

3-8-99

FORM PTO-1594 MRD
(Rev. 6-93) 3-8-99

REC

03-16-1999

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

To the Honorable Commissioner of Patents and



nal documents or copy thereof.

1. Name of conveying party(ies):

100985547

receiving party(ies):

International Microcomputer Software, Inc.
1895 E. Francisco Blvd.
San Rafael, CA 94901

Name: Union Bank of California

Internal Address: _____

Street Address: 350 California Street, 10th Floor

City: San Francisco State: CA ZIP 94104

- Individual(s) Association
- General Partnership Limited Partnership
- Corporation-State California
- Other _____

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State _____
- Other Bank

Additional name(s) of conveying party(ies) attached? Yes
 No

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designation 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 Collateral Assignment, Patent Mortgage and Security Agreement

Execution Date: May 1, 1998

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

A. Trademark Application No.(s)

See Exhibit "C" attached hereto and made a part hereof.

B. Trademark Registration No.(s)

See Exhibit "C" attached hereto and made a part hereof.

Additional numbers attached? Yes No

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

Name: Cooley Godward LLP

Internal Address: Attn: April M. Piercey

Street Address: 5 Palo Alto Square

City: Palo Alto State: CA ZIP 94306

6. Total number of applications and registration involved: 10

7. Total fee (37 CFR 3.41):..... \$ 265.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: 03-3115

(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.

April M. Piercey

March 5, 1999
Date

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

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

03/11/1999 DMGUYEN 00000071 75532185

01 FC:481 40.00 OP
02 FC:482 225.00 OP
369365 v1/PA
7X05011.DOC
030599

TRADEMARK
REEL: 1867 FRAME: 0738

EXHIBIT C

U.S. TRADEMARKS

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

TITLE	APPLICATION NO. (SERIAL NO.)	APPLICATION DATE
STRATICA	75-532,185	8/6/98
UPDATENOW	75-469-884	4/17/98
CLICK AND SPEAK	75-467-843	4/14/98
DREAM HOUSE	75-455,205	3/23/98
FLOORPLAN	75-454,867	3/23/98
RAMSHIELD	75-452,720	3/19/98
MASTERPUBLISHER	75-452,719	3/19/98
MULTIMEDIA FUSION	75-406,839	12/16/97

REGISTERED: List titles below or indicate "None"

TITLE	REGISTRATION NO.	REGISTRATION DATE
TURBODRAW	2,038,648	2/18/97
IMSI	1,980,954	6/18/96

**COLLATERAL ASSIGNMENT, PATENT MORTGAGE AND SECURITY
AGREEMENT**

THIS COLLATERAL ASSIGNMENT, PATENT MORTGAGE AND SECURITY AGREEMENT is made as of May 1, 1998 ("*Intellectual Property Security Agreement*"), by and between INTERNATIONAL MICROCOMPUTER SOFTWARE, INC., a California corporation ("*Debtor*"), and UNION BANK OF CALIFORNIA, N.A. ("*Bank*").

RECITALS

A. Bank has agreed to lend to Debtor certain funds (the "*Loan*"), 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 modified, amended, supplemented, restated or superceded from time to time, the "*Loan Agreement*").

B. In order to induce Bank to make the Loan, 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. **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, including, without limitation, such indebtedness, obligations and liabilities under the Loan Agreement and the other documents executed in connection therewith (as the same may be modified, amended, supplemented, restated or superceded from time to time, collectively, the "*Loan Documents*"), Debtor hereby assigns, transfers, conveys and grants a security interest and mortgage to Bank, as 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 "*Collateral*"):

(a) Any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, including, without limitation, those set forth on **Exhibit A** attached hereto and incorporated herein by this reference (collectively, the "*Copyrights*").

