

04-05-1999



101000999
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
03 12 1999

B-26-99

Conveying Party

Mark if additional names of conveying parties attached

Name

Execution Date
Month Day Year
02 25 1999

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 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.)
- Corporation Association
- Other

Citizenship/State of Incorporation/Organization

04/02/1999 JSHABAZZ 00000111 2096799

FOR OFFICE USE ONLY

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40.00 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: 1877 FRAME: 0122

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)

| | | |
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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.

Gary Hayes
Name of Person Signing

[Signature]
Signature

3/22/99
Date Signed

WAIVER AND CONSENT AGREEMENT

This Waiver and Consent Agreement ("Consent") is entered into as of March 3, 1999, by and between Silicon Valley Bank ("Bank") and Acuity Corporation, a Delaware corporation formerly known as ichat, Inc. ("Borrower").

RECITALS

1. WHEREAS, Borrower and Bank are parties to that certain Loan and Security Agreement dated as of May 29, 1996, as amended by that certain First Amendment to Loan and Security Agreement dated as of November 1, 1996, that certain Second Amendment to Loan and Security Agreement dated as of February 14, 1997, that certain Third Amendment to Loan and Security Agreement dated as of March 26, 1998, that certain Fourth Amendment to Loan and Security Agreement dated June 10, 1998, the modification of February 11, 1999 and as may have been or may be amended from time to time (the "Agreement"), and

2. WHEREAS, Borrower has informed Bank that Borrower intends to sell, transfer and assign certain assets related to Borrower's ichat software products, brand, domain names and related web services, as more particularly described in Exhibit A attached hereto (the "Transferred Assets") on substantially the terms set forth on Exhibit B attached hereto (the "Asset Purchase"), and

3. WHEREAS, without the consent of Bank, the consummation of the actions contemplated by the Asset Purchase would constitute a violation of the Agreement, and

4. WHEREAS, Borrower requests Bank's consent to and waiver of Borrower's transfer of the Transferred Assets pursuant to the Asset Purchase.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower and Bank agree as follows:

AGREEMENTS:

1. Release of Security Interest. Bank agrees to release the security interest granted pursuant to Section 4.1 of the Agreement with respect only to the Transferred Assets, effective upon the closing of the Asset Purchase by signing and delivering to Borrower a Termination Statement on Form UCC-3.

2. Consents and Waivers. Bank agrees to waive Borrower's covenant set forth in Section 7.1 of the Agreement as it relates to the sale, transfer and assignment of the Transferred Assets pursuant to the terms of the Asset Purchase.

3. No Defenses of Borrower. In consideration of Bank's waiver set forth above, Borrower represents to Bank, as of this date, that it has no defense against the payment of any or all of the Obligations and that no Event of Default has occurred and is continuing.

4. Costs and Expenses. In consideration of Bank's waiver set forth above, Borrower covenants with Bank to pay all reasonable costs and expenses of Bank incurred in connection with Bank's execution of this Consent, including reasonable attorneys' fees

5. The violation by Borrower of any representation or covenant set forth in Paragraphs 3 or 4, above, shall constitute an Event of Default under the Agreement.

6. Interpretation. Unless otherwise defined, all capitalized terms in this Consent shall be as defined in the Agreement.

7. Representations. Borrower represents and warrants that the Representations and Warranties contained in the Agreement are true and correct as of the date of this Consent (except such representations and warranties to be expressly true as of a specific date or otherwise disclosed in writing to Bank.

8. Miscellaneous.

(a) Successors and Assigns. This Consent shall be binding upon and shall inure to the benefit of Borrower and Bank and their respective successors and assigns; provided, however, that the foregoing shall not authorize any assignment by Borrower of its rights or duties hereunder.

(b) Entire Agreement. This Consent and the Loan Documents contain the entire agreement of the parties hereto and supersede any other oral or written agreements or understandings.

(c) Course of Dealing; Waivers. No course of dealing on the part of Bank or its officers, nor any failure or delay in the exercise of any right by Bank, shall operate as a waiver thereof, and any single or partial exercise of any such right shall not preclude any later exercise of any such right. Bank's failure at any time to require strict performance by Borrower of any provision shall not affect any right of Bank thereafter to demand strict compliance and performance. Any suspension or waiver of a right must be in writing signed by an officer of Bank.

(d) Legal Effect. Except as waived by this Consent, the Loan Documents remain in full force and effect and Bank reserves all rights available to it thereunder or under applicable law. If any provision of this Consent conflicts with applicable law, such provision shall be deemed severed from this Consent, and the balance of this Consent shall remain in full force and effect.

