

11-7-01

Form PTO-1594
(Rev. 03/01)
OMB No. 0651-0027 (exp. 5/31/2002)
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11-07-2001



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

101893737

To the Honorable Commissioner of Patents and Trademarks... send original documents or copy thereof.

1. Name of conveying party(ies):

Windward Petroleum, Inc. *11-7-01*

- 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 Capital Corporation, as
Internal _____ Agent
Address: _____

Street Address: One South Wacker Drive
Suite 1400
City: Chicago State: IL Zip: 60606

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State Rhode Island
- 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

3. Nature of conveyance:

- Assignment Merger
- Security Agreement Change of Name
- Other Copyright, Patent, Trademark & License, Mortgage

Execution Date: May 31, 2001

4. Application number(s) or registration number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1816594; 1853432

Additional number(s) attached Yes No *400*

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

Name: Maisha Gibson, Paralegal

Internal Address: Goldberg, Kohn, et al.

Street Address: 55 E. Monroe Street,
37th Floor

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:

(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.

Maisha Gibson
Name of Person Signing

Maisha Gibson
Signature

November 5, 2001
Date

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

11/08/2001 DBYRNE 00000011 1816594

01 FC:481
02 FC:482

40.00 DP
25.00 DP

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

TRADEMARK
REEL: 002394 FRAME: 0503

Additional Name of Conveying Party:

Windward Petroleum, Inc., formerly known as Windward Petroleum Partners, Inc.

THIS COPYRIGHT, PATENT, TRADEMARK AND LICENSE MORTGAGE (this "Mortgage") made as of this 31st day of May, 2001, by WINDWARD PETROLEUM, INC., formerly known as Windward Petroleum Partners, Inc., a Delaware corporation, having an office at 15800 John J. Delaney Drive, Suite 500, Charlotte, North Carolina 28277 ("Mortgagor") in favor of FLEET CAPITAL CORPORATION, a Rhode Island corporation, as a Lender and as Agent on behalf of itself and the Lenders, with an office at One South Wacker Drive, Suite 1400, Chicago, Illinois 60606 ("Mortgagee").

WITNESSETH:

WHEREAS, Mortgagor, Mortgagee, and various Lenders are parties to a certain Loan and Security Agreement dated October 21, 1999, (as from time to time amended or otherwise modified, the "Loan Agreement"), and other Loan Documents (collectively with the Loan Agreement, and as each is from time to time amended or otherwise modified, the "Financing Agreements") which Loan Agreement provides, among other things, (i) for Mortgagee and the other Lenders to, from time to time, extend credit to or for the account of Mortgagor and (ii) for the grant by Mortgagor to Mortgagee, on behalf of itself and Lenders, of a security interest in substantially all of Mortgagor's assets, including, without limitation, the copyrights, copyright agreements, copyright applications, patents, patent applications, trademarks, trademark applications, trade names, service marks, service mark applications, goodwill and certain licenses of Mortgagor;

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt, sufficiency and adequacy 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. All terms capitalized but not otherwise defined herein shall have the same meanings herein as in the Loan Agreement.

2. Mortgage of Copyrights, Patents, Trademarks and Licenses. To secure the complete and timely payment and satisfaction of all of the Obligations, Mortgagor hereby grants to Mortgagee for its own benefit and the benefit of Lenders, and hereby reaffirms its prior grant pursuant to the Financing Documents of, a continuing security interest in all of its now existing and hereafter created or acquired:

(i) 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 A attached hereto and hereby made a part hereof, and all renewals, extensions and continuations 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 or 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");

(ii) patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein, all patentable inventions and those patents and patent applications listed on Exhibit B attached hereto and made a part hereof, and all reissues, divisions, continuations, renewals, extensions and continuations-in-part of any of the foregoing, and 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 or 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 "Patents");

(iii) trademarks, trademark registrations, trademark applications, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, other business identifiers, prints and labels on which any of the foregoing have appeared or appear, all registrations and recordings thereof, and all applications in connection therewith (other than "intent to use" applications until a verified statement of use is filed with respect to such applications), including, without limitation, the trademarks, trade names, service marks, registrations and applications listed on Exhibit C attached hereto and hereby made a part hereof, and all renewals, extensions and continuations of any of the foregoing, and 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 or 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 "Trademarks");

