

03-14-2001

U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

12.5.00



101611643

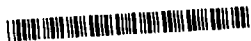
To the Honorable Director of Patents and Trademark

or copy thereof.

1. Name of conveying party(ies) Syntellect, Inc.

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

Additional name(s) of conveying party(ies) attached?  Yes  No



12-05-2000

U.S. Patent & TMO/TM Mail RptDt. #70

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

Name: Vocal Point, Inc.

Internal Address: \_\_\_\_\_

Street Address: 847 Howard Street

City San Francisco State CA ZIP 94103

Individual(s) citizenship

Association

General Partnership

Limited Partnership

Corporation-State California

Other

If assignee is not domiciled in the United States, a domestic representative designation is attached:

Yes  No

(Designation 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: September 29, 2000

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

A. Trademark Application No.(s) 75/466,723

B. Trademark Registration No.(s) 1,871,845; 2,182,315

Additional numbers attached?  Yes  No

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

Name: John A. Livingstone II

Internal Address: SKJERVEN, MORRILL, MacPHERSON,

FRANKLIN & FRIEL LLP

Street Address: 25 METRO DRIVE, SUITE 700

City SAN JOSE State CA ZIP 95110

6. Total number of applications and registrations involved: 3

7. Total fee (37 CFR 3.41): .....\$ 90

Enclosed

Authorized to be charged to deposit account

8. Deposit account number: 19-2386  
(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.*

John A. Livingstone II  
Name of Person Signing

Signature

December 5, 2000  
Date

Total number of pages comprising cover sheet: 7

OMB No. 0651-0011 (exp. 4/94)

**Do not detach this portion**

Mail documents to be recorded with required cover sheet information to:

**Director of Patents and Trademarks  
Box Assignments  
Washington, D.C. 20231**

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project, (0651-011), Washington, D.C. 20231.

701324 v1

Express Mail Label # EL 403808716US

**TRADEMARK  
REEL: 002207 FRAME: 0476**

# TRADEMARK PURCHASE AND LICENSE AGREEMENT

This Trademark Purchase and License Agreement (the "Agreement") is made as of September 29, 2000 (the "Effective Date"), by and between Vocal Point, Inc., a California corporation with offices at 847 Howard Street, San Francisco, California, 94103 ("VPI"), and Syntellect, Inc., a Delaware corporation with offices at 16610 North Black Canyon Highway, Suite 100, Phoenix, Arizona, 85053 ("SYNTELLECT").

WHEREAS, SYNTELLECT is a computer telephony software solutions and services business;

WHEREAS, SYNTELLECT is the owner of the trademarks described in Exhibit A, attached hereto (the "Trademarks");

WHEREAS, SYNTELLECT desires to assign the Trademarks to VPI and VPI desires to accept such assignment; and

WHEREAS, SYNTELLECT desires to license the Trademarks from VPI to be utilized for the end of the product life cycle for SYNTELLECT's Vocalpoint IVR product (the "Product"), and VPI desires to make such license.

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties agree as follows:

## Article 1 Assignment

1.1 SYNTELLECT hereby assigns, sells, and transfers to VPI all worldwide right, title, and interest, whether statutory or at common law, in and to the Trademarks, including any similar trademarks and all intellectual property rights embodied therein, together with (a) the goodwill of the business symbolized by and associated with the Trademarks and the registrations thereof throughout the world, (b) all registrations and applications pending, filed or obtained for the Trademarks in all countries throughout the world, and (c) the right to sue and recover for any and all past, present and future infringement or dilution of or other damage or injury to the Trademarks, their registrations and/or their goodwill (collectively, the "Assignment").

1.2 In consideration for the Assignment, VPI shall pay to SYNTELLECT \$50,000 cash upon execution of this Agreement and shall grant SYNTELLECT warrants to purchase 10,000 shares of VPI preferred stock in its next financing round after execution of the Agreement. The execution price of the warrants and other terms and conditions of the purchase shall be equal to those applicable to the purchases of other investors in VPI's next financing round. The warrants shall be on the terms of VPI's standard form of warrant.

