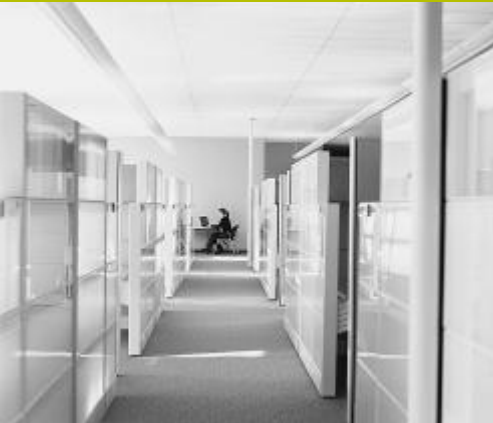


Law School For The CFO

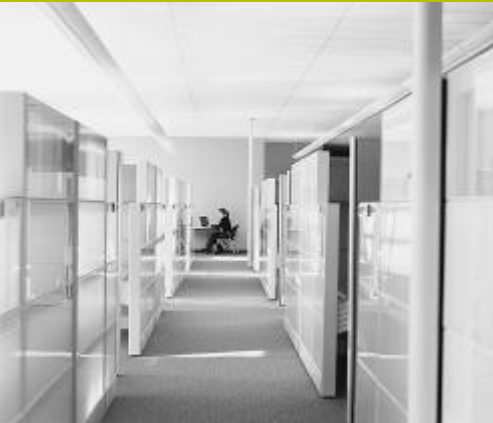


- September 8, 2010

- Brandon F. White
- Malcolm G. Henderson
 - Julia Huston
- Michael L. Rosen
- David R. Pierson



Practical Approaches to Litigation



- Brandon F. White



Negotiating Credit Agreements – Traps for the Unwary Borrower



- Malcolm G. Henderson

Current Market Environment

- Volatility and unpredictability!
- Deals getting done, with lenders focusing on better credits

Pricing – Interest, Fees And Other Costs

- **Origination/Arrangement Fees**
 - generally 0.5% (smaller deals) to 2.0% (larger, committed deals)
- **Interest Rates**
 - Base Interest Rate
 - Prime Rate vs. LIBOR Rate
 - Margins
 - added to Base Interest Rate; generally 1.5%-6.0%
 - LIBOR Floors
 - prevalent, but resist

Pricing – Interest, Fees And Other Costs (continued)

- Ongoing Lender Fees/Penalties
 - Goal: Avoid duplicate or excessive fees
 - Ongoing Commitment Fee on Undrawn Revolver
 - generally .25% - .50%
 - Default Rate
 - hold to 2.0-3.0%
 - Late Payment Fees/Penalties (in addition to Default Rate)
 - resist
 - Annual Administration Fees
 - appropriate only for syndicated deals
 - Voluntary Prepayment/Termination of Loan
 - permit at any time without penalty – allows free refinancing
 - if there is a penalty: (i) limit to termination in first or second year, and (ii) allow exceptions for acceleration by lender upon event of default and other involuntary prepayments (casualty events and excess cash flow mandatory prepayments)

Pricing - Interest, Fees And Other Costs (continued)

- Lender Attorneys' Fees Reimbursement
 - Company pays all Lender legal fees
 - Get a Fee Cap
 - cap varies based on size and level of negotiation of documents
 - Otherwise:
 - limit to “reasonable” legal fees
 - In-house counsel fees of Lender should never be reimbursed
- Hedging/Interest Rate Swaps
 - Generally a concern for medium to larger deals
 - Avoid tying arrangements that prevent Borrower from obtaining hedging from other providers

Pricing - Interest, Fees And Other Costs (continued)

- **Controlled Foreign Corporation Tax Structuring Issues**
 - Loan obligations of U.S. companies generally cannot be guaranteed or secured by foreign subsidiaries without adverse US tax consequences to borrower; limit foreign subsidiary security to pledge of 66 2/3% of stock of first-tier foreign subsidiaries
- **No Foreign Lenders Unless Exempt from U.S. Withholding Tax**
 - Otherwise, will have to make Lenders whole through gross-up for withholding taxes

Financial Covenants

- Common Covenants (Highly Negotiated):
 - Maximum Leverage Ratio (Senior vs. Total Leverage) (debt vs. EBITDA)
 - Minimum Interest Coverage Ratio (EBITDA vs. interest expense)
 - Minimum Fixed Charge Coverage Ratio (EBITDA - Cap Ex vs. interest/principal payments + cash taxes + management fees/dividends)
 - Minimum Tangible Net Worth
 - exclude subordinated debt
 - Minimum EBITDA
 - Maximum Capital Expenditures
 - Liquidity/Minimum Quick Ratio (cash + A/R (not inventory) vs. current liabilities)
 - Minimum Net Income/Maximum Net Loss

Financial Covenants (continued)

- Review All Accounting Terms Closely
 - Review “EBITDA” definition closely – e.g., consider any necessary addbacks to net income (e.g. for extraordinary or non-recurring expenses)
- Set Covenant Levels/Ratios with Reasonable Cushion to Financial Plan
- Equity Cure Right