(e) Counterparts. This Consent may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the first date above written.

ACTIV CORPORATION

By: Michael S. Oswald
Name: Michael S. Oswald
Title: General Counsel & Assistant Secretary

SILICON VALLEY BANK

By: Mike Drakew
Name: Mike Drakew
Title: AVP

EXHIBIT A

Transferred Assets

AU4012201.1
103739-153429

A-(i)

TRADEMARK
REEL: 1877 FRAME: 0127

Exhibit A - "Transferred Assets"

List of Purchased Assets Being Released by Secured Party

Seller = Acuity Corp.

Buyer = Koz inc.

Secured Party = Silicon Valley Bank

iChat Software

| <u>Name or Identity of Asset</u> | <u>Version</u> | <u>Release Status</u> | <u>Operating System</u> | <u>Browser Interface or Application</u> |
|-----------------------------------|----------------|-----------------------|--------------------------|---|
| Servers: | | | | |
| Global Message Router (GMR) | 1.0 | General | Solaris, NT | |
| Ichat WebServer (ICWS) | 3.0 | General | Solaris, NT AIX, HPUX | Free BSD |
| WebLink (icws plugin) | 4.0 | Beta | NT | Oracle OAS |
| ROOMs Clients: | | | | |
| Java "Ultralite" | 3.03 | General | | |
| Active X Plugin | 3.03 | General | | IE 3.x/4.x |
| NS Plugin (hosts Active X Plugin) | 3.03 | General | | NS 3.x/4.x |
| HTML | 3.03 | General | | IE 3.x/4.x NS 3.x/4.x |
| Pager Clients: | | | | |
| Pager | 1.3 | General | | |
| Java Pager | 1.3 | General | | |
| SDKs: | | | | |
| Pager/Java | 1.2 | Beta | | |
| Pager/C++ | 1.2 | Beta | | |
| Bot API | 3.03 | General | | |

Servlets:

| | | |
|-------|------|-------------|
| IPS | 1.2 | Sample Code |
| ROOMS | 3.03 | Sample Code |
| MB | 2 | Sample Code |

QA Resources

| | | |
|-----------------|------|-----|
| Segue Scripts | | n/a |
| Silk Scripts | | n/a |
| Pager Simulator | 1.2 | n/a |
| Rooms Simulator | 3.03 | n/a |

Legend:

IE = MicroSoft Internet Explorer
NS= Netscape Navigator

[In addition to the above software, the Buyer shall receive web page pager client technology and product demonstrations conducted with avatars and VRML worlds.]

Intellectual Property and Other Assets comprising Acuity's iChat product line:

Domain names:

ichat.com
chat411.com
dotchat.com
irc.com
netchat.com
open24.com
open24.net
rooms.net
santachat.com
usechat.com
globalchat.com

Trademarks:

ichat, inc.
the ichat logo
the winky logo
the slogan "Never underestimate the power of a little chat"
ROOMS

Web Services:

the iChat Pager service and associated HTML, databases, etc.
the Open 24 chat service, web site, events guide and associated HTML
the GlobalChat IRC service and associated HTML, databases, etc.

Accounts Receivable:

All accounts receivable of Seller selected by Buyer for assignment which relate to the Acquired Assets.

Assigned Contracts and Agreements

All rights under Seller's contracts and agreements relating to the Acquired Assets.

List of Licensed Assets Being Released by Secured Party

iChat and Other Software

| <u>Name or Identity of Asset</u> | <u>Version</u> | <u>Release Status</u> | <u>Operating System</u> | <u>Browser Interface or Application</u> |
|----------------------------------|-----------------------|-----------------------|-------------------------|---|
| Servers: | | | | |
| ROOMS | 3.03 4.0 | General Beta | Solaris, NT NT | Oracle WebServer |
| ComHub | 3.03 4.0 Webcenter | General Beta | Solaris, NT NT | Oracle |
| ichat Paging Server (iPS) | 1.2 | General | Solaris, NT | |
| ichat Firewall Proxy (iFP) | 3.03 | General | Solaris, NT | |
| Message Boards | 2.01 | General | Solaris, NT | |
| WebLink (icws plugin) | 3.03 | General | Solaris, NT | IIS, NSE, ICS |
| ROOMS Clients: | | | | |
| Events | 3.03 | | | |
| Pager Clients: | | | | |
| Browser-based | n/a | Demo only | | |
| SDKs: | | | | |
| Client/Java (Pager/chat) | 2.2 WC | General | | |
| Servlets: | | | | |
| ComHub | 4.0 | Unit Test | | |
| Libraries: | | | | |
| ICSLib | 3.03, 4.0 | General | | |
| ICULib | 3.03, 4.0 | General | | |

| | | |
|----------|------|---------|
| ICNlib | 3.03 | General |
| ICTlib | 3.03 | General |
| Licenkey | 3.03 | General |

