

MRB 12-1-99

12-07-1999

FORM PTO-1594
(Rev 5-93)



U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

To the Honorable Commissioner

101217575

ed original documents or copy thereof.

1. Name of conveying party(ies):
FIRSFLOOR SOFTWARE, INC.
Individual(s) citizenship:
Association:
General Partnership:
Limited Partnership:
Corporation - State: CALIFORNIA
Other:

2. Name and address of receiving party(ies):
Name: COMERICA BANK-CALIFORNIA
Address: 55 ALMADEN BLVD., SECOND FLOOR
City: SAN JOSE State: CA Zip: 95113

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

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
(Designations must be a separate document from assignment)
Additional name(s) & address(es) attached? Yes No

3. Nature of Conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: October 15, 1999

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

A. Trademark Application No.(s)

75/295,504 75/294,488
74/695,720 75/295,505
75/295,499 75/295,697
75/295,517 75/295,503
75/295,698

B. Trademark Registration No.(s)

1,977,163 2,027,991
2,175,207 2,219,759

Additional numbers attached? Yes No

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

Name: Erin O'Brien
Internal Address: GRAY CARY WARE & FREIDENRICH
401 B Street, Suite 1700
San Diego, California 92101-4297

6 Total number of applications and registrations involved: 13

7. Total fee (37 CFR 3.41) \$ 340.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: 07-1907

(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.

Erin O'Brien
Name of Person Signing

Erin O'Brien
Signature

November 30, 1999
Date

Total number of pages comprising cover sheet: [14]

Mail Documents to be recorded with required cover sheet information to:
U.S. Patent and Trademark Office, Office of Public Records
1213 Jefferson Davis Highway, 3rd Floor
Arlington, VA 22202

12/06/1999 DNGUYEN 00000149 071907 75295504

01 FC:481
02 FC:482

40.00 CH
300.00 CH

Gray Cary\SD\1324300.1
1030967-901500

TRADEMARK
REEL: 001996 FRAME: 0203

COLLATERAL ASSIGNMENT, PATENT MORTGAGE
AND SECURITY AGREEMENT

This Collateral Assignment, Patent Mortgage and Security Agreement (the "Assignment") is made as of October 15, 1999, between FIRSTFLOOR SOFTWARE, INC., a California corporation ("Assignor"), and COMERICA BANK-CALIFORNIA ("Assignee").

RECITALS

A. Assignee has extended credit accommodations (collectively the "Loan") to Calico Commerce Inc. ("Borrower"), which is Assignor's sole shareholder, pursuant to the terms of an Amended and Restated Loan and Security Agreement and various promissory notes that Borrower has issued to Assignee's order (such documents collectively the "Loan Agreement").

B. Borrower has requested that Assignee make certain modifications to the Loan, and Assignee is willing to agree to such request provided that, among other things, Assignor pledges all of its right, title and interest in its intellectual property as described herein as security for the Loan and for its obligations under that certain Unconditional Guaranty executed by Assignor in favor of Assignee of even date herewith (the "Guaranty").

C. Assignor has determined that it is in its best interest that the Loan be modified as Borrower requested and therefore has agreed to assign its intellectual property to Assignee for purposes of securing Borrower's obligations to Assignee.

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 Borrower's present or future indebtedness, obligations and liabilities to Assignee, and as security for Assignor's obligations under the Guaranty, Assignor hereby assigns, transfers, conveys and grants a security interest and mortgage to Assignee, as security, in and to Assignor's entire right, title and interest in, to and under the following (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, now or hereafter existing, created, acquired or held, including, without limitation, those set forth on Exhibit A attached hereto (collectively, the "Copyrights");

(b) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held;

(c) Any and all design rights which may be available to Assignor now or hereafter existing, created, acquired or held;

(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 the patents and patent applications set forth on Exhibit B attached hereto (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 Assignor connected with and symbolized by such trademarks, including without limitation those set forth on Exhibit C attached hereto (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; and

(h) All amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents; 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 BORROWER'S OBLIGATIONS TO ASSIGNEE UNDER THE LOAN AGREEMENT.

