

07-16-2003

7.14.03

Form PTO-1594  
(Rev. 10/02)  
OMB No. 0651-0027 (exp. 6/30/2003)  
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102497609

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):

Pitt Penn Oil Co., 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: 3/24/2003

2. Name and address of receiving party(ies)

Name: Congress Financial Corporation

Internal

Address:

Street Address: 1133 Avenue of the Americas

City: New York State: NY Zip: 10036

- Individual(s) citizenship
- Association
- General Partnership
- Limited Partnership
- Corporation-State Delaware
- 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) 2077699;

2079414; 2079425; 2079427;

Additional number(s) attached  Yes  No

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

Name: Christopher M. Turk, Esquire

Internal Address: Blank Rome LLP

Street Address: One Logan Square

City: Philadelphia State: PA Zip: 19103

6. Total number of applications and registrations involved:

14

7. Total fee (37 CFR 3.41): \$ 365.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

02-2555

OFFICE OF RECORDS  
JUL 14 AM 10:19  
FINANCE SECTION

DO NOT USE THIS SPACE

9. Signature 489.00 DA  
325.00 DA

Christopher M. Turk, Esquire  
Name of Person Signing

*Christopher M. Turk*  
Signature

July 7, 2003

Date

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

4

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

TRADEMARK  
REEL: 002778 FRAME: 0091

07/15/2003 DBYRNE 00000189 022555 2077699  
01 FC:8521  
02 FC:8522

RECORDATION FORM COVER SHEET  
CONTINUATION  
TRADEMARKS ONLY

**Conveying Party**

Enter Additional Conveying Party

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name

Formerly

Individual  General Partnership  Limited Partnership  Corporation  Association

Other

Citizenship State of Incorporation/Organization

**Receiving Party**

Enter Additional Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

Individual  General Partnership  Limited Partnership

Corporation  Association

Other

Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached (Designation must be a separate document from the Assignment.)

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

**Trademark Application Number(s)**

**Registration Number(s)**

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**PATENTS, TRADEMARKS, COPYRIGHTS  
AND LICENSES SECURITY AGREEMENT**

This Patents, Trademarks, Copyrights, and Licenses Security Agreement (“Agreement”) is made as of the 24th day of March, 2003, by Pitt Penn Oil Co., LLC formerly known as SpinWell, Ltd. (“Company”), an Ohio limited liability company, with its chief executive office located at 7461 Dillman Drive, Hudson, OH, 44236, and delivered to Congress Financial Corporation (“Lender”), having a mailing address of 1133 Avenue of the Americas, New York 10036.

**BACKGROUND**

A. This Agreement is being executed contemporaneously with that certain Loan and Security Agreement of even date herewith by and between Borrower and Lender (as may be amended, modified, supplemented, extended, renewed, restated or replaced the “Loan Agreement”), a Term Note (as may be amended, modified, supplemented, extended, renewed, restated or replaced the “Note”), and certain Open-End Mortgage and Security Agreements (as may be amended, modified, supplemented, extended, renewed, restated or replaced, collectively, the “Mortgage”) (the Loan Agreement, Note, Mortgage and all other documents evidencing, securing, or otherwise documenting the terms and conditions of Borrower’s Obligations which are referenced in the Loan Agreement, collectively referred to as the “Financing Documents”).

B. Capitalized terms not defined herein shall have the meanings given to such terms in the Loan Agreement.

C. Company has adopted, used and is using (or has filed applications and/or registrations of) the patents, patent rights, and patent applications, if any (collectively, the “Patents”); trademarks, service marks, trade names, and service trade names, if any (collectively, “Trademarks”); copyrights, and copyright applications and licenses, if any (collectively, the “Copyrights”); and goodwill associated thereto (“Goodwill”) listed on Schedule A attached hereto and made part hereof (all such Patents, Trademarks, Copyrights or Goodwill hereinafter referred to as the “Assets”).

