

MINW
12/6/99

RE
TR

12-21-1999



101229683

Tab settings → → →

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Alpha Shirt Company
410 E. Hunting Park Avenue
Philadelphia, Pennsylvania 19124

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

Additional names(s) of conveying party(ies) Yes No

2. Name and address of receiving party(ies):

Name: Key Corporate Capital Inc.

Internal Address: _____

Street Address: 127 Public Square

City: Cleveland State: Ohio ZIP: 44114-1306

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

3. Nature of conveyance:

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

Execution Date: April 30, 1999

If assignee is not domiciled in the United States, a domestic designation is Yes No
(Designations must be a separate document from Additional name(s) & address(es) Yes No

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,978,685	1,990,235	1,994,211
1,989,637	2,002,303	2,088,039
2,120,183		

Additional numbers Yes No

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

Name: Robert H. Earp, III

Benesch, Friedlander, Coplan & Aronoff

Internal Address: _____

Street Address: 2300 BP America Building

200 Public Square

City: Cleveland State: OH ZIP: 44114

6. Total number of applications and trademarks involved:.....

7

7. Total fee (37 CFR 3.41):.....\$ 190.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

02-2051

(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.

Robert H. Earp, III
Name of Person Signing

Robert H. Earp, III
Signature

November 30, 1999
Date

Total number of pages including cover sheet, attachments, and

12

0000022 1978683
40.00 BP
50.00 BP
12/21/1999 T 1611
01 FC:481
02 FC:482

CONTINGENT PATENT,
TRADEMARK AND LICENSE ASSIGNMENT

This Contingent Patent, Trademark and License Assignment ("Assignment") is made by Alpha Shirt Company, a Delaware corporation ("Assignor"), in favor of KEY CORPORATE CAPITAL INC., a Michigan corporation having its main office at 127 Public Square, Cleveland, Ohio 44114-1306, as agent (in that capacity, "Agent") for the benefit of Lenders (defined below) for the purposes of this Assignment, the Credit Agreement (defined below) and the other Related Writings.

INTRODUCTION:

WHEREAS, A. Assignor, Agent and the lending institutions named in Schedule I of the Credit Agreement (collectively, "Lenders", and individually, "Lender"), are parties to a Credit and Security Agreement made of even date as this Assignment (that Credit and Security Agreement, as the same may be amended or amended and restated from time to time, the "Credit Agreement") and setting forth, among other things, the terms and conditions of Lenders' respective commitments (each commitment, a "Subject Commitment") aggregating Seventy-Eight Million Dollars (\$78,000,000), which amount shall be available to Assignor pursuant to the terms and conditions of the Credit Agreement

B. It is a condition precedent to each extension of credit pursuant to the Credit Agreement and to any other extension of credit by Lenders or any of them to or for the account of Assignor that, among other things, Assignor shall have executed and delivered this Assignment to Agent.

THEREFORE, in consideration of the premises, to induce Lenders to extend credit pursuant to the Credit Agreement, to induce each Lender to extend to or for the account of Assignor such other credit as that Lender may from time to time deem advisable (all upon such terms and conditions as that Lender may from time to time deem advisable), in order to induce Agent to accept its appointment as "Agent" pursuant to the Credit Agreement, and in consideration of the foregoing and for other valuable considerations, Assignor hereby agrees, grants, represents, and warrants as follows:

1. Incorporation of Credit Agreement. The Credit Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto. All capitalized terms used herein have the meanings given to them in the Credit Agreement unless otherwise defined herein.

2. Assignment of Patents. To secure the complete and timely satisfaction of all of the Secured Debt, Assignor hereby grants, assigns and conveys to Agent all of the 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:

(i) patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein, and those patents listed on Schedule 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"); and

(ii) license agreements with any other party which by their terms are assignable, whether Assignor is a licensor or licensee under any such license agreement, including, without limitation, the licenses listed on Schedule C 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").

3. Security Interest in Trademarks and Goodwill. To secure the complete and timely satisfaction of all of the Secured Debt, Assignor hereby grants and conveys to Agent a lien and security interest in all of the 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:

(i) trademarks, trademark registrations, trade names and trademark applications, service marks, service mark registrations, service names and service mark applications, including, without limitation, the trademarks, trademark registrations, trade names and trademark applications, service marks, service mark registrations, service names and service mark applications listed on Schedule B, attached hereto and made a part hereof, and (a) renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payment 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 trademarks, service marks, trademark and service mark registrations, trade names, service names and applications, together with the items described in clauses (a)-(d), are sometimes hereinafter individually and/or collectively referred to as the "Trademarks"); and

(ii) the goodwill of Assignor's business including but not by way of limitation such goodwill connected with and symbolized by the Trademarks.

