

01-26-1999

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U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

Tab settings



100948384

attached original documents or copy thereof

MD 126-99

To the Honorable Commissioner of P.T.

1. Name of conveying party(ies):

American National Bank and Trust Company of Chicago

- Individual(s)
- General Partnership
- Corporation-State
- Other
- 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: December 23, 1998

2. Name and address of receiving party(ies):

Name: American National Bank and Trust Company of Chicago

Internal Address:

Street Address: 120 South LaSalle Street

City: Chicago State: IL ZIP: 60606

- Individual(s) citizenship
- Association
- 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)

1,614,145

Additional numbers attached? Yes No

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

Name: Miles A. Zvi, Esq.

Internal Address: Seyfarth, Shaw, Fairweather & Geraldson

Street Address: 55 East Monroe Street,

Suite 4200

City: Chicago State: IL ZIP: 60603

6. Total number of applications and registrations involved:

7. Total fee (37 CFR 3.41): \$ 40.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

01/26/1999 TTON11 00000143 1614145
01 C1481 40.00 DP

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.

Miles A. Zvi

Name of Person Signing

Miles A. Zvi
Signature

1/20/99
Date

Total number of pages comprising cover sheet

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents and Trademarks
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Washington, D.C. 20231

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington, D.C. 20503.

TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT (this "**Agreement**") is dated as of December 23, 1998 and is made by AMERICALL CORPORATION, an Illinois corporation (the "**Borrower**"), in favor of and for the benefit of AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO, a national banking association (the "**Bank**").

RECITALS

WHEREAS, the Borrower and the Bank have entered into that certain Secured Credit Agreement of even date herewith (as hereafter amended, supplemented, restated or otherwise modified from time to time, the "**Credit Agreement**") pursuant to which the Bank has agreed to make Revolving Loans and certain Term Loans to the Borrower, subject in each case to the terms and conditions of the Credit Agreement; and

WHEREAS, to secure the repayment of all amounts under the Credit Agreement and the Related Documents, the Borrower has granted to the Bank a valid security interest in and to all of its now existing and hereafter acquired general intangibles, including, without limitation, all of its now existing and hereafter arising trade secrets, patents and patent applications, trademarks and use-based trademark applications, trade names and copyrights.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to induce the Bank to make the Revolving Loans and the Term Loan, the parties hereto agree as follows:

1. Definitions. Capitalized terms used in this Agreement but not otherwise defined herein shall have the meanings ascribed to such terms in the Credit Agreement.
2. Grant of Security Interest. To secure the payment and performance of all indebtedness and other obligations and liabilities of the Borrower to the Bank of every kind and description, whether direct or indirect, absolute or contingent, primary or secondary, due or to become due, now existing or hereafter arising under or in connection with the Credit Agreement and the Related Documents, the Borrower hereby grants to the Bank a security interest in all of the Borrower's rights, titles and interests in the United States and throughout the world, in and to (a) all of its currently owned or hereafter acquired trademarks, registrations of trademarks and use-based applications for trademark registration pending before the United States Patent and Trademark Office ("**PTO**"), together with the goodwill of the business symbolized by such trademarks, including, without limitation, those United States trademark registrations and use-based applications for trademark registrations listed on **Schedule A** and **Schedule B** attached

Schedule A and **Schedule B** attached hereto and made a part hereof, (b) all currently owned or hereafter acquired trademarks, registration of trademarks and use based applications for trademark registration pending before the trademark offices of foreign countries, (c) all income, royalties, damages and payments now and hereafter due and/or payable under or based on such trademarks, and (d) all rights to sue, collect and retain damages and payments for past and future infringements and violation of the rights thereof (such trademarks, registrations of trademarks and use-based applications for trademark registrations set forth at (a) and (b) of this paragraph being herein the "**Trademarks**"). The marks listed in **Schedule B** are marks that are the subject of pending intent-to-use applications (each an "ITU Application" and collectively the "**ITU Applications**"). At such time, if any, that the Borrower begins making use in interstate commerce of any such mark, (1) the Borrower shall convert the applicable ITU Application to a use-based application by filing an Amendment to Allege Use or Statement of Use with the PTO and providing notice of such filing to the Bank, and (2) upon notice from the PTO of the acceptance of such Amendment to Allege Use or Statement of Use, such mark and corresponding use-based application shall automatically become one of the Trademarks and fully subject to the security interest of the Bank hereunder.

3. **Representations and Warranties.** The Borrower represents and warrants that:

(a) The Borrower is the present owner of the entire right, title and interest in and to the Trademarks described in **Schedule A** and **Schedule B** hereto and, to the best of its knowledge, has good and indefeasible title thereto.

(b) The Trademarks are free and clear of all security interests, liens and encumbrances, except Permitted Liens.

