

05-31-2002



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U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

Form PTO-1594
(Rev. 03/01)
OMB No. 0651-0027 (exp. 5/31/2002)
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Resubm

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

1. Name of conveying party(ies): 5-22-02
Gascard, Inc.
(formerly Gascard Club, Inc.)

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

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

3. Nature of conveyance:
 Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: October 25, 2001

2. Name and address of receiving party(ies)
Name: West Texas Gas, Inc.

Internal Address: _____

Street Address: 211 North Colorado

City: Midland State: TX Zip: 79701

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State Texas
- 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 number(s):
A. Trademark Application No.(s)

B. Trademark Registration No.(s)
1366991

Additional number(s) attached Yes No

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

Name: Jonathan C. Benda

Internal Address: _____

Street Address: 445 North Boulevard

Suite 701

City: Baton Rouge State: LA Zip: 70802

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41).....\$ 80.00

- 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.

Jonathan C. Benda
Name of Person Signing

Signature

5/22/02
Date

Total number of pages including cover sheet, attachments, and document: 12

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 20231

OFFICE OF PATENT & TRADEMARKS

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Form PTO-1594 (Rev. 03/01)

OMB No. 0651-0027 (exp. 5/31/2002)

RECORDATION FORM COVER SHEET TRADEMARKS ONLY

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

Tab settings

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

1. Name of conveying party(ies): 2-25-02

Gascard, Inc. (formerly Gascard Club, Inc.)

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

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

3. Nature of conveyance:

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

Execution Date: October 25, 2001

2. Name and address of receiving party(ies)

Name: West Texas Gas, Inc.

Internal Address:

Street Address: 211 North Colorado

City: Midland State: TX Zip: 79701

- Individual(s) citizenship, Association, General Partnership, Limited Partnership, Corporation-State Texas, 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 number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1366991

Additional number(s) attached Yes No

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

Name: Jonathan C. Benda

Internal Address:

Phelps Dunbar, LLP

Street Address: 445 North Boulevard

Suite 701

City: Baton Rouge State: LA Zip: 70802

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41): \$ 80.00

- Enclosed, Authorized to be charged to deposit account

8. Deposit account number:

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

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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.

Name of Person Signing

Signature

Date

12

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

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

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Refund Ref: 03/21/2002 JJALLAH2 000011538

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TRADEMARK REEL: 002516 FRAME: 0236

ASSIGNMENT AGREEMENT

This Assignment Agreement is entered into as of the 25th day of October, 2001 by and between GASCARD, INC. and FLEETCOR TECHNOLOGIES, INC. (collectively, "Assignor"), and West Texas Gas, Inc. ("WTG"), assignee.

WHEREAS, Assignor is the owner of the GASCARD business, system, technology, and trademarks;

WHEREAS, pursuant to an Asset Purchase Agreement by and among Assignor, FleetCor Technologies, Inc., WTG and Gascard Partners, L.P. executed on September 28, 2001 ("**Asset Purchase Agreement**") and a Software License Agreement and Computer System Lease executed contemporaneously herewith, WTG is acquiring certain hardware and software used in said GASCARD business, system, technology, and trademarks, and along with Gascard Partners, L.P., is acquiring certain of Assignor's exclusive GASCARD operations and goodwill associated with same (collectively, the "Transfer");

WHEREAS, in order to facilitate the Transfer and the continued operations of the Assignor and WTG, WTG wishes to own and secure certain trademark rights and other intellectual property rights, titles, and interests covering the GASCARD business, system, technology, and trademarks, as described more fully below;

AND WHEREAS, in order to facilitate the Transfer and the continued operations of Assignor, contemporaneously herewith, WTG will license to Assignor the interests transferred herein pursuant to a "**Trademark License-Back Agreement.**"

THEREFORE, the parties agree as follows:

