

3/25/02

04-04-2002

FORM PTO-1594  
(Rev. 6-93)

R



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

102042681

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

1. Name of conveying party(ies):  
Erik M. Pelton

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: February 12, 2002

2. Name and address of receiving party(ies):  
Name: Marksmen Inc.  
Internal Address: \_\_\_\_\_  
Street Address: 116 North Maryland Avenue, Lower Level  
City: Glendale State: CA ZIP 91206

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  
(Designation 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)  
76/202,181

Additional numbers attached?  Yes       No

B. Trademark Registration No.(s)

5. Name and address of party to whom correspondence concerning document should be mailed:  
Name: COOLEY GODWARD LLP  
Internal Address: Five Palo Alto Square  
3000 El Camino Real  
Palo Alto, California 94306-2155  
Street Address Five Palo Alto Square  
3000 El Camino Real  
City: Palo Alto State: CA ZIP 94306-2155

6. Total number of applications and registrations involved: 1

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

Enclosed  
 If any deficiency, authorized to be charged to deposit account

8. Deposit account number: 03-3118  
(Attach duplicate copy of this page if paying by deposit account)

OFFICE OF PUBLIC RECORDS  
MAR 25 PM 1:19  
FINANCE SECTION

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.*

Susan D. Berney-Key, Esq.      3/12/02  
Date

Total number of pages including cover sheet, attachments, and document: 5

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

04/04/2002 LINDLER 00000006 76202181  
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CW49011.DOC

TRADEMARK  
REEL: 002474 FRAME: 0808

## AGREEMENT

**THIS AGREEMENT** (the "Agreement") is made as of the Effective Date below by and between **MARKSMEN INC.**, a Delaware Corporation with its principal place of business at 116 North Maryland Avenue, Glendale, California 91206 ("Marksmen") and **ERIK M. PELTON, DBA TMARKSMAN.COM**, an individual with a principal place of business at 1408 N. Fillmore Street, Suite 2, Arlington, VA 22201 ("Mr. Pelton") (collectively referred to herein as "the Parties").

**WHEREAS**, Marksmen is the owner of U.S. Trademark Registration Nos. 2,320,577 and 2,310,868 for the mark **MARKSMEN**, and is the owner of other registrations and applications for this mark in several foreign jurisdictions, in addition Marksmen is the owner of U.S. Registration No. 2,208,330 for the mark **TRADEMARKSMAN** (collectively referred to herein as "the **MARKSMAN** marks");

**WHEREAS**, **MR. Pelton** is using the marks **TMARKSMAN** and **TMARKSMAN.COM** and has filed an application for the mark **TMARKSMAN** in the U.S. Patent and Trademark Office (Application Serial No. 76/202,181) (collectively referred to herein as "the **TMARKSMAN** Mark");

**WHEREAS**, Marksmen has objected to Mr. Pelton's use of the **TMARKSMAN** Mark on the basis of likelihood of confusion and dilution;

**WHEREAS**, the Parties wish to amicably resolve their dispute with respect to the above-referenced trademarks;

**NOW, THEREFORE**, in consideration of the mutual promises set forth below, it is agreed by and between the parties hereto as follows:

1. Upon execution of this Agreement by the parties, Mr. Pelton agrees to begin phasing out use of the **TMARKSMAN** Mark on February 28, 2002, and will print no further literature, advertisements, or other written materials containing the **TMARKSMAN** Mark, and will not create or manufacture any new product or service bearing or including the **TMARKSMAN** Mark, or any other mark confusingly similar to the **MARKSMAN** marks.

2. Mr. Pelton agrees that this phase out of use of the **TMARKSMAN** Mark will include taking steps to conduct business under the name Erik M. Pelton, or some other fictitious business name that does not use the term or terms: **TMARKSMAN**, **MARKSMEN**, **MARKSMAN**, **TRADEMARKSMAN**, **TRADEMARKSMEN** or any other mark confusingly similar to the **MARKSMAN** marks. Mr. Pelton also agrees to cease all use of the **TMARKSMAN** Mark, and any other marks, domain names, email addresses, or trade names confusingly similar to the **MARKSMAN** marks by April 30, 2002.

