

12-22-1999



RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY

101230107

MRD 11-10-99

TO: The Commissioner of Patents and Trademarks: Please record the attached

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

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

12/21/1999 TTOM11 00000225 75465201

FOR OFFICE USE ONLY

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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: 002002 FRAME: 0374

**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.

*Y. KONISHI*

Name of Person Signing

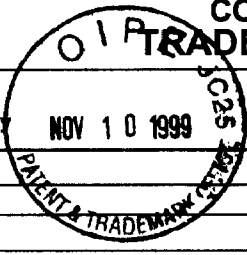
*[Signature]*

Signature

*9/9/99*

Date Signed

RECORDATION FORM COVER SHEET  
CONTINUATION  
TRADEMARKS ONLY



**Conveying Party**

Enter Additional Conveying Party

Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name

Formerly

Individual  General Partnership  Limited Partnership  Corporation  Association

Other

Citizenship State of Incorporation/Organization

**Receiving Party**

Enter Additional 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

Corporation  Association

Other

Citizenship/State of Incorporation/Organization

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 the Assignment.)

**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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# TRADEMARK COLLATERAL ASSIGNMENT AGREEMENT

THIS TRADEMARK COLLATERAL ASSIGNMENT AGREEMENT (this "Agreement") is entered into as of July 28, 1999, by and between SUTMYN AMERICA, a California corporation ("Borrower"), and KANEMATSU CORPORATION, a Japanese corporation ("Kanematsu").

## RECITALS

WHEREAS, Kanematsu has extended credit to Borrower, and to secure its obligations to Kanematsu, Borrower has executed various agreements, including without limitation, that certain Security Agreement dated as of or about even date herewith, covering among other items, general intangibles, including various proprietary rights and trademarks (which security agreement, together with any and all amendments and modifications thereto from time to time entered into, and any security agreements at any time hereafter executed in replacement and/or in substitution thereof and/or in addition thereto, shall be referred to herein as the "Security Agreement"); and

WHEREAS, Borrower and Kanematsu wish to further clarify and declare their respective rights and obligations with regard to certain collateral in an instrument to be recorded with the United States Patent and Trademark Office and elsewhere.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, Borrower and Kanematsu hereby agree as follows:

1. Collateral Assignments. Pursuant to the Security Agreement and subject to and upon the additional terms, covenants and conditions hereof, Borrower hereby grants, assigns, conveys, mortgages and transfers to Kanematsu, Borrower's entire right, title and interest, now owned or hereafter acquired, in and to all of the following (the "Property"):

a. all trademarks, service marks, trade names, proprietary labels, designs, logos, names or similar identifications, whether registered or unregistered, in which Borrower now has or at any time hereafter acquires an interest (the "Trademarks"), including without limitation, all proceeds thereof, license royalties and proceeds of infringement suits; and including all rights to carry on business under such Trademarks and any related goodwill associated with such Trademarks; and

b. the right to sue, in Kanematsu's name or joined with Borrower, for past, present or future infringements of any rights in Trademarks.

The Property shall include without limitation: (i) all Trademarks described on Exhibit A attached hereto and incorporated herein by this reference, and (ii) all reissues and/or extensions of any of the Trademarks and all proceeds thereof. The Trademarks assigned to Kanematsu as security hereunder shall be held by Kanematsu for the full term for which said rights are granted, and for the term or terms of each and every extension thereof, as fully as the same would have been held by Borrower if this Agreement had not been executed, subject to Kanematsu's obligation to release Kanematsu's security interest in the Property upon satisfaction in full of all obligations of Borrower to Kanematsu secured thereby.