1. Assignment. For good and valuable consideration, receipt of which is hereby acknowledged, Assignor hereby transfers, assigns, and conveys to WTG all of its rights in the **GC Gascard trademark, Registration Number 1366991**, and any identifying marks or symbols associated with said trademark, and to any intellectual property developments related to or arising from GC Gascard now or in the future, in the United States and its territorial possessions and in all foreign countries (collectively, "**GC Gascard**"). This further includes but is not limited to all rights: (1) to claim priority; (2) in and to any and all improvements which form part of GC Gascard or which are related to or arise out of GC Gascard; (3) in and to all Letters Patent to be obtained for GC Gascard and any continuation, division, renewal, extension, or substitute applications, and as to any letters patent, reissue, or re-examination thereof; (4) to all registration rights (state and federal) and certificates with respect to related trademarks (including but not limited to all rights to prepare and register derivative marks) and copyrights (including but not limited to all rights to copy, distribute, display publicly, or prepare derivative works); (5) to all goodwill, common law or state law rights, trade secret rights, and all other intellectual property rights related to or arising from GC Gascard now or in the future; (6) and to make use of any technology upon which GC Gascard is based and which Assignor has permission or rights to use, including but not limited to all licenses for technology which is necessary or desirable in order for GC Gascard to function fully and completely.

As the owner of all intellectual property rights relating to and arising out of GC Gascard, WTG will have all rights to enforce the intellectual property rights in GC Gascard, including the right to bring suit for infringement claims, without the need to join any other party.

WTG acknowledges that the assignment of GC Gascard made herein is subject to a license back in favor of Assignor under the Trademark License-Back Agreement, and further subject to the

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~~GASCARD, INC. INC.~~

~~DATE~~

TRADEMARK
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limitations in the Asset Purchase Agreement, including without limitation, limitations on WTG's ability to license and use GC Gascard, and Assignor's rights to repurchase the GC Gascard as provided therein. WTG covenants and agrees that any license or assignment by it or any of its affiliates, including without limitation, Gascard Partners, L.P., of GC Gascard shall conform with the terms of said agreements. This Assignment does not include any rights to any operating system utilized by Assignor (or either of them), nor does it include any rights to any current or future licensees or franchisees of Assignor (or either of them), nor any rights to any revenues therefrom other than as set forth in the Asset Purchase Agreement or the documents contemplated thereby.

In addition, WTG acknowledges that the assignment made hereunder does not include rights in and to Gascard Trademark, Registration No. 1382621, and GC Club trademark, Registration No. 1321191, or any identifying marks or symbols associated with said trademark, and to any intellectual property developments related to or arising from said Gascard Trademark and said GC Club Trademark now or in the future, in the United States and its territorial possessions and in all foreign countries. WTG acknowledges that in accordance with the Asset Purchase Agreement, said rights and marks associated with said Gascard Trademark and said GC Club Trademark are being assigned to DMH Holding, LLC contemporaneously herewith, and that WTG will be licensed to use said marks contemporaneously herewith by DMH Holding, LLC.

2. Representations and Warranties. Assignor represents, covenants, and warrants that:

- (a) Assignor has the right, power, and authority to enter into this agreement;
- (b) Assignor is the sole and exclusive owner of all rights, titles, and interests, including patents, copyrights, trademarks, and any other intellectual property rights, in GC Gascard, and further has the right to transfer any permission or license which is necessary or desirable for the full use and functioning of GC Gascard;
- (c) All patents, trademarks, copyrights, and any other intellectual property rights which arise out of or relate to GC Gascard have been properly maintained and are currently operable and in full effect;
- (d) No assignment, sale, agreement, lien, security interest, license, or encumbrance, has been made or entered into which would conflict with this assignment except licenses granted to local or regional fleet fueling licensees or liens cancelled contemporaneously herewith;
- (e) Assignor has no knowledge of any claim, pending or threatened, by any person or entity asserting the invalidity or unenforceability of any intellectual property rights in GC Gascard, and Assignor further does not know of any reason or ground for claiming that any intellectual property rights in GC Gascard are or may be invalid or unenforceable;
- (f) The intellectual property rights in GC Gascard do not to the best knowledge of Assignor infringe the rights of any other person or entity;
- (g) Any and all intellectual property related to or arising from GC Gascard, developed by employees and officers of Assignor in the course of their employment with Assignor, are subject to assignment as part of their employment contracts and, therefore, belong to and are owned solely and exclusively by GC Gascard;