Financial Reporting Covenants

- Review and Thoroughly Understand Periodic Reporting Requirements
 - Monthly vs. quarterly reporting
 - Ensure sufficient time to complete and deliver, including year-end audit
 - Consolidated vs. consolidating (latter not covered by audit)
 - Borrowing Base reports together with monthly financials
- Projections
 - Should be represented only as prepared “in good faith based on reasonable assumptions”, not “complete and accurate” (or similar words)

Operational Covenants

- Affirmative vs. Negative Covenants
- Key: Ensure flexibility to allow Borrower to conduct business both as it is currently conducted and as it is expected to grow and be conducted in the future
- Freely Allow Intercompany Transactions (such as Loans and Capital Contributions)
- Key Negative Covenants
 - Debt/Lien Covenants
 - Permit subordinated debt including shareholder debt
 - Ensure equipment financing/capital lease baskets are sufficient
 - Acquisitions Covenant
 - Build in permission for agreed “Permitted Acquisitions”

Operational Covenants (continued)

- Restricted Payments Covenant (re Dividends and Stock Repurchases)
 - Allow repurchases of founder/employee stock upon termination
 - Permit stock repurchase payments with promissory note so founder/employee can't hold up company for cash

- Investments (Loans and Equity) Covenant
 - Loans to Founders/Employees to Purchase Stock
 - company should take a security interest in stock and hold stock certificates in escrow pending repayment of loan

Representations and Warranties

- Be Aware of Bring-Down of Representations at Each Revolver Borrowing
- No “Loan Stripping”, i.e. no requirement that LIBOR loans should be due at the end of each interim Interest Period
 - Inappropriate to have to bring down reps re, for instance, absence of Material Adverse Change or material adverse litigation developments
 - Particular Events of Default based on, for instance, financial covenant default or judgments of a certain size already protect Lender
- Add Materiality/Reasonableness Wherever Possible

Events of Default

- **No Material Adverse Change (MAC) Default**
 - Inherently vague and discretionary for Bank; gives Bank extra leverage when business is having difficulty but is still in compliance with terms
 - Financial and other covenants are negotiated to protect Bank appropriately
- **Payment Defaults**
 - Add grace periods (1-5 business days)
- **Affirmative Covenant Defaults**
 - Add grace periods (15-30 days)
- **Cross Default to Other Debt/Judgment Default**
 - Set dollar thresholds appropriately high so that only significant other debt or judgments trigger default
 - Avoid cross-default to any other agreement with Lender

Security And Guaranty Issues

- Limit secured obligations to loan obligations, or provide for termination of security once all loan obligations are repaid
 - Avoid continuous cross-collateralization of other financial services obligations to Lender (such as credit card or deposit account services) so that debt can be smoothly refinanced with a new Lender
- Avoid real estate mortgages (as to both owned and lease property) – add significant cost
- Avoid shareholder guarantees, if possible

Miscellaneous Issues

- **Syndicated Deal Issues**
 - Know your syndicate
 - Amendments/waivers should require consent of Majority Lenders (i.e. lenders holding a majority of loans), not a supermajority or all lenders
 - Agent's (as opposed to Majority Lenders') discretion wherever possible
- **Assignments by Lender**
 - Should be subject to consent of Borrower (except during Event of Default), not to be unreasonably withheld
- **Borrowing Base Issues**
 - Advance rates at 85% of A/R and 50% of inventory
 - Limit lender's discretion to reduce advance rates
 - Limit annual collateral exams at Borrower's expense (once per year)

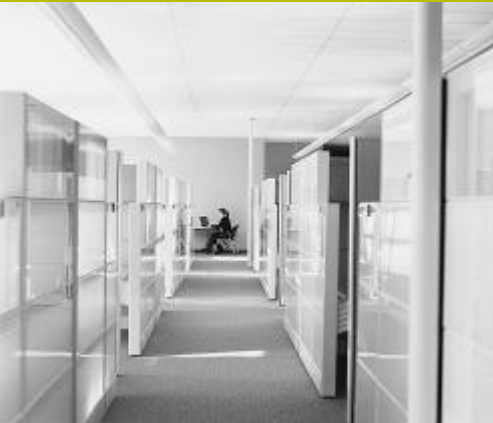
Miscellaneous Issues (continued)

■ Mandatory Prepayments

- Equity Issuance proceeds
 - Carve out additional VC/PE equity sponsor investments
- Excess Cash Flow sweep
 - Keep percentage to 50% or below
 - Percentage should decline based on decreasing Borrower leverage
- Asset Sales and Casualty Events
 - Allow 180-day reinvestment period for proceeds



Intellectual Property Strategies



- Julia Huston

Intellectual Property

- Intellectual property (IP) is a legal right covering creations of the mind
 - Inventions
 - Musical, literary, and artistic works
 - Names and symbols
 - Images
 - Designs

- Provides creators with economic incentives to engage in creative activities and to share ideas

