

06-26-2003

10-26-03

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



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

102482925

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

1. Name of conveying party(ies): 6-26-03 Telco Research Corporation

- Individual(s) Association General Partnership Limited Partnership Corporation-State Tennessee Other

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

- Assignment Merger Security Agreement Change of Name Other

Execution Date: November 7, 2002

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

Internal Address: 4015 Miranda Avenue, 2nd Floor

Street Address:

City: Palo Alto State: CA Zip: 94304

- 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 (Designations 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)

B. Trademark Registration No.(s) 2165378 and 2134188

Additional number(s) attached Yes No

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

Name: John A. Mizhir, Jr., Esq. Cooley Godward LLP

Internal Address:

6TON11 00000052 033118 2165378

40.00 DA 25.00 DA

Street Address: 4401 Eastgate Mall

City: San Diego State: CA Zip: 92121

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: 03-3118

(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.

John A. Mizhir, Jr. Name of Person Signing

Signature

June 24, 2003 Date

Total number of pages including cover sheet, attachments, and document: 8

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

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ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (the "Agreement") is made and entered into effective as of November 7, 2002 by and between Telco Research Corporation, a Tennessee corporation ("TRC or "Seller"), and Symphony Service Corp., a Delaware corporation ("Buyer").

RECITALS

A. Seller wishes to sell certain assets used in connection with Seller's Telco business products;

B. Buyer wishes to purchase from Seller, and Seller wishes to sell to Buyer, concurrently herewith, all of Seller's interest in the Acquired Assets (as defined herein) and Seller wishes to assign, and Buyer wishes to assume, all Assumed Liabilities (as defined herein), all for the Purchase Price (as defined herein) and subject to the terms and conditions hereinafter set forth.

C. Simultaneously with the execution and delivery of this Agreement, Peregrine Systems, Inc., a Delaware corporation ("PSI") has entered into an Assignment and Assumption Agreement (the "PSI Assignment Agreement") whereby it has assigned to Buyer, effective as of immediately prior to the Closing and subject to the approval of the United States Bankruptcy Court for the District of Delaware in Case No. 02-12740 (JFK) (the "Bankruptcy Court"), its right, title and interest under each of the contracts, licenses, leases and other assets listed on Schedule 5.1(c) attached hereto.

D. Simultaneously with the execution and delivery of this Agreement, PSI has entered into a Software License Agreement (the "PSI Software License Agreement") whereby it has granted, among other things, a perpetual, royalty-free license to Buyer, effective as of the Closing and subject to the approval of the Bankruptcy Court, for use of its Get.It 2.0.1 software.

E. Simultaneously with the execution and delivery of this Agreement, PSI has entered into a Release (the "PSI Release") whereby it has agreed to release each of Seller and Buyer, effective as set forth in the PSI Release and subject to the approval of the Bankruptcy Court, from any liability related to intercompany obligations of the Seller to PSI or any of its affiliates.

NOW, THEREFORE, in consideration of the covenants, promises and representations set forth herein, and for other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, the parties, intending to be legally bound hereby, agree as follows:

ARTICLE I
SALE AND PURCHASE OF ASSETS

1.1 Transferred Assets. Upon the terms and subject to the conditions hereof, Seller hereby sells, transfers, conveys, assigns and delivers to Buyer, and Buyer hereby purchases and accepts from Seller, all right, title and interest of Seller in and to the assets listed on Schedule 1.1 hereto (the "Acquired Assets").

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, any assets of Seller (and of all direct or indirect subsidiaries of Seller) not set forth on Schedule 1.1 will be retained by Seller (or the applicable subsidiary of Seller) and are excluded from the Acquired Assets.

1.3 Consideration. The purchase price for the Acquired Assets shall be \$2,150,000 (the "Purchase Price").

1.4 Assumed Liabilities. Concurrently herewith, Seller hereby assigns and transfers to Buyer, and Buyer assumes, and shall henceforth fully perform and discharge, on a timely basis and in accordance with their respective terms, the liabilities and obligations of Seller under each of the agreements listed on Schedule 1.4(a) hereto (the "Assumed Liabilities"). All Liabilities of the Seller or any of its affiliates not listed on Schedule 1.4(a) (the "Excluded Liabilities") shall be the sole responsibility of the Seller or its affiliates, as the case may be.

