

MD
2-22-99

RECORDED

02-25-1999



100972199

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

- New
- Resubmission (Non-Recordation)
Document ID #
- Correction of PTO Error
Reel # Frame #
- Corrective Document
Reel # Frame #

Conveyance Type

- Assignment License
 - Security Agreement Nunc Pro Tunc Assignment
 - Merger Change of Name
 - Other
- Effective Date
Month Day Year

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

- 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 Assignment.)

02/24/1999 DNGUYEN 00000137 75581239

FOR OFFICE USE ONLY

01 FC:481 40.00 DP
02 FC:482 350.00 DP

Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20503

TRADEMARK
REEL: 1859 FRAME: 0668

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages Enter the total number of pages of the attached conveyance document including any attachments. #

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)

Number of Properties Enter the total number of properties involved. #

Fee Amount Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed Deposit Account

Deposit Account (Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number: #

Authorization to charge additional fees: Yes No

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. Charges to deposit account are authorized, as indicated herein.

Joni Gok
Name of Person Signing

Joni Gok
Signature

2.16.99
Date Signed

**RECORDATION FORM COVER SHEET
CONTINUATION
TRADEMARKS ONLY**

FORM PTO-1618C
Expires 06/30/99
OMB 0651-0027

U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK

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

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.)

Corporation Association

Other

Citizenship/State of Incorporation/Organization

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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COLLATERAL ASSIGNMENT, PATENT MORTGAGE AND SECURITY AGREEMENT

THIS COLLATERAL ASSIGNMENT, PATENT MORTGAGE AND SECURITY AGREEMENT (“Assignment”) is made as of February 9, 1999, by and THE CUSTOMER COMPANY, a California corporation (“Debtor”), and COMERICA BANK-CALIFORNIA (“Bank”).

RECITALS

A. Bank has agreed to lend to Debtor certain funds (the “Loans”), and Debtor desires to borrow such funds from Bank pursuant to the terms of a Loan Agreement dated of even date herewith (as the same may be amended, modified or supplemented from time to time, the “Loan Agreement”). All capitalized terms used but not defined herein shall have the respective meanings given to them in the Loan Agreement.

B. Pursuant to the terms of a Security Agreement (All Assets) dated of even date herewith by and between Debtor and Bank (as the same may be amended, modified or supplemented from time to time, the “Security Agreement”), Debtor has granted to Bank a security interest in all of Debtor’s right, title and interest in, to or under all of the Debtor’s assets, excluding Debtor’s real property.

C. In order to induce Bank to make the Loans, Debtor has agreed to assign certain intangible property to Bank for purposes of securing the obligations of Debtor to Bank.

NOW, THEREFORE, the parties hereto agree as follows:

1. **DEFINITIONS.** All capitalized terms used but not otherwise defined herein shall have the respective meanings assigned to them in the Security Agreement.

2. **COLLATERAL ASSIGNMENT, PATENT MORTGAGE AND GRANT OF SECURITY INTEREST.** As collateral security for the prompt and complete payment and performance of all of Debtor’s present or future indebtedness, obligations and liabilities to Bank under the Loan Agreement and the other Loan Documents, Debtor hereby assigns, transfers, conveys and grants a security interest and mortgage to Bank, as collateral security, in and to Debtor’s entire right, title and interest in, to and under the following, now or hereafter existing, created, acquired or held by Debtor (all of which shall collectively be called the “*Intellectual Property Collateral*”):

(a) Any and all Copyright and Copyright Licenses, including, without limitation, those set forth on **Exhibit A** attached hereto and incorporated herein by this reference;

(b) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products;

(c) Any and all design rights which may be available to Debtor;

(d) Any and all Patents and Patent Licenses, including, without limitation, those set forth on **Exhibit B** attached hereto and incorporated herein by this reference;

(e) Any and all Trademarks and Trademark Licenses, and the entire goodwill of the business of Debtor connected with and symbolized by all such Trademarks, including, without limitation, those set forth on **Exhibit C** attached hereto and incorporated herein by this reference;

(f) Any and all claims for damages by way of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

(g) All other licenses or other rights to use any of the Intellectual Property, and all license fees and royalties arising from such use to the extent permitted by such license or rights;

(h) All amendments, renewals and extensions of any of the Intellectual Property;
and

(i) All proceeds and products of the foregoing, including, without limitation, all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

The security interest granted hereunder is granted in conjunction with the security interests granted to Bank under the Security Agreement. The rights and remedies of Bank with respect to the security interest granted hereby are in addition to those set forth in the Security Agreement, the Loan Agreement and the other Loan Documents, and those which are now or hereafter available to Bank as a matter of law or equity. Each right, power and remedy of Bank provided for herein or in the Security Agreement, the Loan Agreement or any of the other Loan Documents, or now or hereafter existing at law or in equity shall be cumulative and concurrent and shall be in addition to every right, power or remedy provided for herein and the exercise by Bank of any one or more of the rights, powers or remedies provided for in this Assignment, the Security Agreement, the Loan Agreement or any of the other Loan Documents, or now or hereafter existing at law or in equity, shall not preclude the simultaneous or later exercise by any person, including Bank, or any or all other rights, powers or remedies.

