

03-14-2001

FORM PTO-1594
(Rev 5-93)



COVER SHEET
BY

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

To the Honorable

101635753

and the attached original documents or copy thereof.

1. Name of conveying party(ies):

KEYSTROKE TECHNOLOGY SOLUTIONS, INC.

Individual(s) citizenship:

Association:

General Partnership:

Limited Partnership:

Corporation - State: WASHINGTON

Other:

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

3. Nature of Conveyance:

- Assignment Merger
- Security Agreement Change of Name
- Other

Execution Date: December 9, 1999

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

Name: IMPERIAL BANK
Address: 5330 CARILLON POINT
City: KIRKLAND State: WA Zip: 98033

Individual(s) citizenship:

Association:

General Partnership:

Limited Partnership:

Corporation - State:

Other: a California chartered bank

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designations must be a separate document from assignment)

Additional name(s) & address(es) attached? Yes No

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ASSIGNMENT SECTION
DIVISION

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,084,885

Additional numbers attached? Yes No

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

Name: Erin O'Brien
Internal Address: GRAY CARY WARE & FREIDENRICH
400 Hamilton Avenue
Palo Alto, California 94301

6 Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41) \$ 40.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number: _____

(Attach duplicate copy of this page if paying by deposit account)

03/14/2001 DEYRNE 00000136 2084885

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9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Erin O'Brien
Name of Person Signing

Erin O'Brien
Signature

March 13, 2000
Date

Total number of pages comprising cover sheet: [9]

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

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1090371-928100

TRADEMARK
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SECOND AMENDMENT
TO
LOAN DOCUMENTS

This Second Amendment to Loan Documents is entered into as of February 15, 2001 (the "Amendment"), by and between IMPERIAL BANK ("Bank") and KEYSTROKE TECHNOLOGY SOLUTIONS, INC. ("Borrower").

RECITALS

Borrower and Bank are parties to that certain Loan and Security Agreement dated as of December 9, 1999, as amended including without limitation that certain First Amendment to Loan and Security Agreement dated as of November 1, 2000 (collectively, the "Loan Agreement"). In connection with the Loan Agreement, Borrower executed an Intellectual Property Security Agreement dated as of December 9, 1999, as amended by that certain First Amendment to Intellectual Property Security Agreement dated as of November 1, 2000, a Warrant to Purchase Stock dated as of December 9, 1999, as amended by that certain First Amendment to Warrant to Purchase Stock dated as of February 23, 2000, and that certain Warrant to Purchase Stock dated as of November 1, 2000 (collectively with the Loan Agreement, the "Loan Documents"). Each of the Loan Documents refers to Borrower as "KEYSTROKE.COM, INC." Borrower has changed its name as reflected in Exhibit A attached hereto, and this Amendment corrects the name of Borrower in each of the Loan Documents. Additionally, the parties desire to amend the Loan Agreement in accordance with the terms of this Amendment.

NOW, THEREFORE, the parties agree as follows:

1. All references in the Loan Documents to "KEYSTROKE.COM, INC." shall mean and refer to "KEYSTROKE TECHNOLOGY SOLUTIONS, INC."

2. Borrower may not request or receive any additional Credit Extensions.

3. Section 6.12 of the Loan Agreement is hereby amended in its entirety to read as follows:

6.12 New Equity. After August 30, 2000 and on or before February 28, 2001, Borrower shall receive cash proceeds from the sale and issuance of its equity or convertible debt securities to institutional venture capital investors or strategic investors satisfactory to Bank in an amount of at least Three Million Dollars (\$3,000,000) (the "\$3MM Round"). Additionally, after the \$3MM Round and on or before May 31, 2001, (i) Borrower shall receive cash proceeds from the sale and issuance of its equity securities to institutional venture capital investors or strategic investors satisfactory to Bank in an amount of at least Seven Million Dollars (\$7,000,000) and (ii) all Borrower's outstanding convertible debt shall be converted into Borrower's equity securities. Borrower shall deliver to Bank a subordination agreement, in form and substance satisfactory to Bank, signed by each holder of its convertible debt on or before the date on which such convertible debt is issued by Borrower, in compliance with Section 7.4 of this Agreement.

