

02-04-2002

Form PTO-1594

(Rev. 03/01)

OMB No. 0651-0027 (exp. 5/31/2002)

Tab settings ⇌ ⇌ ⇌ ▼ ▼ ▼ ▼ ▼



101971392

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

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

1. Name of conveying party(ies):

Medical Automation Systems, Inc.

1-18-02

- ☐ Individual(s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☒ Corporation-State
☐ Other _____

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

3. Nature of conveyance:

- ☐ Assignment ☐ Merger
☒ Security Agreement ☐ Change of Name
☐ Other _____

Execution Date: December 26, 2001

2. Name and address of receiving party(ies)

Name: LeClair Ryan

Internal

Address: _____

Street Address: 707 East Main St., Suite 1100

City: Richmond State: VA Zip: 23219

- ☐ Individual(s) citizenship _____
☐ Association _____
☐ General Partnership _____
☐ Limited Partnership _____
☐ Corporation-State _____
☒ Other: Professional Corporation

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

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

A. Trademark Application No.(s) _____

B. Trademark Registration No.(s) 2,334,788

Additional number(s) attached ☐ Yes ☒ No

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

Name: Thomas C. McThenia, Jr.

Internal Address: _____

Street Address: 123 East Main St., 8th Floor

City: Charlottesville State: VA Zip: 22902

6. Total number of applications and registrations involved: _____

1

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

- ☒ Enclosed
☐ Authorized to be charged to deposit account

8. Deposit account number: _____

DO NOT USE THIS SPACE

9. Signature.

Thomas C. McThenia, Jr.

Name of Person Signing

Signature

January 18, 2002

Date

Total number of pages including cover sheet, attachments, and document: 8

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

01/31/2002 TDIAZI 00000193 2334788

01 FC:481

40.00 DP

TRADEMARK
 REEL: 002435 FRAME: 0761

INTELLECTUAL PROPERTY SECURITY AGREEMENT

This Intellectual Property Security Agreement (the "Agreement") is made as of December 26, 2001 ("Effective Date") by and between MEDICAL AUTOMATION SYSTEMS, INC., a Virginia corporation ("Grantor"), and LECLAIR RYAN, A PROFESSIONAL CORPORATION, a Virginia professional corporation ("Secured Party").

RECITALS

A. Secured Party has agreed to make certain financial accommodations to Grantor (the "Loan") in the amounts and manner set forth in that certain Secured Promissory Note, dated as of December 26, 2001 (the "Note;" all capitalized terms used herein without definition shall have the meanings ascribed to them in the Note).

B. Secured Party is willing to make the Loan to Grantor, but only upon the condition, among others, that Grantor shall grant to Secured Party a security interest in all of Grantor's right title, and interest in, to and under all of the Collateral whether presently existing or hereafter acquired

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Grant of Security Interest. As collateral security for the prompt and complete payment and performance of all of Grantor's present or future indebtedness, obligations and liabilities to Secured Party, Grantor hereby grants a security interest and mortgage to Secured Party, as security, in and to Grantor's entire right, title and interest in, to and under the following personal property of Grantor relating to certain software programs in the form as of the effective date and licensed in commerce under the marks RALS-G, RALS-PLUS, RALS-LIS and RALS-ADT, including enhancements, modifications, updates and successors thereto (collectively, the "Software") whether presently existing or hereafter created or acquired (all of which shall collectively be called the "Collateral"):

(a) Any and all copyright rights, copyright applications, copyright registrations and like protections in the code of the Software and each derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held, including without limitation those set forth on Exhibit A attached hereto (collectively, the "Copyrights");

(b) Any and all trade secrets in the Software now or hereafter existing, created, acquired or held by Grantor;

(c) All patents, patent applications and like protections claiming inventions embodied in the Software including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, including without limitation the patents and patent applications set forth on Exhibit B attached hereto (collectively, the "Patents");

(d) Any trademark and servicemark rights in marks used to identify the Software in commerce, whether such marks are registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Grantor connected with and symbolized by such trademarks, including without limitation those set forth on Exhibit C attached hereto (collectively, the "Trademarks");

