

07-03-2001



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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
Effective Date
Month Day Year
- Merger
- Change of Name
- Other

Conveying Party

Mark if additional names of conveying parties attached
 Execution Date
 Month Day Year
 05/03/2001

Name

Formerly

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

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

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

FOR OFFICE USE ONLY

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: 002322 FRAME: 0876

TRADEMARK OFFICE
 JUN 21 A 8:50
 ALL MARK FEE PROCESS RECEIVED

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)

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.

Patrick Lalor

June 19, 2001

Name of Person Signing

Signature

Date Signed

COLLATERAL ASSIGNMENT AGREEMENT - TRADEMARKS

THIS COLLATERAL ASSIGNMENT TO SECURITY AGREEMENT - TRADEMARKS ("Collateral Assignment") is executed as of May 3, 2001, by and between **THE KERNEL GROUP, INC.** (the "Grantor"), with an address at 1250 S. Capital of Texas Highway, Suite 3-601, Austin, TX 78746, and **PNC BANK, NATIONAL ASSOCIATION** (the "Bank"), with an address at 600 Grant Street, 29th Floor, Pittsburgh, PA 15219. This Collateral Assignment is incorporated into and made part of that certain Security Agreement by and between the Grantor and the Bank dated as of May 3, 2001 (as the same may be modified, amended or restated, the "Security Agreement").

Initially capitalized terms used and not otherwise defined in this Collateral Assignment shall have the same meanings ascribed to such terms in the Security Agreement.

The Grantor has adopted, used and is using, and has registered or has filed applications for the registration of, the trademarks, servicemarks and tradenames listed on Schedule A to the Trademark Assignment, the form of which is attached hereto as Exhibit A (the "Trademark Assignment") (all such marks or names hereinafter referred to as the "Trademarks").

The Bank desires to acquire a lien and security interest on the Trademarks and the registration thereof, together with all the goodwill of the Grantor associated therewith and represented thereby, as security for all of the Obligations, and the Bank desires to have its security interest in such Trademarks confirmed by a document identifying same and in such form that it may be recorded in the United States Patent and Trademark Office.

NOW, THEREFORE, with the foregoing background deemed incorporated by reference and made part hereof, the parties hereto, and intending to be legally bound hereby, covenant and agree as follows:

1. Grant of Security Interest. In consideration of and pursuant to the terms of the Loan Documents, and for other good, valuable and sufficient consideration, the receipt of which is hereby acknowledged, and to secure the Grantor's present and future liabilities to the Bank, the Grantor does hereby assign for security and grant to the Bank a lien and security interest in all its present and future right, title and interest in and to the Trademarks, together with all the goodwill of the Grantor associated with and represented by the Trademarks, and the registration thereof and the right (but not the obligation) to sue for past, present and future infringements, and the proceeds thereof, including, without limitation, license royalties and proceeds of infringement suits.

2. Maintenance of Trademarks. The Grantor hereby covenants and agrees to maintain the registered Trademarks in full force and effect until all of the Obligations to the Bank are satisfied in full except as permitted by Section 12(a) hereof.

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3. Representations and Warranties. The Grantor represents, warrants and covenants that: (a) The Trademarks have not been adjudged invalid or unenforceable; (b) the Grantor has no notice of any suits or actions commenced or threatened against it, or notice of claims asserted or threatened against it, with reference to the Trademarks and the interests granted herein, including, without limitation, any claim, suit or action alleging or asserting that a Trademark is not valid or enforceable, and the Grantor has no knowledge of a factual basis for any such claim, suit or action; (c) except as disclosed in the Loan Documents, to the Grantor's knowledge, the Grantor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the registered Trademarks, and, except as disclosed in or permitted under the Loan Documents, each of the Trademarks is free and clear of any liens, charges, licenses (except for non-exclusive licenses granted in the ordinary course of business) and encumbrances, including, without limitation, pledges, assignments, and covenants by the Grantor not to sue third persons; (d) the Grantor has the full corporate power and authority to enter into this Collateral Assignment and perform its terms; (e) the Grantor has used, and will continue to use for the duration of this Collateral Assignment, proper notice, as permitted by 15 U.S.C. §1051-1127 in connection with its use of the registered Trademarks; and (f) the Grantor has used, and will continue to use for the duration of this Collateral Assignment, consistent standards of quality in products leased or sold under the Trademarks and hereby grants to the Bank and its employees and agents the right to visit the Grantor's locations that lease, sell, or store products under any of the Trademarks and to inspect the products and quality control records relating thereto at reasonable times during regular business hours to ensure the Grantor's compliance with this paragraph 3(f).

