

06-04-2001

R SHEET

Docket No.:

ONLY

40010-10069



Tab settings

To the Honorable Commissioner

101736810

and the attached original documents or copy thereof.

1. Name of conveying party(ies):

**Illumitek Inc.**

5-29-01

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

Additional names(s) of conveying party(ies)  Yes  No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other **Patent, Trademark and Copyright Mortgage**
- Merger
- Change of Name

Execution Date: **April 20, 2001**

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

Name: **SPSS Inc.**

Internal Address:

Street Address: **233 S. Wacker Drive**

City: **Chicago** State: **IL** ZIP: **60606**

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

If assignee is not domiciled in the United States, a domestic designation is  Yes  N  
(Designations must be a separate document from Additional name(s) & address(es)  Yes  N

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

A. Trademark Application No.(s)

76/072,389

Additional numbers

B. Trademark Registration No.(s)

Yes  No

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

Name: **Patent and Trademark Docket Clerk**

Internal Address: **RYNDAK & SURI**

Street Address: **30 N. LaSalle Street, Suite 2630**

City: **Chicago** State: **IL** ZIP: **60602**

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:

**50-0503**

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.

**James D. Ryndak**

Name of Person Signing

Signature

May 24, 2001

Date

Total number of pages including cover sheet, attachments, and

13

TRADEMARK

PATENT, TRADEMARK AND COPYRIGHT MORTGAGE

THIS PATENT, TRADEMARK AND COPYRIGHT MORTGAGE (the "Mortgage") made as of the 10 day of April, 2001, by Illumitek Inc., a Delaware corporation ("Mortgagor"), in favor of SPSS Inc., a Delaware corporation ("Mortgagee"):

W I T N E S S E T H:

WHEREAS, Mortgagor and Mortgagee are parties to that certain agreement entitled "Loan Agreement" effective as of January 1, 2001 (the "Loan Agreement");

WHEREAS, Mortgagor and Mortgagee are parties to that certain agreement entitled "Security Agreement" effective as of January 1, 2001, which provides to Mortgagee a security interest in, among other things, the software known as nVIZn;

WHEREAS, Mortgagor has signed that certain promissory note in favor of Mortgagee entitled "Promissory Note" which is dated January 1, 2001;

WHEREAS, Mortgagor and Mortgagee are parties to that certain agreement entitled "Patent Sale Agreement" effective as of March 30, 2001, wherein Mortgagee agreed to sell and assign certain patent rights to Mortgagor and wherein Mortgagee sold and assigned certain trademark rights and all rights in the business relating to those patent and trademark rights to Mortgagor;

WHEREAS, Mortgagor and Mortgagee are parties to that certain assignment entitled "Assignment" dated March 30, 2001, wherein Mortgagee sold and assigned all of its right, title and interest in a certain patent application to Mortgagor; and

WHEREAS, to further secure the obligation of Mortgagor under the Loan Agreement and the Promissory Note, Mortgagor has granted Mortgagee a security interest in various assets of Mortgagor, including without limitation, its patents, patent applications, trademarks and trademark registrations and applications, copyrights, copyright registrations and applications therefor.

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Mortgagor agrees as follows:

1. Incorporation of Loan Agreement and Promissory Note. The Loan Agreement and the Promissory Note and the terms and provisions are incorporated in this Mortgage in their entirety by this reference.
2. Mortgage of Trademarks, Patents, Copyrights and Licenses. To secure the complete and timely satisfaction of all of Mortgagor's obligations as set forth in the Loan Agreement and Promissory Note ("Obligations"), Mortgagor hereby grants, bargains, assigns, mortgages, pledges, sells, creates a security interest in, transfers, and

conveys to Mortgagee, as and by way of a first mortgage and security interest having priority over all other security interests, with power of sale, to the extent permitted by law, upon the occurrence of an "Event of Default" (as defined in the Loan Agreement) all of Mortgagor's right, title and interest in and to all of its now owned or existing and filed and hereafter acquired or arising and filed:

