

01-10-2002

ET

Docket No.:

112155-020



Tab settings

To the Honorable Commissioner of Pa

101939577

attached original documents or copy thereof.

1. Name of conveying party(ies):

Data Return Corporation

1-3-02

- Individual(s)
- General Partnership
- Corporation-State Delaware
- Other

- Association
- Limited Partnership

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

3. Nature of conveyance:

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

Execution Date: November 1, 2001

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

Name: divine, inc.

Internal Address:

Street Address: 1301 North Elston

City: Chicago State: IL ZIP: 60690

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

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

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

A. Trademark Application No.(s)

~~75/909,340~~; 75/891,900; 75/891,901;
75/909,339.

Additional numbers

B. Trademark Registration No.(s)

Yes No

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

Name: Jeffrey H. Canfield, Esq.

Internal Address: Bell, Boyd & Lloyd LLC

P.O. Box 1135

Street Address:

City: Chicago State: IL ZIP: 60690

6. Total number of applications and registrations involved:.....

4

7. Total fee (37 CFR 3.41):.....\$ \$40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

02-1818

01/10/2002 JJALLAH2 00000002 021818 75909340

01 FC:481 40.00 OP
02 FC:482 75.00 CH

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.

Jeffrey H. Canfield, Esq.

Name of Person Signing

Signature

November 14, 2001

Date

Total number of pages including cover sheet, attachments, and

21

INTELLECTUAL PROPERTY
SECURITY AGREEMENT

This INTELLECTUAL PROPERTY SECURITY AGREEMENT (the "Agreement"), is entered into as of the 1st day of November, 2001 among Data Return Corporation, a Texas corporation (the "Borrower" or "Debtor"), and divine, inc., a Delaware corporation (the "Lender").

WHEREAS, Borrower and Lender are parties to a Credit Agreement dated as of November 1, 2001, providing for the making of loans and other financial accommodations to the Borrower, as contemplated therein (as used herein, the term "Credit Agreement" means the Credit Agreement described above in this paragraph as the same may be amended, modified, extended, renewed, replaced, restated or supplemented from time to time, and including any agreement extending the maturity of, or restructuring the indebtedness under such agreement or any successor agreement); and

WHEREAS, pursuant to the terms of the Security Agreement dated as of November 1, 2001 (as said Agreement may be amended and in effect from time to time, the "Security Agreement"), by and among Debtor and Lender, the Debtor has granted to Lender a security interest in all of the assets of Debtor, including, without limitation, its patents, patent applications, service marks, service mark applications, service names, trademarks, trademark applications, service names, trademarks, trademark applications, trade names, goodwill, copyrights, mask works and licenses, to secure the payment of all amounts owing by Borrower under the Credit Agreement;

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, Debtor agrees as follows:

1. Security Interest. To secure the complete and timely satisfaction of all of the "Obligations" (as defined in the Credit Agreement), each Debtor hereby grants and conveys to Lender a lien and security interest in all of Debtor's right, title and interest in and to all of its now owned, held or existing and hereafter owned, held, acquired or arising intellectual property, other than the Excluded Assets as defined in the Security Agreement (such intellectual property, excluding the Excluded Assets, is collectively referred to herein as the "Intellectual Property"), including, without limitation, the following:

(A) Copyrights. Any and all copyrights, rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, including, without limitation, those registered copyrights set forth on Exhibit A attached hereto, and (i) amendments, extensions and renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payment for past or future infringements thereof, (iii) the right, but not the obligation, to sue for past, present and future infringements thereof, and (iv) all rights corresponding thereto throughout the world (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Copyrights").

(B) Patents. Any and all patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein, and those patents of Debtor listed on Exhibit B, attached hereto and made a part hereof, and (i) the reissues, divisions, continuations, amendments, renewals, extensions and continuations-in-part thereof, (ii) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, damages and payments for past or future

infringements thereof, (iii) the right, but not the obligation, to sue for past, present and future infringements thereof, and (iv) all rights corresponding thereto throughout the world (all of the foregoing patents and applications, together with the items described in clauses (i) through (iv), are sometimes hereinafter individually and /or collectively referred to as the "Patents").