Legend:

IE = Internet Explorer
 NS= Netscape Navigator
 NSE= Netscape Enterprise Server
 ICS= Acuity's proprietary web server running on NT
 IIS= MicroSoft Internet Information Server

The Seller further grants to the Buyer an internal use license of the Acuity Web Center Express product which may be used by the Buyer in its support center operations. This license shall be limited to a maximum of 15 seats and shall include maintenance in accordance with the Seller's standard terms and conditions for a period of one year from the Closing Date at no cost to the Buyer.

Patents:

The following patents or patent applications subject to the Patent License Agreement between Buyer and Seller:

| <u>U.S. Patent No.</u> | <u>Issue Date</u> | <u>Patent Title</u> |
|------------------------|-------------------|--|
| 5,764,916 | June 9, 1998 | Method and Apparatus for Real Time Communication Over a Computer Network |

1. Patent Application Title: Method and Apparatus for Synchronizing Browse and Chat Functions on a Computer Network
 Application Number: 08/741,470
 Application Filing Date: October 30, 1996
 Name of Inventors: Andrew T. Busey and Gerald H. Weghorst, Jr.

2. Patent Application Title: Method and System for Coordinating Media and Messaging Operations in an Information Processing System
 Application Number: 09/187,895
 Application Filing Date: November 6, 1998
 Name of Inventors: Andrew T. Busey

3. Patent Application Title: Con+1100: Method and Apparatus for Real Time Network Communication
Application Number: 09/060,867
Application Filing Date: April 15, 1998
Name of Inventors: Andrew T. Busey and Gerald H. Weghorst, Jr.
4. Patent Application Title: Con+1100: Method and Apparatus for Embedding Chat Functions in a Web Page
Application Number: 08/768,606
Application Filing Date: December 18, 1996
Name of Inventors: Andrew T. Busey and Gerald H. Weghorst, Jr.

"Acquired Assets" means all right, title, and interest in and to all of the tangible and intangible assets of the Seller used in or useful for the operation of the Seller's iChat business, including without limitation all goodwill associated therewith and specifically including those assets listed on Exhibit A attached hereto (including the Assigned Contracts) The Acquired Assets (specifically including the Licensed Assets) shall specifically include the following items relating to the Acquired Assets:

- (a) all current versions, updates and new versions to any of the software or other Intellectual Property, in object and source code format, transferred or available to the Buyer on the same terms as the prior version;
- (b) all customer names, lists, addresses, contact names and registered user lists, including specifically, in electronic recordable format, (i) the approximately 500,000 registered users for the Pager/Open 24 service, (ii) the approximately 2,000,000 email addresses for registered iChat users, and (iii) the approximately 2,100 registered iChat business customers;
- (c) Intellectual Property, goodwill associated therewith and rights thereunder, remedies against infringements thereof, and rights to protection of interests therein under the laws of all jurisdictions;
- (d) claims, deposits, prepayments, refunds, causes of action, choses in action, rights of recovery, rights of set off, and rights of recoupment (including any such item relating to the payment of Taxes);
- (e) franchises, approvals, permits, licenses, orders, registrations, certificates and similar rights obtained from governments and governmental agencies; and
- (f) books, records, ledgers, files, source and user documents in support of the Intellectual Property, correspondence, lists, drawings, specifications, creative materials, advertising and promotional materials, studies, reports, and other printed or written materials;

EXHIBIT B

Asset Purchase



KOZ inc.
Mr. Gary Hayes, Chief Financial Officer
1000 Park Forty Plaza, Suite 120
Durham, NC 27713

Via Fax 919.767.4861 1700

Re: Term Sheet - Ichat Assets:

Dear Mr. Hayes:

In response to KOZ's letter dated 06 February 1999, and per our discussions to date, Acuity Corp. is pleased to provide the following letter expressing our intent regarding the Ichat software products, brand, domain names and related web services as more specifically detailed in the attached list of assets (the "Assets"):

