached

Name Plymouth Locomotive International Execution Date  
Month Day Year  
10/30/98

Formerly \_\_\_\_\_

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other \_\_\_\_\_
- Citizenship/State of Incorporation/Organization Ohio

Receiving Party

Mark if additional names of receiving parties attached

Name Comerica Bank

DBA/AKA/TA \_\_\_\_\_

Composed of \_\_\_\_\_

Address (line 1) Comerica Tower at DetroitCenter

Address (line 2) 500 Woodward Avenue

Address (line 3) Detroit Michigan 48226  
City State/Country Zip Code

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other Michigan banking corporation
- Citizenship/State of Incorporation/Organization Michigan

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

FOR OFFICE USE ONLY

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40-00 CH  
50-00 CH  
BROWN

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Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, DC 20231

REEL: 002010 FRAME: 0585

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name Susan L. Mizer, Esq.

Address (line 1) Arter & Hadden LLP

Address (line 2) 1100 Huntington Building

Address (line 3) 925 Euclid Avenue

Address (line 4) Cleveland, Ohio 44115

**Correspondent Name and Address**

Area Code and Telephone Number (216) 696-3466

Name Susan L. Mizer, Esq.

Address (line 1) Arter & Hadden LLP

Address (line 2) 1100 Huntington Building

Address (line 3) 925 Euclid Avenue

Address (line 4) Cleveland, Ohio 44115

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments. # 9

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

75659183

1011486 1744428

**Number of Properties**

Enter the total number of properties involved. # 3

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41): \$                     

Method of Payment: Enclosed  Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number: # 50-0903

Authorization to charge additional fees: Yes  No

**Statement and Signature**

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Charges to deposit account are authorized, as indicated herein.

Susan L. Mizer

Name of Person Signing

Signature

12/22/97

Date Signed

**PATENT, TRADEMARK AND COPYRIGHT ASSIGNMENT**

This Patent, Trademark and Copyright Collateral Assignment (the "Agreement"), dated October 30, 1998, is entered into among PLYMOUTH LOCOMOTIVE INTERNATIONAL, INC., an Ohio corporation, (referred to herein as the "Assignor"), and COMERICA BANK, a Michigan banking corporation (the "Assignee").

WHEREAS, pursuant to that certain Credit Agreement (as amended, restated, modified or supplemented from time to time, the "Credit Agreement") of even date herewith by and between, inter alia, the Assignor, certain affiliates of the Assignor (together with the Assignee, the "Borrowers") and Assignee, Assignee has agreed to provide certain loans to the Borrowers and the Assignor has agreed, among other things, to grant to the Assignee a security interest in, and upon the occurrence of an Event of Default (as that term is defined in the Credit Agreement), to conditionally assign to the Assignee certain patents, trademarks and copyrights.

NOW, THEREFORE, intending to be legally bound hereby, the parties hereto agree as follows:

1. Except as otherwise expressly provided herein, capitalized terms used in this Agreement shall have the respective meanings given to them in the Credit Agreement.

2. To secure the payment and performance of all indebtedness and other obligations of the Borrowers now or hereafter existing under the Credit Agreement and the other Loan Documents, including, without limitation, principal, interest, fees, expenses, costs and expenses of enforcement, reasonable attorney's fees and expenses, and obligations under indemnification provisions in the Loan Documents (collectively, the "Secured Obligations"), Assignor hereby grants to the Assignee, its successors and assigns, a security interest in, and subject to Section 7 hereof, assigns and conveys to Assignee all of its right, title and interest of such Assignor in and to all, patent applications, patents, trademark applications, and registrations and copyrights now owned by Assignor in the United States, including, without limitation, those listed on Schedule A hereto, including all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements, all rights corresponding thereto throughout the world and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, and the goodwill of the business to which any of the foregoing relate (collectively, the "Patents, Trademarks and Copyrights").

