

13001 TRA



Tab settings

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To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

**Th. Goldschmidt AG,**  
currently by change of name **Goldschmidt AG**  
**Goldschmidtstrasse 100**  
**Essen, Germany**

- Individual(s)
- General Partnership
- Corporation-State
- Other Joint stock company of Germany
- Association
- Limited Partnership

Additional names(s) of conveying party(ies) attached?  Yes  No

3. Nature of conveyance:

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

Execution Date: December 20, 2000

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

Name: Elektro-Thermit GmbH & Co. KG

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

Street Address: D-45116

City: Essen, Germany State: \_\_\_\_\_ ZIP: \_\_\_\_\_

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State Germany
- Other

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designations must be a separate document from Assignment)  
Additional name(s) & address(es) attached?  Yes  No

4. Application number(s) or registration numbers(s):

A. Trademark Application No.(s)

02/08/2001 GTOM11 00000038 1904078  
01 FC:481 40.00 DP

B. Trademark Registration No.(s)

1,904,078

Additional numbers attached?  Yes  No

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

Name: Robert S. Stoll

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

Street Address: 6110 Empire State Building

City: New York State: N.Y. ZIP: 10118

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

**1**

7. Total fee (37 CFR 3.41):.....\$ \$40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Robert S. Stoll

Name of Person Signing

[Signature]

Signature

January 30, 2001

Date

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

**8**

## TRADEMARK ASSIGNMENT

WHEREAS, ~~J.H.~~ **GOLDSCHMIDT AG**, (hereinafter "Assignor"), a joint stock company having a principal place of business at Goldschmidtstrasse 100, D-45116 Essen, Germany, desires to enter into this Assignment, which Assignment assigns all rights to Assignee for the Assigned Mark as hereinbelow defined, and

WHEREAS, **ELEKTRO-THERMIT GMBH & CO. KG.**, (hereinafter "Assignee"), a corporation of Germany having a principal place of business at D-45116 Essen, Germany, desires to enter into this Assignment;

NOW, THEREFORE, Assignor and Assignee, in consideration of the mutual agreements herein contained and for other good and valuable consideration, acknowledged by each of them to be satisfactory and adequate, do hereby agree as follows:

### Section 1

#### ASSIGNMENT

**Assignment.** Assignor hereby irrevocably assigns to Assignee, and Assignee accepts, all right, title and interest in and to:  
the trademark THERMIT and all goodwill associated therewith, and U.S. Trademark Registration No. 1,904,078 therefor (said trademark, goodwill and registration hereinafter collectively referred to as the "Assigned Mark"), in and for the United States of America, its territories, possessions and Puerto Rico, together with all rights to take action and retain any recoveries with respect to any infringements of the rights herein assigned, past, present and future.

### Section 2

#### UNDERTAKINGS WITH RESPECT THE ASSIGNED MARK

**Assignor's Warranties.** Assignor warrants and represents to Assignee that:

- (A) Assignor has the full and unencumbered right, title, ownership and right to use the Assigned Mark and to make this assignment and transfer to Assignee all rights set forth and has not and will not enter into any agreement in conflict herewith;
- (B) Assignor has not done, and will not at any time after this Assignment do or cause to be done or omit to do anything, the doing, causing, or omitting of which would contest or in any way impair or tend to impair the rights of Assignee in the Assigned Mark;
- (C) Assignor will not at any time after this Assignment use the Assigned Mark in the United States of America, its territories, possessions and Puerto Rico; and

- (D) The Assigned Mark is good and valid in law, has been in substantially continuous and exclusive use by Assignor and its predecessors in interest in U.S. interstate commerce since at least as early as January 31, 1900 and in continuous and exclusive use by Assignor in U.S. interstate commerce for at least the five consecutive years subsequent to the date of registration, July 11, 1995, and for at least the five consecutive years next preceding the date hereof, and to the present day, on and in connection with *mixtures of metals and metal oxides for employment in the process of welding metals and welding*, the Assigned Mark is still in use in connection with such goods and services in U.S. interstate commerce, there has been no claim or final or non-final decision adverse to Assignor's ownership of such Assigned Mark for such goods and services, or its right to register the same or to keep the same on the U.S. Register, and that there has been and is no proceeding involving said rights in any U.S. or state Trademark Office or any successor thereof or in any U.S. or state Court whether or not finally disposed of, and Assignor will cooperate in providing specimens and proof of use and such other assistance as may be requested by Assignee, including any reasonably requested evidence, documents, declarations and testimony, in connection with maintaining, renewing, registering and defending, and prosecuting infringers of, the Assigned Mark.

### Section 3

#### RELATIONSHIP OF THE PARTIES

**Relationship.** This Assignment shall not be construed to make either party the agent or legal representative of the other, nor is any party granted any right or authority to assume or create any obligations for, on behalf of, or in the name of the other party.

