

04-18-2002

FORM PTO-1594
(Rev 5-93)

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office



To the Honorable Commissioner

Original documents or copy thereof.

102059026

1. Name of conveying party(ies):

MASIMO CORPORATION

Individual(s) citizenship:

Association:

General Partnership:

Limited Partnership:

Corporation - State: DELAWARE

Other:

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

3. Nature of Conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: June 29, 2001

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

Name: COMERICA BANK-CALIFORNIA
Address: 611 ANTON BOULEVARD, SECOND FLOOR
City: COSTA MESA State: CA Zip: 92626

Individual(s) citizenship:

Association:

General Partnership:

Limited Partnership:

Corporation - State:

Other: a California banking 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 [x] No

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

A. Trademark Application No.(s)

76/237,588	76/192,967	76/192,966
76/172,269	76/172,268	76/169,987
76/169,986	76/169,985	76/169,984
76/169,983	76/169,928	76/155,402
76/155,401	76/078,351	75/937,727
75/806,494	75/541,860	75/540,527
75/540,450	75/536,680	75/445,161

B. Trademark Registration No.(s)

2,427,418	2,146,863
2,000,434	2,018,361
1,991,550	

Additional numbers attached? [] Yes [x] No

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

Name: Erin O'Brien
Internal Address: GRAY CARY WARE & FREIDENRICH
4365 Executive Drive, Suite 1100
San Diego, CA 92121-2133

6 Total number of applications and registrations involved: 26

7. Total fee (37 CFR 3.41) \$665.00

[x] 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.

Erin O'Brien
Name of Person Signing

Erin O'Brien
Signature

April 17, 2002

Date

Total number of pages comprising cover sheet: [10]

Mail Documents to be recorded with required cover sheet information to:
U.S. Patent and Trademark Office, Office of Public Records
1213 Jefferson Davis Highway, 3rd Floor
Arlington, VA 22202

04/18/2002 DBYRNE 00000225 76237588

01 FC:481
02 FC:482

40.00 OP
625.00 OP

PAN0228624.1
102365-152110

TRADEMARK
REEL: 002485 FRAME: 0755

4-18-02

AMENDED AND RESTATED
INTELLECTUAL PROPERTY SECURITY AGREEMENT

This Intellectual Property Security Agreement is entered into as of June 29, 2001 by and between COMERICA BANK-CALIFORNIA ("Secured Party") and MASIMO CORPORATION, a Delaware corporation ("Grantor").

RECITALS

A. Borrower and Secured Party are parties to a Collateral Assignment, Patent Mortgage and Security Agreement dated as of April 16, 1997 (the "Original Agreement"). Borrower and Secured Party wish to amend and restate the terms of the Original Agreement.

B. Secured Party has agreed to make certain advances of money and to extend certain financial accommodations to Grantor (the "Loans") in the amounts and manner set forth in that Loan and Security Agreement by and between Secured Party and Grantor dated as of April 16, 1997 as amended or restated, including by that certain Loan and Security Agreement dated as of April 5, 1999, as amended by that certain Amendment to Loan and Security Agreement of even date herewith (as the same may be amended, modified or supplemented from time to time, collectively, the "Loan Agreement"; capitalized terms used herein are used as defined in the Loan Agreement).

C. Secured Party is willing to make the Loans to Grantor, but only upon the condition, among others, that Grantor shall grant to Secured Party a security interest in certain Copyrights, Trademarks and Patents to secure the obligations of Grantor under the Loan Agreement.

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 all of its intellectual property, including without limitation the following (all of which shall collectively be called the "Collateral"):

(a) Any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and 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, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held;

(c) Any and all design rights which may be available to Grantor now or hereafter existing, created, acquired or held;

(d) All patents, patent applications and like protections 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");

(e) Any trademark and servicemark rights, whether 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");

ML
bank

(f) Any and all claims for damages by way of past, present and future infringement 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;

(g) All licenses or other rights 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;

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

(i) 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 of the Collateral, except for licenses granted by Grantor to its customers in the ordinary course of business; and except for liens, encumbrances, or security interests described in Annex I attached hereto;

(b) Grantor's rights as a licensee of intellectual property do not give rise to more than five percent (5%) of its gross revenue in any given month, including without limitation revenue derived from the sale, licensing, rendering or disposition of any product or service;

(c) Performance of 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;

