

04-30-2001



101695259

RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY

APR 12 2001

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  Effective Date  
Month Day Year
- Change of Name
- Other

Conveying Party

Mark if additional names of conveying parties attached

Name

Execution Date  
Month Day Year

Formerly

- Individual  General Partnership  Limited Partnership  Corporation  Association
- Other

Citizenship/State of Incorporation/Organization

Receiving Party

75617303

Mark if additional names of receiving parties attached

Name

DBA/AK/A/T/A

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

04/30/2001 AAHME1 00000032 501563 75617303

FOR OFFICE USE ONLY

01 FC:481 40.00 CH  
02 FC:482 200.00 CH

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

FORM PTO-1618B  
Expires 08/31/99  
OMB 0851-0027

Page 2

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

**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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| <input type="text" value="76/160,224"/> | <input type="text"/>                    | <input type="text"/>                    | <input type="text" value="2,048,170"/> | <input type="text" value="2,077,220"/> | <input type="text"/>                   |
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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.

Thomas C. McThenia, Jr.

4/11/2001

Name of Person Signing

Signature

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

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DBA/AKATA

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Trademark Application Number(s)

Registration Number(s)

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Trademark Application Number(s)

Registration Number(s)

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**EXHIBIT B**

**TO**

**COLLATERAL ASSIGNMENT OF SECURITY INTEREST IN TRADEMARKS**

**ASSIGNMENT OF TRADEMARKS**

WHEREAS, Experient Holdings, Inc. a Delaware corporation, (“Experient”) has entered into a Security Agreement dated December 14, 2000 (“Security Agreement”) with Ivor Massey, Jr., CMB Capital, LLC, and Clay M. Biddinger (the “Secured Parties”);

WHEREAS, Experient and the Secured Parties desire to enable the Secured Parties to record and perfect its security interest in the Trademarks and to effectuate the Secured Parties’ ability to exercise their rights under the Security Agreement upon the occurrence of an Event of Default as defined therein;

WHEREAS, pursuant to the Security Agreement, Experient and Secured Parties have also entered into a Collateral Assignment of Security Interest in Trademarks dated March 29, 2001, under which Secured Parties are authorized to execute this Assignment as Experient’s attorney-in-fact upon the occurrence of an Event of Default as defined by the Security Agreement;

WHEREAS Ivor Massey, Jr., has assigned his rights as a Secured Party to Triad, LC in accordance with the terms of the Security Agreement; and

WHEREAS, an Event of Default has occurred; all conditions specified in the Security Agreement and otherwise in place, whether by agreement or by operation of law, have been satisfied; all contingencies upon the exercise of the contingent power-of-attorney have been

satisfied; and Secured Parties have elected to exercise their rights and remedies under the Security Agreement and the Collateral Assignment of Security Interest in Trademarks.

NOW THEREFORE, pursuant to the Security Agreement, the Collateral Assignment of Security Interest in Trademarks and the joint contingent power-of-attorney granted therein:

The term, "Trademark" includes service marks and trade dress, and means any word, symbol, device, slogan or any combination thereof used to distinguish or identify goods or services, and all associated registrations, applications and the goodwill of the business conducted under such Trademarks.

Experient, by and through its attorney-in-fact as appointed by the contingent power of attorney set forth in the Collateral Assignment of Security Interest in Trademarks, hereby assigns to the Secured Parties all rights, title and interest in all of its Trademarks secured by the Security Agreement including all applications and registrations thereof, and all of the goodwill of the business conducted under such Trademarks. Without limiting the foregoing, Experient specifically assigns to The Secured Parties all of its rights, title and interest in and to the trademarks and associated applications, registrations and goodwill, and the trademark applications identified in Exhibit A of this Assignment of Trademarks.

Experient authorizes and requests the United States Commissioner of Patents and Trademarks and equivalent official in all other countries to, if applicable, issue all such Trademarks to the Secured Parties in accordance with this instrument of assignment.

