

# FILED

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION

LG SOURCING, INC. and  
LOWE'S HOME CENTERS, INC.,

Plaintiffs,

v.

WORLD KITCHEN (GHC), LLC and  
PAO SHIN GARDEN TOOLS, CO., LTD.,

Defendant.

CIVIL ACTION NO.:

5:04CV85-H

Jury Trial Demanded

**COMPLAINT FOR DECLARATORY RELIEF**

Plaintiffs LG SOURCING, INC. (hereinafter referred to as "LG"), and LOWE'S HOME CENTERS, INC. (hereinafter referred to as "LHC") (LG and LHC are referenced together herein as "Plaintiffs") for their Complaint against Defendants WORLD KITCHEN (GHC), LLC (hereinafter referred to as "World Kitchen") and PAO SHIN GARDEN TOOLS, CO., LTD. (hereinafter referred to as "Pao Shin"), allege as follows:

1. This is an action for Declaratory Judgment and other relief brought under the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201-02.

2. Plaintiff LG is a corporation organized and existing under the laws of the State of North Carolina, having a principal place of business at 1605 Curtis Bridge Road, Wilkesboro, North Carolina 28697, and is doing business in this State and District.

3. Plaintiff LHC is a corporation organized and existing under the laws of the State of North Carolina, having offices at 1605 Curtis Bridge Road, Wilkesboro, North Carolina 28697, and is doing business in this State and District. LHC owns and operates

retail home improvement warehouses known as “Lowe’s Home Improvement” warehouses.

4. Upon information and belief, Defendant World Kitchen is a corporation organized and existing under the laws of the State of Illinois, having a principal place of business at 77 West Wacker Drive, Suite 3500, Chicago, Illinois 60601-1676.

5. On information and belief, World Kitchen is in the business of manufacturing and selling kitchen housewares and other household products; is the successor in interest to World Kitchen (GHC), Inc. as a result of a merger effected on or about January 30, 2003; and is a subsidiary of parent company World Kitchen, Inc. of Reston, Virginia, which is a subsidiary of ultimate parent company WKI Holding Company, Inc. of Reston, Virginia.

6. Defendant World Kitchen may be served with a Summons and this Complaint through its registered agent, CT Corporation System, located at 111 Eighth Avenue, New York, New York 10011.

7. Upon information and belief, Defendant Pao Shin is a corporation organized and existing under the laws of Taiwan with a places of business located at 10, Lane 188, Kung Yeh Rd., C, Lungching Hsiang, Taiwan, 43442, and at No. 8, Industrial Rd., Chungho Tsun, Lungching Hsiang, Taichung Hsien, Taiwan. Upon information and belief, Pao Shin is in the business of developing, designing, and selling garden tools, including shears, pruners, and other hand tools.

8. This Court has jurisdiction over the subject matter of this action on the following grounds:

- (a) 28 U.S.C. §§ 1331, this being a civil action arising under the laws of the United States;
- (b) 28 U.S.C. § 1337(a), this being a civil action arising under an Act of Congress regulating commerce and protecting trade and commerce;
- (c) 28 U.S.C. § 1338(a), this being a civil action arising under an Act of Congress relating to alleged patent rights;
- (d) 28 U.S.C. § 1332, this being a civil action between citizens of different states in which the amount in controversy exceeds seventy-five thousand dollars (\$75,000.00) exclusive of interest and costs.

9. This Court may declare the rights and other legal relations of the parties in this case under 28 U.S.C. § 2201, and Rule 57, Fed.R.Civ.P., because an actual and justiciable controversy exists concerning the rights of, and legal relations between, Plaintiffs and Defendant World Kitchen.

10. This Court has personal jurisdiction over Defendant World Kitchen consistent with the principles underlying the U.S. Constitution and N.C. Gen. Stat. § 1-75.4 because, among other things, any injury caused to Plaintiffs occurred in the State of North Carolina as a result of World Kitchen's actions within the State of North Carolina and this District, and because World Kitchen sent a cease and desist demand letter to this State and District threatening Plaintiff LG with possible litigation and thus creating in LG and LHC a reasonable apprehension of suit by World Kitchen. Additionally, upon information and belief, World Kitchen is doing business in this State and District.

11. This Court has personal jurisdiction over Defendant Pao Shin consistent with the principles underlying the U.S. Constitution and N.C. Gen. Stat. § 1-75.4

because, among other things, Pao Shin's actions occurred in this State and District. Additionally, Pao Shin, on information and belief, is doing business in this State and District. Further, Pao Shin has entered into a Master Standard Buying Agreement with Plaintiffs wherein it agreed to submit to the jurisdiction of the courts of this State. The terms of the relationship between Plaintiffs and Pao Shin are set forth in the Master Standard Buying Agreement, which is attached hereto as Exhibit 1.

12. Venue is proper in this Court under the provisions of 28 U.S.C. § 1391 and/or § 1400 because, among other things, this is an action arising out of allegations for patent infringement and because Plaintiffs are in this District and a substantial part of the events giving rise to Plaintiffs' claims occurred in this District, and on information and belief, Defendants are subject to personal jurisdiction in this District.

13. On or about September 30, 2003 (and again by follow-up on or about November 3, 2003), counsel for Defendant World Kitchen sent a letter to LG's corporate offices in North Wilkesboro, North Carolina, alleging that Defendant World Kitchen is the owner of U.S. Patent No. Re 37,190, entitled "Universal Handle for Hand-Held Implement," which was reissued on May 29, 2001 ("the '190 patent"). A copy of the '190 patent is attached hereto as Exhibit 2.

14. The letter attached at Exhibit 2 alleges that LG has infringed on World Kitchen's alleged patent rights by virtue of a certain products allegedly manufactured and sold by Plaintiff LG ("the accused products"). World Kitchen's letter includes, *inter alia*, a demand that LG immediately discontinue manufacturing and selling the accused products, immediately recall all such products from LG's channels of distribution, and

provide a “full accounting” of any and all such sales of the accused products to World Kitchen. *See* Exhibit 2.

15. Defendant World Kitchen has alleged that it is the owner of whatever rights, if any, may exist in the ‘190 patent.

16. On information and belief, the accused products do not infringe any valid and enforceable patent rights of World Kitchen.

17. There is an actual, substantial, and justiciable controversy between Plaintiffs and Defendant World Kitchen of sufficient immediacy and reality to warrant the rendering of a declaratory judgment by this Court. Defendant World Kitchen has made a clear threat against Plaintiff LG sufficient to create in Plaintiffs a reasonable apprehension of suit by World Kitchen concerning its alleged patent rights. Plaintiffs are entitled to a judgment declaring their rights as requested herein.

### **COUNT I**

#### **DECLARATORY JUDGMENT REGARDING ALLEGATIONS OF PATENT INFRINGEMENT**

18. Plaintiffs incorporate by reference paragraphs 1 through 17 above as if set forth fully herein.

19. There is an actual, substantial, and justiciable controversy between Plaintiffs and Defendant World Kitchen concerning World Kitchen’s allegations that Plaintiff LG has infringed the ‘190 patent, and by implication that Plaintiff LHC, as LG’s primary channel of distribution for the accused product, also has infringed the ‘190 patent.

20. These allegations place a cloud over Plaintiffs’ business activities and will cause uncertainty among customers, prospective customers, suppliers, and others in the

marketplace, likely leading Plaintiffs and/or their related companies to lose sales and business opportunities.

21. On information and belief, the accused products do not infringe the '190 patent, as alleged by World Kitchen.

22. Plaintiffs are entitled to a judgment declaring that any and all making, using, selling, offering for sale, or importing into the United States of the accused products by Plaintiffs, or either of them, is and has been lawful, and otherwise declaring that Plaintiffs have not infringed whatever rights, if any, that Defendant World Kitchen may hold in the '190 patent.

23. As a direct and proximate result of World Kitchen's allegations of patent infringement against products made, used, sold, offered for sale, and/or imported into the United States by or for Plaintiffs, Plaintiffs are suffering irreparable injury to their reputation and goodwill in an amount that cannot presently be ascertained and cannot be compensated adequately by monetary relief alone.

## **COUNT II**

### **DECLARATORY JUDGMENT REGARDING PATENT INVALIDITY**

24. Plaintiffs incorporate by reference paragraphs 1 through 23 above as if set forth fully herein.

25. There is an actual, substantial, and justiciable controversy between Plaintiffs and Defendant World Kitchen concerning World Kitchen's allegations that Plaintiff LG has infringed the '190 patent, and by implication that Plaintiff LHC, as LG's primary channel of distribution for the accused product, also has infringed the '190 patent.

26. These allegations place a cloud over Plaintiffs' business activities and will cause uncertainty among customers, prospective customers, suppliers, and others in the marketplace, likely leading Plaintiffs and/or their related companies to lose sales and business opportunities.

27. On information and belief, Defendant World Kitchen's broad assertion, construction, and/or interpretation of the '190 patent renders one or more of its claims invalid in view of the prior art and/or for failure to comply with the provisions of one or more sections of the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

28. On information and belief, Plaintiffs are entitled to a judgment declaring that one or more of the claims of the '190 patent are invalid for failure to comply with the provisions of one or more sections of the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

29. As a direct and proximate result of World Kitchen's allegations of patent infringement against Plaintiffs, Plaintiffs are suffering irreparable injury to their reputation and goodwill in an amount that cannot presently be ascertained and cannot be compensated adequately by monetary relief alone.

