

01-08-2002

FORM PTO-1618A  
Expires 06/30/99  
OMB 0651-0027



101936303

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

EL704199714US

10-22-01

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

#### 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

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

- Individual  General Partnership  Limited Partnership

Corporation  Association

Other

Citizenship/State of Incorporation/Organization

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.)

#### FOR OFFICE USE ONLY

01/07/2002 DBYRNE 00000162 76096661

01 FC:481 40.00 OP  
02 FC:482 225.00 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

TRADEMARK  
REEL: 002417 FRAME: 0916

**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.

Jane Eckels  
Name of Person Signing



Signature

10/19/2001  
Date Signed

# INTELLECTUAL PROPERTY SECURITY AGREEMENT

This Intellectual Property Security Agreement (this "Agreement") is made as of October 11, 2001, by Phyve Corporation, a Delaware corporation ("Borrower") and Sentinel Trust Company, a Tennessee trust company, as collateral agent ("Agent") for certain shareholders of Borrower ("Lenders") who are providing credit to Borrower under the terms of a Loan and Security Agreement dated as of the date of this Agreement (the "Loan Agreement"). Capitalized terms used in this Agreement and not otherwise defined in this Agreement shall have the meanings given to them in the Loan Agreement.

## BACKGROUND

Pursuant to the Loan Agreement, Borrower has granted to Agent, for the benefit of Lenders, a continuing security interest in all of Borrower's present and future assets, including without limitation all the Intellectual Property Collateral (as defined below), to secure all of its obligations to Lenders under the Loan Agreement. In order to induce Lenders to enter into the Loan Agreement, Borrower has agreed to execute and deliver to Agent this Agreement. Therefore, the parties agree as follows:

## AGREEMENT

1. Assignment. To secure the complete and timely payment and performance of all obligations under the Loan Agreement, and without limiting any other security interest Borrower has granted to Agent for the benefit of Lenders, Borrower hereby grants, assigns, and conveys to Agent, for the benefit of Lenders, for security purposes only but does not transfer title to Agent, all of Borrower's right, title and interest in and to the Intellectual Property Collateral (defined below).

2. Definition of Intellectual Property Collateral. "Intellectual Property Collateral" means:

(a) All of Borrower's present and future United States registered copyrights and copyright registrations, including, without limitation, the registered copyrights listed on the attached Schedule A (and including all of the exclusive rights afforded a copyright registrant in the United States under 17 U.S.C. § 106 and any exclusive rights which may in the future arise by act of Congress or otherwise) and all of Borrower's present and future applications for copyright registrations (including applications for copyright registrations of derivative works and compilations) (collectively, the "Registered Copyrights"), and any and all royalties, payments, and other amounts payable to Borrower in connection with the Registered Copyrights, together with all renewals and extensions of the Registered Copyrights, the right to recover for all past, present, and future infringements of the Registered Copyrights, and all computer programs, computer databases, computer program flow diagrams, source codes, object codes, and all tangible property embodying or incorporating and Registered Copyrights.

(b) All of Borrower's present and future copyrights which are not registered in the United States Copyright Office (the "Unregistered Copyrights"), whether

now owned or hereafter acquired, and any and all royalties, payments, and other amounts payable to Borrower in connection with the Unregistered Copyrights, together with all renewals and extensions of the Unregistered Copyrights, together with all renewals and extensions of the Unregistered Copyrights, the right to recover for all past, present and future infringements of the Unregistered Copyrights, and all computer programs, computer databases, computer program flow diagrams, source codes, object codes, and all tangible property embodying or incorporating the Unregistered Copyrights. The Registered Copyrights and the Unregistered Copyrights collectively are referred to herein as the "Copyrights."

(c) All of Borrower's right, title, and interest in and to any and all present and future license agreements with respect to the Copyrights.