2. Obligations Secured. The obligations secured hereby are the payment and performance of: (a) all present and future Indebtedness (as defined below) of Borrower to Kanematsu under that certain Credit Agreement dated as of or about even date herewith (the "Credit Agreement"); and (b) all other obligations of Borrower to Kanematsu under this Agreement and the Security Agreement. The word "Indebtedness" is used herein in its most comprehensive sense and includes any and all advances, debts, obligations and liabilities of Borrower heretofore, now or hereafter made, incurred or created, whether voluntary or involuntary and however arising, whether due or not due, absolute or contingent, liquidated or unliquidated, determined or undetermined, and whether Borrower may be liable individually or jointly with others, or whether recovery upon such Indebtedness may be or hereafter becomes unenforceable.

Upon payment and performance in full of all of the Indebtedness and Borrower's other obligations to Kanematsu, at Borrower's cost and expense, Kanematsu shall reassign to Borrower, without recourse and without any warranty or representation of any kind or nature, all right, title and interest that Kanematsu may then have in the Property, free and clear of any claims by Kanematsu, in a form acceptable to counsel for Kanematsu, and upon such reassignment, the license and rights granted hereunder shall terminate, and the entire right shall be reinvested in Borrower, as fully as if this Agreement and license had not been made.

3. Perfection of Security Interest. Borrower hereby covenants and agrees to prepare, execute, acknowledge, deliver and record or file such instruments and documents and to do and perform all other acts which may be necessary or which Kanematsu deems necessary or appropriate to perfect and vest in favor of Kanematsu a valid collateral assignment of the Property. Concurrently with the filing of any trademark application or the acquisition of any interest in or to any trademark hereafter, Borrower shall duly execute, acknowledge and record in the United States Patent and Trademark Office a Trademark Collateral Assignment Agreement substantially in the form of this Agreement; provided that Exhibit A to each such Trademark Collateral Assignment Agreement shall describe (with such particularity as may be required by said Patent and Trademark Office or other applicable governmental authorities or agencies from time to time) only the additional trademarks and applications which have not been previously recorded as subject to Kanematsu's security interest.

4. Grant of Rights. Unless and until there shall have occurred and be continuing an Event of Default (as defined in the Security Agreement), and Kanematsu shall have given written notice to Borrower that the rights, license and privilege granted under this Paragraph have been terminated, Kanematsu hereby grants to Borrower:

a. the exclusive, non-transferable, non-assignable royalty-free right and license under the Trademarks to use for Borrower's own benefit and account and for none other; and

b. the right to sue for past, present or future infringements of the Trademarks, all rights corresponding thereto throughout the world and all reissues, divisions, continuations, renewals and extensions thereof in whole or in part; provided, however, that no such suit shall be brought in the name of Kanematsu unless Borrower shall have first received the written consent of Kanematsu thereto, which consent shall not be unreasonably withheld in

instances where applicable law requires that the property owner be joined as a necessary party in infringement suits.

Borrower agrees not to sell or assign its interest in, nor to grant any sublicense under, the license granted to Borrower in this Paragraph 4, without the prior written consent of Kanematsu; provided, however, that Borrower may grant such bona fide sublicenses for good and valuable consideration as are necessary and usual in the ordinary course of Borrower's business as it is presently conducted and as it may be legally expanded, on condition that such sublicenses so granted shall be subject to the terms and conditions of the Security Agreement and this Agreement.

Nothing in this Agreement or this Paragraph 4 shall constitute an admission, waiver of any kind, or agreement to forbear by Kanematsu with respect to any existing defaults or Events of Default by Borrower, and Kanematsu expressly reserves all rights to declare an Event of Default at any time hereafter.

5. Warranties. In addition to the representations and warranties made by Borrower in the Security Agreement, Borrower represents and warrants that:

- a. the Trademarks are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;
- b. to the best of Borrower's knowledge, each of the Trademarks is valid and enforceable;
- c. Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, free and clear of any liens, charges and encumbrances except those in favor of Kanematsu, including without limitation, pledges, assignments, licenses, shop rights and covenants by Borrower not to sue third persons;
- d. Borrower has the unqualified right to enter into this Agreement and perform its terms;
- e. the Trademarks listed on Exhibit A hereto represent all of the Trademarks and applications therefor in which Borrower has any rights; and
- f. the information set forth on Exhibit A hereto is entirely correct.

