

02-21-2002

FEB 4

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



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

101988776

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

1. Name of conveying party(ies):

Heartsoft, Inc. Benjamin Shell

2.4.02

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

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

2. Name and address of receiving party(ies)

Name: The Glenn A. Chalker Revocable Trust dated June 15, 1993 Internal Address: c/o Glenn A. Chalker, Trustee

Street Address: 11331 South Erie City: Tulsa State: OK Zip: 74147

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

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: 09012001 Sept. 1, 2001

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

A. Trademark Application No(s) 76119876 76119251 76119697 76119875 76119252 76119698 76119877 76119253 76119699 76119878

B. Trademark Registration No.(s)

Additional number(s) attached Yes No

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

Name: Joseph D. Fincher Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C. Internal Address: 320 S. Boston, Suite 400 Tulsa, OK 74013

6. Total number of applications and registrations involved:

10

7. Total fee (37 CFR 3.41): \$ 400.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

Street Address: City: State: Zip:

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.

Joseph D. Fincher Name of Person Signing

Signature

16

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

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

02/20/2002 TDIAZ1 00000192 76119251

01 FC:481 02 FC:482

40.00 OP 225.00 OP

Refund Ref: 02/20/2002 TDIAZ1 00001437 2/10/02 Date: 1135 00 CHECK Refund Total

TRADEMARK REEL: 002446 FRAME: 0723

Additional Receiving Parties:

Alan W. Carlton Revocable Living Trust  
c/o Alan W. Carlton, Trustee  
10770 South 77th East Avenue  
Tulsa, Oklahoma 74133

June Limited Partnership  
c/o Robert K. Pezold, General Partner  
8086 South Yale, PMB#23  
Tulsa, Oklahoma 74136

255335.1:231284:00820

**AMENDED AND RESTATED  
JOINT SECURITY AGREEMENT**

THIS AMENDED AND RESTATED JOINT SECURITY AGREEMENT ("Agreement") is made as of this 1<sup>st</sup> day of September, 2001, by Heartsoft, Inc., a Delaware corporation ("Debtor") and Benjamin Shell ("Pledgor"), in favor of ALAN W. CARLTON REVOCABLE LIVING TRUST (the "Carlton Trust"), JUNE LIMITED PARTNERSHIP (the "Partnership") and THE GLENN A. CHALKER REVOCABLE TRUST DATED JUNE 15, 1993 (the "Chalker Trust"). The Carlton Trust, the Partnership and the Chalker Trust are collectively referred to herein as the "Secured Parties" or "Secured Party."

WHEREAS, the Carlton Trust and the Partnership have each loaned \$279,805 to Debtor as evidenced by Amended and Restated Promissory Notes of even date and the Chalker Trust has loaned \$322,430 to Debtor as evidenced by an Amended and Restated Promissory Note of even date (with such Amended and Restated Promissory Notes to the Carlton Trust, the Partnership and the Chalker Trust collectively referred to as the "Note" or "Notes"); and

WHEREAS, Debtor has agreed to pledge the Collateral (as defined below) to secure the obligation; and

WHEREAS, Pledgor is the chief executive officer of Debtor and, in order to induce the Secured Parties to make the loans represented by the Notes and to secure his guarantee of the Notes as set forth in the Extension Agreement (as defined below), has agreed to pledge the Pledged Shares (as defined below) to the Secured Parties.

NOW, THEREFORE, for valuable consideration, the receipt and adequacy of which are hereby acknowledged, Debtor does hereby covenant and agree as follows:

1. Definitions. The terms as used herein shall be construed and controlled by the following definitions, and except as the context may otherwise require or as may be otherwise provided herein, the singular shall be deemed to include the plural and the plural shall be deemed to include the singular.