2. Authorization and Request. Assignor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this conditional assignment.

3. Covenants and Warranties. Assignor represents, warrants, covenants and agrees as follows:

(a) Assignor is now the sole owner of the Collateral, except for non-exclusive licenses granted by Assignor to its customers in the ordinary course of business and except for liens, encumbrances or security interests described in Schedule 3 attached hereto; ~~ASSIGNEE~~ *WCF*
ACKNOWLEDGES THAT THE SECURITY INTEREST GRANTED HEREUNDER IS SUBJECT TO THE RIGHTS OF SUCH CUSTOMERS NOW EXISTING OR HEREAFTER ARISING, AND ASSIGNEE MAY NOT TERMINATE ANY SUCH LICENSES AS A CONSEQUENCE OF ASSIGNEE'S EXERCISING ITS RIGHTS UNDER THIS AGREEMENT OR THE LOAN AGREEMENT.

PA1885985.5
1030967-901500

TRADEMARK

REEL: 001996 FRAME: 0205

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

(c) During the term of this Assignment, Assignor will not transfer or otherwise encumber any interest in the Collateral, except for non-exclusive licenses granted by Assignor in the ordinary course of business;

(d) 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) Assignor shall promptly advise Assignee of any material change in the composition of the Collateral, including, but not limited to, any subsequent ownership right of the Assignor in or to any Trademark, Patent or Copyright not specified in this Assignment;

(f) Assignor shall (i) protect, defend and maintain the validity and enforceability of the Trademarks, Patents and Copyrights, (ii) use its best efforts to detect infringements of the Trademarks, Patents and Copyrights and promptly advise Assignee in writing of material infringements detected and (iii) not allow any Trademarks, Patents or Copyrights to be abandoned, forfeited or dedicated to the public without the written consent of Assignee, which shall not be unreasonably withheld;

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

(h) This Assignment creates, and in the case of after acquired Collateral, this Assignment will create at the time Assignor first has rights in such after acquired Collateral, in favor of Assignee a valid and perfected first priority security interest in the Collateral in the United States securing the payment and performance of the Borrower's obligations under the Loan Agreement upon making the filings referred to in clause (i) below;

(i) Except for, and upon, the filing with the United States Patent and Trademark office with respect to the Patents and Trademarks and the Register of Copyrights with respect to the Copyrights 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 U.S. governmental authority or U.S. regulatory body is required either (i) for the grant by Assignor of the security interest granted hereby or for the execution, delivery or performance of this Assignment by Assignor in the U.S. or (ii) for the perfection in the United States or the exercise by Assignee of its rights and remedies hereunder;

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

(k) Assignor shall not enter into any agreement that would materially impair or conflict with Assignor's obligations hereunder without Assignee's prior written consent, which consent shall not be unreasonably withheld. Assignor 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 Assignor's rights and interests in any property included within the definition of the Collateral acquired under such contracts; and

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

4. Impact of Borrower Actions and Nature of Guaranty. No payment or payments made by Borrower, any endorser, guarantor or other party, or received or collected by Assignee from Borrower or any endorser, guarantor or other party by virtue of any action or proceeding or any set-off, at any time which reduced the Loan outstanding shall be deemed to modify, reduce, release or otherwise affect Assignor's liability hereunder for the Loan. This guaranty of the Loan includes all Borrower obligations to Assignee which would become due but for the operations of (i) the automatic stay under Section 362(a) of the Bankruptcy Code, or (ii) Section 502(b) of the Bankruptcy Code. This guaranty of the Loan is a guaranty of prompt and punctual payment of the Loan, whether at stated maturity, by acceleration or otherwise, and is not merely a guaranty of collection.

5. Assignor Authorizations. Assignor, as a guarantor of the Loan, authorizes Assignee, without notice or demand and without affecting its liability hereunder, from time to time to (a) renew, extend, or otherwise change the terms of the Loan Agreement; (b) take and hold security for the payment of the Loan, and exchange, enforce, waive and release any such security; and (c) apply such security and direct the order or manner of sale thereof as Assignee, in its sole discretion, may determine.