NOW THEREFORE, with the foregoing Background hereinafter deemed incorporated by reference and made a part hereof, and in consideration of the premises and mutual promises herein contained, the parties hereto, intending to be legally bound hereby, covenant and agree as follows:

1. In consideration of and pursuant to the terms of the Loan Agreement, the Guaranty and all other instruments, agreements and documents entered into in connection therewith (collectively, the “Loan Documents”), and for other good, valuable and sufficient consideration, the receipt of which is hereby acknowledged, and to secure the Obligations, Company grants a lien and security interest to Lender in all of its present and future right, title and interest in and to the Assets, and the registration thereof and the right (but not the obligation) to sue for past, present and future infringements, and the proceeds thereof, including, without limitation, license royalties and proceeds of infringement suits.

2. Company hereby covenants and agrees to maintain the Assets in full force and effect until all Obligations are indefeasibly paid and satisfied in full and the Loan Agreement is terminated.

3. Company represents, warrants and covenants that:

(a) The Assets are subsisting and have not been adjudged invalid or unenforceable;

(b) Each of the Assets is valid and enforceable;

(c) Company is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Assets, and each of the Assets is free and clear of any liens, claims, charges and encumbrances, including, without limitation, pledges, assignments, licenses and covenants by Company not to sue third persons;

(d) Company has the unqualified right, power and authority to enter into this Agreement and perform its terms;

(e) Company has complied with, and will continue for the duration of this Agreement to comply with, the requirements set forth in 15 U.S.C. §§1051-1127, 17 U.S.C. §101, et seq., 35 U.S.C. §101 et seq. and any other applicable statutes, rules and regulations in connection with its use of the Assets; and

(f) Each of the Assets listed on Schedule A constitute all of the Assets, and all applications for any of the foregoing, now owned by Company. If, before all Obligations shall have been indefeasibly paid and satisfied in full and the Loan Agreement shall have been terminated, Company shall (i) obtain rights to any new patentable inventions, trademarks, trademark registrations, trade names, or copyrights or licenses, or (ii) become entitled to the benefit of any patent or trademark application, trademark, trademark registration, copyright or copyright registration or application or license renewal, or patent for any reissue, division, continuation, renewal, extension, or continuation-in-part of any Patent or any improvement on any Patent, the provisions of this Agreement shall automatically apply thereto and such patent or trademark application, trademark, trademark registration, copyright or copyright registration or application or license renewal, or patent for any reissue, division, continuation, renewal, extension, or continuation-in-part of any Patent or any improvement on any Patent shall be deemed part of the Assets. Company shall give Lender prompt written notice thereof along with an amended Schedule A.

4. Company further covenants that until all Obligations have been indefeasibly paid and satisfied in full and the Loan Agreement is terminated, it will not enter into any agreement, including without limitation, license agreements or options, which is inconsistent with Company's obligations under this Agreement, except for agency, co-marketing and co-branding agreements.

5. So long as an Event of Default or Default has not occurred under the Loan Agreement, Company shall continue to have the exclusive right to use the Assets and Lender shall have no right to use the Assets or issue any exclusive or non-exclusive license with respect thereto, or assign, pledge or otherwise transfer title in the Assets to anyone else.

6. Company agrees not to sell, license, grant any option, assign or further encumber its rights and interest in the Assets without prior written consent of Lender.

7. If and while an Event of Default exists under the Loan Agreement, Company hereby covenants and agrees that Lender, as the holder of a security interest under the Uniform Commercial Code, as now or hereafter in effect in the State of New York, may take such action permitted under the Loan Documents or permitted by law, in its exclusive discretion, to foreclose upon the Assets covered hereby. Upon the occurrence of an Event of Default, Company hereby authorizes and empowers

Agent, its successors and assigns, and any officer or agent of Lender as Lender may select, in its exclusive discretion, as Company's true and lawful attorney-in-fact, with the power to endorse Company's name on all applications, assignments, documents, papers and instruments necessary for Lender, to use the Assets or to grant or issue any exclusive or non-exclusive license under the Assets to anyone else, or necessary for Lender to assign, pledge, convey or otherwise transfer title in or dispose of the Assets to anyone else including, without limitation, the power to execute an assignment in the form attached hereto as **Exhibit 1**. Company hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof and in accordance with the terms hereof, except for the gross negligence or wilful misconduct of such attorney. This power of attorney shall be irrevocable for the life of this Agreement, the Loan Documents, and until all Obligations are indefeasibly paid and satisfied in full and the Loan Agreement is terminated.