(e) Any and all claims for damages directly arising from past, present and future infringement by third parties of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

(f) All licenses or other rights granted to third parties in writing to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use to the extent permitted by such license or rights;

(g) All amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents; and

(h) All proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

2. Covenants and Warranties. Grantor represents, warrants, covenants and agrees as follows:

- (a) Grantor is now the sole owner or has rights to use of the Collateral, except for licenses granted by Grantor to its customers in the ordinary course of business;
- (b) Grantor's entering into this Agreement does not conflict with or result in a breach of any agreement to which Grantor is party or by which Grantor is bound (but not including the BioSite IP Security Agreement);
- (c) During the term of this Agreement, Grantor will not, without the prior written consent of Secured Party (which consent shall not be unreasonably withheld), transfer or otherwise encumber any interest in the Collateral in a manner that materially impairs Secured Party's security interest, except for licenses granted by Grantor in the ordinary course of business or as set forth in this Agreement;
- (d) This Agreement creates, and in the case of after acquired Collateral, this Agreement will create at the time Grantor first has rights in such after acquired Collateral, in favor of Secured Party a valid security interest in the Collateral in the United States securing the payment and performance of the obligations evidenced by the Note;
- (e) All information heretofore, herein or hereafter supplied to Secured Party by or on behalf of Grantor with respect to the Collateral is accurate and complete in all material respects;
- (f) Grantor shall not enter into any agreement that would materially impair or conflict with Grantor's obligations hereunder without Secured Party's prior written consent, which consent shall not be unreasonably withheld. Grantor shall not permit the inclusion in any material contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a security interest in Grantor's rights and interests in any property included within the definition of the Collateral acquired under such contracts; and
- (g) Upon any executive officer of Grantor obtaining actual knowledge thereof, Grantor will promptly notify Secured Party in writing of any event that materially adversely affects the value of any Collateral, the ability of Grantor to dispose of any Collateral or the rights and remedies of Secured Party in relation thereto, including the levy of any legal process against any of the Collateral.

3. Obligations

- (a) Grantor shall deliver to Secured Party within thirty (30) days of the last day of each fiscal quarter, a report signed by Grantor, in form reasonably acceptable to Secured Party, listing any applications or registrations that Grantor has made or filed in respect of any patents, copyrights or trademarks and the status of any outstanding applications or registrations. Grantor shall promptly advise Secured Party of any material change in the composition of the Collateral, including but not limited to any subsequent ownership right of the Grantor in or to any Trademark, Patent or Copyright not specified in this Agreement;
- (b) Grantor shall (i) shall take commercially reasonable measures that are consistent with Grantor's business judgment, to protect, defend and maintain the validity and enforceability of the Trademarks, Patents and Copyrights; (ii) use reasonable efforts to detect infringements of the Trademarks, Patents and Copyrights and promptly advise Secured Party in writing of material infringements detected and (iii) take reasonable efforts not to allow any Trademarks, Patents or Copyrights to be abandoned, forfeited or dedicated to the public, unless Grantor determines that maintaining the Trademarks, Patents or Copyrights is not consistent with Grantor's business judgment, without the written consent of Secured Party, which shall not be unreasonably withheld;
- (c) Grantor shall apply for registration or patenting (to the extent not already registered or patented) with the United States Patent and Trademark Office or the United States Copyright Office where Grantor reasonably deems such protection for a particular intellectual property right to be in line with Grantor's business judgment: (i) those intellectual property rights listed on Exhibits A, B and C hereto within thirty (30) days of the date of this Agreement; (ii) applicable registerable intellectual property rights Grantor has developed as of the date of this Agreement but heretofore failed to register, within a reasonable time of the date of this Agreement; and (iii) those

additional intellectual property rights developed or acquired by Grantor from time to time in connection with any product or service at reasonable times as determined in Grantor's business judgment (including without limitation revisions or additions to the intellectual property rights listed on such Exhibits A, B and C). Grantor shall, from time to time, execute and file such other instruments, and take such further actions as Secured Party may reasonably request from time to time to perfect or continue the perfection of Secured Party's interest in the Collateral. Grantor shall give Secured Party notice of all such applications or registrations;

4. **Secured Party's Rights.** Secured Party shall have the right, but not the obligation, to take, at Grantor's sole expense, any actions that Grantor is required under this Agreement to take in order to perfect Secured Party's security interest in the Collateral but which Grantor fails to take, after fifteen (15) days' notice to Grantor. Grantor shall reimburse and indemnify Secured Party for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this section 3.

