

02-13-2001

FORM PTO-1618A  
Expires 06/30/99  
OMB 0651-0027



U.S. Department of Commerce  
Patent and Trademark Office  
TRADEMARK

101612951

2-501

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### 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  
\_\_\_\_\_

#### Conveying Party

Mark if additional names of conveying parties attached

Name TestOut! Corporation

Execution Date  
Month Day Year  
10 13 00

Formerly \_\_\_\_\_

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other \_\_\_\_\_
- Citizenship/State of Incorporation/Organization Utah

#### Receiving Party

Mark if additional names of receiving parties attached

Name First Security Bank, N.A.

DBA/AKA/TA \_\_\_\_\_

Composed of \_\_\_\_\_

Address (line 1) 79 South Main Street #800

Address (line 2) \_\_\_\_\_

Address (line 3) Salt Lake City  
City

Utah  
State/Country

84111  
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.

*Handwritten symbols and numbers*

02/12/2001 6TDM11 00000080 76132944

FOR OFFICE USE ONLY

01 FC:481  
02 FC:482

40.00 DP  
125.00 DP

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: 002233 FRAME: 0394

**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)		
<input type="text" value="76/132944"/>	<input type="text" value="76/014000"/>	<input type="text"/>	<input type="text" value="2,369,741"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="76/132943"/>	<input type="text" value="75/481541"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="76/132945"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

**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.

Stephen C. Tingey

Name of Person Signing

*Stephen C. Tingey*  
Signature

01/31/01

Date Signed

## SECURITY AGREEMENT

THIS SECURITY AGREEMENT (the "Agreement"), dated as of October 13, 2000, is entered between TESTOUT! CORPORATION, a Utah corporation ("Borrower"), and FIRST SECURITY BANK, N.A. ("Lender").

### RECITALS:

A. Lender has extended credit to Borrower pursuant to the following:

1. Borrower made, executed and delivered to Lender, a Promissory Note dated October 30, 1997 ("Note 9002") in the original principal sum of \$441,000.00.
2. Borrower entered into and signed with Lender a Master Equipment Lease Agreement dated February 17, 1998 (the "Master Lease Agreement").
3. In connection with the Master Lease Agreement, Borrower made, executed and delivered to Lender: (i) Lease Schedule to Master Equipment Lease Agreement, Lease No. 3003450, dated February 17, 1998 ("Lease 3003450"), and (ii) Lease Schedule to Master Equipment Lease Agreement, Lease No. 3003459, dated March 24, 1998 ("Lease 3003459") wherein Borrower promised to pay to Lender the amounts described in Lease 3003450 and Lease 3003459 and Lender retained title to and was granted a security interest in the equipment described in Lease 3003450 and Lease 3003459. The Master Lease Agreement, Lease 3003450 and Lease 3003459 are hereafter referred to collectively as the "Leases."
4. Borrower made, executed and delivered to Lender a Promissory Note dated April 15, 1999 (the "Note 9005") in the original principal sum of \$120,000.00.
5. Borrower made, executed and delivered to Lender a Promissory Note dated March 20, 1998 ("Note 9004"), in the original principal sum of \$250,000.00.

Note 9002, Note 9004, Note 9005 and the Leases are hereafter referred to as the "Notes" and the obligations evidenced by the Notes are hereafter referred to as the "Loans." The Notes, and all documents executed in connection with any of the Notes are hereafter referred to collectively as the "Loan Documents."

B. In consideration of accommodations made in connection with the Loans, Borrower has agreed to grant to Lender the security interests and liens set forth in this Agreement.

C. All notes, loan agreements and other documents executed in connection with the Loans, including the Loan Modification Agreement of even date herewith, are hereafter referred to as the "Loan Documents." All indebtedness, liabilities, obligations, indemnifications, covenants and responsibilities of Borrower to Lender under the Loan Documents, whether now existing or hereafter arising, shall be referred to as the "Obligations."

D. In addition to all other collateral described and granted pursuant to the Loan Documents, the term "Collateral" as used herein shall include all Equipment (as that term is defined below), all Inventory (as defined below), all Receivables (as defined below), all General Intangibles (as defined below), and all Intellectual Property (as defined below), whether now owned or hereafter acquired or arising, and wherever located, together with all products and proceeds therefrom (including without limitation proceeds of insurance policies insuring any Collateral against loss by theft, casualty or otherwise). Collateral shall also include any substitutions for, accessions and modifications to and other additions and replacements for any of the Collateral and any other rights or interests arising out of or in connection with any of the Collateral. Collateral shall also include all records, accountings, reports, papers and documents relating to any of the Collateral, including all computer records, data programs, software, disks, etc., relating to or arising out of or used in connection with any of the Collateral.

