

05-28-2003

FORM PTO-1594
1-31-92

5-27-03 RECORDED
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DEPARTMENT OF COMMERCE
Patent and Trademark Office

Tab numbers 000

102457822

To the Honorable Commissioner of Patents and Trade... original documents or copy thereof.

1. Name of conveying party(ies):
Bank of America, N.A.

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

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

2. Name and address of receiving party(ies):
Name: Vibratech Acquisition, Inc.

Internal Address: _____

Street Address: 369 Franklin Street

City Buffalo State NY ZIP 14202

Individual(s) citizenship _____
 Association _____
 General Partnership _____
 Limited Partnership _____
 Corporation-State New York
 Other _____

If assignee is not domiciled in the United States, a domestic rep. tentative designation is attached: Yes No
 (Designation 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: May 14, 2003

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

A. Trademark Application No.(s)

B. Trademark registration No.(s) 1,533,932
2,097,558

Additional numbers attached? Yes No

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

Name: Annabelle V. Irey

Internal Address: Phillips, Lytle, Hitchcock,
Blaine & Huber LLP

Street Address: 3400 HSBC Center

City: Buffalo State: NY ZIP 14203

6. Total number of applications and registrations involved: 2

7. Total fee (37 CFR 3.41): \$65.00

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.

Annabelle V. Irey Annabelle V. Irey May 22, 2003

Name of Person Signing Signature Date

05/27/2003 DBYRNE 00000159 1533932

01 FC 8521 40.00 DP
 02 FC 8522 25.00 DP

OMB No. 0651-0011 (exp. 4/94)

Total number of pages comprising cover sheet:

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Commissioner of Patents and Trademarks
 Box Assignments
 Washington, D.C. 20231

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011) Washington, D.C. 20503

FINANCE SECTION
MAY 27 PM 12:59

TRADEMARK ASSIGNMENT

THIS TRADEMARK ASSIGNMENT ("Assignment") is made and entered into as of May 14, 2003, by and between **BANK OF AMERICA, N.A.**, a national banking association having an address of 600 Peachtree Street, N.E., Atlanta, GA 30308, successor to NationsBank, N.A. ("Assignor"), and **VIBRATECH ACQUISITION, INC.**, a corporation organized under the laws of the State of New York, having an address of 369 Franklin Street, Buffalo, NY 14202 (hereinafter "Assignee").

WHEREAS, Assignor is the holder of certain instruments of indebtedness of Vibratech, Inc., a Delaware corporation ("Debtor"), to Assignor;

WHEREAS, pursuant to a certain Patent, Trademark and License Security Agreement executed as of June 8, 1998 (the "Security Agreement") by and between Debtor and Assignor, Debtor granted to Assignor a security interest in and collaterally assigned to Assignor certain assets purported to be owned by Debtor, including, without limitation, the marks identified on Schedule A attached hereto (the "Marks"), any and all of the goodwill of Debtor's business connected with and symbolized by the Marks, and certain other related rights set forth below;

WHEREAS, Debtor has defaulted in its obligations to Assignor, and Assignor is entitled to exercise its rights under the Security Agreement pursuant to Article 9 of the New York Uniform Commercial Code with respect to the disposition of the Marks, any and all goodwill of Debtor's business connected with and symbolized by the Marks, and certain other related rights set forth below;

WHEREAS, Assignor and Assignee are parties to a certain Foreclosure Bill of Sale dated May 14, 2003 ("Foreclosure Bill of Sale"), which provides for, among other things, the foreclosure sale by Assignor of all of Debtor's right, title and interest in the Marks, any and all goodwill of Debtor's business connected with and symbolized by the Marks, and certain other rights related thereto to the extent such items constitute "Collateral" (as such term is defined in the Foreclosure Bill of Sale);

WHEREAS, as a successor to the portion of Debtor's business to which the Marks pertain, Assignee is desirous of acquiring the Marks, any and all goodwill of Debtor's business connected with and symbolized by the Marks, and certain other related rights of Debtor set forth below.