Intellectual Property

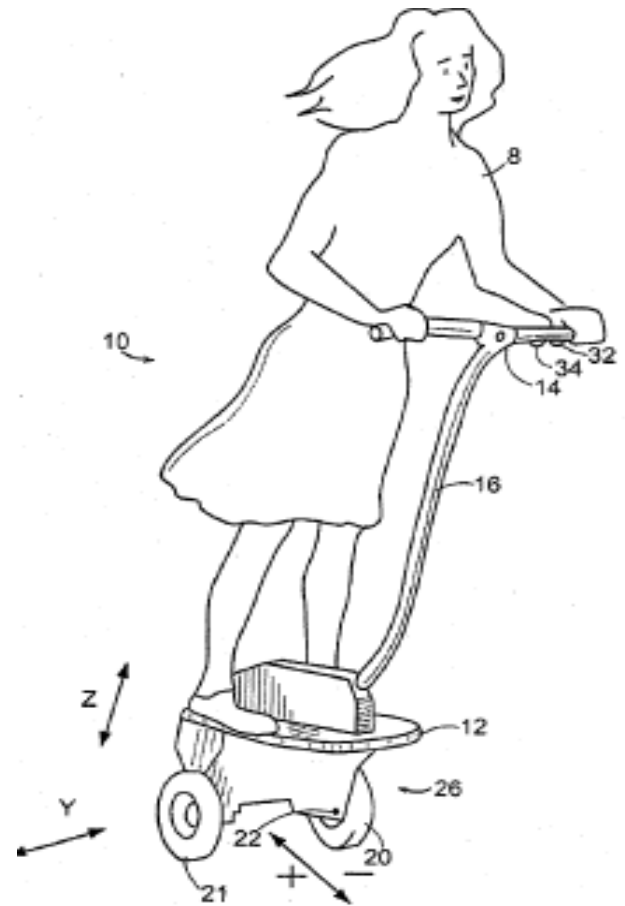
Why IP is important

- Can be a major asset of a technology based venture
- Important to your investors
- Helps prevent competitors from entering your market
- Can be a source of revenue through licensing

Major Types of IP

- Patents
- Trademarks
- Copyrights
- Trade Secrets

- Protects inventions
- Government grant providing exclusive rights to an inventor in exchange for public disclosure of invention.
- Valid 20 years from filing date



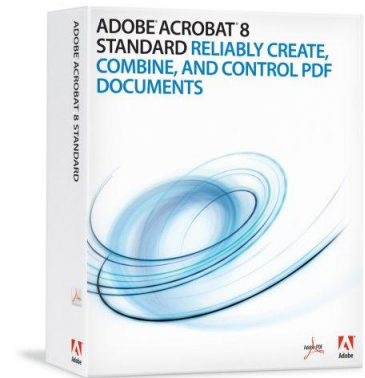
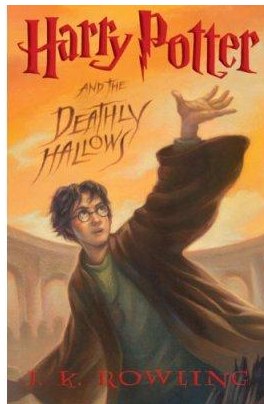
Trademarks

- Protects words, names, phrases, logos, designs, or virtually anything used to identify and distinguish the goods of one seller from goods manufactured or sold by others
- Prevents others from using confusingly similar marks



Copyrights

- Protects creative or artistic works (e.g., books, music, movies, art, computer programs)
- Requirements:
 - Original
 - Fixed in a tangible medium (e.g., paper, electronic medium)
- Copyrights protect expression of ideas, not the ideas themselves



Trade Secrets

- A formula, pattern, physical device, idea, process, or compilation of information that:
 - provides the owner with a competitive advantage in the marketplace, and
 - is treated by the owner in a way that can reasonably be expected to prevent the public or competitors from learning about it

- Trade secret protection has no term limit, as long as the secret is kept.



- Must be novel and non-obvious
- One year on sale bar
- Cost
- Claims infringed



US007603013B1

(12) United States Patent
Namati et al.

(10) **Patent No.:** US 7,603,013 B1
(45) **Date of Patent:** Oct. 13, 2009

(54) **FIBERSCOPES AND FIBER BUNDLES**

(75) **Inventors:** Eman Namati, Iowa City, IA (US);
Jacqueline Thiesse Namati, Iowa City,
IA (US); Geoffrey McLennan, Iowa
City, IA (US)

(73) **Assignee:** University of Iowa Research
Foundation, Iowa City, IA (US)

(*) **Notice:** Subject to any disclaimer, the term of this
patent is extended or adjusted under 35
U.S.C. 154(b) by 0 days.

(21) **Appl. No.:** 12/103,563

(22) **Filed:** Apr. 15, 2008

(51) **Int. Cl.**
G02B 6/06 (2006.01)

(52) **U.S. CL** 385/116; 385/117

(58) **Field of Classification Search** 385/115-119;
600/182

See application file for complete search history.