(C) Trademarks. Any and all trademarks, trademark registrations, trade names and trademark applications, service marks, service mark registrations, service names and service mark applications, including, without limitation, the trademark registrations, trademark applications, service mark registrations and service mark applications listed on Exhibit C attached hereto and made a part thereof, and (i) amendments, extensions and renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payment for past or future infringements thereof, (iii) the right, but not the obligation, to sue for past, present and future infringements thereof, and (iv) all rights corresponding thereto throughout the world (all of the foregoing trademarks, service mark registrations, trade names, service names and applications, together with the items described in clauses (a) through (d), inclusive, are sometimes hereinafter individually and/or collectively referred to as the "Trademarks").

(D) Mask Works. Any and all mask works or similar rights available for the protection of semiconductor chips, now owned or hereinafter acquired, including, without limitation those set forth on Exhibit D attached hereto and made a part hereof, and (i) amendments, extensions and renewals thereof, (ii) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payment for past or future infringements thereof, (iii) the right to sue for past, present and future infringements thereof, and (iv) all rights corresponding thereto throughout the world such mask works and similar rights, together with the items described in clauses (i) through (iv), inclusive, are sometimes collectively referred to as the "Mask Works").

(E) Licenses. Any and all license agreements with any other party (provided, however, that with respect to any license agreements existing on the date hereof, only to the extent not prohibited pursuant to the terms of such license agreement), whether Debtor is a licensor or licensee under any such license agreement, including, without limitation, Debtor's licenses listed on Exhibit E attached hereto and made a part hereof, and all amendments extensions and renewals thereof, and the right to prepare for sale, sell and advertise for sale, all "Inventory" (as defined in the Security Agreement) now or hereafter owned by Debtor and now or hereafter covered by such licenses (all of the foregoing is hereinafter referred to collectively as the "Licenses").

(F) Goodwill. The goodwill of Debtor's business including but not by way of limitation such goodwill connected with and symbolized by the Trademarks.

(G) Miscellaneous. Any and all trade secrets, and any intellectual property rights in computer software and computer software products, and any and all design rights which may be available to Debtor.

(H) Proceeds and Products. Any and all proceeds and products of the items described in clauses (A) through (D) above, including, without limitation, all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

2. Restrictions on Future Assignments. Debtor agrees that until the Obligations shall have been satisfied in full (whether by payment of such amounts in cash or by the conversion of such amounts into equity securities of Borrower in accordance with Section 3.6 of the Credit Agreement) and the Credit Agreement and the commitment of the Lender to extend credit to or for the account of Borrower shall have been terminated, Debtor will not, without

Lender's prior written consent, enter into any agreement relating to the Intellectual Property (for example, a license agreement) other than in the ordinary course of business or in compliance with the terms and provisions of the Credit Agreement and Debtor further agrees that other than in the ordinary course of business, it will not take any action, or permit any action to be taken by others subject to its control, including licensees, or fail to take any action which would affect the validity or enforcement of the rights transferred to Lender under this Agreement.

3. New Patents, Trademarks, and Licenses. Debtor represents and warrants that all Intellectual Property registered or patented or as to which an application for registration or a patent has been made that is now owned by it is collectively listed on Schedules A, B, C, D and E. If, before the Obligations shall have been satisfied in full (whether by payment of such amounts in cash or by the conversion of such amounts into equity securities of Borrower in accordance with Section 3.6 of the Credit Agreement) and the commitment of the Lender to extend credit to or for the account of Borrower shall have been terminated, Debtor shall (i) obtain rights to any new patentable inventions, trademarks, trademark registrations, trade names, service marks, service mark registrations, service names, licenses or other Intellectual Property, or (ii) become entitled to the benefit of any patent, service mark or trademark application, service mark, service mark registration, trademark, trademark registration, or license renewal, or patent for any reissue, division, continuation, renewal, extension, or continuation-in-part of any Patent or any improvement on any Patent, or any other Intellectual Property, to the extent commercially reasonable, the provisions of this Agreement shall automatically apply thereto and, if such Intellectual Property is registered or patented or if an application for registration or a patent has been made, Debtor shall give to Lender prompt written notice. Debtor hereby authorizes Lender as attorney in fact to modify this Agreement by amending Schedules A, B, C, D and/or E, as applicable, to include any future Intellectual Property under Paragraph 1 above or under this Paragraph 3, and to file or refile this Agreement with the United States Patent and Trademark Office.