4. Bank waives Borrower's violation of Section 6.12 of the Loan Agreement, as such section was in effect prior to this Amendment. Bank does not waive Borrower's obligations under Section 6.12 of the Loan Agreement after the date of this Amendment, and Bank does not waive any other failure by Borrower to perform its Obligations under the Loan Documents. This waiver is not a continuing waiver with respect to any failure to perform any Obligation after the date of this Amendment.

5. Unless otherwise defined, all initially capitalized terms in this Amendment shall be as defined in the Loan Agreement. The Loan Documents, as amended hereby, shall be and remain in full force and effect in accordance with its respective terms and hereby is ratified and confirmed in all respects. Except as expressly set

forth herein, the execution, delivery, and performance of this Amendment shall not operate as a waiver of, or as an amendment of, any right, power, or remedy of Bank under the Loan Documents, as in effect prior to the date hereof. Borrower ratifies and reaffirms the continuing effectiveness of all promissory notes, guaranties, security agreements, mortgages, deeds of trust, environmental agreements, and all other instruments, documents and agreements entered into in connection with the Loan Documents.

6. Borrower represents and warrants that the representations and warranties contained in the Loan Documents are true and correct as of the date of this Amendment, and that no Event of Default has occurred and is continuing.

7. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one instrument.

8. As a condition to the effectiveness of this Amendment, Bank shall have received, in form and substance satisfactory to Bank, the following:

(a) this Amendment, duly executed by Borrower; and

(b) such other documents, and completion of such other matters, as Bank may reasonably deem necessary or appropriate.

IN WITNESS WHEREOF, the undersigned have executed this Amendment as of the first date above written.

KEYSTROKE TECHNOLOGY SOLUTIONS,
INC.

By: Heather K O'Keefe
Title: VP Finance

IMPERIAL BANK

By: [Signature]
Title: VP

Exhibit A
Articles of Amendment

Gray Cary\PA\10105660.7
1090371-928100

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ARTICLES OF AMENDMENT
OF
ARTICLES OF INCORPORATION
OF
KEYSTROKE.COM, INC.

STATE OF WASHINGTON

JAN 31 2001

SECRETARY OF STATE

THESE ARTICLES OF AMENDMENT of the Articles of Incorporation of KEYSTROKE.COM, INC., a Washington corporation, are hereby executed and delivered for filing in accordance with the provisions of Section 23B.10.060 of the Washington Business Corporation Act:

1. The name of the corporation is **KEYSTROKE.COM, INC.**
2. Article I of the Articles of Incorporation of the corporation is hereby amended to

read as follows:

ARTICLE I
Name

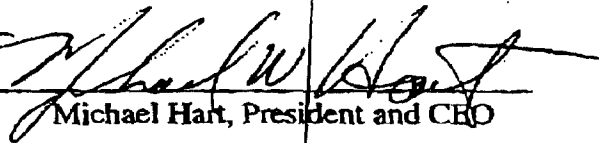
The name of the corporation is **KEYSTROKE TECHNOLOGY SOLUTIONS, INC.**

3. The above amendment was adopted on January 11, 2001.
4. The above amendment was duly approved by the Board of Directors of the corporation, without shareholder action, in accordance with the provisions of Section 23B.10.020(5) of the Washington Business Corporation Act. Shareholder action was not required to effect this amendment.

DATED this 25th day of January, 2001.

KEYSTROKE.COM, INC.

By


Michael Hart, President and CEO

INTELLECTUAL PROPERTY SECURITY AGREEMENT

This Intellectual Property Security Agreement (the "Agreement") is made as of December 9, 1999, by and between KEYSTROKE.COM, INC., a Washington corporation ("Grantor"), and Imperial Bank ("Secured Party").

RECITALS

A. Secured Party has agreed to make certain advances of money and to extend certain financial accommodations to Grantor (the "Loans") in the amounts and manner set forth in that certain Loan and Security Agreement by and between Secured Party and Grantor dated as of the date hereof, as amended from time to time (the "Loan Agreement"; capitalized terms used herein without definition are used as defined in the Loan Agreement). Secured Party is willing to make the Loans to Grantor, but only upon the condition, among others, that Grantor shall grant to Secured Party a security interest in certain of the Copyrights, Trademarks and Patents to secure the obligations of Grantor under the Loan Agreement and any other Agreement now existing or hereafter arising between Secured Party and Grantor.

