

02-12-2002

DEPARTMENT OF COMMERCE

RECORD  
TI



102017069

Patent and Trademark Office  
Docket No. 012410.2090

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

1. Name of Conveying party(ies):

Dr. Solomon's Software, Inc.

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

Massachusetts

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

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other: Asset Purchase Agreement
- Merger
- Change of Name

Execution Date: December 31, 1998

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

Name: Netopia, Inc.

Street Address:

2470 Mariner Square Loop  
Alameda, California 94501

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

Additional name(s) & address(es) attached?  Yes  No

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

A. Trademark Application No.(s)

B. Registration No.(s)

1991049

Additional numbers attached?  Yes  No

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

Rochelle D. Alpert  
Brobeck, Phleger & Harrison LLP  
Spear Street Tower  
One Market  
San Francisco, CA 94105

6. Total number of applications and trademark registrations involved: 1

7. Total fee (37 C.F.R. § 3.41): \$40.00

- Enclosed
- Authorized to be charged to deposit account, referencing Attorney Docket: 012410.2090

8. Deposit account number: 02-3950

The Commissioner is hereby authorized to charge any fees under 37 C.F.R. § 1.21 which may be required by this paper, or to credit any overpayment to Deposit Account No. 02-3950.

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.

Name: Rochelle D. Alpert

December 6, 2001

Date

Total number of pages comprising cover sheet, attachment and document: 9

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

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TRADEMARK  
REEL: 002443 FRAME: 0742

**ASSET PURCHASE AGREEMENT**

by and among

Netopia, Inc.,

Netopia Development GmbH,

Network Associates, Inc., and

Dr. Solomon's Development GmbH, and

Dr. Solomon's Software, Inc.,

dated as of

December 31, 1998

## ASSET PURCHASE AGREEMENT

THIS AGREEMENT is dated as of December 31, 1998 by and among Netopia, Inc., a Delaware corporation ("Netopia"), Netopia Development GmbH, a German corporation and a wholly-owned subsidiary of Netopia ("NDG", collectively, Netopia and NDG are sometimes referred to herein as "Purchasers") and Network Associates, Inc., a Delaware corporation ("NAI"). Dr. Solomon's Software, Inc., a Delaware corporation and wholly-owned subsidiary of NAI ("DSSI"), and Dr. Solomon's Development GmbH, a German corporation and wholly-owned subsidiary of NAI ("DSDG") (NAI, DSSI and DSDG are sometimes referred to collectively herein as "Sellers").

WHEREAS, Sellers design, develop, market and sell the software known as netOctopus and FileScripter (the "Software"), the source code for which has been delivered to Purchasers; and

WHEREAS, Purchasers desire to acquire the Software from Sellers.

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the parties hereby agree as follows:

### ARTICLE I PURCHASE AND SALE OF CERTAIN ASSETS

#### 1.1 Description of Assets to be Acquired.

(a) Upon the terms and subject to the conditions set forth in this Agreement, at the Closing (as defined in Section 4.1), NAI agrees to convey, sell, transfer, assign and deliver to Netopia, and Netopia shall purchase, all right, title and interest of NAI in and to the Software of every kind, nature and description, personal, tangible and intangible, known or unknown, wherever located, including, without limiting the generality of the foregoing:

(i) All customer lists, records and contracts with respect to the Software; and

(ii) All Intellectual Property with respect to the Software as that term is defined in Section 5.2(f).

(b) Upon the terms and subject to the conditions set forth in this Agreement, at the Closing (as defined in Section 4.1), DSSI and DSDG agree to convey, sell, transfer, assign and deliver to NDG, and NDG shall purchase, all right, title and interest of DSSI and DSDG in and to the Software of every kind, nature and description, personal, tangible and intangible, known or unknown, wherever located and all assets of DSSI and DSDG located at Weingasse 26, 91077 Neunkirchen am Brand, Germany, including, without limiting the generality of the foregoing:

(c) Bulk Sales Laws. There are no "bulk sales" laws in any jurisdiction in the United States applicable to Sellers that impose any obligation on Netopia or NDG regarding the sale and transfer of the Acquired Assets contemplated hereunder.

(d) Title to Assets.

(i) Sellers have valid title to the Acquired Assets, free and clear of all mortgages, pledges, liens, encumbrances, and security interests, of any nature whatsoever.

(ii) By virtue of the deliveries made at the Closing, Purchasers will obtain Sellers' title to the Acquired Assets, free and clear of all liens, mortgages, pledges, encumbrances, and security interests.

