

01-13-2003

Form PTO-1594
(Rev. 10/02)
OMB No. 0651-0027 (exp. 6/30/2005)
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U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

102335201 ▼ ▼ ▼ ▼

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

1. Name of conveying party(ies):

FYPON, LTD.

1-9-03

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

Execution Date: 12/20/2002

2. Name and address of receiving party(ies)

Name: ALLFIRST BANK

Internal

Address: _____

Street Address: 12 South Charles Street

City: Baltimore State: MD Zip: 21201

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

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) 76-362,958;
75-097,373

B. Trademark Registration No.(s) 2,421,816; 912,202
1,108,674; 1,646,855; 1,108,673

Additional number(s) attached Yes No

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

Name: Robbin Gossman, Paralegal

Internal Address: _____

Street Address: OKGS

120 East Baltimore Street

City: Baltimore State: MD Zip: 21202

6. Total number of applications and registrations involved: _____

7

7. Total fee (37 CFR 3.41).....\$ 190.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: _____

DO NOT USE THIS SPACE

9. Signature.

Robbin Gossman

Name of Person Signing

Robbin Gossman

Signature

01/07/2003

Date

Total number of pages including cover sheet, attachments, and document: 9

01/10/2003 6TDM11 00000149 76362958

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

01 FC:0521
02 FC:0522

40.00 OP
150.00 OP

TRADEMARK
REEL: 002646 FRAME: 0898

TRADEMARK SECURITY AGREEMENT

This TRADEMARK SECURITY AGREEMENT (this "Agreement") dated December 20, 2002, is given by FYPON, LTD, a Pennsylvania limited partnership ("Assignor"), in favor of ALLFIRST BANK, a Maryland state-chartered commercial bank ("Assignee").

BACKGROUND

Pursuant to a Loan and Security Agreement dated December 20, 2002, by and between Assignor and Assignee (as the same may from time to time be amended, restated, supplemented, or otherwise modified, the "Loan Agreement"), Assignee agreed to make available to Assignor (a) a senior secured revolving credit facility in the principal amount up to, but not to exceed, \$3,800,000 at any one time outstanding (the "Revolving Credit Facility"), (b) a senior secured term loan in the principal amount of \$1,200,000 (the "Term Loan"), and (c) a senior secured irrevocable direct-payment letter of credit up to \$2,772,123.99 (the "Direct-Pay Letter of Credit"). The Revolving Credit Facility, the Term Loan and the Direct-Pay Letter of Credit are sometimes hereinafter called collectively the "Credit Facilities". As inducement to Assignee to enter into the Loan Agreement and make the Credit Facilities available to Assignor, Assignor agreed to, among other things, pledge to Assignee and grant Assignee a continuing, first priority security interest in and lien on all trademark applications and trademarks of Assignor.

As used herein, the term "Financing Documents" means collectively the Loan Agreement, and all notes, guarantees, mortgages, security agreements, debentures, and other documents previously, simultaneously or hereafter executed and delivered by Assignor or any party or parties in favor of Assignee to secure or guarantee, or in connection with, the Credit Facilities.

Capitalized terms used herein without definition shall have the meanings ascribed to them in the Loan Agreement

AGREEMENTS

NOW THEREFORE, in consideration of the premises and of the mutual covenants herein contained, and intending to be legally bound hereby, the parties hereto hereby agree as follows:

1. Grant of Security Interest. To secure the complete and timely payment and satisfaction of all Obligations under the Loan Agreement and the other Financing Documents, Assignor, to the extent of its interest, hereby grants, assigns and conveys to Assignee a continuing, first priority security interest in and to all trademark applications, trademarks (whether registered, unregistered or for which any application to register has been filed), service mark applications, service marks (whether registered, unregistered or for which any application to register has been filed) and tradenames owned, held or claimed by Assignor, all of which are listed in Schedule A hereto (as the same may be amended pursuant hereto from time to time), including, without limitation, all renewals thereof and all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements, all rights owned by them corresponding thereto throughout the world

(all of the foregoing are collectively called the "Marks"), together with the goodwill of the business symbolized by each of the Marks and the registrations (if any) thereof.

