

08-21-2001

Form PTO-1594 (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002) Tab settings

RE



U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

101818199

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

StarMatix, Inc. d/b/a PowerFile

- Individual(s), Association, General Partnership, Limited Partnership, Corporation-State California, Other 8-13-01

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

2. Name and address of receiving party(ies)

Name: National City Bank of Indiana

Internal

Address:

Street Address: One National City Center

City: Indianapolis State: Indiana Zip: 46255

- Individual(s) citizenship, Association National Banking Association

General Partnership

Limited Partnership

Corporation-State

Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No

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

3. Nature of conveyance:

- Assignment, Merger, Security Agreement, Change of Name, Other

Execution Date: July 3, 2001

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

A. Trademark Application No.(s)

75/869,485 75/866,898

B. Trademark Registration No.(s)

Additional number(s) attached Yes No

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

Name: Robert C. Hyta

Internal Address:

Street Address: 300 North Meridian Street

Suite 2700

City: Indianapolis State: Indiana Zip: 46204

6. Total number of applications and registrations involved: 2

7. Total fee (37 CFR 3.41): \$ 65.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

Additional fees may be charged to Deposit Account No. 02-0390

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

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.

Robert C. Hyta

Name of Person Signing

Signature

8/8/01 Date

Total number of pages including cover sheet, attachments, and document: 11

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

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01 FC:481 02 FC:482

40.00 DP 25.00 DP

TRADEMARK REEL: 002351 FRAME: 0790

## TRADEMARK SECURITY AGREEMENT

THIS TRADEMARK SECURITY AGREEMENT ("Agreement") is made as of July 3, 2001, by and between StarMatix, Inc. d/b/a PowerFile, a California corporation ("Grantor"), and National City Bank of Indiana, a national banking association ("NCB").

### WITNESSETH:

WHEREAS, Grantor (in such capacity, the "Borrower") and NCB are parties to that certain Credit Agreement of even date herewith (as the same may hereafter be modified, amended, restated or supplemented from time to time, the "Credit Agreement"), pursuant to which NCB may, from time to time, make loans, advances, and other financial accommodations to or for the benefit of the Grantor;

WHEREAS, Grantor and NCB are parties to that certain Security Agreement of even date herewith (as the same may hereafter be modified, amended, restated or supplemented from time to time, the "Security Agreement"), pursuant to which Grantor has granted a security interest in certain of its assets to NCB; and

WHEREAS, NCB has required Grantor to execute and deliver this Agreement (i) in order to secure the prompt and complete payment, observance and performance of all of the Obligations, and (ii) as a condition precedent to the making of any loans, advances and any other financial accommodations by NCB;

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, Grantor agrees as follows:

1. Defined Terms.

(a) Unless otherwise defined herein, each capitalized term used herein that is defined in the Credit Agreement shall have the meaning specified for such term in the Credit Agreement. Unless otherwise defined herein or in the Credit Agreement, each capitalized term used herein that is defined in the Security Agreement shall have the meaning specified for such term in the Security Agreement.

(b) The words "hereof," "herein" and "hereunder" and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section references are to this Agreement unless otherwise specified.

(c) All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural, and vice versa, unless otherwise specified.

2. Incorporation of Premises. The premises set forth above are incorporated into this Agreement by this reference thereto and are made a part hereof.

3. Incorporation of the Credit Agreement. The Credit Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto.

4. Security Interest in Trademarks. To secure the complete and timely payment, performance and satisfaction of all of the Obligations, Grantor hereby GRANTS to NCB a security interest in, 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 applicable law, all of Grantor's now owned or existing and hereafter acquired or arising:

(i) trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, including, without limitation, the trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications listed on Schedule A attached hereto and made a part hereof, and (a) all renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (c) the right to sue for past, present and fixture infringements and dilutions thereof, (d) the goodwill of Grantor's business symbolized by the foregoing and connected therewith, and (e) all of Grantor's rights corresponding thereto throughout the world (all of the foregoing trademarks, registered trademarks and trademark applications, and service marks, registered service marks and service mark applications, together with the items described in clauses (a)-(e) in this paragraph 4(i), are sometimes hereinafter individually and/or collectively referred to as the "Trademarks"); and