### **COUNT III**

#### **IN THE ALTERNATIVE, FOR INDEMNIFICATION FROM DEFENDANT PAO SHIN**

30. Plaintiffs incorporate by reference paragraphs 1 through 29 above as if set out fully herein.

31. On information and belief, Pao Shin has supplied the accused products to Plaintiffs.

32. In the event that Plaintiffs or any of them are found liable for violating World Kitchen's alleged patent rights under 35 U.S.C. § 1 *et seq.*, pursuant to a Master Standard Buying Agreement between Pao Shin and Plaintiff LG and its related companies, Pao Shin agreed to "hold [Plaintiffs] harmless from and against any and all liability and/or losses and/or damages, whether compensatory or punitive, which may be assessed against" Plaintiffs or their affiliates. Exhibit 1, Art. V(7), p. 15.

33. Pao Shin's obligation to indemnify and hold harmless Plaintiffs includes court costs, expenses and attorney's fees and specifically applies to any alleged claims of patent infringement.

34. Additionally, Plaintiffs are entitled to an indemnification from Pao Shin for all expenses and costs, including attorneys' fees, that are incurred by Plaintiffs as a result of their defense against the allegations made by World Kitchen.

WHEREFORE, Plaintiffs LG Sourcing, Inc. and Lowe's Home Centers, Inc. pray that this Court enter judgment:

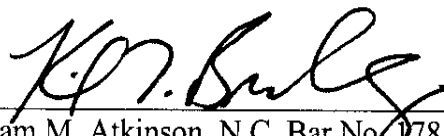
- (a) Declaring that Plaintiffs, and including specifically the accused products made, used, imported, sold and/or offered for sale by Plaintiffs, or either of them, or their related companies, have not infringed any purported patent rights of World Kitchen in the '190 patent, or otherwise violated any provision of the patent laws of the United States;
- (b) Declaring that the '190 patent is invalid pursuant to the patent laws of the United States;



- (c) Permanently enjoining World Kitchen, its successors, assigns, and others from asserting the '190 patent against Plaintiffs with respect to the accused products made, used, imported, sold and/or offered for sale by Plaintiffs, or either of them, or their related companies;
- (d) Finding in favor of Plaintiffs and declaring this case to be exceptional pursuant to 35 U.S.C. § 285;
- (e) Awarding Plaintiffs their attorneys' fees and other costs and expenses;
- (f) Awarding interest to Plaintiffs to the extent permitted by law;
- (g) In the alternative, awarding to Plaintiffs indemnification from Pao Shin of all damages and expenses, including attorneys' fees, awarded to World Kitchen as a result of any claim alleged by World Kitchen;
- (h) That the Court award to Plaintiffs indemnification from Pao Shin of all costs and expenses, including attorneys' fees, incurred by Plaintiffs as a result of their defense against the allegations made by World Kitchen; and
- (i) Awarding to Plaintiffs such further relief as the Court deems just and proper.

**PLAINTIFFS HEREBY DEMAND A TRIAL BY JURY ON ALL ISSUES SO TRIABLE.**

This 28<sup>th</sup> day of June, 2004.

  
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ATTORNEYS FOR LG SOURCING, INC. and  
LOWE'S HOME CENTERS, INC.

EXH. 1

## LGS MASTER STANDARD BUYING AGREEMENT

This Master Standard Buying Agreement by and between L G Sourcing, Inc. (hereinafter referred to as "LGS") a North Carolina corporation with its principal place of business at North Wilkesboro, North Carolina 28659, having a mailing address of P. O. Box 1535, a wholly-owned subsidiary of LOWE'S COMPANIES, INC. and the undersigned corporation and/or partnership, including such other wholly-owned subsidiaries, its parent, all associated trading companies and manufacturer's associates (hereinafter referred to as "Vendor"), by and through its authorized agent is hereby entered into this 17 day of September, 1997.

### WITNESSETH:

WHEREAS, LGS is in the business of procuring products on behalf of certain other entities who sell the products at retail; and

WHEREAS, the undersigned Vendor is a manufacturer of products and desires to sell products to LGS for eventual sale to LGS' customers, who will sell the goods at retail in the United States and Canada; and

WHEREAS, every LGS Purchase Order, whether written, verbal or electronically communicated by LGS to said Vendor is subject to all terms and conditions contained herein, and shall apply to all purchases made by LGS.

NOW, THEREFORE, in consideration of the terms and conditions stated herein and for good and valuable consideration receipt of which is hereby acknowledged by said Vendor, the parties agree to the following:

ARTICLE I.            **ACCEPTANCE**

(1) Every LGS Purchase Order, whether written, verbal or electronically communicated to Vendor is subject to all of the terms and conditions contained in this Agreement, the terms and conditions contained herein shall apply to all purchases by LGS from Vendor. There can be no changes or alterations to the LGS Purchase Order unless consented to in writing by an authorized representative of LGS.

(2) In case of any conflict, this Agreement supersedes all previous or simultaneous agreements between the parties. Further, this Agreement supersedes any future agreements between the parties unless said future agreements are executed by an officer of LGS.

(3) This Agreement establishes the minimum standards between LGS and the Vendor.

(4) Any LGS Purchase Order is void unless given by an authorized representative of LGS.

ARTICLE II.           **EDI & BARCODING**

(1) Electronic Data Interchange "EDI" may be a requirement for all vendors with more than 100 LGS Purchase Orders or invoices per year. LGS, at its sole option, may require Vendor to receive LGS Purchase Orders, submit its requests for payment, and other documents via EDI.

(2) LGS requires all vendors to have a scannable Universal Product Code "UPC" label affixed to products sold to LGS according to the Uniform Code Council's specifications. A scannable UPC label shall be affixed to each unit of each product sold by Vendor to LGS.

(3) All standard shipping containers (master cartons, bundles, pallets, inner packs, etc.) containing fixed multiples of the same item must have an Interleaved 2 of 5 (UPC Shipping Container Code) code placed on the packaging according to the Uniform Code Council's specifications. LGS, at its sole option, may require Vendor to provide to LGS samples of the Interleaved 2 of 5 code and UPC labels for approval prior to their application to the containers and products. The model number of the products and unit count contained within each level of packaging must be printed on each level of packaging in human readable form.

(4) In the event Vendor: (1.) fails to apply an acceptable scannable UPC label or acceptable, scannable Interleaved 2 of 5 codes, (2.) labels products with incorrect UPC bar codes or Interleaved 2 of 5 codes, (3.) provides LGS with inaccurate UPC or Interleaved 2 of 5 information, (4.) applies poor quality, nonscannable UPC label or Interleaved 2 of 5 codes, (5.) substitutes products without prior written notification of the new UPC Codes or Interleaved 2 of 5 codes and/or (6.) otherwise fails to meet Lowe's requirements for coding and labelling, Vendor shall pay LGS a penalty for each such Violation in the amount of One Thousand U.S. Dollars (US\$1,000.00) per each Violation. The payment of said penalty is in addition to any other damages or remedies that may be incurred as defined herein or otherwise allowable by law. For the purpose of this Article II, a "Violation" shall be defined as each shipping container which is not properly coded as required herein and each, individual unit of product that is not labeled as required herein.

### **ARTICLE III. DELIVERY AND PRICING**

(1) LGS preferred terms of sale are FOB Port with the Vendor providing all the ex-port license, ex-port taxes and all fees. The Vendor shall deliver the products "On Board" the ship and provide a Clean Bill of Lading without any stipulations. LGS further requires Vendor to provide three (3) additional pricing levels, in which said pricing levels must be submitted on an LGS International Vendor Offer Sheet, which is attached hereto and incorporated herein by reference as if fully set forth herein as Exhibit 1, as follows:

FOB Consolidation Center  
Ex Works  
CIF-Indicate Port of Call

Vendor is required to provide pricing that adequately reflects and passes on to LGS the savings Vendor incurs due to reduced administrative, labor, transportation, packaging costs and any other cost savings Vendor incurs due to the economies of scale provided by LGS Purchase Orders. LGS shall have the right to select any of the pricing option(s) described above as its terms of sale during the term of this Agreement, and LGS reserves the right, at its option, to change from one pricing option to another, without limitation, if the LGS business so requires.

(2) Regarding CIF orders, no liability is incurred by LGS and the risk of loss shall not pass to LGS until legal title passes upon delivery of the products to LGS final destination(s), in good condition and accepted by LGS.

(3) Vendor must advise LGS immediately if any products cannot be shipped or picked up in time to be received by the date(s) specified on the individual LGS Purchase Order. Products must not be shipped to arrive prior to the specified date unless consented to by an authorized representative of LGS. FOB Consolidation Center shipments must have ship date. CIF shipments must have an arrival date. If products are shipped or arrive on days other than those specified they are subject to penalty. Vendor warrants, covenants and agrees to ship all Purchase Orders timely and complete.

(4) A detailed packing slip, including item number, the LGS Purchase Order number, LGS' customers store number, model number, quantity and shipper's name must accompany each shipment of products.

(5) All cartoning must be capable of withstanding the normal rigors of international transportation and physical distribution process as outlined in LGS Loading, Shipping Cargo Requirement Program, which is attached hereto and incorporated herein by reference as fully set forth herein as Exhibit 2. Vendor shall adhere to all requirements as set forth in the LGS Loading, Shipping Cargo Requirement Program. All master cartons must protect inner packs and individual sales units which will be displayed on US/Canadian retailer sales floors. Products that have concealed damage that originated with the Vendor or while Vendor had the risk of loss which is discovered upon receipt of the products by LGS or LGS' customer will be destroyed by LGS or LGS' customer without prior approval from Vendor. Vendor shall reimburse LGS for the cost of the damaged products, the pro rata cost of the transportation charges for said products and any other amounts lost by LGS or LGS' customer (including lost profits) occasioned by the concealed damage.

(6) Multiple orders on the same ocean container must be segregated. Identical items on each LGS Purchase Order must be grouped together.

(7) All transportation costs or expenses incurred by LGS because of Vendor's noncompliance with the terms of an order, and any additional transportation or administrative charges due to split shipments, failure to follow LGS routing instructions, errors in classification of products, or for any other reason, shall be charged back to Vendor.