6. Guarantor Waivers of Rights and Defenses. Assignor, as a guarantor of the Loan, waives any right to require Assignee to (a) proceed against Borrower; (b) proceed against or exhaust any security held from Borrower; or (c) pursue any other remedy in Assignee's power. Assignee may, at its election, exercise or decline or fail to exercise any right or remedy it may have against Borrower or any security held by Assignee, including, without limitation, the right to foreclose upon any such security by judicial or nonjudicial sale, without affecting or impairing in any way Assignor's guarantor liability with respect to the Loan. Assignor, as a guarantor of the Loan, waives any defense arising by reason of any disability or other defense of Borrower or by reason of the cessation from any cause whatsoever of Borrower's liability for the Loan. Assignor, as a guarantor of the Loan, waives (i) any setoff, defense or counterclaim that it may have against

Assignee, (ii) any defense arising out of the absence, impairment or loss of any right of reimbursement or subrogation or any other rights against Borrower, (iii) all presentments, demands for performance, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of Assignor's guaranty of the Loan and of the existence, creation, or incurring of new or additional indebtedness, and (iv) any defense to its liability with respect to Borrower's liability based on (A) any changes to the Loan Agreement, (B) any impairment or suspension of Assignee's rights and remedies against Borrower, (C) any obligation of Assignee to proceed first against Borrower or any of Borrower's assets, (D) any obligation of Assignee to marshal Collateral or other assets, (E) any law providing that a guarantor's obligations to a lender may not be greater than the obligations of the principal debtor whose obligations are guaranteed, and (F) any law providing that a guarantor is released from liability for guaranteed obligations to the extent that the principal debtor is not liable for such obligations. Assignor assumes the responsibility for being and keeping itself informed of Borrower's financial condition and of all other circumstances bearing upon the risk of nonpayment of the Loan, warrants to Assignee that it will keep so informed, and agrees that absent a request for particular information by it, Assignee shall have no duty to advise it of information known to Assignee regarding such condition or any such circumstances.

7. Scope of Liability. Notwithstanding any other provision hereof, Assignor's liability for the Loan at any time shall not exceed the greater of (1) the sum of (a) the total principal of the Loan that Assignor directly or indirectly received and (b) the interest and expenses accrued with respect to such principal, and (2) ninety-five percent (95%) of the amount by which all of Assignor's assets are greater than the sum of all Assignor's debts (excluding the Loan) from time to time, at fair valuation and after giving effect to the inclusion and exclusion of the matters included and excluded in determining whether a debtor is solvent according to Section 548 of the Bankruptcy Code and applicable state fraudulent conveyance or fraudulent transfer laws.

8. Assignee's Rights. Assignee shall have the right, but not the obligation, to take, at Assignor's sole expense, any actions that Assignor is required under this Assignment to take but which Assignor fails to take, after fifteen (15) days' notice to Assignor. Assignor shall reimburse and indemnify Assignee for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this section.

9. Inspection Rights. Assignor hereby grants to Assignee and its employees, representatives and agents the right to visit, during reasonable hours upon prior reasonable written notice to Assignor, any of Assignor'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 Assignor and as often as may be reasonably requested.

10. Further Assurances; Attorney in Fact.

(a) On a continuing basis, Assignor 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 deemed necessary or advisable, or as requested by Assignee, to perfect Assignee's security interest in all Copyrights, Patents and Trademarks and otherwise to carry out the intent and purposes of this Assignment, or for assuring and confirming to Assignee the grant or perfection of a security interest in all Collateral.

Assignor hereby irrevocably appoints Assignee as Assignor's attorney-in-fact, with full authority in the place and stead of Assignor and in the name of Assignor, from time to time in Assignee's discretion, to take any action and to execute any instrument which Assignee may deem necessary or advisable to accomplish the purposes of this Assignment, including

(i) to modify, in its sole discretion, this Assignment without first obtaining Assignor's approval of or signature to such modification by amending Exhibit A, Exhibit B and Exhibit C, thereof, as appropriate, to include reference to any right, title or interest in any Copyrights, Patents or Trademarks acquired by Assignor after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents or Trademarks in which Assignor no longer has or claims any right, title or interest, (ii) to file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of Assignor where permitted by law and (iii) after the occurrence of an Event of Default, to transfer the Collateral into the name of Assignee or a third party to the extent permitted under the California Uniform Commercial Code.

11. Events of Default. The occurrence of any of the following shall constitute an Event of Default under this Assignment:

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

(b) Assignor breaches any warranty or agreement made by Assignor in this Assignment and, as to any breach that is capable of cure, Assignor fails to cure such breach within five (5) days of the occurrence of such breach.

