

04-26-2001



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4.13.01

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

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

Submission Type

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

Conveyance Type

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

Conveying Party

☐ Mark If additional names of conveying parties attached

Execution Date
Month Day Year
04 03 00

Name

Formerly

1161744

- ☐ Individual ☐ General Partnership ☐ Limited Partnership ☒ Corporation ☐ Association
- ☐ Other
- ☒ Citizenship/State of Incorporation/Organization

Receiving Party

☐ Mark If additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

State/Country

Zip Code

- ☐ Individual ☐ General Partnership ☐ Limited Partnership
- ☐ Corporation ☒ Association
- ☐ Other
- ☐ Citizenship/State of Incorporation/Organization

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

FOR OFFICE USE ONLY

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

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

REEL: 002280 FRAME: 0204

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

(216) 586-7206

Name

John E. Mazey

Address (line 1)

Jones, Day, Reavis & Pogue

Address (line 2)

North Point

Address (line 3)

901 Lakeside Avenue

Address (line 4)

Cleveland, Ohio 44114

Pages

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

#

10

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

☐

Mark if additional numbers attached

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

Trademark Application Number(s)

Registration Number(s)

1161244	1236331	2028305
2028307	2088556	2080590
2085242	1125804	

Number of Properties

Enter the total number of properties involved.

#

8

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$

215.00

Method of Payment:

Enclosed

☒

Deposit Account

☐

Deposit Account

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

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

☐

No

☐

Statement and Signature

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

Kathie J. Kopczyk

Name of Person Signing

Kathie J. Kopczyk

Signature

April 12, 2001

Date Signed

COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT

1. RECITALS.

OGLEBAY NORTON COMPANY, a Delaware corporation (together with its successors and assigns, "Pledgor"), is entering into the Loan Agreement, as hereinafter defined, with the financial institutions listed on Schedule 1 to the Loan Agreement (collectively, together with their respective successors and assigns, "Banks" and individually, "Bank") and KEYBANK NATIONAL ASSOCIATION, as agent for the Banks ("Agent").

Pledgor understands that the Banks are willing to grant such financial accommodations to Pledgor only upon certain terms and conditions, one of which is that Pledgor grant to Agent, for the benefit of the Banks, a security interest in and an assignment of the Collateral, as hereinafter defined, and this Collateral Assignment and Security Agreement (as the same may from time to time be amended, restated or otherwise modified, this "Agreement") is being executed and delivered in consideration of each financial accommodation granted to Pledgor by the Banks and for other valuable considerations.

2. DEFINITIONS. As used herein, the following terms shall have the following meanings:

2.1. "Collateral" shall mean, collectively, all of Pledgor's existing and future (a) patents, patent registrations, patent applications, trademarks, trademark registrations, trademark applications and copyright registrations, whether federal or state, including, but not limited to, those listed on Schedule A hereto (as such Schedule A may from time to time be amended, supplemented or otherwise modified); (b) common law trademark rights, copyrights, improvements and inventions; (c) renewals, proceeds on infringement suits, and rights to sue for past, present and future infringements relating to any of the foregoing; (d) goodwill associated with any of the foregoing; and (e) proceeds of any of the foregoing.

2.2. "Debt" shall mean, collectively, (a) the Loan; (b) all other indebtedness now owing or hereafter incurred by Pledgor to Agent or any Bank pursuant to the Loan Agreement and any Note executed in connection therewith; (c) each renewal, extension, consolidation or refinancing of any of the foregoing, in whole or in part; (d) all interest from time to time accruing on any of the foregoing, and all fees and other amounts payable by Pledgor to Agent or any Bank pursuant to the Loan Agreement; (e) all obligations and liabilities of Pledgor now existing or hereafter incurred to Agent or any Bank under, arising out of, or in connection with any Hedge Agreement; (f) all amounts payable by Pledgor to Agent or any Bank pursuant to the Loan Agreement or any Related Writing; and (g) all Related Expenses.

2.3. "Hedge Agreement" shall mean any currency swap or hedge agreement, interest rate swap, cap, collar or floor agreement, or other interest rate management device entered into by Pledgor or Original Borrower with Agent or any of the Banks, or any of their respective affiliates in connection with the Debt.

2.4. "Loan" shall mean the Term Loan, as defined in the Loan Agreement, and any other loan, granted pursuant to the Loan Agreement.