4. Representations and Warranties. Debtor represents and warrants to and agrees with Lender that, except as disclosed on Section 5.2(o) of the Company Disclosure Schedules (as defined in the Credit Agreement):

(i) The issued Patents and issued Trademarks are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;

(ii) To the knowledge of Responsible Officers of the Borrower, each portion of the federally registered (or patented) Intellectual Property is valid and enforceable;

(iii) Debtor is the owner of the federally registered (or patented) Intellectual Property indicated to be owed by Debtor on Schedules A, B, and C hereto and Debtor has the power and authority to make, and will continue to have authority to perform, this Agreement according to its terms subject to any outstanding agreements applicable to such Intellectual Property;

(iv) This Agreement does not violate and is not in contravention of any other agreement to which Debtor is a party or any judgment or decree by which Debtor is bound and does not require any consent under any other agreement to which Debtor is a party or by which Debtor is bound, except where such violation, contravention or breach individually or in the aggregate would not reasonably be expected to have a Material Adverse Effect on Debtor. Upon the occurrence of and during the continuance of an Event of Default, Debtor hereby authorizes the Commissioner of Patents and Trademarks to issue any and all patents on said inventions and any and all certificates of registration on all Trademarks to Lender as assignee of Debtor's entire interest; and

(v) The Intellectual Property is free from all liens of any kind, other than Permitted Liens (as defined in the Credit Agreement).

5. Terms. The term of the security interests granted herein shall extend until the earlier of (i) the expiration of each of the respective Intellectual Property assigned hereunder, or (ii) the Obligations have been paid in full (whether by payment of such amounts in cash or by the conversion of such amounts into equity securities of Borrower in accordance with Section 3.6 of the Credit Agreement) and the Credit Agreement and the commitment of the Lender to extend credit to or for the account of Borrower have been terminated.

6. Duties of Debtor. Debtor shall have the duty to (i) prosecute diligently, to the extent commercially reasonable, any patent application owned by it and any trademark or service mark application owned by it pending as of the date hereof or thereafter until the Obligations shall have been paid in full (whether by payment of such amounts in cash or by the conversion of such amounts into equity securities of Borrower in accordance with Section 3.6 of the Credit Agreement), and (ii) preserve and maintain all of its rights in material Intellectual Property, but only to the extent Debtor deems necessary. Any expenses incurred in connection with such applications, preservation and maintenance shall be borne by Debtor. Debtor shall not abandon any pending material patent application, material trademark application, material patent, or material trademark without the consent of Lender if such patent application, trademark application, patent or trademark is necessary for the Debtor's business.

7. Financing Statements; Documents. At the request of Lender, Debtor authorizes Lender to file and, if necessary, will join with Lender in executing one or more financing statements pursuant to any applicable version of the Uniform Commercial Code in form satisfactory to Lender and will pay the costs of filing and/or recording this Agreement and all financing, continuation and termination statements in all public offices where filing or recording is deemed necessary or desirable by Lender. Debtor will execute and deliver to Lender from time to time such supplemental assignments or other instruments, including, but not by way of limitation, additional assignments to be filed with the United States Patent and Trademark Office, as Lender may require for the purpose of confirming Lender's interest in the Intellectual Property.

8. Lender's Right to Sue. During the continuation of any Event of Default (as defined in the Credit Agreement) and so long as Lender may declare (or has declared) any or all Obligations to be immediately due and payable pursuant to Section 9.2 of the Credit Agreement, Lender shall have the same rights, if any, as Debtor has, but shall in no way be obligated, to bring suit in its own name to enforce the Intellectual Property, and any licenses thereunder, and, if Lender shall commence any such suit, Debtor shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents reasonably required by Lender in aid of such enforcement and Debtor shall promptly, upon demand and as a part of the Obligations, reimburse and indemnify Lender for all costs and expenses incurred by Lender in the exercise of its rights under this Paragraph 8.

9. Waivers. No course of dealing between Debtor and Lender nor any failure to exercise nor any delay in exercising, on the part of Lender, any right, power or privilege hereunder or under the Credit Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

10. Severability. 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 thereof,

in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

11. Modification. This Agreement cannot be altered, amended or modified in any way, except as specifically provided in Paragraph 3 hereof or by a writing signed by the parties hereto.