1.5 Closing. Subject to the terms and conditions of this Agreement, the closing of the purchase and sale of the Acquired Assets (the "Closing") shall take place at the offices of Heller Ehrman White and McAuliffe LLP, 4350 La Jolla Village Drive, San Diego, CA 92122 or at such other location as Seller and Buyer may agree, and on a date mutually agreed upon by Buyer and Seller within five business days after all conditions precedent to Closing have been satisfied or waived (the "Closing Date").

1.6 Further Assurances. Buyer and Seller will each use reasonable efforts to obtain written consents to the transfer and assignment of the Acquired Assets and Assumed Liabilities to Buyer, and, at Seller's option, the novation of Seller, where the approval or other consent of any other person may be required for these actions. Buyer shall cooperate with Seller (including, where necessary, entering into appropriate instruments of assumption as shall be agreed upon) to have Seller released from all liability to third parties with respect to the Assumed Liabilities, and Buyer and Seller will each solicit such releases concurrently in a manner acceptable to both Buyer and Seller, with the solicitation of consents from third parties to the transfer, assignment and novation of the Acquired Assets and the Assumed Liabilities; provided, that, neither party shall be required to grant any additional consideration to any third party in order to obtain any such consent, novation, assumption or release.

1.7 Lease Agreements.

(a) Schedule 1.1 contains a list of the real property lease agreements desired by the parties to be for the benefit of Buyer after the Closing Date (collectively, the "Lease Agreements"). The Seller and Buyer shall use their commercially reasonable efforts to obtain all required consents to assign the Lease Agreements to the Buyer (the "Lease Consents"), and shall

corporate power to own, lease and operate its assets and property and to carry on its business as is now being conducted.

3.2 Corporate Power and Authority. Seller has all requisite corporate power and authority to enter into this Agreement and to consummate the transactions contemplated hereby. The execution and delivery of this Agreement by Seller and the consummation of the transactions contemplated hereby have been duly authorized by all necessary corporate action on the part of Seller. This Agreement has been duly executed and delivered by Seller and constitutes the valid and binding obligation of Seller enforceable against Seller in accordance with its terms, subject to the effect of any applicable bankruptcy, reorganization, insolvency, moratorium or similar laws affecting creditors' rights generally and subject, as to enforceability, to the effect of general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

3.3 No Conflict. The execution and delivery of this Agreement by Seller does not, and the consummation of the transactions contemplated hereby will not, conflict with, or result in any violation of, or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation or acceleration of any obligation or loss of any benefit under (a) any provision of the charter documents of Seller or (b) any material mortgage, indenture, lease, contract or other agreement or instrument, permit, concession, franchise, license, judgment, order, decree, statute, law, ordinance, rule or regulation applicable to the Seller which would result in a material adverse affect on the ability of Seller to consummate the transactions contemplated under this Agreement.

3.4 Title to Assets. To the Seller's Knowledge Regarding Title to Assets (as defined below), the Seller has good and valid title to, or in the case of leased property has valid leasehold interests in, all of the Acquired Assets (whether real or personal, tangible or intangible). To the Seller's Knowledge Regarding Title to Assets, except as set forth in the disclosure schedules, none of the Acquired Assets is subject to any lien, pledge, security interest or encumbrance ("Encumbrance") (including tax-related Encumbrances). On the Closing Date the Seller will transfer to the Buyer good and valid title to all Acquired Assets, free and clear of any Encumbrances. For the purposes of this Agreement, "Seller's Knowledge Regarding Title to Assets" means the actual present knowledge of Alice Arterburn and Matthew Songstad.

3.5 Intangible Property. Schedule 1.1 sets forth all of the software, patents, trademarks, service marks and trade names (collectively, the "Proprietary Rights") that are included in the Acquired Assets. To the Seller's Knowledge Regarding Intangible Property (as defined below), Seller owns all Proprietary Rights that are included in the Acquired Assets. To the Seller's Knowledge Regarding Intangible Property, Seller has not received any notices of infringement by Seller of any Proprietary Rights of others. To the Seller's Knowledge Regarding Intangible Property, none of the present activities of Seller related to the Acquired Assets, nor the Acquired Assets, infringe on any Proprietary Rights of others; and Seller is not aware of any infringement or violation by others of the Proprietary Rights that are included in the Acquired Assets. For the purposes of this Section 3.5, "Seller's Knowledge Regarding Intangible Property" means the actual present knowledge of Luke Pistorius.

expired without any appeals having been filed or any stay having been entered with regard thereto.