B. Pursuant to the terms of the Loan Agreement, Grantor has granted to Secured Party a security interest in all of Grantor's right, title and interest, whether presently existing or hereafter acquired, in, to and under all of the Collateral upon the occurrence of the Equity Event. Secured Party will not publicly file this Agreement until the occurrence of the Equity Event.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Grant of Security Interest. As collateral security for the prompt and complete payment and performance of all of Grantor's present or future indebtedness, obligations and liabilities to Secured Party, Grantor hereby grants a security interest and mortgage to Secured Party, as security, in and to Grantor's entire right, title and interest in, to and under the following (all of which shall collectively be called the "Collateral"):

(a) Any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held, including without limitation those set forth on Exhibit A attached hereto (collectively, the "Copyrights");

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

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

(d) All patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, including without limitation the patents and patent applications set forth on Exhibit B attached hereto (collectively, the "Patents");

(e) Any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Grantor connected with and symbolized by such trademarks, including without limitation those set forth on Exhibit C attached hereto (collectively, the "Trademarks");

(f) Any and all claims for damages by way of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

(g) All licenses or other rights to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use to the extent permitted by such license or rights; and

(h) All amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents; and

(i) All proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

2. Authorization and Request. Grantor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this security agreement.

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

(a) Grantor is now the sole owner of the Collateral, except for non-exclusive licenses granted by Grantor to its customers in the ordinary course of business;

(b) Except as set forth in the Schedule, Grantor's rights as a licensee of intellectual property do not give rise to more than five percent (5%) of its gross revenue in any given month, including without limitation revenue derived from the sale, licensing, rendering or disposition of any product or service;

(c) Performance of this Agreement does not conflict with or result in a breach of any agreement to which Grantor is party or by which Grantor is bound;

(d) During the term of this Agreement, Grantor will not transfer or otherwise encumber any interest in the Collateral, except for non-exclusive licenses granted by Grantor in the ordinary course of business or as set forth in this Agreement;

(e) To its knowledge, each of the Patents is valid and enforceable, and no part of the Collateral has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Collateral violates the rights of any third party;

(f) Grantor shall deliver to Secured Party within (30) days of the last day of each fiscal quarter, a report signed by Grantor, in form reasonably acceptable to Secured Party, listing any applications or registrations that Grantor has made or filed in respect of any patents, copyrights or trademarks and the status of any outstanding applications or registrations. Grantor shall promptly advise Secured Party of any material change in the composition of the Collateral, including but not limited to any subsequent ownership right of the Grantor in or to any Trademark, Patent or Copyright not specified in this Agreement;

(g) Grantor shall (i) protect, defend and maintain the validity and enforceability of the Trademarks, Patents and Copyrights (ii) use its best efforts to detect infringements of the Trademarks, Patents and Copyrights and promptly advise Secured Party in writing of material infringements detected and (iii) not allow any Trademarks, Patents or Copyrights to be abandoned, forfeited or dedicated to the public without the written consent of Secured Party, which shall not be unreasonably withheld, unless Grantor determines that reasonable business practices suggest that abandonment is appropriate;

(h) Grantor shall apply for registration on an expedited basis (to the extent not already registered) with the United States Patent and Trademark Office or the United States Copyright Office, as applicable: (i) those intellectual property rights listed on Exhibits A, B and C hereto within forty-five (45) days of the date of this Agreement, (ii) all registerable intellectual property rights Grantor has developed as of the date of this Agreement but heretofore failed to register, within forty-five (45) days of the date of this Agreement, and (iii) those additional intellectual property rights developed or acquired by Grantor from time to time in connection with any product, prior to the sale or licensing of such product to any third party and prior to Grantor's use of such product (including without limitation revisions or additions to the intellectual property rights listed on such Exhibits A, B and C). Grantor shall give Secured Party notice of all such applications or registrations.