4. Covenants. The Grantor further covenants that: (a) until all of the Obligations have been satisfied in full, the Grantor will not enter into any agreement, including without limitation, license agreements, except for non-exclusive licenses granted in the ordinary course of business or any other agreement the terms of which are consistent with the Grantor's obligations under this Collateral Assignment, and (b) if the Grantor acquires rights to any new Trademarks, the provisions of this Collateral Assignment shall automatically apply thereto and the Grantor shall give the Bank prompt written notice thereof along with an amended Schedule A to the Trademark Assignment.

5. Exclusive Use of Trademarks. So long as this Collateral Assignment is in effect and so long as the Grantor has not received notice from the Bank that an Event of Default has occurred under the Loan Documents and that the Bank has elected to exercise its rights hereunder, the Grantor shall continue to own the Trademarks and to have the right to the exclusion of the Bank to use the Trademarks and to grant non-exclusive licenses with respect thereto in the ordinary course of business, and the Bank shall have no right to use the Trademarks or issue any exclusive or non-exclusive license with respect thereto, or assign, pledge or otherwise transfer title in the Trademarks to anyone else.

6. Negative Pledge. The Grantor agrees not to sell, assign or further encumber its rights and interest in the Trademarks without prior written consent of the Bank, except for non-exclusive licenses granted in the ordinary course of business and any other agreements the terms of which are consistent with the Grantor's obligations under this Collateral Assignment.

7. Remedies Upon Default. (a) Anything herein contained to the contrary notwithstanding, if and while the Grantor shall be in default hereunder or an Event of Default exists under the other Loan Documents, the Grantor hereby covenants and agrees that the Bank, as the holder of a security interest under the Uniform Commercial Code, as now or hereafter in effect in the Commonwealth of Pennsylvania, may take such action permitted under the Loan Documents or permitted by law, in its exclusive discretion, to foreclose upon the Trademarks covered hereby, including, but not limited to, the recording of the Trademark Assignment with the United States Patent and Trademark Office as provided in Section 7(c) hereof.

(b) For such purposes, and in the event of the Grantor's default hereunder or an Event of Default under the other Loan Documents and while such default or Event of Default exists, the Grantor hereby authorizes and empowers the Bank to make, constitute and appoint any officer or agent of the Bank as the Bank may select, in its exclusive discretion, as the Grantor's true and lawful attorney-in-fact, with the power to endorse the Grantor's name on all applications, documents, papers and instruments necessary for the Bank to use the Trademarks or to grant or issue any exclusive or non-exclusive license under the Trademarks to anyone else, or necessary for the Bank to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone else, subject to such limitations on the exercise of such authority as may be necessary to comply with legal obligations owed by the Grantor to third parties which are either existing on the date of this Collateral Assignment or created after the date of this Collateral Assignment in the ordinary course of granting licenses otherwise permissible under this Collateral Assignment. The Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof, except for the gross negligence or willful misconduct of such attorney. This power of attorney shall be irrevocable for the life of this Collateral Assignment and the Loan Documents, and until all the Obligations are satisfied in full.

(c) The Grantor expressly acknowledges that the Bank shall record this Collateral Assignment with the United States Patent and Trademark Office in Washington, DC. Contemporaneously herewith, the Grantor shall also execute and deliver to the Bank the Trademark Assignment in the form attached hereto as Exhibit A, which assignment shall have no force and effect and shall be held by the Bank, in escrow, until the occurrence of a default hereunder or an Event of Default under the other Loan Documents. After such occurrence, the Trademark Assignment shall take effect immediately upon certification of such fact by an authorized officer of the Bank in the form reflected on the face of the Trademark Assignment and the Bank may, at its sole option, record the Trademark Assignment with the United States Patent and Trademark Office.

8. Subject to Security Agreement. This Collateral Assignment shall be subject to the terms, provisions, and conditions set forth in the Security Agreement and may not be modified without the written consent of the party against whom enforcement is being sought.

9. Inconsistency with Security Agreement. All rights and remedies herein granted to the Bank shall be in addition to any rights and remedies granted to the Bank under the Security Agreement. In the event of an inconsistency between this Collateral Assignment and the Security Agreement, the language of the Security Agreement shall control. The terms and conditions of the Security Agreement are hereby incorporated herein by reference.

10. Termination of Agreement. Upon payment and performance of all Obligations, the Bank shall execute and deliver to the Grantor all documents necessary to terminate the Bank's security interest in the Trademarks and deliver to the Grantor from escrow the original Trademark Assignment.