THE INTEREST IN THE COLLATERAL BEING ASSIGNED HEREUNDER SHALL NOT BE CONSTRUED AS A CURRENT ASSIGNMENT, BUT AS A CONTINGENT ASSIGNMENT TO SECURE DEBTOR'S OBLIGATIONS TO BANK UNDER THE LOAN AGREEMENT.

3. AUTHORIZATION AND REQUEST. Debtor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this conditional assignment.

4. COVENANTS AND WARRANTIES. Debtor represents, warrants, covenants and agrees as follows:

(a) Debtor is now the sole owner of the Intellectual Property Collateral;

(b) Performance of this Assignment does not conflict with or result in a breach of any agreement to which Debtor is a party or by which Debtor is bound;

(c) During the term of this Assignment, Debtor will not sell, transfer, assign or otherwise encumber any interest in the Intellectual Property Collateral, other than with respect to Permitted Liens;

(d) To its knowledge, each of the Patents is valid and enforceable, and there is no Intellectual Property which has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Intellectual Property Collateral violates the rights of any third party;

(e) Debtor shall promptly advise Bank of any material changes in the composition of the Intellectual Property Collateral, including but not limited to any subsequent ownership right of Debtor in or to any Intellectual Property not specified in this Assignment;

(f) Debtor shall (i) protect, defend and maintain the validity and enforceability of the Intellectual Property, (ii) use its best efforts to detect infringements of the Intellectual Property and promptly advise Bank in writing of material infringements detected, and (iii) not allow any of its Intellectual Property to be abandoned, forfeited or dedicated to the public without the written consent of Bank, which shall not be unreasonably withheld, unless Debtor determines that reasonable business practices suggest that abandonment is appropriate;

(g) Debtor shall promptly register the most recent version of Debtor's material Copyrights, if not so already registered and shall, from time to time, execute and file such other instruments, and take such further actions as Bank may reasonably request from time to time to perfect or continue the perfection of Bank's interest in the Intellectual Property Collateral;

(h) This Assignment creates, and in the case of after acquired Intellectual Property Collateral, will create at the time Debtor first has rights in such after acquired Intellectual Property Collateral, in favor of Bank a valid and perfected first priority security interest in the Intellectual Property Collateral in the United States securing the payment and performance of the Secured Obligations upon making the filings referred to in Section 4(i) below, subject only to Permitted Liens;

(i) To its knowledge, except for, and upon, the filings with, as applicable, (1) the United States Patent and Trademark Office, (2) the Register of Copyrights and (3) the UCC Division of the applicable Office of the Secretary of State, necessary to perfect the security interests and assignment created hereunder, and except as has been already made or obtained, no authorization, approval or other action by, and no notice to or filing with, any United States governmental authority or United States regulatory body is required either (a) for the grant by Debtor of the security interest granted hereby or for the execution, delivery or performance of this Assignment by Debtor in the United States or (b) for the perfection in the United States or the exercise by Bank of its rights and remedies hereunder;

(j) All information heretofore, herein or hereafter supplied to Bank by or on behalf of Debtor with respect to the Intellectual Property Collateral is accurate and complete in all material respects;

(k) Debtor shall not enter into any agreement that would materially impair or conflict with Debtor's obligations hereunder without Bank's prior written consent, which consent

shall not be unreasonably withheld. Debtor shall not permit the inclusion in any material contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a security interest in Debtor's rights and interests in any property included within the definition of the Intellectual Property Collateral acquired under such contracts; and

(l) Upon any executive officer of Debtor obtaining actual knowledge thereof, Debtor will promptly notify Bank in writing of any event that materially adversely affects the value of any Intellectual Property Collateral, the ability of Debtor to dispose of any Intellectual Property Collateral or the rights and remedies of Bank in relation thereto, including the levy of any legal process against any of the Intellectual Property Collateral.

5. BANK'S RIGHTS. Bank shall have the right, but not the obligation, to take, at Debtor's sole expense, any actions that Debtor is required under this Assignment to take but which Debtor fails to take, after fifteen (15) days' written notice to Debtor. Debtor shall reimburse and indemnify Bank for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this **Section 5**.

