

Tab settings → → → ▼

01-21-2003



102341819

SHEET

VLV

Docket No.:

21992.055

To the Honorable Commissioner of

the attached original documents or copy thereof.

1. Name of conveying party(ies):

NQL Technologies, Inc.
815 N. W. 13th, Suite D
Portland, OR 92709

1-14-03

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

Additional names(s) of conveying party(ies) ☐ Yes ☒ No

3. Nature of conveyance:

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

Execution Date: **December 31, 2002**

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

Name: **BFI Business Finance**

Internal Address:

Street Address: **1655 The Alameda**

City: **Sand Jose** State: **CA** ZIP: **95126**

- ☐ Individual(s) citizenship
☐ Association
☐ General Partnership
☐ Limited Partnership
☒ Corporation-State **California**
☐ Other

If assignee is not domiciled in the United States, a domestic designation is ☐ Yes ☐ N
(Designations must be a separate document from
Additional name(s) & address(es) ☐ Yes ☒ N

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

A. Trademark Application No.(s)

76/258387 76/144126 76/142359

B. Trademark Registration No.(s)

2,383,926 2,480,986 2,158,893
2,420,195

Additional numbers ☐ Yes ☒ No

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

Name: **Charlotte Carberry, Legal Assistant**

Internal Address:

Street Address: **Manatt, Phelps & Phillips, LLP**

1001 Page Mill Road, Bldg. 2

City: **Palo Alto** State: **CA** ZIP: **94304**

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

7

7. Total fee (37 CFR 3.41):.....\$ **\$190.00**

- ☐ Enclosed
☒ Authorized to be charged to deposit account

8. Deposit account number:

50-1847

OFFICE OF RECORDS
2003 JAN 14 AM 11:25
FINANCE SECTION

01/21/2003 LNUELLER 00000019 501847 76258387

DO NOT USE THIS SPACE

01 FC:8521 40.00 CH
02 FC:8522 150.00 CH

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.

Francis X. Ferrer, Esq.

Name of Person Signing

Signature

January 14, 2003

Date

Total number of pages including cover sheet, attachments, and

13

TRADEMARK

REEL: 002651 FRAME: 0928

COLLATERAL ASSIGNMENT, PATENT MORTGAGE AND SECURITY AGREEMENT

This Collateral Assignment, Patent Mortgage and Security Agreement (this "Assignment") is made as of this 31st day of December, 2002 by and between NQL Technologies, Inc., an Oregon corporation ("Assignor") and BFI Business Finance ("Assignee"), a California corporation.

RECITALS

A. Assignee has lent and has agreed to lend to Assignor certain funds (collectively, the "Loan"), and Assignor desires to continue to borrow such funds from Assignee pursuant to the terms of that certain Security Agreement dated December 31, 2003 (the "Loan Agreement") and that certain Secured Promissory Note dated December 31, 2002 (the "Note"), which Loan will be secured pursuant to the terms of the Security Agreement and UCC-1 Financing Statements and this Assignment.

B. In order to induce Assignee to continue to make the Loan, Assignor has agreed to assign certain intangible property to Assignee for purposes of securing the obligations of Assignor to Assignee.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Assignment, Patent Mortgage and Grant of Security Interest. As collateral security for the prompt and complete payment and performance of all of Assignor's present or future indebtedness, obligation and liabilities to Assignee, Assignor hereby assigns, transfers, conveys and grants a mortgage to Assignee, as security, Assignor's entire right, title and interest in, to and under the following (all of which shall collectively be called the "Collateral"):

(a) Any and all copyright rights, copyright application, 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, or acquired or held;

(c) Any and all design rights which may be available to Assignor 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 service mark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Assignor connected with and symbolized by such trademarks, including without limitation those set forth on Exhibit C attached hereto (collectively, the "Trademarks");

(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; 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.