1.1 Collateral. "Collateral" shall mean and include the following property: (i) FIVE HUNDRED THOUSAND ("500,000") shares of common stock of Debtor represented by stock certificate number 7328 (the "Pledged Shares"); (ii) all intangible property now owned or hereafter acquired by Debtor, including without limitation copyrights, trademarks and patents (and related applications and registrations) held by Debtor (including without limitation those set forth on Schedule A hereto), (iii) the software product called "Internet Safari" and the source code and any related files and all software products and underlying computer code created, owned or marketed by Debtor, including, but not necessarily limited to "Thinkology", "The Knowledge Construction Set", "Heartsoft Early Learning Reading Series", "Heartsoft Early Learning Math Series" and all products in "The Heartsoft K-8 Library" (the "Software"); (iv) all accounts receivable of Debtor now owned or hereafter arising; (v) all inventory of Debtor now owned or hereafter acquired; (vi) all equipment and tangible and intangible property of any type

whatever owned by or within, or hereafter acquired within Plug-Inventions Technologies, Inc. or any other subsidiaries of affiliates of Debtor; (vii) all equipment and other tangible and intangible property now owned or hereafter acquired by Debtor; and (viii) all proceeds of the foregoing property, or other property, rights or claims received upon the disposition of, collection upon, release or cancellation of, or otherwise on account of said property or any part thereof and including all dividends (cash, stock or otherwise) or other property, rights or claims received upon the disposition of, collection upon, release or cancellation of, or otherwise on account of the Pledged Shares or any part thereof.

1.2 Event of Default. "Event of Default" shall have the meaning set forth in Section 6.

1.3 Extension Agreement. "Extension Agreement" shall refer to that certain Extension Agreement dated as of October 15, 2001, among Debtor, Pledgor, the Chalker Trust, the Carlton Trust and the Partnership.

1.4 Obligations. "Obligations" shall mean and include all indebtedness of Debtor to Secured Parties arising out of or relating to the Notes and all obligations of Debtor or Pledgor under this Agreement and the Extension Agreement and Pledgor's obligations to Secured Parties under his guarantee.

2. Security Interest. Debtor and Pledgor hereby assign and grant to Secured Parties a security interest in the Collateral to secure the Obligations.

3. Delivery and Possession of Collateral. Tullius Taylor Sartain & Sartain LLP shall retain the physical possession of the source code of the Software and shall agree in writing with Debtor and Secured Parties to retain the source code in its possession pending receipt of written instructions signed by Debtor and Secured Parties or issued by a court and Debtor shall file a financing statement with the Delaware Secretary of State covering the Collateral. Monty Montgomery shall retain possession of the Pledged Shares on behalf of the Secured Parties. Debtor shall promptly prepare and file any other documents requested by Secured Parties in order to evidence or perfect the security interest in the collateral, including without limitation a filing with the U. S. Patent and Trademark Office.

4. Representations and Warranties. Debtor hereby represents and warrants to Secured Parties that Debtor (and Pledgor with respect to the Pledged Shares) is and will remain the legal and beneficial owner of the Collateral, free and clear of any prior liens, security interests, encumbrances or conflicting claims, or rights of any kind, except the security interest created hereby, and Debtor (and Pledgor with respect to the Pledged Shares) will not transfer or offer or attempt to transfer, by lease or sale or otherwise, any interest in the Collateral or possession thereof without the express written consent of each of the Secured Parties, except for collection of accounts receivable of sales of inventory in the ordinary course of business, and the use of proceeds thereof in the ordinary course of business. All of the Pledged Shares have been duly and validly issued and are fully paid and non-assessable. Debtor (and Pledgor with respect to Pledged Shares) will defend the Collateral against all claims and demands of all persons at any time claiming the Collateral or any interest therein. No security agreement, financing statement

or other public notice with respect to all or any part of the Collateral is on file or of record in any public office except: (i) such as may have been filed pursuant to this Agreement, (ii) that certain financing statement filed in Oklahoma County on June 8, 1992 and continued on April 30, 1997 by Liberty Bank and Trust Company of Tulsa, Document No.: 0022024, (iii) that certain financing statement filed in Oklahoma County on October 20, 1993 and continued on June 15, 1998 by Liberty National Bank and Trust Company, Document No.: 0030571, (iv) that certain financing statement filed in Oklahoma County on May 16, 1997 by the Liberty Bank and Trust Company of Tulsa, Document No.: 0025242, (v) that certain financing statement filed in Oklahoma County on April 27, 1998 by Tulsa National Bank, Document No.: 0021469, (vi) that certain financing statement filed in Tulsa County on January 21, 1999 by the Bank of Oklahoma, N.A., Document No.: 9900230, and (vii) that certain financing statement filed in Oklahoma County on January 25, 2001 and amended on September 19, 2001 by the Glenn A. Chalker Revocable Trust Dated June 15, 1993. The indebtedness secured by the financing statements described in (ii), (iii), (iv), (v) and (vi) of the preceding sentence has been paid in full.