NOW, THEREFORE, in consideration of, and subject to, the mutual covenants and obligations contained in the Foreclosure Bill of Sale, one dollar (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, ASSIGNOR does hereby sell, assign, and transfer to ASSIGNEE, its successors and assigns, all of Debtor's right, title, and interest, if any, in the United States of America and all foreign countries, in and to the Marks, all applications, registrations and common law rights therefor and

BFLO Doc. # 1289589

thereto, together with any and all of the goodwill of the business connected with and symbolized by the Marks, and all income, royalties, fees, damages, and payments now or hereafter due or payable in respect thereto, and in and to any and all causes of action (either in law or in equity), and the right to enforce any rights and file any causes of action, including the right to recover damages, for any past, present, or future infringement or misappropriation of any of the Marks, as part of the portion of the business to which the Marks pertains, as required by 15 U.S.C. Section 1060, to the extent such items constitute "Collateral" (as such term is defined in the Foreclosure Bill of Sale). Assignor hereby represents and agrees that it has full power and authority to enter into and perform this Assignment. Assignor hereby agrees that upon request, it will sign all reasonably required papers prepared by Assignee, and make all rightful oaths which Assignee, its successors or assigns may reasonably request to give effect to the Marks and the assignment herein granted; provided, however, that all costs incurred in connection therewith shall be borne by the Assignee. This Assignment shall be effective as of the date hereof. **The assignment made hereunder is "AS IS, WHERE IS, WITH ALL FAULTS," and subject to all superior liens and encumbrances, if any. Except as expressly provided in the Foreclosure Bill of Sale, Assignee makes no warranties, express or implied, regarding any of the Marks, any goodwill of Debtor's business associated therewith or any other related rights of Debtor as to the Marks, including, but not limited to, warranties of title, merchantability or fitness for a particular purpose, all of which are hereby expressly disclaimed. There is no warranty relating to title, possession, quiet enjoyment or the like in this Assignment. Without limiting the generality of the foregoing disclaimers, Assignor does not warrant or make any representation or assurances concerning the existence, validity, quality or legality of any of the above-described assets, the absence of any conflicting claims or rights thereto, or the absence of any claims of infringement that have been or may be asserted by others with respect to such assets. The foregoing disclaimers are in addition to and not in lieu of the limitations and disclaimers made by Seller in the Foreclosure Bill of Sale.**

Notwithstanding anything in this Assignment to the contrary, Assignee hereby agrees, on behalf of itself and its successors and assigns, that upon the written request of Debtor or Assignor, Assignee will grant Debtor or Assignor a royalty-free non-exclusive license for the sole purpose of disposing of the remaining inventory, to the extent such license may be appropriate for such purposes, and that, upon the written request of Debtor or Assignor, it will grant to Debtor's affiliate operating in Germany (the "German Affiliate") and to any one or more persons or entities that purchase or otherwise acquire all or a portion of the assets or business of Debtor (either directly from Debtor, through a sale by Assignor or any other secured creditor of Debtor or otherwise), as identified by Debtor (each, a "Purchaser"), a perpetual, royalty free license to use the Mark "Vibratech", as identified in Schedule A (the "Vibratech Mark") anywhere in the world where Debtor had the right to use the Vibratech Mark as of the date hereof (each, a "License"), subject to the following limitations. The parties to whom a License is granted hereunder are referred to as "License Holders." Each License granted to a License Holder shall be limited to the use of the Vibratech Mark only with respect to the field of use associated with (i) the business of the German Affiliate in the case of a License granted to the German Affiliate, or (ii) the assets, business and/or product lines of Debtor acquired by such Purchaser, in the case of a License granted to a Purchaser (each, a "Field of Use"), and Assignee

