



06-27-2003

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

REC T



102484739

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):

Holman Boiler Works, Inc.

- Individual(s) Association General Partnership Limited Partnership Corporation-State - Delaware 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: 12/30/2002

2. Name and address of receiving party(ies)

Name: PNC Bank, National Association

Internal

Address:

Street Address: 2 Tower Center Blvd., 8th Fl.

City: E. Brunswick State: NJ Zip: 08816

- Individual(s) citizenship Association National General Partnership Limited Partnership Corporation-State 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) 1443562, 1441988

1497069, 1496676, 1448885, 1460767

Additional number(s) attached Yes No

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

Name: George M. Borababy

Internal Address:

Street Address: Patton Boggs LLP

2550 M Street, N.W.

City: Washington State: DC Zip: 20037

6. Total number of applications and registrations involved:

6

7. Total fee (37 CFR 3.41): \$ 165.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

50-0709

DO NOT USE THIS SPACE

9. Signature.

George M. Borababy

Name of Person Signing

Signature

6/20/03

Date

9

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

06/26/2003 6TON11 00000143 500709 1443562

01 FC:8521 40.00 DA 02 FC: 8522 150.00 DA

TRADEMARK REEL: 002765 FRAME: 0218

PATENT AND TRADEMARK SECURITY AGREEMENT

This Agreement, dated as of December 30, 2002, is made by and between Holman Boiler Works, Inc., a Delaware corporation (the "Debtor"), and PNC Bank, National Association, for itself as a Lender, and as agent for the Lenders (as defined below) (the "Secured Party").

Recitals

The Debtor and the Secured Party have entered into a Revolving Credit, Term Loan and Security Agreement of even date herewith (as the same may hereafter be amended, supplemented or restated from time to time, the "Credit Agreement") setting forth the terms on which the Secured Party may now or hereafter make certain loans or other financial accommodations to or for the account of the Debtor.

As a further condition to making any loan or other financial accommodation under the Credit Agreement or otherwise, the Secured Party has required the execution and delivery of this Agreement by the Debtor.

ACCORDINGLY, in consideration of the mutual covenants contained in the Credit Agreement and herein, the parties hereby agree as follows:

1. Definitions. All terms defined that are not otherwise defined herein shall have the meanings given to them in the Credit Agreement. In addition, the following terms have the meanings set forth below:

"Patents" means all of the Debtor's right, title and interest in and to patents or applications for patents, fees or royalties with respect to each, and including without limitation the right to sue for past, present and future infringement and all proceeds of infringement suits, and licenses thereunder, all as presently existing or hereafter arising or acquired, including without limitation the patents listed on Exhibit A.

"Trademarks" means all of the Debtor's right, title and interest in and to trademarks, service marks, collective membership marks, the respective goodwill associated with each, all accounts, registrations and applications appurtenant thereto hereafter acquired, the right to sue for past, present and future infringements and all proceeds of infringements suits, licenses thereunder, all accounts, contract rights and general intangibles arising under and relating to each and every license, proceeds and products of any of the foregoing, all as presently existing or hereafter arising or acquired, including, without limitation, the marks listed on Exhibit B.

2. Security Interest. As collateral security to secure payment of the Obligations, Debtor hereby grants to the Secured Party, as Agent for the benefit of itself and Lenders, a continuing first priority security interest, with power of sale to the extent permitted by law (the "Security Interest", in all of Grantor's right, title and interest in, to and under the Patents and Trademarks and whether presently existing or hereafter created or acquired.

3. Representations, Warranties and Agreements. The Debtor hereby represents, warrants and agrees as follows:

(a) **Existence; Authority.** The Debtor is a corporation, having full power to and authority to make and deliver this Agreement. The execution, delivery and performance of this Agreement by the Debtor have been duly authorized by all necessary action of the Debtor's board of directors, and if necessary its stockholders, and do not and will not violate the provisions of, or constitute a default under, any presently applicable law or its articles of incorporation or bylaws or any agreement presently binding on it. This Agreement has been duly executed and delivered by the Debtor and constitutes the Debtor's lawful, binding and legally enforceable obligation. The correct name of the Debtor is Holman Boiler Works, Inc. The authorization, execution, delivery and performance of this Agreement do not require notification to, registration with, or consent or approval by, any federal, state or local regulatory body or administrative agency.

(b) **Patents.** Exhibit A lists all Patents owned or controlled by the Debtor as of the date hereof and accurately reflects the existence and status of registrations pertaining to the Patents as of the date hereof.

(c) **Trademarks.** Exhibit B lists all Trademarks owned or controlled by the Debtor as of the date hereof and accurately reflects the existence and status of Trademarks and all registrations pertaining thereto as of the date hereof.

