

08-07-2001

FORM PTO-1594

(Rev. 6-93)

OMB No. 0651-0011 (exp. 4/94)



U.S. Department of Commerce
Patent and Trademark Office

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original documents or copy thereof.

To the Honorable Commissioner of Pat

1. Name of conveying party(ies):

Alberta Smyth Resources, L.L.C.
7 Entin Road
Parsippany, NJ 07054-5020

7-31-01

- Individual(s)
 - General Partnership
 - Corporation-State of New Jersey
 - Other: New Jersey limited liability company
- Additional name(s) of conveying party(ies) attached? Yes No

- Association
- Limited Partnership

3. Nature of conveyance:

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

Execution Date: July 23, 2001

2. Name and address of receiving party(ies)

Name: The Bank of New York

Internal Address: _____

Street Address: 385 Rifle Camp Road

City: West Paterson State: NJ ZIP: 07424

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation- a banking corporation
- 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 patent number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s) **1,221,993**

Additional numbers attached: Yes No

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

Name: Michael Turner, Esq.

Internal Address: c/o Pitney, Hardin, Kipp & Szuch

Street Address: P.O.Box 1945

City: Morristown State: NJ ZIP: 07945

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:

(Attach duplicate copy of this page if paying by deposit account.)

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.

Michael Tuner, Esq.

Name of Person Signing

Signature

7-25-01

Date

Total number of pages including cover sheet, attachments, and document: 11

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents & Trademarks, Box Assignments

Washington, D.C. 20231

08/06/2001 6TOM11 00000011 1221993

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TRADEMARK
REEL: 002342 FRAME: 0749

Prepared by, Record and Return to:
Peter A. Forgosh, Esq.
Pitney, Hardin, Kipp & Szuch LLP
P.O. Box 1945
Morristown, NJ 07962-1945

PLEDGE OF TRADEMARKS AS SECURITY

This Pledge of Trademarks as Security ("Pledge") made as of the 23rd day of July, 2001, by **ALBERTA SMYTH RESOURCES, L.L.C.**, a New Jersey limited liability company, having its principal place of business at 7 Entin Road, Parsippany, New Jersey 07054-5020 ("Pledgor"), and delivered to **THE BANK OF NEW YORK**, a corporation of the State of New York, having a location at 385 Rifle Camp Road, West Paterson, New Jersey 07424 ("Lender").

WITNESSETH:

WHEREAS, Pledgor has adopted, used and is using (or has filed applications, other than intent-to-use applications, for the registration of) the trademarks, service marks and trade names listed on Schedule "A" annexed hereto (all such marks or names hereinafter referred to as the "Trademarks"), as evidenced by records in the United States Patent and Trademark Office; and

WHEREAS, Pledgor is the owner of and has exclusive right, title and interest in and to said Trademarks; and

WHEREAS, Lender is contemporaneously herewith entering into a Loan and Security Agreement with, *inter alia*, Pledgor (as amended and supplemented from time to time the "Loan Agreement") pursuant to which loans and advances may be made by Lender to Pledgor (hereinafter collectively referred to as the "Loan") and certain other documents and agreements relating thereto (collectively, the "Loan Documents"); and

WHEREAS, Lender desires to acquire a lien and security interest on the Trademarks and the registration thereof, together with all the goodwill of the Pledgor associated therewith and represented thereby, as security for the Loan and all other obligations of Pledgor to Lender related thereto, and Lender desires to have its security interest in such Trademarks confirmed by a document identifying same and in such form that it may record in the United States Patent and Trademark Office.

NOW THEREFORE, in consideration of the foregoing premises and mutual promises herein contained, Pledgor and Lender, intending to be legally bound, hereby covenant and agree as follows (all capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Loan Agreement):

1. **Grant of Security Interest.** In consideration of and pursuant to the terms of the Loan Documents, and for other good, valuable and sufficient consideration, the receipt and

sufficiency of which is hereby acknowledged, and to secure payment and performance of the Obligations, the Pledgor grants a lien and security interest to the Lender in all its present and future right, title and interest in and to the Trademarks, together with all the goodwill and other tangible assets of the Pledgor associated with and represented by the Trademarks, and the non-intent-to-use applications for and registration thereof and the right (but not the obligation) to sue for past, present and future infringements, and the proceeds thereof, including, without limitation, license royalties and proceeds of infringement suits.