(d) Each of the material trademarks and rights and interests which are capable of being protected as trademarks (including trademarks, service marks, designs, logos, indicia, trade names, corporate names, company names, business names, fictitious business names, trade styles, and other source or business identifiers and applications pertaining thereto), which are presently, or in the future may be, owned, created, acquired, or used (whether pursuant to a license or otherwise) by Borrower, in whole or in part, including but not limited to those trademarks and trademark registrations listed on the attached Schedule B, and all trademark rights with respect thereto throughout the world, including all proceeds thereof (including license royalties and proceeds of infringement suits), and rights to renew and extend such material trademarks and trademark rights;

(e) All of Borrower's right, title and interest to register trademark claims under any state or federal trademark law or regulation of any foreign country and to apply for, renew and extend the trademark registrations and trademark rights, the right (without obligation) to sue or bring opposition or cancellation proceedings in the name of Borrower or in the name of Agent for past, present and future infringements of the trademarks, registrations or trademark rights and all rights (but not obligations) corresponding thereto in the United States and any foreign country and the associated goodwill;

(f) Each of the material patents and patent applications which are presently, or in the future may be, owned, issued, acquired, or used (whether pursuant to a license or otherwise) by Borrower, in whole or in part, including but not limited to those patents and patent applications listed on the attached Schedule C, and all patent rights with respect thereto throughout the world, including all proceeds thereof (including license royalties and proceeds of infringement suits), foreign filing rights, and rights to extend such patents and patent rights;

(g) All of Borrower's right, title and interest, in all material patentable inventions, and to file applications for patents under federal patent law or regulation of any foreign country, and to request re-examination and/or re-issue of the patents, the right (without obligation) to sue or bring interference proceedings in the name of Borrower or in the name of Agent for past, present and future infringements of the patents, and all rights (but not obligations) corresponding thereto in the United States and any foreign country;

(h) All general intangibles relating to the foregoing; and

(i) All proceeds of any and all of the foregoing (including, without limitation, license royalties and proceeds of infringement suits) and, to the extent not otherwise included, all payments under insurance or any indemnity, warranty or guaranty payable by reason of loss or damage to or otherwise with respect to the Intellectual Property Collateral.

(j) All present and future accounts, accounts receivable, and other rights to payment arising from the Intellectual Property Collateral.

(k) All cash and non-cash proceeds of any and all of the foregoing.

3. Covenants. Until all obligations under the Loan Agreement have been satisfied in full and the Loan Agreement has terminated:

(a) Borrower shall not grant a security interest in any of the Intellectual Property Collateral to any other person and shall not enter into any agreement or take any action that is inconsistent with Borrower's obligations hereunder or under the Loan Agreement, without Agent's prior written consent.

(b) Borrower shall use its best efforts to ensure that each use of the material Copyrights carries a complete and accurate copyright notice.

(c) Borrower shall use its best efforts to preserve and defend Borrower's and Lenders' rights in the Intellectual Property Collateral unless Borrower, in its good faith business judgment, reasonably determines that a material Copyright is not worth preserving or ~~defending~~. Borrower shall undertake all reasonable measures to cause its employees, agents, and independent contractors to assign to Borrower all rights of authorship to any material copyrighted material, in which Borrower has or may subsequently acquire any right or interest.

(e) Borrower shall, at its expense, promptly make, execute, acknowledge and deliver, and file and record in the proper filing and recording places, all instruments and documents, and take all further action, that may be necessary or desirable, in order to perfect and protect any security interest granted hereby or to enable Agent to exercise and enforce its rights and remedies hereunder with respect to any Intellectual Property Collateral. Without limiting the generality of the foregoing, Borrower will: (i) execute and file such financing or continuation statements, or amendments thereto, and such other instrument or notices, as may be necessary or desirable, or as Agent may reasonably request, in order to perfect and preserve the security interests granted under this Agreement; (ii) at any reasonable time during normal business hours, upon demand by Agent, allow inspection of the Intellectual Property Collateral and records relating thereto by Agent, or persons designated by Agent; and (iii) appear in and defend any action or proceeding that may adversely affect Borrower's title to or Agent's security interest in the Intellectual Property Collateral.