8. This Agreement shall be subject to the terms, provisions, and conditions set forth in the Loan Agreement and may not be modified without the written consent of the parties hereto.

9. All rights and remedies herein granted to Lender shall be in addition to any rights and remedies granted under the Loan Documents. In the event of an inconsistency between this Agreement and the Loan Agreement, the language of the Loan Agreement shall control.

10. Upon Company's and Borrowers' performance of all of the obligations under the Loan Documents and full and unconditional satisfaction of all Obligations, Lender shall execute and deliver to Company all documents reasonably necessary to terminate Lender's security interest in the Assets.

11. Any and all reasonable fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by Lender in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, reasonable counsel fees, maintenance fees, encumbrances or costs otherwise incurred in protecting, maintaining, preserving the Assets, or in defending or prosecuting any actions or proceedings arising out of or related to the Assets, or defending, protecting or enforcing Lender's rights hereunder, in each case in accordance with the terms of this Agreement, shall be borne and paid by Company on demand by Lender and until so paid shall be added to the principal amount of Obligations and shall bear interest at the otherwise applicable rate of interest prescribed in the Loan Agreement.

12. Company shall have the duty to prosecute diligently any trademark application with respect to the Assets pending as of the date of this Agreement or thereafter, until all Obligations shall have been indefeasibly paid and satisfied in full and the Loan Agreement is terminated, to preserve and maintain all rights in the Assets. Any expenses incurred in connection with such applications shall be borne by Company. Company shall not abandon any Patent, Trademark or Copyright without the prior written consent of Lender.

13. Company shall have the right to bring suit in its own name to enforce the Assets, in which event Lender may, if Company reasonably deems it necessary, be joined as a nominal party to such suit if Lender shall have been satisfied, in its sole discretion, that Lender is not thereby incurring any risk of liability because of such joinder. Company shall promptly, upon demand, reimburse and indemnify Lender for all damages, reasonable costs and expenses, including reasonable attorneys' fees, incurred by Lender in the fulfillment of the provisions of this paragraph.

14. During the existence of an Event of Default under the Loan Agreement, Lender may, without any obligation to do so, complete any obligation of Company hereunder, in Company's name or in Lender's name, but at Company's expense, and Company hereby agrees to reimburse Lender in full for all costs and expenses, including reasonable attorneys' fees, incurred by Lender in protecting, defending and maintaining the Assets.

15. No course of dealing between Company and Lender nor any failure to exercise, nor any delay in exercising, on the part of Lender, any right, power or privilege hereunder, shall operate as a waiver thereof, and all of Lender's rights and remedies with respect to the Assets, whether established hereby or by the Loan Documents, or by any other future agreements between Company and Lender or by law, shall be cumulative and may be exercised singularly or concurrently.

16. The provisions of this Agreement are severable and the invalidity or unenforceability of any provision herein shall not affect the remaining provisions which shall continue unimpaired and in full force and effect.

17. This Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

18. This Agreement shall be governed by and construed in conformity with the laws of the State of New York without regard to its otherwise applicable principles of conflicts of laws.

19. **Company and Lender each waive any and all rights it may have to a jury trial in connection with any litigation, proceeding or counterclaim arising with respect to rights and obligations of the parties hereto or under the Loan Documents.**

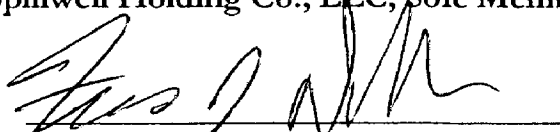
**SIGNATURES ON FOLLOWING PAGE**

IN WITNESS WHEREOF, the parties hereto have executed this Patents, Trademarks, Licenses and Copyrights Security Agreement the day and year first above written.