Experient hereby represents and warrants that there are no rights or interests outstanding with respect to any third party inconsistent with the rights and interests granted herein and that Experient shall not execute any instrument or grant or transfer any rights or interests inconsistent therewith, and that Experient and its successors and assigns, as the case may be, shall execute

and deliver to the Secured Parties, its successors and assigns, any further documents or instruments, including but not limited to affidavits, declarations, powers of attorney and assignments and do any and all further acts that may be deemed necessary by the Secured Parties, its successors and assigns, to file and prosecute applications for such Trademarks in any country where it may elect to file such applications, and that may be necessary to vest in the Secured Parties, its successors and assigns the title herein conveyed, or intended so to be, and to enable such title to be recorded in the United States of America and in all other countries where any such applications and/or registrations exist.

Experient further covenants and agrees that Experient and its successors and assigns, as the case may be, in consideration of the premises shall at any time upon request, communicate to the Secured Parties, or its successors and assigns, as the case may be all material facts and provide the Secured Parties with all available documentation thereof in the possession or control of Experient or its successors or assigns, as the case may be, relating in any way to the Trademarks, including the history thereof, and shall testify as to same in any litigation or any other proceeding in the United States of America including its territorial possessions and in any other country when requested to do so by the Secured Parties, or its successors and assigns, as the case may be.

**END OF AGREEMENT**

SIGNATURE PAGE FOLLOWS NEXT







**EXHIBIT A**

**TO**

**EXPERIENT HOLDINGS, INC ASSIGNMENT OF TRADEMARKS**

**SCHEDULE OF TRADEMARKS  
AND ASSOCIATED APPLICATIONS AND REGISTRATIONS**

**SCHEDULE OF TRADEMARKS , REGISTRATIONS AND APPLICATIONS**

| <b>Mark</b>                           | <b>Registration Number</b>       | <b>Registration Date</b> |
|---------------------------------------|----------------------------------|--------------------------|
| CYBERMAILAV                           | 2352905                          | May 23, 2000             |
| GYRUS                                 | 1914627                          | January 24, 1994         |
| GYRUS and Design                      | 1929134                          | February 24, 1994        |
| TRAINING WIZARD                       | 2048170                          | January 9, 1997          |
| TRAINING WIZARD and Design            | 2077220                          | April 22, 1996           |
| <b>Mark</b>                           | <b>Application Serial Number</b> | <b>Filing Date</b>       |
| EXPERIENT (Intent-to-Use Application) | 75/617,303                       | January 8, 1999          |
| CALYPSO (Intent-to-Use)               | 75/700,897                       | May 7, 1999              |
| IQ BUILDER (Intent-to-Use)            | 75/561,109                       | September 29, 1998       |
| MLEARNING (Intent-to-Use)             | 76/160,224                       | November 6, 2000         |

F:\Clients\Experient Technologies 06264\Collateral Assignment of TM03.23.01.doc

## COLLATERAL ASSIGNMENT OF SECURITY INTEREST IN TRADEMARKS

WHEREAS EXPERIENT HOLDINGS, INC., a Delaware corporation ("Experient") entered into a Security Agreement dated December 14, 2000, as amended (the "Security Agreement") with Ivor Massey, Jr., CMB Capital, LLC, Clay M. Biddinger and Triad, LC (the "Secured Parties");

WHEREAS in the Security Agreement, and in connection with all other extensions of credit to Experient from Triad, LC or other Secured Parties which amended the Security Agreement and added Triad, LC as a Secured Party, Experient granted to the Secured Parties security interests in the intellectual property of Experient, including Experient's trademarks. For the purposes of this Collateral Assignment of Trademarks, the term "trademark" includes service marks and trade dress, and means any word, symbol, device, slogan or any combination thereof used to distinguish or identify goods or services, and all associated registrations, applications and the goodwill of the business conducted under such Trademarks, including the applications for trademark registration filed with the United States Patent & Trademark Office listed in Exhibit A hereto (collectively, hereinafter referred to as the "Trademarks.").