(8) Vendor is responsible, at its cost, for insuring the products to the FOB point for full replacement value, including freight, and Vendor shall file all claims for loss or damage. All uncollectible portions of concealed damage claims will be charged back to Vendor. Risk of loss shall not shift from the Vendor to LGS until the Vendor and/or its agent has delivered the products to the appropriate LGS and/or LGS' customers location.



(9) No backorders will be accepted.

(10) Accumulation of orders to fill a container unless specified by LGS is not allowed. Vendors/Carriers must adhere to the specified ship dates and arrival date per the designated routings.

(11) Each unit of each product as well as all product packaging must be marked with the Country of Origin either stamped, printed or forged in a size and location which complies with the United States Custom Regulations, Canadian Custom Regulations and any applicable United States or Canadian law, rule, regulation or administrative requirements. Products which have been determined to be out of compliance either by LGS or any appropriate governmental authority will be either: (1) returned to Vendor, at Vendor's expense, in which case Vendor shall reimburse LGS for all costs associated with said products, a pro rata share of transportation charges, lost profits and any additional damages which may be applicable or (2) LGS or its customers may choose to properly mark any product out of compliance; in such case, Vendor shall reimburse LGS for all costs associated with said marking, any costs of any applicable transportation charges, lost profits and any additional damages which may be applicable.

(12) Vendor shall place specific markings on the product(s) in order to identify the manufacturing month and year, as described in LGS' Product Identification and Traceability

Program, which is attached hereto and incorporated herein by reference as fully set forth herein as Exhibit 3.

#### ARTICLE IV. INVOICING/BILLING REQUIREMENTS

(1) All invoice and/or credit memorandum transactions regarding products purchased for resale should be mailed or electronically transmitted promptly and accurately to the specified address or Third Party Value Added Network mailbox, to which the Vendor acknowledges LGS has provided to Vendor information and specifics. All billing related transactions that cannot be processed due to their failure to comply with LGS billing requirements may be returned for re-billing or held for correction without the loss of applicable discounts. LGS shall not pay interest, service charges or any similar penalty, nor shall LGS lose any applicable discount caused by the late payment of invoices in which payment was delayed due to reasons beyond LGS' control. Vendors may be subject to an administrative processing charge for non-compliance.

(2) All invoices, credit memoranda, bills of lading, related documents and other correspondence must reference the applicable LGS Purchase Order Number or Assigned Control Number (Example: RMR #) and the specific LGS' customer store number(s) to which the transactions apply. In addition, Vendor must provide LGS item numbers on invoices and packing slips as well as list line items in the same sequence as ordered. In lieu of requiring proof of

shipment on all invoices, LGS reserves the right to request proof of shipment or proof of delivery for selected transactions at a later date.

(3) In respect to products purchased through the LGS open account order process, LGS pays from invoice only pursuant to LGS Import Procedures For Open Account, which is attached hereto and incorporated herein by reference as set forth herein as Exhibit 4. Vendor acknowledges that LGS is not obligated to pay any invoice until the full LGS Purchase Order of the products ordered are received pursuant to the delivery terms agreed upon between the parties. Vendor shall submit one invoice per LGS Purchase Order (shipment) and one LGS Purchase Order per invoice with no backorders being allowed by LGS. Invoicing should be initiated on the day of shipment (not before) and reference the correct F.O.B. terms as well as the freight payment responsibility (collect or prepaid). LGS reserves the right to charge back to the Vendor any shortages between products received and products invoiced. Vendor acknowledges that vendor must comply with all of the requirements as set forth in the LGS Import Procedures For Open Account to receive payments for products purchased by LGS.

(4) In respect to products purchased by LGS from Vendor which are to be paid by a Letter of Credit, Vendor shall follow all requirements as set forth in the LGS Letter of Credit and any other LGS documents associated with said purchase. Vendor acknowledges that LGS is not obligated to pay any invoice until the full order of the products ordered are received pursuant to the delivery terms agreed upon between the parties.

(5) Payment will be made in accordance with the terms mutually agreed upon in writing between the parties. Any deviation from the negotiated payment terms must be communicated and agreed to in writing by LGS prior to accepting an order. Payment terms begin on the date of satisfactory receipt of all required documents which comply with the stipulations set forth in the open account policies of LGS. The average transit time for a specific Vendor will be added to invoice/shipment date to determine the day on which dating is to begin. On all Prox. (approximate date) and E.O.M. (end of the month) dating, products received after the 24th of any month shall be payable as if received on the 1st day of the following month. LGS interprets payment due date as the day the remittance is to be mailed.

(6) LGS policy will be to include unit pricing on all outgoing EDI LGS Purchase Orders. Vendor agrees to notify LGS of any price discrepancies prior to shipment/invoicing. Failure to communicate irregularities will result in a LGS deduction which will not be refunded. Vendor further agrees that if prior to shipment there is any reduction in Vendor's regular selling price for the products, Vendor shall notify LGS of the reduced selling price and the price specified on the LGS Purchase Order will be reduced to the lower price. LGS requires a minimum 60 days written notice for all price increases. A price increase cannot take effect until 30 days after LGS authorized representative agrees (by letter) to accept the proposed price increase. In addition, it is agreed that for price increases LGS Purchase Order date determines applicable price and on price decrease invoice/shipment date determines applicable price.

(7) If Vendor has a debit balance with LGS, the amount owed will be deducted from the next remittance or a check from the Vendor to clear this amount will be paid within thirty (30) days at the option of LGS. It is also agreed that LGS has the option to perform post audits and file claims for billing/payment errors on prior years business transactions. These audits will normally be completed within 24 months of the end of a calendar year.

(8) Vendor acknowledges that Vendor has provided LGS its best pricing and delivery terms in respect to the sale of its products to LGS. Vendor acknowledges that should the terms become more favorable after execution of this Agreement or any purchase order(s) made pursuant to this Agreement, then in that event, the terms of this Agreement or any purchase order(s) automatically shall change to the more favorable terms. LGS shall have the exclusive discretion in determining if the terms become more favorable after the execution of this Agreement or any purchase order(s) made pursuant to this Agreement.

(9) Vendor acknowledges that at LGS' sole discretion, LGS and its agents, have the authority to enter upon Vendor's premises for the purpose of inspecting its manufacturing facilities, the procedures used by Vendor in manufacturing applicable products, its work place, etc. to assure compliance with Vendor's obligations under this Agreement or any pertinent laws, orders or decrees applicable to LGS and LGS' customers.

ARTICLE V.            **WARRANTIES & GUARANTEES**

(1) Vendor agrees that LGS shall not be liable for the inspection of products before resale and that all warranties set out herein or otherwise (whether expressed or implied) shall survive inspection, acceptance and payment by LGS and LGS customers.

(2) Approval by LGS of Vendor's product design or materials used in products shall not relieve Vendor from any obligations under any warranties, representations or guarantees. Products delivered (whether paid for or not) are subject to inspection, testing and approval by LGS before acceptance. Vendor acknowledges its obligations under the warranties, guarantees and representations of this Agreement are not relieved even if LGS or LGS' customer approves or accepts the products or if the designs or the specifications of the products purchased by LGS originated with LGS. Vendor warrants that all products will be of good quality, material and workmanship, merchantable and free from any and all defects. Vendor shall comply and adhere to the procedures as set forth under the LGS Quality Acceptance Program, which is attached hereto as Exhibit 5 and incorporated herein by reference as fully as set forth.

(3) Vendor, by entering into this Agreement and accepting any LGS Purchase Order, warrants, represents and guarantees that all applicable laws, ordinances, codes, rules, regulations and provisions of the Country of Origin of any product, any country in which a component part of

any product is manufactured, Canada, the United States of America, each U.S. state and each locality where products are sold has been fully complied with as it relates in any way to the manufacture, packaging, shipment, sale and use of all products. Further, Vendor warrants, represents and guarantees that all applicable industry, trade, safety and other regulations have been fully met with respect to the manufacture, packaging, shipment, sale and use of all products. Vendor also warrants, represents and guarantees that the price and other terms and conditions of sale, the terms on which all promotional and advertising matter are furnished by Vendor to LGS and all guarantees, warranties, labels and instructions furnished in connection with any product comply with all applicable laws, ordinances, codes, rules and regulations.

(4) Vendor, by entering into this Agreement and accepting any LGS Purchase Order, warrants, represents and guarantees its products and that all products comply with any and all applicable LGS specifications.