(ii) rights under or interest in any trademark license agreements or service mark license agreements with any other party, whether Grantor is a licensee or licensor under any such license agreement, including, without limitation, those trademark license agreements and service mark license agreements listed on Schedule B attached hereto and made a part hereof, together with any goodwill connected with and symbolized by any such trademark license agreements or service mark license agreements, and the right to prepare for sale and sell any and all Inventory now or hereafter owned by Grantor and now or hereafter covered by such licenses (all of the foregoing are hereinafter referred to collectively as the "Licenses"). Notwithstanding the foregoing provisions of this Section 4, the Licenses shall not include any license agreement in effect as of the date hereof which by its terms prohibits the grant of the security contemplated by this Agreement; provided, however, that upon the termination of such prohibitions for any reason whatsoever, the provisions of this Section 4 shall be deemed to apply thereto automatically.

5. Restrictions on Future Agreements. Grantor will not, without NCB's prior written consent, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with this Agreement, and Grantor further agrees that it will not take any action, and will use its best efforts not to permit any action to be taken by others, including, without limitation, licensees, or fail to take any action, which would in any respect affect the validity or enforcement of the rights transferred to NCB under this Agreement or the rights associated with the Trademarks or Licenses.

6. New Trademarks and Licenses. Grantor represents and warrants that, from and after the Effective Date, (a) the Trademarks listed on Schedule A include all of the trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications now owned or held by Grantor, (b) the Licenses listed on Schedule B include all of the trademark license agreements and service mark license agreements under which Grantor is the licensee or licensor and (c) no liens, claims or security interests in such Trademarks and Licenses have been granted by Grantor to any Person other than NCB. If, prior to the termination of this Agreement, Grantor shall (i) obtain rights to any new trademarks, registered trademarks, trademark applications, service marks, registered service marks or service mark applications, (ii) become entitled to the benefit of any trademarks, registered trademarks, trademark applications, trademark licenses, trademark license renewals, service marks, registered service marks, service mark applications, service mark licenses or service mark license renewals whether as licensee or licensor, or (iii) enter into any new trademark license agreement or service mark license agreement, the provisions of paragraph 4 above shall automatically apply thereto. Grantor shall give to NCB prompt written notice of events described in clauses (i), (ii) and (iii) of the preceding sentence after the occurrence thereof. Grantor hereby authorizes NCB to modify this Agreement unilaterally (i) by amending Schedule A to include any future trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications and by amending Schedule B to include any future trademark license agreements and service mark license agreements, which are Trademarks or Licenses under paragraph 4 above or under this paragraph 6, and (ii) by filing, in addition to and not in substitution for this Agreement, a duplicate original of this Agreement containing on Schedule A or B thereto, as the case may be, such future trademarks, registered trademarks, trademark applications, service marks, registered service marks and service mark applications, and trademark license agreements and service mark license agreements.

7. Royalties. Grantor hereby agrees that the use by NCB of the Trademarks and Licenses as authorized hereunder in connection with NCB's exercise of its rights and remedies under paragraph 15 or pursuant to Section 19 of the Security Agreement shall be coextensive with Grantor's rights thereunder and with respect thereto and without any liability for royalties or other related charges from NCB to Grantor.

8. Right to Inspect; Further Assignments and Security Interests. NCB may at all reasonable times (and at any time when a Default exists) have access to, examine, audit, make copies (at Grantor's expense) and extracts from and inspect Grantor's premises and examine Grantor's books, records and operations relating to the Trademarks and Licenses; provided, that in conducting such inspections and examinations, NCB shall use reasonable efforts not to disturb unnecessarily the conduct of Grantor's ordinary business operations. From and after the occurrence of a Default, Grantor agrees that NCB, or a conservator appointed by NCB, shall have the right to establish such reasonable additional product quality controls as NCB or such conservator, in its sole and absolute judgment, may deem necessary to assure maintenance of the quality of products sold by Grantor under the Trademarks and the Licenses or in connection with which such Trademarks and Licenses are used. Grantor agrees (i) not to sell or assign its respective interests in the Trademarks or the Licenses, or grant any license under the Trademarks, without the prior and express written consent of NCB, (ii) to maintain the quality of such products as of the date hereof at a level sufficient to preserve any applicable Trademarks, and (iii) not to change the quality of such products in any material respect without NCB's prior and express written consent.