12. Remedies. Upon the occurrence of an Event of Default, Assignee 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 Assignor to assemble the Collateral and any tangible property in which Assignee has a security interest and to make it available to Assignee at a place designated by Assignee. Assignee shall have a nonexclusive, royalty free license to use the Copyrights, Patents and Trademarks to the extent reasonably necessary to permit Assignee to exercise its rights and remedies upon the occurrence of an Event of Default. Assignor will pay any expenses (including reasonable attorneys' fees) incurred by Assignee in connection with the exercise of any of Assignee's rights hereunder, including, without limitation, any expense incurred in disposing of the Collateral. All of Assignee's rights and remedies with respect to the Collateral shall be cumulative.

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

14. Reassignment. At such time as Borrower shall completely satisfy all of the obligations secured hereunder and the Loan Agreement has expired or terminated, Assignee shall execute and deliver to Assignor all deeds, assignments and other instruments as may be necessary or proper to revest in Assignor full title to the property assigned hereunder, subject to any disposition thereof which may have been made by Assignee pursuant hereto.

15. Course of Dealing. No course of dealing, nor any failure to exercise, nor any delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

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

17. Amendments. This Assignment may be amended only by a written instrument signed by both parties hereto.

18. Counterparts. This Assignment may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.

19. California Law and Jurisdiction; Jury Waiver. This Assignment shall be governed by the laws of the State of California, without regard for choice of law provisions. Assignor and Assignee consent to the exclusive jurisdiction of any state or federal court located in Santa Clara County, California. ASSIGNOR AND ASSIGNEE EACH WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS ASSIGNMENT OR ANY TRANSACTION HEREUNDER, OR CONTEMPLATED HEREUNDER, OR ANY OTHER CLAIM (INCLUDING TORT OR BREACH OF DUTY CLAIMS), OR DISPUTE HOWEVER ARISING BETWEEN ASSIGNOR AND ASSIGNEE.

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

Address of Assignor:

ASSIGNOR:

FIRSTFLOOR SOFTWARE, INC.

WCF
AFK

Attn:

By: Alan Naiman

Title: CEO

Address of Assignee:

ASSIGNEE:

55 Almaden Blvd., 2nd Floor
San Jose, CA 95113

COMERICA BANK-CALIFORNIA

Attn: Mary Beth Suhr

: Mary Beth Suhr
Title: V.P.

ASSIGNOR :

FIRSTFLOOR SOFTWARE, INC

By: A. A. F. K. Naiman

Title: SECRET

EXHIBIT A

Copyrights

EXHIBIT B

Patents

United States

PATENT	STATUS	App. No. File Date
Method and Apparatus for Collecting and Displaying Information From Diverse Computer Resources	Filed	08/689405 08/08/96

EXHIBIT C

Trademarks

European

MARK	STATUS	App. No. File Date	Reg. No. Reg. Date	Renewal Date
FIRSTFLOOR	Filed	00572792 06/09/97		
SMART BOOKMARKS	Filed	657940 10/13/97		
SMART DELIVERY	Filed	657981 10/13/97		
SMART DELIVERY CHANNEL SU	Filed	658633 10/16/97		
SMART NOTIFICATION SERVER	Filed	657999 10/13/97		
SMART PUBLISHER	Filed	657973 10/13/97		
SMART SUBSCRIBER	Filed	657767 10/13/97		

Japan

FIRSTFLOOR	Filed	99-189260 12/26/97		
SMART BOOKMARKS	Filed	9-189259 12/26/98		
SMART DELIVERY	Filed	9-178352 11/21/97		
SMART DELIVERY CHANNEL SU	Filed	9-178353 11/21/97		
SMART NOTIFICATION SERVER	Filed	9-178355 11/21/97		
SMART PUBLISHER	Filed	9-178351 11/21/97		
SMART SUBSCRIBER	Filed	9-178254 11/21/97		

United States

CORPORATE ENCYCLOPEDIA SY	Filed	75/29504 05/21/97		
FILEMONITOR	Closed	74/718187 08/18/95		
FIRSTFLOOR	Allowed	74/476291		

SCHEDULE 3

PA\885985.5
1030967-901500

RECORDED: 12/01/1999

**TRADEMARK
REEL: 001996 FRAME: 0216**