5. Covenants of Debtor. Debtor and Pledgor jointly and severally covenant and agree that so long as the Notes shall be outstanding that:

5.1 Debtor will not create, incur, assume, guarantee or in any manner become liable in respect of any indebtedness except for (i) liabilities incurred by Debtor in the ordinary course of its business, (ii) indebtedness not exceeding \$100,000, and (iii) indebtedness under the Notes. The term "indebtedness" shall mean and include all items which in accordance with generally accepted accounting principles would be included in determining total liabilities as shown on the liability side of a balance sheet as of the date at which indebtedness is to be determined.

5.2 Debtor shall not amend its certificate of incorporation or its bylaws, except for amendments to the bylaws which do not affect the rights or the security of Secured Parties. Debtor shall comply with all of the provisions of its certificate of incorporation and its bylaws.

5.3 Debtor shall not, by operation of law or otherwise, merge with, consolidate with, acquire all or substantially all of the assets of, acquire all or substantially all of the securities or interests in or otherwise combine with any other entity. This Section 5.3 shall not affect the ability of Debtor to organize subsidiaries in order to acquire other businesses as long as (a) all of the equity securities and debt and other securities convertible into, or exchangeable or exercisable for equity securities are owned by Debtor and (b) such organization does not materially adversely affect the performance by Debtor under the Note.

5.4 Debtor shall not sell, convey, transfer, license or dispose of any of its assets other than sales of its inventory to its customers in the ordinary course of its business.

5.5 Debtor shall take all actions necessary to preserve and to keep in fully force and effect its corporate existence. Debtor shall not take any action or omit to take any action, which act or omission may result in the loss of such corporate existence or the dissolution, liquidation or winding up of Debtor.

5.6 Debtor shall not declare or pay any dividends or incur any liability to make any other payment or distribution of cash or other assets of Debtor in respect of any equity security of Debtor.

5.7 Debtor shall not pay any bonuses or other extraordinary payments to any officer or director of Debtor, other than salaries currently in effect or bonuses which Debtor is currently obligated to pay.

5.8 Debtor shall use the proceeds from the Notes for the conduct of its business in the ordinary course.

5.9 Debtor shall not make any loans or other payments outside the ordinary course of business.

5.10 Except as set forth in the Extension Agreement, Debtor shall not issue or sell shares of capital stock of any class of Debtor or of any subsidiary.

5.11 Debtor shall not grant or issue any stock options or warrants.

5.12 Debtor shall not enter into any agreement related to the transactions described in subsections 5.1 through 5.11 above.

6. Default. The term "Event of Default" for all purposes of this Security Agreement shall mean the occurrence after the date hereof of one or more of the following:

6.1 Note Payments. Failure to pay principal or interest under the Notes when and as the same shall become due and payable, whether at the due date thereof, by acceleration or otherwise and any such failure shall continue unremedied for five (5) days.

6.2 Other Default in Payment or Performance. Default in the payment, performance or observance by Debtor of any other obligation, covenant or liability contained or referred to herein or in the Notes or in the Extension Agreement or the occurrence of an event of default in any other security agreement or pledge agreement securing payment of the Notes (an "Other Security Agreement") and any such default shall continue unremedied for ten (10) days after Debtor is given notice thereof.

6.3 Material Inaccuracy. Any of the representations and warranties of Debtor or Pledgor to Secured Parties herein or in the Extension Agreement or of any other debtor in any Other Security Agreement shall contain a material inaccuracy.

6.4 Dissolution; Insolvency. (i) Debtor shall commence any case, proceeding, or other action (A) under any existing or future law or any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding up, liquidation, dissolution, composition, or other like relief with respect to it or its debts, or (B) seeking appointment of a receiver, trustee,

custodian, or other similar official for it, or for all or any substantial part of its assets, or make a general assignment for the benefit of its creditors; or (ii) there be commenced against Debtor any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment, or (B) remains dismissed, undischarged, or unbonded for a period of thirty (30) days; or (iii) there be commenced against Debtor any case, proceeding, or other action seeking issuance of a warrant of attachment, execution, restraint or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, stayed or bonded pending appeal within thirty (30) days from the entry thereof; or (iv) any action be taken by Debtor in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii) or (iii) above.

6.5 Discontinuance of Change of Business. Debtor shall discontinue its business or materially change the nature or scope of its business.