E. The term "Equipment" shall mean all equipment (as defined in the Uniform Commercial Code), machinery, computers, furniture, furnishings, building materials, appliances and mechanical systems of every nature, whether now or hereafter acquired. Equipment shall also include all General Intangibles related to or arising from the ownership or operation of any of the foregoing.

F. The term "General Intangibles" shall include the meaning specified in the Uniform Commercial Code and shall include without limitation all licensing agreements, licenses, permits, goodwill, patents, trademarks, service-marks, trade names, copyrights, trade secrets, intellectual property, customer lists, choses in action, contracts and contract rights, rents, royalties, revenues, income, issues, profits, privileges, appurtenances, water rights and shares of stock in water companies, purchase agreements, development and use rights, governmental entitlements and authorizations, use rights, use permits, utility contracts, utility deposits and rebates, voting and other rights under any recorded or unrecorded declaration, articles, bylaws, or rules and regulations established by any owners' association or similar entity, declarant and other rights under any recorded or unrecorded covenants, conditions and restrictions, plans and specifications, studies, data, tests, reports and drawings, surveys, guaranties, warranties, management agreements, franchise agreements, operating agreements, service contracts, and all other intangible property.

G. The term "Inventory" shall include the meaning specified in the Uniform Commercial Code, and shall include without limitation all goods, raw materials, stock in trade, finished goods, goods in process, merchandise, parts, building supplies, and materials, supplies and tools.

"Inventory" shall include all General Intangibles related to or arising from the ownership, manufacturing, processing, storing, shipping, sale or distribution of any of the foregoing.

H. The term "Receivables" shall mean all of Borrower's accounts (as defined in the Uniform Commercial Code) and any and all rights of any kind of Borrower to payment from a third party, including without limitation all instruments, executory contract rights, contract rights, chattel paper, documents and tax refunds, whether the rights associated therewith are now held or existing or hereafter acquired or arising and wherever located. Receivables shall also include all ledger sheets, files, records and documents relating to the same, including but not limited to invoices, purchase orders, contracts, etc.

1. The term "Intellectual Property" shall mean all copyrights, rights in copyrights, interests in copyrights, copyright applications, copyright registrations, trademarks, service marks, trade names, patents, patent rights and shop rights in which Borrower has interest, whether as owner, assignee or otherwise, or which are otherwise held in its name, and all related registrations, applications, renewals and extensions for the same, which are created by, arise under or exist under, the laws of the United States or any State, Territory or political subdivision thereof, all licenses, sublicenses, contracts and agreements relating to the foregoing, and all trade secrets, knowledge and information relating to Borrower's business, goods or the foregoing, along with the goodwill of the business and all general intangibles associated with all of the foregoing, including, but not limited to, those copyrights, trademarks, service marks and patents listed in SCHEDULE A hereto.

#### AGREEMENT:

1. To secure repayment of the Obligations, Borrower hereby grants, assigns and conveys to Lender a security interest and lien in all of Borrower's right, title and interest, whether now existing or hereafter created or acquired, in and to the Collateral. The liens and security interests granted hereby shall be in addition to all other liens and security interests granted by the other Loan Documents to secure the Obligations.

2. Borrower shall execute and deliver or shall cause to be executed and delivered all documents and shall take all actions that Lender may at any time deem appropriate to secure, perfect, protect and enforce the liens, security interests and rights of Lender granted under this Agreement.

3. Borrower warrants and represents as follows:

(a) Borrower is validly existing and in good standing. Borrower has full power, authority and capacity to execute this Agreement. The person or persons executing this Agreement on behalf of Borrower are duly authorized to do so.

(b) This Agreement is in all respects legal, valid, and binding according to its terms. The execution and performance of this Agreement will not violate any applicable law, regulation, order, judgment or decree, partnership agreement, article of incorporation, bylaw, article of organization, operating agreement, indenture, contract or agreement that purports to be binding on the Borrower or its assets, and will not result in the creation of any encumbrance on the assets of Borrower except as contemplated by this Agreement.