9. Nature and Continuation of NCB's Security Interest; Termination of NCB's Security Interest. This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Trademarks and Licenses and shall terminate only when the Obligations have been paid in full in cash and the Credit Agreement and the Security Agreement have been terminated. When this Agreement has terminated, NCB shall promptly execute and deliver to Grantor, at Grantor's expense, all termination statements and other instruments as may be necessary or proper to terminate NCB's security interest in the Trademarks and the Licenses, subject to any disposition thereof which may have been made by NCB pursuant to this Agreement or the Security Agreement.

10. Duties of Grantor. Grantor shall have the duty, to the extent desirable in the normal conduct of Grantor's business, to prosecute diligently any trademark application or service mark application that is part of the Trademarks pending as of the date hereof or hereafter until the termination of this Agreement. Grantor further agrees to use its best efforts to maintain in full force and effect the Trademarks and the Licenses that are or shall be necessary or economically desirable in the operation of Grantor's business. Any expenses incurred in connection with the foregoing shall be borne by Grantor. NCB shall not have any duty with respect to the Trademarks and Licenses. Without limiting the generality of the foregoing, NCB shall not be under any obligation to take any steps necessary to preserve rights in the Trademarks or Licenses against any other parties, but NCB may do so at its option from and after the occurrence of a Default, and all expenses incurred in connection therewith shall be for the sole account of Grantor and shall be added to the Obligations secured hereby.

11. NCB's Right to Sue. From and after the occurrence of a Default, NCB shall have the right, but shall not be obligated, to bring suit in its own name to enforce the Trademarks and the Licenses and, if NCB shall commence any such suit, Grantor shall, at the request of NCB, do any and all lawful acts and execute any and all proper documents required by NCB in aid of such enforcement. Grantor shall, upon demand, promptly reimburse NCB for all costs and expenses incurred by NCB in the exercise of its rights under this paragraph 11 (including, without limitation, reasonable fees and expenses of attorneys and paralegals for NCB).

12. Waivers. NCB's failure, at any time or times hereafter, to require strict performance by Grantor of any provision of this Agreement shall not waive, affect or diminish any right of NCB thereafter to demand strict compliance and performance therewith nor shall any course of dealing between Grantor and NCB have such effect. No single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. None of the undertakings, agreements, warranties, covenants and representations of Grantor contained in this Agreement shall be deemed to have been suspended or waived by NCB unless such suspension or waiver is in writing signed by an officer of NCB and directed to Grantor specifying such suspension or waiver.

13. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but the provisions of this Agreement 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 hereof, 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 Agreement in any jurisdiction.

14. Modification. This Agreement cannot be altered, amended or modified in any way, except as specifically provided in paragraph 6 hereof or by a writing signed by the parties hereto.