## Article 2 Assignment Representations and Warranty

2.1 SYNTELLECT represents and warrants to VPI as follows:

DEC 01 2000

a. Exhibit A sets forth a true and accurate identification of each registration and application for any of the Trademarks (collectively, the "Registrations");

b. SYNTELLECT is the owner of all right, title and interest in and to each item of the Trademarks and Registrations, free and clear of all liens and encumbrances;

c. There have not been any claims, actions or judicial or other adversary proceedings involving SYNTELLECT concerning any of the Trademarks or Registrations and to the best knowledge of SYNTELLECT, no such action or proceeding is threatened;

d. SYNTELLECT has the exclusive right and authority to use each of the Trademarks in connection with the manufacture, sale and advertising of its products, and to the best of its knowledge such use does not conflict with, infringe upon, or violate any trademark or other proprietary right of any other person;

e. There are no licenses or rights currently in effect in favor of any third party to use the Trademarks; and

f. All Registrations were properly issued by the relevant authorities and there is no pending or threatened claim, action, suit, investigation or proceeding of any kind challenging, alleging or asserting that any Registration was improperly or invalidly granted or is otherwise invalid.

### Article 3

#### Further Actions Regarding the Assignment

3.1 SYNTELLECT shall execute and deliver to VPI assignments in the form reasonably prescribed by VPI to effect assignments of the Registrations. Each of the parties shall execute such further documents and other papers and perform such further acts as may be reasonably required or desirable to carry out such assignments.

### Article 4

#### License

4.1 VPI hereby grants SYNTELLECT a worldwide, royalty-free right to use the Trademarks in the manufacture, sale and support of the Product (the "License") on the terms stated herein.

4.2 SYNTELLECT shall use the Trademarks only on the Product manufactured by SYNTELLECT in accordance with the Syntellect specifications, directions to be provided to VPI upon request.

4.3 SYNTELLECT will provide VPI with a copy of its standard usage of the Vocal Point trademark, if in the event SYNTELLECT modifies its usage of the trademark, a copy of the revised usage will be provided to VPI for its approval, which approval shall not be unreasonably withheld. Approval will be granted on the earlier of written receipt of approval/disapproval or within seven (7) business days from the date of submission.

4.4 The License is non-exclusive, and VPI shall be free to itself use or grant others the right to use the Trademarks

4.5 The License is non-divisible and shall not be assigned, transferred or sublicensed, without the prior written consent of VPI. Any assignment, transfer or sublicense without such consent shall be void and of no effect.

4.6 The License granted herein shall become effective on the Effective Date and continue until the earlier of five years or the date upon which SYNTELLECT ceases selling and supporting the Product (the "Term"), unless earlier terminated as provided herein. In the event SYNTELLECT requires an extension of the Term in order to fulfill its support obligations with respect to the Product, VPI will not unreasonably withhold its consent to such an extension.

4.7 The License is made AS-IS, without any warranty as to whether SYNTELLECT's use of the Trademarks as contemplated by the License will infringe the rights of any third party.

#### **Article 5** Protection of Licensed Trademarks

5.1 SYNTELLECT shall not register and/or utilize any trademarks similar to the Trademarks.

5.2 SYNTELLECT shall render VPI all reasonable assistance in connection with any matter pertaining to the registration, maintenance, renewal, protection, enforcement or infringement of the Trademarks.

5.3 SYNTELLECT shall provide VPI with prompt written notice of any and all infringements, imitations, simulations or other illegal use or misuse of the Trademarks that come to SYNTELLECT's attention. VPI shall have the sole discretion whether to take any action to prevent such activities and shall be entitled to keep all money recovered in any such action.

5.4 SYNTELLECT shall provide VPI with prompt written notice of any action commenced or threatened against SYNTELLECT in connection with its use of the Trademarks. SYNTELLECT shall allow VPI to participate in SYNTELLECT's defense of any such action.

5.5 In manufacturing and selling the Product that bears the Trademarks, SYNTELLECT shall comply with all laws of the United States and of the states where the Product is marketed.

