

06-02-2003

6203

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



102461757 ▼

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):

Amweld Building Products, LLC

- Individual(s)
- General Partnership
- Corporation-State
- Other limited liability company
- 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: 5/28/2003

2. Name and address of receiving party(ies)

Name: Congress Financial Corporation \*

Internal Address: \* (Central)

Street Address: 150 S. Wacker Drive, Ste. 2200

City: Chicago State: IL Zip: 60606

- Individual(s) citizenship \_\_\_\_\_
- Association \_\_\_\_\_
- General Partnership \_\_\_\_\_
- Limited Partnership \_\_\_\_\_
- Corporation-State Illinois
- 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) 78-202430

B. Trademark Registration No.(s) 2427454

Additional number(s) attached  Yes  No

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

Name: Deneen Sanders, Paralegal

Internal Address: Goldberg, Kohn, et. al.

Street Address: 55 East Monroe Street

Suite 3700

City: Chicago State: IL Zip: 60603

6. Total number of applications and registrations involved: .....

2

7. Total fee (37 CFR 3.41).....\$ 65.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Deneen Sanders  
Name of Person Signing

Signature

May 28, 2003  
Date

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

11

06/03/2003 6TON11 00000002 78202430

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

01 FC:8521 40.00 DP  
02 FC:8522 25.00 DP

TRADEMARK  
REEL: 002743 FRAME: 0426

# PATENT, TRADEMARK AND COPYRIGHT MORTGAGE

THIS PATENT, TRADEMARK AND COPYRIGHT MORTGAGE (this "Mortgage") is made as of this 28<sup>th</sup> day of May, 2003, by Amweld Building Products, LLC, a Delaware limited liability company, with its principal place of business and chief executive office at 1500 Amweld Drive, Garrettsville, Ohio 44231 ("Mortgagor") in favor of Congress Financial Corporation (Central), with an office at 150 South Wacker Drive, Suite 2200, Chicago, Illinois 60606 ("Mortgagee"):

## W I T N E S S E T H

WHEREAS, Mortgagor, certain affiliates of Mortgagor and Mortgagee are parties to a certain Third Amended and Restated Loan and Security Agreement dated as of April 9, 2003 (as amended, restated and supplemented from time to time, the "Loan Agreement") and other related loan documents of even date herewith (collectively with the Loan Agreement, the "Financing Agreements"), which Financing Agreements provide, among other things, (i) for Mortgagee to, from time to time, extend credit to or for the account of Mortgagor and certain of its affiliates and (ii) for the grant by Mortgagor to Mortgagee of a security interest in certain of Mortgagor's assets, including, without limitation, its patents, patent applications, trademarks, trademark applications, trade names, service marks, service mark applications, copyrights, goodwill and licenses;

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, receipt and sufficiency of which are hereby acknowledged, Mortgagor agrees as follows:

1. Incorporation of Financing Agreements. The Financing Agreements and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto. All terms capitalized but not otherwise defined herein shall have the same meanings herein as in the Financing Agreements.

2. Mortgage of Patents, Trademarks and Copyrights. To secure the complete and timely satisfaction of all of Mortgagor's Obligations, Mortgagor hereby grants, bargains, assigns, mortgages, pledges, sells, creates a security interest in, transfers and conveys to Mortgagee, as and by way of a first mortgage and security interest having priority over all other security interests, with power of sale upon the occurrence of an Event of Default, to the extent permitted by law, in all of Mortgagor's right, title and interest in and to all of its now existing and hereafter created or acquired:

(i) patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein, and those patents listed on Exhibit A attached hereto and hereby made a part hereof, and (a) the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (b) all income, damages and payments now and hereafter due or payable under or with respect thereto, including, without

limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing patents and applications, together with the items described in clauses (a)-(d) of this subsection 2(i), are sometimes hereinafter referred to individually as a "Patent" and, collectively, as the "Patents");

(ii) trademarks, trademark registrations, trademark applications, trade names and tradestyles, service marks, service mark registrations, service mark applications and brand names, including, without limitation, the trademarks, trade names, service marks and applications and registrations thereof listed on Exhibit B attached hereto and hereby made a part hereof, and (a) renewals or extensions, thereof, (b) all income, damages and payments now and hereafter due or payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing trademarks, trade names, service marks and applications and registrations thereof, together with the items described in clauses (a)-(d) of this subsection 2(ii), are sometimes hereinafter referred individually as a "Trademark" and, collectively, as the "Trademarks");

(iii) copyrights, rights and interests in copyrights, works protectable by copyrights, copyright registrations and copyright applications, including, without limitation, the copyright registrations and applications listed on Exhibit C attached hereto and made a part hereof, and all renewals of any of the foregoing, all income, royalties, damages and payments now and hereafter due and/or payable under or with respect to any of the foregoing, including, without limitation, damages and payments for past, present and future infringements of any of the foregoing and the right to sue for past, present and future infringements of any of the foregoing (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Copyrights"); and

(iv) the goodwill of Mortgagor's business connected with and symbolized by the Trademarks.