2.5. "Loan Agreement" shall mean the Loan Agreement executed by and among Pledgor, Agent and the Banks and dated as of April 3, 2000, as the same may from time to time be amended, restated or otherwise modified.

2.6. "Person" shall mean any individual, sole proprietorship, partnership, joint venture, unincorporated organization, corporation, limited liability company, institution, trust, estate, government or other agency or political subdivision thereof or any other entity.

2.7. "Related Expenses" shall mean any and all reasonable costs, liabilities, and expenses (including, without limitation, losses, damages, penalties, claims, actions, reasonable attorneys' fees, legal expenses, judgments, suits, and disbursements) (a) incurred by, imposed upon, or asserted against, Agent or any Bank in any attempt by Agent or any Bank to (i) obtain, preserve, perfect, or enforce any security interest evidenced by this Agreement, the Loan Agreement or any Related Writing, as defined in the Loan Agreement; (ii) obtain payment, performance, and observance of any and all of the Debt; or (iii) maintain, insure, audit, collect, preserve, repossess, and dispose of any of the Collateral or any other collateral securing the Debt, including, without limitation, costs and expenses for appraisals, assessments, and audits of Pledgor or any such collateral; or (b) incidental or related to (a) above, including, without limitation, interest thereupon from the date incurred, imposed, or asserted until paid at the Default Rate, as defined in the Loan Agreement.

Except as specifically defined herein, all capitalized terms used herein that are defined in the Loan Agreement shall have the meanings ascribed to them in the Loan Agreement. Unless otherwise defined in this Section 2, terms that are defined in Chapter 1309 of the Ohio Revised Code, as in effect from time to time, are used herein as so defined.

3. GRANT OF ASSIGNMENT AND SECURITY INTEREST. In consideration of and as security for the full and complete payment of all of the Debt, Pledgor hereby agrees that Agent, for the benefit of the Banks, shall at all times have, and hereby grants to Agent, for the benefit of the Banks, a security interest in and assignment of all of the Collateral, including (without limitation) all of Pledgor's future Collateral, irrespective of any lack of knowledge by Agent or the Banks of the creation or acquisition thereof.

4. WARRANTIES AND REPRESENTATIONS. Pledgor represents and warrants to Agent and the Banks that each of the following statements is true and complete:

(a) Pledgor owns the Collateral and, whether the same are registered or unregistered, no such Collateral has been adjudged invalid or unenforceable.

(b) The Collateral is valid and enforceable.

(c) Pledgor has no knowledge of any claim that the use of any of the Collateral does or may violate the rights of any third person.

(d) Except for the liens granted in this Agreement or permitted by the Loan Agreement, Pledgor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to the Collateral, free and clear of any liens, charges and encumbrances, including, without limitation, pledges, assignments, licenses, registered user agreements and covenants by Pledgor not to sue third persons.

(e) Pledgor has full power, authority and legal right to pledge the Collateral and enter into this Agreement and perform its terms.

(f) Pledgor has used, and will continue to use, for the duration of this Agreement, proper statutory notice in connection with its use of the Collateral, except where the failure to do so will not have a material adverse effect.

5. **RIGHT TO USE.** Unless and until there shall have occurred an Event of Default (as that term is defined in Section 8 of this Agreement), Agent and the Banks, to the extent permitted by law, hereby grants to Pledgor the exclusive, royalty-free, world-wide, nontransferable right and license to use the Collateral on and in connection with products manufactured, distributed, or both by or in connection with products sold by Pledgor, for Pledgor's sole benefit and account and for none other. Pledgor shall not enter into any agreement which is inconsistent with Pledgor's obligations under this Agreement and shall not otherwise sell or assign its interest in, or grant any sublicense under, the license granted to Pledgor hereunder, without Agent's prior written consent. Absent such prior written consent, any attempted sale or license is null and void.

6. **RIGHT TO INSPECT.** Pledgor hereby grants to Agent and its employees and agents the right, during regular business hours, to visit Pledgor's plants and facilities or the plants and facilities of any subcontractors which manufacture, inspect, sell or store products sold under any of the Collateral, and to inspect the products and quality control records relating thereto at reasonable times during regular business hours, at Pledgor's expense.

7. **STANDARD PATENT AND TRADEMARK USE.**

Pledgor shall not use the Collateral in any manner that would jeopardize the validity or legal status thereof. Pledgor shall comply with all patent marking requirements as specified in 35 U.S.C. §287. Pledgor shall further conform its usage of any trademarks to standard trademark usage, including, but not limited to, using the trademark symbols ®, ™, and ™ where appropriate.