Key components of the proposed transaction are:

- Acuity will provide to KOZ exclusive source and object code licenses to the Software (except in our WebCenter market) and will transfer the Intellectual Property and Other Assets, as defined on the attached List of Assets
- A total of \$3.0M in cash, via wire transfer from KOZ to Acuity, payable in four installments.
 - \$150,000 upon execution of this Letter of Intent as a Break-up Fee, non-refundable unless Acuity terminates this Letter of Intent without cause, as defined below. The break-up fee is in consideration for Acuity's negotiating exclusively with KOZ regarding the Assets during the period between execution of this Term Sheet and 10 March 1999.
 - \$1,150,000 upon contract execution
 - \$1,000,000 on 30 June 1999, provided that Acuity has delivered the following items:
 - The software detailed in the attached list of Assets, licensed in source or object code format, as verified by KOZ's VP of Engineering.
 - Source and user documentation in support of the software
 - Up to 60 person-days of on site dedicated support from Acuity's Engineering group to assist KOZ's staff in the assimilation of the code into KOZ's environment
 - Continued first-tier and second-tier help desk for 30 consecutive days immediately after the parties sign the definitive agreement, and continued second-tier help desk customer support to KOZ through 30 June 1999 while KOZ creates its internal capability
 - Assistance from A. Buscy relative to preparing and possible participation in possible trade/press tours as needed during the first 90 days of post acquisition activity. Details to be worked out during contract negotiations.
 - Customer names, addresses, contact names and all associated

11100 Metric Blvd.
Building Seven
Austin, Texas 78758
512 425 2200
fax 512 719 8225
www.acuity.com
a Delaware Corporation

contracts including reseller/distribution agreements related to the Assets.

-Prospect database as of the date of the last update by Acuity.

-Assurance that Acuity will prepare with KOZ's guidance a letter to Acuity's customer base announcing the sale with a strong emphasis that the iChat customer base is being enhanced with this sale.

- All accounts receivable still open as of the contract execution date if any. Final determination of which open Accounts Receivable and related support obligations that will be assumed by KOZ will be determined by the parties on a case by case basis.

- \$700,000 payable 15 December 1999. Acuity's indemnity obligation shall be limited to \$350,000 to ensure compliance with contractual obligations, including but not limited to the continuance of second tier help desk support through August 31, 1999, provided that the indemnity obligation shall be unlimited with respect to representations and warranties regarding good title to the Assets.

- KOZ will provide to Acuity a number of shares of Next Issued Preferred (as defined below) equal to the quotient determined by dividing \$600,000 by the price per share paid in connection with the initial issuance of the Next Issued Preferred. For purposes of this Letter of Intent, the Next Issued Preferred shall mean that equity security issued in connection with KOZ's next round of private equity financing. Acuity shall receive all of the rights, preferences and privileges, including shareholders' and registration rights, extended to the purchasers of the Next Issued Preferred. In the event there is no issuance of Next Issued Preferred on or prior to April 30, 1999, Acuity shall immediately receive 400,000 shares of KOZ's Preferred Stock with features equivalent with KOZ's prior round of financing with a conversion price of \$1.50 per share. In the event of a change of control of KOZ, Acuity shall, at its option, put all of such Preferred or Next Issued Preferred to KOZ or its successor at a purchase price per share equal to the liquidation preference per share of such Next Issued Preferred (at a minimum of \$1.50 per share), or convert all of such Preferred or Next Issued Preferred into the common stock of KOZ or its successor, as applicable, at the conversion rate then in effect for such ~~Next Issued Preferred~~ Preferred.

Preferred
MS

Upon execution of this Letter of Intent, KOZ will immediately proceed to prepare a definitive asset purchase agreement with appropriate warranties, representations, indemnities and covenants of the parties with an expected closing of no later than February 28th, 1999. KOZ will complete the remaining due diligence activities concurrently with the preparation of the purchase agreement

The obligation of KOZ to pay the break-up fee, the obligation of Acuity to reimburse KOZ for its out of pocket expenses, the confidentiality agreement executed by the parties and dated January 27, 1999, and the standstill agreement set forth herein, represent agreements and are intended to be binding obligations of the parties. Other than such obligations, neither party shall have any obligation to the other party and this letter of intent shall be for discussion purposes only and shall not be a binding obligation of either party. Any such binding obligation shall be made only upon execution of the definitive asset purchase agreement. Acuity shall not during the period between acceptance of this term sheet and March 28, 1999, enter into or continue any discussions with any third party, either agent or principal, concerning a possible sale of the Assets. The foregoing notwithstanding, in the event KOZ terminates the negotiations or Acuity terminates the negotiations for good cause, Acuity may immediately enter into discussions with third parties and retain the Break-up Fee.