3. Warranties and Representations. Mortgagor warrants and represents to Mortgagee that:

(i) no Patent, Trademark or Copyright has been adjudged invalid or unenforceable nor has any such Patent, Trademark or Copyright been cancelled, in whole or in part and each such Patent, Trademark and Copyright is presently subsisting;

(ii) each Patent, Trademark and Copyright is valid and enforceable;

(iii) Mortgagor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each Patent, Trademark and Copyright, free and clear of any liens, charges and encumbrances, including without limitation licenses, shop rights and covenants by Mortgagor not to sue third persons, other than security interests and liens of Ableco, granted pursuant to the Ableco Agreements;

(iv) Mortgagor has adopted, used and is currently using all of the Trademarks;

(v) Mortgagor has no notice of any suits or actions commenced or threatened with reference to the Patents, Trademarks or Copyrights; and

(vi) Mortgagor has the unqualified right to execute and deliver this Mortgage and perform its terms.

4. Restrictions on Future Agreements. Mortgagor agrees that until Mortgagor's Obligations shall have been satisfied in full and the Financing Agreements shall have been terminated, Mortgagor shall not, without the prior written consent of Mortgagee, sell or assign its interest in, or grant any license or sublicense under, the Patents, Trademarks or Copyrights, or enter into any other agreement with respect to the Patents, Trademarks or Copyrights (other than any Ableco Agreement), and Mortgagor further agrees that it shall not take any action or permit any action to be taken by others subject to its control, including licensees, or fail to take any action which would affect the validity or enforcement of the rights transferred to Mortgagee under this Mortgage.

5. New Patents, Trademarks, and Copyrights. Mortgagor represents and warrants that the Patents, Trademarks and Copyrights listed on Exhibits A, B and C, respectively, constitute all of the Patents, Trademarks, and Copyrights now owned by Mortgagor. If, before the Obligations shall have been satisfied in full or before the Financing Agreements have been terminated, Mortgagor shall (i) become aware of any existing Patents, Trademarks or Copyrights of which Mortgagor has not previously informed Mortgagee, (ii) obtain rights to any new patentable inventions, copyrightable works, Patents, Trademarks, or Copyrights, or (iii) become entitled to the benefit of any Patents, Trademarks or Copyrights which benefit is not in existence on the date hereof, the provisions of this Mortgage above shall automatically apply thereto and Mortgagor shall give to Mortgagee prompt written notice thereof. Mortgagor hereby authorizes Mortgagee to modify this Mortgage by amending Exhibits A, B and C, as applicable, to include any such Patents, Trademarks and Copyrights.

6. Royalties; Terms. The term of the mortgages granted herein shall extend until the earlier of (i) the expiration of each of the respective Patents, Trademarks and Copyrights assigned hereunder, and (ii) the payment in full of the Obligations and the

termination of the Financing Agreements. Mortgagor agrees that upon the occurrence of an Event of Default, the use by Mortgagee of all Patents, Trademarks and Copyrights shall be worldwide, except as limited by their terms, and without any liability for royalties or other related charges from Mortgagee to Mortgagor.

7. Product Quality. Mortgagor agrees (i) to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with commercially reasonable business practices, and (ii) to provide Mortgagee, upon Mortgagee's request from time to time, with a certificate of an officer of Mortgagor certifying Mortgagor's compliance with the foregoing. Upon the occurrence of an Event of Default, Mortgagor agrees that Mortgagee, or a conservator appointed by Mortgagee, shall have the right to establish such additional product quality controls as Mortgagee, or said conservator, in its reasonable judgment, may deem necessary to assure maintenance of the quality of products sold by Mortgagor under the Trademarks.

8. Release of Mortgage. This Mortgage is made for collateral purposes only. Upon payment in full of Mortgagor's Obligations and termination of the Financing Agreements, Mortgagee shall execute and deliver to Mortgagor all deeds, assignments and other instruments, and shall take such other actions, as may be necessary or proper to re-vest in Mortgagor full title to the Patents, Trademarks and Copyrights, subject to any disposition thereof which may have been made by Mortgagee pursuant to the Financing Agreements.

9. Expenses. All expenses incurred in connection with the performance of any of the agreements set forth herein shall be borne by Mortgagor. All fees, costs and expenses, of whatever kind or nature, including attorneys' fees and legal expenses, incurred by Mortgagee in connection with 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 in protecting, maintaining or preserving the Patents, Trademarks and Copyrights, or in defending or prosecuting any actions or proceedings arising out of or related to the Patents, Trademarks and Copyrights, shall be borne by and paid by Mortgagor and shall be charged against the Obligations.