8. **EVENT OF DEFAULT.**

(a) The occurrence of any of the following shall constitute an "Event of Default" under this Agreement:

(i) If an Event of Default, as defined in the Loan Agreement, shall occur under the Loan Agreement; or

(ii) If Pledgor shall fail to perform any obligation of Pledgor to be performed under this Agreement and the same shall not have been fully corrected within thirty (30) days after the giving of written notice thereof to Pledgor by Agent.

(b) If any Event of Default shall have occurred, Pledgor irrevocably authorizes and empowers Agent, on behalf of the Banks, to terminate Pledgor's use of the Collateral and to exercise such rights and remedies as allowed by law. Without limiting the generality of the foregoing, Agent may immediately sell at public or private sale, in a commercially reasonable manner, or otherwise realize upon all or, from time to time, any of the Collateral together with the associated goodwill, or any interest which Pledgor may have therein, and, after deducting from the proceeds of sale or other disposition of the Collateral all expenses (including all reasonable expenses for attorneys' and brokers' fees and other legal services), Agent shall apply the residue of such proceeds against payment of the Debt for the benefit of the Banks. Any remainder of the proceeds, after payment in full of the Debt, shall be distributed in accordance with the Chapter 1309 of the Ohio Revised Code. Notice of any sale or other disposition of the Collateral shall be given to Pledgor at least five (5) business days before the time of any intended public or private sale or other disposition of the Collateral is to be made, which Pledgor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, Agent or any Bank may, to the extent permissible under applicable law, purchase the whole or any part of the Collateral sold, free from any right of redemption on the part of Pledgor, which right is hereby waived and released.

9. **TERMINATION.** At such time as the Debt has been irrevocably paid in full, the Commitment, as defined in the Loan Agreement, terminated, and the Loan Agreement terminated and not replaced by any other credit facility with Agent and the Banks, this Agreement shall terminate and Agent shall execute and deliver to Pledgor all deeds, assignments, and other instruments as may be necessary or proper to release Agent's security interest in and assignment of the Collateral and to re-vest in Pledgor full title to the Collateral, subject to any disposition thereof which may have been made by Agent pursuant hereto.

10. **MAINTAINING COLLATERAL, ATTORNEYS' FEES, COSTS AND EXPENSES.** Pledgor shall have the obligation and duty to perform all acts necessary to maintain or preserve the Collateral, provided that Pledgor shall not be obligated to maintain any Collateral in the event Pledgor determines, in the reasonable business judgment of Pledgor, that the maintenance of such Collateral is no longer necessary in Pledgor's business. Any and all reasonable fees, costs and expenses, of whatever kind or nature, including, without limitation, the attorneys' fees and legal expenses incurred by Agent and the Banks in connection with the amendment and enforcement of this Agreement, all renewals, required affidavits and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving the Collateral, or in defending or prosecuting any

actions or proceedings arising out of or related to the Collateral, shall be borne and paid by Pledgor, upon demand by Agent, and, until so paid, shall be added to the principal amount of the Debt.

11. **PLEDGOR'S OBLIGATIONS TO PROSECUTE.** Except as otherwise agreed to by Agent in writing, Pledgor shall have the duty to prosecute diligently any patent application or trademark application pending as of the date of this Agreement or thereafter until the Debt shall have been paid in full, to file and prosecute opposition and cancellation proceedings and to do any and all acts which are necessary or desirable to preserve and maintain all rights in the Collateral, including, but not limited to, payment of any maintenance fees. Any expenses incurred in connection with the Collateral shall be borne by Pledgor. Pledgor shall not abandon any Collateral without the prior written consent of Agent, unless such abandonment will not have a material adverse effect on Pledgor or such abandonment is in connection with the abandonment of a product or product line.

12. **AGENT'S RIGHTS TO ENFORCE.** Pledgor shall have the right to bring any opposition proceedings, cancellation proceedings or lawsuit in its own name to enforce or protect the Collateral. Agent and the Banks shall have the right, but shall have no obligation, to join in any such action. Pledgor shall promptly, upon demand, reimburse and indemnify Agent and the Banks for all damages, costs and expenses, including attorneys' fees incurred by Agent in connection with the provisions of this Section 12, in the event Agent and the Banks elect to join in any such action commenced by Pledgor.