(iv) all license agreements between Mortgagor and any other party with respect to any of the Copyrights or any of the Patents or any of the Trademarks or any other copyright, patent, trademark, service mark or any registration or application for registration or any other trade name or tradestyle, whether Mortgagor is a licensor or licensee under any such license agreement, including, without limitation, the licenses listed on Exhibit D attached hereto and hereby made a part hereof, other than license agreements

which, according to their terms, may not be assigned without the prior consent of the other Person party thereto (unless such consent has been obtained) (all of the foregoing license agreements and Mortgagor's rights thereunder are referred to collectively as the "Licenses"); and

(v) all rights corresponding to any of the foregoing throughout the world and the goodwill of Mortgagor's business connected with and symbolized by the Trademarks.

Upon the occurrence of an Event of Default, Mortgagee, on behalf of itself and Lenders, shall have the power, to the extent permitted by law, to exercise the rights and remedies of a secured party provided under the Loan Agreement, including without limitation the right to sell the Copyrights, Patents, Trademarks and Licenses.

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

(i) No Copyright, Patent, Trademark or License has been adjudged invalid or unenforceable or, has been cancelled, in whole or in part;

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

(iii) Mortgagor is the sole and exclusive owner of the entire unencumbered right, title and interest in and to each Copyright, Patent, Trademark and License, free and clear of any liens, charges and encumbrances, including, without limitation, licenses, shoprights and covenants by Mortgagor not to sue third parties;

(iv) Mortgagor has no notice of any suits or actions commenced or threatened with respect to any of the Copyrights, Patents, Trademarks or Licenses;

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

(vi) No License restricts the ability of Mortgagor to pledge, mortgage and assign such License as contemplated by this Mortgage, except as disclosed on Schedule I hereto;

(vii) Mortgagor has no notice of any infringement or unauthorized use presently being made of any of the Copyrights, Patents, Trademarks or Licenses which would reasonably be expected to materially adversely affect the fair market value of the Copyrights, Patents, Trademarks or Licenses or the benefits to Mortgagee of this Mortgage, including, without limitation, the priority or perfection of the security interest granted herein or the remedies of Mortgagee hereunder; and

(viii) Mortgagor has no notice of any suits or actions commenced or threatened with respect to any Copyright, Patent, Trademark or License.

4. Restrictions on Future Agreements. Mortgagor agrees that until the Obligations shall have been satisfied in full and the Financing Agreements shall have been terminated (the "Loan Agreement Termination"), Mortgagor shall not, without the prior written consent of Mortgagee, sell or assign its interest in, or grant any license under, any Copyright, Patent, Trademark or License, or enter into any other agreement with respect to the Copyrights, Patents, Trademarks or Licenses which is inconsistent with the Obligations under this Mortgage. 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 adversely affect the validity or enforcement of the rights transferred to Mortgagee under this Mortgage.

5. New Copyrights, Patents, Trademarks, and Licenses. Mortgagor represents and warrants that the Copyrights, Patents, Trademarks and Licenses listed on Exhibits A, B, C and D, respectively, constitute all of the registered Copyrights, registered Patents and registered Trademarks now owned by, and Licenses granted by or to, Mortgagor. If, before the Loan Agreement Termination, Mortgagor shall (i) become aware of any existing Copyrights, Patents, Trademarks or Licenses of which Mortgagor has not previously informed mortgagee; (ii) obtain rights to any new Copyrights, patentable inventions, Patents, Trademarks or Licenses, or (iii) become entitled to the benefit of any Copyrights, Patents, Trademarks or Licenses or any improvement on any Patent, the provisions of this Mortgage above shall automatically apply thereto. Mortgagor hereby authorizes Mortgagee to modify this Mortgage by amending Exhibits A, B, C and D, as applicable, to include any such (registered or unregistered) Copyrights, Patents, Trademarks and Licenses.