2. Warranties and Representations. Assignor hereby covenants with, and warrants to, Assignee that: (a) Assignor is the sole and exclusive owner of the entire right, title and interest in each of the Marks, free and clear of any liens, pledges, assignments or other encumbrances; (b) Assignor has the unqualified right to enter into this Agreement and perform its terms; (c) except as set forth on Schedule A hereto, the Marks are subsisting and have not been adjudged invalid or unenforceable; (d) except as set forth on Schedule A hereto, each of the Marks is valid and enforceable; (e) no claim has been made that the use of any of the Marks does or may violate the rights of any third person; (f) Assignor has used, and, subject to the provisions of Paragraph 7 below, will continue to use for the duration of this Agreement, proper statutory notice in connection with its use of the Marks; and (g) Assignor has used, and, subject to the provisions of Paragraph 7 below, will continue to use for the duration of this Agreement, consistent standards of quality in its manufacture of products and delivery of services sold or provided under the Marks. Assignor shall, in any event, indemnify and hold Assignee harmless from all losses, damages, costs and expenses, including legal costs and counsel fees, incurred by Assignee as the direct or indirect result of any action, claim or demand, whether or not groundless, alleging that the Marks infringe any trademarks held by third parties.

3. Right To Inspect. Assignor hereby grants to Assignee and its officers, agents and employees the right to visit Assignor's plants and facilities where products sold or services provided under any of the Marks are manufactured, inspected, stored, or provided, and to inspect and review the products and quality control records relating thereto at reasonable times upon reasonable prior written notice from Assignor to Assignee. Assignor shall do any and all acts reasonably required by Assignee to ensure Assignor's compliance with Paragraph 2(g) above.

4. Right to Benefits. If, before the Obligations shall have been satisfied in full, Assignor shall become entitled to the benefit of any additional trademark or service mark registration, or any renewal or affidavit of any Mark, the provisions of Paragraph 1 shall automatically apply thereto and Assignor shall give Assignee prompt written notice thereof.

5. Future Marks. Assignor hereby authorizes Assignee to modify this Agreement by amending Schedule A hereto to include any future trademarks, service marks or tradenames which are Marks under Paragraph 1 or Paragraph 4 hereof. Assignee shall deliver a true and correct copy of any such amended Schedule A to Assignor promptly following Assignee's completion thereof.

6. Default. The term "Default", as used herein, shall mean: (a) any Event of Default under the Loan Agreement or a default under any of the other Financing Documents; and (b) any violation by Assignor of any obligation, agreement, representation, warranty or covenant contained in this Agreement and any modification or amendment hereof which is not waived or cured and remedied within thirty (30) calendar days after notice thereof to Assignor.

7. Assignor's Right to Use Marks. Unless and until a Default shall occur and be continuing, Assignor shall retain the legal and equitable title to the Marks and shall have the right to use the Marks in the ordinary course of its business but shall not be permitted to sell,

assign, transfer or otherwise encumber the Marks or any part thereof without the prior written consent of Assignee; provided, however, that nothing herein contained shall prohibit Assignor from failing to renew or otherwise abandoning any item included within the Marks if, in Assignor's good faith judgment, the retention of such item is not material to the proper conduct of its business; provided, however, that Assignor shall give Assignee ten (10) days' prior written notice of any abandonment or failure to renew of any item included within the Marks.

8. Assignee's Rights As Secured Party. If a Default shall have occurred and be continuing, Assignee shall have, in addition to all other rights and remedies given to it by this Agreement, the Loan Agreement and the Financing Documents, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Marks may be located or used and, without limiting the generality of the foregoing, Assignee may immediately, without demand of performance and without advertisement, sell at public or private sale or otherwise realize upon, in Maryland or elsewhere, the whole, or from time to time during the continuance of such Default any part, of the Marks, the goodwill and equipment associated therewith, or any interest which Assignor has therein, and after deducting from the proceeds of said sale or other disposition of the Marks all expenses (including all reasonable expenses for brokers' fees and legal services), shall apply the balance of such proceeds towards payment of the Obligations. Notice of any sale or other disposition of the Marks shall be given to Assignor at least ten (10) calendar days before the time of any intended public or private sale or other disposition of the Marks is to be made, which Assignor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, Assignee may, to the extent permissible under applicable law, purchase the whole or any part of the Marks sold, free from any right of redemption on the part of Assignor, which right is hereby waived and released.