3. Assignor covenants and warrants that, except as set forth in Schedule B hereto:

(a) the Patents, Trademarks and Copyrights are subsisting and have not to the knowledge of the Assignor, been adjudged invalid or unenforceable, in whole or in part;

(b) to the best of Assignor's knowledge, each of the Patents, Trademarks and Copyrights is valid and enforceable;

(c) except for Permitted Encumbrances, and except for such licenses, if any, disclosed on **Schedule C** hereto (the "**Licenses**"), Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Patents, Trademarks and Copyrights, free and clear of any liens, charges and encumbrances, including without limitation pledges, assignments, licenses, shop rights and any covenants by Assignor not to sue third persons;

(d) Assignor has the corporate power and authority to enter into this Agreement and perform its terms;

(d) no claim has been made to Assignor or, to the knowledge of Assignor, any other person that the use of any of the Patents, Trademarks and Copyrights does or may violate the rights of any third party;

(e) Assignor will use, for the duration of this Agreement, consistent standards of quality in its manufacture of products sold under the Patents, Trademarks and Copyrights; and

(e) Assignor will use, for the duration of this Agreement, proper statutory notice in connection with its use of the Patents, Trademarks and Copyrights.

4. Except as set forth in Section 6 hereof, Assignor agrees that, until all of the Secured Obligations shall have been satisfied in full, it will not enter into any agreement which is inconsistent with Assignor's obligations under this Agreement, without such Assignee's prior written consent which shall not be unreasonably withheld.

5. If, before the Secured Obligations shall have been satisfied in full, Assignor shall file any new U.S. applications for any material Patents, Trademarks or Copyrights, Assignor shall diligently prosecute such applications. The provisions of this Agreement shall automatically apply to any such registration or patents which preissued to Assignor in connection with such applications, and Assignor shall give to Assignee prompt notice thereof in writing. Assignors and Assignee agree to modify this Agreement by amending **Schedule A** to include any such future patents, trademark registrations, or copyrights and the provisions of this Agreement shall apply thereto. Any expenses incurred in connection with such an application shall be borne by Assignor. Assignor shall not abandon any Patent, Trademark or Copyright which is in any manner material to the operations of the Assignor without the consent of Assignee, which shall not be unreasonably withheld.

6. Until such time as there shall have occurred and be continuing an Event of Default (a) Assignor shall have the exclusive, nontransferable right and license under the Patents, Trademarks and Copyrights to make, have made for it, use and sell the inventions and products disclosed and claimed in the Patents, Trademarks and Copyrights and (b) Assignor shall have the right to grant any license under any of the Patents, Trademarks and Copyrights in the ordinary course of such Assignor's business. Except to the extent otherwise permitted under the terms of the Credit Agreement, Assignor agrees not to assign or sell its interests in any of the Patents,

Trademarks and Copyrights (other than pursuant to a license otherwise permitted hereby) without the prior written consent of Assignee which shall not be unreasonably withheld. Assignee reserves the right upon reasonable notice during normal business hours to inspect the operations and facilities of Assignor from time to time for the purpose of ensuring that the use of Assignor's Patents, Trademarks and Copyrights are consistent with Assignor's obligations under the Credit Agreement and hereunder.

7. If, and during the period that, the Secured Obligations are declared due and payable pursuant to Section 10.3 of the Credit Agreement, Assignee shall have all rights and remedies given it by this Agreement, the Credit Agreement 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 Copyrights may be located and, without limiting the generality of the foregoing, Assignee may, in a commercially reasonable manner, sell, lease or otherwise dispose of any part or all of the Patents, Trademarks and Copyrights, or any interest in which Assignor may have therein, in its then condition or following any commercially reasonable preparation or processing. After deducting from the proceeds of sale or other disposition of the Patents, Trademarks and Copyrights all expenses (including fees and expenses for brokers and attorneys), Assignee shall apply the remainder of such proceeds toward the payment of the Secured Obligations as the Assignee, in its sole discretion, shall determine. Any remainder of the proceeds after payment in full of the Secured Obligations shall be paid over to Assignor. Notice of any transfer or assignment or other disposition of the Patents, Trademarks and Copyrights shall be given to Assignor at least ten (10) days before the time of any intended public or private transfer or assignment or other disposition of the Patents, Trademarks and Copyrights is to be made, which Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such transfer or assignment or other disposition, Assignee may, to the extent permissible under applicable Law, purchase the whole or any part of the Patents, Trademarks and Copyrights sold, free from any right of redemption on the part of Assignor, which right is hereby waived and released.