10. Duties of Mortgagor. Mortgagor shall have the duty (i) to file and prosecute diligently any patent, trademark, copyright or service mark applications pending as of the date hereof or hereafter until Mortgagor's Obligations shall have been paid in full and the Financing Agreements have been terminated, (ii) to make application on unpatented but patentable inventions, on all uncopyrighted but copyrightable works and on trademarks and service marks, as commercially reasonable, (iii) to preserve and maintain all rights in the Patents, Trademarks and Copyrights, as commercially reasonable and (iv) to ensure that the Patents, Trademarks and Copyrights are and remain enforceable, as commercially reasonable. Any expenses incurred in connection with Mortgagor's obligations under this Section 10 shall be borne by Mortgagor.

11. Mortgagee's Right to Sue. After an Event of Default, and subject to any restrictions set forth in the Ableco Agreements, Mortgagee shall have the right, but shall in

no way be obligated, to bring suit in its own name to enforce the Patents, Trademarks and Copyrights, and, if Mortgagee shall commence any such suit, Mortgagor shall, at the request of Mortgagee, do any and all lawful acts and execute any and all proper documents required by Mortgagee in aid of such enforcement and Mortgagor shall promptly, upon demand, reimburse and indemnify Mortgagee for all costs and expenses incurred by Mortgagee in the exercise of its rights under this Section 11.

12. Waivers. No course of dealing between Mortgagor and Mortgagee, nor any failure to exercise, nor any delay in exercising, on the part of Mortgagee, any right, power or privilege hereunder or under the Financing Agreements 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.

13. Severability. The provisions of this Mortgage 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 Mortgage in any jurisdiction.

14. Modification. This Mortgage cannot be altered, amended or modified in any way, except as specifically provided in Section 5 hereof or by a writing signed by the parties hereto.

15. Cumulative Remedies; Power of Attorney; Effect on Financing Agreements. All of Mortgagee's rights and remedies with respect to the Patents, Trademarks and Copyrights, whether established hereby or by the Financing Agreements, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Mortgagor hereby authorizes Mortgagee upon the occurrence of an Event of Default, to make, constitute and appoint any officer or agent of Mortgagee as Mortgagee may select, in its sole discretion, as Mortgagor's true and lawful attorney-in-fact, with power to (i) endorse Mortgagor's name on all applications, documents, papers and instruments necessary or desirable for Mortgagee in the use of the Patents, Trademarks and Copyrights, or (ii) take any other actions with respect to the Patents, Trademarks and Copyrights as Mortgagee deems to be in the best interest of Mortgagee, or (iii) grant or issue any exclusive or non-exclusive license under the Patents, Trademarks or Copyrights to anyone, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Patents, Trademarks or Copyrights to anyone. Mortgagor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until Mortgagor's Obligations shall have been paid in full and the Financing Agreements, have been terminated. Mortgagor acknowledges and agrees that this Mortgage is not intended to limit or restrict in any way the rights and remedies of Mortgagee under the Financing Agreements but rather is intended to facilitate the exercise of such rights and remedies. Mortgagee shall have, in addition to all other rights and remedies given it by the terms of this Mortgage and the Financing

Agreements, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in Illinois.

16. Binding Effect; Benefits. This Mortgage shall be binding upon Mortgagor and its respective successors and assigns, and shall inure to the benefit of Mortgagee, its successors, nominees and assigns.

17. Governing Law. This Mortgage shall be governed by and construed in accordance with the laws of the State of Illinois.

18. Headings. Paragraph headings used herein are for convenience only and shall not modify the provisions which they precede.

19. Further Assurances. Mortgagor agrees to execute and deliver such further agreements, instruments and documents, and to perform such further acts, as Mortgagee shall reasonably request from time to time in order to carry out the purpose of this Mortgage and agreements set forth herein.

20. Survival of Representations. All representations and warranties of Mortgagor contained in this Mortgage shall survive the execution and delivery of this Mortgage and shall be remade on the date of each borrowing under the Financing Agreements.

**[Signature Page Follows]**

IN WITNESS WHEREOF, Mortgagor has duly executed this Mortgage in favor of Mortgagee as of the date first written above.

AMWELD BUILDING PRODUCTS, LLC

By Jeffrey David Warr  
Its Sec



**EXHIBIT A**

PATENTS

PATENT DESCRIPTION	REGISTRATION NO.
Method of Constructing a Door	6351882

**EXHIBIT B**

TRADEMARKS

MARK	STATUS	SERIAL NO.	REG. NO.
Amweld & Design	Registered	75-651892	2,427,454

TRADEMARK APPLICATIONS

MARK	STATUS	SERIAL NO.
Independence Door Hardware Systems	Pending – Initialized	78-202430

**EXHIBIT C**

COPYRIGHTS

TITLE	REGISTRATION NO.
Amweld Doors & Frames Handbook by James H. Jay	RE-523054
Amweld Doors & Frames	A609053
Amweld Handbook	A615053