(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) All patents, patent applications and like protections including, without limitation, improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, including, without limitation, those set forth on **Exhibit B** attached hereto and incorporated herein by this reference (collectively, the "*Patents*");

(e) Any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Debtor connected with and symbolized by such trademarks, including, without limitation, those set forth on **Exhibit C** attached hereto and incorporated herein by this reference (collectively, the "*Trademarks*");

(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 licenses or other rights to use any of the Copyrights, Patents or Trademarks, 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 Copyrights, Patents or Trademarks; 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 INTEREST IN THE COLLATERAL BEING ASSIGNED HEREUNDER SHALL NOT BE CONSTRUED AS A CURRENT ASSIGNMENT, BUT AS A CONTINGENT ASSIGNMENT TO SECURE ALL OF DEBTOR'S PRESENT OR FUTURE INDEBTEDNESS, OBLIGATIONS AND LIABILITIES TO BANK, INCLUDING, WITHOUT LIMITATION, SUCH INDEBTEDNESS, OBLIGATIONS AND LIABILITIES UNDER THE LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS.

2. **AUTHORIZATION AND REQUEST.** Debtor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this Intellectual Property Security Agreement.

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

(a) Debtor is now the sole owner of the Collateral, except for non-exclusive licenses granted by Debtor to its customers in the ordinary and normal course of business as now conducted;

(b) Performance of this Intellectual Property Security Agreement does not conflict with or result in a breach of any agreement to which Debtor is party or by which Debtor is bound, except to the extent that certain intellectual property agreements prohibit the assignment of the rights thereunder to a third party without the licensor's or other party's consent and this Intellectual Property Security Agreement constitutes as assignment;

(c) During the term of this Intellectual Property Security Agreement, Debtor will not sell, transfer, assign or otherwise encumber any interest in the Collateral, except for (i)

non-exclusive licenses granted by Debtor in the ordinary and normal course of its business as now conducted or as set forth in this Intellectual Property Security Agreement and (ii) subject to Debtor's execution of appropriate documents, in form acceptable to Bank, to perfect or continue the perfection of Bank's interest in the Collateral, transfers to affiliates of Debtor;

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

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

(f) Debtor shall (i) protect, defend and maintain the validity and enforceability of the Copyrights, Patents and Trademarks, (ii) use its best efforts to detect infringements of the Copyrights, Patents and Trademarks and promptly advise Bank in writing of material infringements detected and (iii) not allow any Copyrights, Patents or Trademarks 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 Copyrights, if not so already registered, upon the occurrence of an Event of Default or an event which with the passage of time could result in an Event of Default or as Bank may reasonably request from time to time based on its review of the Quarterly Report (as hereinafter defined) 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 Collateral;

(h) This Intellectual Property Security Agreement creates, and in the case of after acquired Collateral, this Intellectual Property Security Agreement will create at the time Debtor first has rights in such after acquired Collateral, in favor of Bank a valid and perfected first priority security interest in the Collateral in the United States securing the payment and performance of all present or future indebtedness, obligations and liabilities of Debtor to Bank, including, without limitation, such indebtedness, obligations and liabilities under the Loan Agreement and the other Loan Documents, upon making the filings referred to in Section 3(i) below;

(i) To its knowledge, except for, and upon, the filings with, as applicable, (1) the United States Patent and Trademark office with respect to the Patents and Trademarks, (2) the Register of Copyrights with respect to the Copyrights and (3) the UCC Division of the California 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 Intellectual Property

Security Agreement 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 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 Collateral acquired under such contracts, except that certain contracts may contain anti-assignment provisions that could in effect prohibit the creation of a security interest in 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 Collateral, the ability of Debtor to dispose of any Collateral or the rights and remedies of Bank in relation thereto, including the levy of any legal process against any of the Collateral.

4. **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 Intellectual Property Security Agreement to take but which Debtor fails to take, after ten (10) days' 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 4.

5. **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 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.

6. **FURTHER ASSURANCES; ATTORNEY IN FACT.**

(a) On a quarterly basis, Debtor agrees to deliver to Bank a report, in form acceptable to Bank and certified by an officer of Debtor, which lists all Copyrights, Patents and Trademarks that are material to the operation of Debtor's business on an on-going basis, and in which Bank does not already have a perfected security interest (the "*Quarterly Report*"). Based upon review of the Quarterly Report, Bank shall, in its reasonable discretion, identify which Copyrights, Patents and Trademarks it deems material to the operation of Debtor's business on an on-going basis or the value of the Collateral.

