

03-17-1999

(Rev. 6-93)

Patent and Trademark Office

OMB No. 0851-0011



Tab Settings 00000v

To the Honorable commissioner of Patents and Trademarks

100984717

Send original documents or copy thereof.

1. Name of conveying party(ies): RXD, INC. CAPITAL FINANCE

2. Name and address of receiving party(ies)

Name: Summit Commercial/Gibraltar Corporation

Internal Address:

Street Address: 546 Fifth Ave.

City: New York State: NY Zip: 10036

- Individual (s)
General Partnership
Corporation - State
Other
Association
Change of Name

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

3. Nature of conveyance: 3-11-99

- Individual(s) citizenship
Association
General Partnership
Limited Partnership
Corporation - State New York
Other

- Assignment
Security Agreement
Other
Merger
Change of Name

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

Execution Date: February 26, 1999

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 1,336,451

Additional Numbers Attached? Yes No

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

556. Total number of registrations and registrations involved: 1

Name: Lynn A. Huebner, Legal Assistant

7. Total fee (37 CFR §3.41) \$ 40.00

Internal Address:

Enclosed

Street Address: 350 Sentry Parkway, Bldg. 640

Authorized to be charged to deposit account

Wolf, Block, Schorr & Solis-Cohen LLP

8. Deposit account number:

City: Blue Bell State: PA Zip: 19422

(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.

40E

Lynn A. Huebner
Name of Person Signing

Signature of Lynn A. Huebner

March 9, 1999
Date

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

11

03/16/1999 DMGUYEN 00000073 1336451

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40.00 DP

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patents & Trademarks, Box Assignments

**COLLATERAL ASSIGNMENT OF PATENTS,
TRADEMARKS, LICENSES AND COPYRIGHTS**

THIS COLLATERAL ASSIGNMENT OF PATENTS, TRADEMARKS, LICENSES AND COPYRIGHTS is made effective as of the 26th day of February, 1999 by and among **RXD, Inc.** ("**Assignor**") and **SUMMIT COMMERCIAL/GIBRALTAR CORP.** ("**Assignee**").

BACKGROUND

A. Pursuant to that certain Loan and Security Agreement of even date herewith by and between Assignee, Assignor and certain other parties (such Loan and Security Agreement, as the same may hereafter be amended, modified or restated, being referred to herein as the "**Loan Agreement**"), the Assignee agreed to extend to the Borrower the credit facilities described therein.

B. The Loan Agreement provides, *inter alia*, that Assignor will grant to Assignee for the benefit of Assignee a security interest in all of Assignor's assets, including, without limitation, its patents, patent rights, patent applications, service marks, trademarks, service trademark applications, service trade names, goodwill, copyrights and licenses.

NOW THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor agrees as follows:

1. **Incorporation of Loan Agreement.** The Loan Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement.

2. **Collateral Assignment.** To secure the complete and timely payment and satisfaction of all Lender Indebtedness, Assignor hereby mortgages, pledges and grants a security interest, to and for the benefit of Assignee, as and by way of a first mortgage and security interest having priority over all other security interests, with power of sale, to the extent permitted by law, in and to all of such Assignor's right, title and interest in and to all of its now owned or existing and filed and hereafter acquired or arising and filed:

a. patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein, and those patents listed on **Exhibit "A"**, attached hereto and made a part hereof, and (a) the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing patents and applications, together with the items described in clauses (a)-(d), are sometimes hereinafter individually and/or collectively referred to as the "**Patents**");

b. service marks, trademarks, service mark and trademark registrations, trade names and trademark applications, including, without limitation, the service marks, trademarks and applications listed on **Exhibit "B"**, attached hereto and made a part hereof and all goodwill in connection therewith, and (a) all renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing service marks, trademarks, service mark and trademark registrations, service mark and trade names and applications together with the items described in clauses (a)-(d), are sometimes hereinafter individually and/or collectively referred to as the "**Trademarks**");

c. copyrights, copyright registrations, copyright applications and all computer programs, operating systems, application systems, hardware or software of any nature whatsoever owned by Assignor, whether operational, under development or inactive, including all object codes, source codes, modules, technical manuals, user manuals, operating instructions and procedures, in-put and out-put formats, program listings, narrative descriptions, program flow charts, file layouts, report layouts, screen layouts and other documentation therefor (including internal notes, memoranda, status evaluations, marketing information and write-ups), and all improvements, modifications, enhancements, new releases and revisions thereof, whether in machine-readable form, programming language or any other language or symbols, and whether stored, encoded, recorded or written on disk, tape, film, memory device, paper or other media of any nature; together with all tangible media upon which any of the foregoing are recorded or encoded, including, without limitation, all chips, disks, tapes, film and paper; including, without limitation, the copyrights, copyrights registrations and copyrights applications listed on **Exhibit "C"** attached hereto and made a part hereof, and (a) all renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, and (c) the right to sue for past, present and future infringements thereof (all of the foregoing items are sometimes referred to herein collectively as the "**Copyrights**");

d. license agreements with any other party, whether Assignor is a licensor or licensee under any such license agreement, including, without limitation, the licenses listed on **Exhibit "D"** attached hereto and made a part hereof, and the right to prepare for sale, sell and advertise for sale all inventory now or hereafter owned by Assignor and now or hereafter covered by such licenses (all of the foregoing is hereinafter referred to collectively as the "**Licenses**"); and

e. all goodwill in connection with the foregoing.