(56) **References Cited**

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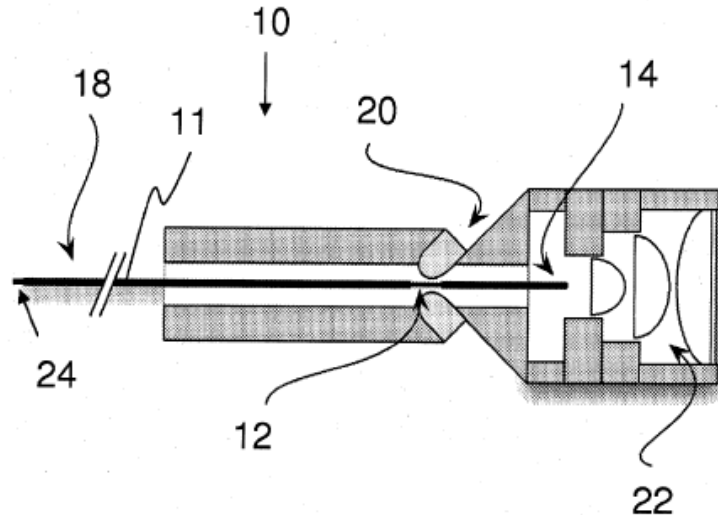
* cited by examiner

Primary Examiner—Hemang Sanghavi
(74) *Attorney, Agent, or Firm*—Scott E. Kamholz; Foley
Hoag LLP

(57) **ABSTRACT**

An elongate imaging fiber bundle may include a plurality of elongate optical fibers coherently arranged in the bundle, the plurality including peripheral fibers at a periphery of the bundle and deep fibers deep to the peripheral fibers, and a coating surrounding the plurality of fibers. An exposed length of the bundle, intermediate the bundle's proximal and distal ends, may be chemically etched to be denuded of the coating, and peripheral fibers are so severed as to permit injection of light into the peripheral fibers at the exposed length. A fiberscope may include a fiber bundle having an exposed length that is denuded of the coating, and peripheral fibers are so severed in the exposed length as to permit injection of light into the peripheral fibers at the exposed length, and a light source so positioned with respect to the exposed length of the bundle as to inject light into the peripheral fibers at the exposed length.

20 Claims, 6 Drawing Sheets



Sample Patent Claim

We claim:

1. A fiberscope comprising:
an elongate imaging fiber bundle having a circumference, a proximal end, and a distal end, and comprising:
a plurality of elongate optical fibers coherently arranged in the bundle, the plurality including peripheral fibers at a periphery of the bundle and deep fibers deep to the peripheral fibers; and
a coating surrounding the plurality of fibers;
wherein an exposed length of the bundle, intermediate the proximal and distal ends, is denuded of the coating, and peripheral fibers are so severed in the exposed length as to permit injection of light into the peripheral fibers at the exposed length; and
a light source so positioned with respect to the exposed length of the bundle as to inject light into the peripheral fibers at the exposed length.

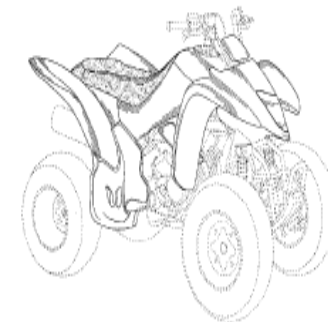
Design Patents



- New, original and ornamental design or article of manufacture
- Valid 14 years from issue date
- Infringed by designs substantially the same in the eyes of an ordinary observer
- Cost

(12) **United States Design Patent** (10) Patent No.: **US D491,108 S**
Tamura (45) Date of Patent: **** Jun. 8, 2004**

(54) ALL TERRAIN VEHICLE	JP	783346	12/1989
	JP	783347	12/1989
(75) Inventor: Shinji Tamura , Shizuoka-Pref. (JP)	JP	1109054	3/2001
(73) Assignee: Suzuki Motor Company , Shizuoka-Pref. (JP)	* cited by examiner		
(**) Term: 14 Years	<i>Primary Examiner</i> —Alan P. Douglas <i>Assistant Examiner</i> —Linda Brooks		
(21) Appl. No.: 29/171,515	(74) <i>Attorney, Agent, or Firm</i> —Foley Hoag LLP		
(22) Filed: Nov. 22, 2002	(57) CLAIM		
(30) Foreign Application Priority Data	The ornamental design for an all terrain vehicle, as shown and described.		
May 24, 2002 (JP)	2002-013828		
(51) LOC (7) Cl.	12-11		
(52) U.S. Cl.	D12/107		
(58) Field of Search	D12/3, 87, 107; 180/225, 215, 229, 233, 247, 312, 315		
(56) References Cited	DESCRIPTION		
U.S. PATENT DOCUMENTS	FIG. 1 is a front perspective view of an all terrain vehicle showing my new design;		
D412,464 S * 8/1999 Ichihara et al.	D12/107		
FOREIGN PATENT DOCUMENTS	FIG. 2 is a rear perspective view thereof;		
JP 693792 8/1986	FIG. 3 is a top view thereof;		
JP 693792-1 8/1986	FIG. 4 is a bottom view thereof;		
	FIG. 5 is a right side elevational view thereof;		
	FIG. 6 is a left side elevational view thereof;		
	FIG. 7 is a front view thereof; and,		
	FIG. 8 is a rear view thereof.		
	The portions of the all terrain vehicle shown in broken lines are for illustrative purposes only and form no part of the claimed design.		
	1 Claim, 8 Drawing Sheets		