THE INTEREST IN THE COLLATERAL BEING ASSIGNED HEREUNDER SHALL NOT BE CONSTRUED AS A CURRENT ASSIGNMENT, BUT AS A CONTINGENT ASSIGNMENT TO SECURE ASSIGNOR'S OBLIGATIONS TO ASSIGNEE UNDER THE LOAN AGREEMENT AND NOTE.

2. Authorization and Request. Assignor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this conditional assignment.

3. Covenants and Warranties. Assignor represents, warrants, covenants and agrees as follows:

(a) Assignor has whatever rights in the Collateral that Assignee has sold to it;

(b) To the best of its knowledge, performance of this Assignment does not conflict with or result in a breach of any agreement to which Assignor is party or by which Assignor is bound;

(c) During the term of this Assignment, Assignor will not transfer or otherwise encumber any interest in the Collateral, except for non-exclusive licenses granted by Assignor;

(d) Intentionally left blank ;

(e) Assignor shall promptly advise Assignee of any material change in the composition of the Collateral, including but not limited to any subsequent ownership right of the Assignor in or to any Trademark, Patent or Copyright not specified in this Assignment;

(f) Assignor shall (i) protect, defend and maintain the validity and enforceability of the Trademarks, Patents and Copyrights that Assignor deems necessary or cost-effective to protect, defend or maintain, provided that Assignor shall provide Assignee with notice should Assignor determine not to protect defend or maintain a Trademark, Patent or Copyright so that Assignee shall have an opportunity to determine whether such nonaction would materially impair Assignee's margin of security; (ii) use reasonable efforts to detect infringements of the Trademarks; Patents and Copyrights and promptly advise Assignee 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 providing notice to Assignee so that assignee shall have an opportunity to determine whether such abandonment, forfeiture or dedication to the public would materially impair Assignee's margin of security;

(g) Assignor shall promptly register the most recent version of any of Assignor'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 Assignee may request from time to time to perfect or continue the perfection of Assignee's interest in the Collateral;

(h) To the best of Assignor's knowledge, this Assignment creates, and in the case of after acquired Collateral, this Assignment will create at the time Assignor first has rights in such after acquired Collateral, in favor of Assignee a valid and 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 and the Note upon making the filings referred to in clause (i) below;

(i) To the best of Assignor's knowledge, except for, and upon, the filing with the United States Patent and Trademark office with respect to the Patents and Trademarks necessary to perfect the security interests and assignment created hereunder, and, except as has been already made or obtained, no authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required either (i) for the grant by Assignor of the security interest granted hereby or for the execution, delivery or performance of this Assignment or by Assignor or (ii) for the perfection in the United States or the exercise by Assignee of its rights and remedies hereunder;

(j) All information heretofore, herein or hereafter supplied to Assignee by or on behalf of Assignor with respect to the Collateral is accurate and complete in all material respects;

(k) Assignor shall not enter into any agreement that would materially impair or conflict with Assignor's obligations hereunder without Assignee's prior written consent. Assignor shall not permit the inclusion in any contract to which it becomes a party of any provisions that could or might in any way impair or prevent the creation of a security interest in Assignor's rights and interests in any property included within the definition of the Collateral acquired under such contracts; and

(l) Upon any officer of Assignor obtaining knowledge thereof, Assignor will promptly notify Assignee in writing of any event that materially adversely affects the value of any of the Collateral, the ability of Assignor or Assignee to dispose of any of the Collateral or the rights and remedies of Assignee in relation thereto, including the levy of any legal process against any of the Collateral.

4. Assignee's Rights. Assignee shall have the right, but not the obligation, to take, at Assignor's sole expense, any actions that Assignor is required under this assignment to take but which Assignor fails to take, after five (5) days' telephonic or written notice to Assignor. Assignor shall reimburse and indemnify Assignee for all reasonable costs and expenses incurred in the reasonable exercise of its rights under this Section 4.

