

05-14-2003

Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings



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

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

<p>1. Name of conveying party(ies): Qiva Holdings, Inc., a Delaware corporation</p> <p style="text-align: right; font-size: 1.5em;">5-17-03</p> <p><input type="checkbox"/> Individual(s)      <input type="checkbox"/> Association  <input type="checkbox"/> General Partnership      <input type="checkbox"/> Limited Partnership  <input checked="" type="checkbox"/> Corporation-State  <input type="checkbox"/> Other _____</p> <p>Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	<p>2. Name and address of receiving party(ies) Name: TradeBeam, Inc. Internal Address: _____ Address: _____ Street Address: Two Waters Park Drive, #100 City: San Mateo State: CA Zip: 94403-1148</p> <p><input type="checkbox"/> Individual(s) citizenship _____  <input type="checkbox"/> Association _____  <input type="checkbox"/> General Partnership _____  <input type="checkbox"/> Limited Partnership _____  <input checked="" type="checkbox"/> Corporation-State Delaware  <input type="checkbox"/> Other _____</p> <p>If assignee is not domiciled in the United States, a domestic representative designation is attached: <input type="checkbox"/> Yes <input type="checkbox"/> No  (Designations must be a separate document from assignment)  Additional name(s) &amp; address(es) attached? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>3. Nature of conveyance:  <input checked="" type="checkbox"/> Assignment      <input type="checkbox"/> Merger  <input type="checkbox"/> Security Agreement      <input type="checkbox"/> Change of Name  <input type="checkbox"/> Other _____</p> <p>Execution Date: 05/05/03</p>	

<p>4. Application number(s) or registration number(s): A. Trademark Application No.(s) <u>75/916,629</u></p>	<p>B. Trademark Registration No.(s) <u>2,609,497</u></p>
Additional number(s) attached <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	

<p>5. Name and address of party to whom correspondence concerning document should be mailed: Name: Vinella I. Sido, Esq. Internal Address: TradeBeam, Inc. Street Address: Two Waters Park Drive Suite 100 City: San Mateo State: CA Zip: 94403-1148</p>	<p>6. Total number of applications and registrations involved: <span style="border: 1px solid black; padding: 2px;">2</span></p> <p>7. Total fee (37 CFR 3.41).....\$ 80.00  <input checked="" type="checkbox"/> Enclosed  <input type="checkbox"/> Authorized to be charged to deposit account</p> <p>8. Deposit account number: _____</p>
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**DO NOT USE THIS SPACE**

<p>9. Signature. 05/13/2003 LNUELLER 00000009 75916629 01 FC:0521 40.00 OP 02 FC:0522 25.00 OP Clarke de Maigret, Esq. Name of Person Signing</p>	<p style="text-align: center;"><i>Clarke de Maigret</i> Signature</p> <p style="text-align: right;">May 5, 2003 Date</p> <p style="text-align: center;">Total number of pages including cover sheet, attachments, and document: <span style="border: 1px solid black; padding: 2px;">9</span></p>
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RECORDS SECTION  
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Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks, Box Assignments Washington, D.C. 20231

TRADEMARK REEL: 002732 FRAME: 0237

## ASSIGNMENT AND ASSUMPTION AGREEMENT

This Assignment and Assumption Agreement (this "Agreement"), effective as of May 5, 2003 (the "Effective Date"), is entered into between TradeBeam, Inc., a Delaware corporation ("Acquiror"), and Sherwood Partners, Inc., a California corporation ("Transferor"), in its capacity as assignee for the benefit of creditors of QIVA Holdings, Inc., QIVA Inc. and Capstan Systems, Inc.

### RECITAL

Pursuant to the provisions of that certain Acquisition Agreement between the parties dated May 5, 2003 (the "Acquisition Agreement"), the parties have agreed that Transferor shall assign to Acquiror certain property in accordance with the provisions hereof.

### AGREEMENTS

**Now, therefore**, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Definitions.** Capitalized terms used without definitions herein shall have the meanings ascribed to such terms in the Acquisition Agreement.

1.1 "Assigned Property" shall mean those items described on Schedule I and all associated Intellectual Property Rights comprising part of the Required Assets .

1.2 "Copyrights" shall mean all copyrights, and all other literary property and authorship rights, and all right, title, and interest in all copyrights, copyright registrations, certificates of copyright and copyrighted interests throughout the world and comprising part of the Required Assets.