6. Covenants. Borrower hereby covenants and agrees to cooperate with Kanematsu in whatever manner may be necessary or which Kanematsu may deem necessary or appropriate so that Kanematsu may enjoy its rights and interests hereunder to the fullest extent. Such cooperation shall include, without limitation:

- a. prompt preparation and execution (at Borrower's expense) of all petitions, oaths, specifications, declarations or other papers that may be necessary or which Kanematsu may deem necessary or appropriate for prosecuting any Trademark or other Property

applications or applications for the reissuance of any Trademark or other Property in which Kanematsu acquires a security interest hereunder and for prosecuting interference proceedings involving any such applications; and

b. prompt assistance and cooperation (at Borrower's expense) in the prosecution of any legal actions or other proceedings involving any Trademarks or application pertaining to any Property in which Kanematsu acquires a security interest hereunder, including without limitation, oppositions, cancellation proceedings, priority contests, public use proceedings and court actions alleging infringement or any other cause of action.

Nothing in this Agreement or this Paragraph 6 shall create any obligation on Kanematsu's part to pursue trademark prosecutions or any other enforcement or infringement actions relating to the Property.

7. Defense of Property; Indemnity. Borrower hereby covenants and agrees promptly upon request of Kanematsu to defend the Property and Kanematsu's rights and interests therein and to promptly notify Kanematsu of any event, occurrence or legal action which affects the Property or the rights of the parties in relation thereto. Borrower acknowledges that Kanematsu may, but shall have no obligation whatsoever to, commence any legal action or other proceeding to defend the Property or to contest the use by any other party of the Property or any portion thereof. Borrower shall unconditionally indemnify Kanematsu and hold Kanematsu harmless from and against all claims, causes of action, damages, liability, costs and expenses, including reasonable attorneys' fees, (including reasonable expenses, including but not limited to expert witness fees, reproduction costs, exhibit preparation costs, and postage, courier and communication expenses), that Kanematsu may be subject to in connection with this Agreement, including without limitation, trademarks infringement suits that may be brought against Kanematsu.

Until the obligations secured hereby shall have been paid in full, Borrower shall have the duty, through qualified counsel, to prosecute diligently any trademark applications pending as of the date of this Agreement or at any time hereafter, to make application for new trademarks with respect to any names, logos, designs, or similar identifications not yet registered with the Patent and Trademark Office, and to preserve and maintain all rights in Trademarks, including without limitation, the payment of all maintenance fees. Any expenses incurred in connection with such an application shall be borne by Borrower. Borrower shall not abandon any right to file a trademark application, or any pending Trademark, without the prior written consent of the Kanematsu, which consent shall not be unreasonably withheld.

8. Defaults. Upon occurrence of any Event of Default as defined in the Security Agreement and/or the Credit Agreement or any document or instrument evidencing or securing Borrower's obligations thereunder, subject to applicable cure provisions, if any, Kanematsu shall have the rights and remedies available to a secured party under law and/or expressly provided in the Security Agreement and/or the Credit Agreement or any such other document or instrument. In addition, Kanematsu shall have the right to sue for past infringement of the Property and to collect all damages and profits for past infringements.

If any Event of Default shall have occurred and be continuing, and following the giving of any notices required hereby, Borrower's license as set forth in Paragraph 4 shall terminate forthwith, and Kanematsu shall have, in addition to all other rights and remedies given it by this Agreement and the Security Agreement, 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 Property may be located and, without limiting the generality of the foregoing, Kanematsu may immediately, without demand of performance and without other notice (except as set forth below) or demand whatsoever to Borrower, all of which are expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon the whole or from time to time any part of the Property or any interest which the Borrower may have therein, and after deducting from the proceeds of sale or other disposition of the Property all expenses (including all reasonable expenses for brokers' fees and legal services), shall apply the residue of such proceeds toward the payment of the obligations secured hereby. Any remainder of the proceeds after payment in full of such obligations shall be paid over to the Borrower. Notice of any sale or other disposition of the Property shall be given to Borrower at least five (5) days before the time of any intended public or private sale or other disposition of the Property is to be made, which Borrower hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, Kanematsu may, to the extent permissible under applicable law, purchase all or any part of the Property.

