

11-16-2001  
101897039  
REGISTRATION 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
- ☐ Merger
- ☐ Change of Name
- ☐ Other

Conveying Party

☐ Mark if additional names of conveying parties attached

Execution Date  
Month Day Year

Name ESLEEP, INC

11 20 01

Formerly

- ☐ Individual ☐ General Partnership ☐ Limited Partnership ☒ Corporation ☐ Association
- ☐ Other
- ☐ Citizenship/State of Incorporation/Organization NEW JERSEY

Receiving Party

☐ Mark if additional names of receiving parties attached

Name The CIT Group / Commercial Services, Inc.

DBA/AKA/TA

Composed of

Address (line 1) 1211 Avenue of the Americas

Address (line 2)

Address (line 3) New York  
City

New York  
State/Country

10036  
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

11/19/2001 6TON11 00000044 1587930

FOR OFFICE USE ONLY

01 FC:481  
02 FC:482

40.00 OP  
25.00 OP

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

38969  
TRADEMARK  
REEL: 002396 FRAME: 0206

**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)

**Return To 3 8 9 6 9**

**National Corporate Research, LTD.**

**225 W. 34th St., Suite 910**

**New York, N.Y. 10122**

**(800) 221-0102 (212) 947-7200**

**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)

1,587,930

1,405,907

**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.

Christine Dery

Name of Person Signing

Christine Dery

Signature

11/13/01

Date Signed

**GRANT OF SECURITY INTEREST IN  
PATENTS, TRADEMARKS AND LICENSES**

THIS GRANT OF SECURITY INTEREST IN PATENTS, TRADEMARKS AND LICENSES (herein the "Agreement") made as of this 20 day of Sept., 2001 by **ESLEEP, INC.**, a New Jersey corporation, with its principal place of business at 234 16<sup>th</sup> Street, Jersey City, New Jersey 07310 (herein the "Company"), and **THE CIT GROUP/COMMERCIAL SERVICES, INC.**, a New York corporation, with offices at 1211 Avenue of the Americas, New York, New York 10036 (herein "CIT").

**W I T N E S S E T H:**

WHEREAS, the Company has executed and delivered to CIT a certain Guaranty of even date herewith (the "Guaranty") pursuant to which the Company has guaranteed the Obligations owing to CIT by Bentley Lingerie, Inc. (the "Client") arising under a certain factoring arrangement, as the same may be amended from time to time (herein the "Factoring Agreement"), and to induce CIT to make certain loans, advances and extensions of credit, all to or for the account of the Client the Company hereby grants to CIT of a security interest in all of the Company's patents, patent applications and/or registrations, trademarks, trademark applications and/or registrations, trade names, goodwill and licenses, all as more fully set forth therein;

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

1. Definitions. Capitalized terms used herein and defined in the Factoring Agreement and/or the Guaranty shall have the meanings set forth therein unless otherwise specifically defined herein.
2. Grant of Security Interest. To secure the payment of the "Obligations" (as defined in the Guaranty), the Company hereby grants to CIT a security interest, effective immediately, in all of the Company's right, title and interest in and to all of the following described property, whether now owned or hereafter acquired (collectively herein the "Intellectual Property Collateral"):
  - (i) Patents and patent applications and/or registrations together with the inventions and improvements described and claimed therein including, without limitation, the patents and applications, if any, listed on Schedule A, attached hereto and made a part hereof, and any and all reissues and renewals thereof and all income, royalties, damages and payments now and hereafter due and/or payable in connection therewith including, without limitation, damages and payments for past or future infringements thereof (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Patent Collateral");
  - (ii) Trademarks, trademark registrations and/or applications and trade names including, without limitation, the trademarks and applications, if any, listed on Schedule B attached hereto and made a part hereof, and any and all reissues and/or renewals

thereof, and all income, royalties, damages and payments now and hereafter due and/or payable in connection therewith including, without limitation, damages and payments for past or future infringements thereof (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Trademark Collateral");

- (iii) Any license agreement in which the Company is or becomes licensed to use any patents and/or trademarks owned by a third party including, without limitation, the licenses, if any, listed on Schedule C attached hereto and made a part hereof (all of the foregoing are sometimes referred to herein individually and/or collectively as the "License Collateral");
- (iv) The goodwill of the Company's business connected with and symbolized by the Intellectual Property Collateral; and
- (v) All cash and non-cash proceeds of the foregoing.