(iii) ALL ACQUIRED ASSETS, PERSONAL PROPERTY AND SOFTWARE PURCHASED HEREUNDER BY PURCHASERS IS PURCHASED "AS-IS" AND "WITH ALL FAULTS". BY ITS EXECUTION OF THIS AGREEMENT, PURCHASERS ACKNOWLEDGE AND AGREE THAT SELLERS MAKE NO WARRANTY WHATSOEVER, EXPRESS OR IMPLIED, (INCLUDING WITHOUT LIMITATION ANY WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE) AS TO THE WORKING ORDER, CONDITION, OR PERFORMANCE OF ANY OF THE ACQUIRED ASSETS EXCEPT AS EXPRESSLY STATED HEREIN.

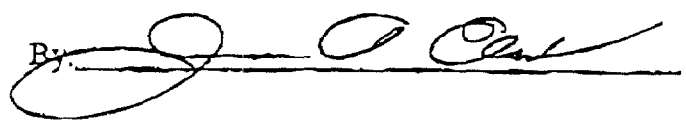
(e) Compliance With Law. To Sellers' knowledge, the use of the Acquired Assets is and has been in compliance, in all material respects, with all applicable laws, statutes, ordinances, rules, regulations, decrees and orders (each and all of the foregoing being herein referred to as "Laws"); including Laws respecting employment, employment practices, labor and safety.

(f) Proprietary Rights. To NAI's knowledge, the information set forth in Schedule 5.2(f) with respect to intellectual property rights associated with the Acquired Assets as of October 9, 1997 is true and correct in all material respects. Sellers own, or have the right to use pursuant to valid and effective agreements, all intellectual property associated with the Acquired Assets, and, any such rights shall be assigned and transferred to Netopia or NDG in connection with the consummation of the transactions contemplated hereby. To Seller's knowledge, no claims are pending against Sellers by any person with respect to the use of any intellectual property or challenging or questioning the validity or effectiveness of any license or agreement relating to the same.

(g) Litigation. Neither Sellers nor any of Sellers' officers, directors or shareholders is engaged in, or has received any threat of, any litigation, arbitration, investigation, or other proceeding, at law or in equity, before any federal, state, local or foreign court, or regulatory agency, or other governmental authority, involving the Acquired Assets, or employees or consultants of Sellers; or against or affecting the transactions contemplated by the Agreement. There is no action, suit, proceeding, or investigation pending or to the knowledge of NAI threatened against Sellers or Sellers' officers or directors that questions the validity of this Agreement, or the right of Sellers, to enter into this Agreement, to consummate the transactions

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above written.

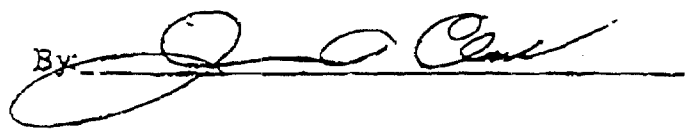
NETOPIA, INC.

By: 

Address: 2470 MARINON SQ LOOP  
ALAMEDA, CA 9450

PURCHASER:

NETOPIA DEVELOPMENT GMBH

By: 

Address: WEINGASSE 26  
D-91077 NEUNKIRCHEN A.O.  
GERMANY

SELLERS:

NETWORK ASSOCIATES, INC.

By: Prabhat K. Goyal  
Name: PRABHAT K. GOYAL  
Title: VP; CFO; Secretary

Address: 3965 FREEDOM CIRCLE  
SANTA CLARA, CA 95054

DR. SOLOMON'S SOFTWARE, INC.

By: Prabhat K. Goyal  
Name: PRABHAT K. GOYAL  
Title: PRESIDENT

Address: 3965 FREEDOM CIRCLE  
SANTA CLARA, CA 95054

DR. SOLOMON'S DEVELOPMENT GMBH

By: Prabhat K. Goyal  
Name: PRABHAT K. GOYAL  
Title: PRESIDENT

Address: 3965 FREEDOM CIRCLE  
SANTA CLARA, CA 95054

SIGNATURE PAGE TO ASSET PURCHASE AGREEMENT

Disclosure Schedule  
Section 2.14(a)(i)  
Page 2

<u>Trademark Name</u>	<u>Brief Description</u>	<u>Country</u>	<u>Status</u>	<u>Application #/ Filing Date</u>	<u>Registration #/ Date</u>
7. NetOctopus	Computer programs used for computer network systems management and administration.	USA	Registered (IC 9)	74/679.601/ 5/24/95	1,991.049/ 8/6/96
8. Dropsan	Computer program function to increase convenience of virus scanning.	European Community	Pending (IC 9)	603.126/ 8/20/97	
9. Dropsan	Computer program function to increase convenience of virus scanning.	USA	Pending (IC 9)	75/247.803/ 2/25/97	

\* Registered Owner is HJC Software, Inc. Trademark is in the process of being assigned to Datawatch.

\*\* Registered Owner is Microcom, Inc. Trademark is in the process of being assigned to Datawatch.

The trademark NetOctopus is in dispute in France. To avoid litigation, the trademark is no longer used there. See Disclosure Schedule Section 2.10.

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