(c) Any financial statements of Borrower heretofore delivered to Lender are true and correct in all respects. The most recent statements given to Lender accurately represent the current financial condition of Borrower. Since the date of such statements, the business, properties, assets, and liabilities of Borrower have not been adversely affected or changed in any material way except that the debt owed to the Internal Revenue Service is shown without interest or penalties, and except that the debt owed to Lender on leased equipment is shown as of year-end 1999.

(d) All written representations previously made and information previously given by Borrower or Borrower's agents to Lender or its agents remain true and correct.

(e) Borrower is in good standing under, and in full compliance with, all applicable laws, codes, rules and regulations under federal, state and municipal authority, including without limitation the proper use, storage, registration and disposal of any hazardous materials.

(f) There are no existing actions, suits, or proceedings pending or threatened against Borrower that may have an adverse effect upon the financial condition, the business, or the assets of Borrower or the Collateral, and no judgment, order, or decree has been rendered which has not been discharged, satisfied, or complied with other than those disclosed to Lender in writing on SCHEDULE B hereto.

(g) Borrower has good title to its assets, including the Collateral and including the properties and assets reflected in the most recent statements given to Lender, and such title is free and clear of all liens and encumbrances except those in favor of Lender and those shown on Exhibit C to the Loan Modification Agreement, of even date herewith. Borrower at its own expense shall defend Lender's interest in the Collateral.

(h) Each item of Intellectual Property identified on the attached Schedule A and the other copyrights, trademarks, service marks, trade names and patents is valid and enforceable, does not infringe on the rights of any third parties, and has not been challenged by third parties.

4. Borrower will:

(a) duly observe and conform to all requirements of any governmental authorities relative to the conduct of Borrower's business or to Borrower's properties or assets, including without limitation the proper use, storage, registration and disposal of any hazardous materials;

(b) maintain and keep in full force and effect all licenses and permits necessary to the proper conduct of Borrower's business, including the continuance of Borrower's good standing; and

(c) pay all obligations and liabilities when due, including without limitation all taxes, assessments and governmental charges or levies imposed upon Borrower or upon Borrower's income or profits or upon any property belonging to Borrower, and maintain appropriate reserves for the accrual of the same in accordance with generally accepted accounting principles.

5. Borrower will maintain, with financially sound and responsible companies, hazard and liability insurance in such form and in such amounts and against such risks as is customarily carried by companies engaged in the same or a similar business and operating like properties or as requested by Lender and shall provide Lender evidence of such coverage. With respect to the Collateral, such policies shall cover at least the full insurable value of the Collateral, and such policies shall identify Lender as an additional insured and shall include a standard mortgagee clause or a lender's loss payable endorsement, as applicable, in favor of Lender. If Borrower fails to obtain such insurance coverage, Lender may obtain such insurance coverage, and any premiums for such insurance shall become part of the Obligations, shall be repaid to Lender on demand, and shall accrue interest at the highest rate at which the Obligations are accruing interest.

6. Borrower will permit Lender or its agents to inspect the Collateral, Borrower's books and financial records of Borrower and to discuss the affairs, finances and assets of Borrower with Borrower, all at such reasonable times and as often as Lender may reasonably request.

7. Borrower will not create or suffer to exist any lien or encumbrance on any of the Collateral except liens in favor of Lender or liens disclosed to Lender on Exhibit C to the Loan Modification Agreement, of even date herewith. Borrower shall notify Lender in writing immediately upon receipt of notice of the imposition of any lien, levy, attachment or execution on the business or assets of Borrower. Borrower shall cause such liens or other process not permitted by this Section to be satisfied immediately. Lender may discharge such unpermitted liens and encumbrances, and any such amounts shall become part of the Obligations, shall be repaid to Lender on demand, and shall accrue interest at the highest rate at which the Obligations are accruing interest.

8. Except for sales or disposal in the ordinary course of its business, Borrower will not transfer, sell, convey, grant or otherwise convey any right, title or interest in and to any of the Collateral, without the prior written consent of Lender.

9. If, before the Obligations shall have been satisfied in full, Borrower shall obtain rights to any new copyrights, trademarks, service marks, trade names, patents, or other intellectual property rights relating to the Collateral, the provisions of this Security Agreement shall automatically apply thereto and Borrower shall give Lender prompt written notice thereof. Borrower authorizes Lender to modify this Agreement by amending Schedule A hereto to include those future copyrights, trademarks, service marks, trade names and patents identified in this paragraph.