(c) The Borrower has not granted any licenses, rights or privileges in or to the Trademarks to any party except the Bank.

(d) To the best of the Borrower's knowledge, the Borrower may use the Trademarks that are the subject of registrations described in **Schedule A** free and clear of the infringement of the rights of others.

(e) The Borrower has not commenced and has not threatened to commence against any Person, and there is not pending, any suit or other proceeding seeking to enforce or alleging a violation of any of the Trademarks or any of the Borrower's rights therein.

(f) No Person has commenced or, to the best of the Borrower's knowledge, has threatened to commence any suit or other proceeding alleging that any of the Trademarks is unenforceable or violates any right or interest of such Person.

(g) The Trademarks on **Schedule A** constitute all of the registrations and applications for the Trademarks in the United States and foreign countries owned by the Borrower.

(h) The Borrower has not and will not make any agreement or assignment in conflict with this Agreement.

(i) The trademark applications set forth in **Schedule A** have been duly and properly filed, the trademark registrations set forth in said Schedule have been issued, and the Trademarks shown as having been registered or for which applications for registration have been filed are valid and enforceable.

4. **Maintenance and Enforcement of Trademarks.** The Borrower shall not take any action, nor permit any action to be taken by others subject to the Borrower's control, including licensees, or fail to take any action regarding any matter of which the Borrower has knowledge, which would affect the validity and enforcement of any of the Trademarks, or impair the value of any of the Trademarks or the goodwill of the business associated therewith, except that the Borrower may discontinue or abandon the use of any of the Trademarks and any applications and registrations therefor if it determines that, in its reasonable business judgment, such discontinuance or abandonment is desirable or necessary. Subject to the other provisions of this Agreement, the Borrower shall assume and continue, at its own cost and expense, through counsel of its own choice and acceptable to the Bank, full and complete responsibility for the prosecution, issuance, enforcement, maintenance, renewal or any other actions in connection with the Trademarks.

5. **Notice of Proceedings.** The Borrower promptly shall notify the Bank, in writing, of any suit, action or proceeding which relates to, is concerned with or affects any of the Trademarks or alleges infringement of another trademark by any of the Trademarks, if in either case an adverse decision could reasonably be expected to have a material adverse effect on any of the Trademarks or on the Borrower's rights therein, and the Borrower shall, on written request of the Bank, deliver to the Bank a copy of all pleadings, papers, orders and decrees heretofore and hereafter filed in any such suit, action or proceeding, and shall keep the Bank fully advised in writing of the progress of any such suit or proceeding.

6. **New Applications and Registrations.** Not less frequently than semi-annually the Borrower shall provide the Bank with a listing of all new applications for trademarks and of newly issued registrations for which application was made previously, each of which new applications and registrations shall be subject to the terms and conditions of the Credit Agreement and this Agreement, and in the case of a use-based application or registration, shall come within the term "Trademarks" as set forth herein. Each new ITU Application shall come within the term "Trademarks" when the conditions for ITU Applications set forth in Paragraph 2 above are met. In addition, the Borrower shall provide the Bank, on request, such documents and instruments, each in a form acceptable to counsel for the Bank, as may be

necessary to grant to the Bank, and to perfect, a valid enforceable security interest in such new applications and registrations.

7. Documents Relating to Trademarks. (a) Upon written request by the Bank, the Borrower shall deliver to the Bank copies of any trademark applications and other documents concerned with or related to the adoption, use, prosecution, protection, maintenance, renewal, enforcement or issuance of the Trademarks.

(b) The Borrower agrees to provide the Bank with supplemental documentation necessary to record and perfect this Agreement with the relevant offices in the countries in which the Borrower has Trademarks as set forth in **Schedules A and B.**

8. Conduct of Business to Protect Goodwill. In order to protect and continue the goodwill of the business associated with and symbolized by the Trademarks, and to avoid deception to the public as to the nature and quality of the goods on which the Trademarks are employed by the Borrower, the Borrower shall conduct its business in accordance with the requirements of production, quality and service of the goods in the market as in the past, and shall at all times use its best efforts to maintain the quality of the goods sold or distributed on which the Trademarks are employed commensurate with at least the same or better quality and past practices of the Borrower.

9. Events of Default. The occurrence of any of the following shall constitute an Event of Default under this Agreement:

(a) if the Borrower fails to perform, keep or observe any term, provision, condition or covenant contained in this Agreement which the Borrower is required to be performed, kept or observed and such failure is not cured within 15 days after written notice thereof from the Bank to the Borrower;

(b) if any representation or warranty made by the Borrower herein is breached or is false or misleading in any material respect; or

(c) the occurrence of an "Event of Default" under the Credit Agreement

10. Remedies. After the occurrence of and during the continuance of an Event of Default, the Bank shall have all of the rights, remedies and benefits of a secured party under applicable law, including without limitation, all of the rights, remedies and benefits of a secured party under the Uniform Commercial Code, whether or not the Uniform Commercial Code is applicable, and, in addition, the Bank may grant licenses, rights or other privileges in, or otherwise take whatever action with respect to, the Trademarks that the Bank deems necessary or appropriate under the circumstances. The Borrower hereby appoints and designates the Bank as its attorney to take, during the continuance of an Event of Default, in

the name of either the Borrower or the Bank, such action as the Bank, in its sole discretion, deems necessary or appropriate under the circumstances to protect the Trademarks and the security interest of the Bank therein, but the Bank shall not be required to take any such action.