1.3 "Intellectual Property Rights" shall mean, collectively, worldwide Patents, Trade Secrets, Copyrights, Trademarks, mask work rights, moral rights, trade names, rights in trade dress, and all other intellectual property rights and proprietary rights, whether arising under the laws of the United States or any other state, country or jurisdiction, including without limitation all rights or causes of action for infringement or misappropriation of any of the foregoing, and comprising part of the Required Assets.

1.4 "License Rights" shall mean all contractual rights of Transferor to access to access, use, execute, reproduce, display, perform, distribute internally or externally, sell copies of, and prepare derivative works based upon any third party's intellectual property and comprising part of the Required Assets.

1.5 "Patents" shall mean all patent rights and all right, title, and interest in all letters patent or equivalent rights and applications, including provisional applications, for letters patent

or rights, industrial and utility models, industrial designs, certificates of invention, and other government issued or granted indicia of invention ownership, including any reissue, extension, division, continuation, or continuation-in-part applications throughout the world and comprising part of the Required Assets.

1.6 “Trademarks” shall mean all right, title, and interest in all trademark, service mark, trade name, and trade dress rights arising under the common law, state law, federal law, and laws of foreign countries, and all right, title, and interest in all trademark, service mark, trade name, and trade dress applications and registrations interests throughout the world and comprising part of the Required Assets.

1.7 “Trade Secrets” shall mean all right, title, and interest in all trade secrets and trade secret rights arising under common law, state law, federal law, or laws of foreign countries and comprising part of the Required Assets.

2. **Assignment.** Transferor hereby assigns, transfers and sets over to Acquiror, its successors, legal representatives and assigns, and Acquiror hereby assumes, the entire worldwide right, title and interest in and to the following:

2.1 All of the Assigned Property, including without limitation all associated Intellectual Property Rights and License Rights; and

2.2 All methodologies, processes, trade secrets, design information, product information, technology, formulae, routines, engineering specifications, data, drawings, inventions, modifications, enhancements, designs, concepts, ideas, improvements, works of authorship, know-how, techniques, engineering work papers, and notes, development work-in-process, good will and other proprietary information and materials of any kind relating to or used in the Assigned Property.

3. **Infringement.** Transferor hereby assigns, waives and quitclaims to Acquiror, its successors, legal representatives and assigns, any and all claims of whatever nature that Transferor has or may acquire for infringement of any Intellectual Property Right in the Assigned Property.

4. **Further Assurances.** Transferor will, at Acquiror’s request and expense: (a) take any reasonable action and execute and aid in the preparation of any assignments, applications and other documents that Acquiror considers desirable for the purpose of obtaining or maintaining any Intellectual Property Rights in any country with respect to the Assigned Property; and (b) take any reasonable action to aid Acquiror in any action against any third party for infringement of any Intellectual Property Right(s) in the Assigned Property, including without limitation joining as a party if reasonably necessary.

## 5. General.

5.1 Amendments and Waivers. Any term of this Agreement may be amended or waived with the written consent of the parties or their respective successors and assigns. Any amendment or waiver effected in accordance with this Section 5.1 shall be binding upon the parties and their respective successors and assigns.

5.2 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties and each of their respective successors and assigns.

5.3 Choice of Law. This Agreement shall be construed, interpreted and the rights of the parties determined in accordance with the laws of the State of California, without giving effect to any choice of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of California.

5.4 Consent to Jurisdiction. Each party to this agreement irrevocably consents and agrees that any legal action, suit or proceeding against it with respect to its obligations or liabilities under or arising out of or in connection with this agreement shall be brought only in the united states district court for the Southern District of California or, in the event (but only in the event) such court does not have subject matter jurisdiction over such action, suit or proceeding, in the courts of the State of California sitting in the County of Los Angeles, and each party hereby (i) irrevocably accepts and submits to the jurisdiction of each of the aforesaid courts in personam, (ii) irrevocably and unconditionally waives any objection to the laying of venue in either of the aforesaid courts, and (iii) irrevocably and unconditionally waives and agrees not to plead or claim that either of the aforesaid courts is an inconvenient forum with respect to any such action, suit or proceeding (including claims for interim relief, counterclaims, actions with multiple defendants and actions in which such party is implied).