4. Restrictions on Future Assignments. Assignor agrees that until the Secured Debt shall have been satisfied in full and the Credit Agreement shall have been terminated, Assignor will not, without Agent's prior written consent, enter into any agreement relating to the Patents, Trademarks or Licenses (for example, a license 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 transferred to Agent under this Assignment.

5. New Patents, Trademarks, and Licenses. Assignor represents and warrants that the Patents, Trademarks and Licenses listed on Schedules A, B and C, respectively, constitute all of the patents, service marks, trademarks, applications and licenses owned by Assignor on the Closing Date. If, before the Secured Debt shall have been satisfied in full, Assignor shall (i) obtain rights to any new patentable inventions, trademarks, trademark registrations, trade names, service marks, service mark registrations, service names, or licenses, or (ii) become entitled to the benefit of any patent, service mark or trademark application, service mark, service mark registration, trademark, trademark registration, 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 this Assignment shall automatically apply thereto and Assignor shall give to Agent prompt written notice thereof. Assignor hereby authorizes Agent as attorney in fact to modify this Assignment by amending Schedules A, B and/or C, as applicable, to include any future patents, patent applications, service marks, service mark registrations, service mark applications, service names, trademarks, trademark registrations, trademark applications, trade names and licenses which are Patents, Trademarks or Licenses, as applicable, under Paragraphs 2 and 3 above or under this Paragraph 5, and to file or refile this Assignment with the United States Patent and Trademark Office.

6. Representations and Warranties. Assignor represents and warrants to and agrees with Agent that:

(i) The Patents and Trademarks are subsisting and have not been adjudged invalid or unenforceable, in whole or in part as of the Closing Date;

(ii) Each of the Patents and Trademarks is valid and enforceable as of the Closing Date;

(iii) Assignor is the owner of the Patents and Trademarks and has the power and authority to make, and will continue to have authority to perform, this Assignment according to its terms;

(iv) This Assignment does not violate and is not in contravention of any other agreement to which Assignor is a party or any judgment or decree by which Assignor is bound and does not require any consent under any other agreement to which Assignor is a party or by which Assignor is bound. Assignor hereby authorizes the Commissioner of Patents and Trademarks to issue any and all Patents on said inventions and any and all certificates of registration on all Trademarks to Agent as assignee of Assignor's entire interest;

(v) There has been no prior sale, pledge, encumbrance, assignment or other transfer or disposition of any of the Patents, Trademarks or Licenses or any part thereof and the same are free from all liens, charges and encumbrances of any kind, including but not

limited to licenses, shop rights and covenants not to sue third persons, other than Permitted Liens; and

(vi) The Licenses are valid and binding agreements enforceable according to their terms. Each of the Licenses is in full force and effect and has not been amended or abrogated and there is no default under any of the Licenses.

7. Royalties; Terms. Assignor hereby agrees that the use by Agent of all Patents, Trademarks and Licenses as described above shall be worldwide and without any liability for royalties or other related charges from Agent to the Assignor. The term of the assignments granted herein shall extend until the earlier of (i) the expiration of each of the respective Patents, Trademarks and Licenses assigned hereunder, or (ii) the Secured Debt has been paid in full and the Credit Agreement has been terminated.

8. Grant of License to Assignor. Unless and until an Event of Default shall have occurred and is continuing, Agent hereby grants to Assignor a nontransferable right and license to use the Trademarks, to exercise Agent's rights under the Licenses, and to make, have made, use and sell the inventions disclosed and claimed in the Patents for Assignor's own benefit and account and for none other. Assignor agrees not to sell or assign its interest in, or grant any sublicense under, the license granted to Assignor in this Paragraph 8, without the prior written consent of Agent. From and after the occurrence of an Event of Default and during the continuance thereof, Assignor's license with respect to Patents, Trademarks and Licenses as set forth in this Paragraph 8 shall terminate forthwith, and Agent shall have, in addition to all other rights and remedies given it by this Assignment, those 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 or Licenses may be located, including, but not by way of limitation, the location of Agent's main office.