2. **Representations and Warranties.** The Pledgor represents, warrants and covenants that: (a) the Trademarks are subsisting and have not been abandoned, suspended, voluntarily terminated or canceled by the Pledgor, have not been adjudged invalid or unenforceable, and to the best of the Pledgor's knowledge, there is no reason why the Trademarks should be adjudged invalid or unenforceable; (b) each of the Trademarks is valid and enforceable; (c) the Pledgor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, and each of the Trademarks is free and clear of any liens, charges and encumbrances, including, without limitation, pledges, assignments, licenses and covenants by the Pledgor not to sue third persons; (d) the Pledgor has the unqualified right to enter into this Agreement and perform its terms; (e) the Pledgor has used, and will continue to use for the duration of this Pledge, proper notice, as required by 15 U.S.C. §§ 1051-1127 in connection with its use of the Trademarks; (f) the Pledgor has used, and will continue to use for the duration of this Pledge, consistent standards of quality in products leased or sold under the Trademarks; and (g) the Pledgor will not (and will not permit any licensee thereof to) do any act or knowingly omit to do any act whereby any of the Trademarks may become invalidated, abandoned, unenforceable, avoided, avoidable or otherwise diminished in value, and shall notify Lender immediately if it knows of any reason or has any reason to know of any grounds under which any of the foregoing may occur.

3. **Intentionally Omitted.**

4. **Covenants.** The Pledgor further covenants that until all of the Obligations have been satisfied in full, unless Lender gives its prior written consent to the contrary: (a) the Pledgor shall maintain the Trademarks in full force and effect to the extent necessary for Pledgor's business in the ordinary course; (b) the Pledgor will not enter into any agreement which is inconsistent with the Pledgor's obligations under this Pledge or which restrict or impair the Lender's rights hereunder; and (c) if the Pledgor acquires rights to any new non-intent-to-use Trademarks, the provisions of this Pledge shall automatically apply thereto and the Pledgor shall give the Lender prompt written notice thereof along with an amended Schedule A; provided, however, that notwithstanding anything to the contrary contained in this Pledge, the Pledgor shall have the right to enter into agreements in the ordinary course of business with respect to the Trademarks.

5. **Exclusive Use of Trademarks.** So long as this Pledge is in effect and so long as the Pledgor has not received notice from the Lender that an Event of Default has occurred under the Loan Documents and that the Lender has elected to exercise its rights to assignment hereunder, the Pledgor shall continue to have the exclusive right to use the Trademarks including licenses thereof, and the Lender shall have no right to use the Trademarks or issue any exclusive

or non-exclusive license with respect thereto, or assign, pledge or otherwise transfer title in the Trademarks to anyone else.

6. **Negative Pledge.** Unless otherwise permitted in the Loan Agreement, the Pledgor agrees not to sell, assign (by operation of law or otherwise) or further encumber its rights and interest in the Trademarks without prior written consent of the Lender. The Pledgor shall defend the Trademarks against and shall take other action as is necessary to remove any lien, security interest, claim, right or other encumbrance of any nature whatsoever in or to the Trademarks, and upon Lender's request will defend the right, title and interest of the Lender in and to any of the Pledgor's rights under the Trademarks against the claims or demands of all persons whatsoever.

7. **No Additional Trademarks.** As of the date hereof, the Pledgor does not have any Trademarks registered in or the subject of pending applications in the United States Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof, other than those grants, registrations or applications for registrations listed on Schedule A annexed hereto and made a part hereof.

8. **Pledge of Additional Trademarks.** In the event the Pledgor, either itself or through any Lender, employee, licensee or designee shall:

- (a) file or record an application for the registration of any Trademark with the United States Patent and Trademark Office or any similar office or agency of the United States, any State thereof, or any other country or any political subdivision thereof; or
- (b) file or record any assignment of any Trademark which the Pledgor may acquire, own or license from a third party, with the United States Patent and Trademark Office or any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof;

the Pledgor shall promptly, but in no event more than fifteen (15) days subsequent to such filing, notify the Lender thereof, and, upon request of the Lender shall promptly, but in no event more than twenty (20) days subsequent to such notice, execute and deliver any and all assignments, agreements, instruments, documents and papers as the Lender may reasonably request to evidence the Lender's interest in such Trademark and the goodwill of the Pledgor associated thereto or represented thereby. The Pledgor hereby grants the Lender a power of attorney, irrevocable until the Obligations are fully paid and satisfied, to modify this Pledge by amending Schedule A, as applicable, to include any future Trademarks or Licenses, including, without limitation, registrations or applications appurtenant thereto, covered by this Agreement.

9. **Remedies Upon Default.** (a) Anything herein contained to the contrary notwithstanding, if and while the Pledgor shall be in material default hereunder or an Event of Default exists under the Loan Documents, the Pledgor hereby covenants and agrees that the Lender, as the holder of a security interest under the Uniform Commercial Code, may take such

action permitted under the Loan Documents or permitted by law, in its exclusive discretion, to foreclose upon the Trademarks covered hereby.

