

01-28-2002

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



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

Tab settings

101959993

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

1-28-02

1. Name of conveying party(ies):

Nightfire Software, Inc. 1-28-02

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

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

2. Name and address of receiving party(ies)

Name: Orix USA Corporation

Internal Address:

Street Address: 550 South Hope St., Suite 1600

City: Los Angeles State: CA Zip: 90071

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

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 01/23/2002

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,440,763 2,400,324 2,337,555 2,373,877

Additional number(s) attached Yes No

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

Name: Levy, Small & Lallas

Internal Address: Attn: Sebastian Camua

Street Address: 815 Moraga Drive

City: Los Angeles State: CA Zip: 90049

6. Total number of applications and registrations involved:

4

7. Total fee (37 CFR 3.41): \$125.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

(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.

Sebastian Camua

Signature

01/25/02

Date

Name of Person Signing

Signature

01/29/2002 DBYRNE 00000036 2446763

01 FC:481 02 FC:482

10.00 75.00

Total number of pages including cover sheet, attachments, and documents to be recorded with required cover sheet in this application

Commissioner of Patent & Trademarks, Box Assignments, Washington, D.C. 20231

000113756 \$10.00 Refund Total: 0

TRADEMARK

REEL: 002431 FRAME: 0414

INTELLECTUAL PROPERTY SECURITY AGREEMENT

This Intellectual Property Security Agreement is entered into as of **January 23, 2002** by and between **ORIX USA Corporation** ("ORIX") and **Nightfire Software, Inc.**, a California corporation ("Grantor"), with reference to the following facts:

A. ORIX and Grantor are parties to that certain Loan and Security Agreement of dated January 23, 2002 (as amended from time to time, the "Loan Agreement"). (Capitalized terms used herein have the meaning assigned in the Loan Agreement.)

B. Pursuant to the Loan Agreement, Grantor has granted to ORIX a security interest in all of the Collateral. The Collateral includes without limitation all Intellectual Property (including without limitation the Intellectual Property described herein).

Grantor agrees as follows:

1. To secure performance of all of its "Obligations" as defined in the Loan Agreement, Grantor grants to ORIX a security interest in all of Grantor's right, title and interest in Grantor's Intellectual Property, including without limitation (i) the trademarks and servicemarks listed on Schedule A hereto, whether registered or not, and all applications to register and registrations of the same and like protections, and the entire goodwill of the business of Borrower connected with and symbolized by such trademarks, and (ii) the patents and patent applications listed on Schedule B hereto and all like protections including, without limitation, all improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, and (iii) all copyrights, maskworks, software, computer programs and other works of authorship listed on Schedule C hereto, and all extensions and renewals thereof, and (iv) all rights to recover for past or future infringement of any of the foregoing, and (v) all right, title and interest in and to any and all present and future license agreements with respect to any of the foregoing, and (vi) all present and future accounts, accounts receivable and other rights to payment arising from, in connection with or relating to any of the foregoing.

2. Grantor represents and warrants that (i) listed on Schedule A hereto are all trademark registrations and pending registrations owned or controlled by Grantor or licensed to Grantor, (ii) listed on Schedule B are all patents and patent applications owned or controlled by Grantor or licensed to Grantor, and (iii) listed on Schedule C are all copyrights, software, computer programs, mask works, and other works of authorship owned or controlled by Grantor or licensed to Grantor (other than off-the-shelf software licensed to Grantor on a non-exclusive basis), including, without limitation, those with respect to which the sale, licensing or other disposition results in royalties receivable, license fees receivable, accounts receivable or other sums owing to Grantor.

3. Grantor shall, within 30 days after the date hereof, register or cause to be registered with the United States Copyright Office the software, computer programs and other works of authorship listed on Schedule C hereto, which are not now so registered, and provide written evidence of the same to ORIX, and Grantor shall, hereafter, register or cause to be registered on an expedited basis with the United States Copyright Office those additional software, computer programs and other works of authorship developed or acquired by Grantor from time to time hereafter (including without limitation revisions or additions to the intellectual property rights listed on such Schedule C), and Grantor shall

provide written evidence of the same to ORIX. Grantor shall from time to time, execute and file such other instruments, and take such further actions as ORIX may reasonably request from time to time to perfect or continue the perfection of ORIX's interest in the Collateral.

[remainder of page intentionally left blank; signature page follows]

4. This Agreement is being executed and delivered pursuant to the Loan Agreement; nothing herein limits any of the terms or provisions of the Loan Agreement, and ORIX's rights hereunder and under the Loan Agreement are cumulative. This Agreement, the Loan Agreement and the other Loan Documents set forth in full all of the representations and agreements of the parties with respect to the subject matter hereof and supersede all prior discussions, oral representations, oral agreements and oral understandings between the parties. This Agreement may not be modified or amended, nor may any rights hereunder be waived, except in a writing signed by the parties hereto. In the event of any litigation between the parties based upon, arising out of, or in any way relating to this Agreement, the prevailing party shall be entitled to recover all of his costs and expenses (including without limitation attorneys' fees) from the non-prevailing party. This Agreement is being entered into, and shall be governed by the laws of the State of California.

Address of Grantor:

Nightfire Software, Inc.

300 Lakeside Drive Suite 2100
Oakland, CA 94612

By _____
Title _____

Address of ORIX:

ORIX USA Corporation

550 S. Hope St., Suite 1600
Los Angeles, California 90071

By Kevin P. Sheehan
Kevin P. Sheehan,
Principal, Merchant Banking Division

Form: Version-1

SCHEDULE A

Trademarks

<u>Description</u>	<u>Registration/ Application Number</u>	<u>Registration/ Application Date</u>
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See attached list titled "NightFire Software, Inc.
Trademark Applications & Registrations"

NightFire Software, Inc.
Trademark Applications & Registrations

Customer Express
United States
Application No. 75/584,171
Filed 11/6/98
Class: 009
Status: Abandoned 10/30/00

NightFire Design Mark
United States
Registration No. 2,440,763
Registered: 4/3/01

Igniting the Bandwidth Explosion
United States
Registration No. 2,400,324
Registered: 10/31/00

NetServ Express
United States
Application No. 75/534,673
Filed 8/11/98
Class: 009
Status: Abandoned 9/15/00

NightFire
United States
Registration No. 2,337,555
Registered: 4/4/00

NightFire
Australia
Registration No. 848668
Registered: 9/1/00

NightFire
European Community
Registration No. 1739416
Registered: 8/31/01

NightFire
Norway
Registration No. 208238
Registered: 4/26/01

NightFire
Australia
Registration No. 848668
Registered: 9/1/00

NightFire
New Zealand
Registration No. 622436
Registered: 3/8/01
Class: 009

NightFire
New Zealand
Registration No. 622437
Registered: 4/5/01
Class: 035

NightFire
New Zealand
Registration No. 622438
Registered: 4/5/01
Class: 042

Supplier Express
Registration No. 2,373,877
Registered: 8/1/00

SCHEDULE B

Patents and Patent Applications

<u>Description</u>	<u>Registration/ Application Number</u>	<u>Registration/ Application Date</u>
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None

SCHEDULE C

Copyrights

<u>Description</u>	<u>Registration/ Application Number</u>	<u>Registration/ Application Date</u>
NightFire Core V3.1	TX 5-361-926	03/27/2001
NightFire Core V2.0 (Application Pending)		