(b) 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 Copyrights, Patents and Trademarks, which Bank reasonably identifies pursuant to Section 6(a) above as material to the operation of Debtor's business on an on-going basis or the value of the Collateral, and otherwise to carry out the intent and purposes of this Intellectual Property Security Agreement, or for assuring and confirming to Bank the grant or perfection of a security interest in all Collateral.

(c) 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 Intellectual Property Security Agreement, including (i) to modify, in its reasonable discretion, this Intellectual Property Security Agreement 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 Copyrights, Patents or Trademarks acquired by Debtor after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents or Trademarks 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 Collateral without the signature of Debtor where permitted by law and (iii) after the occurrence and during the continuance of an Event of Default, to transfer the Collateral into the name of Bank or a third party to the extent permitted under the California Uniform Commercial Code.

7. **EVENTS OF DEFAULT.** The occurrence of any of the following shall constitute an "*Event of Default*" under this Intellectual Property Security Agreement:

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

(b) Debtor breaches any warranty or agreement in any material respect made by Debtor in this Intellectual Property Security Agreement 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.

8. **REMEDIES.** Upon the occurrence and during the continuance of an Event of Default, Bank shall have the right to exercise all the remedies of a secured party under the California Uniform Commercial Code, including, without limitation, the right to require Debtor to assemble the 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 to use the Copyrights, Patents and Trademarks to the extent reasonably necessary to permit Bank to exercise its rights and remedies upon the occurrence and during the continuance of an Event of Default. 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 Collateral. All of Bank's rights and remedies with respect to the Collateral shall be cumulative.

9. **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 Intellectual Property Security Agreement 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 Intellectual Property Security Agreement 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.

10. **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.

11. **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.

12. **ATTORNEYS' FEES.** If any action relating to this Intellectual Property Security Agreement is brought by either party hereto against the other party, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements.

13. **AMENDMENTS.** This Intellectual Property Security Agreement may be amended only by a written instrument signed by both parties hereto.

14. **COUNTERPARTS.** This Intellectual Property Security Agreement 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 Intellectual Property Security Agreement 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.

15. **JUDICIAL REFERENCE.** The terms and provisions of the Alternative Dispute Resolution Agreement of even date herewith are incorporated herein by this reference and made a part hereof.

16. **GOVERNING LAW; JURISDICTION; JURY WAIVER.** This Intellectual Property Security Agreement 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 the City and County of San Francisco, 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, THE SECURITY AGREEMENT, ANY OTHER LOAN DOCUMENTS, OR THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT**

CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

17. **CONFLICT.** In the event of a conflict between any term and/or provision contained in this Intellectual Property Security Agreement with any term and/or provision contained in the Security Agreement of even date herewith, the term and/or provision of this Intellectual Property Security Agreement shall govern.

IN WITNESS WHEREOF, the parties hereto have executed this Intellectual Property Security Agreement on the day and year first above written.

BANK

UNION BANK OF CALIFORNIA, N.A.

By: *Lander L. Schulte*
Printed Name: CANDIS L. DIBBLE
Title: V. P.

DEBTOR

INTERNATIONAL MICROCOMPUTER
SOFTWARE, INC., a California corporation

By: *Ken J.*
Printed Name: Ken Fineman
Title: CFO

Address of Bank

350 California Street, 10th Floor
San Francisco, CA 94104
Attention: James Goudy
Facsimile: (415) 705-7111
Telephone: (415) 705-7165

Address of Debtor

1895 E. Francisco Blvd.
San Rafael, CA 94901
Attention: Kenneth Fineman
Facsimile: (415) 459-1920
Telephone: (415) 454-3000

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

(List titles below or indicate "None")

None.

EXHIBIT C

U.S. TRADEMARKS

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

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