**PITT PENN OIL CO., LLC**

**By: Spinwell Holding Co., LLC, Sole Member**

By:



Francis De Milta

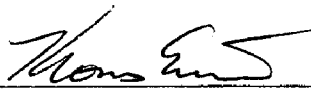
Title:

Managing Member

Approved and Accepted:

**CONGRESS FINANCIAL CORPORATION**

By:



Thomas Ennis, Vice President

**SCHEDULE A**

<b><u>Trademark</u></b>	<b><u>Registration/ Application Number</u></b>	<b><u>Registration/ Application Date</u></b>	<b><u>Owner</u></b>
ALL-AMERICAN	2,077,699	07/08/1997	Pitt Penn Oil Co., LLC
ALL-AMERICAN	2,079,414	07/15/1997	Pitt Penn Oil Co., LLC
ALL-AMERICAN logo	2,079,425	07/15/1997	Pitt Penn Oil Co., LLC
ALL-AMERICAN logo	2,079,427	07/15/1997	Pitt Penn Oil Co., LLC
GEARHEAD*	2,099,965	09/23/1997	Market Promotions, L.P.
GEARHEAD*	2,377,840	08/15/2000	Market Promotions, L.P.
GEARHEAD logo*	2,074,531	06/24/1997	Market Promotions, L.P.
GEARHEAD logo*	2,348,534	04/25/2000	Market Promotions, L.P.
LUBLEND	2,078,137	07/08/1997	Pitt Penn Oil Co., LLC
LUBLEND (Stylized)	2,078,139	07/08/1997	Pitt Penn Oil Co., LLC
PITT PENN	2,175,648	07/21/1998	Pitt Penn Oil Co., LLC
PITT PENN and Design	2,249,395	06/01/1999	Pitt Penn Oil Co., LLC
PITT PENN and Design	2,173,866	07/14/1998	Pitt Penn Oil Co., LLC
VANTAGE	1,980,258	06/11/1996	Pitt Penn Oil Co., LLC

\* Licensed from Owner to Pitt Penn Oil Co., LLC



CORPORATE ACKNOWLEDGMENT

*Commonwealth* UNITED STATES OF AMERICA :  
STATE OF PENNSYLVANIA : SS  
COUNTY OF Allegheny :

On this 24 of March, 2003, before me personally appeared Francis DeMilita to me known and being duly sworn, deposes and says that he is the Managing Member of Spinwell Holding Co., LLC, sole member of Pitt Penn Oil Co., LLC, the Company described in the foregoing Agreement; that he signed the Agreement as such officer pursuant to the authority vested in him by law; that the within Agreement is the voluntary act of such corporation; and he desires the same to be recorded as such.

Notarial Seal  
Shawn F. McKernan, Notary Public  
Green Tree Boro, Allegheny County  
My Commission Expires June 26, 2006  
Member, Pennsylvania Association Of Notaries

Shawn F. McKernan  
Notary Public

My Commission Expires:

6/26/06

CORPORATE ACKNOWLEDGMENT

*Commonwealth*

UNITED STATES OF AMERICA :  
STATE OF PENNSYLVANIA : SS  
COUNTY OF Allegheny :

On this 24 day of March, 2003, before me personally appeared Thomas Ennis to me known and being duly sworn, deposes and says that he is Vice President of Congress Financial Corporation, the Lender described in the foregoing Agreement; that he signed the Agreement as such officer pursuant to the authority vested in him by law; that the within Agreement is the voluntary act of such corporation; and he desires the same to be recorded as such.

Shawn F. McKern  
Notary Public

My Commission Expires:

6/26/06

Notarial Seal  
Shawn F. McKern, Notary Public  
Green Tree Boro, Allegheny County  
My Commission Expires June 26, 2006  
Member, Pennsylvania Association Of Notaries

**EXHIBIT 1**

**PATENTS, TRADEMARKS, LICENSES AND COPYRIGHTS ASSIGNMENT**

WHEREAS, Pitt Penn Oil Co., LLC, an Ohio limited liability corporation ("Grantor"), is the registered owner of the assets listed on **Schedule A** attached hereto and made a part hereof ("Assets"), which are registered in the United States Patent and Trademark Office; and

WHEREAS, \_\_\_\_\_ ("Grantee"), having a place of business at \_\_\_\_\_, is desirous of acquiring said Assets;

NOW THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, Grantor, its successors and assigns, does hereby transfer, assign and set over unto Grantee, its successors, transferees and assigns, subject to the terms of the Patents, Trademarks, Licenses and Copyrights Security Agreement, dated as of \_\_\_\_\_, 2003, between Grantor and Grantee, all of its present and future right, title and interest in and to the Assets and all proceeds thereof and all goodwill associated therewith.