9. Power of Attorney. If a Default shall have occurred and be continuing, Assignor hereby authorizes and empowers Assignee to make, constitute and appoint any officer or agent of Assignee as Assignee may select in its exclusive discretion, as Assignor's true and lawful attorney-in-fact, with the power (a) to endorse Assignor's name on all applications, documents, papers and instruments necessary for Assignee to use the Marks, or (b) to grant or issue any exclusive or non-exclusive license under the Marks to any third person, or (c) necessary for Assignee to assign, pledge, convey or otherwise transfer title in or dispose of the Marks, the goodwill and equipment associated therewith, to any third person. Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue of such power of attorney. This power of attorney shall be irrevocable for the life of this Agreement and be coupled with an interest.

10. Termination. At such time as Assignor shall completely satisfy all of the Obligations and all other liabilities of Assignor to Assignee under the Loan Agreement and the other Financing Documents, Assignee shall execute and deliver to Assignor at Assignor's sole cost and expense, all deeds, assignments and other instruments as may be necessary or proper to terminate the liens and security interests granted hereby and to re-vest in Assignor the full unencumbered title to the Marks, and the goodwill associated therewith, subject to any disposition thereof which may have been made by Assignee in accordance with the provisions hereof.

11. Fees and Expenses of Assignee. If a Default shall have occurred and be continuing, any and all fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and legal expenses, incurred by Assignee in connection with the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving the Marks, or in defending or prosecuting any actions or proceedings arising out of or related to the Marks, shall be borne and paid by Assignor on demand by Assignee, and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the highest rate prescribed in the Loan Agreement.

12. Protection of Marks.

(a) Subject only to the first proviso in Section 7 hereof, Assignor shall take all actions reasonably necessary to protect and defend the Marks and shall institute such proceedings to enforce the Marks as it, in its reasonable business judgment, deems appropriate. Assignee shall, upon the reasonable request of Assignor, do any and all lawful acts and execute any and all proper documents in aid of such protection, defense and enforcement, and Assignor shall promptly, upon demand, reimburse and indemnify Assignee for all costs and expenses incurred by Assignee in connection therewith.

(b) If a Default shall have occurred and be continuing, Assignee shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Marks, in which event Assignor shall, at the request of Assignee, do any and all lawful acts and execute any and all proper documents required by Assignee in aid of such enforcement, and Assignor shall promptly, upon demand, reimburse and indemnify Assignee for all costs and expenses incurred by Assignee in the exercise of its rights under this Paragraph 12.

13. No Waiver. No course of dealing between Assignor and Assignee nor any failure to exercise, nor any delay in exercising, on the part of Assignee, any right, power or privilege hereunder or under the Loan Agreement or the other Financing Documents 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 or the exercise of any other right, power or privilege.

14. 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.

15. Manufacture and Sale. The parties understand and agree that the collateral security assignment of the Marks as provided for in this Agreement, together with other collateral provided to Assignee pursuant to the Loan Agreement and the other Financing Documents, will permit Assignee, upon the happening and during the continuation of a Default as provided herein or an Event of Default as provided in the Loan Agreement or the other Financing Documents, to make use of all rights to the Marks, the goodwill associated therewith and certain equipment and machinery as set forth in the Loan Agreement, all of which will permit Assignee to manufacture and sell the products for which the use of the Marks is

associated and maintain substantially the same product specifications and quality as maintained by Assignor.

16. Amendment. This Agreement is subject to modification only by a writing signed by the parties hereto, except as provided in Paragraph 5 hereof.

17. Successors and Assigns. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties.

18. Governing Law. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by the laws of the State of Maryland.

19. JUDICIAL PROCEEDINGS. EACH PARTY TO THIS AGREEMENT AGREES THAT ANY SUIT, ACTION, OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT OR INSTITUTED BY ANY PARTY HERETO OR ANY SUCCESSOR OR ASSIGN OF ANY PARTY, ON OR WITH RESPECT TO THIS AGREEMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, ASSIGNOR WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. ASSIGNOR ACKNOWLEDGES AND AGREES THAT THIS PARAGRAPH IS A SPECIFIC AND MATERIAL ASPECT OF THIS AGREEMENT AND THAT ASSIGNEE WOULD NOT EXTEND CREDIT TO ASSIGNOR IF THE WAIVERS SET FORTH IN THIS PARAGRAPH WERE NOT A PART OF THIS AGREEMENT.