WHEREAS Experient and the Secured Parties desire to enable the Secured Parties to record and perfect their security interests;

WHEREAS Ivor Massey, Jr., has assigned his rights as a Secured Party to Triad, LC in accordance with the terms of the Security Agreement;

NOW, THEREFORE, in consideration of the foregoing, in furtherance of the parties' prior agreements, and for other good and valuable consideration, the receipt and sufficiency of which Experient and Secured Parties each acknowledge, the parties hereby enter into this Collateral Assignment of Trademarks including the contingent joint power of attorney contained herein:

1. Experient warrants that it is the owner of all right, title and interest in the Trademarks, including all associated applications, registrations and the goodwill of the business conducted under such Trademarks. Experient further warrants that it is the owner of all right, title and interest in the applications for Trademark registration that are also identified in Exhibit A as "Intent-to-Use" Applications.
2. Experient hereby grants to the Secured Parties, their successors, assigns and legal representatives, as additional security in the Trademarks, this Collateral Assignment of, and the security interest in, all of Experient's rights, title and interest in and to all of the Trademarks listed in Exhibit A hereto, including all associated goodwill of the business conducted under such Trademarks, and, which includes, without limitation all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits, the right to sue for past, present and future infringement suits), all rights corresponding thereto throughout the world and all

relating registrations thereof, now or hereafter existing. To the extent that the security interests in certain of the Trademarks listed in Exhibit A are not presently assignable due to their status as Intent-to-Use applications, Experient agrees to assign security interests in such trademarks at a later date and take all actions (including continued prosecution and filing of a Statement of Use or Amendment to Allege Use) necessary to complete acts necessary for assignment. Without limiting the effect of the foregoing, however, until the Secured Parties exercise their rights upon the occurrence or existence of an "Event of Default" as that term is defined in the Security Agreement and the expiration of any applicable cure period, Experient shall retain title to the Trademarks, subject to this Collateral Assignment, and the Secured Parties shall hold only security interests in and the contingent right to full ownership of the Trademarks.

3. Experient hereby appoints the Secured Parties as its attorney-in-fact and grants to the Secured Parties a joint contingent, limited power of attorney:

a. to modify and amend Exhibit A to include any after-acquired Trademarks and associated applications and registrations in the event that any such Trademark is used and/or acquired by Experient to identify and/or distinguish its goods or services while the Security Agreement remains in effect.

b. to execute, through any of its duly appointed officers, on behalf of Experient, or any of its successors-in-interest, the "Experient Assignment of Trademarks" appended hereto as Exhibit B, the terms of which are incorporated herein.

4. The Secured Parties acknowledge and agree that the foregoing contingent power of attorney extends to it the authority to execute the Assignment appended at Exhibit B, to seize the trademarks and applications for registration, and to seize the incidents of the goodwill associated with the trademarks only upon the occurrence of an Event of Default as defined in the Security Agreement and the expiration of any applicable cure period. In the event that the Secured Parties exercise the Assignment on the basis that an Event of Default occurred as defined under the Security Agreement and it thereafter transpires that in fact no such Event of Default occurred, the Secured Parties shall immediately assign back to Experient all rights, title, interest, applications, registrations and goodwill acquired by virtue of the initial assignment to the Secured Parties.

5. Upon execution of this Collateral Assignment by all parties, the Secured Parties or their designee may record the same with the United States Patent & Trademark Office, Assignment Branch, and with such other federal and state agencies as is necessary or appropriate to memorialize and perfect its security interest in the Trademarks. The Secured Parties shall ensure that this Collateral Assignment is recorded and indexed as evidencing a security interest and not an assignment.

6. The Secured Parties agree that, in the event that all obligations under the Security Agreement are satisfied and discharged by Experient or its successors or assigns, the Secured

Parties shall execute releases of their security interests when and as requested by Experient or its successors or assigns and the contingent joint power of attorney granted hereunder shall automatically expire.

7. The Secured Parties and Experient each agree to execute such other documents and take such additional steps as may be reasonably necessary to secure and perfect the Secured Parties' rights under the Security Agreement and to otherwise effectuate the purposes of this Collateral Assignment.