3. CIT's Rights. Upon the occurrence of any Event of Default hereunder, CIT shall have all the rights and remedies of a secured party under the Uniform Commercial Code and any other applicable state or federal laws. CIT will give the Company reasonable notice of the time and place of any public sale of the Intellectual Property Collateral or the time after which any private sale of the Intellectual Property Collateral or any other intended disposition thereof is to be made. Unless otherwise provided by law, the requirement of reasonable notice shall be met if such notice is mailed, postage prepaid to the address of the Company set forth above at least ten (10) days before the date of such sale or disposition. In addition to the foregoing and all other rights and remedies of CIT upon the occurrence of any Event of Default hereunder, CIT shall thereupon have the immediate right to transfer to itself or to sell, assign and transfer to any other person all right, title and interest in and to all or any part of the Intellectual Property Collateral. A formal irrevocable power of attorney (in the form annexed hereto) is being executed and delivered by the Company to CIT concurrently with this Agreement to enable such rights to be carried out. The Company agrees that, in the event CIT exercises its rights hereunder and/or pursuant to said power of attorney in accordance with its terms, after written notification of such exercise from CIT to the Company, the Company shall never thereafter, without the prior written authorization of the owner or owners of such Intellectual Property Collateral, use any of such Intellectual Property Collateral. The condition of the foregoing provision is such that unless and until there occurs an Event of Default under this Agreement, the Company shall continue to own and use the Intellectual Property Collateral in the normal course of its business and to enjoy the benefits, royalties and profits therefrom provided, however, that from and after the occurrence of an Event of Default such right will, upon the exercise by CIT of the rights provided by this Agreement, be revoked and the right of the Company to enjoy the uses, benefits, royalties and profits of said Intellectual Property Collateral will wholly cease, whereupon CIT or its transferee(s) shall be entitled to all of the Company's right, title and interest in and to the Intellectual Property Collateral hereby so assigned. This Agreement will not operate to place upon CIT any duty or responsibility to maintain the Intellectual Property Collateral.

4. Fees. The Company will pay all filing fees with respect to the security interest created

hereby which CIT may deem necessary or advisable in order to perfect and maintain the perfection of its security interest in the Intellectual Property Collateral.

5. Representations and Warranties. The Company represents and warrants: that the Company lawfully possesses and owns the Intellectual Property Collateral and that except for the security interest granted hereby, the Intellectual Property Collateral will be kept free from all liens, security interests, claims and encumbrances whatsoever; that the Company has not made or given any prior assignment, transfer or security interest in the Intellectual Property Collateral or any of the proceeds thereof; that the Intellectual Property Collateral is and will continue to be, in all respects, in full force and effect; and that there are no known infringements of the Intellectual Property Collateral.
6. Application of Proceeds. The proceeds of any sale, transfer or disposition of the Intellectual Property Collateral shall be applied first to all costs and expenses, including, but not limited to, reasonable attorneys' fees and expenses and court costs, incurred by CIT in connection with such sale and the exercise of CIT's rights and remedies hereunder and under the Guaranty; next, such proceeds shall be applied to the payment, in whole or in part, of the Obligations due CIT in such order as CIT may elect; and the balance, if any, shall be paid to the Company or as a court of competent jurisdiction may direct.
7. Defense of Claims. The Company will defend at its own cost and expense any action, claim or proceeding affecting the Intellectual Property Collateral or the interest of CIT therein. The Company agrees to reimburse CIT for all costs and expenses incurred by CIT in defending any such action, claim or proceeding.
8. Rights Cumulative. This Agreement shall be in addition to the Guaranty and shall not be deemed to affect, modify or limit the Guaranty or any rights that CIT has under the Financing Agreement. The Company agrees to execute and deliver to CIT (at the Company's expense) any further documentation or papers necessary to carry out the intent or purpose of this Agreement including, but not limited to, financing statements under the Uniform Commercial Code.
9. Construction and Invalidity. Any provisions hereof contrary to, prohibited by or invalid under any laws or regulations shall be inapplicable and deemed omitted herefrom, but shall not invalidate the remaining provisions hereof.
10. **CHOICE OF LAW. THE COMPANY AGREES THAT THE VALIDITY, INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT AND ALL RIGHTS HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. THIS AGREEMENT TOGETHER WITH THE FINANCING AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT OF THE COMPANY AND CIT WITH RESPECT TO THE INTELLECTUAL PROPERTY COLLATERAL, CAN ONLY BE CHANGED OR MODIFIED IN WRITING AND SHALL BIND AND BENEFIT THE COMPANY, CIT AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS. THE COMPANY AND CIT EACH HEREBY EXPRESSLY WAIVES ANY RIGHT OF TRIAL BY JURY ON ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING HEREUNDER.**