6.6 Cessation of Trading. Shares of common stock of Debtor shall cease being listed on NASDAQ's Over the Counter Bulletin Board.

6.7 Litigation. There shall have been filed a lawsuit against Debtor alleging potential money damages in excess of \$100,000 or any governmental agency shall have instituted proceedings against Debtor in which its total monetary exposure exceeds \$100,000.

6.8 SEC Orders, etc. The Securities and Exchange Commission or any other state securities agency shall have issued an order against Debtor in which it is ordered to cease and desist from engaging in any improper conduct.

7. Remedies. Upon the occurrence of any Event of Default and at any time thereafter, Secured Parties shall have and may exercise the following rights and remedies, without further notice to Debtor:

7.1 Acceleration. Declare the Notes to be immediately due and payable, whereupon the same shall become forthwith due and payable.

7.2 All Legal Remedies. Proceed to enforce and exercise any and all rights and remedies which Secured Parties may have under this Security Agreement or applicable law, including, without limitation: (i) commencing one or more actions against Debtor or Pledgor and reducing the claims of Secured Parties against Debtor or Pledgor to judgment, and (ii) foreclosure or other enforcement of Secured Parties' security interest in the Collateral, or any portion thereof, or other enforcement of Secured Parties' rights and remedies in respect of and to recover upon the Collateral, through judicial action or otherwise, including all available remedies under the applicable provisions of the Oklahoma Uniform Commercial Code.

7.3 Disposition. Sell, lease or otherwise dispose of the Collateral at private or public sale, in bulk or in parcels and, where permitted by law, without having the Collateral present at the place of sale. Secured Parties will give Debtor and Pledgor reasonable notice of the time and place of any public sale or other disposition thereof or the time after which any

private sale or disposition thereof is to be made. The requirements of reasonable notice shall be met if such notice is given to Debtor and Pledgor at least five (5) business days before the time of any such sale or disposition. Secured Parties shall not be obligated to make any such sale pursuant to any such notice. Secured Parties may, without notice or publication, adjourn any public or private sale or cause the same to be adjourned from time to time by announcement at the time and place fixed for the sale, and such sale may be made at any time or place to which the same may be so adjourned.

7.4 Costs and Expenses. Recover from Debtor and Pledgor an amount equal to all reasonable costs, expenses and attorneys' fees incurred by Secured Parties in connection with the exercise of the rights contained or referred to herein, together with interest on such sums at the rate applicable to the Notes at the time such costs, expenses or attorneys' fees are incurred.

7.5. Voting Rights. Upon the occurrence of an Event of Default, Pledgor's right to vote the Pledged Shares shall terminate and the Secured Parties shall have all voting rights with respect to the Pledged Shares.

8. Application of Proceeds. All monies collected by Secured Parties upon the sale of the Collateral hereunder, together with any other monies received by Secured Parties hereunder, shall be applied by Secured Parties to the payment of all costs and expenses reasonably incurred by Secured Party in connection with such sale, the delivery of such Collateral or the collection of any such monies (including, without limitation, reasonable attorney's fees and expenses), and the balance of such monies shall be applied by Secured Parties to the payment of the Obligations, and the remainder, if any, shall be returned to Debtor.

9. Termination. This Agreement shall terminate upon payment in full of the Obligations, but shall be subject to reinstatement in the event of bankruptcy or other insolvency proceedings.

10. Miscellaneous.

10.1 Cumulative Remedies. No failure on the part of Secured Parties to exercise and no delay in exercising any right under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise by Secured Parties of any right hereunder preclude any other or further right of exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not alternative.

10.2 Notices. All notices, requests and demands shall be served by registered or certified mail or personal delivery as follows:

DEBTOR  
and  
PLEDGOR:

Heartsoft, Inc.  
3101 North Hemlock  
Broken Arrow, Oklahoma 74012  
Attn: Benjamin Shell

SECURED PARTIES:

The Glenn A. Chalker Revocable Trust



dated June 15, 1993  
Attn: Glenn A. Chalker, Trustee  
11331 South Erie  
Tulsa, Oklahoma 74147  
Fax: (918) 299-3667

-with copy to-

Del L. Gustafson  
Hall, Estill, Hardwick, Gable,  
Golden & Nelson, P.C.  
320 South Boston, Suite 400  
Tulsa, Oklahoma 74103  
Fax: (918) 594-0505