- Unique identifier of goods or services

- U.S. registration v. common law rights

- Likelihood of confusion test for infringement

- Cost

TRADEMARK
PRINCIPAL REGISTER



VELCRO INDUSTRIES B.V. (NETHERLANDS
LTD LIAB CO)
CASTORWEG 22-24
CURACAO, NETHERLD ANTILLES

FIRST USE 6-0-2007; IN COMMERCE 6-0-2007.

FOR: FABRICS AND TEXTILES AND SUBSTITUTES THEREFOR, NAMELY, WOVEN, MOLDED, NON-WOVEN OR EXTRUDED SYNTHETIC MATERIAL HAVING A SURFACE OF HOOKS AND WOVEN SYNTHETIC MATERIAL HAVING A SURFACE OF LOOPS, IN CLASS 24 (U.S. CLS. 42 AND 50).

THE MARK CONSISTS OF AN ITALIC LETTER "V", WITH THE RIGHT SIDE TALLER THAN THE LEFT AND BOTH SERIFS EXTENDED TO THE PERIMETER, AND THE WORD "VELCRO" PLACED ABOVE THE LEFT SERIF. THE MATTER SHOWN IN THE DOTTED LINES FORMS NO PART OF THE MARK AND IS MEANT TO SHOW THE MARK'S PLACEMENT ON A LABEL OR PACKAGE.

FIRST USE 6-0-2007; IN COMMERCE 6-0-2007.

SN 77-105,018, FILED 2-12-2007.

FOR: SEPARABLE FASTENERS, NAMELY, HOOK AND LOOP-TYPE FASTENERS AND COMPONENTS THEREOF, IN CLASS 26 (U.S. CLS. 37, 39, 40, 42 AND 50).

ROBIN CHOSID, EXAMINING ATTORNEY

Copyrights

- Creative and original work in tangible medium of expression
- Registration
- Copyright notice
- Infringement requires actual copying and substantial similarity
- Cost

Certificate of Registration



This Certificate issued under the seal of the Copyright Office in accordance with title 17, United States Code, attests that registration has been made for the work identified below. The information on this certificate has been made a part of the Copyright Office records.

Margareth Peters
Register of Copyrights, United States of America

Registration Number:
VA 1-684-831

Effective date of
registration:
October 1, 2009

Title _____

Title of Work: Flip Flops

Completion/ Publication _____

Year of Completion: 2005

Date of 1st Publication: July 3, 2005

Nation of 1st Publication: United States

Author _____

Author: Paper House Productions, Inc.

Author Created: photograph(s)

Work made for hire: Yes

Domestic In: United States

Copyright claimant _____

Copyright Claimant: Paper House Productions, Inc.

PO Box 259, Saugerties, NY, 12477, United States

Rights and Permissions _____

Organization Name: Paper House Productions, Inc.

Name: Pamela Gudecki

Email: pam@paperhouseproductions.com

Address: PO Box 259

Saugerties, NY 12477 United States

Certification _____

Name: Charles E. Weinstein, Esq.

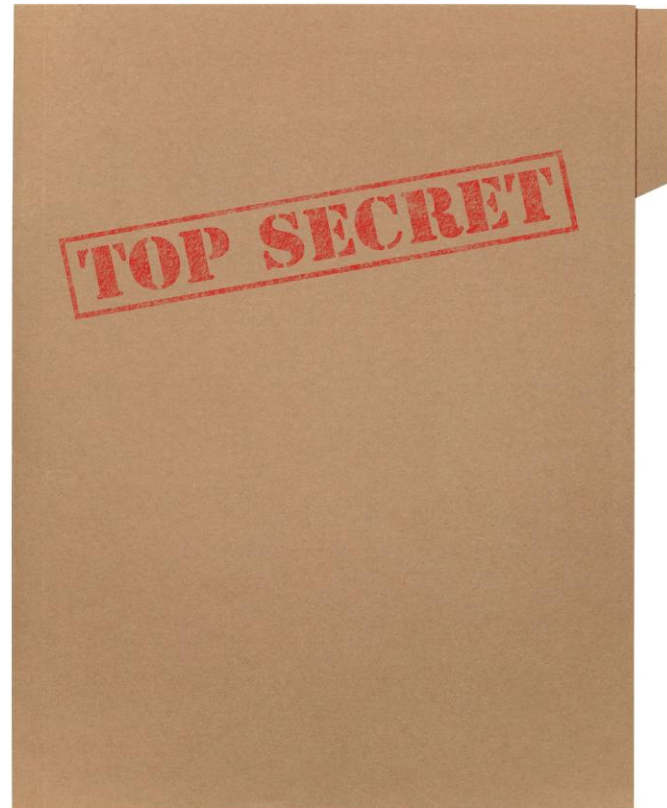
Date: October 1, 2009

Applicant's Tracking Number: 20181-2



Trade Secrets

- Confidential
- Employee contracts
- Outside licenses
- Cost



Managing IP Costs and Risks

■ Defensive Considerations

- Don't infringe
- Be aware of insurance options
- Get your own patents
- Confer with counsel early and often