shall not be required to grant any License, and no License Holder shall have any right, to use the Vibrattech Mark in connection with the Field of Use associated with the assets and portion of the business of Debtor acquired by Assignee pursuant to the Foreclosure Bill of Sale. Each License granted to a License Holder shall be exclusive to such License Holder with respect to its Field of Use, and Assignee shall not use or grant to any other party any rights or license to use the Vibrattech Mark in connection with any such Field of Use for which a License is granted. Notwithstanding anything in this Assignment to the contrary, Assignee shall have the right, but no obligation, to defend and protect the Vibrattech Mark against infringement or inappropriate use. Assignee shall have the right to sell, assign or transfer the Vibrattech Mark, provided, however, that any such sale, transfer or assignment shall be, and the transferee thereof shall take the Vibrattech Mark, subject to the provisions of this paragraph and the terms of all Licenses granted hereunder. If at any time Assignee desires to abandon, sell or otherwise dispose of the Vibrattech Mark at any time while any License remains outstanding, it shall first deliver to each License Holder and Assignor written notice of its intention to do so, and each License Holder shall thereafter have the option, exercisable during the 30 day period following its receipt of such notice from Assignee, to obtain all of Assignee's rights to the Vibrattech Mark. Assignee shall transfer and assign to the first License Holder that provides written notice to Assignee of its intention to exercise such option all of Assignee's right, title and interest in and to the Vibrattech Mark, for consideration in the amount of \$1.00. Assignee agrees to execute and deliver to each License Holder such license agreements, assignments and other documents, and to take any further actions, as may be reasonably required to give effect to the provisions of this paragraph.

This Assignment is being executed and delivered pursuant to, and subject to, the Foreclosure Bill of Sale.

WHEREFORE, Assignor and Assignee have caused this Assignment to be duly executed below, on the date indicated, by their respective duly authorized officers.

ASSIGNOR: BANK OF AMERICA, N.A.,
SUCCESSOR TO
NATIONSBANK, N.A.

May 14, 2003
Date

By: [Signature]
Name: Robert Walker
Title: SUP

State of GEORGIA)
County of Fulton) SS

On this 14th day of May, 2003, before me, a Notary Public in and for the City of Atlanta in the State of GEORGIA, personally appeared, to me known to be the of BANK OF AMERICA, N.A., and being duly sworn, averred that, being duly

authorized, she executed the foregoing Assignment as the free act and deed of said national banking association.

Darlene Withers

Notary Public

My commission expires

August 24, 2006



ASSIGNEE: VIBRATECH ACQUISITION, INC.

By: _____

Name: Richard J. Ryan

Title: Vice President

authorized, she executed the foregoing Assignment as the free act and deed of said national banking association.

Notary Public

My commission expires: _____

ASSIGNEE: VIBRATECH ACQUISITION, INC.

Date: May 14, 2003

By: 

Name: Richard J. Ryan

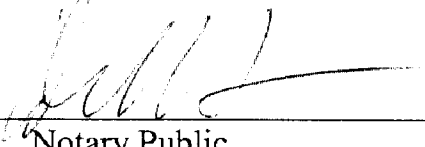
Title: Vice President

State of New York)

) SS

County of Erie)

On this 14th day of May, 2003, before me, a Notary Public in and for the City of Buffalo in the State of New York, personally appeared Richard J. Ryan, to me known to be the Vice President of VIBRATECH ACQUISITION, INC., and being duly sworn, averred that, being duly authorized, he executed the foregoing Assignment as the free act and deed of said corporation..



Notary Public
DAVID C. HORAN
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 09/30/20 *04*

My commission expires: _____

SCHEDULE A

Mark: Vibratech

<u>Registration Number</u>	<u>Country</u>	<u>Registration Date</u>
1,533,932	United States	4/11/89
92/3474	South Africa	4/24/92
92/3475	South Africa	4/24/92
251,754	Sweden	9/17/93
368,218	Canada	4/27/90
553287	Italy	11/11/91
1,185,591	Germany	8/25/92
1,307,251	Spain	2/15/93
1,307,252	Spain	5/6/91
1,371,347	Great Britain	1/27/89
1,371,348	Great Britain	1/27/89
1,518,303	France	3/8/89

Mark: VSG (Viscous Speed Governor)

<u>Registration No.</u>	<u>Country</u>	<u>Registration Date</u>
2,097,558	United States	9/16/97
491086	Canada	3/9/98
000413351	European Community	11/12/96

BFLO Doc # 1289589.1