9. Reassignment to Assignor. Upon payment in full of the Secured Debt and termination of the Credit Agreement, Agent shall execute and deliver to Assignor all assignments and other instruments as may be necessary or proper to re-vest in Assignor full title to the Patents, Trademarks and Licenses, subject to any disposition thereof which may have been made by Agent pursuant hereto or pursuant to the Credit Agreement.

10. Duties of Assignor. Assignor shall have the duty to (i) prosecute diligently any patent application of the Patents made by it and any trademark or service mark application of the Trademarks made by it pending as of the date hereof or thereafter until the Secured Debt shall have been paid in full, (ii) make application on unpatented but patentable material inventions and on material trademarks and material service marks, as appropriate, and (iii) preserve and maintain all of its rights in patent applications and patents of the Patents and in trademark applications, trademarks, trademark registrations, service mark applications, service marks, and service mark registrations of the Trademarks. Any expenses incurred in connection with such applications shall be borne by Assignor. Assignor shall not abandon any right to file a Patent application or Trademark application, or any pending Patent application, Trademark application, Patent, or Trademark without the consent of Agent.

11. Financing Statements; Documents. At the request of Agent, Assignor will join with Agent in executing one or more financing statements pursuant to the applicable version of the Uniform Commercial Code in form satisfactory to Agent and will pay the costs of filing and/or recording this Assignment and all financing, continuation and termination statements in all public offices where filing or recording is deemed necessary or desirable by Agent. Assignor will execute and deliver to Agent from time to time such supplemental assignments or other instruments, including, but not by way of limitation, additional assignments to be filed with the United States Patent and Trademark Office, as Agent may require for the purpose of confirming Agent's interest in the Patents, Trademarks and Licenses.

12. Agent's Right to Sue. Agent shall have the same rights, if any, as Assignor has, but shall in no way be obligated, to bring suit in its own name to enforce the Licenses and the Patents and Trademarks, and any licenses thereunder, and, if Agent shall commence any such suit, Assignor shall, at the request of Agent, do any and all lawful acts and execute any and all proper documents required by Agent in aid of such enforcement and Assignor shall promptly, upon demand and as a part of the Secured Debt, reimburse and indemnify Agent for all costs and expenses incurred by Agent in the exercise of its rights under this Paragraph 12.

13. Waivers. No course of dealing between Assignor and Agent nor any failure to exercise nor any delay in exercising, on the part of Agent, any right, power or privilege hereunder or under the Credit 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.

14. Severability. The provisions of this Assignment are severable, and if any clause or provision shall be held 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.

15. Modification. This Assignment cannot be altered, amended or modified in any way, except as specifically provided in Paragraph 5 hereof or by a writing signed by the parties hereto.

16. Cumulative Remedies; Effect on Credit Agreement. All of Agent's rights and remedies with respect to the Patents, Trademarks and Licenses, whether established hereby or by the Credit Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Assignor acknowledges and agrees that this Assignment is not intended to limit or restrict in any way the rights and remedies of Agent under the Credit Agreement but rather is intended to facilitate the exercise of such rights and remedies.

17. Binding Effect; Benefits. This Assignment shall be binding upon the Assignor and its respective successors and assigns, and shall inure to the benefit of Agent, its successors and assigns.

18. Notice. All notices, requests, demands and other communications provided for hereunder shall be in writing and mailed or delivered to Assignor, addressed to Assignor at the address specified on the signature page of this Assignment, if to Agent or Lenders, mailed or delivered to them, addressed to the respective addresses of Agent and Lenders specified on the signature page of the Credit Agreement. All notices, statements, requests, demands and other communications provided for hereunder shall be deemed to be given or made when delivered or forty-eight (48) hours after being deposited in the mails with postage prepaid by registered or certified mail, addressed as aforesaid, or sent by facsimile with telephonic confirmation of receipt, except that notices from Assignor to Agent pursuant to any of the provisions hereof shall not be effective until received by Agent.

19. Governing Law. This Assignment has been delivered and accepted in Cleveland, Ohio, and shall be governed by and construed in accordance with the local laws of the State of Ohio.

[The remainder of this page is intentionally blank.]