Managing IP Costs and Risks

- Offensive Considerations
 - Establish a budget
 - Prioritize
 - Consider licensing when appropriate
 - Don't fragment your portfolio
 - Use your IP creatively

Use Your IP Creatively

Int. Cl.: 7

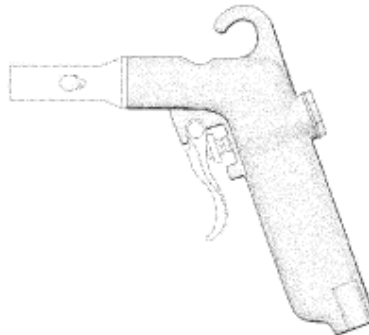
Prior U.S. Cls.: 13, 19, 21, 23, 31, 34 and 35

United States Patent and Trademark Office

Reg. No. 3,397,037

Registered Mar. 18, 2008

**TRADEMARK
PRINCIPAL REGISTER**



GUARDAIR CORPORATION (MASSACHUSETTS CORPORATION)
54 SECOND AVENUE
CHICOPEE, MA 01020

FOR: PNEUMATIC HAND-OPERATED TOOLS FOR INDUSTRIAL USE, NAMELY, HAND-HELD SAFETY AIR GUNS USED FOR CLEANING AND MAINTENANCE, IN CLASS 7 (U.S. CLS. 13, 19, 21, 23, 31, 34 AND 35).

FIRST USE 10-1-1975; IN COMMERCE 10-1-1975.

THE MARK CONSISTS OF THE CONFIGURATION OF A HAND-HELD SAFETY AIR GUN.

SEC. 2(F).

SER. NO. 77-033,940, FILED 11-1-2006.

JAMES A. RAUEN, EXAMINING ATTORNEY

Use Your IP Creatively

GUARDAIR
CORPORATION

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www.guardaircorp.com info@guardaircorp.com

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What's New at Guardair Corporation

Press Releases

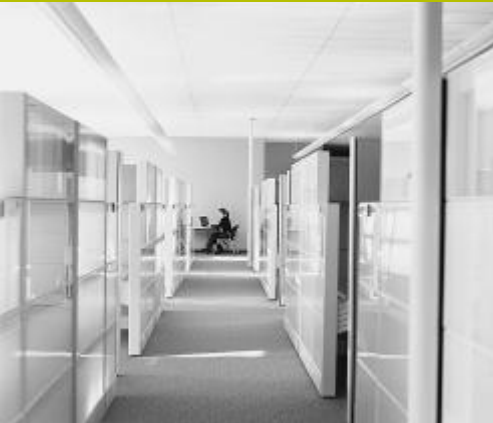
- [Guardair Corporation Announces Key Addition to Management Team](#)
- [Guardair Corporation Introduces the Quiet Force™ Nozzle](#)
- [Guardair Corporation Acquires Air-Spade Product Line](#)
- [Guardair Corporation Takes Advantage of the Power of Air and Syphon Technology](#)
- [Tremblay Elected to ISA Association Board](#)
- [Guardair Corporation is keeping the noise down](#)
- [Guardair Corporation introduces another of the Industry's Most Powerful Air Guns](#)
- [Nortech Corporation Releases New Vacuum Catalog](#)
- [Guardair Introduces Lazer 600 Series Safety Air Guns](#)
- [New Sidekick Support Handle](#)

Types of IP

	Patents	Trademarks	Copyrights	Trade Secrets
Subject Matter	Inventions	Product identifiers (names, logos, symbols, etc.)	Creative and artistic works (e.g., books, art, music, movies, software)	Valuable secret information (formulas, processes, etc.)
Term	20 years from filing date	As long as used	Life of author plus 70 years	As long as kept secret
Requirements	Subject matter, novel, nonobvious, useful	Distinctive, used in commerce	Originality and fixation	Reasonable efforts to keep secret
Scope of Protection	No use, sale, or manufacture	No use of confusingly similar marks	No copying, public display, or derivative works	No use of information, if misappropriated



Employment Law Update



Michael L. Rosen

Employment Law Update

- Update on MA Noncompete Reform Efforts

- Very Recent Changes in MA Law
 - CORI reform law
 - Personnel Record law

- What U.S. Health Care Reform Means for Employers

MA Noncompete Legislation is Dead....

.... at least for now.