12. Cumulative Remedies; Effect on Financing Agreement. All of Lender's rights and remedies with respect to the Intellectual Property, whether established hereby or by the Credit Agreement or any other Loan Document, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Debtor acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of Lender under the Credit Agreement or the Security Agreement but rather is intended to facilitate the exercise of such rights and remedies.

13. Binding Effect; Benefits. This Agreement shall be binding upon the Debtor and its respective successors and assigns, and shall inure to the benefit of Lender, its successors and assigns; *provided, however*, that Debtor may not assign its rights or delegate its duties hereunder without the Lender's prior written consent and, prior to the occurrence and continuation of an Event of Default, Lender may not assign its rights hereunder without the Borrower's prior written consent. Without limiting the generality of the foregoing, Lender may assign or otherwise transfer any indebtedness held by it secured by this Agreement to any other person or entity in accordance with the terms hereof, and such other person or entity shall thereupon become vested with all the benefits in respect thereof granted to Lender herein or otherwise.

14. Governing Law. This Agreement has been delivered and accepted in Chicago, Illinois, and shall be governed by and construed in accordance with the local laws of the State of Illinois.

IN WITNESS WHEREOF the undersigned have executed this Agreement as of the 1st day of November, 2001.

Signed and Acknowledged:
in the presence of:

DATA RETURN CORPORATION

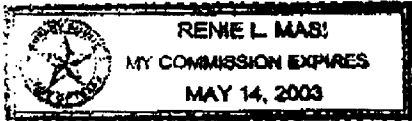
Melissa A.L. Ankeney
Melissa G.L. Ankeney

Stuart A. Walker
Name: Stuart A. Walker
Title: CFO

Diane Brown
DIANE BROWN

STATE OF TEXAS)
) ss:
COUNTY OF DALLAS)

The foregoing instrument was executed before me this ~~12~~ ^{November} day of ~~October~~, 2001, by Stuart Walker, the CEO of Data Return Corporation, a Texas corporation, on behalf of the company.



Rene Masl

Notary Public

Accepted at Lisle, Illinois
as of ~~October~~ 1, 2001.
November

DIVINE, INC.

Jude M. Sullivan
By: Jude M. Sullivan
Title: Senior Vice President

Exhibit "A" attached to that certain Intellectual Property Security Agreement dated November 1, 2001.

EXHIBIT "A"

COPYRIGHTS

1. The Company has no copyrights.

Exhibit "B" attached to that certain Intellectual Property Security Agreement dated November 1, 2001.

EXHIBIT "B"

PATENTS

PATENT NUMBER	APPLICATION NUMBER	TITLE	ISSUE DATE	APPLICATION FILING DATE
	09/877,626	System and Method of Interactive Network System Design		6/8/01
	09/638,324	System and Method of Synchronizing Replicated Data		8/14/00

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EXHIBIT "C"

TRADEMARKS

<u>DEBTOR</u>	<u>TRADEMARK DESCRIPTION</u>	<u>COUNTRY</u>	<u>SERIAL NO.</u>	<u>REG. NO.</u>	<u>STATUS</u>
	24x7xFOREVER	USA	75/909,340		Pending; Filed 2/3/00
	DATA RETURN	USA	75/891,900		Pending; Filed 1/7/00
	DATA RETURN & Design	USA	75/909,339		Pending; Filed 2/3/00
	EVERYTHING IS POSSIBLE	USA	75/891,901		Pending; Filed 1/7/00
	Miscellaneous Design	USA	75/909,338		Abandoned 5/7/01
	DATA RETURN	CTM	1539642	1539642	Registered 1/6/01
	DATA RETURN & Design	CTM	1539733	1539733	Registered 1/6/01
	DATA RETURN	China	2000034308		Pending; Filed 3/23/00
	DATA RETURN	Hong Kong	2000 05917		Pending; Filed 3/20/00
	DATA RETURN	India	975016		Pending; Filed 12/5/00
	DATA RETURN	Indonesia	J00 29043		Pending; Filed 12/1/00
	DATA RETURN	Japan	27252/2000		Pending; Filed 3/21/00
	DATA RETURN	Singapore	T00/94392H		Pending; Filed 3/21/00
	DATA RETURN	United Kingdom	2222801	2222801	Registered 9/22/00