11. Fees and Expenses. Subject to the limitations set forth in Section 9(a) of the Loan Agreement, any and all reasonable fees, costs and expenses, of whatever kind or nature, including the reasonable attorneys' fees and legal expenses incurred by the Bank in connection with the preparation of this Collateral Assignment and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, reasonable counsel fees, maintenance fees, encumbrances or costs otherwise incurred in protecting, maintaining, preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, in each case in accordance with the terms of this Collateral Assignment, shall be borne and paid by the Grantor on demand by the Bank and until so paid shall be added to the principal amount of the Obligations to the Bank and shall bear interest at the contract rate therefor.

12. Prosecution of Trademark Applications. (a) Subject to the terms of the Security Agreement, the Grantor shall have the duty to prosecute diligently any trademark application with respect to the Trademarks pending as of the date of this Collateral Assignment or thereafter, until the Obligations shall have been satisfied in full, to preserve and maintain all rights in the Trademarks, and upon reasonable request of the Bank, the Grantor shall make federal application on registrable but unregistered trademarks belonging to the Grantor. Any reasonable expenses incurred in connection with such applications shall be borne by the Grantor. Except with respect to a Trademark that the Grantor reasonably determines is of negligible economic value to it or the loss of which would not be Material, the Grantor shall not abandon any Trademark registration or application without the prior written consent of the Bank, which consent will not be unreasonably withheld or delayed.

(b) The Grantor shall have the right to bring suit in its own name to enforce the Trademarks, in which event the Bank may, if the Grantor deems it necessary or after and during the continuance of a default hereunder or an Event of Default under the other Loan Documents, be joined as a nominal party to such suit if the Bank shall have been reasonably satisfied that it is not thereby incurring any risk of liability because of such joinder. The Grantor shall promptly, upon demand, reimburse and indemnify the Bank for all damages, reasonable costs and reasonable expenses, including attorneys' fees, incurred by the Bank in the fulfillment of the provisions of this paragraph.

13. Additional Remedies. Upon the occurrence and continuance of a default hereunder or an Event of Default under the other Loan Documents, the Bank may, without any obligation to do so, complete any obligation of the Grantor hereunder, in the Grantor's name or in the Bank's name, but at the Grantor's expense, and the Grantor hereby agrees to reimburse the Bank in full for all reasonable expenses, including reasonable attorneys' fees, incurred by the Bank in protecting, defending and maintaining the Trademarks.

14. Governing Law.

THIS COLLATERAL ASSIGNMENT WILL BE INTERPRETED AND THE RIGHTS AND LIABILITIES OF THE PARTIES HERETO DETERMINED IN ACCORDANCE WITH THE LAWS OF COMMONWEALTH OF PENNSYLVANIA, EXCLUDING ITS CONFLICT OF LAWS RULES, EXCEPT THAT THE FEDERAL LAWS OF THE UNITED STATES OF AMERICA SHALL GOVERN TO THE EXTENT APPLICABLE.

15. Counterparts. This Collateral Assignment may be signed in any number of counterpart copies and by the parties hereto on separate counterparts, which may be delivered by facsimile, but all such copies shall constitute one and the same instrument.

[Signature Page to Follow]

WITNESS the due execution hereof as of the date first written above.

ATTEST:

The Kernel Group Incorporated
~~THE KERNEL GROUP, INC.~~

By: *Dana Canada*

Print Name: _____

Print Name: Dana Canada

Title: Controller

PNC BANK, NATIONAL ASSOCIATION

By: *Thomas Majeski*

Print Name: Thomas Majeski

Title: Vice President & Director

STATE OF TEXAS

)

COUNTY OF TRAVIS

)

ss:

)

The Kernel Group Incorporated

On May 3, 2001, before me, a Notary Public, personally appeared Dana Canada, who acknowledged himself/herself to be an authorized officer of ~~The Kernel Group, Inc.~~, a Delaware corporation, and that as such he/she, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Dick Hall Harrison
Notary Public

My commission expires: 8-11-03

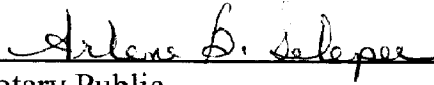
(Notary Seal)

COMMONWEALTH OF PENNSYLVANIA)
)
COUNTY OF ALLEGHENY)

ss:

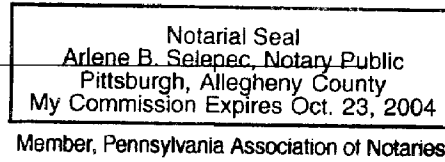
On the May 03, 2001, before me, a Notary Public, personally appeared Thomas Majeski who acknowledged himself/herself to be an authorized officer of PNC Bank, National Association, and that he/she, as such officer, being authorized to do so, executed the foregoing instrument for the purposes therein contained by signing on behalf of said bank as such officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.