■ Proposed legislation:

- 14-day notice requirement
- Additional compensation required if imposed during employment
- Limited term to one year, with better chance of enforcement if limited to six months
- \$75K annual compensation minimum
- Legal fees available if grossly overreaching or materially modified by judge

Proposed Massachusetts Noncompete Legislation

- Status:
 - Initial bill to abolish noncompetes filed in mid-2009
 - Compromise bill filed soon after
 - Well-attended hearing in Nov. 2009
 - Was reported out of Joint Labor Committee in March, 2010
 - Patrick administration had questioned need to change law
 - July, 2010: was included in, but then dropped from, economic development bill
 - future is unclear

- For more information, see the Massachusetts Noncompete Law Blog
www.massachusettsnoncompetelaw.com

MA CORI Reform Law

- Gov. Patrick signed on Aug. 6
 - Intended to improve opportunities for people with criminal records

- Effective Nov. 4, employers can't ask job applicants about criminal records or history on an initial job application
 - Most applications have such questions (with various carve outs): need to revise applications

- How Can You Find Out About Criminal Background?
 - Can inquire orally in job interviews: but must limit to permissible questions (essentially felonies and certain misdemeanors)
 - You can continue to perform criminal background checks
 - But you must comply with federal/state laws governing the obtaining and use of background checks (including criminal checks)

MA CORI Reform Law (continued)

- New law changes how employers can use criminal record information that they do obtain: **these changes take effect on February 6, 2012**

- Must provide copy of information to applicant prior to questioning him/her about it or using as a basis to deny employment
 - this was always required by Fair Credit Reporting Act, which governs use of third parties to obtain background information
 - new law requires this of all information, even if obtained directly by employer

- If employer conducts five or more criminal background checks per year, must have in place a written criminal offender record information policy:
 - states that applicants will be notified of potential adverse decision based on CORI
 - states that copy of information will be given to applicant
 - explains process for correcting a criminal record

MA CORI Reform Law (continued)

- New law substantially revamps MA's CORI service
 - does away with old Criminal History Systems Board
 - creates new system allowing all employers to register and receive CORI information on line
- New service won't be up and running for at least a year
- Once service is in place, employers will have incentive to use it
 - if employer obtains and relies on information from system, it will be immune from liability for (a) failure to hire applicant on the basis of erroneous information in the CORI report and (b) failure to conduct additional background checks
- **Critically**, these changes **do not** affect existing law as to an employer's right to use the existence of a criminal record as a reason not to hire or employ someone

New Personnel Record Law Changes

- Buried in a new development bill that took effect in August
 - causing much angst for HR professionals (and employment lawyers)

- Old law:
 - employers must provide employees with access to their “personnel record” within five days of a request
 - employee can dispute any negative information in her file by placing a written statement in the file stating the basis of the dispute

New Personnel Record Law Changes (continued)

■ New Law:

- requires employers to give notice to employees when certain information is added to their personnel records
- Notice is required within 10 days of adding any information that has been used or may be used in the future to negatively affect "the employee's qualification for employment, promotion, transfer, additional compensation or the possibility that the employee will be subject to disciplinary action"
- What does this mean? Not clear
- *The Problem*: "Personnel record" is not necessarily limited to the file maintained by HR
 - includes anything affecting employee's qualifications, promotion, transfer, compensation or discipline
 - Example: email communications between managers criticizing employee's performance on particular task
- What is "notice"? Not clear

New Personnel Record Law Changes (continued)

- What Happens If You Violate?
 - Attorney General can enforce, can seek fine of at least \$500 and not more than \$2,500
 - Possible civil action for violation
 - May be barred from relying on documents in litigation

- Is there anything in this for employers?
 - Employer does not have to permit more than two separate reviews of personnel records in a calendar year
 - But, employer's notification to the employee that it has placed negative information in the record does not count toward this twice a year limit

What U.S. Health Care Reform Means for Employers

- Two Key Laws:
 - 1. Patient Protection & Affordable Care Act
 - President signed the bill into law on March 23, 2010
 - 2. Health Care and Education Affordability Reconciliation Act
 - Signed into law on March 30, 2010 (significantly amends the first law)
- Goal is to provide health insurance to 45 million Americans who currently do not have insurance
- Many changes impact employers and employer-provided group health plans

Lactation Breaks

- Effective now
- Employers must provide “reasonable breaks” for nursing mothers
- Provide a private location; not a bathroom
- Law does not specify number or length of breaks
- Employers with fewer than 50 employees may be exempt if “undue hardship” due to significant difficulty or expense in complying with the law
- July, 2010: DOL issued Fact Sheet
 - Applies only to non-exempt employees
 - Temporary space is okay so long as available when needed
- Employers may need to review/revise written break policies

