

08-12-2003

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

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

102521175

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

1. Name of conveying party(ies):

Whitehall Jewellers, Inc.,

8-8-03

- 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 Amended Restated License Mortgage

Execution Date: 07/29/2003

2. Name and address of receiving party(ies)

Name: LaSalle Bank National Association

Internal Address:

Street Address: 135 South LaSalle Street

City: Chicago State: IL Zip: 60603

- Individual(s) citizenship Association 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 (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) 76/431,784

B. Trademark Registration No.(s) 1,814,693

Additional number(s) attached Yes No

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

Name: Tammy S. Settle

Internal Address: Vedder Price Kaufman Kammholz

Street Address: 222 North LaSalle Street

City: Chicago State: IL Zip: 60601

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:

22-0259

DO NOT USE THIS SPACE

9. Signature.

Tammy S. Settle Name of Person Signing

Signature

August 4, 2003

Date

Total number of pages including cover sheet, attachments, and document: 14

OFFICE OF PUBLICATION RECORDS 2003 AUG -8 AM 9:41 FINANCE SECTION

08/11/2003 ECOOPER 00000218 220259 76431784

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

TRADEMARK REEL: 002798 FRAME: 0576

AMENDED AND RESTATED
PATENT, TRADEMARK AND LICENSE MORTGAGE

THIS AMENDED AND RESTATED PATENT, TRADEMARK AND LICENSE MORTGAGE (the "**Mortgage**") made as of this 29th day of July, 2003, by Whitehall Jewellers, Inc., a Delaware corporation ("**Mortgagor**"), in favor of LaSalle Bank National Association, a national banking association ("**LaSalle**"), as collateral agent for the banks party to the Credit Agreement (as defined below) ("**Mortgagee**");

W I T N E S S E T H:

WHEREAS, Mortgagor and Mortgagee are parties to a certain Amended and Restated Revolving Credit, Term Loan and Gold Consignment Agreement (as amended, restated, supplemented and otherwise modified from time to time, the "**Original Credit Agreement**") dated as of September 10, 1998, and as further amended and restated by that certain Second Amended and Restated Revolving Credit and Gold Consignment Agreement of even date herewith (such agreement, as amended, modified or restated from time to time, the "**Credit Agreement**"), and other related loan documents of even date herewith (collectively, with the Credit Agreement, the "**Loan Documents**"), which Loan Documents provide (i) for the banks party to the Credit Agreement from time to time (the "**Banks**"), to extend credit and provide other financial accommodations to or for the account of Mortgagor 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, goodwill and licenses; and

WHEREAS, in order to secure all of Mortgagor's Obligations (as such term is defined in the Loan Documents), the Banks have required Mortgagor to execute this Mortgage in favor of Mortgagee.

WHEREAS, the obligations of the Mortgagor under the Original Credit Agreement were secured by that certain Trademark Collateral Security and Pledge Agreement, dated as of May 3, 1996, among the Mortgagor and Fleet Capital Corporation (formerly known as the First National Bank of Boston) as collateral agent (as amended prior to the date hereof, the "**Original Trademark Collateral Security and Pledge Agreement**");

WHEREAS, the Mortgagor has requested, and the Banks have agreed, to amend and restate the Original Credit Agreement in accordance with the terms of the Credit Agreement; and

WHEREAS, as a condition to the effectiveness of the Credit Agreement, the Mortgagor has agreed to enter into this Mortgage which (i) reaffirms the Mortgagor's grant of a valid, enforceable first priority security interest in all of the Mortgagor's Trademarks (as defined below), goodwill and trademark-related Licenses (as defined below) pursuant to the Original Trademark Collateral Security and Pledge Agreement, (ii) amends and restates in its entirety the Original Trademark Collateral Security and Pledge Agreement and (iii) further pledges to the Mortgagee a first priority security interest in all of the mortgagor's Patents (as defined below)

and patent-related Licenses, in each case in order to secure its Obligations under the Credit Agreement and any other Loan Document.

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 Loan Documents. The Loan Documents 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 Credit Agreement.

2. Mortgage of Patents, Trademarks and Licenses. To secure the complete and timely satisfaction of all of Borrower's Obligations, Mortgagor hereby grants to Mortgagee, as and by way of a first mortgage and security interest having priority over all other security interests (subject to the priority of Permitted Liens entitled to priority under applicable law), with power of sale, to the extent permitted by law, upon the occurrence and continuance of an Event of Default, a lien and mortgage upon, and security interest 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, 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, if any (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, brand names, service marks, service mark registrations and service mark applications, including, without limitation, the trademarks, trade names, brand 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 and tradestyles, brand 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 to individually as a "Trademark" and, collectively, as the "Trademarks");