3. **Restrictions on Future Agreements.** Assignor agrees that until all Lender Indebtedness shall have been satisfied in full and the Loan Agreement shall have been terminated, Assignor will not, without Assignee's prior written consent, enter into any agreement (including, without limitation, any license or royalty agreement) which is inconsistent with Assignor's obligations under this Assignment

or which is prohibited under the terms of the Loan Agreement, and Assignor further agrees that it will 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 affect the validity or enforcement of the rights of Assignee under this Assignment.

4. **New Patents, Trademarks, Copyrights and Licenses.** Assignor represents and warrants that the Patents, Trademarks, Copyrights and Licenses listed on **Exhibits "A", "B", "C" and "D"**, respectively, constitute all of the patents, trademarks and applications now owned by Assignor. If, before all Lender Indebtedness shall have been satisfied in full and the Loan Agreement shall have been terminated, Assignor shall (i) obtain rights to any new patentable inventions, trademarks, trademark registrations, trade names, copyrights or licenses, or (ii) become entitled to the benefit of any patent or trademark application, trademark, trademark registration, copyright or license renewal, or patent for any reissue, division, continuation, renewal, extension, or continuation-in-part of any Patent or any improvement on any Patent, the provisions of **Section 1** above shall automatically apply thereto and Assignor shall give to Assignee prompt written notice thereof. Assignor hereby authorizes Assignee to modify this Assignment by amending **Exhibit "A", "B", "C" and/or "D"**, as applicable, to include any future patents, patent applications, trademarks, trademark registrations, trademark applications, trade names, copyrights and licenses which are Patents, Trademarks, Copyrights or Licenses, as applicable, under **Section 2** above or under this **Section 4**.

5. **Royalties; Term.** Assignor hereby agrees that any use by Assignee permitted hereunder of all Patents, Trademarks, Copyrights and Licenses as described above shall be worldwide to the extent allowed by the terms of such Patents, Trademarks, Copyrights and Licenses and by applicable law in any country in which such use may be proposed and without any liability for royalties or other related charges from Assignee to Assignor. The term of the assignment granted herein shall extend until the earlier of (i) the expiration of each of the respective Patents, Trademarks, Copyrights and Licenses assigned hereunder, or (ii) the date on which all Lender Indebtedness has been paid in full and the Loan Agreement is terminated.

6. **Assignee's Right to Inspect.** Assignee shall have the right, at any time and from time to time, to inspect Assignor's premises and to examine Assignor's books, records and operations, including, without limitation, Assignor's quality control processes. Assignor agrees that Assignee shall have the right to establish such additional reasonable product quality controls as Assignee, in its reasonable judgment, may deem necessary to assure maintenance of the quality of products sold by Assignor under the Trademarks. Assignor agrees (i) not to sell or assign its interest in, or grant any license under, the Patents, Trademarks, Copyrights or Licenses, without the prior written consent of Assignee; (ii) to maintain the quality of any and all products in connection with which the Trademarks and/or the Copyrights are used, substantially consistent with the quality of said products as of the date hereof; (iii) not to materially adversely change the quality of said products without Assignee's express written consent; and (iv) to provide Assignee, upon request, with a certificate of an officer of Assignor certifying Assignor's compliance with the foregoing.

7. **Duties of Assignor.** Assignor shall have the duty (i) to prosecute diligently any patent, trademark and copyright application pending as of the date hereof or thereafter until all Lender

Indebtedness shall have been paid in full and the Loan Agreement is terminated, (ii) to make application on unpatented but patentable inventions and on trademarks and copyrights, as appropriate, and (iii) to preserve and maintain all rights in patent applications and patents of the Patents, in trademark applications, trademarks and trademark registrations of the Trademarks and in copyright applications and copyrights of the Copyrights, in each case which are material to its business. Any expenses incurred in connection with such applications shall be borne by Assignor. Assignor shall not abandon any right to file a patent, trademark or copyright application, or any pending patent, trademark or copyright application, or any Patent, Trademark or Copyright, without the consent of Assignee, which consent shall not be unreasonably withheld.