10. Borrower shall immediately notify Lender in writing of any change in the location of Borrower's business or any change in Borrower's name.

11. The occurrence of an Event of Default under any of the Loan Documents shall constitute an event of default under this Agreement.

12. Upon the occurrence of an event of default as described in Section 11:

(a) Lender may (i) declare the entire Obligations to be immediately due and payable, whereupon the principal amount of the outstanding Obligations, together with accrued interest thereon, shall become immediately due and payable in full; and/or (ii) proceed to enforce any of its remedies under this Agreement and the other Loan Documents.

(b) Lender may, in its sole discretion and for its sole account, advance such sums and costs and take such other steps as it may deem necessary or advisable to protect the Collateral. All sums advanced or paid by Lender for such purposes shall accrue interest at the highest rate at which the Obligations accrue interest, and shall be payable by the Borrower to Lender on demand, and shall be part of the Obligations.

(c) Lender may, at its sole option, without demand and upon such notice as may be required by law, and irrespective of negative consequences to Borrower or to any other party to the Loan Documents, do any one or more of the following: (i) require Borrower to assemble the Collateral and make it available to Lender at a place designated by Lender; (ii) immediately take possession of the Collateral wherever it may be found, using all necessary and lawful actions to do so, and Borrower waives all claims to damages due to or arising from or connected with any such taking; (iii) proceed in the foreclosure of this Agreement and sell all the Collateral in any manner permitted by law or provided for herein; (iv) sell the Collateral at public or private sale with or without having said Collateral at the place of sale and upon terms and in such manner as Lender may determine, with Borrower agreeing that if notice of such a sale is required by law, a ten (10) day notice period shall be commercially reasonable unless a shorter time period is permitted by law or the other Loan Documents; (v) complete the processing of any of the Collateral or repair or recondition any of the Collateral to such extent as Lender may

deem advisable, and any sums expended therefor by Lender shall be repaid by Borrower and be part of the Obligations; (vi) take possession of Borrower's premises to complete such processing, repairing and reconditioning, using the facilities and other property of Borrower to do so, to store any of the Collateral subject to Lender's security interest and to conduct any sale as provided for herein, all without compensation to Borrower; (vii) sell, in one or more sales, at public or private sale, for such price as it may deem fair, any or all of the Collateral; and (viii) be the purchaser of any of the Collateral so sold and hold the same thereafter in its own right, absolutely free from any claims or rights of Borrower.

The net proceeds of any sale as hereinbefore described shall be applied against the amount owed on the Obligations in such order as Lender may elect. Borrower shall forthwith pay to Lender any deficiency upon demand. Demand of performance, advertisement and presence of property at sale are hereby waived, and Lender is hereby authorized to sell hereunder any evidence of debt it may hold as security for the Obligations. All demands and presentments of any kind or nature are expressly waived by Borrower. Borrower hereby waives any right to require Lender to proceed against any Collateral. Borrower waives the right to require Lender to pursue any other remedy for the benefit of Borrower and agrees that Lender may proceed against Borrower for the amount of the Obligations owed by Borrower to Lender without taking any action against any other party and without selling or otherwise proceeding against or applying any Collateral. Borrower authorizes Lender, at its option, to apply toward the payment of the Obligations all balances of any deposit account in the name of Borrower held by Lender.

(d) Lender may exercise and enforce with respect to the Collateral any and all other rights and remedies available on default to a secured party under this Agreement, the Loan Agreement, the other Loan Documents, the Uniform Commercial Code or other applicable law.

No remedy given to Lender in the Loan Documents, which includes this Agreement, is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given under the Loan Documents or now or hereafter existing at law or in equity or by statute.

13. Time is of the essence of this Agreement. No failure or delay on the part of Lender in exercising any right, power or privilege hereunder or under the other Loan Documents 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. The rights and remedies herein provided are cumulative and not exclusive of any rights or remedies provided by law.