(iii) license agreements (to the extent such license agreements may be pledged or assigned without violating the terms of any such license agreement) with respect to any of the Patents or the Trademarks or any other patent, trademark, service mark or any application or

registration thereof or any other trade name or tradestyle between Mortgagor and any other party, whether Mortgagor is a licensor or licensee under any such license agreement, including, without limitation, the licenses listed on Exhibit C attached hereto and hereby made a part hereof (all of the foregoing license agreements and Mortgagor's rights thereunder are referred to collectively as the "**Licenses**"); 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 License material to the Mortgagor's business has been adjudged invalid or unenforceable nor has any such Patent, Trademark or License been canceled, in whole or in part, and each such Patent, Trademark and License is presently subsisting;

(ii) each Patent, Trademark and License material to the Mortgagor's business is valid and enforceable in all material respects;

(iii) Mortgagor (or together with subsidiaries of Mortgagor which have executed similar grants of security interest to Mortgagee) is the sole and exclusive owner of the entire and unencumbered right, title and interest as they may appear in and to each Patent, Trademark and License, free and clear of any liens, charges and encumbrances, including without limitation licenses, shop rights and covenants by Mortgagor not to sue third persons, except for the lien of this Mortgage, Permitted Liens and the terms of the documents evidencing or creating the Patents, Trademarks and Licenses;

(iv) Mortgagor has adopted, used and is currently using all of the Trademarks, except where such failure is not reasonably likely to have a material adverse effect on the business, assets or financial condition of the Mortgagor (a "**Material Adverse Effect**");

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

(vi) Mortgagor has the corporate power and authorization to execute and deliver this Mortgage and perform its terms.

4. Restrictions on Future Agreements. Mortgagor agrees that until all Borrower's Obligations shall have been satisfied in full and the Loan Documents shall have been terminated, Mortgagor shall not, without the prior written consent of Mortgagee, other than in connection with a sale of assets or non-exclusive licenses of intellectual property permitted under Section 9.5.2 of the Credit Agreement, sell or assign its interest in, or grant any license or sublicense under the Patents, Trademarks or Licenses, or enter into any other similar agreement with respect to the Patents, Trademarks or Licenses, 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 otherwise adversely affect the validity of the rights of the

Mortgagor in the Patents, Trademarks or licenses, except to the extent such action or failure to take action would be reasonably expected to not have a Material Adverse Effect.

5. New Patents, Trademarks, and Licenses. Mortgagor represents and warrants that the Patents, Trademarks and Licenses listed on Exhibits A, B and C, respectively, constitute all of the Patents, Trademarks, and Licenses now owned by Mortgagor and is material to the Mortgagor's business. If, before all Borrower's Obligations shall have been satisfied in full or before the Loan Documents have been terminated, Mortgagor shall (i) become aware of any existing Patents, Trademarks or Licenses of which Mortgagor has not previously informed Mortgagee, (ii) obtain rights to any new Patents, Trademarks or Licenses, or (iii) become entitled to the benefit of any Patents, Trademarks or Licenses 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; provided, however, Mortgagor shall be required to provide such prompt written notice only to the extent the aggregate amount or value of such Patents, Trademarks or Licenses described in clauses (i) through (iii) above exceeds \$250,000. Mortgagor hereby authorizes Mortgagee to modify this Mortgage by amending Exhibits A, B and C, as applicable, to include any such Patents, Trademarks and Licenses.

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 Licenses assigned hereunder, and (ii) the payment in full of all Borrower's Obligations and the termination of the Loan Documents. Mortgagor agrees that upon the occurrence and during the continuance of an Event of Default, the use by Mortgagee of all Patents, Trademarks and Licenses shall be coextensive with the Mortgagor's rights thereunder and with respect thereto and without any liability for royalties or other related charges from Mortgagee to Mortgagor.

7. Mortgagee's Right to Inspect. Mortgagee shall have the right, at any time and from time to time during normal business hours with prior reasonable notice and prior to payment in full of all Borrower's Obligations and termination of the Loan Documents, to inspect Mortgagor's premises and to examine Mortgagor's books, records and operations, including, without limitation, Mortgagor's quality control processes. Mortgagor agrees (i) to maintain the quality of any and all products in connection with which the Trademarks are used, substantially consistent with the quality of said products as of the date hereof 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 and during the continuance 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 discretion, may deem necessary to assure maintenance of the quality of products sold by Mortgagor under the Trademarks. The foregoing notwithstanding, unless an Event of Default shall have occurred and be continuing, Mortgagee agrees to hold confidential and not disclose or use any information regarding any Patent, Trademark or License unless such disclosure is required by applicable law or court order. This obligation shall survive the termination of this Mortgage and the release of the security interests granted herein.

8. Release of Mortgage. This Mortgage is made for collateral security purposes only. Upon payment in full of all Borrower's Obligations and termination of the Loan Documents, Mortgagee shall promptly execute and deliver to Mortgagor all deeds, assignments and other instruments, and shall take such other actions, as may be necessary or proper to terminate the Mortgagee's security interest in the Patents, Trademarks and Licenses, subject to any disposition thereof which may have been made by Mortgagee pursuant to the Loan Documents.