(5) Vendor represents, warrants and guarantees that the weights, measures, signs, legends, words, particulars or descriptions (if any) stamped, printed or otherwise attached to the products or containers are true and correct and comply with all applicable laws, ordinances, codes, rules and regulations; and that the products delivered pursuant to this Agreement or any LGS Purchase Order, as well as all activities by or on behalf of Vendor in designing, manufacturing, packing, shipping and otherwise handling any product under this Agreement, fully conform and comply with all laws and regulations of the United States, Canada and the country of origin of all

products (and components thereof) pertaining to the environment, public safety and health and the transportation of hazardous materials, including, without limitation, all applicable provisions of the United States Consumer Product Safety Act; the Magnuson-Moss Warranty-Federal Trade Commission Improvement Act; the Consumer Products Safety Act; the Wool Products Labeling Act; the Food, Drug and Cosmetics Act; the Hazardous Materials Transportation Act; the Solid Waste Disposal Act, including the Resource Conservation and Recovery Act; the Comprehensive Environmental Response, Compensation, and Liability Act; the Federal Insecticide Fungicide, and Rodenticide Act (FIFRA); the Toxic Substances Control Act (TSCA); the Marine Mammal Protection Act; the Endangered Species Act; the Forest and Rangeland Renewable Resources Planning Act of 1974; the Federal Water Pollution Control Act; the Clean Air Act; the Noise Control Act; the National Environmental Policy Act; the Safe Drinking Water Act; the Emergency Planning and Community Right-to-Know Act; the Pollution Prevention Act of 1990; the Atomic Energy Act; and all other similar international, federal, regional, state, or local statutes, rules, regulations, guidance, memoranda, decisions, and other interpretations by any agency implementing those requirements; and all applicable standards of the Underwriters Laboratories, Inc.; the American Society for Testing Materials (ASTM); the National Fire Protection Association (NFPA); American National Standards Institute (ANSI); the International Standards Organization (ISO); and other similar standards organizations; and any and all amendments, modifications and updates of all of the foregoing (collectively, the statutes, rules, regulations, guidance, memoranda, decisions, interpretations, and standards referred to in this sentence are hereafter referred to as "Standards"). Vendor further agrees that the weights, measures, signs, legends, words, particulars



or descriptions (if any) stamped, printed or otherwise attached to the products or containers or referring to the products delivered pursuant to this Agreement are complete, true and correct and comply with all Standards. Vendor shall provide LGS with a guaranty form executed by an officer of Vendor, if prescribed by Standards, along with Vendor's invoice (before payment is required to be made and without loss of discount). Upon request Vendor shall provide Lowe's with any information necessary to facilitate Lowe's disposal or return to Vendor of any merchandise which is defective, off-specification, mislabeled or which otherwise fails to conform to any LGS Purchase Order.

(6) Vendor warrants and represents that if the importation of products into the United States or Canada or the sale of the products in the United States or Canada is enjoined or otherwise stopped for any reason, then in that event, Vendor shall, at LGS' option and at Vendor's expense, either remove the reason for said injunction or stoppage, or alternatively, substitute other products approved in writing by LGS that are not subject to the injunction or stoppage. If such event occurs (injunction or stoppage of the products), then Vendor shall pay LGS all damages and expenses incurred by LGS and/or LGS' customers due to said injunction or stoppage, which shall include, but is not limited to the following: lost profits, attorney fees and expenses incurred along with any associated expenses (such as testing fees, engineering consultant fees, etc.) that LGS and/or LGS' customers may expend or incur to insure compliance. LGS at its exclusive option, may back charge or set off any funds due to Vendor in respect to its damages or expenses to overcome any injunction or stoppage of importation of the products.

(7) With acknowledgment that the terms and conditions of this paragraph have been expressly bargained for and are an essential part of this Agreement and all LGS Purchase Orders, and in consideration of any and all purchases heretofore, herein and hereafter made by LGS from Vendor or from affiliates or subsidiaries of Vendor, and by accepting this Agreement or any LGS Purchase Order, Vendor agrees to defend and shall indemnify LGS, its employees, its officers, its directors, its agents, its parent, its subsidiaries, its affiliates, its customers and the successors and assigns of any of the foregoing (hereinafter "Indemnitees") and shall hold them harmless from and against any and all liability and/or losses and/or damages, whether compensatory or punitive, which may be assessed against any of them. Vendor's obligation to indemnify and hold harmless Indemnitees shall include, but not be limited to, any and all claims, lawsuits, appeals, actions, assessments, product recalls, decrees, judgments, orders, investigations, civil penalties or demands of any kind, including court costs, expenses and attorney's fees, which may be made or brought against Indemnitees arising out of: (1) any allegation of or actual misrepresentation or breach of warranty; (2) any alleged bodily injury or property damage related to the possession or use of any product; (3) any alleged infringement of any patent, design, trade name, trademark, copyright or trade secret; (4) any alleged violation by Vendor or any law, ordinance, code, rule, or regulation; (5) any alleged or threatened discharge, release or escape of pollutants or other environmental impairment; (6) any breach or violation by Vendor of any terms or conditions of this Agreement or any LGS Purchase Order; or (7) any other allegation arising directly or indirectly from any product originating from Vendor. Vendor shall pay all judgments against and assume the defense of

Indemnitees upon Indemnitees' demand with respect to any such matters, even if any such allegation of liability is groundless, false or fraudulent. Notwithstanding the above, Indemnitees shall have the right but not the obligation to participate as they deem necessary in the handling, adjustment, defense or settlement of any such matters. Further, for the term of this Agreement and hereafter, Vendor releases Indemnitees from any claim based on Vendor's patent, copyright, trademark, trade dress or other intellectual property rights. LGS, at its sole discretion, shall have the right to purchase from other sources those products manufactured or offered by Vendor free of any patent, copyright, trademark, trade dress or other intellectual property rights of Vendor.

Should Vendor fail to assume its obligations hereunder, to diligently pursue and pay for the defense of Indemnitees within ten (10) days from the written demand by Indemnitees, Vendor hereby agrees that Indemnitees shall have the right, but not the obligation, to proceed on their own behalf to defend themselves by way of engaging their own legal counsel and the services of any and all other experts or professionals they deem necessary to prepare and present a proper defense, and to thereafter require from Vendor reimbursement and indemnification for all costs and expenses incurred in such defense and for any and all penalties, judgments, fines, interest or other expenses incurred as a result of such claim, lawsuit, appeal, action, assessment, civil penalty, product recall, decree judgments, orders or demands as more fully set forth above. Vendor warrants, represents and agrees that Indemnitees shall have the exclusive right, at their sole option, to settle or otherwise proceed to resolution of any dispute at their discretion. Vendor warrants, represents and agrees that it will reimburse Indemnitees for all payments, costs and expenses paid by or for Indemnitees in

respect to said settlement. Indemnitees, at their sole option, may charge back or set off any monies due by Vendor to LGS in respect to the settlement of any claims under this Agreement.

(8) Vendor warrants Vendor is a corporation and/or partnership duly organized, validly existing, and in good standing under the laws of the country of origin of the products; said Vendor has the requisite corporate power and/or authority and the legal right to enter into this Agreement, and to conduct its business as now conducted and hereafter contemplated to be conducted; and is in compliance with its Articles of Incorporation and Bylaws or its Partnership Agreement. Vendor warrants the execution, delivery and performance of this Agreement and all instruments and documents to be delivered by Vendor are within the Vendor's corporate power and/or partnership agreement have been duly authorized by all necessary or proper action, including the consent of shareholders if required; do not and will not contravene any provisions of the Vendor's Articles of Incorporation or Bylaws and/or Partnership Agreement. Vendor warrants this Agreement has been duly executed and delivered by Vendor, and constitutes the legal, valid, and binding obligation of the Vendor and enforceable against the Vendor in accordance with its terms.

(9) Vendor warrants and acknowledges that Vendor and its officers, directors, employees and agents have received a copy of LGS and/or its parent corporation's Code of Ethics and Statement of Business Ethics. Vendor warrants along with its officers, directors, employees and agents hereby warrant, covenant and agree to perform in strict compliance with the LGS and/or

its parent corporation's Code of Ethics, Statement of Business Ethics, and all applicable laws, rules, regulations, orders, codes, and governmental orders.

(10) Vendor warrants that the performance of this Agreement along with any addenda to said Agreement and LGS purchase order(s), is personal to Vendor. Vendor warrants, represents and guarantees that no other entity will manufacture the products or otherwise perform any obligations under this Agreement without the express written approval of a representative of LGS. Vendor further warrants, represents and guarantees that Vendor has not and shall not prior to, during the term of, and/or any time subsequent to the execution of this Agreement or any LGS purchase order(s) has made or will make any payment to any outside parties, representatives, agents, without prior written approval and notification from LGS.

(11) Vendor warrants, represents and guarantees that all communications between the parties concerning this Agreement, any LGS purchase order(s) or the products manufactured pursuant thereto shall be made in English. Vendor acknowledges and warrants that it has completely read this Agreement prior to execution of the Agreement and that Vendor understands and accepts each of the terms contained herein.

(12) Vendor shall indemnify LGS against and hold LGS harmless from any and all lawsuits, claims, actions, damages (including reasonable attorney fees, obligations, liabilities and

liens) arising or imposed in connection with LGS for amounts due and owing under this Agreement where Vendor has not complied with the notice requirements of this section.

(13) Vendor, by entering into this Agreement and by accepting any LGS Purchase Order, warrants, represents and guarantees that all labor used by the Vendor and/or its vendors or suppliers is furnished by employees with a minimum age of no less than 16 years. Vendor acknowledges LGS policy of purchasing products from vendors who do not use child labor in the production of goods.

(14) Vendor, by entering into this Agreement and by accepting any LGS Purchase Order, warrants, represents and guarantees that all labor in producing the goods by the Vendor and/or its vendors or suppliers is not furnished, manufactured, produced, or distributed, wholly or in part by convicts or prisoners, except convicts or prisoners on parole, supervised release, or probation, or in any penal or reformatory institution.

(15) Vendor warrants, covenants and agrees to ship each item on each LGS Purchase Order complete and on the shipment date as set out in the LGS Purchase Order.

(16) Vendor warrants, covenants, acknowledges and agrees that LGS is in the business of procuring products on behalf of certain other entities who sell the products at retail in the United States and Canada, and in the event Vendor fails to comply with any of the terms and conditions of

this Agreement, or the LGS Purchase Orders, then in that event, such failure to perform will result in damage not only to LGS but to LGS' customers. Vendor acknowledges that LGS will be liable to LGS' customers for its failure to perform, and therefore, Vendor warrants, represents and guarantees that Vendor shall indemnify LGS and LGS' customers and hold LGS and LGS' customers harmless for any damages arising or imposed in connection with LGS and/or LGS' customers where Vendor has not complied or failed to perform under the LGS Master Standard Buying Agreement, the LGS Purchase Order and any associated documents provided to Vendor by LGS.