(f) Borrower will furnish to Agent from time to time statements and schedules further identifying and describing the Intellectual Property Collateral and such

other reports in connection with the Intellectual Property Collateral as Agent may reasonably request.

4. License Rights. Borrower may license or sublicense the Intellectual Property Collateral only subject to Agent's security interest and Borrower's obligations under this Agreement.

5. Lenders and Borrower May Supplement. Borrower shall from time to time update the lists of Copyrights, trademarks and patent rights on Schedules A, B and C as Borrower obtains, acquires or obtains licenses in copyrights, trademarks and patent rights in the future. Without limiting the generality of the foregoing, Borrower shall give Agent prior written notice of any future application for copyright registration and shall make any filings and recordings that are necessary or appropriate to protect or perfect its security interest in the Intellectual Property Collateral. Thereafter, Schedule A, B or C (as applicable) shall be deemed modified to include any future Intellectual Property Collateral. Notwithstanding the foregoing, no failure to so modify this Agreement or amend Schedules A, B or C or make any filings or recordings shall in any way affect, invalidate, or detract from Agent's continuing security interest in all Intellectual Property Collateral, whether or not listed on Schedule A, B or C.

6. True and Lawful Attorney. Borrower does hereby designate and appoint the Agent its true and lawful attorney with power irrevocable, for it and in its name, place and stead, to execute an abstract of this Agreement or any other document describing Agent's interest in the Intellectual Property Collateral, for filing with the United States Copyright Office, the United States Patent and Trademark Office, or other applicable government authority; and after an Event of Default (as defined in the Loan Agreement) has occurred and is continuing, to ask, demand, receive and give acquittance for any and all amounts that may be or become due or payable to Borrower with respect to the Intellectual Property Collateral, and in the Agent's sole discretion to file any claim or take any action or proceeding, or either, in its own name or in the name of Borrower, or otherwise, which the Agent deems necessary or desirable in order to collect or enforce payment of any and all amounts which may become due or owing with respect to the Intellectual Property Collateral. The acceptance of this appointment by the Agent shall not obligate it to perform any duty, covenant or obligation required to be performed by Borrower under or by virtue of the Intellectual Property Collateral or to take any action in connection therewith. The Agent also may execute, on behalf of Borrower, any UCC Financing Statements or other instruments which in its opinion may be necessary or desirable to perfect or protect its position with respect to the Intellectual Property Collateral. Without limiting the generality of the foregoing, the Agent is authorized at any time to exercise any right of Borrower, or enforce any obligation owed to Borrower pursuant to the terms of any agreements to which Borrower is a party or in which it has any beneficial interest. When an Event of Default has occurred and is continuing, the Agent may, in its sole discretion, perform any obligation of Borrower under any of Borrower's contracts or in respect of any of Borrower's accounts, and any expenses incurred in such performance shall bear interest from the date incurred until repaid by Borrowers at a per annum rate equal to the Interest Rate (as defined in the Loan Agreement). Any such amounts shall be secured hereby and shall be repaid by Borrower on demand.

7. Agent's Cure Rights. In the event that Borrower fails to use its best efforts to preserve and defend Borrower's rights in the Intellectual Property Collateral, and subject to any notice requirements in the Loan Agreement, Agent shall have the right, but shall in no way be obligated to, bring suit or take any other action, in its own name or in Borrower's name, to enforce or preserve Agent's or Borrower's rights in the Intellectual Property Collateral. Borrower shall at the request of Agent and at Borrower's expense do any lawful acts and execute any documents requested by Agent to assist with such enforcement. In the event Borrower has not taken action to enforce or preserve Agent's and Borrower's rights in the Intellectual Property Collateral and Agent thereupon takes such action, Borrower, upon demand, shall promptly reimburse and indemnify Agent for all costs and expenses incurred in the exercise of Agent's rights under this Agreement.