14. Borrower shall pay all attorneys' fees, paralegal fees, costs, including without limitation costs of appraisals, environmental audits and evidences of title, and other expenses incurred by Lender in the enforcement of its rights hereunder and the other Loan Documents, whether any default is ultimately cured or Lender is obligated to pursue its remedies hereunder, including such expenses incurred before legal action, during the pendency of any such legal action, during the enforcement of Lender's rights in any bankruptcy or insolvency proceedings, and continuing to all such expenses in connection with any appeal to higher courts arising out of matters associated therewith. Until so paid, all such fees, costs and expenses shall constitute part of the Obligations of Borrower secured by this Agreement and shall accrue interest at the highest rate at which the Obligations accrue interest.

15. Any notice required by this Agreement will be deemed effective if personally delivered to the party to which notice is being given, or, in the alternative, on the date such notice is placed, first-class mail, in the U.S. Mail addressed to the party to which notice is being given, at such address as is set forth below.

16. All representations and warranties made in this Agreement and certificates delivered pursuant hereto and thereto shall survive the execution and delivery of this Agreement and shall survive payment of the Obligations. This Agreement shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns, except that the Borrower may not assign or transfer its rights under the Loan Documents without the prior written consent of Lender. It is understood that Lender may sell its interests under this Agreement and the other Loan Documents without the need for Borrower's consent and may procure other lenders to participate therein, and Lender may issue participation certificates to such other lenders. A copy of this Agreement may be filed as a Uniform Commercial Code financing statement.

17. Borrower agrees to execute any other documentation and provide such other information and documentation as Lender may reasonably require. Any provision of this Agreement that may be found to be invalid shall be deemed separable and shall not invalidate the remainder of the provisions.

18. This Agreement may be signed in any number of counterparts, each of which shall be deemed an original, and such counterparts together shall constitute one and the same instrument. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Utah. References to "Uniform Commercial Code" shall mean the Utah Uniform Commercial Code.

DATED as of the date written above.

LENDER:

FIRST SECURITY BANK, N.A.

By: Matt P. [Signature]  
Its: Vice President

BORROWER:

TESTOUT! CORPORATION, a Utah corporation

By: Paul Valley [Signature]  
Its: President

558164/v3

SCHEDULE A

to

Security Agreement

I. Trademark:

Mark: TESTOUT!

Reg. No.: 2,369,741

Registered: July 25, 2000

II. Application for Trademark:

Mark: EXAMSIM

Serial No.: 76/132944

International Class: 9

Applicant: TestOut! Corporation  
50 South Main Street  
Pleasant Grove, UT 84062

Goods: Computer-based training stored on a CD-ROM, computer hard drive or other electronic storage device for computers.

III. Application for Trademark:

Mark: LABSIM

Serial No.: 76/132943

International Class: 9

Applicant: TestOut! Corporation  
50 South Main Street  
Pleasant Grove, UT 84062

Goods: Computer-based training stored on a CD-ROM, computer hard drive or other electronic storage device for computers.



IV. Application for Service Mark:

Mark: WE SELL EXPERIENCE

Serial No.: 76/132945

International Class: 35

Applicant: TestOut! Corporation  
50 South Main Street  
Pleasant Grove, UT 84062

Goods: Business services, including providing distributorships for selling computer-based training and training products.

V. Application for Trademark:

Mark: THE LESSONS ONLY EXPERIENCE CAN TEACH

Serial No.: 76/014,000

International Class: 9

Applicant: TestOut! Corporation  
50 South Main Street  
Pleasant Grove, UT 84062

Goods: Computer educational software, namely, a self-study tool for use in software user certification training; audio tapes, video tapes, and CD-ROM featuring self-study training in software user certification training.

VI. Application for Trademark:

Mark: TESTOUT

Serial No.: 75/481541

International Class: 9

Applicant: TestOut! Corporation  
50 South Main Street  
Pleasant Grove, UT 84062

Goods: Computer educational software, namely, a self-study tool for use in software user certification training; audio tapes, video tapes, and CD-ROM featuring self-study training in software user certification training.

**SCHEDULE B**  
to  
**Security Agreement**

The following actions, suits and proceedings pending or threatened against Borrower are disclosed to Lender pursuant to paragraph 3(f):

- (1) Arbitration award in favor of PC Age in the approximate amount of \$70,000.00.
- (2) Action initiated or threatened by Express Recovery alleging a claim of less than \$5,000.00.
- (3) Action initiated or threatened by Intermountain Envelope alleging a claim of less than \$5,000.00.
- (4) Action initiated or threatened by MCB Printing alleging a claim of approximately \$50,000.00.
- (5) Action threatened by Video West.

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