6. INSPECTION RIGHTS. Debtor hereby grants to Bank and its employees, representatives and agents the right to visit, during reasonable hours upon prior reasonable written notice to Debtor, any of Debtor's plants and facilities that manufacture, install or store products (or that have done so during the prior six-month period) that are sold utilizing any of the Intellectual Property Collateral, and to inspect the products and quality control records relating thereto upon reasonable written notice to Debtor and as often as may be reasonably requested.

7. FURTHER ASSURANCES; ATTORNEY IN FACT.

(a) On a continuing basis, Debtor will make, execute, acknowledge and deliver, and file and record in the proper filing and recording places in the United States, all such instruments, including appropriate financing and continuation statements and collateral agreements and filings with the United States Patent and Trademark Office and the Register of Copyrights, and take all such action as may reasonably be necessary or advisable, or as reasonably requested by Bank, to perfect Bank's security interest in all Intellectual Property, and otherwise to carry out the intent and purposes of this Assignment, or for assuring and confirming to Bank the grant or perfection of a security interest in all Intellectual Property Collateral.

(b) Debtor hereby irrevocably appoints Bank as Debtor's attorney-in-fact, with full authority in the place and stead of Debtor and in the name of Debtor, from time to time in Bank's discretion, to take any action and to execute any instrument which Bank may reasonably deem necessary or advisable to accomplish the purposes of this Assignment, including (i) to modify, in its reasonable discretion, this Assignment without first obtaining Debtor's approval of or signature to such modification by amending Exhibit A, Exhibit B or Exhibit C hereof, as appropriate, to include reference to any material right, title or interest in any Intellectual Property acquired by Debtor after the execution hereof or to delete any reference to any right, title or interest in any Intellectual Property in which Debtor no longer has or claims any right, title or interest, (ii) to file, in its reasonable discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Intellectual Property Collateral without the signature of Debtor where permitted by law, and (iii) to transfer the Intellectual Property Collateral into the name of Bank or a

third party to the extent permitted under the UCC; *provided*, that Bank agrees that it shall not exercise its powers as attorney-in-fact under this **Section 7** except upon the occurrence and during the continuation of an Event of Default..

8. EVENTS OF DEFAULT. The occurrence of any of the following shall constitute an “*Event of Default*” under this Assignment:

(a) An Event of Default occurs under the Loan Agreement or any other Loan Document; or

(b) Debtor breaches any warranty or agreement in any material respect made by Debtor in this Assignment and, as to any breach that is capable of cure, Debtor fails to cure such breach within fifteen (15) days of the occurrence of such breach if notice thereof has been given to Debtor.

9. REMEDIES. Upon the occurrence and during the continuance of an Event of Default, Bank shall have the right to exercise, upon three (3) Business Days’ notice to Borrower, all the remedies of a secured party under the UCC, including, without limitation, the right to require Debtor to assemble the Intellectual Property Collateral and any tangible property in which Bank has a security interest and to make it available to Bank at a place designated by Bank. Bank shall have a nonexclusive, royalty free license or other right, solely pursuant to the provisions of this **Section 9**, to use, without charge, the Intellectual Property and any property of a similar nature as it pertains to the Intellectual Property Collateral, to the extent reasonably necessary to permit Bank to exercise its rights and remedies pursuant to this **Section 9**, including, without limitation, the completion of production, advertising for sale and the sale of any Intellectual Property Collateral and, in connection with Bank’s exercise of its rights hereunder, Debtor’s rights under all licenses and all franchise agreements shall inure to the benefit of Bank. Debtor will pay any expenses (including reasonable attorneys’ fees) incurred by Bank in connection with the exercise of any of Bank’s rights hereunder, including, without limitation, any expense incurred in disposing of the Intellectual Property Collateral. All of Bank’s rights and remedies with respect to the Intellectual Property Collateral shall be cumulative.

10. INDEMNITY. Debtor agrees to defend, indemnify and hold harmless Bank and its officers, employees, and agents against: (a) all obligations, demands, claims and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Assignment and (b) all losses or expenses in any way suffered, incurred, or paid by Bank as a result of or in any way arising out of, following or consequential to transactions between Bank and Debtor, whether under this Assignment or otherwise (including, without limitation, reasonable attorneys’ fees and reasonable expenses), except for losses arising from or out of Bank’s gross negligence or willful misconduct.

11. SUCCESSORS AND ASSIGNS. This Assignment and all obligations of Grantor hereunder shall be binding upon the successors and assigns of Grantor, and shall, together with the rights and remedies of Bank hereunder, inure to the benefit of Bank, any future holder of any Note and their respective successors and assigns. No sales of participations, other sales, assignments, transfers or other dispositions of any agreement governing or instrument evidencing the

Indebtedness or any portion thereof or interest therein shall in any manner affect the security interest created herein and granted to Bank hereunder.