5.5 Waiver of Jury Trial. Consistent with the intention of Section 5.4, each signatory to this Agreement hereby waives its respective right to a jury trial of any permitted claim or cause of action arising out of this Agreement, any of the transactions contemplated hereby, or any dealings between any of the signatories hereto relating to the subject matter of this Agreement or any of the transactions contemplated hereby. The scope of this waiver is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this agreement or any of the transactions contemplated hereby, including, without limitation, contract claims, tort claims, and all other common law and statutory claims. This waiver is irrevocable, meaning that it may not be modified either orally or in writing, and this waiver shall apply to any subsequent amendments, supplements or other modifications to this agreement, any of the transactions contemplated hereby or to any other document or agreement relating to the transactions contemplated hereby.

5.6 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one instrument.

5.7 Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

5.8 Notices. Unless otherwise provided herein, any notice, request, instruction or other document to be given hereunder by any party to the other shall be in writing and delivered in person or by courier, sent by electronic mail, by facsimile transmission, sent via overnight delivery service or mailed by registered or certified mail (such notice to be effective upon receipt), as follows:

If to Transferor:

Sherwood Partners, Inc.  
1849 Sawtelle Blvd., Suite 543  
Los Angeles, CA 90025-7011  
Attn: Michael Maily  
fax: (310) 477-8402

With a copy to:

Sulmeyer, Kupetz, Baumann & Rothman  
300 S. Grand Ave., 14th Floor  
Los Angeles, CA 90071  
Attn: David Kupetz, Esq.  
fax: (213) 629-4520

If to Acquiror:

TradeBeam, Inc.  
Two Waters Park Drive, Suite 100  
San Mateo, CA 94403-1148  
Attn: Graham R. F. Napier  
CEO  
fax: (650) 653-4801

With a copy to:

Orrick, Herrington & Sutcliffe LLP  
Old Federal Reserve Bank Building  
400 Sansome Street  
San Francisco, California 94111-3143  
Attn: John Seegal, Esq.  
fax: (415) 773-5759

or to such other place and with such other copies as any party may designate as to itself by written notice to the others.

5.9 Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each party as close as possible to that under the provision rendered unenforceable. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such provision, then (i) such provision shall be excluded from this Agreement, (ii) the balance of the Agreement shall be interpreted as if such provision were so excluded and (iii) the balance of the Agreement shall be enforceable in accordance with its terms.

5.10 Entire Agreement. This Agreement and the documents referred to herein are the product of both of the parties hereto, and constitute the entire agreement between such parties pertaining to the subject matter hereof and thereof, and merge all prior negotiations and drafts of the parties with regard to the transactions contemplated herein and therein. Any and all other written or oral agreements existing between the parties hereto regarding such transactions are expressly canceled.

5.11 Advice of Legal Counsel. Each party acknowledges and represents that, in executing this Agreement, it has had the opportunity to seek advice as to its legal rights from legal counsel and that the person signing on its behalf has read and understood all of the terms and provisions of this Agreement. This Agreement shall not be construed against any party by reason of the drafting or preparation thereof.

5.12 Effect of Agreement. Nothing in this Agreement shall, or shall be deemed to, modify or otherwise affect any provisions of the Acquisition Agreement or affect the rights of the parties under the Acquisition Agreement. In the event of any conflict between the provisions hereof and the provisions of the Acquisition Agreement, the provisions of the Acquisition Agreement shall govern and control.

[Remainder of page intentionally left blank]

The parties have caused their duly authorized representatives to execute and deliver this Agreement as of the Effective Date.

TRANSFEROR:

ACQUIROR:

Sherwood Partners, Inc.,  
solely in its capacity as Assignee for the  
Benefit of Creditors of QIVA Holdings, Inc.,  
QIVA Inc. and Capstan Systems, Inc.

TradeBeam, Inc.

By: [Signature]

By: \_\_\_\_\_

Name: Michael A. May

Name: \_\_\_\_\_

Title: [Signature]

Title: \_\_\_\_\_

The parties have caused their duly authorized representatives to execute and deliver this Agreement as of the Effective Date.


TRANSFEROR:

ACQUIROR:

Sherwood Partners, Inc.,  
solely in its capacity as Assignee for the  
Benefit of Creditors of QIVA Holdings, Inc.,  
QIVA Inc. and Capstan Systems, Inc.

TradeBeam, Inc.

By: \_\_\_\_\_

By: 

Name: \_\_\_\_\_

Name: Graham RF Nason

Title: \_\_\_\_\_

Title: CEO



## SCHEDULE I

### DESCRIPTION OF ASSIGNED PROPERTY

All of Transferor's right, title and interest in the Required Assets, as defined in the Acquisition Agreement, in which Transferor has any Intellectual Property Rights and/or License Rights.