8. If any Event of Default shall have occurred and be continuing, Assignor hereby authorizes and empowers Assignee to make, constitute and appoint any officer or agent of Assignee, as Assignee may select in its exclusive discretion, as Assignor's true and lawful attorney-in-fact, with the power to endorse Assignor's name on all applications, documents, papers and instruments necessary for Assignee to use the Patents, Trademarks and Copyrights, or to grant or issue, on commercially reasonable terms, any exclusive or nonexclusive license under the Patents, Trademarks and Copyrights to any third person, or necessary for Assignee to in accordance otherwise with the terms of Section 7 above, assign, pledge, convey or otherwise transfer title in or dispose, on commercially reasonable terms, of the Patents, Trademarks and Copyrights to any third Person. Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof other than acts or omissions which are grossly negligent or constitute willful misconduct. This power of attorney, being coupled with an interest, shall be irrevocable for the life of this Agreement.

9. At such time as Assignor shall have indefeasibly paid in full all of the Secured Obligations and the Credit Agreement shall have been terminated, this Agreement shall terminate and Assignee shall execute and deliver to Assignor all deeds, assignments and other instruments as may be necessary or proper as reasonably requested by Assignor to release the security interest created hereby and to reassign to Assignor any and all rights granted to the Assignee in and to the Patents, Trademarks and Copyrights, pursuant to this Agreement.

10. Until such time as this Agreement is terminated as provided in Section 9 above, Assignor shall preserve and maintain all rights in the Patents, Trademark and Copyrights, including without limitation the payment of all maintenance fees, renewal fees or taxes.

11. Any and all fees, costs and expenses, of whatever kind or nature, including reasonable attorney's fees and expenses incurred by Assignee in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances, the protection, maintenance or preservation of the Patents, Trademarks and Copyrights (in the event that Assignors fail to discharge their duty pursuant to Section 10 or otherwise), or the defense or prosecution of any actions or proceedings arising out of or related to the Patents, Trademarks and Copyrights, shall be borne and paid by Assignor within thirty (30) days of demand by Assignee, and if not paid within such time, shall be added to the principal amount of the Secured Obligations and shall bear interest at the highest rate prescribed in the Credit Agreement.

12. Assignor shall have the right, with the consent of Assignee, which shall not be unreasonably withheld, to bring suit, action or other proceeding in its own name, to enforce the Patents, Trademarks and Copyrights and any licenses thereunder. Assignor shall promptly, upon demand, reimburse and indemnify Assignee for all damages, costs and expenses, including reasonable legal fees, incurred by Assignee as a result of such suit.

13. 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 Credit Agreement or other Loan Documents shall operate as a waiver of such right, power or privilege, 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.

14. All of Assignee's rights and remedies with respect to the Patents, Trademarks and Copyrights, whether established hereby or by the Credit Agreement or by any other agreements or by Law, shall be cumulative and may be exercised singularly or concurrently.

15. 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 clause or provision of this Agreement in any jurisdiction.

16. This Agreement is subject to modification only by a writing signed by the parties, except as provided in Paragraph 5.

17. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

18. This Agreement shall be governed by and construed in accordance with the internal Laws of the State of Michigan without regard to its conflicts of law principles.

[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers or agents "hereunto duly authorized, as of the date first above written.

PLYMOUTH LOCOMOTIVE  
INTERNATIONAL, INC.