(b) For such purposes, and in the event of the Pledgor's default hereunder or an Event of Default under the Loan Documents and while such default or Event of Default exists, the Pledgor hereby authorizes and empowers the Lender to make, constitute and appoint any officer or Lender of the Lender as the Lender may select, in its exclusive discretion, as the Pledgor's true and lawful attorney-in-fact, with the power to endorse the Pledgor's name on all applications, documents, papers and instruments necessary for the Lender to use the Trademarks or to grant or issue any exclusive or non-exclusive license under the Trademarks to anyone else, or necessary for the Lender to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else. The Pledgor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof, except for the gross negligence or willful misconduct of such attorney. This power of attorney shall be irrevocable for the life of this Pledge and the Loan Documents, and until all the Obligations are satisfied in full.

(c) The Pledgor expressly acknowledges that this Agreement shall be recorded with the Patent and Trademark Office in Washington, D.C. Contemporaneously herewith, the Pledgor shall also execute and deliver to the Lender such documents as the Lender shall reasonably request to permanently assign all rights in the Trademarks to the Lender, which documents shall be held by the Lender, until the occurrence of an Event of Default hereunder or under the Loan Documents. After such occurrence, the Lender may, at its sole option, record such documents with the Patent and Trademark Office.

10. **Subject to Loan Agreement.** This Pledge shall be subject to the terms, provisions, and conditions set forth in the Loan Agreement and may not be modified without the written consent of the party against whom enforcement is being sought.

11. **Inconsistent with Loan Agreement.** All rights and remedies herein granted to the Lender shall be in addition to any rights and remedies granted to the Lender under the Loan Documents. In the event of an inconsistency between this Agreement and the Loan Agreement, the language of the Loan Agreement shall control. The terms and conditions of the Loan Agreement are hereby incorporated herein by reference.

12. **Termination of Agreement.** Upon payment and performance of all Obligations under the Loan Documents, the Lender shall execute and deliver to the Pledgor all documents necessary to re-vest all rights in and to the Trademarks in the Pledgor and/or terminate any interest of the Lender therein.

13. **Prosecution of Trademark Applications.** (a) Subject to the terms of the Loan Documents, the Pledgor shall have the duty to prosecute diligently any trademark application with respect to the Trademarks pending as of the date of this Pledge or thereafter, until the Obligations shall have been satisfied in full, to preserve and maintain all rights in the registration and grant of the Trademarks, to halt any infringement of the Trademarks and upon reasonable request of the Lender, the Pledgor shall make federal application on registrable but unregistered trademarks belonging to the Pledgor. Any reasonable expenses incurred in connection with such

applications or defense of said Trademarks shall be borne by the Pledgor. The Pledgor shall not abandon any Trademark without the written consent of the Lender.

(b) The Pledgor shall have the right to bring suit in its own name to enforce the Trademarks, in which event the Lender may, if the Pledgor deems it necessary or after an Event of Default under the Loan Documents, be joined as a nominal party to such suit if the Lender shall have been satisfied that it is not thereby incurring any risk of liability because of such joinder. The Pledgor shall promptly, upon demand, reimburse and indemnify the Lender for all damages, reasonable costs and reasonable expenses, including attorneys' fees, incurred by the Lender in the fulfillment of the provisions of this paragraph.

14. Responsibility and Liability. The Pledgor assumes all responsibility and liability arising from the use of the Trademarks, and hereby indemnifies and holds the Lender, the Lenders and each director, officer, employee, affiliate and Lender thereof, harmless from and against any claim, suit, loss, damage or expense (including attorneys' fees and expenses) arising out of any alleged defect in any product manufactured, promoted or sold by the Pledgor in connection with any of the Trademarks or otherwise arising out of the Pledgor's operation of its business from the use of the Trademarks. In any suit, proceeding or action brought by the Lender under any License for any sum owing thereunder, or to enforce any provisions of such License, the Pledgor will indemnify and keep the Lender harmless from and against all expense, loss or damage suffered by reason of any defense, set off, recoupment, claim, counterclaim, reduction or liability whatsoever of the obligee thereunder or arising out of a breach of the Pledgor of any obligation thereunder or arising out of any agreement, indebtedness or liability at any time owing to or in favor of such obligee or its successors from the Pledgor, and all such Obligations of the Pledgor shall be and remain enforceable against and only against the Pledgor and shall not be enforceable against the Lender.

15. Lender's Rights. Upon the occurrence and during the continuation of a default hereunder or any other Event of Default under the Loan Agreement, the Lender may, in its sole discretion, pay any amount or do any act required of the Pledgor hereunder or requested by the Lender to preserve, defend, protect, maintain, record or enforce the Pledgor's obligations contained herein, the Obligations of the Pledgor to the Lender, the Trademarks, or the right, title and interest granted the Lender herein, and which the Pledgor fails to do or pay, and any such payment shall be deemed an advance by the Lender to the Pledgor and shall be payable on demand together with interest thereon at the default rate specified in the Loan Documents.