(d) **Title.** Except as permitted herein or in the Credit Agreement, the Debtor (i) will have, at the time the Debtor acquires any Patents or Trademarks hereafter arising, right, title and interest to each such Patent or Trademark free and clear of all security interests, liens and encumbrances, except the Security Interest and Permitted Encumbrances (as defined in the Credit Agreement), and (ii) will keep all Patents and Trademarks free and clear of all security interests, liens and encumbrances, except the Security Interest and Permitted Encumbrances (as defined in the Credit Agreement).

(e) **No Sale.** Except as permitted herein or in the Credit Agreement, the Debtor will not sell or otherwise dispose of the Patents or Trademarks, or any interest therein, without the Secured Party's prior written consent.

(f) **Defense.** To the extent reasonably advisable in its business, the Debtor will at its own expense, and using commercially reasonable efforts, protect and defend the Patents and Trademarks against all claims or demands of all persons other than the Secured Party.

(g) **Maintenance.** The Debtor will at its own expense maintain the Patents and the Trademarks to the extent reasonably advisable in its business including, but not limited to, filing all renewals possible with respect to issued registrations. The Debtor covenants that it will not abandon, nor fail to pay any maintenance fee or annuity due and payable on, any material Patent or Trademark, nor fail to file any required affidavit in support thereof, without first providing the Secured Party: (i) sufficient written notice, as

provided in the Credit Agreement, to allow the Secured Party to timely pay any such maintenance fees or annuity which may become due on any of said Patents or Trademarks, or to file any affidavit with respect thereto, and (ii) a separate written power of attorney or other authorization to pay such maintenance fees or annuities, or to file such affidavit, should such be necessary or desirable.

(h) **Secured Party's Right to Take Action.** If the Debtor fails to perform or observe any of its covenants or agreements set forth in this Section 3, and if such failure continues for a period of ten (10) calendar days after the Secured Party gives the Debtor written notice thereof (or, in the case of the agreements contained in subsection (g), immediately upon the occurrence of such failure, without notice or lapse of time), the Secured Party may (but need not) perform or observe such covenant or agreement on behalf and in the name, place and stead of the Debtor (or, at the Secured Party's option, in the Secured Party's own name) and may (but need not) take any and all other actions which the Secured Party may reasonably deem necessary to cure or correct such failure.

(i) **Costs and Expenses.** Except to the extent that the effect of such payment would be to render any loan or forbearance of money usurious or otherwise illegal under any applicable law, the Debtor shall pay the Secured Party on demand the amount of all moneys expended and all costs and expenses (including reasonable attorneys' fees) incurred by the Secured Party in connection with or as a result of the Secured Party's taking action under subsection (h) or exercising its rights under Section 6, together with interest thereon from the date expended or incurred by the Secured Party at the highest rate then applicable to any of the Obligations.

(j) **Power of Attorney.** To facilitate the Secured Party's taking action under subsection (h) and exercising its rights under Section 6, the Debtor hereby irrevocably appoints (which appointment is coupled with an interest) the Secured Party, or its delegate, as the attorney-in-fact of the Debtor with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of the Debtor, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by the Debtor under this Section 3, or, necessary for the Secured Party, after an Event of Default, to enforce or use the Patents or Trademarks or to grant or issue any exclusive or non-exclusive license under the Patents or Trademarks to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Patents or Trademarks to any third party. The Debtor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein shall terminate upon the termination of the Credit Agreement as provided therein and the payment and performance of all Obligations.

4. **Debtor's Use of the Patents and Trademarks.** The Debtor shall be permitted to control and manage the Patents and Trademarks, including the right to exclude others from making, using or selling items covered by the Patents and Trademarks and any licenses thereunder, in the same manner and with the same effect as if this Agreement had not been entered into, so long as no Event of Default has occurred and is continuing.

5. Events of Default. Each of the following occurrences shall constitute an event of default under this Agreement (herein called "Event of Default"): (a) an Event of Default, as defined in the Credit Agreement, shall occur; or (b) the Debtor shall fail promptly to observe or perform any covenant or agreement herein binding on it; or (c) any of the representations or warranties contained in Section 3 shall prove to have been incorrect in any material respect when made.

6. Remedies. Upon the occurrence of an Event of Default and at any time thereafter, the Secured Party may, at its option, take any or all of the following actions:

(a) The Secured Party may exercise any or all remedies available under the Credit Agreement.

(b) The Secured Party may sell, assign, transfer, pledge, encumber or otherwise dispose of the Patents and Trademarks.

(c) The Secured Party may enforce the Patents and Trademarks and any licenses thereunder, and if the Secured Party shall commence any suit for such enforcement, the Debtor shall, at the request of Secured Party, do any and all lawful acts and execute any and all proper documents required by Secured Party in aid of such enforcement.