15. Cumulative Remedies; Power of Attorney. Grantor hereby irrevocably designates, constitutes and appoints NCB (and all Persons designated by NCB in its sole and absolute discretion) as Grantor's true and lawful attorney-in-fact, and authorizes NCB and any of NCB's designees, in Grantor's or NCB's name, to take any action and execute any instrument which NCB may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, from and after the occurrence and during the continuance of a Default and the giving by NCB of notice to Grantor of NCB's intention to enforce its rights and claims against Grantor, to (i) endorse Grantor's name on all applications, documents, papers and instruments necessary or desirable for NCB in the use of the Trademarks or the Licenses, (ii) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks or the Licenses to anyone on commercially reasonable terms, (iii) grant or issue any exclusive or nonexclusive license under the Trademarks or, to the extent permitted, under the Licenses, to anyone on commercially reasonable terms, and (iv) take any other actions with respect to the Trademarks or the Licenses as NCB deems in its own best interest. Grantor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until all of the Obligations shall have been paid in full in cash and the Credit Agreement shall have been terminated. Grantor acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of NCB under the Security Agreement, but rather is intended to facilitate the exercise of such rights and remedies. NCB shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks or the Licenses may be located or deemed located. Upon the occurrence of a Default and the election by NCB to exercise any of its remedies under Section 9.1-610 or Section 9.1-620 of the Uniform Commercial Code with respect to the Trademarks and Licenses, Grantor agrees to assign, convey and otherwise transfer title in and to the Trademarks and the Licenses to NCB or any transferee of NCB and to execute and deliver to NCB or any such transferee all such agreements, documents and instruments as may be necessary, in NCB's sole discretion, to effect such assignment, conveyance and transfer. All of NCB's rights and remedies with respect to the Trademarks and the Licenses, whether established hereby, by the Security Agreement, by any other agreements or by law, shall be cumulative and may be exercised separately or concurrently. Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence of a Default, NCB may exercise any of the rights and remedies provided in this Agreement, the Security Agreement and any of the other Loan Documents. Grantor agrees that any notification of intended disposition of any of the Trademarks and Licenses required by law shall be deemed reasonably and properly given if given at least ten (10) days before such disposition; provided, however, that NCB may give any shorter notice that is commercially reasonable under the circumstances.

16. Successors and Assigns. This Agreement shall be binding upon Grantor and its successors and assigns, and shall inure to the benefit of NCB and its successors and assigns. Grantor's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession of or for Grantor; provided, however, that Grantor shall not voluntarily assign or transfer its rights or obligations hereunder without NCB's prior written consent.

17. Governing Law. This Agreement shall be construed and enforced and the rights and duties of the parties shall be governed by in all respects in accordance with the internal laws (as opposed to conflict of laws provisions) and decisions of the State of Indiana.

18. Notices. All notices or other communications hereunder shall be given in the manner and to the addresses set forth in the Credit Agreement.


19. Section Titles. The section titles herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.

20. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

21. Merger. This Agreement represents the final agreement of the Grantor with respect to the matters contained herein and may not be contradicted by evidence of prior or contemporaneous agreements, or subsequent oral agreements, between the Grantor and NCB.

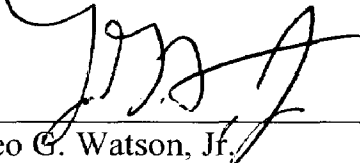
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

STARMATIX, INC. D/B/A POWERFILE

By:   
Name: Thomas B. Gabbert  
Title: Treasurer

Accepted and agreed to as of the day and year first above written.

NATIONAL CITY BANK OF INDIANA

By:   
Name: Leo G. Watson, Jr.  
Title: Senior Vice President



ACKNOWLEDGMENT

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF MARION     )

Before me, a Notary Public in and for the State of Indiana, personally appeared Thomas B. Gabbert, the Treasurer of StarMatix, Inc. d/b/a PowerFile who, first being duly sworn, acknowledged the execution of the foregoing instrument for and on behalf of said corporation as its duly authorized officer.

WITNESS my hand and Notarial Seal this 3rd day of July, 2001.

Shirley D. Burne  
Notary Public  
Shirley D. Burne  
Printed

I am a resident of  
Hamilton County, Indiana

My commission expires:  
6-9-09

ACKNOWLEDGMENT

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF MARION     )

Before me, a Notary Public in and for the State of Indiana, personally appeared Leo G. Watson, Jr., a Senior Vice President of National City Bank of Indiana, who, first being duly sworn, acknowledged the execution of the foregoing instrument for and on behalf of said bank as its duly authorized officer.

WITNESS my hand and Notarial Seal this 3rd day of July, 2001.

Shirley D. Burne  
Notary Public  
Shirley D. Burne  
Printed

I am a resident of  
Hamilton County, Indiana

My commission expires:  
6-9-09

**SCHEDULE A**

**STARMATIX, INC. TRADEMARKS**

<b>Trademark</b>	<b>Filed</b>	<b>Application No.</b>	<b>Status</b>
FIRECAT	12/08/1999	75/869,485	Allowed
MEDIAFINDER	12/08/1999	75/866,898	Pending

**SCHEDULE B**

**STARMATIX, INC. LICENSE AGREEMENTS**

None.