5. **Inspection Rights.** Grantor hereby grants to Secured Party and its employees, representatives and agents the right to inspect master copies of the Software on a designated machine or other records and procedures relating to the protection of the Collateral during reasonable hours upon prior reasonable written notice to Grantor and without disrupting Grantor's business, at a designated location of Grantor and to inspect the products and quality control records relating thereto upon reasonable written notice of at least ten (10) days to Grantor and on a quarterly basis.

6. **Further Assurances.** On a continuing basis, Grantor will take reasonable efforts to make, execute, acknowledge and deliver, and file and record in the proper filing and recording places in the United States, all such instruments, including appropriate financing and continuation statements and collateral agreements and filings with the United States Patent and Trademark Office and the Register of Copyrights, and take all such action as may reasonably be deemed necessary or advisable, or as requested by Secured Party, to perfect Secured Party's security interest in all Copyrights, Patents and Trademarks and otherwise to carry out the intent and purposes of this Agreement, or for assuring and confirming to Secured Party the grant or perfection of a security interest in all Collateral.

7. **Events of Default.** The occurrence of any of the following shall constitute an Event of Default under the Agreement:

(a) An Event of Default occurs under the Note; or

(b) Grantor breaches any warranty or covenant made by Grantor in this Agreement in a way that materially compromises Secured Party's security interest and, as to any breach that is capable of cure, Grantor fails to cure such breach within thirty (30) days of the receipt of notice of such breach from Secured Party.

8. **Remedies.**

(a) Upon the occurrence and continuance of an Event of Default that is not cured consistent with this Agreement or the Note then in such event and at any time thereafter, Secured Party may declare the required performance owed to it and secured hereby to be immediately due and payable without presentment, demand, protest or other notice of any kind (except as provided below), Secured Party shall have the right to exercise all the remedies of a secured party under the Virginia Uniform Commercial Code, including without limitation the right to require Grantor to assemble the Collateral and any tangible property in which Secured Party has a security interest and to make it available to Secured Party at a place designated by Secured Party which is reasonable convenient to both parties. Secured Party will give Grantor reasonable notice of time and place of any public sale thereof or the time after which any private sale or any other intended disposition thereof is to be made. The requirement of reasonable notice shall be met if notice is mailed by Federal Express or similar express delivery service, postage prepaid to the Grantor at its principal office, at least ten (10) days before the time of sale or disposition of Collateral. Secured Party shall have a nonexclusive, royalty free license to use the Copyrights, Patents and Trademarks to the extent reasonably necessary to permit Secured Party to exercise its rights and remedies upon the occurrence of an Event of Default. Grantor will pay any expenses (including reasonable attorneys' fees) incurred by Secured Party in connection with the protecting or enforcing any of Secured Party's

rights hereunder, including without limitation any expense incurred in disposing of the Collateral. All of Secured Party's rights and remedies with respect to the Collateral shall be cumulative

(b) The proceeds of any disposition of the Collateral or other action by the Secured Party shall be applied as follows:

(i) first, to the satisfaction of the Loan;

(ii) second, to the payment of any other amounts required by applicable law; and

(iii) third, to the Grantor to the extent of any surplus proceeds.

9. Release of Collateral. Upon the payment in full of the Loan of the Note, the Secured Party shall release the Collateral and release the Company from any duty or obligation hereunder upon and shall deliver to the Company all documents and instruments necessary to terminate the security interest in the Collateral and all obligations hereunder between the Grantor and Secured Party shall thereupon cease.