(d) During the term of this Agreement, Grantor will not transfer or otherwise encumber any interest in the Collateral, except for licenses granted by Grantor in the ordinary course of business or as set forth in this Agreement;

(e) To its knowledge, each of the Patents is valid and enforceable, and no part of the Collateral has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Collateral violates the rights of any third party;

(f) Grantor shall (i) protect, defend and maintain the validity and enforceability of the Trademarks, Patents and Copyrights (ii) use its best efforts to detect infringements of the Trademarks, Patents and Copyrights and promptly advise Secured Party in writing of material infringements detected and (iii) not allow any Trademarks, Patents or Copyrights to be abandoned, forfeited or dedicated to the public without the written consent of Secured Party, which shall not be unreasonably withheld;

(g) Grantor shall promptly register the most recent version of any of Grantor's copyrights, if not so already registered, and 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 at Grantor's sole expense. Grantor shall give Secured Party notice of all such applications or registrations;

(h) 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 and (upon recordation hereof) perfected first priority security interest in the Collateral in the United States securing the payment and performance of the obligations evidenced by the Loan Agreement upon making the filings referred to in subsection (i) below;

(i) Except for, and upon, the filing with the United States Patent and Trademark Office with respect to the Patents and Trademarks and the Register of Copyrights with respect to the Copyrights necessary to

Gray Cary\PA\10154244.4
102365-152110

2

... in fact, with full discretion, to take any action and to execute any instrument which Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement, including (i) to modify, in its sole discretion, this Agreement without first obtaining Grantor's approval or signature to such modification by amending Exhibit A, Exhibit B and Exhibit C, hereof, as appropriate, to include reference to any right, title or interest in any Copyrights, Patents or Trademarks acquired by Grantor after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents or Trademarks in which Grantor no longer has or claims any right, title or interest, (ii) to file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of Grantor where permitted by law and (iii) after the occurrence and during

Gray Cary\PA\10154244.4
102365-152110

3

the continuance of an Event of Default, to transfer the Collateral into the name of Secured Party or a third party to the extent permitted under the California Uniform Commercial Code.

6. 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 Loan Agreement; or

(b) Grantor breaches any warranty or agreement made by Grantor in this Agreement and, as to any breach that is capable of cure, Grantor fails to cure such breach within five (5) days of the occurrence of such breach.

7. Remedies. Upon the occurrence and continuance of an Event of Default, Secured Party shall have the right to exercise all the remedies of a secured party under the California 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. 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 exercise of 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.

8. Indemnity. Grantor agrees to defend, indemnify and hold harmless Secured Party and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement, and (b) all losses or expenses in any way suffered, incurred, or paid by Secured Party as a result of or in any way arising out of, following or consequential to transactions between Secured Party and Grantor, whether under this Agreement or otherwise (including without limitation reasonable attorneys' fees and reasonable expenses), except for losses arising from or out of Secured Party's gross negligence or willful misconduct.

9. Reassignment. At such time as Grantor shall have completely satisfied in full all of the Obligations, and Secured Party shall have no further obligation to make credit extensions under the Loan Agreement, Secured Party shall execute and deliver to Grantor all deeds, assignments and other instruments as may be necessary or proper to revest in Grantor full title to the Collateral assigned hereunder, subject to any disposition thereof which may have been made by Secured Party pursuant hereto.

10. 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.

11. 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.

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

13. 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.

14. California Law and Jurisdiction; Jury Waiver. This Agreement shall be governed by the laws of the State of California, without regard for choice of law provisions. Grantor and Secured Party consent to the exclusive jurisdiction of any state or federal court located in Santa Clara County, California. GRANTOR AND SECURED PARTY EACH WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE LOAN AGREEMENT, THIS AGREEMENT.

OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

IN WITNESS WHEREOF, the parties have cause this Intellectual Property Security Agreement to be duly executed by its officers thereunto duly authorized as of the first date written above.


GRANTOR:

MASIMO CORPORATION

Address of Grantor:

2852 Kelvin Ave.
Irvine, CA 92614

Attn: Chief Executive Officer

By: 

Title: CEO, CFO

BANK:

COMERICA BANK-CALIFORNIA

Address of Secured Party:

611 Anton Boulevard, 2nd Floor
Costa Mesa, CA 92626

Attn: Bonnie Kehe

By: Bonnie E. Kehe

Title: SVP / Regional Manager