(i) federally and state registered trademarks, service marks, trademark and service mark applications for federal and state registration, trade names, including without limitation, the registered trademarks, service marks, trademark and service mark applications and trade names listed on Exhibit A attached hereto; patents and patent applications, including without limitation, the applications listed on Exhibit B attached hereto; and copyrights and copyright registrations and applications, including without limitation, the copyrights listed on Exhibit C attached hereto; and (a) renewals, extensions, continuations, continuations-in-part, continued prosecution applications, requests for continued prosecution applications, provisional and/or non-provisional applications, divisionals, re-exams, reissues, and any other type of patent or patent applications that may be created now or in the future based on these rights and any PCT or foreign equivalents or correspondents of the foregoing, (b) all income, damages and payments now and hereafter due and/or payable with respect thereto, including without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing trademarks, service marks, trademark and service mark registrations, trade names and applications, together with the items described in clauses (a)-(d), are sometimes hereinafter individually and/or collectively referred to as the "Trademarks"; patent and patent applications, together with the items described in clauses (a)-(d), are sometimes hereinafter individually and/or collectively referred to as "Patents; and copyrights and copyright registrations and applications, together with the items described in clauses (a)-(d) are sometimes hereinafter individually and/or collectively referred to as "Copyrights."

(ii) license agreements with respect to the Trademarks, Patents and Copyrights, between Mortgagor and any other party, whether Mortgagor is a licensor or licensee under any such license agreement, including without limitation the licenses listed on Exhibit D (and any and all of the foregoing is hereinafter referred to collectively as the "Licenses"); and

(iii) the good-will of Mortgagor's business connected with and symbolized by the Trademarks.

3. Warranties and Representations. Mortgagor warrants and represents to Mortgagee that:

(a) The Trademarks, Patents, Copyrights and Licenses have not been adjudged invalid or unenforceable and have not been canceled, in whole or in part and are presently subsisting;

(b) Each of the Trademarks, Patents, Copyrights, and Licenses is valid and enforceable;

(c) Mortgagor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, Copyrights, and Licenses, free and clear of any liens, charges and encumbrances, including without limitation, licenses, shop rights and covenants by Mortgagor not to use third persons;

(d) Mortgagor is the owner of one-hundred percent (100%) of the unencumbered right, title and interest in and to each of the Patents, free and clear of any liens, charges and encumbrances, including without limitation, licenses, shop rights and covenants by Mortgagor not to use third persons;

(e) Mortgagor has adopted or intends to adopt all of the Trademarks;

(f) There are no claims raised, or suits or actions commenced or threatened with reference to the Trademarks, Patents, Copyrights, and Licenses; and

(g) Mortgagor has the unqualified right to execute and deliver this Mortgage and perform its terms and has entered or will enter into written agreements with each of its present and future employees, agents and consultants which will enable it to comply with the covenants contained herein.

4. Restrictions on Future Loan Agreements. Mortgagor agrees that until the Obligations shall have been satisfied in full and the Loan Agreement and Promissory Note shall have been terminated, Mortgagor will not sell or assign its interest in, or grant any license under, the Trademarks, Patents, Copyrights and Licenses, or enter into any other agreement with respect to the Trademarks, Patents, Copyrights and Licenses which is inconsistent with Mortgagor's obligations under this Mortgage, without the prior written consent of Mortgagee, and, Mortgagor further agrees that it will not take any action, or permit any action to be taken by others subject to its control, including licensees, or fail to take any action, which would affect the validity or enforcement of the rights transferred to Mortgagee under this Mortgage. Nothing in this section shall prevent Mortgagor from licensing the Trademarks, Patents or Copyrights so long as said licensees do not diminish or impair the collateral secured hereunder and further, that said licensees do not diminish or destroy the Mortgagor's ability to do business using the Trademarks, Patents and/or Copyrights.

5. New Trademarks, Patents, Copyrights, and Licenses. Mortgagor represents and warrants that the Trademarks, Patents, Copyrights and Licenses listed on Exhibits A, B, C, and D, respectively, constitute all of the Trademarks, Patents, Copyrights and Licenses now owned by Mortgagor. If, before the Obligations shall have been satisfied in full, Mortgagor shall (i) become aware of any existing Trademarks, Patents, Copyrights and/or Licenses of which Mortgagor has not previously informed Mortgagee, (ii) obtain rights to any additional Trademarks, Patents, Copyrights, or Licenses, or (iii) become entitled to the benefit of any Trademark, Patent, Copyright, or License renewal except to the extent Mortgagor becomes a licensee of a third party regarding a trademark, patent and/or copyright controlled by a third party, the provisions of paragraph 2 above shall automatically apply thereto and Mortgagor shall give to Mortgagee prompt written notice thereof. Mortgagor hereby authorizes Mortgagee to modify this Mortgage by amending Exhibit A, B, C, and/or D, as applicable, to include any future Trademarks, Patents, Copyrights, and Licenses under paragraph 2 above or under this paragraph 5.