20. WAIVER. ASSIGNOR, TO THE EXTENT PERMITTED BY LAW, WAIVES ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, AMONG LENDERS, AGENT AND ASSIGNOR ARISING OUT OF, IN CONNECTION WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THEM IN CONNECTION WITH THIS AGREEMENT OR ANY NOTE OR OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION THEREWITH OR THE TRANSACTIONS RELATED THERETO.

IN WITNESS WHEREOF, the undersigned, being a duly authorized officer of Assignor, has executed this Assignment as of the 30th day of April, 1999.

WITNESS:
Sign: [Signature]
Print Name: Mauna Brandon

Sign: [Signature]
Print Name: Brian A. McMahon

ALPHA SHIRT COMPANY
By: [Signature] Chairman
Eric V. Bacon, Chairman

Address: 401 East Hunting Park Avenue
Philadelphia, Pennsylvania 19124

STATE OF OHIO)
) SS:
COUNTY OF CUYAHOGA)

The foregoing Contingent Patent, Trademark and License Assignment was executed and acknowledged before me this 30th day of April, 1999, by Eric V. Bacon, Chairman of Alpha Shirt Company, a Delaware corporation, on behalf of the corporation.

[Signature]
Notary Public
My commission expires: _____

Accepted at Cleveland, Ohio,
as of April 30, 1999

**NOTARIES BY OBTAINER, ATTORNEY AT LAW
NOTARY PUBLIC - STATE OF OHIO
MY COMMISSION HAS NO EXPIRATION DATE
SECTION 147.03 R.C.**

KEY CORPORATE CAPITAL INC., as agent
By: [Signature]
Stephen J. Holler, Vice President

EXHIBIT A
TO
CONTINGENT PATENT, TRADEMARK AND
LICENSE AGREEMENT

PATENTS

None.

{SNO0870;2}

TRADEMARK
REEL: 002001 FRAME: 0759

EXHIBIT B
TO
CONTINGENT PATENT, TRADEMARK AND
LICENSE AGREEMENT

TRADEMARKS

<u>Name/Mark</u>	<u>Date Registered</u>	<u>Registration No.</u>
Alpha	July 30, 1996	1,989,637
Alpha Shirt Company	September 24, 1996	2,002,303
Design of Authentic Pigment	June 4, 1996	1,978,685
Earth Collection	July 30, 1996	1,990,235
Copa Banana	August 12, 1997	2,088,039
Design of Palm Trees & Plane	August 13, 1996	1,994,211
Design of Palm Trees & Plane (Hong Kong)	December 12, 1997	Class No. 25, No. 12218
Dilly Dally	December 9, 1997	2,120,183

{SNO0870;2}

EXHIBIT C
TO
CONTINGENT PATENT, TRADEMARK AND
LICENSE AGREEMENT

LICENSE AGREEMENTS

1. CONTRACTS CONCERNING INTELLECTUAL PROPERTY OR INFORMATION TECHNOLOGY

- (a) License Agreement between Seller and M.J.C. Ltd. for use of software programs.
- (b) Software License between Seller and Sound Ideas of America, Inc. for use of FineLine Message Manager.
- (c) End-User License Agreement between Seller and Microsoft for use of Windows NT, Version 4.0.
- (d) License Agreement, dated November 1, 1998, with 915 Central Avenue, Inc., relating to the use of the name "Good Buy".

2. SELLER USES REGULARLY AND OWNS OR LICENSES, AS INDICATED, THE FOLLOWING INFORMATION TECHNOLOGY IN ITS BUSINESS:

	<u>Owned/Licensed</u>
Software:	
Advantage Business System	Licensed ¹
FDM4 (Cutsey Business Systems)	Licensed
• General Ledger	
• Accounts Receivable	
• Accounts Payable	
• Consolidations	
• Order Entry	
• Inventory	
• Purchase Orders	
• Sales Analysis	
• Vendor Analysis	
• Warehouse Transfers	
• Profits Telemarketing Software	
IWS IRMS Warehouse Management System	Licensed
Progress Pro Vision	Licensed
Progress Data Base Server - Enterprise	Licensed
Progress Roundtable TSMS	Licensed
Progress Results	Licensed
Progress WebSpeed	Licensed
VSIFAX - Faxing Software	Licensed
Windows 95/Office 97	Licensed

Telephone: InterTel
T-1
Frame Relay

Networks: Ethernet
LAN

{SNO0870;2}