By: Maricea Elliott  
Title: Secretary

COMERICA BANK

By: Timothy C. [Signature]  
Title: Vice President

387755.1



**SCHEDULE A  
TO  
PATENT, TRADEMARK AND COPYRIGHT COLLATERAL ASSIGNMENT**

**LIST OF REGISTERED PATENTS, TRADEMARKS,  
TRADE NAMES AND COPYRIGHTS**

See attached.

# PLYMOUTH LOCOMOTIVE INTERNATIONAL TRADEMARKS

FILE NO.	TITLE	ST	SER. NO.	FILING DAT	REG. NO.	DATE #1
14-409	AUTOLIFT (CL 12)	I	73/014112	02-22-1974	1011486	05-27-1975
14-619	AUTOLIFT	I		- -	1011486	05-27-1975
14-620	PLYMOUTH	I		- -	1744420	01-05-1993
14-854	SCHROCK	M		- -		09-02-1990

**SCHEDULE B  
TO  
PATENT, TRADEMARK AND COPYRIGHT COLLATERAL ASSIGNMENT**

**ADDITIONAL DISCLOSURES**

None

**SCHEDULE C  
TO  
PATENT, TRADEMARK AND COPYRIGHT COLLATERAL ASSIGNMENT**

**LICENSES**

None

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DIALOG(R) File 226:TRADEMARKSCAN(R)-US FED  
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**PLYMOUTH**

INTL CLASS: 12 (Vehicles)  
U.S. CLASS: 19 (Vehicles)  
23 (Cutlery, Machines, & Tools, Parts Therof)  
STATUS: Registered; Section 8 & 15 - Accepted & Acknowledged  
GOODS/SERVICES: RAILROAD LOCOMOTIVES  
SERIAL NO.: 74-201,628  
REG. NO.: 1,744,428  
REGISTERED: January 5, 1993  
FIRST USE: March 20, 1914 (Intl Class 12)  
FIRST COMMERCE: April 14, 1914 (Intl Class 12)  
FILED: September 9, 1991  
PUBLISHED: October 13, 1992  
AFFIDAVIT SEC.: 8-15; February 12, 1999  
ORIGINAL APPLICANT: PLYMOUTH LOCOMOTIVE INTERNATIONAL, INC. (Ohio Corporation), BELL AND HIGH STREET, PLYMOUTH, OH (Ohio), 44865, USA (United States of America)  
OWNER AT PUBLICATION: PLYMOUTH LOCOMOTIVE INTERNATIONAL, INC. (Ohio Corporation), BELL AND HIGH STREET, PLYMOUTH, OH (Ohio), 44865, USA (United States of America)  
ORIGINAL REGISTRANT: PLYMOUTH LOCOMOTIVE INTERNATIONAL, INC. (Ohio Corporation), BELL AND HIGH STREET, PLYMOUTH, OH (Ohio), 44865, USA (United States of America)  
FILING CORRESPONDENT: WARREN A. SKLAR, RENNER, OTTO, BOISSELLE & SKLAR, 1621 EUCLID AVENUE - 19TH. FLOOR, CLEVELAND, OH 44115

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DIALOG(R) File 226:TRADEMARKSCAN(R)-US FED  
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05659183

**SCHRECK**

INTL CLASS: 7 (Machinery)  
U.S. CLASS: 13 (Hardware, Plumbing, Steam-fitting Supplies)  
19 (Vehicles)  
21 (Electrical Apparatus, Machines & Supplies)  
23 (Cutlery, Machines, & Tools, Parts Therof)  
31 (Filters & Refrigerators)  
34 (Heating, Lighting, & Ventilating Apparatus)  
35 (Belting, Hoses, Machines Packing, Nonmetallic  
Tire)

T&T U.S. CLASS: 24 (Laundry Appliances & Machines)