Termination: Break-up Fee

This Letter of Intent may be terminated by either party at any time, with or without cause, by providing written notice thereof to the other party. This Letter of Intent shall automatically terminate in the event a definitive asset purchase agreement is not signed on or prior to 10 March 1999.

Acuity shall be entitled to retain the Break-up Fee in the event Acuity terminates this Letter of Intent for cause (cause being defined, for purposes of this letter, as an attempt by KOZ to deviate materially from the terms of this Letter of Intent, an unreasonable delay by KOZ in closing the Transaction, or breach by KOZ of any binding portion of this letter of intent).

In the event that Acuity terminates this Letter of Intent without cause, Acuity will refund the Break-up Fee and reimburse KOZ for up to \$75,000 in actual out-of-pocket expenses incurred in due diligence and documenting and negotiating the Transaction. In case of a termination of this Letter of Intent because Acuity and KOZ are unable to agree upon a structure for the Transaction reasonably acceptable to Acuity's tax advisors, Acuity will refund the Break-up Fee and shall be relieved of any obligation to reimburse KOZ for out-of-pocket expenses. In any event, after making the payments described in this paragraph, Acuity may immediately enter into discussions, negotiate and conclude an alternative transaction with a third party involving the Assets.

Please indicate your acknowledgment that the above reflects your intent by signing below:

Acuity Corporation:

KOZ, inc

[Signature]
Name
[Signature]
Signature
CEO
Title
2/14/99
Date

[Signature]
Name
[Signature]
Signature
CFO
Title
2/12/99
Date

Revised Asset List:

List of Assets

The definitive agreement will have multiple components: Portions of the iChat software will be sold, as part of the asset purchase agreement and other portions of the software will be licensed. Final determination of this separation will be determined as part of the due diligence effort. In addition there will be a transfer of certain intellectual property and other assets. The definition of what falls in to these categories follows.

Acuity warrants that these are all the intellectual property assets, in their current and derivative forms, which were used to conduct the business known as iChat, Inc.

iChat Software

The "iChat Software" means the current versions and all unreleased versions of the following Acuity software programs, in object and source code format, related to or incorporated in Acuity's iChat product line:

- ROOMS server
- Message Boards server
- Pager server
- ComHub
- Global Message Router
- Proxy server
- Wcblink
- Client SDK
- Pager Clients
- Chat Clients

Handwritten: EXPANS

In addition to the above software, buyer would receive web page pager client technology and product demonstrations conducted with avatars and VRML worlds. Lastly buyer would also obtain an internal use license of the Acuity Web Center product which could be use by KOZ in its support center operation. This license would be limited to a maximum of 15 seats and would include maintenance for the first year at no charge.

With respect to those software assets which are licensed as per the final asset purchase agreement, the buyer would have a royalty free license to use all technologies regardless of any patent held or licensed by Acuity, present or future.

Intellectual Property and Other Assets comprising Acuity's iChat product line:

Domain names:

- chat411.com
- dotchat.com
- irc.com
- netchat.com
- open24.com
- open24.net
- rooms.net
- santachat.com
- usechat.com
- iChat.com
- globalchat.com

Trademarks

- ichtat, inc.
- the ichtat logo
- the winky logo
- "Never underestimate the power of a little chat"

Web Services:

- The ichtat Pager service and associated HTML, databases etc.
- The Open24 chat service, web site, events guide, and associated HTML, databases, etc.
- The GlobalChat IRC service and associated HTML, databases, etc.
- The ichtat registered client user database.

ichtat Registered User Lists:

- 500,000 registered users for the Pager/Open 24 service
- 2,000,000 email addresses for registered ichtat users

Note: Acuity represents that these are the numbers of users contained in these databases as of 11 February 1999. These are unaudited figures, and Acuity makes no representation regarding the accuracy or status of any current or former user.

In the event that, during due diligence, the actual numbers of email addresses is materially less than represented above, the parties will, at KOZ's option, either negotiate a reduced price for the Assets, or terminate negotiations. Acuity will return the Break-up Fee and will be relieved of any obligation to reimburse KOZ for its out-of-pocket costs.

B-4