13. **POWER OF ATTORNEY.** Pledgor hereby authorizes and empowers Agent, on behalf of the Banks, to make, constitute and appoint any officer or agent of Agent as Agent may select, in its exclusive discretion, as Pledgor's true and lawful attorney-in-fact, with the power to endorse, after the occurrence of an Event of Default, Pledgor's name on all applications, documents, papers and instruments necessary for Agent to use the Collateral, or to grant or issue any exclusive or nonexclusive license under the Collateral to any third party, or necessary for Agent to assign, pledge, convey or otherwise transfer title in or dispose of the Collateral, together with associated goodwill to a third party or parties. Pledgor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable for the life of this Agreement.

14. **AGENT'S RIGHT TO PERFORM OBLIGATIONS.** If Pledgor fails to comply with any of its obligations under this Agreement, Agent, on behalf of the Banks, may, but is not obligated to, do so in Pledgor's name or in Agent's name, but at Pledgor's expense, and Pledgor hereby agrees to reimburse Agent on demand in full for all expenses, including reasonable attorneys' fees, incurred by Agent in protecting, defending and maintaining the Collateral.

15. **ADDITIONAL DOCUMENTS.** Pledgor shall, upon written request of Agent, enter into such additional documents or instruments as may be required by Agent in order to effectuate, evidence or perfect Agent's interests in the Collateral as evidenced by this Agreement.

16. **NEW COLLATERAL.** If, before the Debt shall have been satisfied in full, Pledgor shall obtain rights to any new Collateral, the provisions of Section 1 shall automatically apply thereto

as if the same were identified on Schedule A as of the date hereof and Pledgor shall give Agent prompt written notice thereof.

17. **MODIFICATION FOR NEW COLLATERAL.** Pledgor hereby authorizes Agent to modify this Agreement by amending Schedule A to include any future Collateral as contemplated by Sections 1 and 16 hereof and, at Agent's request, Pledgor shall execute any documents or instruments required by Agent in order to modify this Agreement as provided in this Section 17, provided that any such modification to Schedule A shall be effective without the signature of Pledgor.

18. **NO WAIVER.** No course of dealing between Pledgor and Agent and the Banks, nor any failure to exercise, nor any delay in exercising, on the part of Agent or the Banks, any right, power or privilege hereunder, under any of the Loan Documents, or any other document executed in connection with any of the foregoing shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

19. **REMEDIES CUMULATIVE.** All of the rights and remedies of Agent and the Banks with respect to the Collateral, whether established hereby or by any other Loan Document, or by any other agreements or by law shall be cumulative and may be executed singularly or concurrently.

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

21. **MODIFICATIONS.** This Agreement may be amended or modified only by a writing signed by the parties hereto, except as provided in Section 17 above. In the event that any provision herein is deemed to be inconsistent with any provision of any other Loan Documents (except the Loan Agreement) relating to the Collateral, the provisions of this Agreement shall control.

22. **SUCCESSORS AND ASSIGNS.** This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties, except that Pledgor may not assign any of its rights or duties hereunder without the prior written consent of Agent. Any attempted assignment or transfer without the prior written consent of Agent shall be null and void.

23. **NOTICE.** All notices, requests, demands and other communications provided for hereunder shall be in writing and, if to Pledgor, mailed or delivered to it, addressed to it at the address specified on the signature page to this Agreement, if to Agent or a Bank, mailed or delivered to it, addressed to the address of Agent or such Bank specified on the signature pages of the Loan Agreement. All notices, statements, requests, demands and other communications provided for hereunder shall be given by overnight delivery or first class mail with postage prepaid by registered or certified mail, addressed as aforesaid, or sent by facsimile with telephonic confirmation of receipt, except that notices pursuant to any of the provisions hereof shall not be effective until received.

24. **GOVERNING LAW/JURISDICTION.** This Agreement shall be construed and enforced in accordance with, and the rights of the parties shall be governed by, the laws of the State of Ohio, without regard to principles of conflicts of law. Pledgor hereby consents to the personal jurisdiction of the state and federal courts of the State of Ohio in connection with any controversy related to this Agreement, waives any argument that venue in such forums is not convenient and agrees that any litigation initiated by Pledgor against Agent or any Bank shall be venued in the State or Federal District Courts of Ohio.