9. Expenses. All reasonable expenses incurred in connection with the performance of any of the agreements set forth herein shall be borne by Mortgagor. All reasonable fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' and paralegals' 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 Licenses, or in defending or prosecuting any actions or proceedings arising out of or related to the Patents, Trademarks and Licenses, shall be borne by and paid by Mortgagor on demand by Mortgagee and until so paid shall be added to the amount of the Borrower's Obligations and shall bear interest at the rate for Revolving Credit Loans.

10. Duties of Mortgagor. Mortgagor shall have the duty (i) to prosecute diligently any patent, trademark or service mark applications pending as of the date hereof or hereafter until all Borrower's Obligations shall have been paid in full and the Loan Documents have been terminated except where failure to do so is not reasonably likely to have a Material Adverse Effect, (ii) to make application on unpatented but patentable inventions and on trademarks and service marks except where failure to do so is not reasonably likely to have a Material Adverse Effect, (iii) to preserve and maintain all rights in the Patents, Trademarks and Licenses except where failure to do so is not reasonably likely to have a Material Adverse Effect, and (iv) to ensure that the Patents, Trademarks and Licenses are and remain enforceable except where failure to do so is not reasonably likely to have a Material Adverse Effect. Any expenses incurred in connection with Mortgagor's obligations under this Section 10 shall be borne by Mortgagor. Mortgagor shall not abandon any right to file a patent, trademark or service mark application, or abandon any pending patent application, or any other Patent, Trademark or License without the consent of Mortgagee, except where consistent reasonably responsible business and legal practices and except where such failure is not reasonably likely to have a Material Adverse Effect.

11. Mortgagee's Right to Sue. Upon the occurrence and during the continuance of an Event of Default, 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 Licenses, 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 reasonably required by Mortgagee in aid of such enforcement and Mortgagor shall promptly, upon demand, reimburse and indemnify Mortgagee for all reasonable costs and out-of-pocket 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 Loan 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 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 Loan Documents. All of Mortgagee's rights and remedies with respect to the Patents, Trademarks and Licenses, whether established hereby or by the Loan Documents, 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 and during the continuance of an Event of Default, to make, constitute and appoint any officer or agent of Mortgagee as Mortgagee may select, in its reasonable discretion, as Mortgagor's true and lawful attorney-in-fact, (but without power to create personal liability for Mortgagor with third parties) with power to, in each case on commercially reasonable terms (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 Licenses, or (ii) take any other actions with respect to the Patents, Trademarks and Licenses 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 Licenses to anyone, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Patents, Trademarks or Licenses to anyone, in each case to the extent not prohibited by the terms of any existing agreement governing any such Patent, Trademark or License, such as a license agreement. 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 all Borrower's Obligations shall have been paid in full and the Loan Documents 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 Loan Documents 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 Loan Documents, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in the State of 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 internal laws (excluding the laws applicable to conflicts or choice of law) 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 Loan Documents in accordance with Section 12.1 of the Credit Agreement.

21. Reaffirmation. This Amended and Restated Patent, Trademark and License Mortgage shall constitute an amendment, restatement and/or reaffirmation, but not an extinguishment or termination, of the pledge and grant of a first priority security interest in the Trademarks and Licenses and the covenants and obligations under the Original Trademark Collateral Security and Pledge Agreement. The Mortgagor confirms and agrees that the security interests granted under the Original Trademark Collateral Security and Pledge Agreement are continued hereby.

(Signature Page to Amended and Restated Patent, Trademark and License Mortgage)

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

WHITEHALL JEWELLERS, INC.

By: 

Name: Jan H. Brawne


Title: Executive Vice President

(Signature Page to Amended and Restated Patent, Trademark and License Mortgage)

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

Agreed and Accepted as of this
29th day of July, 2003

LASALLE BANK NATIONAL
ASSOCIATION, as Collateral Agent

By: 
Name: Bernardo Lacayo
Title: First Vice President

STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

The foregoing Amended and Restated Patent, Trademark and License Mortgage was executed and acknowledged before me this 29 day July, 2003, by Jon Brunne personally known to me to be the Executive VP of Whitehall Jewellers, Inc., a Delaware corporation.



Yvette Brandy
Notary Public

My Commission expires:

9/14/03

THIS INSTRUMENT PREPARED BY AND
AFTER FILING RETURN TO:

Matthew T. O'Connor, Esq.
Vedder, Price, Kaufman & Kammholz
222 North LaSalle Street
Chicago, Illinois 60601

EXHIBIT B

TRADEMARKS

Trademark	Application/ Registration No.	Date Filed/ Registered/ Renewed	If Foreign TM, What Country?
WHITE STAR (tm)	76/431,784 (app.)	7/18/02 (filed)	N/A
MESABI (tm)	1,814,693 (reg.)	1/4/94 (registered) 2/10/00 (renewed)	N/A

SERVICEMARKS

None.

EXHIBIT C
LICENSE AGREEMENTS

None.