

03-24-1999



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RECORDATION FORM COVER SHEET
TRADEMARKS ONLY

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

MPO 3.18.99

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
Effective Date
Month Day Year

- Merger
- Change of Name
- Other _____

Conveying Party

Mark if additional names of conveying parties attached

Execution Date
Month Day Year

Name NETIQ CORPORATION

03 10 1999

Formerly _____

- Individual
- General Partnership
- Limited Partnership
- Corporation
- Association

Other _____

Citizenship/State of Incorporation/Organization California

Receiving Party

Mark if additional names of receiving parties attached

Name COMPUWARE CORPORATION

DBA/AK/A/T/A _____

Composed of _____

Address (line 1) 31440 Northwestern Highway

Address (line 2) _____

Address (line 3) Farmington Hills

Michigan

48334

City

State/Country

Zip Code

- Individual
- General Partnership
- Limited Partnership

- Corporation
- Association

Other _____

Citizenship/State of Incorporation/Organization Michigan

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.)

03/23/1999 DHSUYEN 00000117 2118436

FOR OFFICE USE ONLY

01 FC:481
02 FC:482

40.00 OP
100.00 OP

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. 20231

TRADEMARK
REEL: 1873 FRAME: 0257

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)		
<input type="text" value="75/477,878"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="2,118,436"/>	<input type="text" value="2,189,210"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="2,137,942"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text" value="2,182,121"/>	<input type="text"/>	<input type="text"/>

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.

Mark Bradshaw, Esq.

Mark Bradshaw
Signature

March 10, 1999

Name of Person Signing

Date Signed

THIS AGREEMENT IS SUBJECT TO A SUBORDINATION AGREEMENT DATED MARCH 10, 1999 BETWEEN COMPUWARE CORPORATION AND SILICON VALLEY BANK.

PATENT MORTGAGE AND INTELLECTUAL PROPERTY SECURITY AGREEMENT

THIS PATENT MORTGAGE AND INTELLECTUAL PROPERTY SECURITY AGREEMENT is made as of March 10, 1999 ("*Security Agreement*"), by and between NETIQ CORPORATION, a California corporation ("*Debtor*"), and COMPUWARE CORPORATION, a Michigan corporation ("*Secured Party*").

RECITALS

A. Secured Party has agreed to lend to Debtor certain funds (the "*Loan*"), and Debtor desires to borrow such funds from Secured Party pursuant to the terms of a Subordinated Secured Promissory Note dated of even date herewith (the "*Note*"). Terms not defined herein shall have the meanings ascribed to them in the Security Agreement dated of even date herewith by and between Debtor and Secured Party (the "*General Security Agreement*").

B. The parties have agreed that Debtor's Obligations will be secured by Debtor's grant to Secured Party of a security interest in and to certain collateral, pursuant to the terms and conditions of this Security Agreement, which provides for a security interest in certain intangible property of Secured Party, and the General Security Agreement pertaining to other personal property of Debtor.

NOW, THEREFORE, the parties hereto agree as follows:

1. **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 Obligations to Secured Party, including, without limitation, such Obligations under the Note and the other Transaction Documents (as defined in the Note) executed in connection therewith (as the same may be modified, amended, supplemented, restated or superseded from time to time, collectively, the "*Loan Documents*"), Debtor hereby grants a security interest and mortgage to Secured Party, as security, in and to all of Debtor's entire right, title and interest in, to and under the following, now or hereafter existing, created, acquired or held by Debtor (the "*Collateral*"):

(a) Any and all copyright rights, copyright applications, copyright registrations and like protections in each work of 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 that 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 service mark 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.

As used herein, "Proceeds" shall mean "proceeds," as such term is defined in Section 9306(1) of the California Uniform Commercial Code ("UCC") and, in any event, shall include, without limitation, (a) any and all accounts, chattel paper, and instruments (as such terms are defined in the UCC), cash, income, royalties, or other proceeds payable to Debtor from time to time in respect of the Collateral or Debtor's Intellectual Property (as defined below), (b) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to Debtor from time to time with respect to any of the Collateral or Debtor's Intellectual Property (as defined below), (c) any and all payments (in any form whatsoever) made or due and payable to Debtor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral or Debtor's Intellectual Property by any governmental body, authority, bureau or agency (or any person acting under color of governmental authority), (d) any damages or settlements received by Debtor based on any claim of Debtor against third parties (i) for past, present or future infringement of any Patent or Patent license, (ii) for past, present or future infringement of any Copyright or Copyright license, (iii) for past, present or future infringement, dilution or misappropriation of any Trademark or Trademark license or for injury to the goodwill associated with any Trademark, Trademark registration or Trademark licensed under any Trademark license, (e) all certificates, dividends, cash, instruments (as such term is defined in the UCC) and other property received or distributed in respect of or in exchange for any investment property (as such term is defined in the UCC) and (f) any and all other amounts

from time to time paid or payable under or in connection with any of the Collateral, Debtor's Intellectual Property or any contract or license relating to the Collateral or Debtor's Intellectual Property.