WWW.MARKSMEN.COM

3. Mr. Pelton agrees to execute the necessary documents to transfer the TMARKSMAN.COM domain name to Marksmen by April 30, 2002. Mr. Pelton agrees that prior to April 30, 2002 he will register and use a new domain name for his business web site, which does not the term TMARKSMAN, or any terms confusingly similar to the MARKSMAN marks.
4. Marksmen agrees that once the TMARKSMAN.COM domain name has been transferred to it, Marksmen will set up a bounce page that gives users ~~thirty~~ <sup>ONE (1)</sup> ~~(30) seconds~~ <sup>MINUTE</sup> to link to Mr. Pelton's new alternate web site before the site points to the Marksmen site. Marksmen agrees to maintain this bounce page until February 28, 2003. EMP  
ICA
5. Mr. Pelton agrees to assign U.S. Application Serial No. 76/202,181 for the TMARKSMAN mark to Marksmen upon execution of this Agreement. Marksmen agrees to agrees to reimburse Mr. Pelton for the cost of the assignment of the mark TMARKSMAN from Mr. Pelton to Marksmen Inc. and also agrees to reimburse Mr. Pelton \$325.00 USD (the cost of the original filing fee of the mark TMARKSMAN).
6. Marksmen agrees that once this Agreement has been executed, the TMARKSMAN.COM domain name has been transferred to Marksmen, and U.S. Application Serial No. 76/202,181 has been assigned to Marksmen, Marksmen will refer appropriate requests received by Marksmen for trademark attorney services, trademark registration services, or other such legal requests that fall outside of the scope of the services offered by Marksmen, to Mr. Pelton until December 31, 2002.
7. Marksmen agrees to make best efforts at the upcoming INTA Annual Meeting to be held in Washington D.C., May 18-22, 2002 ("May 2002 INTA Meeting"), to introduce Mr. Pelton to Marksmen clients who are interested in Mr. Pelton's services. These introductions will be made outside the Exhibit Hall, if Mr. Pelton decides to attend the May 2002 INTA Meeting. Marksmen will not be liable for paying Mr. Pelton's registration or membership fees for INTA and/or any of its conferences or functions.
8. The terms and provisions of this Agreement shall extend to, inure to the benefit of, and bind the legal representatives, employees, assigns and successors of the parties to this Agreement.
9. This Agreement shall be governed and construed according to the laws of the United States and the State of California, without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the laws of the United States or the State of California as to the rights and duties of the Parties.

WWW.MARKSMEN.COM

GLENDAL, CA P.O. Box 10038, Glendale, California 91209 800.558.8838 818.637.8050 Fax 818.637.8054

CHAPEL HILL, NC P.O. Box 968, Chapel Hill, North Carolina 27514 888.558.5268 919.915.2600 FAX 919.915.82804

**TRADEMARK**  
**REEL: 002474 FRAME: 0810**

10. The Parties have been fully advised by their respective attorneys of the contents of Section 1542 of the Civil Code of the State of California, and that section and the benefits thereof are expressly waived. Section 1542 reads as follows:

Section 1542. (General Release - Claims Extinguished)

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor

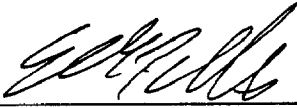
11. This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes all prior agreements, understandings and representations concerning such subject matter. This Agreement may not be modified except in writing, signed by both Parties.

12. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, together, shall constitute one and the same instrument.

13. Each of the parties represents, warrants and agrees (a) it has received prior independent legal advice from counsel of its choice with respect to the content of this Agreement; and (b) its corporate officers reviewing and executing the Agreement have been duly authorized and empowered to do so.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed by their duly authorized representatives as of the last day of the execution hereof ("Effective Date").

**Eric M. Pelton**

By: 

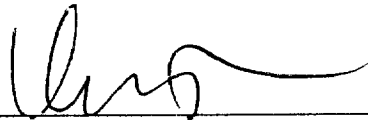
Print Name: ERIC M. PELTON

Title: OWNER

Address: 1408 N. FILLMORE ST., STE 2  
ARLINGTON, VA 22201

Date: 2/13/02

**Marksmen Inc.**

By: 

Print Name: KEN TAYLOR

Title: PRESIDENT AND CEO

Address: 212 E. ROSEMARY ST.  
CHAPEL HILL, NC 27514

Date: 2/1/02

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