Notary Public

My commission expires: _____



(Notary Seal)

EXHIBIT A

THIS DOCUMENT SHALL BE HELD BY THE BANK IN ESCROW PURSUANT TO AND IN ACCORDANCE WITH THE PROVISIONS OF THAT CERTAIN SECURITY AGREEMENT DATED AS OF MAY 3, 2001, BY AND BETWEEN THE GRANTOR AND THE BANK (THE "SECURITY AGREEMENT") AND THAT CERTAIN COLLATERAL ASSIGNMENT AGREEMENT - TRADEMARKS OF EVEN DATE HERewith BETWEEN THE BANK AND THE GRANTOR. BY SIGNING IN THE SPACE PROVIDED BELOW, THE UNDERSIGNED OFFICER OF THE BANK CERTIFIES THAT AN EVENT OF DEFAULT (AS DEFINED IN THE SECURITY AGREEMENT) HAS OCCURRED AND THAT THE BANK AS GRANTEE HEREUNDER HAS ELECTED TO TAKE POSSESSION OF THE TRADEMARKS (AS DEFINED BELOW) AND TO RECORD THIS DOCUMENT WITH THE UNITED STATES PATENT AND TRADEMARK OFFICE. UPON RECORDING OF THIS DOCUMENT WITH THE UNITED STATES PATENT AND TRADEMARK OFFICE, THIS LEGEND SHALL CEASE TO HAVE ANY FORCE OR EFFECT.

PNC BANK, NATIONAL ASSOCIATION

BY: _____
PRINT NAME: _____
TITLE: _____
DATE: _____

Trademark Assignment

WHEREAS, THE KERNEL GROUP, INC. (the "Grantor") is the owner of the entire right, title and interest in and to the United States trademark and service mark registrations and applications listed on Schedule A attached hereto and made a part hereof ("Trademarks"); and

WHEREAS, PNC BANK, NATIONAL ASSOCIATION, having a place of business at 600 Grant Street, 29th Floor, Pittsburgh, PA 15219, identified as "Bank" under that certain Collateral Assignment - Trademarks of even date herewith between the Grantor and the Bank (herein, the "Grantee") is desirous of acquiring said Trademarks;

WHEREAS, the Grantee has a security interest in the assets of the Grantor, adequate to carry on the business of the Grantor; and

WHEREAS, the Collateral Assignment provides that this Assignment shall become effective upon the occurrence of an "Event of Default" as defined in the Security Agreement.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound hereby, the Grantor, its successors and assigns, subject to the limitations stated in the paragraph immediately following, does hereby transfer, assign, and set over unto Grantee, its successors, transferees and assigns, all of its present and

future right, title and interest in and to the Trademarks and all proceeds thereof and all goodwill associated therewith.

This Trademark Assignment shall be effective only upon the certification by an authorized officer of the Grantee, as provided above, that (a) an Event of Default has occurred, and (b) the Grantee has elected to take possession of the Trademarks.

[Signature Page to Follow]

IN WITNESS WHEREOF, the undersigned has caused this Trademark Assignment to be executed by its duly authorized officer on May 3, 2001.

WITNESS / ATTEST:

THE KERNEL GROUP, INC.

By: _____

Print Name: _____

Print Name: Dana Canada

Title: Controller

STATE OF TEXAS

)

ss:

)

COUNTY OF TRAVIS

)

On May __, 2001, before me, a Notary Public, personally appeared Dana Canada, who acknowledged himself/herself to be an authorized officer of The Kernel Group, Inc., a Delaware corporation, and that as such he/she, being authorized to do so, executed the foregoing instrument for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

Notary Public

My commission expires: _____

(Notary Seal)

Schedule A To Trademark Assignment

<u>Trademark</u>	<u>Registered (Y/N)</u>	<u>Country</u>	<u>Application or Regis. No.</u>	<u>Registration or Filing Date</u>
Integrated Change Manager	In process	U.S.A.	76/206067	2/7/2001
Auto Trace	In process	U.S.A.	76/206068	2/7/2001
Bare Metal Restore	In process	U.S.A.	76/062862	6/6/2000
TKG Orchestrate	N			