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

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

(a) Debtor is now the sole owner of the Collateral, except that Debtor does not own the intellectual property rights in any portion of the Debtor's software products that now or hereafter is licensed from a third party ("Third Party Code"). Debtor has adequate license rights to make the uses it makes of such Third Party Code, but does not have the right to grant Secured Party ownership, use or distribution rights to such Third Party Code;

(b) Performance of this Security Agreement 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 Security Agreement, Debtor will not sell, transfer, assign or otherwise encumber any interest in the Collateral, except as currently provided in the Specified Senior Indebtedness Agreement (as defined in the Note). Unless otherwise provided in the Loan Documents, Debtor retains the right to sell, transfer, license and assign rights in its Intellectual Property (as defined below) in the ordinary course of Debtor's business or as approved by Debtor's Board of Directors;

(d) To its knowledge, as of the date of this Security Agreement each of the Patents is valid and enforceable, and there are no Patents, Trademarks or Copyrights (collectively, the "Intellectual Property") which have been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Intellectual Property violates the rights of any third party other than Secured Party;

(e) Debtor shall promptly advise Secured Party of any new products or major new releases of its software products that it makes generally available to its customers (collectively, the "Releases") and of any patents that issue in the name of Debtor or that are assigned to Debtor;

(f) Debtor shall use its best efforts as its Board of Directors determines appropriate to protect, defend and maintain the validity and enforceability of the Intellectual Property to detect infringements;

(g) Debtor shall promptly register the copyright to each new Release with the U.S. Copyright Office;

(h) This Security Agreement creates, and in the case of after acquired Collateral, this Security Agreement will create at the time Debtor first has rights in such after-

acquired Collateral, in favor of Secured Party a valid and properly perfected security interest in the Collateral in the United States securing the payment and performance of all present or future Obligations of Debtor to Secured Party, including, without limitation, such Obligations under the Note and the other Loan Documents, upon making the filings referred to in Section 3(i) below, subject only to any Permitted Liens;

(i) To its knowledge as of the date of this Security Agreement, 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 mortgage 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 Security Agreement by Debtor in the United States or (b) for the perfection in the United States or the exercise by Secured Party of its rights and remedies hereunder;

(j) All information heretofore, herein or hereafter supplied to Secured Party 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 Secured Party'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

(1) Upon any executive officer of Debtor obtaining actual knowledge thereof, Debtor will promptly notify Secured Party 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 Secured Party in relation thereto, including the levy of any legal process against any of the Collateral. Debtor shall have no obligation to notify Secured Party of market changes that could materially adversely affect the value of the Debtor's Intellectual Property, including but not limited to the introduction of competitive products.

4. SECURED PARTY'S RIGHTS. Secured Party shall have the right, but not the obligation, to take, at Debtor's sole expense, any actions that Debtor is required under this Security Agreement to take but which Debtor fails to take, after fifteen (15) days' notice to Debtor. Debtor shall reimburse and indemnify Secured Party for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this Section 4.

5. 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 Secured Party, to perfect Secured Party's security interest and mortgage in the Collateral, and otherwise to carry out the intent and purposes of this Security Agreement, or for assuring and confirming to Secured Party the grant or perfection of a security interest and mortgage in all Collateral.

(b) Debtor hereby irrevocably appoints Secured Party 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 Secured Party's discretion, to take any action and to execute any instrument which Secured Party may reasonably deem necessary or advisable to accomplish the purposes of this Security Agreement, (i) to modify, in its reasonable discretion, this 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 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 collateral agreements, 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 Secured Party or a third party to the extent permitted under the UCC or other applicable law.

6. **EVENTS OF DEFAULT.** An Event of Default under the Note shall constitute an "*Event of Default*" under this Security Agreement.

7. **REMEDIES.** Upon the occurrence and during the continuance of an Event of Default, Secured Party shall have the right to exercise all the remedies of a secured party under the UCC and other applicable law, including, without limitation, the right to require Debtor to assemble the Collateral and any tangible property in which Secured Party has a security interest and to make it available to Secured Party at a place designated by Secured Party; provided, however, that Secured Party shall not take actual possession of, use or sell (at public or private sale) the Collateral hereunder unless it has substantially exercised or attempted to exercise its rights and remedies under the General Security Agreement with respect to material assets secured thereunder and Obligations to Secured Party remain outstanding following such exercise or attempt to exercise. Debtor will pay any reasonable expenses (including reasonable attorneys' fees) incurred by Secured Party in connection with the exercise of any of Secured Party's rights hereunder, including, without limitation any expense incurred in disposing of the Collateral. All of Secured Party's rights and remedies with respect to the Collateral shall be cumulative.

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

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

10. ATTORNEYS' FEES. If any action relating to this 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.

11. AMENDMENTS. This Security Agreement may be amended only by a written instrument signed by both parties hereto.

12. COUNTERPARTS. This 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 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 Secured Party.