(i) This Agreement creates, and in the case of after acquired Collateral, this Agreement will create at the time Grantor first has rights in such after acquired Collateral, in favor of Secured Party a valid and perfected first priority security interest in the Collateral in the United States securing the payment and performance of the obligations evidenced by the Loan Agreement upon making the filings referred to in clause (j) below;

(j) To its knowledge, except for, and upon, the filing with the United States Patent and Trademark office with respect to the Patents and Trademarks and the Register of Copyrights with respect to the Copyrights necessary to perfect the security interests created hereunder, and except as has been already made or obtained, no authorization, approval or other action by, and no notice to or filing with, any U.S. governmental authority or U.S. regulatory body is required either (i) for the grant by Grantor of the security interest granted hereby or for the execution, delivery or performance of this Agreement by Grantor in the U.S. or (ii) for the perfection in the United States or the exercise by Secured Party of its rights and remedies hereunder;

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

(l) Grantor shall not enter into any agreement that would materially impair or conflict with Grantor's obligations hereunder without Secured Party's prior written consent, which consent shall not be unreasonably withheld. Grantor shall not permit the inclusion in any material contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a security interest in Grantor's rights and interests in any property included within the definition of the Collateral acquired under such contracts; and

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

4. Secured Party's Rights. Secured Party shall have the right, but not the obligation, to take, at Grantor's sole expense, any actions that Grantor is required under this Agreement to take but which Grantor fails to take, after fifteen (15) days' notice to Grantor. Grantor shall reimburse and indemnify Secured Party for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this section 4.

5. Inspection Rights. Grantor hereby grants to Secured Party and its employees, representatives and agents the right to visit, during reasonable hours upon prior reasonable written notice to Grantor, any of Grantor's plants and facilities that manufacture, install or store products (or that have done so during the prior six-month period) that are sold utilizing any of the Collateral, and to inspect the products and quality control records relating thereto upon reasonable written notice to Grantor and as often as may be reasonably requested.

6. Further Assurances; Attorney in Fact.

(a) On a continuing basis, Grantor will make, execute, acknowledge and deliver, and file and record in the proper filing and recording places in the United States, all such instruments, including appropriate financing and continuation statements and collateral agreements and filings with the United States Patent and Trademark Office and the Register of Copyrights, and take all such action as may reasonably be deemed necessary or advisable, or as requested by Secured Party, to perfect Secured Party's security interest in all Copyrights, Patents and Trademarks and otherwise to carry out the intent and purposes of this Agreement, or for assuring and confirming to Secured Party the grant or perfection of a security interest in all Collateral.

(b) Grantor hereby irrevocably appoints Secured Party as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor, from time to time in Secured Party's discretion, to take any action and to execute any instrument which Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement, including (i) to modify, in its sole discretion, this Agreement without first obtaining Grantor's approval of or signature to such modification by amending Exhibit A, Exhibit B and Exhibit C, thereof, as appropriate, to include reference to any right, title or interest in any Copyrights, Patents or Trademarks acquired by Grantor after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents or Trademarks in which Grantor no longer has or claims any right, title or interest, (ii) to

file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of Grantor where permitted by law and (iii) after the occurrence of an Event of Default, to transfer the Collateral into the name of Secured Party or a third party to the extent permitted under the California Uniform Commercial Code.

7. Events of Default. The occurrence of any of the following shall constitute an Event of Default under the Agreement:

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

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

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

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

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

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

12. Amendments. This Agreement may be amended only by a written instrument signed by both parties hereto.

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

14. California Law and Jurisdiction; Jury Waiver. This Agreement shall be governed by the laws of the State of California, without regard for choice of law provisions. Grantor and Secured Party consent to the exclusive jurisdiction of any state or federal court located in Santa Clara County, California. GRANTOR AND SECURED PARTY EACH WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE LOAN AGREEMENT, THIS AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

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

GRANTOR:

Address of Grantor:

1511 Third Avenue, Suite 1018
Seattle, WA 98101

Attn: Max Clough

KEYSTROKE.COM, INC.

By: 

Its: Chairman, CEO

SECURED PARTY:

Address of Secured Party:

5330 Carillon Point
Kirkland, WA 98033

Attn: J.P. Michael / Bob Van Nortwick

IMPERIAL BANK

By: 

Its: Vice President

EXHIBIT A

Copyrights

Description

Registration/
Application
Number

Registration/
Application
Date

EXHIBIT B

Patents

Description

**Registration/
Application
Number**

**Registration/
Application
Date**

EXHIBIT C

Trademarks

Description

Registration/
Application
Number

Registration/
Application
Date