

04-02-2003



Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings

RE 1

102406675

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

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

1. Name of conveying party(ies): PEABODY COAL COMPANY 3.28.03
Individual(s) Association
General Partnership Limited Partnership
Corporation-State Delaware
Other
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)
Name: FLEET NATIONAL BANK
Internal Address:
Street Address: 100 Federal Street
City: Boston State: MA Zip: 02110
Individual(s) citizenship
Association National Banking
General Partnership
Limited Partnership
Corporation-State
Other
If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:
Assignment Merger
Security Agreement Change of Name
Other SECOND NOTICE OF SUCCESSOR ADMINISTRATIVE AGENT
Execution Date: March 21, 2003 (Effective Date)

4. Application number(s) or registration number(s):
A. Trademark Application No.(s)
B. Trademark Registration No.(s) 1303393
Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Chester Rothstein, Esq.
Internal Address: Amster, Rothstein & Ebenstein
Street Address: 90 Park Avenue
City: New York State: NY Zip: 10016

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: 01-1785 [for ADDITIONAL Fees only, if any]
(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.
Chester Rothstein
Name of Person Signing
Signature
03-28-2003 [49236/8]
Date

Total number of pages including cover sheet, attachments, and document: 18

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

04/01/2003 GTON11 00000067 1303393

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TRADEMARK REEL: 002703 FRAME: 0220

**SECOND NOTICE OF SUCCESSOR ADMINISTRATIVE AGENT
(Peabody Coal Company - Trademark Security Agreement)**

THIS SECOND NOTICE OF SUCCESSOR ADMINISTRATIVE AGENT, dated as of March 21, 2003 is made by PEABODY COAL COMPANY, a Delaware corporation (“Grantor”) in favor of FLEET NATIONAL BANK (the “Administrative Agent”).

WHEREAS, on June 9, 1998, Grantor granted a security interest in favor of The First National Bank of Chicago (now known as Bank One, NA) and the Lenders party to a certain Amended and Restated Credit Agreement dated as of June 9, 1998 (as the same may be amended, restated, modified, or supplemented from time to time, the “Credit Agreement”) (all capitalized terms not otherwise defined herein shall have the definitions given to them in the Credit Agreement); and

WHEREAS, pursuant to the Credit Agreement, Grantor entered into a Trademark Security Agreement dated as of June 9, 1998 (“Trademark Security Agreement”) granting to The First National Bank of Chicago a security interest in, *inter alia*, certain United States Trademarks; and

WHEREAS, the Trademark Security Agreement was recorded in the records of the United States Patent and Trademark Office in the Assignee Index at Reel 1757, Frame 824 against seven registered Trademarks, only one of which is currently subsisting; and

WHEREAS, on December 31, 2001, Bank One, NA, (formerly known as The First National Bank of Chicago) resigned as Administrative Agent and was replaced by Fleet National Bank and the parties executed a Notice of Successor Administrative Agent, a copy of which is attached hereto as Exhibit A; and

WHEREAS, the parties have entered into a Second Amended and Restated Credit Agreement dated as of the date hereof, with all secured rights granted by Grantor continuing seamlessly to Fleet National Bank under the terms and conditions of the Credit Agreement, and the Trademark Security Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged by all parties, Grantor and Fleet National Bank agree as follows:

SECTION 1. Grant of Security Interest.

As collateral security for the full and prompt payment and performance of all Obligations, the Grantor does hereby mortgage, pledge, and grant to Fleet National Bank, as Administrative Agent, for its benefit and the benefit of the Lenders, a first priority security interest in all of its right, title and interest in and to each of the Trademarks (as defined in the Trademark Security Agreement) and any Trademark at any time hereafter acquired by Grantor or in which Grantor at any time in the future may acquire or develop any right, title, or interest, including but not limited to the Trademark listed on Exhibit B attached hereto.

SECTION 2. Purpose.

This Second Notice of Successor Administrative Agent has been executed and delivered by Grantor for the purpose of confirming the substitution of Fleet National Bank for The First National Bank of Chicago, now known as BANK ONE, NA, as Administrative Agent under the Credit Agreement and the Trademark Security Agreement entered into by the parties and recorded in the records of the United States Patent and Trademark Office in the Assignee Index at Reel 1757, Frame 824. The Credit Agreement and the Trademark Security Agreement (and all rights and remedies of the Administrative Agent thereunder) shall remain in full force and effect in accordance with their terms.

SECTION 3. Acknowledgment.