(h) Assignor shall cooperate as reasonably required by WTG, but at the expense of WTG, in providing needed documents, signatures, testimony, and other assistance to secure and register copyrights, patents, trademarks, and other intellectual property rights in, to, and arising out of GC Gascard; to establish assignment and ownership of such intellectual property rights; to record assignment of intellectual property rights; and to enforce and/or defend the intellectual property rights transferred, assigned, and conveyed herein; and

(i) Assignor is not subject to any agreement, judgment, or order inconsistent with the terms of this agreement.

3. Attorney's Fees. Should either party hereto, or their successors or assigns, resort to litigation to enforce this Agreement, the party prevailing in such litigation shall be entitled, in addition to such other relief as may be granted, to recover its reasonable attorney's fees and costs in such litigation from the party against whom enforcement is sought.

4. Amendment of Agreement. This Agreement may be amended only in writing signed by both parties.

5. Successors and Assigns. The rights and obligations of the parties under this Agreement shall inure to the benefit of and be binding upon successors and assigns who agree to be bound by the terms of the Asset Purchase Agreement, the Trademark-License Back Agreement and any other agreements between the parties pertaining to or affecting the GC Trademark.

6. Severability. If any term, provision, covenant, or condition of this Agreement, or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such term, provision, covenant, or condition as applied to other persons, places, and circumstances shall remain in full force and effect.

7. Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of Texas. The Parties agree that any suit arising under this Agreement or relating to the transactions contemplated herein will be brought only in either of Potter or Randall Counties, Texas, or in the federal court located there.

GASCARD, INC.

By: [Signature]
Name:
Title:

WEST TEXAS GAS, INC.

By: [Signature]
Name:
Title:

FLEETCOR TECHNOLOGIES, INC.

By: [Signature]
Name:
Title:

SWORN AND SUBSCRIBED before me this 25th day of October, 2001.

[Signature]
NOTARY PUBLIC

GASCARD, INC.

By: _____
Name:
Title:

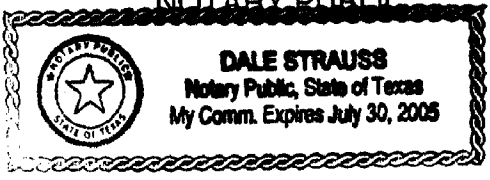
WEST TEXAS GAS, INC.

By: [Signature]
Name: J. L. Davis
Title: President

FLEETCOR TECHNOLOGIES, INC.

By: _____
Name:
Title:

SWORN AND SUBSCRIBED before me this 25th day of October, 2001 by J. L. Davis, President of West Texas Gas, Inc., on behalf of said corporation.

[Signature]
NOTARY PUBLIC


SWORN AND SUBSCRIBED before me this ___ day of _____, 2001 by _____ of Gascard, Inc., on behalf of said corporation.

NOTARY PUBLIC

SWORN AND SUBSCRIBED before me this ___ day of _____, 2001 by _____ of Fleetcor Technologies, Inc., on behalf of said corporation.

NOTARY PUBLIC

88-03482-54

**CERTIFICATE OF MERGER
MERGING**

**GCF, INC.,
A DELAWARE CORPORATION,**

WITH AND INTO

**GASCARD CLUB, INC.,
A DELAWARE CORPORATION**

(Pursuant to Sections 251 and 303 of the
General Corporation Law of the State of Delaware)

GASCARD Club, Inc., a corporation organized and existing under and by virtue of the General Corporation Law of the State of Delaware ("GASCARD"), does hereby certify that:

1. Provision for entering into this Certificate of Merger is contained in the Plan of Reorganization of GASCARD (the "Plan") confirmed by the United States Bankruptcy Court for the Southern District of California in the bankruptcy proceedings conducted under Chapter 11 of the United States Bankruptcy Code of 1978, as amended, styled In Re: GASCARD Club, Inc., Debtor, Case No. 88-03482-B11, pursuant to the Order of Confirmation (the "Order") dated September 1, 1988 issued in such proceedings. Certified copies of the Plan and Order are attached hereto as Exhibits A and B, respectively.