6. Royalties; Terms. The term of the mortgages granted herein shall extend until the earlier of (i) the expiration of each of the respective Trademarks, Patents, Copyrights, and Licenses secured hereunder, or (ii) the Obligations have been paid in full (except for indemnities extending beyond the termination date of the Loan Agreement) and the Loan Agreement and Promissory Note have been terminated. Upon the occurrence of an Event of Default, Mortgagor agrees that the use by Mortgagee of all Trademarks, Patents, Copyrights and Licenses shall be in all territories where Mortgagor's rights exist and without any liability for royalties or other related charges from Mortgagee to the Mortgagor.

7. Mortgagee's Right to Inspect. Mortgagee shall have the right, at any time and from time to time during normal business hours and prior to payment in full of the Obligations and termination of the Loan Agreement and Promissory Note, to inspect Mortgagor's premises and to examine Mortgagor's books, records and operations, including, without limitation, Mortgagor's quality control processes.

8. Release of Mortgage. This Mortgage is made for collateral purposes only. Upon payment in full of the Obligations and termination of the Loan Agreement and Promissory Note, Mortgagee shall execute and deliver to Mortgagor all deeds, assignments and other instruments, and shall take such other actions, as may be necessary or proper to re-vest in Mortgagor title to the Trademarks, Patents, Copyrights, and Licenses, subject to any disposition thereof which may have been made by Mortgagee pursuant hereto or pursuant to the Loan Agreement.

9. Expenses. All expenses incurred in connection with the performance of any of the agreements set forth herein shall be borne by Mortgagor. All fees, costs and expenses, of whatever kind or nature, including reasonable attorneys' fees and legal expenses, incurred by Mortgagee in connection with the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment

or discharge of any taxes, counsel fees, maintenance fees, preserving the Trademarks, Patents, Copyrights and Licenses, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, Patents, Copyrights and Licenses, shall be borne by and paid by Mortgagor on demand by Mortgagee and until so paid shall be added to the principal amount of the Obligations.

10. Duties of Mortgagor. Mortgagor shall have the duty (i) to prosecute diligently any Trademark, Patents or Copyright applications for registration pending as of the date hereof or thereafter until the Obligations shall have been paid in full, and (ii) to preserve and maintain all rights in such Trademark, Patent and Copyright applications. Any expenses incurred in connection with such applications shall be borne by Mortgagor. Mortgagor shall not abandon any registered Trademark, Patent or Copyright without the prior written consent of Mortgagee which consent shall not be unreasonably withheld.

11. Mortgagee's Right to Sue. Mortgagee shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Trademarks, Patents, Copyrights and/or Licenses, except that before Mortgagee may commence any suit it must request Mortgagor to commence said action and wait a reasonable time based on the circumstances of the infringement for Mortgagor to commence suit. If Mortgagor declines to bring such suit or fails to do so within a reasonable time, Mortgagee may commence any such suit. Mortgagor shall, at the request of Mortgagee, do any and all lawful acts and execute any and all proper documents required by Mortgagee in aid of such enforcement and Mortgagor shall promptly, upon demand, reimburse and indemnify Mortgagee for all reasonable costs and expenses including without limitation attorneys fees, incurred by Mortgagee in the exercise of its rights under this paragraph 11. Any unreimbursed costs and expenses (including without limitation attorneys' fees) will be added, until paid, to the principal amount of the Obligations.

12. Waivers. No course of dealing between Mortgagor and Mortgagee, nor any failure to exercise, nor any delay in exercising, on the part of Mortgagee, any right, power or privilege hereunder or under the Loan Agreement 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.

13. Severability. The provisions of this Mortgage are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Mortgage in any jurisdiction.

14. Modification. This Mortgage cannot be altered, amended or modified in any way, except as specifically provided in paragraph 5 hereof or by a writing signed by the parties hereto.