11. Events of Default. Any of the following constitutes an Event of Default under this Agreement:
- (i) The Company fails to perform or observe any agreement, covenant or condition required under this Agreement;
  - (ii) Any warranty or representation made by Company, in this Agreement shall be or becomes false or misleading in any material respect; or
  - (iii) The occurrence of any Event of Default under the Factoring Agreement with the Client which is not waived in writing by CIT.
12. Notices. The Company covenants and agrees that, with respect to the Intellectual Property Collateral, it will give CIT written notice in the manner provided in paragraph 15 below:
- (i) any claim by a third party that the Company has infringed on the rights of a third party;
  - (ii) any suspected infringement by a third party on the rights of the Company; or
  - (iii) any Intellectual Property Collateral created, arising or acquired by the Company after the date hereof.
13. Further Assurances. The Company will take any such action as CIT may reasonably require to further confirm or protect CIT's rights under this Agreement in the Intellectual Property Collateral. In furtherance thereof, the Company hereby grants to CIT a power of attorney coupled with an interest which shall be irrevocable during the term of this Agreement to execute any documentation or take any action in the Company's behalf required to effectuate the terms, provisions and conditions of this Agreement.
14. Termination. This Agreement shall terminate upon termination of the Guaranty and full final and indefeasible payment of all Obligations of the Company thereunder. Upon the Company's request, CIT shall within a reasonable time after any such termination execute and deliver to the Company (at the Company's expense) such documents and instruments as are reasonably necessary to evidence such termination and release of the security interest granted herein on any applicable public record.
15. Except as otherwise herein provided, any notice or other communication required hereunder shall be in writing (provided that, any electronic communications from the Company with respect to any request, transmission, document, electronic signature, electronic mail or facsimile transmission shall be deemed binding on the Company for purposes of this Agreement, provided further that any such transmission shall not relieve the Company from any other obligation hereunder to communicate further in writing), and shall be deemed to have been validly served, given or delivered when hand delivered or sent by facsimile, or three days after deposit in the United State mails, with proper first class postage prepaid and addressed to the party to be notified or to such other address as any party hereto may designate for itself by like notice, as follows:

(A) if to CIT, at:

The CIT Group/Commercial Services, Inc.  
1211 Avenue of the Americas  
New York, NY 10036  
Attn: Regional Manager  
Fax No.:

(B) if to the Company at:

Esleep, Inc.  
234 16<sup>th</sup> Street  
Jersey City, NJ 07310  
Attn:  
Fax No.:

With a courtesy copy of any material notice to the Company's counsel at:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attn:  
Fax No.

provided, however, that the failure of CIT to provide the Company's counsel with a copy of such notice shall not invalidate any notice given to the Company and shall not give the Company any rights, claims or defenses due to the failure of CIT to provide such additional notice.

**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the \_\_\_\_\_ day of Sept 20, 2001.

**BENTLEY LINGERIE, INC.**

By Marvin Angel  
Name:  
Title:

Agreed and Accepted this  
2 day of November, 2001

**THE CIT GROUP/COMMERCIAL SERVICES, INC.**

By Ken S. Gillopie  
Name: Ken S. Gillopie  
Title: Vice President

STATE OF New York )  
COUNTY OF New York )

On September 30, 2001, before me, the undersigned, a notary public in and for said State, personally appeared MARVIN HASE known to me to be the ESLEEP of, **ESLEEP, INC.**, the corporation that executed the within instrument, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws and a resolution of its board of directors.

**WITNESS** my hand and official seal.

Ernestine Brennan  
Notary Public  
My Commission Expires: 11/01/01

Ernestine Brennan  
Notary Public State of New York  
No. 01BR6032602 Qualified in New York County  
Certificate Filed in New York County  
Commission Expires 11/01/2001

**SCHEDULE A TO GRANT OF SECURITY INTEREST IN PATENTS,  
TRADEMARKS AND LICENSES**

**between**

**ESLEEP, INC.**

**and**

**THE CIT GROUP/COMMERCIAL SERVICES, INC.**

**U.S. PATENTS**

Title

Patent No.

Issue Date

**NONE**

**SCHEDULE B TO GRANT OF SECURITY INTEREST IN PATENTS,  
TRADEMARKS AND LICENSES**

between

**ESLEEP, INC.**

and

**THE CIT GROUP/COMMERCIAL SERVICES, INC.**

**U.S. TRADEMARKS**

<u>Title or Mark</u>	<u>Registration No.</u>	<u>Registration Date</u>
Asleep	1,587,930	March 20, 1990
Esleep	1,405,907	August 19, 1986

**SCHEDULE C TO GRANT OF SECURITY INTEREST IN PATENTS,  
TRADEMARKS AND LICENSES**

between

**ESLEEP, INC.**

and

**THE CIT GROUP/COMMERCIAL SERVICES, INC.**

**U.S. LICENSES**

<u>Name</u>	<u>Registration No.</u>	<u>Registration Date</u>
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**NONE**