13. GOVERNING LAW; JURISDICTION. This 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 Secured Party consent to the exclusive jurisdiction of any state or federal court located in Santa Clara County, California.

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

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

SECURED PARTY

COMPUWARE CORPORATION
a Michigan corporation

By: _____
Name:
Title:

Address of Secured Party

31440 Northwestern Highway
Farmington Hills, Michigan 48334
Attention: Thomas Costello, General Counsel
Telephone: 248-737-7310
Telecopy: 248-737-7690

with a copy to:

Fenwick & West LLP
Two Palo Alto Square, Suite 700
Palo Alto, California 94306
Attention: Stuart P. Meyer, Esq.
Telephone: 650-494-0600
Telecopy: 650-494-1417

DEBTOR

NETIQ CORPORATION
a California corporation

By: Ching Fa Hwang
Name: Ching-Fa Hwang
Title: President & COO

Address of Debtor

5410 Betsy Ross Drive
Santa Clara, California 95054
Attention: Ching-Fa Hwang
Telephone: 408-330-7000
Telecopy: 408-330-0959

with a copy to:

Wilson, Sonsini, Goodrich & Rosati
650 Page Mill Road
Palo Alto, California 94304-1050
Attention: Thomas C. DeFilippis, Esq.
Telephone: 650-493-9300
Telecopy: 650-493-6811

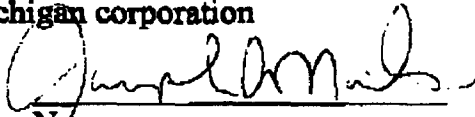
IN WITNESS WHEREOF, the parties hereto have executed this Security Agreement on the day and year first above written.

SECURED PARTY

DEBTOR

COMPUWARE CORPORATION
a Michigan corporation

NETIQ CORPORATION
a California corporation

By: 
Name:
Title:

By: _____
Name:
Title:

Address of Secured Party

Address of Debtor

31440 Northwestern Highway
Farmington Hills, Michigan 48334
Attention: Thomas Costello, General Counsel
Telephone: 248-737-7310
Telecopy: 248-737-7690

5410 Betsy Ross Drive
Santa Clara, California 95054
Attention: Ching-Fa Hwang
Telephone: 408-330-7000
Telecopy: 408-330-0959

with a copy to:

with a copy to:

Fenwick & West LLP
Two Palo Alto Square, Suite 700
Palo Alto, California 94306
Attention: Stuart P. Meyer, Esq.
Telephone: 650-494-0600
Telecopy: 650-494-1417

Wilson, Sonsini, Goodrich & Rosati
650 Page Mill Road
Palo Alto, California 94304-1050
Attention: Thomas C. DeFilipps, Esq.
Telephone: 650-493-9300
Telecopy: 650-493-6811

EXHIBIT A
COPYRIGHTS

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

A. U.S. Copyright Registration: "NetIQ AppManager Suite Version 1.0"

Registration No. Txu 776-056

Effective Date: Jan. 9, 1997

B. U.S. Copyright Registration: "NetIQ AppManager Suite Version 2.0"

Registration No. TX 4-562-020

Effective Date: Dec. 11, 1997

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

- A. U.S. Patent Application: "Selection, Type Matching and Manipulation of Resource Objects by a Computer Program"
Serial No. 08/784,613
Filing Date: Jan. 21, 1997
- B. U.S. Patent Application: "Event Signaling in a Foldable Object Tree"
Serial No. 08/784,563
Filing Date: Jan. 21, 1997
- C. U.S. Patent Application: "Database Updates Over a Network"
Serial No. 08/784,593
Filing Date: Jan. 21, 1997

EXHIBIT C

U.S. TRADEMARKS AND TRADEMARK APPLICATIONS

1. **Registered Trademarks:** List marks below or indicate "None":

A. U.S. Registered Trademark: "NETIQ"

Registration No. 2, 137, 942

Date of Registration: Feb. 17, 1998

B. U.S. Registered Trademark: "APPMANAGER"

Registration No. 2, 118, 436

Date of Registration: Dec. 2, 1997

C. U.S. Registered Trademark: "KNOWLEDGE SCRIPTS"

Registration No. 2,182,121

Date of Registration: August 18, 1998

D. U.S. Registered Trademark : "WORK SMARTER"

Registration No. 2,189,210

Date of Registration: September 15, 1998

E. U.S. Trademark Application: "NetIQ Partner Network (and Design)"

Serial No. 75/477,878

Date of Filing: May 1, 1998

F. European Community Trademark Application: "NETIQ"

Serial No. 684571

Date of Filing: Nov. 8, 1997

G. European Community Trademark Application: "APPMANAGER"

Date of Filing: Mar. 16, 1998

2. **UNREGISTERED TRADEMARKS:** List marks below or indicate "None":

None