15. Cumulative Remedies; Power of Attorney; Effect on Loan Agreement. All of Mortgagee's rights and remedies with respect to the Trademarks, Patents, Copyrights, and Licenses, whether established hereby or by the Loan Agreement, Promissory Note, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Upon the occurrence of an Event of Default, Mortgagor hereby authorizes Mortgagee to make, constitute and appoint any officer or agent of Mortgagee as Mortgagor's true and lawful attorney-in-fact, with power to (i) endorse Mortgagor's name on all applications, documents, papers and instruments necessary or desirable for Mortgagee in the use of Trademarks, Patents, Copyrights and Licenses, (ii) take any other actions with respect to the Trademarks, Patents, Copyrights, and Licenses as Mortgagee deems in the best interest of Mortgagee, (iii) grant or issue any exclusive or non-exclusive license under the Trademarks, Patents or Copyrights to anyone, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks, Patents, Copyrights or Licenses to anyone. Mortgagee hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until the Obligations shall have been paid in full and the Loan Agreement, including any amendments thereto, has been terminated. Mortgagor acknowledges and agrees that this Mortgage is not intended to limit or restrict in any way the rights and remedies of Mortgagee under the Loan Agreement but rather is intended to facilitate the exercise of such rights and remedies. Mortgagee shall have, in addition to all other rights and remedies allowed by law, the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks, Patents, Copyrights or Licenses may be located.

16. Binding Effect; Benefits. This Mortgage shall be binding upon the Mortgagor and its respective successors and assigns, and shall inure to the benefit of Mortgagee, its nominees and assigns.

17. Governing Law. This Mortgage has been executed and delivered in Illinois and shall be governed by and construed in accordance with the laws of the State of Illinois.

18. Headings. Paragraph headings used herein are for convenience only and shall not modify the provisions which they precede.

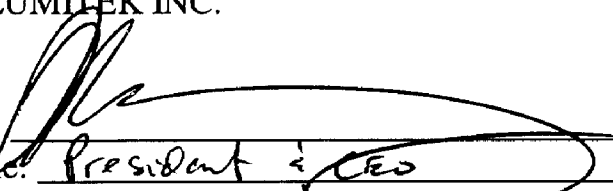
19. Further Assurances. Mortgagor agrees to execute and deliver such further agreements, instruments and documents, including Uniform Commercial Code financing statements, and to perform such further acts, as Mortgagee shall reasonably request from time to time in order to carry out the purpose of this Mortgage and agreements set forth herein.

IN WITNESS WHEREOF, Mortgagor has duly executed this Mortgage in favor of Mortgagee as of the \_\_\_ day of April, 2001.

SPSS INC.

By:   
Title: EVP - CFO

ILLUMITEK INC.

By:   
Title: President & CEO



STATE OF ILLINOIS        )  
                                  )SS.  
COUNTY OF COOK        )

The foregoing Patent, Trademark and Copyright Mortgage was executed and acknowledged before me this 20<sup>th</sup> day of April, 2001 by Anthony CCCCARD personally known to me to be the President & CEO of Illumitek Inc., a Delaware corporation, on behalf of such corporation.

(SEAL)

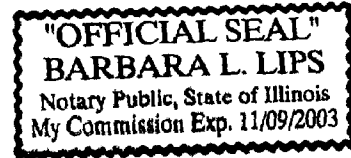
Barbara L. Lips

Notary Public

Cook County, Illinois

My Commission Expires: 11/09/2003

THIS INSTRUMENT PREPARED BY AND  
AFTER FILING RETURN TO:



James D. Ryndak  
Ryndak & Suri  
30 North LaSalle Street  
Suite 2630  
Chicago, Illinois 60602

EXHIBIT A

United States Trademark Registrations and Applications

<u>Mark</u>	<u>Date of Application</u>	<u>Application No.</u>
nVIZn	June 16, 2000	76/072,389

EXHIBIT B

Patents and Patent Applications

<b>Name</b>	<b>Application Date</b>	<b>Application Number</b>
Computer Method and Apparatus for Creating Visible Graphics by Using a Graph Algebra	April 20, 2000	09/553,507

EXHIBIT C

Copyrights

All copyrights in and to the computer software program known as nVIZn, and any and all updates, enhancements, modifications and derivatives thereto.

**EXHIBIT D**

**Licenses**

None currently exist.