7. Miscellaneous. This Agreement has been duly and validly authorized by all necessary action, corporate or otherwise. This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by the Secured Party. A waiver signed by the Secured Party shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Secured Party's rights or remedies. All rights and remedies of the Secured Party shall be cumulative and may be exercised singularly or concurrently, at the Secured Party's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other. The Secured Party shall not be obligated to preserve any rights the Debtor may have against prior parties, to realize on the Patents and Trademarks at all or in any particular manner or order, or to apply any cash proceeds of Patents and Trademarks in any particular order of application. This Agreement shall be binding upon and inure to the benefit of the Debtor and the Secured Party and their respective participants, successors and assigns and shall take effect when signed by the Debtor and delivered to the Secured Party, and the Debtor waives notice of the Secured Party's acceptance hereof. The Secured Party may execute this Agreement if appropriate for the purpose of filing, but the failure of the Secured Party to execute this Agreement shall not affect or impair the validity or effectiveness of this Agreement. A carbon, photographic or other reproduction of this Agreement or of any financing statement signed by the Debtor shall have the same force and effect as the original for all purposes of a financing statement. This Agreement shall be governed by the internal law of Pennsylvania without regard to conflicts of law provisions. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect and this Agreement shall be construed as if the unlawful or unenforceable provision or application

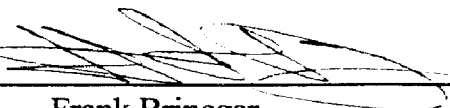
had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Obligations.

THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR PERTAINING TO THIS AGREEMENT.

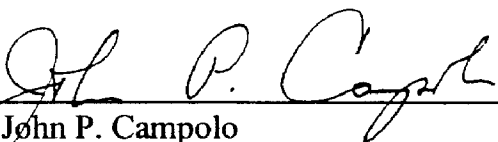
[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

IN WITNESS WHEREOF, the parties have executed this Patent and Trademark Security Agreement as of the date written above.

PNC Bank, National Association

By: 
Frank Brinegar
Vice President

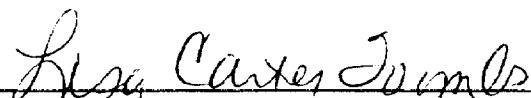
Holman Boiler Works, Inc.

By: 
John P. Campolo
President and Chief Executive Officer

STATE OF TEXAS)
COUNTY OF DALLAS)

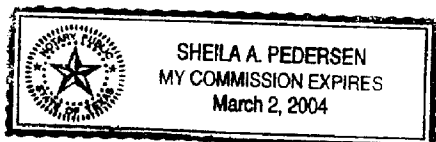
The foregoing instrument was acknowledged before me this 30th day of December, 2002, by John P. Campolo, the President and Chief Executive Officer of Holman Boiler Works, Inc., a Delaware corporation, on behalf of the corporation.




Notary Public

STATE OF TEXAS)
COUNTY OF DALLAS)

The foregoing instrument was acknowledged before me this 30th day of December, 2002, by Frank Brinegar, a Vice President of PNC Bank, National Association, on behalf of the Secured Party.





Notary Public

EXHIBIT A
PATENTS

<u>U.S. Pat. No., Issue Date or App. No., App. No. Filing Date</u>	<u>Foreign Pat. No., Issue Date or Filing, Filing Date</u>	<u>Title</u>	<u>Assignee</u>	<u>Status</u>
5,603,906	not found	Low NO Burner	Holman Boiler Works, Inc.	1 st maintenance fee due 8/18/00; expires 11/20/15
5,257,0927 11/2/93	CA 2,099,112 JP2, 617, 680 6/4/97 RU2, 091,669	Low NO Burner	Holman Boiler Works, Inc.	2 nd maintenance fee due 5/21/01; expires 11/1/11 The 3 foreign patents expire 10/29/12
08/034,327 3/22/93	PCT/US94/0307 2 3/22/94 RU2,089,785 9/10/94 (pat.) CA2, 135, 772 3/22/94 (app.) JP94-521, 316 3/22/94 (app.)	Low NO Burner	Holman Boiler Works, Inc.	RU patent expires 3/22/14

EXHIBIT B

UNITED STATES TRADEMARK REGISTRATIONS

<u>Trademark</u>	<u>Reg. No.</u>	<u>Reg. Date</u>
THE BOILER SUPERMARKET	1,443,562	June 16, 1987
THE BOILER SUPERMARKET	1,441,988	June 9, 1987
HOLMAN BOILER WORK INC. and Design	1,497,069	July 19, 1988
HOLMAN BOILER WORK INC. and Design	1,496,676	July 19, 1988
Design	1,448,885	July 21, 1987
Design	1,460,767	October 13, 1987