Alan W. Carlton Revocable Living Trust  
10770 South 77<sup>th</sup> East Avenue  
Tulsa, Oklahoma 74133  
Attn: Alan W. Carlton, Trustee

June Limited Partnership  
8086 South Yale, PMB#23  
Tulsa, Oklahoma 74136  
Attn: Robert K. Pezold, General Partner

-and-

C. Philip Tholen  
June Limited Partnership  
4203 East 75<sup>th</sup> Place  
Tulsa, Oklahoma 74136

or at such other address as Debtor or Secured Parties shall designate for such purpose in a written notice to the other party hereto and shall be effective and deemed given three (3) business days after deposit in the U.S. Mail, first class postage prepaid or when personally delivered.

10.3 Interpretation. This Agreement shall be deemed to be a contract made under the laws of the State of Oklahoma and shall be construed in accordance with the laws of said State (without regard to its conflicts of laws principles). The descriptive headings of the sections of this Agreement are for convenience only and shall not be used in the construction of the content of this Agreement.

10.4 Binding Effect. This Agreement shall be binding on Debtor and its successors and assigns and shall be binding on and inure to the benefit of Secured Parties and their respective successors and assigns.

10.5 Severability. In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof.

10.6 Amendment. This Agreement cannot be amended except by an agreement in writing signed by the party or parties against whom enforcement of any waiver, change, modification or discharge is sought.

10.7 Counterparts. This Agreement shall be executed in multiple counterparts, each of which when duly executed and delivered shall be an original but such counterparts shall together constitute but one and the same instrument.

10.8 Assignment. This Agreement may be assigned by the Secured Parties without the consent or approval of the Debtor or Pledgor in connection with an assignment of all or any part of the Obligations.

10.9 Amendment and Restatement. This Agreement amends and restates in its entirety that certain Joint Security Agreement dated November 9, 2000 among Debtor, Pledgor and the Carlton Trust and the Partnership and this Agreement amends and restates in its entirety that certain Amended and Restated Security Agreement dated June 14, 2001 between Debtor and the Chalker Trust.

**(signatures on following page)**

IN WITNESS WHEREOF, Debtor has executed and delivered this Security Agreement to and in favor of Secured Parties on the day and year first above written.

"DEBTOR"

HEARTSOFT, INC.

By: 

Benjamin Shell, Chairman and CEO

"PLEDGOR"

  
Benjamin Shell, individually

ACCEPTED AND AGREED:

"SECURED PARTIES"

THE GLENN A. CHALKER REVOCABLE  
TRUST DATED JUNE 15, 1993

By: 

Glenn A. Chalker, Trustee

ALAN W. CARLTON REVOCABLE  
LIVING TRUST

By: 

Alan W. Carlton, Trustee

JUNE LIMITED PARTNERSHIP

By: 

Robert K. Pezold, General Partner

## Copyrights

Name	Date Filed	Dkt Number	Type	Date Approved	Approval Number
Milo	6/14/00	23075	Work of the Visual Arts	6/16/00	VA 1-037-844
Molly	6/14/00	23074	Work of the Visual Arts	6/16/00	VA 1-037-845
Sidney	6/14/00	22988	Work of the Visual Arts	6/16/00	VA 1-037-846

## Trademark Registration

Name	Date Filed	Dkt Number	Class	Date Approved	Serial Number
Heartsoft	8/30/00	22991	Int'l 09 Goods Class		76/119,251
Heartsoft	8/30/00	23076	Int'l 35 Service		76/119,252
Heartsoft	8/30/00	22835	Int'l 41 Educational Svc.		76/119,253
Thinkology	8/30/00	22992	Int'l 09 Goods Class		76/119,698
Thinkology	8/30/00	23100	Int'l 35 Service		76/119,697
Thinkology	8/30/00	22834	Int'l 41 Educational Svc.		76/119,699
Internet Safari - Intent to use	8/30/00	22989	Int'l 09 Goods Class		76/119,875
Internet Safari	8/30/00	23054	Int'l 25 Clothing		76/119,877
Internet Safari - Intent to use	8/30/00	23055	Int'l 35 Service		76/119,878
Internet Safari	8/30/00	22987	Int'l 41 Educational Svc.		76/119,876

## Patent

Name	Date Filed	Dkt Number	Type	Date Approved	Serial Number
Evaluating Graphic Image Files	5/26/00	23052.P	Provisional Patent	8/21/00	60/207,593