20. Counterparts. This Agreement may be executed in any number of duplicate originals or counterparts, each of such duplicate originals or counterparts shall be deemed to be an original and all taken together shall constitute one and the same instrument.


[SIGNATURES ON NEXT PAGE]

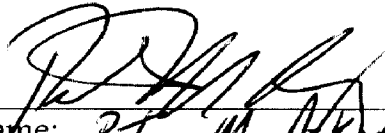
IN WITNESS WHEREOF, and intending to be legally bound hereby, the parties hereto have executed this Agreement, under seal, the day and year first above written.

WITNESS:

FYPON, LTD.

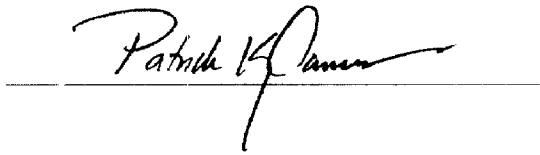
By: Fypon, Inc.
its General Partner

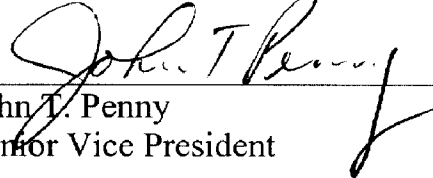


By:  (SEAL)
Name: Peter M. Kelly
Title: Authorized Representative

WITNESS:

ALLFIRST BANK



By:  (SEAL)
John T. Penny
Senior Vice President

ACKNOWLEDGMENTS

STATE OF Maryland, CITY OF Baltimore, TO WIT:

I HEREBY CERTIFY, that on this 20th day of December, 2002, before me, the undersigned Notary Public of said State, personally appeared Peter Askey, who acknowledged himself to be the President of Fypon, Inc., the sole General Partner of FYPON, LTD, a Pennsylvania limited partnership, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as the duly authorized President of Fypon, Inc. for and on behalf of FYPON, LTD.

WITNESS my Hand and Notarial Seal.

Anita J. Russum
Notary Public

ANITA J. RUSSUM
NOTARY PUBLIC STATE OF MARYLAND
My commission expires: My Commission Expires July 1, 2003

STATE OF MARYLAND, CITY OF BALTIMORE, TO WIT:

I HEREBY CERTIFY, that on this 20th day of December, 2002, before me, the undersigned Notary Public of said State, personally appeared John T. Penny, who acknowledged himself to be a Senior Vice President of ALLFIRST BANK, a Maryland state-chartered commercial bank, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged that he executed the same for the purposes therein contained as one of the duly authorized Senior Vice Presidents of said bank by himself as Senior Vice President.

WITNESS my Hand and Notarial Seal.

Anita J. Russum
Notary Public

ANITA J. RUSSUM
NOTARY PUBLIC STATE OF MARYLAND
My commission expires: My Commission Expires July 1, 2003

**SCHEDULE A
TO THE
TRADEMARK SECURITY AGREEMENT
DATED DECEMBER 20, 2002
BY FYPON, LTD. IN FAVOR OF
ALLFIRST BANK**

LIST OF TRADEMARK REGISTRATIONS AND TRADEMARK APPLICATIONS

1. Federal Registered Trademarks.

	<u>Mark</u>	<u>Registration Number</u>	<u>Registration Date</u>
(a)	BEAUTIFUL MILLWORK DOESN'T GROW ON TREES	2,421,816	January 16, 2001
(b)	FYPON	912,202	June 8, 1971
(c)	MOLDED MILLWORK	1,108,674	December 12, 1978

2. Federal Trademark Applications.

	<u>Mark</u>	<u>Serial Number</u>	<u>Filing Date</u>
	AMERICA'S FIRST CHOICE	76-362,958	January 28, 2002

3. Abandoned, Cancelled and Expired Federal Trademarks.

	<u>Mark</u>	<u>Registration Number</u>	<u>Abandonment, Cancellation or Expiration Date</u>
(a)	THE CROWNING TOUCH ARCHITECTURAL DETAIL COLLECTION	1,646,855	Cancelled August 5, 1997
(b)	FYPON MOLDED MILLWORK	1,108,673	Expired September 20, 1999
(c)	ADD WARMTH TO YOUR WELCOME	N/A (Serial Number 75-097,373)	Abandoned October 9, 1998