8. No Waiver. No course of dealing between Borrower and Agent nor any failure to exercise nor any delay in exercising, on the part of Agent, any right, power, or privilege under this Agreement or under the Loan Agreement or any other agreement, shall operate as a waiver. No single or partial exercise of any right, power, or privilege under this Agreement or under the Loan Agreement or any other agreement by Agent shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege by Agent.

10. Rights Are Cumulative. All of Agent's rights and remedies with respect to the Intellectual Property Collateral whether established by this Agreement, the Loan Agreement, any other documents or agreements, or by law shall be cumulative and may be exercised concurrently or in any order.

11. Indemnity. Borrower shall protect, defend, indemnify, and hold harmless Agent and Lenders from all liabilities, losses, and costs (including without limitation reasonable attorneys' fees) incurred or imposed on Agent or Lenders relating to the matters in this Agreement, including, without limitation, in connection with Agent's or Lenders' defense of any infringement action brought by a third party against Agent or Lender; provided, however, Borrower shall have no obligation to Agent or Lenders under this Agreement with respect to any liability, loss or cost that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of Agent or Lenders.

12. Release. Upon satisfaction of all obligations under the Loan Agreement and termination of the Loan Agreement, Agent shall execute and deliver to Borrower assignments and other instruments necessary to terminate Agent's security interest in the Intellectual Property Collateral. For the purpose of this Agreement, the obligations under the Loan Agreement shall be deemed to continue if Borrower enters into any bankruptcy or similar proceeding at a time when any amount paid to Lenders could be ordered to be repaid as a preference or pursuant to a similar theory, and shall continue until it is finally determined that no such repayment can be ordered.

13. Amendments. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally, but only by a statement in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought.

14. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, mailed by certified mail (return receipt requested) or sent by overnight delivery service, cable, telegram, facsimile transmission or telex to the parties at the addresses set forth on the signature page hereto or at such other addresses as shall be specified by the parties by like notice. Notice so given shall, in the case of notice so given by mail, be deemed to be given and received on the fourth calendar day after posting, in the case of notice so given by overnight delivery service, on the date of actual delivery and, in the case of notice so given by cable, telegram, facsimile transmission, telex or personal delivery, on the date of actual transmission or, as the case may be, personal delivery.

15. Severability. If any provision of this Agreement shall be held to be illegal, invalid or unenforceable under any applicable law, then such contravention or invalidity shall not invalidate the entire Agreement. Such provision shall be deemed to be modified to the extent necessary to render it legal, valid and enforceable, and if no such modification shall render it legal, valid and enforceable, then this Agreement shall be construed as if not containing the provision held to be invalid, and the rights and obligations of the parties shall be construed and enforced accordingly.

16. Parties in Interest. All the terms and provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties.

17. Choice of Law. This Agreement will be governed by the laws of the State of Tennessee without reference to its conflicts of laws principles.

18. Incorporated of Schedules. Schedules A, B and C, inclusive, are by this reference incorporated herein as if set forth in full in this Agreement.

**[remainder of page intentionally blank – signatures appear on following page]**



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

LENDER AND AGENT:

SENTINEL TRUST COMPANY

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Agent for Lenders

Address: \_\_\_\_\_

BORROWER:

PHYVE CORPORATION

By: \_\_\_\_\_

Name: Terry A. Hemmings

Title: President

Address: 20 Burton Hills Blvd., Suite 100

Nashville, TN 37215

NOTARY

STATE OF TENNESSEE )  
 ) ss.  
County of \_\_\_\_\_ )

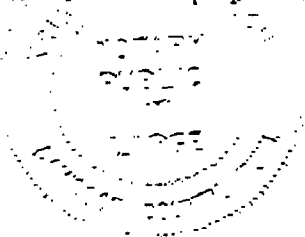
On this 11th day of October, 2001, before me, the undersigned Notary Public in and for said State, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_ of Sentinel Trust Company), a \_\_\_\_\_ corporation, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