#### ARTICLE VI. PRODUCTS RETURNS

(1) Notice of defects in the products or any other breach by Vendor under the terms of this Agreement and the individual LGS Purchase Order will be considered made within reasonable time, if made within a reasonable time after being discovered by LGS or after notification is given to LGS by LGS' customers or the users of the products. The return of such products shall not relieve Vendor from liability from any failure to ship conforming products under the LGS Purchase Order or for liability with respect to warranties, expressed or implied. Failure of LGS to state a particular defect upon rejection shall not preclude LGS from relying on unstated defects to justify rejection or establish breach. Resale, repackaging, repacking or cutting up for the purpose of resale or for use shall not be considered as acceptance of the products so as to bar LGS right to reject such products or to revoke acceptance.

(2) Vendor agrees that in the absence of a negotiated and signed Defective Products Return Policy, LGS will adhere to the following general guidelines. Specifically, defective products (item) will be destroyed by the retailer, LGS, and/or LGS's parent without obtaining Vendor return authorization. Vendor further agrees to reimburse LGS and its parent for the products (item) at Purchased Ordered delivered cost, including all freight charges.

#### ARTICLE VII. CANCELLATIONS & RETURNS

(1) LGS reserves the right to refuse or return any products comprising a portion of LGS Purchase Order that is not shipped complete, as ordered and in accordance with the terms in this Agreement and in compliance with all details, including requested ship and arrival dates, as outlined in the LGS Purchase Order.

*196*  
*45*  
(2) LGS reserves the right to cancel in whole or in part any Purchase Order up to ~~thirty~~ *Forty-five* *45* (30) days prior to the shipment of products on the Purchase Order without incurring any liability. *9/17*

#### ARTICLE VIII. MISCELLANEOUS

(1) Both parties acknowledge that this LGS' Master Standard Buying Agreement forms the agreement between the parties and controls the manufacture, sale and delivery of products.



Performance of any LGS Purchase Order must be in accordance with all of the terms and conditions stated herein. There can be no changes or modifications to the Standard Master Buying Agreement, unless in writing and signed by an officer of LGS. In absence of any agreements signed by Vendor, this Agreement represents the entire agreement of the parties.

(2) All costs, lost profits and expenses incurred by LGS or LGS' customers due to Vendor's violations of or failure to follow any or all of the terms of this Agreement will be charged back to Vendor and Vendor expressly agrees to reimburse LGS or LGS' customers for all such costs, loss profits and expenses. Vendor further agrees that LGS or LGS' customers may deduct such costs, loss profits and expenses from any sum thereafter owing to Vendor by LGS or LGS' customers under any Orders between LGS or LGS' customers and Vendor.

(3) Any and all taxes, fees, imports or stamps required by State, Federal or Municipal Governments in the exporting of products/products to LGS shall be paid and assumed by Vendor.

(4) No provisions of this Agreement shall be waived or shall be construed to be waived by LGS unless such waiver is in writing and signed by an authorized agent of LGS. No failure on the part of LGS to exercise any of the rights and remedies granted hereunder or to insist upon strict compliance by Vendor shall constitute a waiver of LGS right to demand exact compliance with the terms hereof. The Vendor hereby waives use of the statute of frauds as a defense to any Order accepted pursuant to this Agreement.

(5) The rights, remedies and options provided herein are in addition to and not to the exclusion of any and all other rights and remedies provided by law.

(6) LGS shall not be bound by any assignment of any LGS Purchase Order by Vendor, unless LGS has consented prior thereto in writing. LGS may assign any LGS Purchase Order to a present or future subsidiary, affiliate, or parent.

(7) Should LGS use the services of an attorney to enforce any of its rights hereunder, or to collect any amounts due, Vendor shall pay LGS for all costs and expenses incurred, including reasonable attorney's fees.

(8) This Agreement shall be construed and enforced in accordance with the laws of the State of North Carolina, USA. The parties agree that the courts within the State of North Carolina will have exclusive jurisdiction with venue being in Wilkes County, State of North Carolina, USA. Vendor in executing this Agreement, hereby submits itself to the jurisdiction of the federal and state courts of the State of North Carolina, USA.

(9) Vendor agrees to furnish, when returning this completed Agreement, a complete set of current financial statements. Publicly held companies should include the Annual Report to

Shareholders and 10K Report (or any international equivalent document). If financial statements are not available, a Dun & Bradstreet report should be furnished.

(10) The Vendor shall provide LGS written notice of an assignment, factoring or other transfer of its right to receive payments arising under this Agreement 30 days prior to such assignment, factoring or other transfer taking legal effect. Such written notice shall include the name and address of assignee/transferee, date assignment is to begin, and terms of the assignment and shall be considered delivered upon receipt of such written notice by LGS' Trade Payable Department. Vendor shall be allowed to have only one assignment, factoring or transfer legally effective at any one point in time. No multiple assignments, factoring or transfers by the Vendor shall be permitted. LGS reserves the right to require any and all documentation in reference to the legal effect of the assignment, factoring or other transfer as determined needed by LGS Corporate Counsel prior to accepting the assignment, factoring or other transfer by LGS.

(11) Vendor, by and through its representative, further covenants and agrees not to communicate during the term of this Agreement, or at any time subsequently, any such information relating to the secrets, business methods, business secrets, including trade secrets, business information, or the manner in which LGS conducts its business to any person, corporation or entity. Vendor acknowledges and agrees that Vendor has and will receive confidential information including, but not limited to: Proprietary packaging, proprietary product(s) and/or product design(s), LGS business and confidential data which includes quotations, sales volume, pricing, etc.

and that money damages will not adequately compensate LGS for any disclosure of any information in violation of this agreement. Any right of equitable enforcement granted to LGS shall not be deemed to preclude LGS from seeking actual money damages or any other remedy from Vendor and/or its agents in the event of a breach of such covenant.

Confidential information does not include information that is generally known by the public or, which becomes known to Vendor through no breach of the Agreement or other unauthorized use of LGS' confidential information.

(12) At any time during the term of this Agreement and for a period of five (5) years after the final payment of any invoice under this Agreement, LGS, or its designated agent, shall have the right to examine and audit up to five (5) years of the Vendor's records in respect to any and all matters occurring within the five (5) year period prior to the request and relating to LGS payments to Vendor under this Agreement, including, but not limited to, payments for any orders, invoices, and Vendor's compliance with LGS business ethics policies and LGS Code of Ethics. Vendor shall maintain complete and accurate records to substantiate Vendor's charges, pursuant to this Agreement. By execution of this Agreement by Vendor, LGS shall have access to such records for the purpose of audit during normal business hours upon reasonable notice to Vendor.

(13) The initial term of this Agreement is for one (1) year commencing on the date first written above and shall automatically renew on a year-to-year basis thereafter, unless terminated by written notice by either party not later than sixty (60) days prior to the end of the then current term.

(14) Any dispute, controversy or claim arising out of or relating to this Agreement, any Purchase Orders between the parties, or the breach, termination or invalidity thereof may at the sole discretion of LGS be finally settled under the Rules of the American Arbitration Association by one or more arbitrators appointed in accordance with said Rules. The place of arbitration shall be Charlotte, North Carolina, USA and the law applicable to arbitration procedures shall be laws of the state of North Carolina, USA. The English Language shall be used throughout the arbitral proceedings. The parties agree that the award of the arbitrator(s) shall be the sole and exclusive remedy between them regarding any claims, counterclaims, issues or accountings presented or pled to the arbitrator(s); that it shall be made and shall promptly be payable in U.S. dollars free of any tax, deduction or offset; that any costs and attorneys fees incurred by the prevailing party as determined by the arbitrator(s) incident to the arbitration, shall be included as part of the arbitration award; and that any costs, fees or taxes incident to enforcing the award shall, to the maximum extent permitted by law, be charged against the party resisting such enforcement. The award shall include interest from the date of any damages incurred for breach or other violation of the contract, and from the date of the award until paid in full, at a rate to fixed by the arbitrator(s), but in no event less than the prime interest rate for First Union National Bank in Charlotte, North Carolina, U.S.A.

(15) The representations, warranties, indemnification, obligations and guarantees contained in this Agreement shall survive for the maximum period permitted by the applicable statutes of limitations, if any, except that the warranties and guarantees in Article V of this Agreement shall survive twenty (20) years from the last date of any purchase pursuant to this Agreement by LGS from the Vendor.

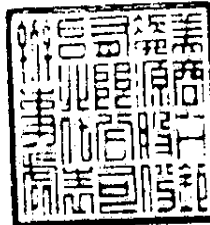
IN WITNESS WHEREOF, LGS and the undersigned Vendor have hereunto set their hands as of the date of this Agreement.

ATTEST:

L G SOURCING, INC.

BY: Mark A. Karpf

TITLE: President



Company Chop/Seal

Received and accepted:

ATTEST: (VENDOR)

Pao Shin Garden Tools Co., LTD  
Name of Company

BY: Michael Lin  
(Signature Line)

Michael Lin  
(Print Signature in English)

President  
(Full Title of Executing Officer)



Company Chop/Seal

EXH. 2





US00RE37190E

(19) **United States**  
 (12) **Reissued Patent**  
**Stowell et al.**

(10) **Patent Number:** **US RE37,190 E**  
 (45) **Date of Reissued Patent:** **\*May 29, 2001**

(54) **UNIVERSAL HANDLE FOR HAND-HELD IMPLEMENT**

(56) **References Cited**

(75) **Inventors:** **Davin Stowell**, New York, NY (US);  
**Michael Callahan**, Dunwoody, GA (US)

(73) **Assignee:** **General Housewares Corp.**, Elmira, NY (US)

(\*) **Notice:** This patent issued on a continued prosecution application filed under 37 CFR 1.53(d), and is subject to the twenty year patent term provisions of 35 U.S.C. 154(a)(2).