11. Fees and Expenses. The Borrower agrees to pay on demand any and all costs, charges, fees and other expenses incurred by the Bank in connection with this Agreement and the enforcement thereof including, without limitation, the fees and expenses of counsel employed by the Bank (i) with respect to the amendment or enforcement of this Agreement or with respect to the any of the Trademarks, (ii) to represent the Bank in any litigation, contest, dispute, suit or proceeding or to commence, defend or intervene or to take any other action in or with respect to any litigation, contest, dispute, suit or proceeding (whether instituted by the Bank, the Borrower or any other Person) in any way or respect relating to this Agreement or any of the Trademarks or (iii) to enforce any of the Bank's rights hereunder including, without limitation, any action to protect, collect, sell, liquidate or otherwise dispose of any of the Trademarks.

12. Governing Law; Jury Trial; Severability. This Agreement shall be a contract made under and governed by the laws of the State of Illinois, without regard to conflict of laws principles. Wherever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement. All obligations of the Borrower and rights of the Bank shall be in addition to and not in limitation of those provided by applicable law

THE BORROWER HEREBY IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING (I) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR (II) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE BORROWER IRREVOCABLY AGREES THAT, SUBJECT TO THE BANK'S SOLE AND ABSOLUTE ELECTION, ANY ACTION OR PROCEEDING IN ANY WAY, MANNER OR RESPECT ARISING OUT OF THIS AGREEMENT, OR ARISING FROM ANY DISPUTE OR CONTROVERSY ARISING IN CONNECTION WITH OR RELATED TO THIS AGREEMENT, SHALL BE LITIGATED ONLY IN THE COURTS HAVING SITUS WITHIN THE CITY OF CHICAGO, THE STATE OF ILLINOIS, AND THE BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SUCH CITY AND STATE. THE BORROWER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR

13. Notices. All notices and other communications hereunder shall be sent in the manner and to the persons set forth in Section 12.2 of the Credit Agreement and when so sent, shall be deemed given at the times provided in said Section.

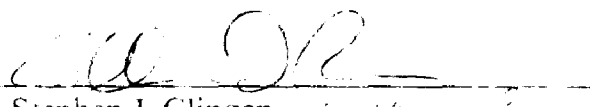
14. Release of Security Interest Upon payment in full of all obligations of the Borrower arising under or in connection with the Credit Agreement and the Related Documents and the termination of the Revolving Credit Commitment thereunder, the Bank agrees to release and take such further action as may be necessary or advisable to evidence such release and termination of its security interest set forth herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

AMERICALI CORPORATION

By: 
Name: George A. Kestler
Title: President

AMERICAN NATIONAL BANK AND TRUST
COMPANY OF CHICAGO

By: 
Name: Stephen J. Clingen
Title: Vice President

Schedule A

Registered Trademarks

<u>Mark</u>	<u>Registration Number</u>	<u>Date of Registration</u>
Americall	1,614,145	September 18, 1990

Use-Based Applications

NONE

Schedule B

Intent to Use Applications

NONE

*

SEYFARTH, SHAW, FAIRWEATHER & GERALDSON
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TELEPHONE (32) 21 647 6021
FAX (32) 21 640 707

January 20, 1999

BY EXPRESS MAIL
NUMBER: EM002613730US

Commissioner of Patents and Trademarks
Box Assignment
Washington, D.C. 20231

Re: Mark: AMERICALL
Reg. No.: 1,614,145
Our File No.: 14041-72

Dear Sir/Madam:

Enclosed are the Recordation Form Cover Sheet - Trademarks Only and the Trademark Security Interest Agreement executed between Americall Corporation and American National Bank And Trust Company Of Chicago. Also enclosed is our check in the amount of \$40.00 covering the recordation fee of same.

In addition, we have enclosed a self-addressed stamped postcard. Please place your received stamp on same and return it to our offices. Thank you for your assistance in this matter.

Very truly yours,

SEYFARTH, SHAW, FAIRWEATHER & GERALDSON

By:



Miles A. Zvi

MAZ:sc
Enclosures

cc: Bart A. Lazar, Esq.
David A. Saunders, Esq.

RECORDED: 01/26/1999

TRADEMARK
REEL: 1843 FRAME: 0553