Grantor does hereby further acknowledge and affirm that the rights and remedies of the Lenders with respect to the security interest in the Collateral granted hereby are more fully set forth in the Credit Agreement, and the Trademark Security Agreement, the terms and provisions of which (including the remedies provided for therein) are incorporated by reference herein as if fully set forth herein.

SECTION 4. Counterparts.

This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together constitute one and the same original.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the day and year first above written.

PEABODY COAL COMPANY

By: _____

Name:

Title:

Accepted and Agreed to:

FLEET NATIONAL BANK

By: Christopher C. Holmomen

Name: **CHRISTOPHER C. HOLMOMEN**

Title: **MANAGING DIRECTOR**

STATE OF New York)
) ss:
COUNTY OF New York)

On March 21 2003, before me, the undersigned, personally appeared
Steven F. Schaab, personally known to me (or proved to me on the
basis of satisfactory evidence) to be the person who executed this instrument as
v.p. Treasurer of **PEABODY COAL COMPANY** and acknowledged to me that
said Company executed it pursuant to its by-laws or a resolution of its board of directors.

Tiffany M. Mitsuda
Notary Public in and for
said County and State

TIFFANI M. MITSUDA
NOTARY PUBLIC, State of New York
No. 01916687707
Qualified in New York County
Commission Expires December 17, 2005

STATE OF _____)
) ss:
COUNTY OF _____)

On March _____ 2003, before me, the undersigned, personally appeared
_____, personally known to me (or proved to me on the basis of
satisfactory evidence) to be the person who executed this instrument as
_____ of **FLEET NATIONAL BANK** and acknowledged to me that
said National Banking Association executed it pursuant to its by-laws or a resolution of its
board of directors.

Notary Public in and for
said County and State

STATE OF _____)
) ss:
COUNTY OF _____)

On March 2003, before me, the undersigned, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as _____ of **PEABODY COAL COMPANY** and acknowledged to me that said Company executed it pursuant to its by-laws or a resolution of its board of directors.

Notary Public in and for
said County and State

STATE OF Massachusetts
) ss:
COUNTY OF Suffolk)

On March 20 2003, before me, the undersigned, personally appeared Christoph Helmgren, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Managing Director of **FLEET NATIONAL BANK** and acknowledged to me that said National Banking Association executed it pursuant to its by-laws or a resolution of its board of directors.

Kathleen M. Jones _____ Middlesex Massachusetts
Notary Public in and for
said County and State

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NOTICE OF SUCCESSOR ADMINISTRATIVE AGENT
(Peabody Coal Company - Trademark Security Agreement)

THIS NOTICE OF SUCCESSOR ADMINISTRATIVE AGENT, dated as of December 31, 2001 is made by and among PEABODY COAL COMPANY ("Grantor"), BANK ONE, NA (formerly known as The First National Bank of Chicago, the "Resigning Agent"), and FLEET NATIONAL BANK (the "Administrative Agent").

WHEREAS, on June 9, 1998, Grantor granted a security interest in favor of the Resigning Agent and the Lenders party to a certain Amended and Restated Credit Agreement dated as of June 9, 1998 (as the same may be amended, restated, modified, or supplemented from time to time, the "Credit Agreement"); and

WHEREAS, pursuant to the Credit Agreement, Grantor entered into a Guarantee and Collateral Agreement dated as of June 9, 1998 ("G&CA") and a Trademark Security Agreement dated as of June 9, 1998 ("Trademark Security Agreement") granting to the Resigning Agent a security interest in, *inter alia*, certain United States Trademarks. The Trademark Security Agreement was recorded in the records of the United States Patent and Trademark Office in the Assignee Index at Reel 1757, Frame 824 against seven Trademarks; and

WHEREAS, the above referenced parties have agreed to replace the Resigning Agent with the Administrative Agent with all secured rights granted by Grantor continuing seamlessly under the terms and conditions of the Credit Agreement, the G&CA, and the Trademark Security Agreement.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is acknowledged by all parties, the Resigning Agent, the Administrative Agent, and Grantor agree as follows:

SECTION 1. Grant of Security Interest.

As collateral security for the full and prompt payment and performance of all Obligations, the Grantor does hereby mortgage and pledge to the Secured Party, for its benefit and the benefit of the other Agents and the Lenders, and grant the Secured Party, for its benefit and the benefit of the other Agents and the Lenders, a first priority security interest in, all of its right, title and interest in and to each of the Trademarks (as defined in the Trademark Security Agreement) described in Schedule A and any Trademark at any time hereafter acquired by Grantor or in which Grantor at any time in the future may acquire or develop any right, title, or interest.