Health Plan Reforms

- Six Months After Enactment (September 23, 2010, meaning Plan year 1/1/11):
 - Eliminates lifetime insurance caps
 - “Restricted” annual caps will be permitted through 2014; cannot cap certain essential benefits
 - Expands coverage to dependants
 - Eliminates cost-sharing for certain adult preventive services, immunizations and preventive care & screenings for infants, children and adolescents
 - Prohibits plan rescissions
 - Prohibits preexisting condition exclusion for children under the age of 19
- Effective in 2014:
 - Eliminates all annual insurance caps
 - Prohibits discrimination based on health status
 - Prohibits preexisting condition exclusion for all ages

“Grandfathered” Plan

- Some of the above requirements will not apply to plans in effect as of March 23, 2010 (“grandfathered plans”)
- Changes that apply to all plans:
 - lifetime limits on coverage (2011)
 - prohibition of plan rescissions based on sickness (2011)
 - extension of parents’ coverage to young adults under 26
 - no coverage exclusions for children with pre-existing conditions (2011)
 - no “restricted” annual limits (2014)
- June 2010 “Interim Final” regulations: details how “grandfathered” status can be lost
 - significantly cut or reduce benefits
 - raise co-insurance charges
 - significantly raises co-pays (increases must be limited to greater of \$5 or medical inflation plus 15%)
 - significantly raise deductibles
 - significantly lower employer contributions
 - change in carrier

Nondiscrimination

- Effective September 23, 2010
- Cannot discriminate in favor of higher compensated employees
- Means cannot offer certain benefits only to highly-paid executives

W-2 Reporting

- Effective 2011
- Employers must report cost of providing benefits on W-2 form
 - Health
 - Dental
 - Vision
 - HSA and HRA
 - Do not have to include employee salary reduction contributions to FSAs

Health Care Flexible Spending Accounts

- Effective 2013
- Limits amount that can be set aside to \$2500 annually
- Cannot use funds for OTC drugs, unless prescribed by a doctor (effective 2011)
- May require plan amendment

Medicare Payroll Tax Increases

- Effective 2013
- Tax rate increases to 2.35% for high-income earners (individuals earning more than \$200,000; families earning more than \$250,000)
- New 3.8% tax on unearned income, effective 2018

Individual Mandate

- Effective 2013
- Similar to what already exists in Massachusetts
- Expectation that individuals who can afford health insurance have it
- If an individual earns more than the federal poverty level and insurance will not cost more than 8% of monthly income, then individual can afford health insurance
- Fine of \$695 per family member (\$2085 maximum) or 2.5% of household income, whichever is greater
- Full fine does not kick in until 2016; increases gradually from 2013 until 2016

Individual Mandate (Continued)

- Low income individuals may be eligible for premium assistance in the form of a tax credit
- Ineligible for credit if able to participate in employer plan, which provides minimum essential coverage
 - Plan pays at least 60% of health care costs
 - Required employee contribution does not exceed 9.5% of income
- Employers are prohibited from terminating an employee for obtaining tax credit

Reporting Requirements

- Effective 2013
- File annual return with IRS
 - Employer name, address and TIN
 - Portion of premium paid by employer
- Beginning in 2014, employer will have to provide annual written statement to employees regarding information reported on return
- Beginning in 2014, employers with at least 50 employees will also have to
 - Certify whether it offers minimum essential coverage
 - Describe the essential terms of the group health plan
 - Number and coverage status of all full-time employees
- Beginning in 2015, employers with at least 50 employees will have to provide annual written statement to employees about this additional return

Excessive Waiting Periods

- Effective January 1, 2014
- Group health plans may not have a waiting period longer than 90 days

Employer Mandate

- Effective 2014
- Covers employers with 50 or more employees (full-time or part-time)
- Pay a fine of \$2000 per full-time employee if employer does not offer health insurance and at least one full-time employee is eligible for premium tax credit
- Full-time is defined as 30 hours per week
- Fine is pro-rated for part-time employees
- Excludes first 30 employees from calculation
- Excludes seasonal employees
- No penalty on employers with fewer than 50 employees

Employer Mandate (Continued)

- If employer offers minimum level of health insurance coverage but employees are eligible for premium tax credit, also pay a fine
- \$3000 for each employee who receives the tax credit with the first 30 excluded
- Remember cannot discriminate based upon receipt of tax credit

Tax Credits for Small Employers

- Employers with fewer than 25 employees may be eligible for a tax credit for offering health insurance
- Eligibility depends on annual average wages (less than \$50,000) and amount of employer contributions (at least 50%)
- Amount of credit is based upon a sliding scale based upon size of workforce
- For 2010 through 2013, the credit is capped at 35% of the cost of the plan
- Beginning in 2014, maximum credit is capped at 50% of the cost of the plan

“Cadillac Plan” Tax

- Effective 2018
- 40% excise tax on amount over threshold
 - \$10,200 annually for individual coverage
 - \$27,500 annually for family coverage

What about MA Health Care Reform?

- Already have an exchange, the Connector
- Some rules about eligibility for insurance through the Connector will have to change
- Insurance options will have to change
- Rules for premium assistance for low income individuals will have to be synthesized
- Likely does not affect Fair Share Contribution (unless preempted)
- Employers who do not offer health insurance could pay both the FSC and the federal \$2000 fine

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