5. Inspection Rights. Assignor hereby grants to Assignee and its employees, representatives and agents the right to visit, during reasonable hours upon prior reasonable notice to Assignor, and any of Assignor's and its subcontractors' plants and facilities that manufacture, install or store products (or that have done so during the prior six-month period) that are sold under any of the Collateral, and to inspect the products and quality control records relating thereto upon reasonable notice to Assignor and as often as may be reasonably requested; provided, however, nothing herein shall entitle Assignee to access to Assignor's trade secrets and other proprietary information.

6. Further Assurances; Attorney in Fact.

(a) On a continuing basis, Assignor will, subject to any prior licenses, encumbrances and restrictions and prospective licenses, 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 take all such action as may reasonably be deemed necessary or advisable, or as requested by Assignee to carry out the intent and purposes of this Collateral Assignment, or for assuring and confirming to Assignee the grant or perfection of a security interest in all Patents.

(b) Assignor hereby irrevocably appoints Assignee as Assignor's attorney-in-fact, with full authority in the place and stead of Assignor and in the name of Assignor, Assignee or otherwise, from time to time in Assignee's discretion, to take any action and to execute any instrument which Assignee may deem necessary or advisable to accomplish the purposes of this Collateral Assignment, including:

(i) To modify in its sole discretion this Collateral Assignment without first obtaining Assignor's approval of or signature to such modification by amending Exhibit A, Exhibit B and Exhibit C thereof, to include reference to any right title or interest in any copyright, patents, or trademarks acquired by Assignor after the execution hereof or to delete any reference to any right, title, interest in any copyrights, patents, or trademarks in which Assignor no longer has or claims any right, title or interest; and,

(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 Assignor where permitted by law.

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

(a) An Event of Default occurs under the Loan Agreement, the Note or any other agreement between Assignor and Assignee; or

(b) Assignor materially breaches any warranty or agreement made by Assignor in this Assignment.

8. Remedies. Upon the occurrence of an Event of Default, Assignee 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 Assignor to assemble the Collateral and to make it available to Assignee at a place designated by Assignee. Assignor will pay any expenses (including attorneys' fees) incurred by Assignee in connection with the exercise of any of Assignee's rights hereunder, including without limitation any expense incurred in disposing of the Collateral. All of Assignee's rights and remedies with respect to the Collateral shall be cumulative.

9. Indemnity. Assignor agrees to defend, indemnify and hold harmless Assignee and its officers, employees, and agents against: all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement except for losses arising from or out of Assignee's gross negligence or willful misconduct.

10. Reassignment. At such time as Debtor has satisfied its obligations to Lender under the Secured Promissory Note dated December 31, 2002 (the "Note"), such Note and the security therefor, including this Agreement, will be assigned to the Former e-botz Subordinated Secured Creditors as defined in the Note, assuming the Former e-botz Subordinated Secured Creditors have signed an intercreditor agreement in form satisfactory to Lender. If not, this Agreement shall still secure the obligations of Debtor to the Former e-botz Subordinated Secured Creditors.

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 Assignment 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 Assignment may be amended only by a written instrument signed by both parties hereto.

14. Counterparts. This Assignment 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. California Law and Jurisdiction. This Assignment shall be governed by the laws of the State of California, without regard for choice of law provisions. Assignor and Assignee consent to the non-exclusive jurisdiction of any state or federal court located in Santa Clara County, California.

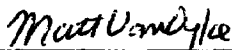
IN WITNESS WHEREOF, the parties hereto have executed this Assignment on the day and year first above written.

Address of Assignor:

**815 NW 13th, Suite D
Portland OR 97209**

ASSIGNOR:

NQL Technologies, Inc.