9. Relation to Security Agreement. This Agreement is a supplement to the Security Agreement, and Kanematsu shall retain all rights granted in the Security Agreement, including all rights to the Property described herein. Kanematsu's rights and remedies, and Borrower's obligations and waivers, under the Security Agreement, and the interpretive principles stated in the Security Agreement shall be applicable hereunder; provided, however, that this Agreement and the Security Agreement shall be construed together so as to grant Kanematsu the greatest rights and remedies with regard to the Property; and provided further, that Kanematsu's rights and remedies hereunder may be modified by amendments to the Security Agreement and this Agreement from time to time provided such amendments are in writing and signed by Borrower and Kanematsu.

10. Successors; Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties; provided, however, that Borrower may not assign this Agreement or any interest herein without Kanematsu's prior written consent.

11. Enforceability. If any provision of this Agreement shall for any reason be unenforceable in any respect, such unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such unenforceable provisions had not been contained herein.

12. Governing Law. Except to the extent that Federal law preempts, this Agreement shall be governed by and construed in accordance with the laws of the State of California.



IN WITNESS WHEREOF, Borrower and Kanematsu hereby execute and acknowledge this Agreement as of the date first written above.

SUTMYN AMERICA, a California corporation

By: Clement A. Bosch

Name: CLEMENT A. BOSCH

Its: SECRETARY

KANEMATSU CORPORATION, a Japanese corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

IN WITNESS WHEREOF, Borrower and Kanematsu hereby execute and acknowledge this Agreement as of the date first written above.

**SUTMYN AMERICA**, a California corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**KANEMATSU CORPORATION**, a Japanese corporation

By: *Y. Konishi*

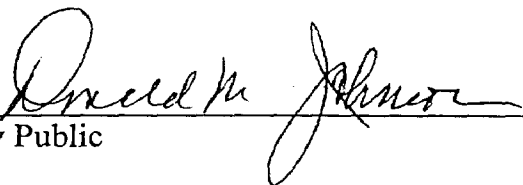
Name: Y. KONISHI

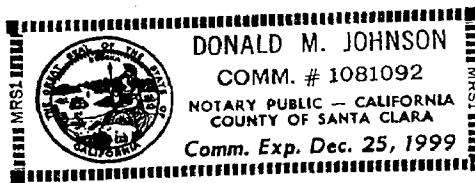
Its: V.P. & GENERAL MANAGER  
OF KANEMATSU USA INC.

State of California )  
 )ss.  
County of SANTA CLARA )

On August 12, 1999, before me, Donald M. Johnson, a notary public, personally appeared Clement Bosed, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

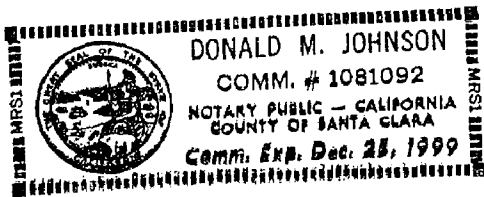
  
\_\_\_\_\_  
Notary Public



State of CALIFORNIA )  
County of SANTA CLARA )ss.

On August 11, 1999, before me, Donald M. Johnson, a notary public, personally appeared YOTAKA KONISHI, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Donald M. Johnson  
Notary Public

EXHIBIT A  
to  
TRADEMARK COLLATERAL ASSIGNMENT AGREEMENT

Serial Number

75/465,381

Trademark

Sutmyn mark