25. **DESIGNATED SENIOR INDEBTEDNESS.** THE INDEBTEDNESSEVIDENCED BY THIS AGREEMENT, THE LOAN AGREEMENT, EACH OF THE NOTES, AND EACH OTHER LOAN DOCUMENT IS AND SHALL AT ALL TIMES CONSTITUTE "DESIGNATED SENIOR INDEBTEDNESS" UNDER THE PROVISIONS OF THAT CERTAIN INDENTURE, DATED AS OF FEBRUARY 1, 1999, AS AMENDED, AMONG OGLEBAY NORTON COMPANY, THE GUARANTORS NAMED THEREIN AND NORWEST BANK MINNESOTA, NATIONAL ASSOCIATION, AS TRUSTEE.

26. JURY TRIAL WAIVER. PLEDGOR, AGENT AND THE BANKS, TO THE EXTENT PERMITTED BY LAW, EACH WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE, AMONG AGENT, THE BANKS AND PLEDGOR, OR ANY OF THEM, ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED BETWEEN THEM IN CONNECTION WITH THIS AGREEMENT OR ANY NOTE OR OTHER AGREEMENT, INSTRUMENT OR DOCUMENT EXECUTED OR DELIVERED IN CONNECTION THEREWITH OR THE TRANSACTIONS RELATED THERETO.

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the 3rd day of April, 2000.

Address: 1100 Superior Avenue
Cleveland, Ohio 44114
Attention: Treasurer

OGLEBAY NORTON COMPANY

By: Michael F. Bruck
Title: Vice President of Finance and
Treasurer

Acknowledged and consented to by:

KEYBANK NATIONAL ASSOCIATION,
as Agent

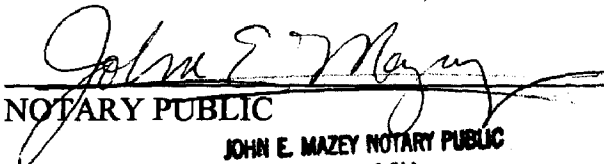
By: James J. Mancan
Title: Vice President

ACKNOWLEDGMENTS

THE STATE OF Ohio)
) SS:
COUNTY OF Cuyahoga)

BEFORE ME, the undersigned authority, on this day personally appeared Michael F. Biehl, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said OGLEBAY NORTON COMPANY, a Delaware corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

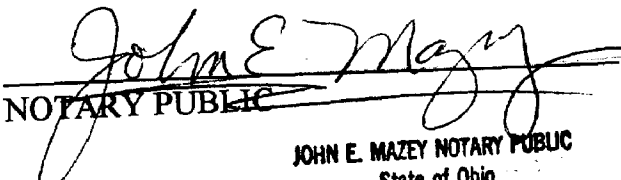
GIVEN UNDER MY HAND AND SEAL OF OFFICE this 3rd day of April, 2000.


NOTARY PUBLIC
JOHN E. MAZEY NOTARY PUBLIC
State of Ohio
My Commission Has No Expiration

THE STATE OF Ohio)
) SS:
COUNTY OF Cuyahoga)

BEFORE ME, the undersigned authority, on this day personally appeared Frank J. Jancar known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said KEYBANK NATIONAL ASSOCIATION, a national banking association, and that he executed the same as the act of such national banking association for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 3rd day of April, 2000.


NOTARY PUBLIC
JOHN E. MAZEY NOTARY PUBLIC
State of Ohio
My Commission Has No Expiration

SCHEDULE A

Trademark Name	Country or State Registration No.	Registration Date	Class (if listed)
Oglebay Norton Compass Point Logo (Color/Old Logo)	US 1,161,244	7/14/81	035,036 & 039
Oglebay Norton Compass Point Logo (Black/White-lined for the color red)	US 1,236,331	5/3/83	017
Oglebay Norton Compass Point Logo (Color)	US 2,028,305	1/7/97	019
Oglebay Norton Compass Point Logo (Black/White)	US 2,028,307	1/7/97	019
Oglebay Norton Compass Point Logo (Black/White)	US 2,088,556	8/19/97	036 & 039
Oglebay Norton Compass Point Logo (Color)	US 2,080,590	7/22/97	036 & 039
Oglebay Norton	US 2,085,242	8/5/97	019, 036 & 039
Oglebay Norton "TMC" Compass Point Logo	US 1,125,804	10/9/79	019
The Millwood Sand Company	OH 25,717	4/14/89	