5.3 Termination of Agreement. This Agreement may be terminated prior to Closing, and, except in the event of willful breach of this Agreement, the parties hereto shall be relieved and discharged of and from any further liability or obligation hereunder:

(a) by either Seller or Buyer if the Closing has not taken place on or before December 31, 2002 (the "Termination Date") (other than as a result of any failure on the part of the terminating party to comply with or perform its covenants and obligations under this Agreement);

(b) by the mutual written consent of the Seller and Buyer; or

(c) by either Seller or Buyer, if any order by any governmental body of competent jurisdiction preventing or prohibiting consummation of the transactions contemplated hereby (including the failure of the Bankruptcy Court to issue the Approval Order) shall have become final and nonappealable.

ARTICLE VI CLOSING DELIVERIES BY THE PARTIES

6.1 Deliveries By Buyer. At the Closing, Buyer shall deliver to Seller each of the following:

(a) Purchase Price. The Purchase Price in cash by wire transfer in accordance with written instructions provided to Buyer by Seller within 24 hours prior to the Closing.

(b) Transfer Documents. Buyer's executed signature page to each of (i) the Assignment and Assumption Agreement in the form attached hereto as Exhibit A; (ii) the Bill of Sale and Conveyance in the form attached hereto as Exhibit B; and (iii) the Assignment of Trademarks in the form attached hereto as Exhibit C (collectively, the "Collateral Agreements").

6.2 Deliveries by Seller. At the Closing, Seller shall deliver to Buyer Seller's executed signature page to each Collateral Agreement.

ARTICLE VII NO SURVIVAL OF REPRESENTATIONS AND WARRANTIES; LIMITATION OF LIABILITY

7.1 No Survival of Representations and Warranties. Other than for purposes of any fraud claims, all of the representations and warranties of the parties hereto contained herein or in any certificate delivered pursuant hereto shall expire with, and be terminated and extinguished upon the consummation of the purchase and sale of the Acquired Assets pursuant to this Agreement.

7.2 No Liability for Breaches of Representations and Warranties. Other than fraud claims, from and after the Closing Date, no party to this Agreement shall be liable to any other

IN WITNESS WHEREOF, Seller and Buyer have caused this Asset Purchase Agreement to be signed as of the date first written above.

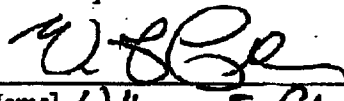
"SELLER"

TELCO RESEARCH CORPORATION
a Tennessee corporation

By: _____
[Name]
[Title]

"BUYER"

SYMPHONY SERVICE CORP.
a Delaware corporation

By: 

[Name] *William F. Christman*
[Title] *Vice President*

[Signature Page to Asset Purchase Agreement]

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IN WITNESS WHEREOF, Seller and Buyer have caused this Asset Purchase Agreement to be signed as of the date first written above.

"SELLER"

TELCO RESEARCH CORPORATION
a Tennessee corporation

By: 

[Name] Ken Sexton
[Title] CFO

"BUYER"

SYMPHONY SERVICE CORP.
a Delaware corporation

By: _____
[Name]
[Title]

[Signature Page to Asset Purchase Agreement]

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Schedule 1.1

Acquired Assets

1. *Intellectual Property (IP)*

A. Software

Except as noted below in the third paragraph of this Section 1.A., all computer software programs relating to the Seller's Telco business (including copies of such software programs in both source and object code form and all documentation, manuals and other materials relating thereto) as follows:

Nashville:

- TRU Server
- TRU System
- TeleCenter
- TRU Call Accountant (TCA)
- TRU Access Manager (TAM)
- Integrated Data Collector (IDC)
- TRU WEB
- TRU VIEW - Used by Hosted Services Customers Only
- CCO - Used by Hosted Services
- SSR.net
- SSR+
- SSR

Seller also transfers any right, title or interest that Seller has pursuant to third-party software or intellectual property licenses.

Seller and Peregrine Systems, Inc. retain all rights to Get.It, Connect.It and OAA code and IP; provided, however, that concurrently herewith, PSI is granting to Buyer a non-exclusive, royalty-free license to use, copy and distribute Get.It version 2.0.1 and Connect.It version 3.1 pursuant to the terms of the PSI License Agreement.

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