SECTION 2. Purpose.

This Notice of Successor Administrative Agent has been executed and delivered by Grantor for the purpose of substituting Fleet National Bank for BANK ONE, NA (formerly known as The First National Bank of Chicago) as Administrative Agent under the Trademark Security Agreement entered into by the parties and recorded in the records of the United States Patent and Trademark Office in the Assignee Index at Reel 1757, Frame 824 against seven Trademarks. The security interest granted hereby has been granted to the Administrative Agent and the Secured Parties in connection with the Credit Agreement, the G&CA, and the Trademark Security Agreement and is expressly subject to the terms and conditions thereof. The Credit Agreement, the G&CA, and the Trademark Security Agreement (and all rights and remedies of the Administrative Agent thereunder) shall remain in full force and effect in accordance with its terms.

SECTION 3. Acknowledgment.

Grantor does hereby further acknowledge and affirm that the rights and remedies of the Secured Party (as defined in the Credit Agreement) with respect to the security interest in the Collateral granted hereby are more fully set forth in the Credit Agreement, the G&CA, and the Trademark Security Agreement the terms and provisions of

which (including the remedies provided for therein) are incorporated by reference herein as if fully set forth herein.

SECTION 4. Counterparts.

This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together constitute one and the same original.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the day and year first above written.

PEABODY COAL COMPANY

By: Steven F. Schmitt
Name: STEVEN F. SCHMITT
Title: V.P.

Accepted and Agreed to:

BANK ONE, NA
(formerly known as The First National Bank of Chicago)

By: _____
Name:
Title:

FLEET NATIONAL BANK

By: _____
Name:
Title:

which (including the remedies provided for therein) are incorporated by reference herein as if fully set forth herein.

SECTION 4. Counterparts.

This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together constitute one and the same original.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the day and year first above written.

PEABODY COAL COMPANY

By: _____
Name:
Title:

Accepted and Agreed to:

BANK ONE, NA
(formerly known as The First National Bank of Chicago)

By: Mary Lu D. Cramer
Name: Mary Lu D. Cramer
Title: Director

FLEET NATIONAL BANK

By: _____
Name:
Title:

STATE OF Illinois)
) ss:
COUNTY OF Cook .)

On December 13th, 2001, before me, the undersigned, personally appeared Mary Lu D. Cramer, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Director of BANK ONE, NA (formerly known as The First National Bank of Chicago) and acknowledged to me that said National Banking Association executed it pursuant to its by-laws or a resolution of its board of directors.

Keck

Notary Public in and for
said County and State

NOTARY PUBLIC
ILLINOIS

which (including the remedies provided for therein) are incorporated by reference herein as if fully set forth herein.

SECTION 4. Counterparts.

This Agreement may be executed in counterparts, each of which will be deemed an original, but all of which together constitute one and the same original.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed and delivered by their respective duly authorized officers as of the day and year first above written.

PEABODY COAL COMPANY

By: _____
Name:
Title:

Accepted and Agreed to:

BANK ONE, NA
(formerly known as The First National Bank of Chicago)

By: _____
Name:
Title:

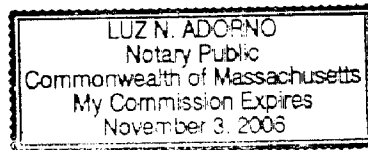
FLEET NATIONAL BANK

By: Christopher C. Holmgren
Name: CHRISTOPHER C. HOLMGREN
Title: MANAGING DIRECTOR

STATE OF Massachusetts)
) ss:
COUNTY OF Suffolk)

On December 19, 2001, before me, the undersigned, personally appeared Christopher C. Holmgren, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person who executed this instrument as Managing Director of FLEET NATIONAL BANK and acknowledged to me that said National Banking Association executed it pursuant to its by-laws or a resolution of its board of directors.

Luiz N. Adorno
Notary Public in and for
said County and State



SCHEDULE A

Peabody Coal Company

TRADEMARKS

Registration Number	Country	Trade Mark
305866	United States	Chieftain
453064	United States	Seneca
377793	United States	Westplan & Design
722430	United States	Power for Progress
719422	United States	Tebo
162457	United States	Chemcoke
313081	United States	Sycamore

TRADEMARK LICENSES

None

EXHIBIT B

<u>Trademark</u>	<u>Reg. No.</u>
SENECA	1,303,393

Exhibit B

TRADEMARK

RECORDED: 03/28/2003

REEL: 002703 FRAME: 0237