IN WITNESS WHEREOF, the undersigned has caused this Patents, Trademarks, Licenses and Copyrights Assignment to be executed as of the \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
By: \_\_\_\_\_  
Attorney-in-fact

Witness: \_\_\_\_\_

**EXHIBIT 1**

**CORPORATE ACKNOWLEDGMENT**

UNITED STATES OF AMERICA :  
STATE OF \_\_\_\_\_ : S.S.  
COUNTY OF \_\_\_\_\_ :

On this \_\_\_\_ day of \_\_\_\_\_, 2003, before me, a Notary Public for the said County and State, personally appeared \_\_\_\_\_ known to me or satisfactorily proven to me to be attorney-in-fact on behalf of Pitt Penn Oil Co., LLC, and s/he acknowledged to me that s/he executed the foregoing Patents, Trademarks, Licenses, and Copyrights Assignment on behalf of Grantor, and as the act and deed of Grantor for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_

**POWER OF ATTORNEY**

Pitt Penn Oil Co., LLC, an Ohio limited liability corporation ("Grantor"), hereby authorizes Congress Financial Corporation, its successors and assigns, and any officer or agent thereof (collectively, the "Grantee") as Grantor's true and lawful attorney-in-fact, with the power to endorse Grantor's name on all applications, assignments, documents, papers and instruments necessary for Grantee to enforce and effectuate its rights under a certain Patents, Trademarks, Licenses and Copyrights Security Agreement between Grantor and Grantee dated the date hereof (as it may hereafter be supplemented, restated, superseded, amended or replaced, the "Agreement"), including, without limitation, the power to use the Assets (as defined in the Agreement) and listed on Schedule A attached hereto and made a part hereof, to grant or issue any exclusive or nonexclusive license under the Assets to anyone else, or to assign, pledge, convey or otherwise transfer title in or dispose of the Assets, in each case subject to the terms of the Agreement.

This Power of Attorney is given and any action taken pursuant hereto is intended to be so given or taken pursuant to and subject to the provisions of a certain Loan and Security Agreement bearing even date herewith among Grantee, as lender, and various affiliates of Grantors, as borrowers, as each document may be hereinafter supplemented, restated, superseded, amended or replaced.

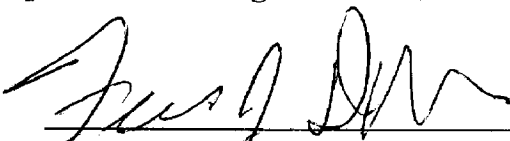
Grantor hereby unconditionally ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof and in accordance with the terms of the Agreement.

This Power of Attorney shall be irrevocable for the life of the Agreement.

IN WITNESS WHEREOF, the Grantor has executed this Power of Attorney, on this 24<sup>th</sup> day of March, 2003.

**PITT PENN OIL CO., LLC**

**By: Spinwell Holding Co., LLC, Sole Member**

By:   
Francis DeMitta, Managing Member

CORPORATE ACKNOWLEDGMENT

*Commissioner*  
UNITED STATES OF AMERICA :  
STATE OF Pennsylvania : SS  
COUNTY OF Allegheny :

On this 24 of March, 2003, before me personally appeared Francis DeMilta to me known and being duly sworn, deposes and says that he is Managing Member of Spinwell Holding Co., LLC, Sole Member of Pitt Penn Oil Co., LLC, the Grantor described in the foregoing Power of Attorney; that he signed the Power of Attorney thereto as such officer pursuant to the authority vested in him by law; that the within Power of Attorney is the voluntary act of such corporation; and he desires the same to be recorded as such.

*Shawn F. McKernan*  
\_\_\_\_\_  
Notary Public

My Commission Expires:

6/26/06

Notarial Seal  
Shawn F. McKernan, Notary Public  
Green Tree Boro, Allegheny County  
My Commission Expires June 26, 2006  
Member, Pennsylvania Association Of Notaries