#### **Article 6** Indemnification Regarding the License

6.1 VPI assumes no liability to SYNTELLECT or third parties with respect to the performance of the Product. SYNTELLECT shall indemnify, defend and hold harmless VPI and its affiliates, employees, representatives, directors, officers, and agents, from and against any and all costs, liabilities and expenses, including without limitation, interest, penalties, attorney and third party fees, and all amounts paid in the investigation, defense, and/or settlement of any of the foregoing, that relate in any way to the manufacture, production, performance, design, sale, distribution, use or advertisement of the Product sold under any of the Trademarks, or the use of the Trademarks on the Product, notwithstanding any approval that may have been given by VPI to SYNTELLECT regarding such products.

#### **Article 7** License Termination

7.1 In the event that SYNTELLECT fails to comply with any provision of this Agreement, VPI may terminate the License upon not less than 60 days' written notice to SYNTELLECT, but if SYNTELLECT shall correct such default during such notice period, such notice shall be of no further force or effect.

7.2 Termination of the License shall be without prejudice to any other remedy otherwise available to the terminating party at law or in equity.

## **Article 8** Ownership of Licensed Trademarks

8.1 SYNTELLECT acknowledges VPI's exclusive right, title and interest in and to the Trademarks and will not at any time do or cause any act or thing contesting or in any way impairing or tending to impair any part of such right, title and interest. SYNTELLECT shall not in any manner represent that it has any ownership in the Trademarks or registrations thereof, and SYNTELLECT acknowledges that use of the Trademarks shall not create any right, title or interest for SYNTELLECT, but all uses of the Trademarks by SYNTELLECT shall inure to the benefit of VPI. Upon the expiration or termination of this Agreement, SYNTELLECT will cease and desist from all use of the Trademarks in any way and no longer possess any right or interest in the Trademarks or any associated goodwill or registrations.

## **Article 9** Miscellaneous

9.1 This Agreement, including the exhibit hereto, and the agreements, documents and instruments to be executed and delivered pursuant hereto are intended to embody the final, complete and exclusive agreement among the parties with respect to the assignment of the Trademarks and Registrations; are intended to supersede all prior agreements, understandings and representations, written or oral, with respect thereto; and may not be contradicted by evidence of any such prior or contemporaneous agreement, understanding or representation, whether written or oral.

9.2 Failure of either party at any time to enforce any of the provisions of this Agreement shall not be deemed a waiver of such or any other provision. Any modification or waiver of any provision of this Agreement must be made in writing and signed by authorized representatives of both parties. Any such waiver shall in no way be construed as a waiver for any subsequent breach.

9.3 The invalidity or partial invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.

9.4 SYNTELLECT shall maintain as confidential and shall not disclose to any third party the financial terms of this Agreement without the prior written approval of VPI.

9.5 This Agreement is to be governed by and construed in accordance with the laws of the State of Arizona applicable to contracts made and to be performed wholly within such State, and without regard to the conflicts of laws principles thereof.

9.6 SYNTELLECT acknowledges that monetary relief would not be an adequate remedy for breach by SYNTELLECT of this Agreement and that VPI shall be entitled to enforcement of this

Agreement by injunction, specific performance or other equitable relief, without prejudice to any other rights and remedies that VPI may have.

9.7 In the event a dispute arises between the parties from this Agreement, the party prevailing in any litigation resulting from such dispute shall be entitled to recover as part of the award, its reasonable attorneys' fees and related legal expenses.

9.8 Any notices required or permitted to be given under this Agreement shall be deemed sufficiently given if mailed by registered mail, postage prepaid, addressed to the party to be notified at its address shown at the beginning of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in duplicate as of the Effective Date by their respective duly authorized representatives:

VOCAL POINT, INC.

By: [Signature]

Name: KURT LOSOFT

Title: VP

Date: 29 SEPT 00

SYNTELLECT, INC.

By: [Signature]

Name: TIM VADUONE

Title: VICE President

Date: SEPT 29, 2000

Exhibit A

<u>Trademark</u>	<u>Country</u>	<u>Registration Number</u>
VOCALPOINT	United States United Kingdom	1,871,845 1,548,689
VOCALPOINT INTERACTIVE WEB RESPONSE	United States United Kingdom	2,182,315 2,148,156
VISTA VOCALPOINT INTERACTIVE SERVICES TRANSACTION ARCHITECTURE	United States	application pending, Serial No. 75,466,723

678556 vl