\_\_\_\_\_  
NOTARY PUBLIC FOR TENNESSEE  
My Commission Expires: \_\_\_\_\_

STATE OF TENNESSEE )  
 ) ss.  
County of Davidson )

On this 11th day of October, 2001, before me, the undersigned Notary Public in and for said State, personally appeared Terry A. Hemmings, known to me to be the President of Phyve Corporation, a Delaware corporation, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

Hester D. Pierson  
\_\_\_\_\_  
NOTARY PUBLIC FOR TENNESSEE  
My Commission Expires: November 29, 2003



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

LENDER AND AGENT:

SENTINEL TRUST COMPANY

By: *Paul Williams*  
Name: Paul Williams  
Title: Agent for Lenders  
Address: SENTINEL TRUST COMPANY  
8122 Sawyer Brown Road - Suite 201  
Nashville, TN 37221

BORROWER:

PHYVE CORPORATION

By: \_\_\_\_\_  
Name: Terry A. Hemmings  
Title: President  
Address: 20 Burton Hills Blvd., Suite 100  
Nashville, TN 37215

NOTARY

STATE OF TENNESSEE )  
County of DAVLDSON ) ss.

On this 11th day of October, 2001, before me, the undersigned Notary Public in and for said State, personally appeared Paul Williams, known to me to be the Exec. V. P. of Sentinel Trust Company, a Tennessee ~~TRUST COMPANY~~ corporation, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

*Paul Williams*  
NOTARY PUBLIC FOR TENNESSEE  
My Commission Expires JULY, 30, 2005

STATE OF TENNESSEE )  
County of \_\_\_\_\_ ) ss.

On this 11th day of October, 2001, before me, the undersigned Notary Public in and for said State, personally appeared Terry A. Hemmings, known to me to be the President of Phylve Corporation, a Delaware corporation, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

\_\_\_\_\_  
NOTARY PUBLIC FOR TENNESSEE  
My Commission Expires: \_\_\_\_\_

Schedule A  
to  
Intellectual Property Security Agreement

Registered U.S. Copyrights and Applications

- Not Applicable -

Schedule B  
to  
Intellectual Property Security Agreement

Trademarks and Applications

REFERENCE#	MARK	FILED	APPL#	REGDT	REG#	STATUS	CLASSES
<b>CANADA</b>							
80015	EHEALTH SIGNED SEALED DELIVERED	2/9/2000	1,045,803			PENDING	A,B
80014	HUMAN DESIGN	2/9/2000	1,045,804			PENDING	A,B
80013	PHYVE	2/9/2000	1,045,802			PENDING	A,B
<b>UNITED STATES</b>							
80007	CPRSERVER	3/11/1994	74/501,691	4/9/1996	1,967,297	REGISTERED	9
80016	EHEALTH SIGNED SEALED DELIVERED	2/25/2000	75/928,072			ALLOWED	9,42
80006	ENABLING HEALTH	1/7/1997	2,029,258			REGISTERED	
80010	MEDICAL DIGITAL ASSISTANT	11/12/1993	74/461,524	12/12/1995	1,941,558	REGISTERED	9
80018	PHYGUARD	7/26/2000	76/096,659			PENDING	9,42
80019	PHYON	7/26/2000	76/096,660			PENDING	9,42
80020	PHYPORT	7/26/2000	76/096,091			PENDING	9,42
80021	PHYSIGN	7/26/2000	76/096,077			PENDING	9,42
80022	PHYVAULT	7/26/2000	76/096,661			PENDING	9,42
80011	PHYVE & DESIGN	2/4/2000	75/911,829			ALLOWED	9,42

Schedule C  
to  
Intellectual Property Security Agreement

Patents and Patent Applications

- Not Applicable -