12. REASSIGNMENT. At such time as Debtor shall completely satisfy all of the obligations secured hereunder, Bank shall execute and deliver to Debtor all deeds, assignments and other instruments as may be necessary or proper to revest in Debtor full title to the property assigned hereunder, subject to any disposition thereof which may have been made by Bank pursuant hereto.

13. NO FAILURE OR DELAY. No failure or delay on the part of Bank, in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof.

14. ATTORNEYS' FEES. If any action relating to this Assignment is brought by either party hereto against the other party, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements.

15. AMENDMENTS. Except as otherwise provided herein, this Assignment may be amended only by a written instrument signed by both parties hereto.

16. COUNTERPARTS. This Assignment may be executed in any number of counterparts, each of which when so delivered shall be deemed an original, but all such counterparts shall constitute but one and the same instrument. Each such Assignment shall become effective upon the execution of a counterpart hereof or thereof by each of the parties hereto and telephonic notification that such executed counterparts has been received by Debtor and Bank.

17. CALIFORNIA LAW AND JURISDICTION; JURY WAIVER. This Assignment shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to principles of conflicts of law. Debtor and Bank consent to the exclusive jurisdiction of any state or federal court located in Santa Clara County, California. DEBTOR AND BANK EACH WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE LOAN AGREEMENT, THIS ASSIGNMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

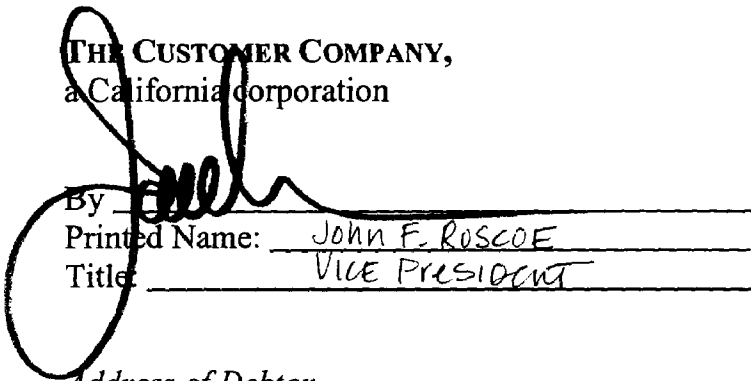
18. CONFLICT. In the event of a conflict between any term and/or provision contained in this Assignment with any term and/or provision contained in the Security Agreement, the term and/or provision of this Assignment shall govern.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have executed this Assignment on the day and year first above written.

DEBTOR

THE CUSTOMER COMPANY,
a California corporation

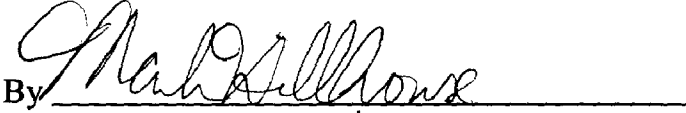
By 
Printed Name: John F. Roscoe
Title: VICE PRESIDENT

Address of Debtor

4457 Park Road
Benicia, California 94510

BANK

COMERICA BANK-CALIFORNIA

By 
Printed Name: MARK HILLHOUSE
Title: ASSISTANT VICE PRESIDENT

Address of Bank

201 Spear Street, Suite 200
San Francisco, California 94105

[COLLATERAL ASSIGNMENT]

EXHIBIT A
COPYRIGHTS

1. **REGISTERED:** List titles below or indicate "None"

None

2. **UNREGISTERED:** List titles below or indicate "None"

None

3. **APPLICATIONS IN PROCESS:** List titles, applicable dates, application numbers, etc. below or indicate "None"

None

EXHIBIT B

U.S. PATENTS AND PATENT APPLICATIONS

None

EXHIBIT C

U.S. TRADEMARKS AND TRADEMARK APPLICATIONS

REGISTRATION No.	PENDING APPLICATION No.	MARK	REGISTRATION DATE	FILING DATE
	75/581,239	Big Chief		11/02/98
	75/557,591	Super Cheaper!		09/24/98
	75/507,344	Cheaper!		06/23/98
2,052,669		Design (service mark)	04/15/97	
1,980,923		Dionysus	06/18/96	
1,978,223		No Guts No Glory	06/04/96	
1,972,512		It'sa	05/07/96	
1,948,683		Aunt Sally's	01/16/96	
1,892,294		Star Kids	05/02/95	
1,888,653		It'sa	04/11/95	
1,883,522		Bagatorial	03/14/95	
1,794,541		Cheaper!	09/21/93	
1,640,733		Money	04/09/91	
1,509,506		Gridlock	10/18/88	
1,463,773		The Customer Company	11/03/87	

UNREGISTERED TRADEMARKS: List or indicate "None" below.

None