16. Protection of the Trademarks. The Pledgor agrees that if it learns of any use by any person or any term or design likely to cause confusion with any Trademark, or of any claim of any lien, security interest, claim, right or other encumbrance of any nature whatsoever in or to the Trademarks, the Pledgor shall promptly notify the Lender of such use, lien, security interest, claim, right or other encumbrance and, if requested by the Lender, shall join with the Lender, at the Pledgor's expense, in such action as the Lender, in its reasonable discretion, may deem advisable for the protection of the Lender's interest in and to the Trademarks, it being understood that the foregoing shall not preclude the Pledgor from bringing an action against a person for the protection of the Pledgor's interest in and to such Trademarks. Notwithstanding anything contained in this Section 16 to the contrary, Pledgor shall not be required to prosecute any such

action, either jointly with Lender or on its own name, if the Trademark requiring protection is not material or necessary in order for Pledgor to conduct its business affairs as being conducted as of the date of this Pledge or the failure to protect such Trademark would not reasonably be expected to have a Material Adverse Effect.

17. **Additional Remedies.** Upon the occurrence of an Event of Default under the Loan Documents, the Lender may, without any obligation to do so, complete any obligation of the Pledgor hereunder, in the Pledgor's name or in the Lender's name, but at the Pledgor's expense, and the Pledgor hereby agrees to reimburse the Lender in full for all reasonable expenses, including reasonable attorney's fees, incurred by the Lender in protecting, defending and maintaining the Trademarks.

18. **Governing Law.** THIS PLEDGE WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE LAWS OF THE STATE WHERE THE LENDER'S OFFICE INDICATED ABOVE IS LOCATED, EXCLUDING ITS CONFLICT OF LAWS RULES, EXCEPT THAT THE FEDERAL LAWS OF THE UNITED STATES OF AMERICA SHALL GOVERN TO THE EXTENT APPLICABLE.

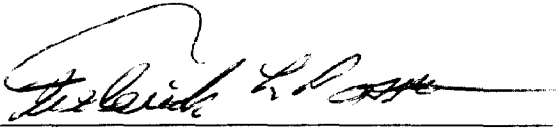
19. **Counterparts.** This Pledge may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, but all such copies shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this Pledge by facsimile transmission shall be effective as delivery of a manually executed counterpart. Any party so executing this Pledge by facsimile transmission shall promptly deliver a manually executed counterpart, provided that any failure to do so shall not affect the validity of the counterpart executed by facsimile transmission.

[End of Text; Signature Page Follows.]


WITNESS the due execution hereof as a document under seal, as of the date first written above.

WITNESS / ATTEST:

ALBERTA SMYTH RESOURCES, L.L.C., a
New Jersey limited liability company

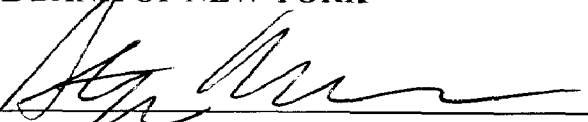
By: 

Name: Frederick L. Passno
Title: Chief Financial Officer

By: 

Name: John Metzger
Title: Managing Member

THE BANK OF NEW YORK

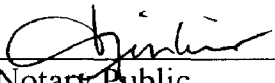
By: 

Name: Stephen G. Necel
Title: Vice President

STATE OF NEW JERSEY):
 : SS.
COUNTY OF MORRIS):

BE IT REMEMBERED, that on this 23rd day of July, 2001, before me, the undersigned notary public, personally appeared John Metzger who acknowledged himself to be the Managing Member of **ALBERTA SMYTH RESOURCES, L.L.C.**, a New Jersey limited liability company, and that he as such Managing Member being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the company.


IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

By 
Notary Public
My Commission Expires:

DEBORAH A. JENKINS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Jan. 30, 2006

STATE OF NEW JERSEY)
 :
 : SS.
COUNTY OF MORRIS):

BE IT REMEMBERED, that on this 23rd day of July, 2001, before me the subscriber, a notary public, personally appeared Stephen G. Necel, who, being by me duly sworn on his oath, deposes and makes proof to my satisfaction, that he is a Vice President of **THE BANK OF NEW YORK**, the Lender named in the within instrument; that the execution as well as the making of this instrument, has been duly authorized and said instrument signed and delivered by said Vice President as and for the voluntary act and deed of said corporation.



Notary Public

My Commission Expires:

DEBORAH A. JENKINS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires Jan. 30, 2006

SCHEDULE A TO PLEDGE OF TRADEMARKS AS SECURITY

<u>Trademark</u>	<u>Application or Registration Number</u>	<u>Registration or Filing Date</u>	<u>Status</u>
ALBERTA SMYTH PERSONNEL AGENCY, INC.	1,221,993	12/28/82	Registered