6. Royalties; Term. The term of the security interests/mortgages granted herein shall extend until the earlier of (i) the expiration of each of the respective Copyrights, Patents, Trademarks and Licenses encumbered hereunder, and (ii) the Loan Agreement Termination. Upon the occurrence of an Event of Default, Mortgagor agrees that the use by Mortgagee of all Copyrights, Patents, Trademarks and Licenses shall be worldwide and without any liability for royalties or other related charges from Mortgagee to Mortgagor.

7. Release of Mortgage. This Mortgage is made for collateral purposes only. Upon the Loan Agreement Termination, Mortgagee shall take such actions as may be necessary or proper to terminate and release its security interest in the Copyrights, Patents, Trademarks, and Licenses created hereby and pursuant to the Financing Agreements, subject to any disposition thereof which may have been made by Mortgagee pursuant hereto or pursuant to the Loan Agreement.

8. 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 reasonable 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, maintenance fees, encumbrances or otherwise in protecting, maintaining or preserving the Copyrights, Patents, Trademarks and Licenses, or in defending or prosecuting any actions or proceedings arising out of or related to the Copyrights, Patents, Trademarks and Licenses, shall be borne by and paid by Mortgagor on written demand by Mortgagee and until so paid shall be added to the principal amount of the Obligations and shall bear interest at the then applicable rate as set forth in the Loan Agreement.

9. Duties of Mortgagor. Mortgagor shall have the duty, in each case as commercially reasonable, (i) to file and prosecute diligently any copyright, patent, trademark or service mark applications pending as of the date hereof or thereafter until the Loan Agreement Termination, (ii) to make application on uncopyrighted but copyrightable works, on unpatented but patentable inventions and on trademarks and service marks, as appropriate, (iii) to preserve and maintain all rights in the Copyrights, Patents, Trademarks and Licenses and (iv) to ensure that the Copyrights, Patents, Trademarks and Licenses are and remain enforceable. Any expenses incurred in connection with Mortgagor's obligations under this Section 9 shall be borne by Mortgagor. Mortgagor shall not abandon any right to file a copyright, patent, trademark or service mark application, or abandon any such Copyright, Patent, Trademark or License without the written consent of Mortgagee. If Mortgagor fails to comply with any of the foregoing duties, Mortgagee may perform said duties in Mortgagor's name, to the extent permitted by law. Mortgagor agrees (i) to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with the quality of said products as of the date hereof, except to the extent that the failure to perform any of the following would not reasonably be expected to have a Material Adverse Effect, 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 continuation 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 sole judgment exercised in a commercially reasonable manner, may deem necessary to assure maintenance of the quality of products sold by Mortgagor under the Trademarks. Mortgagor shall promptly, upon demand, reimburse and indemnify Mortgagee for all costs and expenses of Mortgagee, including attorney's fees and expenses so incurred by Mortgagee, in the exercise of its rights under this Section 9.

10. Mortgagee's Right to Sue. After the occurrence 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 Copyrights, 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 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, including attorneys' fees and expenses so incurred by Mortgagee, in the exercise of its rights under this Section 10.

11. Waivers. No course of dealing among Mortgagor, Mortgagee and the Lenders, nor any failure to exercise, nor any delay in exercising, on the part of Mortgagee or Lenders, any right, power or privilege hereunder or under the Loan Agreement 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.

12. 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.

13. 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.

14. Cumulative Remedies; Power of Attorney; Effect on Loan Agreement. All of Mortgagee's rights and remedies with respect to the Copyrights, Patents, Trademarks and Licenses, whether established hereby or by the Loan Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Upon the occurrence and during the continuation of an Event of Default, Mortgagor hereby authorizes Mortgagee 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 any or all of the Copyrights, Patents, Trademarks and Licenses, or (ii) take any other actions with respect to any or all of the Copyrights, Patents, Trademarks and Licenses as Mortgagee deems to be in its best interest, or (iii) grant or issue any exclusive or non-exclusive license under any or all of the Copyrights, Patents, Trademarks or Licenses to any Person, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of any or all of the Copyrights, Patents, Trademarks or Licenses to any Person, or (v) take any other actions with respect to any or all of the Copyrights, Patents, Trademarks and Licenses as Mortgagee deems to be in its best interests. Mortgagor hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney, being coupled with an interest, shall be irrevocable until the Loan Agreement Termination. Mortgagor acknowledges and agrees that this Mortgage is not intended to limit or restrict in any way the rights and remedies of Mortgagee or Lenders or their respective successors transferees and assigns under the Loan Agreement but rather is intended to facilitate the exercise of such rights and remedies. Mortgagee and such other parties shall have, in addition to all other rights and remedies given it or them by the terms of this Mortgage and the Loan Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code (or such

other applicable law) as enacted in any jurisdiction in which the Copyrights, Patents, Trademarks or Licenses may be located.