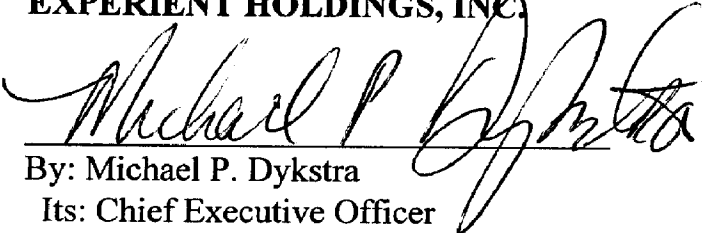
8. This Collateral Assignment shall be binding upon any assigns, successors-in-interest, insurers and re-insurers of the parties.

9. This Collateral Assignment is intended only to memorialize or effectuate the rights and remedies available to the parties under the Security Agreement, and it does not amend, revise or rescind any provision of the Security Agreement.

IN WITNESS WHEREOF, the parties agree to the foregoing this 9<sup>th</sup> day of April, 2001.

[SIGNATURE PAGES TO FOLLOW]

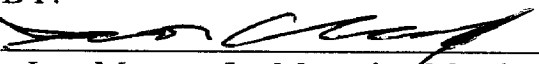
**EXPERIENT HOLDINGS, INC**



By: Michael P. Dykstra  
Its: Chief Executive Officer

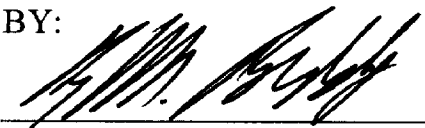
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**TRIAD, LC.**

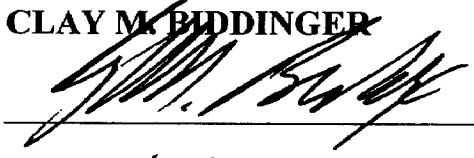
BY:   
Ivor Massey, Jr., Managing Member

Date: 4/6/01

**CMB CAPITAL, LLC**

BY:   
Clay M. Biddinger, Managing Member

Date: 4/6/01

**CLAY M. BIDDINGER**  


Date: 4/6/01

Acknowledgment

On this 9<sup>th</sup> day of ~~March~~ April, 2001, before me appeared Michael P. Dykstra, the person who signed the foregoing instrument, who acknowledged that he/she signed it on behalf of the **Experient Holdings, Inc.**, with which his/her signature is associated, with authority to do so and to thereby bind such entity, and as a free act.

COMMONWEALTH OF VIRGINIA )  
)  
CITY OF RICHMOND )

Subscribed and sworn to before me this 9<sup>th</sup> day of ~~March~~ April, 2001.

My commission expires: Nov 30 2004

[Signature]  
Notary Public

Acknowledgment

On this 6<sup>th</sup> day of ~~March~~ April, 2001, before me appeared Ivor Massey, Jr., the person who signed the foregoing instrument, who acknowledged that he signed it on behalf of **Triad, LC** with which his signature is associated, with authority to do so and to thereby bind such entity, and as a free act.

COMMONWEALTH OF VIRGINIA )  
)  
CITY OF RICHMOND )

Subscribed and sworn to before me this 6<sup>th</sup> day of ~~March~~ April, 2001.

My commission expires: 1/31/08

[Signature]  
Notary Public

Acknowledgment

On this 6<sup>th</sup> day of ~~March~~ April, 2001, before me appeared **Clay M. Biddinger**, the person who signed the foregoing instrument, who acknowledged that he signed it on behalf of **CMB Capital, LLC**, and **Clay M. Biddinger**, individually, with authority to do so and to thereby bind CMB Capital, LLC and Clay M. Biddinger, and as a free act.

COMMONWEALTH OF VIRGINIA )  
)  
CITY OF RICHMOND )

Subscribed and sworn to before me this 6<sup>th</sup> day of ~~March~~ April, 2001.

My commission expires: 1/31/08

[Signature]  
Notary Public

**Notary Public**



**EXHIBIT A  
TO  
COLLATERAL ASSIGNMENT OF SECURITY INTEREST IN TRADEMARKS**

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