(21) **Appl. No.:** **07/985,918**

(22) **Filed:** **Dec. 4, 1992**

#### **Related U.S. Patent Documents**

Reissue of:

(64) **Patent No.:** **Re. 34,194**  
**Issued:** **Mar. 16, 1993**  
**Appl. No.:** **07/710,466**  
**Filed:** **Jun. 5, 1991**

Which Is a Reissue of:

(64) **Patent No.:** **4,974,286**  
**Issued:** **Dec. 4, 1990**  
**Appl. No.:** **07/498,729**  
**Filed:** **Mar. 26, 1990**

U.S. Applications:

(63) Continuation of application No. 07/710,466, filed on Jun. 5, 1991, now Pat. No. Re. 34,194.

(51) **Int. Cl.<sup>7</sup>** ..... **B25G 1/00**

(52) **U.S. Cl.** ..... **16/422; 16/110.1; 16/431; 16/DIG. 12; 16/430; 74/551.9; D8/303; 81/489; 81/177.1; 473/549**

(58) **Field of Search** ..... **16/110 R, 110 A, 16/111 R, 111 A, 114 R, 116 R, 118, DIG. 12, DIG. 19, 110.1, 421, 422, 430; 74/551.9; 273/75, 81 B, 81 C, 81 D, 81 R, 73 J; 81/177.1, 177.85, 489; 15/143 R, 145, 176.1, 176.6, 143.1, 167.1; D4/104, 138; D7/395; D8/303, 313, 315, 322, DIG. 6, DIG. 8**

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*Primary Examiner*—Anthony Knight

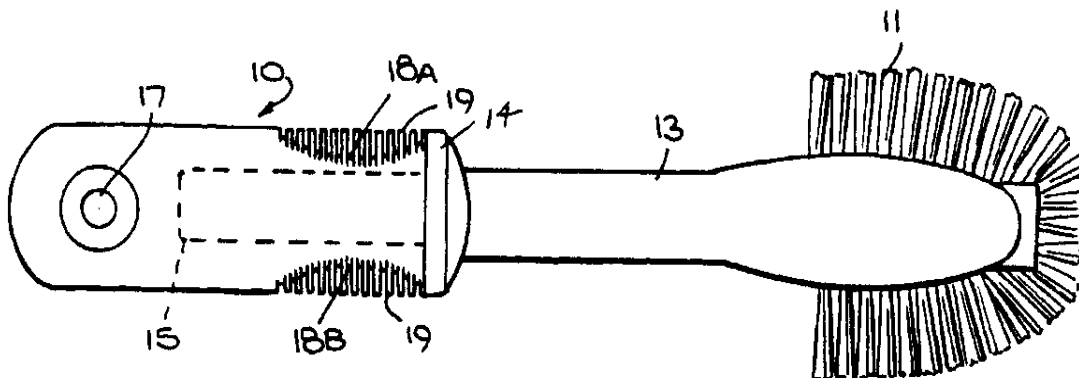
*Assistant Examiner*—Donald M. Gurley

(74) *Attorney, Agent, or Firm*—Seyfarth Shaw

(57) **ABSTRACT**

A universal handle for household and other hand-held implements, the handle being adapted to ergonomically render the implement to which it is applied useable by individuals who have difficulty in firmly grasping a conventional handle. The universal handle, which is fabricated of elastomeric material having good thermal insulation and cushioning properties, includes an internal cavity to socket the core shank of the implement. The handle has an elliptical cross section, the opposing sides of the handle adjacent its upper end each having a concave depression, in each of which an array of spaced, flexible fins is anchored to define a depressible grip site. When the fingers of a user's hand are clenched about the handle, the internal region of the resultant fist conforms to the form of the handle to provide a good grip thereon, the thumb and forefinger pressing into the grip sites to enhance the user's grip on the handle.

**12 Claims, 2 Drawing Sheets**



# US RE37,190 E

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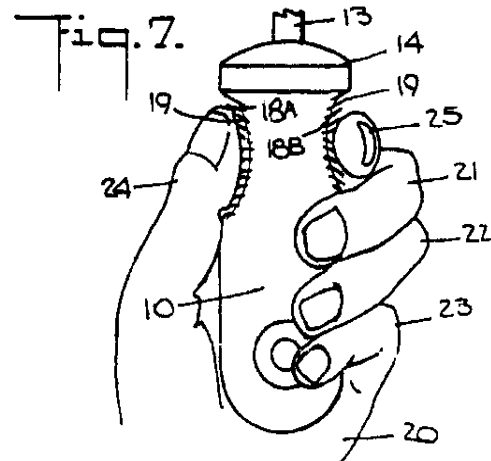
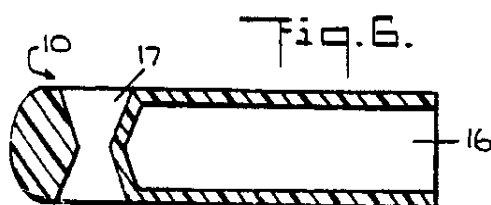
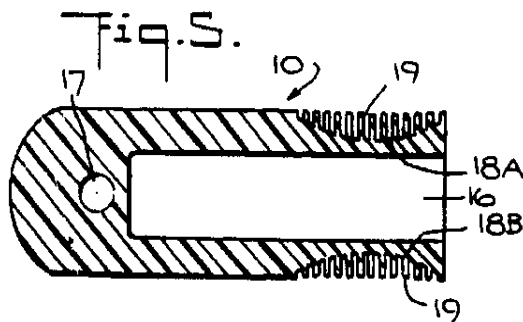
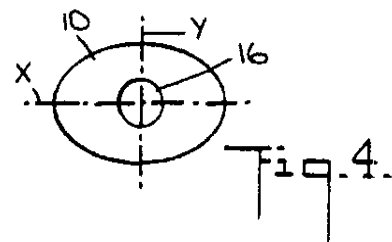
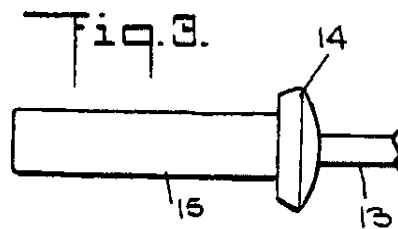
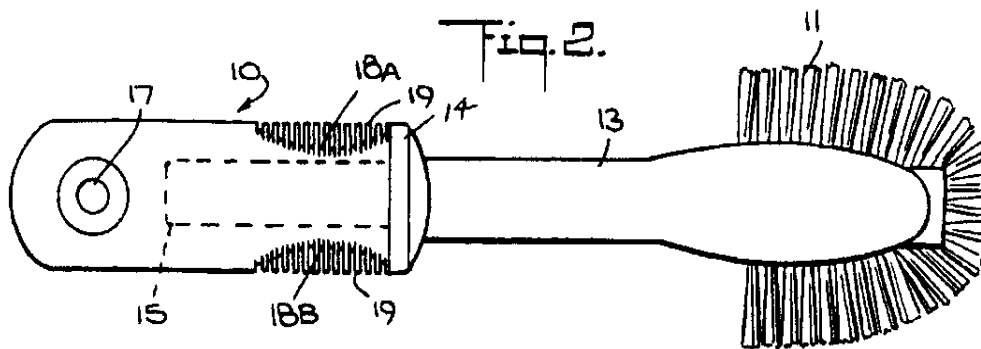
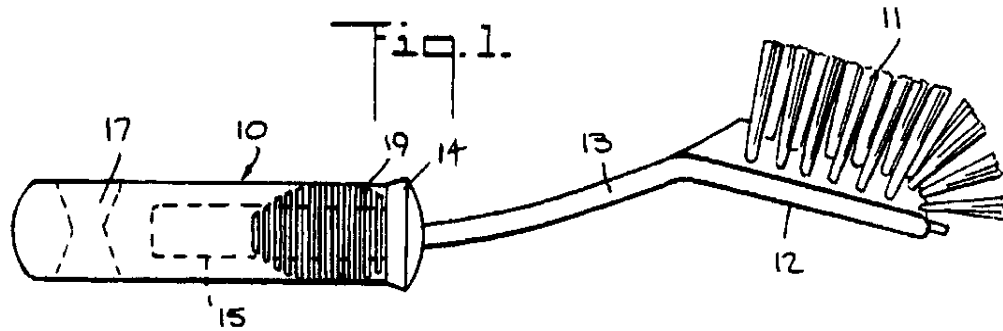
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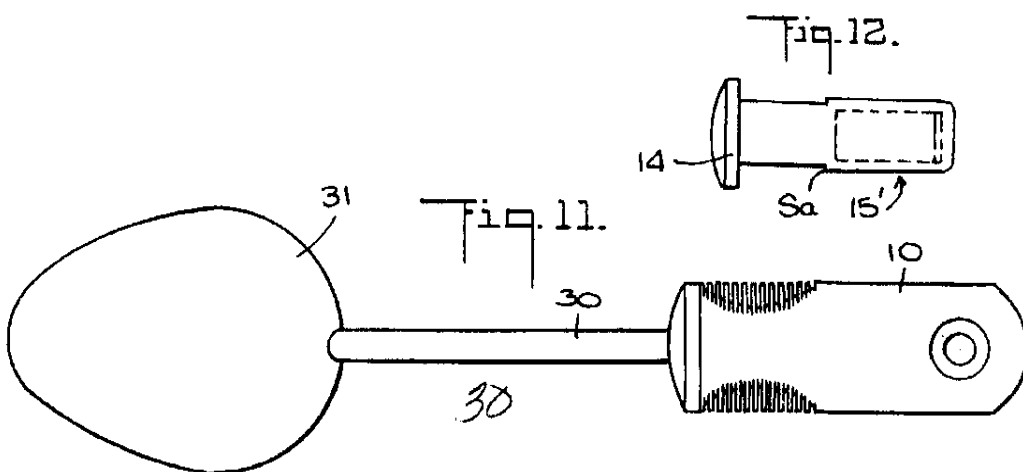
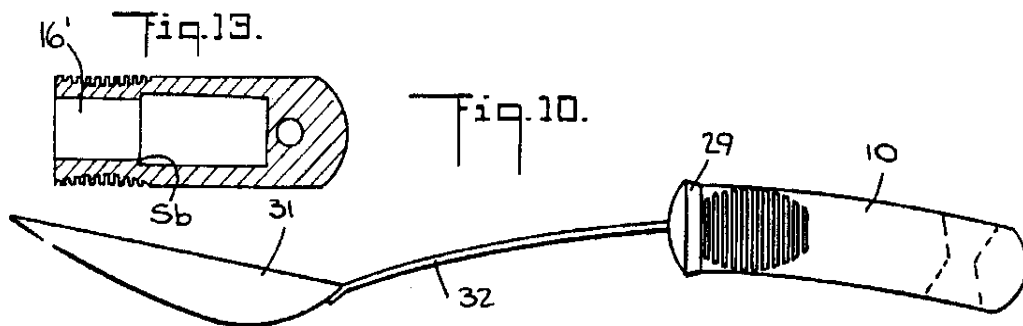
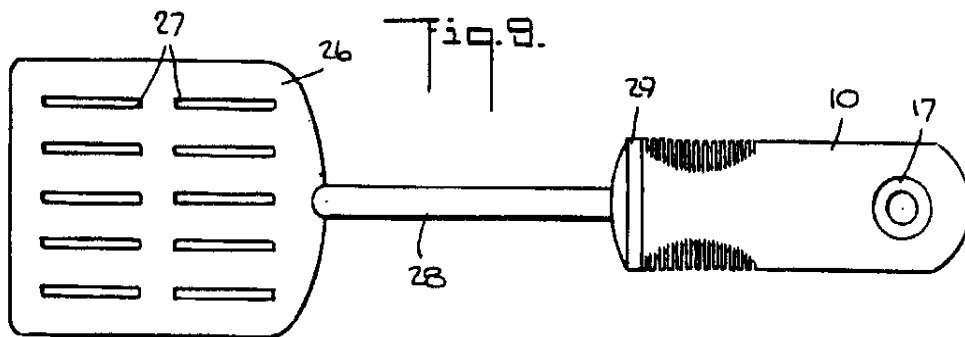
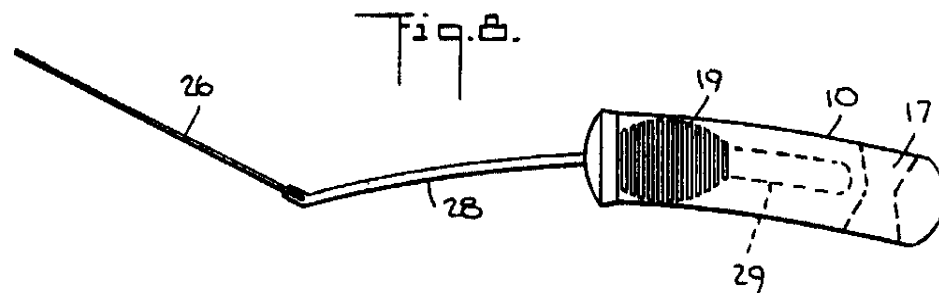
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## UNIVERSAL HANDLE FOR HAND-HELD IMPLEMENT