### Section 4

#### MISCELLANEOUS

**4.1 Successors.** This Assignment shall bind and inure to the benefit of the successors, legal representatives and assigns of each of Assignor and Assignee and shall inure solely to the benefit of Assignee, its successors and assigns.

**4.2 Severability.** Should any part of this Assignment be finally declared invalid for any reason by a court of competent jurisdiction, such invalidation shall not affect the validity of the remaining portion hereof, which remaining portion shall continue in full force such as to give effect to the assignment herein.

**4.3 Applicable Law.** This Assignment shall be governed by and interpreted and construed in accordance with the laws (excluding choice of law rules) of the State of New York, U.S.A.

4.4 **Dispute Resolution/ choice of forum:** Any dispute arising under this Assignment which remains unresolved after thirty (30) days written notice to the other party specifying the unresolved matter shall be resolved solely in the State or Federal Courts situate in New York County, New York, U.S.A. and the parties hereby irrevocably submit to the exclusive jurisdiction thereof with service of process as set forth herein for notices.

4.5 **Notices.** Whenever notice is required to be given under the terms of this Assignment, it shall be given in writing, and shall be deemed delivered when sent via telecopier to and received by the facsimile number identified below the signature of each party, or three (3) days after mailing via certified or registered mail or German equivalent, return receipt requested, postage prepaid, addressed to the party for whom intended, to the address as first above set forth or when actually received by the party for whom intended by normal courier means, whichever is earlier. Other than telecopier, electronic transmission (e.g.- e-mail) does not suffice as notice hereunder unless expressly accepted as such in writing by the recipient.

4.6 **Entire Assignment; Captions.** This Assignment contains the entire agreement between the parties hereto as to the subject matter hereof. No agreement of any kind relating to the matters covered by this Assignment shall be binding upon either party unless set forth in a written document executed by the parties. The captions contained in this Assignment are included for convenience only and shall not affect the interpretation of the Assignment.

IN WITNESS WHEREOF, the parties hereto have duly executed this Assignment as of the 20th day of December, 2000.

**M. GOLDSCHMIDT AG:**

**ELEKTRO-THERMIT GMBH & CO. KG.:**

by: ppa. [Signature] ppa. [Signature]  
Name: (Dr. Geisler) (Dr. Rotenberg)  
Title: Procurist Procurist  
Facsimile: \_\_\_\_\_

by: [Signature]  
Name: WIRTZ  
Title: Managing Director  
Facsimile: \_\_\_\_\_



Amtsgericht Essen  
- Registergericht -

Amtsgericht - 45116 Essen

Telefon (0201) 8 03-0  
Durchwahl (0201) 8 03-27 00  
Telefax (0201) 8 03-29 10  
(0201) 8 03-27 51

Datum 15.05.2000

Geschäfts-Nr.: **89 a HRB 817**  
(Bitte bei allen Schreiben angeben !)

Bescheinigung

Es wird hiermit bescheinigt, dass die Firma

**GOLDSCHMIDT AG**

im hiesigen Handelsregister unter HRB 817 eingetragen ist.

Die Firma wurde zuvor unter dem Namen

**Th. Goldschmidt Aktiengesellschaft**


geführt.

Die Eintragung der Firmenänderung erfolgte am 28.07.99.