8. **Assignee's Right to Sue.** After the occurrence of an Event of Default, Assignee shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Licenses, Patents, Copyrights and/or Trademarks, and any licenses thereunder, and, if Assignee shall commence any such suit, Assignor shall, at the request of Assignee, do any and all lawful acts and execute any and all proper documents required by Assignee in aid of such enforcement and Assignor shall promptly, upon demand, reimburse and indemnify Assignee for all costs and expenses incurred by Assignee in the exercise of its rights under this **Section 8.**

9. **Waivers.** No course of dealing between Assignor and Assignee, nor any failure to exercise, nor any delay in exercising, on the part of Assignee, 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.

10. **Severability.** The provisions of this Assignment are severable, and if any clause or provision shall be 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 Assignment in any jurisdiction.

11. **Modification.** This Assignment cannot be altered, amended or modified in any way, except as specifically provided in **Section 4** hereof or by a writing signed by the parties hereto.

12. **Cumulative Remedies; Power of Attorney; Effect on Loan Agreement.** All of Assignee's rights and remedies with respect to the Patents, Trademarks, Copyrights 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. Assignor hereby authorizes Assignee to make, constitute and appoint any officer or agent of Assignee as Assignee may select, in its sole discretion, as Assignor's true and lawful attorney-in-fact, with power, following the occurrence of an Event of Default, to (i) endorse Assignor's name on all applications, documents, papers and instruments necessary or reasonably desirable for the use by Assignee or its successors or assigns of the Patents, Trademarks, Copyrights and/or Licenses in the event Assignor fails to do so upon request of Assignee, (ii) take any other actions with respect to the Patents, Trademarks, Copyrights and/or Licenses as the Assignee reasonably deems in the best interest of the Assignee in the event Assignor fails to do so upon

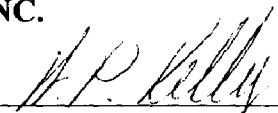
request of Assignee, (iii) grant or issue any exclusive or non-exclusive license under the Patents or Trademarks to anyone, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Patents, Trademarks, Copyrights and/or Licenses to anyone, including Assignee. Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until all Lender Indebtedness shall have been paid in full and the Loan Agreement shall have been terminated. Assignor acknowledges and agrees that this Assignment is not intended to limit or restrict in any way the rights and remedies of Assignee under the Loan Agreement but rather is intended to facilitate the exercise of such rights and remedies given it by the terms of this Assignment, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Patents, Trademarks, Copyrights or Licenses may be located.

13. **Binding Effect; Benefits**. This Assignment shall be binding upon the Assignor and its successors and assigns, and shall inure to the benefit of Assignee, its nominees, successors and assigns.

14. **Governing Law**. This Assignment shall be governed by and construed in accordance with the laws of the State of New York.

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

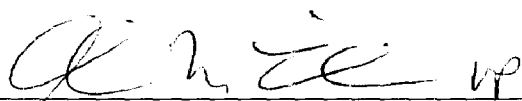
RXD, INC.



William P. Kelly, Vice President/ CFO

(CORPORATE SEAL)

SUMMIT COMMERCIAL/GIBRALTAR CORP.



Alan Lapidus, Vice President

STATE OF NEW YORK :
 :
 : SS.
COUNTY OF *New York* :

On this, the 26th day of February, 1999, before me, a Notary Public, personally appeared William P. Kelly, who acknowledged himself to be a duly acting Vice President and CFO of RXD, Inc. and that he as such officer, being duly authorized to do so, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Madeleine E. Schechter

Notary Public

My commission expires:

MADELEINE E. SCHECHTER
Notary Public, State of New York
No. 31-4815919
Qualified in New York County
Commission Expires Dec. 31, 2000

STATE OF NEW YORK :
 :
 : SS.
COUNTY OF *New York* :

On this 26th day of February, 1999, before me, a Notary Public, personally appeared Alan Lapidus, who acknowledged himself to be a duly acting Vice President of Summit Commercial/Gibraltar Corp. and that he as such officer, being duly authorized to do so, executed the foregoing Assignment for the purposes therein contained by signing the name of the corporation by himself as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Madeleine E. Schechter

Notary Public

My Commission Expires:

MADELEINE E. SCHECHTER
Notary Public, State of New York
No. 31-4815919
Qualified in New York County
Commission Expires Dec. 31, 2000

EXHIBIT "A"
TO
ASSIGNMENT OF PATENT, TRADEMARK,
COPYRIGHT AND LICENSES AGREEMENT

Patents

NONE

EXHIBIT "B"
TO
ASSIGNMENT OF PATENT, TRADEMARK,
COPYRIGHT AND LICENSES AGREEMENT

U.S. Trademarks

Trademark

Application/Registration No.

RXD

1,336,451

**EXHIBIT "C"
TO
ASSIGNMENT OF PATENT, TRADEMARK,
COPYRIGHT AND LICENSES AGREEMENT**

Copyrights

NONE

EXHIBIT "D"
TO
ASSIGNMENT OF PATENT, TRADEMARK,
COPYRIGHT AND LICENSES AGREEMENT

Licenses

NONE