By: **Matt Van Dyke**

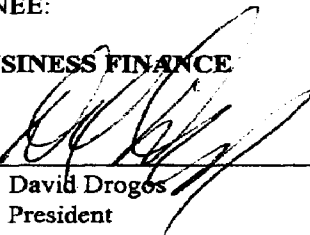
Its: **President**

Address of Assignee:

**1655 The Alameda
San Jose, CA 95126**

ASSIGNEE:

BFI BUSINESS FINANCE



By: **David Drogos**

Its: **President**

Exhibit "A"

Copyrights

<u>Description of Copyrights</u>	<u>Country</u>	<u>Registration or Application No.</u>
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All Copyrights of Debtor, whether registered or unregistered.

Exhibit "B"**Patents**

<u>Patent Name</u>	<u>Date</u>	<u>Registration Number</u>
METHOD AND APPARATUS FOR DATA COMMUNICATION	July 25, 2000	6,094,684
U.S. PROVISIONAL APPLICATIONS		
OBJECT RECOGNITION ENGINE	September 1, 1998 August 31, 1999	09/387,412
METHOD FOR FACILITATING QUERIES OVER A COMPUTER NETWORK	March 15, 1999 March 15, 2000 March 15, 2000	09/525,574 PCT/US00/07059
SCRIPTING TOOLS FOR NETWORK FUNCTIONS	April 1, 1999 March, 15, 2000	09/525/574
SCRIPTING TOOLS FOR NETWORK FUNCTIONS	April 13, 1999 March 15, 2000	09/525,574
NETWORK QUERY LANGUAGE	March 14, 2000 March 15, 2000	09/525,574
U.S. PENDING APPLICATIONS		
OBJECT RECOGNITION ENGINE	August 31, 1999 August 31, 1999	60/098,765
SCRIPTING LANGUAGE FOR NETWORK FUNCTIONS	March 15, 2000 March 15, 1999 April 1, 1999 April 13, 1998 March 14, 2000	60/124,699 60/127,363 60/129,138 60/189,094
NETWORK CRAWLING WITH LATERAL LINK HANDLING	May 30,2001 May 31, 2000	60/208,954
PENDING FOREIGN APPLICATIONS		
SCRIPTING LANGUAGE FOR NETWORK FUNCTIONS	March 15, 2000 March 15, 1999	PCT/US00/07059 60/124,699

Exhibit "C"

Trademarks

<u>Trademark</u>	<u>Registration Number/Serial Number</u>
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United States Trademarks

NQL (stylized)	Serial #76/258,387
NQL (word mark)	Registration #2,383,926
IQ	Serial #76/144,126
NQL Content Anywhere	Serial #76/142,359
Network Query Language	Registration #2,480,986
Stockvue	Registration #2,158,893
Object Recognition Engine	Registration #2,420,195

Foreign Trademarks

NQL Content Anywhere	European Community Serial #218303
NQL Content Anywhere	Canada Application #109,898,500

Exhibit "D"

(list any exceptions to liens, encumbrances or security interests)

NONE

January 14, 2003

Client-Matter: 21992..055

VIA EXPRESS MAIL

Commissioner of Patents & Trademarks
U.S. Patent and Trademark Office
Recordation Division
Box: Assignment
Washington, D.C. 20231

Re: Recordation of Security Interest against seven (7) U.S. patent applications and issued patents in the name of NQL Technologies, Inc. in favor of BFI Business Finance

Dear Commissioner:

Enclosed please find the following for filing with the Patent and Trademark Office:

1. Recordation Form Cover Sheet (Form PTO-1594); and
2. Collateral Assignment, Patent Mortgage and Security Agreement

Please debit the Deposit Account No. 50-1847 of Manatt, Phelps & Phillips LLP for the \$190.00 filing fee. A duplicate copy of this letter is enclosed for such purpose. Please indicate your receipt of these documents by date-stamping and returning to us the enclosed stamped self-addressed postcard.

Should you have any questions regarding the foregoing, please contact us.

Very truly yours,


Charlotte C. Carberry

Enclosures

cc: Janet R. Walworth, Esq, General Counsel, BFI Business Finance
Francis X. Ferrer, Esq.
Jennifer S. Fryhling, Esq.

20078600.1