Essen, den 15.5.00

(Bacht) *[Signature]*  
Richterin am Amtsgericht



Nr. der Eintragung	a) Firma b) Sitz c) Gegenstand des Unternehmens	Grund- oder Stammkapital	Ortstand Persönlich haftende Geschäftsführer Abwickler	Prokura	Rechtsverhältnisse	a) Tag der Eintragung und Unterschrift b) Bemerkungen
1	2	3	4	5	6	7
95	<p>a) GOLDSCHMIDT AG</p> <p>c) Die Entwicklung, die Herstellung und der Vertrieb von chemischen und chemisch-technischen Erzeugnissen aller Art, insbesondere von Spezialchemikalien sowie der Handel damit.</p> <p>Dienstleistungen aller Art, insbesondere Serviceleistungen für den Bau und Betrieb chemischer Anlagen sowie für die Erzeugung von chemischen Produkten.</p> <p>Der Betrieb aller sonstigen Geschäfte, die mit der Betätigung auf den vorgenannten Gebieten zusammenhängen oder geeignet sind, diese zu fördern.</p>	<p>Euro 33.800.000,--</p>			<p>Die Hauptversammlung vom 15. Juli 1999 hat beschlossen, die Firma und den Gegenstand des Unternehmens und entsprechend die Satzung in §§ 1 und 2 zu ändern. Die Vorzugsaktien sind unter Aufgabe ihrer Vorzüge zu Stammaktien umgewandelt worden. Das Grundkapital der Gesellschaft ist in der Weise in Stückaktien eingeteilt worden, daß an die Stelle jeweils einer Aktie im Nennbetrag von 1.000,-- DM 20 Stückaktien, an die Stelle jeweils einer Aktie im Nennbetrag von 100,-- DM 2 Stückaktien treten und an die Stelle jeweils einer Aktie im Nennbetrag von 50,-- DM 1 Stückaktie tritt. Im Zusammenhang hiermit ist § 4 Abs. 1 und § 18 geändert worden. Das Grundkapital der Gesellschaft in Höhe von 65 Mio. DM ist auf 33.233.972,28 Euro umgestellt worden. Abschließend ist das Grundkapital der Gesellschaft von 33.233.972,28 Euro gemäß § 207 Abs. 2 Satz 2 AktG ohne Ausgabe neuer Aktien um 566.027,72 Euro auf 33.800.000,-- Euro erhöht worden, und zwar durch Umwandlung eines Teilbetrages in Höhe des 566.027,72 Euro entsprechenden Betrages in Deutscher Mark (aufgerundet 1.107.054,-- DM) der in der festgestellten Jahresbilanz der Gesellschaft zum 31.12.1998 unter dem Posten "Kapitalrücklage" ausgewiesenen Kapitalrücklage nach § 272 Abs. 2 Nr. 1 HGB in Grundkapital. Im Zusammenhang hiermit ist § 4 Abs. 1 der Satzung geändert worden. Außerdem sind die §§ 12 und 21 der Satzung geändert worden. Nach § 5 ist ein neuer § 5 a (Aktienartikeln) in die Satzung eingefügt worden.</p> <p>Die Gesellschaft hat mit der VIAG Chemie Holding Aktiengesellschaft, Troisdorf, als berrichtendem Unternehmen am 2. Juni 1999 mit Zustimmung der Hauptversammlungen der beiden Gesellschaften vom 14. und 15. Juli 1999 einen Beherrschungs- und Gewinnabführungsvertrag geschlossen. Wegen des weitergehenden Inhalts wird auf den gen. Vertrag und die zusammenfassenden Beschlüsse der Hauptversammlungen Bezug genommen.</p>	<p>a) 28. Juli 1999 Baude</p>
<p>Handelsregisterarsche: Th. Goldschmidt Aktiengesellschaft</p> <p>Auf Anordnung</p>  <p>(Baude), Justizangestellte</p>						

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Mark: THERMIT  
Registration No.: 1,904,078  
Date: July 11, 1995  
International Cl. No.: 6 and 40 (Prior U.S. 14 and 106)

COMBINED DECLARATION UNDER SECTIONS 8 AND 15 OF TRADEMARK ACT OF 1946

Johann-Hugo WIRTZ, declares under the penalties of perjury that he is the  
Managing Director of ELEKTRO-THERMIT GMBH & CO. KG.,

a corporation organized and existing under the laws of Germany, presently located and doing  
business at: D-451<sup>39</sup>~~1~~ Essen, Germany

that said corporation is the owner by assignment of Registration No. 1,904,078, dated July 11,  
1995 as shown by records in the U.S. Patent and Trademark Office; on information and belief  
(a) that the mark described therein has been in continuous use by Registrant's predecessor in  
interest in commerce among the several states for five consecutive years subsequent to the  
date of registration, July 11, 1995, to the present day, on or in connection with the following  
goods and services:

*mixtures of metals and metal oxides for employment in the process of welding metals in  
International Class 6 and welding in International Class 40,*

as stated in the registration; (b) that the mark is still in such use in connection with such goods  
and services, in commerce among the several states, and specimens or facsimiles showing  
such use are filed herewith; (c) that there has been no final decision adverse to registrant's  
claim of ownership of such mark for such goods, or its right to register the same or to keep the  
same on the Register, and (d) that there is no proceeding involving said rights pending in the  
Patent and Trademark Office or in a Court and not finally disposed of.

DESIGNATION OF DOMESTIC REPRESENTATIVE

The undersigned hereby designates Robert S. Stoll,

Mailing address: 6110 Empire State Building  
New York, New York 10118

as its domestic representative upon whom notice or process in proceedings affecting the mark may be served, all prior designations of domestic representative herein being hereby revoked.

POWER OF ATTORNEY

The undersigned hereby designates and appoints Robert S. Stoll, a member of the Bar of the State of New York, of the firm of:

Mailing address: Stoll, Miskin, Hoffman & Badie  
6110 Empire State Building  
New York, New York 10118  
Telephone number: 212 736-0290

as its attorney, to file and prosecute the foregoing, to transact all business in the U.S. Patent and Trademark Office and to receive all communications in connection therewith, all prior powers of attorney herein being hereby revoked.

J. H. Wirtz hereby states that all statements made herein of his own knowledge are true and that all statements made on information and belief are believed to be true; and further, that these statements were made with the knowledge that willful, false statements and the like so made are punishable by fine or imprisonment or both, under Section 1001 of Title 18 of the United States Code and that such willful, false statements may jeopardize the validity of the above registration.

ELEKTRO-THERMIT GMBH & CO. KG.

Dated: Dec. 22, 2000

By: Johann. Stoll