2. The name and state of incorporation of each constituent corporation is:

<u>Name of Corporation</u>	<u>State of Incorporation</u>
GCF, Inc.	Delaware
GASCARD Club, Inc.	Delaware

3. Pursuant to the Plan, GASCARD and GCF, Inc. ("GCF") entered into and consummated that certain agreement and plan of merger dated September 15, 1988 (the "Merger Agreement").

4. The name of the surviving corporation is GASCARD Club, Inc., a Delaware corporation.

5. The Certificate of Incorporation of GASCARD is hereby amended and restated in its entirety as follows:

FIRST: The name of the corporation is GASCARD, Inc.

SECOND: The address of the registered office of the corporation is Corporation Trust Center, 1209 Orange Street,

d. The terms of the sinking fund provisions or redemption or purchase amount, if any, for the redemption or purchase of shares;

e. The terms and conditions on which shares may be converted into shares of Common Stock, or any other class or series, if any shares are issued with the privilege of conversion; and

f. Whether or not shares shall have voting rights, and the terms and conditions upon which any voting rights may be exercised.

2. Incorporation, Exclusion or Limitation of Terms by Reference. The Board of Directors, in fixing and determining any terms of any series of Preferred Stock as permitted under Paragraph 1, may incorporate by specific reference (with or without any permissible variations, exclusions or limitations then determined by the Board of Directors) any or all of the terms set forth in this Article FOURTH or set forth in any other resolution fixing the terms of the same or another series of Preferred Stock; provided that such other resolution has been duly filed so as to constitute an amendment to this Certificate of Incorporation of the corporation.

3. Terms of New Series Deemed an Addition to This Part. Upon completion of any filing of a resolution of the Board of Directors adopted pursuant to Paragraph 1, which may be required in order that the same shall constitute an amendment to this Certificate, the terms of the new series as set forth therein shall be deemed to become an appropriately numbered additional paragraph to this Article FOURTH, and may be so certified by any officer of the corporation or by any public official whose duty it may be to certify copies of this Certificate of Incorporation, or amendments thereto.

FIFTH: The following provisions are inserted for the management of the business and for the conduct of the affairs of the corporation, and for further definition, limitation and regulation of the powers of the corporation and of its directors and stockholders:

1. The business and affairs of the corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authority expressly conferred upon them by statute or by this Certificate of Incorporation or the bylaws of the corporation, the directors are hereby empowered to exercise all such powers and to do such things and acts as may be exercised or done by the corporation.

2. Except as otherwise fixed by or pursuant to the provisions of Article FOURTH relating to the rights of the

holders of any class or series of stock having a preference over the Common Stock, the number of directors of the corporation shall be such as from time to time shall be fixed by or in the manner provided in the bylaws, but shall not be less than three, except that when all the shares of the corporation are owned beneficially and of record by either one or two stockholders, the number of directors may be less than three but not less than the number of stockholders. Election of directors need not be by ballot unless the bylaws so provide.

3. The Board of Directors shall have the power, without the vote or assent of the stockholders and subject to rights of the holders of any series of Preferred Stock then outstanding:

a. To make, alter, amend, change, add to or repeal the bylaws of the corporation; to fix and vary any amount to be reserved for any proper purpose; to authorize and cause to be executed mortgages and liens upon all or any part of the property of the corporation; to determine the use and disposition of any surplus or net profit; and to fix the times for declaration and payment of dividends.

b. To submit any contract or act for approval or ratification at any annual meeting of the stockholders, or at any special meeting of the stockholders called for the purpose of considering any such act or contract, and any contract or act that shall be approved or ratified by the vote of the holders of a majority of the stock of the corporation which is represented in person or by proxy at such meeting and entitled to vote thereat (provided that a lawful quorum of stockholders is represented in person or by proxy) shall be as valid and binding upon the corporation and upon all the stockholders as though it had been approved or ratified by every stockholder of the corporation, whether or not the contract or act would otherwise be open to attack because of directors' interest or for any other reason.