10. Indemnity. Grantor agrees to defend, indemnify and hold harmless Secured Party and its officers, employees, and agents from and against all losses, liabilities, damages and expenses (including reasonable attorneys' fees and costs) resulting from all claims, demands, actions and other proceedings by any third party to the extent arising from the breach of any representation, warranty or covenant of Grantor under this Agreement. Secured Party agrees to defend, indemnify and hold harmless Secured Party and its officers, employees, and agents from and against all losses, liabilities, damages and expenses (including reasonable attorneys' fees and costs) resulting from any claims, demands, actions or other proceedings by any third party to the extent arising from Secured Party's breach of Section 9 of this Agreement.

11. Course of Dealing. No course of dealing, nor any failure to exercise, nor any delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

12. Attorneys' Fees. If any action relating to this Agreement is brought by either party hereto against the other party, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements.

13. Amendments. This Agreement may be amended only by a written instrument signed by both parties hereto.

14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.

15. Notices. Any notice required or permitted under this Agreement shall be given in writing and shall be deemed effectively given upon personal delivery, or three days after deposit with Federal Express or another express delivery service or sent by confirmed facsimile or e-mail, addressed

To Grantor, at:

Medical Automation Systems, Inc.

2300 Commonwealth Drive

Charlottesville, Virginia 22901

Attn: Greg Menke, Chief Executive Officer

To Secured Party:

LeClair Ryan, A Professional Corporation

1872 Pratt Drive

Suite 1865

Blacksburg, VA 24060

or at such other address as either party shall have furnished to the other in writing.

16. Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Virginia, without regard to principles of conflicts of law.

17. Confidential Nature of Agreement. Secured Party acknowledges that this Agreement and all attachments hereto are confidential and for Secured Party's use only, and Secured Party will refrain from using such information or reproducing, disclosing or disseminating such information to any other person (other than its employees or agents having a need to know the contents of such information and its attorneys), except in connection with the perfection or enforcement of rights under this Agreement, unless Grantor has made such information available to the public other than as required for filings to perfect Secured Party's security interest or Grantor is required by a court, tribunal or governmental body to disclosure such information.

18. Expenses. Except as otherwise noted in this Agreement, Grantor and Secured Party shall each bear its own expenses with respect to this Agreement and the transactions contemplated hereby.

19. Counsel. *This Agreement has been prepared by LeClair Ryan, A Professional Corporation, after full disclosure of its prior and continued representation of MAS and with the consent of MAS. MAS has all reviewed the contents of this Agreement and fully understand its terms. MAS acknowledge that they are fully aware of their right to the advice of independent counsel, that LeClair Ryan has advised them of such right and disclosed to them the risks in not seeking such independent advice, and that they understand the potentially adverse interests of the parties with respect to this Agreement. MAS further acknowledge that LeClair Ryan has made no representations or given any advice with respect to the tax or other consequences of this Agreement, that they have been advised of the importance of seeking independent counsel with respect to such consequences, and that it has either obtained independent counsel with respect to such consequences or elected, notwithstanding the advisability of seeking such independent counsel, not to consult such independent counsel. By executing this Agreement, MAS represents that it has, after being advised of the potential conflicts among each of them and between each of them with respect to the future consequences of this Agreement, either consulted independent legal counsel or elected, notwithstanding the advisability of seeking such independent legal counsel, not to consult such independent legal counsel. MAS hereby waives any conflict or potential conflict which may arise with respect to this Agreement, or LeClair Ryan's representation or previous representation of MAS.*

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

Address of Grantor:

2300 Commonwealth Drive
Charlottesville, VA 22901

GRANTOR:

MEDICAL AUTOMATION SYSTEMS, INC.

By: 

Its: EXECUTIVE VICE PRESIDENT

Address of Secured Party:

1872 Pratt Drive, Suite 1865
Blacksburg, VA 24060

SECURED PARTY

LECLAIR RYAN, A PROFESSIONAL
CORPORATION

By: 

Its: Vice President

EXHIBIT C

Trademarks

Description

Registration/Application
Number

Registration/Application
Date

RALS

2,334,788

03/28/00