Matter enclosed in heavy brackets [ ] appears in the original patent but forms no part of the first and this reissue specification; matter printed in italics indicates the additions made by the first reissue. Matter enclosed in double heavy brackets [ ] appears in the first reissue patent but forms no part of this reissue specification; matter printed in bold face indicates the additions made by this reissue.

This application is a reissue of, and a continuation of, application Ser. No. 07/710,466, filed Jun. 5, 1991, now U.S. Pat. No. Re. 34,194, which is a reissue of U.S. Pat. No. 4,974,286.

### BACKGROUND OF INVENTION

#### 1. Field of Invention:

This invention relates generally to household and other hand-held implements which to be used effectively must be securely grasped by the user, and more particularly to a universal handle applicable to such implements to ergonomically render them usable by individuals who, because of physical or other disabilities have difficulty in firmly grasping a conventional implement handle.

#### 2. Status of Prior Art:

Human factors engineering or ergonomics is an applied science that deals with the interaction between machines or tools and their users, taking into the account the capabilities or limitations of these individuals. It seeks to insure that the nature of the tool or machine is such that is effectively matched to the physical and cognitive abilities of the user to manipulate it.

Human factors engineering comes into play in the design of cockpits, control handles, seats and other objects which must be accommodated by the size, strength and shape of the user. Thus in designing the handle for a tea kettle, the designer must bear in mind that when the kettle is put to use, it will contain boiling water, and it is important, therefore, that the configuration of the handle and the material of which it is made be such as not only to afford a firm grip, but that it also thermally insulate the hand of the user from the kettle.

While typical household implements such as ladles, potato peelers, bottle openers and cheese knives have handles of metal, plastic or wood, little attention has heretofore been paid to human factors engineering; for whether in flat or round form, or in any other configuration, these handles are normally not difficult to grasp when the user is reasonably strong and his hands are free of impairment. Hence in the past, far greater attention has been paid to the ornamental or aesthetic features of handle design than to its ergonomic aspects.

But in the modern world in which senior citizens represent a substantial portion of the adult population, one is faced with many users of household or other hand-held implements who are advanced in years or physically weak, or who suffer from an arthritic or other condition that makes the simple act of clenching the fingers to form a tight fist difficult and painful. And should the user who has difficulty in forming a fist grasp an implement handle but fail to grip it securely, then the implement can slip from his hand, and in some cases this may have serious consequences.

### SUMMARY OF INVENTION

In view of the foregoing, the main object of this invention is to provide a universal handle that is ergonomically adapted to render hand-held implements usable by individuals who are incapable of firmly grasping a conventional handle.

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A significant feature of a handle in accordance with the invention is that it is relatively stocky, so that a user who has difficulty in making a tight fist can make enough of a fist in clenching the handle with his fingers to firmly engage the handle. Also an advantage of the handle, which is fabricated of elastomeric material, is that it has both cushioning and thermal insulation properties, thereby minimizing any pain that may be experienced in grasping the handle and at the same time thermally isolating the hand of the user from the implement.

More particularly, an object of this invention is to provide a universal handle having an elliptical cross section to create a stocky handle form that conforms to the internal region of the user's fist when the fingers of the hand are clenched about the handle, whereby the handle can be securely gripped.

Also an object of the invention is to provide an elastomeric handle of the above type having depressible grip sites that are engaged by the thumb and forefinger of the user's hand to enhance the gripping action.

Still another object of the invention is to provide a universal handle that may be mass produced at relatively low cost.

Briefly stated, these objects are attained in a universal handle for household and other hand-held implements, the handle being adapted to ergonomically render the implement to which it is applied usable by individuals who have difficulty in firmly grasping a conventional handle. The universal handle, which is fabricated of elastomeric material having good thermal insulation and cushioning properties, includes an internal cavity to socket the core shank of the implement. The handle has an elliptical cross section, the opposing sides of the handle adjacent its upper end each having a concave depression, in each of which an array of spaced, flexible fins is anchored to define a depressible grip site. When the fingers of a user's hand are clenched about the handle, the internal region of the resultant fist conforms to the form of the handle to provide a good grip thereon, the thumb and forefinger pressing into the grip sites to enhance the user's grip on the handle.

### BRIEF DESCRIPTION OF DRAWINGS

For a better understanding of the invention, reference is made to the following detailed description to be read in conjunction with the accompanying drawings, wherein:

FIG. 1 is a side view of an implement serving as a pot brush, the implement including a universal handle in accordance with the invention;

FIG. 2 is a bottom view of this implement;

FIG. 3 separately shows the core shank of the implement which is socketed in the universal handle;

FIG. 4 is an end view of the handle which has an elliptical cross section having a long and a short axis;

FIG. 5 is a longitudinal section taken through the long axis of the handle;

FIG. 6 is a longitudinal section taken through the short arc of the handle;

FIG. 7 illustrates how the handle is grasped by a user;

FIG. 8 is a side view of a spatula provided with a universal handle in accordance with the invention;

FIG. 9 is a top view of the spatula;

FIG. 10 is a side view of a spoon provided with a universal handle according to the invention;

FIG. 11 is a top view of the spoon;

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FIG. 12 shows a modified core shank in accordance with the invention for an implement; and

FIG. 13 shows a modified handle in accordance with the invention which complements the core shank shown in FIG. 12.

#### DESCRIPTION OF INVENTION

A universal handle in accordance with the invention is applicable to any hand-held tool or implement that includes a core shank that can be socketed in the handle. Hence though the universal handle will, by way of example, be illustrated as applied to a pot brush, a spatula and a spoon, it is to be understood that the handle is by no means limited to these implements but may be applied to various hand-held tools and implements such as hammers and screwdrivers, garden tools, such as spades, and various kinds of handled household implement such as bottle openers, kitchen knives, potato peelers and cheese knives.

Referring now to FIGS. 1 and 2, shown therein is a pot brush provided with a universal handle in accordance with the invention, generally identified by reference numeral 10. This implement includes an arcuate array of bristle clusters 11 formed of nylon filaments or similar material, the clusters being anchored in a synthetic plastic base 12 having an extension arm 13. Arm 13, as best seen in FIG. 3, is joined to the enlarged head 14 of a core shank 15, the shank being securely socketed in handle 10.