SIXTH: Whenever a compromise or arrangement is proposed between this corporation and its creditors, or any class of them and/or between this corporation and its stockholders or any class of them, any court of equitable jurisdiction within the State of Delaware may, on the application in a summary way of this corporation or of any creditor or stockholder thereof, or on the application of any receiver or receivers appointed for this corporation under the provisions of Section 291 of Title 8 of the Delaware Code, or on the application of trustees in dissolution

or of any receiver or receivers appointed for this corporation under the provisions of Section 279 of Title 8 of the Delaware Code, order a meeting of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, to be summoned in such manner as the said court directs. If a majority in number representing three-fourths in value of the creditors or class of creditors, and/or of the stockholders or class of stockholders of this corporation, as the case may be, agree to any compromise or arrangement and to any reorganization of this corporation as a consequence of such compromise or arrangement, the said compromise or arrangement and the said reorganization shall, if sanctioned by the court to which the said application has been made, be binding on all the creditors or class of creditors, and/or on all the stockholders or class of stockholders, of this corporation, as the case may be, and also on this corporation.

SEVENTH: The corporation shall indemnify, to the full extent permitted by law, any person who is made a party to any action, suit or proceeding, whether civil, criminal, administrative or investigative, or any appeal in such an action, by reason of the fact that he is or was a director or officer of the corporation after May 2, 1988, against all expenses (including attorneys' fees), judgments, fines or amounts paid in settlement actually and reasonably incurred by such director or officer in connection with any such action, suit or proceeding. The corporation may indemnify other persons, as permitted by law. The corporation may advance expenses to directors, officers or other persons, as permitted by law. The corporation may purchase and maintain insurance on behalf of directors, officers or any persons against any liability asserted against such person in such a capacity or arising out of his status as such a person, whether or not the corporation would have the power to indemnify him against such liability, as permitted by law.

EIGHTH: The corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation in the manner now or hereafter prescribed by law, and all rights and powers conferred herein on stockholders, directors and officers are subject to this reserved power.

NINTH: A director of the corporation shall not be personally liable to the corporation or any stockholder for monetary damages for breach of a fiduciary duty as a director, except that this Article NINTH shall not eliminate or limit a director's liability (i) for any breach of the director's duty of loyalty to the corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the General Corporation Law of Delaware, or (iv) for any transaction from which the director derived an improper personal

benefit. Any repeal or modification of the foregoing provisions of this Article NINTH shall not increase the personal liability of any director of the corporation for any act or occurrence taking place prior to such repeal or modification, or otherwise adversely affect any right or protection of a director of the corporation existing at the time of such repeal or modification.

The corporation shall, to the fullest extent permitted by Section 145 of the Delaware General Corporation Law, as amended from time to time, indemnify all persons who are eligible for indemnification pursuant thereto. The provisions of this Article NINTH shall not be deemed to limit or preclude indemnification of a director by the corporation for any liability of a director which has not been eliminated by the provisions of this Article NINTH.

TENTH: The name and address of the incorporator is:
David J. Harshman
11025 North Torrey Pines Road
P.O. Box 389700
La Jolla, CA 92038

6. The executed Agreement and Plan of Merger is on file at the principal place of business of the surviving corporation, the address of which is:

GASCARD, Inc.
11025 North Torrey Pines Road
La Jolla, California 92037
Attention: Mr. Keith Moore, President

7. A copy of the Agreement and Plan of Merger will be furnished by GASCARD, on request and without cost, to any stockholder of GASCARD or GCF.

IN WITNESS WHEREOF, GASCARD Club, Inc. has caused this Certificate of Merger to be signed on its behalf by its President and attested by its Secretary, this 15th day of September, 1988.

ATTEST:

GASCARD CLUB, INC.



Lindsay B. Holland, Secretary

By: 

R. Keith Moore, President