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

16. GOVERNING LAW. THIS MORTGAGE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF ILLINOIS.

17. CONSENT TO FORUM AND WAIVERS. TO INDUCE MORTGAGEE AND LENDERS TO MAKE THE LOANS, AS EVIDENCED BY THE LOAN AGREEMENT AND THIS AGREEMENT, MORTGAGOR IRREVOCABLY AGREES THAT, SUBJECT TO MORTGAGEE'S SOLE AND ABSOLUTE ELECTION, ALL SUITS, ACTIONS OR OTHER PROCEEDINGS IN ANY WAY, MANNER OR RESPECT ARISING OUT OF OR FROM OR RELATED TO THIS AGREEMENT OR ANY DOCUMENTS EXECUTED IN CONNECTION HEREWITH, SHALL BE SUBJECT TO LITIGATION THE SUPERIOR COURT OF COOK COUNTY, ILLINOIS OR, AT MORTGAGEE'S OPTION, THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION. MORTGAGOR HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN COOK COUNTY, ILLINOIS. MORTGAGOR HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY SUIT, ACTION OR OTHER PROCEEDING BROUGHT AGAINST MORTGAGOR BY MORTGAGEE IN ACCORDANCE WITH THIS SECTION. MORTGAGOR AND MORTGAGEE HEREBY WAIVE, TO THE EXTENT PERMITTED BY LAW, TRIAL BY JURY. MORTGAGOR FURTHER WAIVES ANY BOND OR SURETY OR SECURITY UPON SUCH BOND WHICH MIGHT, BUT FOR THIS WAIVER, BE REQUIRED OF MORTGAGEE.

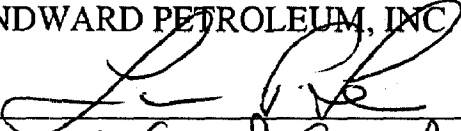
18. Headings. Paragraph headings used herein are for convenience only and shall not modify the provisions which they precede.

19. Further Assurances. Mortgagor agrees to execute and deliver such further agreements, instruments and documents, and to perform such further acts, as Mortgagee shall 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 Agreement.

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

WINDWARD PETROLEUM, INC

By 
Its VP, General Counsel + Secretary

AGREED AND ACCEPTED THIS
__ day of _____, 2001.

FLEET CAPITAL CORPORATION,
as Agent

By _____
Its _____


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

WINDWARD PETROLEUM, INC.

By _____
Its _____

AGREED AND ACCEPTED THIS
31st day of May, 2001.

FLEET CAPITAL CORPORATION,
as Agent

By  _____
Its SVP _____

STATE OF Illinois)
) SS
COUNTY OF Cook)

The foregoing Copyright, Patent, Trademark and License Mortgage was executed and acknowledged before me this 21st day of September 2001, by Daniel Fiorito, personally known to me to be the Vice President of Fleet Capital Corporation, as Agent, a Rhode Island corporation, on behalf of such corporation.



Robin M. Chiti
Notary Public

My Commission expires: 5/11/03

AFTER FILING RETURN THIS INSTRUMENT TO:

Keith G. Radner, Esq.
Goldberg, Kohn, Bell, Black,
Rosenbloom & Moritz, Ltd.
Suite 3700
55 East Monroe
Chicago, Illinois 60603

EXHIBIT A

Copyrights

None

EXHIBIT B

Patents

None

EXHIBIT C

Trademarks

Trademark	Application/ Registration Date	Application Number	Federal Registr. Number
Mainz Oil	01-06-1993/01-18- 1994	74346137	1816594
Mainz Oil	07-27-1993/09-13- 1994	74417511	1853432

EXHIBIT D

Licenses

None

SCHEDULE 1

Non-Assignable Licenses

None