STATUS: Pending; Non-Final Action - Mailed

GOODS/SERVICES: MOBILE MATERIAL HANDLING EQUIPMENT AND SYSTEMS,  
NAMELY, MATERIAL HANDLING TRUCKS, CRANES, MATERIAL HANDLERS,  
TRACTORS, LIFT TRUCKS, ORDER PICKERS, MULES, TUGS, STOCK  
PICKERS, MOBILE EQUIPMENT, DISTRIBUTION AND WAREHOUSE MATERIAL  
HANDLERS, SPECIALIZED MATERIAL HANDLING EQUIPMENT, NARROW ISLE  
LIFT TRUCKS, AND NARROW ISLE MATERIAL HANDLING EQUIPMENT

SERIAL NO.: 75-659,183

FIRST USE: June 1, 1984 (Intl Class 7)

FIRST COMMERCE: June 1, 1984 (Intl Class 7)

FILED: March 9, 1999

ORIGINAL APPLICANT: PLYMOUTH LOCOMOTIVE INTERNATIONAL, INC. (Ohio  
Corporation), 607 BELL STREET, PLYMOUTH, OH (Ohio), 44865, USA  
(United States of America)

FILING CORRESPONDENT: JOHN R. HLAVKA, WATTS, HOFFMANN, FISHER &  
HEINKE, P.O. BOX 99839, LEVELAND, OHIO 44199-0839

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DIALOG(R) File 226:TRADEMARKSCAN(R)-US FED  
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**AUTOLIFT**

INTL CLASS: 12 (Vehicles)  
U.S. CLASS: 23 (Cutlery, Machines, & Tools, Parts Therof)  
STATUS: Renewed  
GOODS/SERVICES: INDUSTRIAL LIFT TRUCKS AND PARTS THEREOF  
SERIAL NO.: 73-014,112  
REG. NO.: 1,011,486  
REGISTERED: May 27, 1975  
FIRST USE: November 7, 1973 (Intl Class 12)  
FIRST COMMERCE: November 7, 1973 (Intl Class 12)  
FILED: February 22, 1974  
PUBLISHED: March 4, 1975  
RENEWED IN OG: October 10, 1995  
AFFIDAVIT SEC.: 8-15  
ORIGINAL REGISTRANT: BANNER INDUSTRIES, INC. (Delaware Corporation), 1605 SUPERIOR BLDG., CLEVELAND, OH (Ohio), USA (United States of America)  
1ST NEW OWNER ENTERED AFTER REGISTRATION: PLYMOUTH LOCOMOTIVE INTERNATIONAL, INC. (Ohio Corporation), BELL & HIGH STREETS, PLYMOUTH, OH (Ohio), 44865, USA (United States of America)  
RENEWAL OWNER: PLYMOUTH LOCOMOTIVE INTERNATIONAL, INC. (Ohio Corporation), BELL & HIGH STREETS, PLYMOUTH, OH (Ohio), 44865, USA (United States of America)  
Renewed: May 27, 1995  
ASSIGNEE(S): PLYMOUTH LOCOMOTIVE INTERNATIONAL, INC. (Ohio Corporation), PLYMOUTH, OHIO 44865, BELL & HIGH STREETS  
Assignor(s): BANNER INDUSTRIES, INC. (Delaware Corporation)  
Reel/Frame: 1315/0068  
Recorded: March 29, 1995  
Brief: ASSIGNS THE ENTIRE INTEREST AND GOOD WILL  
ASSIGNEE(S): PLYMOUTH LOCOMOTIVE INTERNATIONAL, INC., BELL & HIGH STREETS, PLYMOUTH, OH (Ohio), 44865, USA (United States of America)  
Assignor(s): FAIRCHILD CORPORATION, THE; D/B/A/ FORMERLY BANNER INDUSTRIES, INC.  
Reel/Frame: 1598/0895  
Recorded: June 11, 1997  
Brief: ASSIGNMENT OF A PART OF ASSIGNOR INTEREST  
FILING CORRESPONDENT: JOHN W. RENNER, RENNER, OTTO, BOISSELLE & SKLAR, NINETEENTH FLOOR, THE KEITH BUILDING, 1621 EUCLID AVENUE, CLEVELAND, OH 44115

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