As best seen in FIG. 4, handle 10, which is formed of elastomeric material such as neoprene or synthetic rubber, has an elliptical cross section, the ellipse having a long axis X and a short axis Y that intersects axis X at the center line of the handle. The handle is stocky, and its dimensions are related to those of the typical adult handle, so that when the handle is clenched by the fingers of the hand, the resultant fist has an internal region that conforms to the contours of the handle.

The nature of jointed fingers are such that when one makes a tight fist, there is then no internal region or open space, but when the fist embraces a stocky handle, the internal region has a generally elliptical cross section that conforms to the form of the handle.

Handle 10 is provided with an internal cavity 16 that extends longitudinally along the center line of the handle. The dimensions of this cavity substantially match those of extension arm 13 inserted therein, so as to securely socket the shank in the cavity. When so socketed, the enlarged head 14 of the shank, which has an elliptical cross section, matches that of the handle. Head 14 abuts the flat end of the handle and is bonded thereto by a suitable epoxy or other bonding agent.

Adjacent the lower end of the handle is an opening 17 whose geometric form, as best seen in FIG. 6, is that of a pair of truncated cones. This opening makes it possible to suspend the handle from a hook, or to grasp the handle between the thumb and forefinger which enter the opposing truncated cones, so that the user can, if necessary, pull on the handle or otherwise manipulate it. It is sometimes useful to be able to so grip the handle of an implement, rather than to clench the body of the handle.

Formed in opposing sides of handle 10 adjacent its upper end are concave depressions 18A and 18B, whose outlines are best seen in FIGS. 2 and 5. The periphery of these concave depressions are elliptical in shape to generally conform to the tips of the thumb and forefinger.

Anchored in each concave depression is an array of equi-spaced fins 19. Because the handle is formed of elas-

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tomeric material, fins 19 are highly flexible. The array of fins forms a grip site whereby when the fins are pressed in by the forefinger and thumb of a user's hand, this action enhances the user's grip on the handle.

When, therefore, as shown in FIG. 7, a user grasps handle 10 with the fingers of his hand 20, the handle is then nested within the palm of the hand. Fingers 21, 22 and 23 are then clenched about the handle to form an open fist whose internal cavity matches the elliptical form of the handle. The forefinger 24 is pressed into the grip site on one side of the handle, while the thumb 25 is pressed in the grip site on the opposing side to enhance the user's grip on the handle.

Hence even if the user is incapable or has difficulty in making a tight fist, he nevertheless gains a good grip on the universal handle which is further enhanced by the grip sites.

FIGS. 8 and 9 show an implement in the form of a spatula having a flat blade 26 provided with an array of slots 27, the blade being cantilevered from an extension arm 28 terminating in the head 29 of a core shank 30 that is socketed in a universal handle 10 in accordance with the invention. In this instance, core shank 30 is somewhat curved, so that the handle, which is of elastomeric material, assumes a curvature conforming to that of the curved shank.

In the spoon 31 shown in FIGS. 10 and 11, the spoon is cantilevered from an arm 32 that terminates in the head of a core shank that is curved, as in the spatula shown in FIG. 8 so that again the handle is curved.

In one practical embodiment, the handle has a length of  $3\frac{3}{4}$  inches, a width of  $1\frac{1}{2}$  inches, and a thickness of  $\frac{1}{2}$  of an inch, so that it is relatively stocky.

The universal handle not only affords a good grip on the implement, but because it is of elastomeric material, it acts to cushion the hand of the user to minimize any pain that might be experienced in handling the implement. Such material, unlike hard plastic or metal, has non-slip characteristics, so that the fingers clenching the handle even when the grip is weak, do not slide on the surface of the handle.

And because the elastomeric material is a poor conductor of heat, the handle thermally isolates the hands of the user from the metal blade or other working component of the implement.

#### Modified Handle and Core Shank

In the arrangements shown in the previous figures, the core shank 15 of the implement is of uniform diameter, and the core shank is snugly socketed in the internal cavity of the elastomeric handle 10 which has a cylindrical cross section. Hence to insure that the handle cannot be pulled off the core shank, it may be necessary to bond the shank to the handle.

To avoid the need for a bonding agent, the core shank 15', as shown in FIG. 12, has a cylindrical upper section whose diameter is slightly smaller than the diameter of the lower section to define a shoulder or step  $S_a$  at the junction of these sections. And, as shown in FIG. 13, the cylindrical cavity 16' in handle 10 has a section whose diameter is slightly smaller than the diameter of the lower section to define a reverse step  $S_b$ .

Hence when the core shank 15 of the implement is forced into cavity 16' of the elastomeric handle 10, then the lower section of the core shank is nested within the lower section of the cavity, and the upper section of the core shank is nested within the upper section of the cavity. The step  $S_a$  and reverse step  $S_b$  are then in abutting relation and serve to resist withdrawal of the handle.



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## Advantages

The elliptical cross section of a handle in accordance with the invention enhances the user's ability to control lateral rotation of the handled implement. Thus with a knife having a conventional round handle, it is difficult to rotate the edge of the knife when it meets resistance in the material being cut. But with a handle in accordance with the invention, the handle will not slip in the hand of the user when resistance to cutting is encountered.

The length of the handle in accordance with the invention and the rounded shape of its end are such that the end fits in the palm of the user's hand and the user can therefore comfortably apply a force in the longitudinal direction of the implement. This is of advantage when, for example, the implement is a fruit corer and is being pushed through an apple, or when the implement is a cleaning brush and has to be pushed into the corner of a pan or recess. The large hole in the handle makes its end somewhat more flexible, thereby providing for shock absorption when the implement is used in this fashion.

The conical hole in the handle also has the advantage of making it easier for a user whose hands are shaky and whose eyesight is failing, to guide the handle onto a supporting hook.

While there has been shown and described a preferred embodiment of a universal handle for hand-held implements in accordance with the invention, it will be appreciated that many changes and modifications may be made therein, without, however, departing from the essential spirit thereof.

We claim:

1. A universal handle for a household or other hand-held implement provided with a core shank, said handle comprising:

- (a) a body formed of elastomeric material having an elliptical cross section, said body having an internal cavity to socket the shank *at a shank end of said body*;
- (b) a pair of concave depressions formed in the body at opposing sides thereof adjacent *[its upper end]* *said shank end*; and
- (c) an array of spaced flexible fins *[anchored]* disposed only in each depression to define a grip site, each of said fins having a proximal end anchored in the associated depression and a free distal end and having a thickness substantially less than the maximum distance between the proximal and distal ends, whereby when a user clenches the handle with the fingers of his hand, the internal region in the resultant fist conforms to the shape of the handle to provide a good grip, the grip sites being pressed in by the forefinger and the thumb of the hand to enhance the grip.

2. A handle as set forth in claim 1, wherein said body is formed of an elastomeric material that has cushioning and thermal *[insulator]* insulation properties.

3. A handle as set forth in claim 1, wherein each concave depression has an elliptical periphery whose long axis is parallel to the longitudinal axis of the handle.

4. A handle as set forth in claim 1, further including an opening formed in the body adjacent *[its lower]* *the end*

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opposite said shank end, said opening being defined by opposing truncated cones.

5. A universal handle for a household or other hand-held implement provided with a core shank, said handle comprising:

- (a) a body having an elliptical cross section, said body having an internal cavity to socket the shank *at a shank end of said body*;
- (b) a pair of concave depressions formed in the body at opposing sides thereof adjacent *[its upper]* *said shank end*; and
- (c) an array of spaced flexible fins *[anchored]* disposed only in each depression to define a grip site, each of said fins having a proximal end anchored in the associated depression and a free distal end and having a thickness substantially less than the maximum distance between the proximal and distal ends, whereby when a user clenches the handle with the fingers of his hand, the internal region in the resultant fist conforms to the shape of the handle to provide a good grip, the grip sites being pressed in by the forefinger and the thumb of the hand to enhance the grip.

6. A universal handle for a household or other hand-held implement, said handle comprising:

- (a) a body;
- (b) a pair of depressions formed in the body at opposing sides thereof adjacent one end thereof; and
- (c) an array of spaced flexible fins disposed only in each depression to define a grip site, each of said fins having a proximal end anchored in the associated depression and a free distal end and having a thickness substantially less than the maximum distance between the proximal and distal ends, whereby when a user clenches the handle with the fingers of his hand, the internal region in the resultant fist conforms to the shape of the handle to provide a good grip, the grip sites being pressed in by the forefinger and the thumb of the hand to enhance the grip.

7. The handle of claim 6, wherein said body has an elliptical cross section.

8. The handle of claim 6 for use with a hand-held implement provided with a core shank, said body having an internal cavity to receive the shank.

9. The handle of claim 6, wherein said depressions are concave.

10. The handle of claim 6, wherein said body includes a portion adjacent to said one end thereof configured for joinder thereof to a household or other hand-held implement.

11. The handle of claim 6, wherein said body is formed of an elastomeric material.

12. The handle of claim 6, wherein said body has an outer surface, the depressions being formed in the outer surface of said body, each of said fins being configured such that its free distal end extends substantially to said outer surface of said body.

\* \* \* \* \*

UNITED STATES PATENT AND TRADEMARK OFFICE  
**CERTIFICATE OF CORRECTION**

PATENT NO. : RE 37,190 P2  
DATED : May 29, 2001  
INVENTOR(S) : Stowell et al.

Page 1 of 1

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

Column 6,

Line 24 to 25, "6. A universal handle for a household or other hand-held implement, said handle comprising:" should be bolded text -- **6. A universal handle for a household or other hand-held implement, said handle comprising: --.**

Signed and Sealed this

Eleventh Day of December, 2001

Attest:

*Nicholas P. Godici*

Attesting Officer

NICHOLAS P. GODICI  
Acting Director of the United States Patent and Trademark Office