

08-27-2003



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TRADEMARKS ONLY

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

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

Tab settings

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

1. Name of conveying party(ies):

Avexus, Inc. 10182 Telesis Court, Suite 600 San Diego, CA 92121

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

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: July 14, 2003

2. Name and address of receiving party(ies)

Name: Moore Macro Fund L.P. Internal Address: 53rd Floor

Street Address: 1251 Avenue of the Americas City: New York State: NY Zip: 9214

- Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Other L.P.

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) 75/328,918

B. Trademark Registration No.(s)

Additional number(s) attached Yes No

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

Name: Brian R. Coleman

Internal Address:

Street Address: Perkins Coie LLP 101 Jefferson Drive

City: Menlo Park State: CA Zip: 94025

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 3.41): \$ 40.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Brian R. Coleman, 39,145

Name of Person Signing

Signature

Signature

August 20, 2003

Date

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

10

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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## PATENT AND TRADEMARK SECURITY AGREEMENT

THIS PATENT AND TRADEMARK SECURITY AGREEMENT (this "Agreement"), dated as of July 14, 2003 is made by and between Avexus, Inc., a Delaware corporation ("Debtor"), and Moore Macro Fund, L.P. ("Lead Lender" or "Collateral Agent"), as collateral agent for the Lenders (as defined below) that are party to the Purchase Agreement (as defined below).

### Recitals

- A. The Lead Lender and the other Lenders have entered into an Intercreditor Agreement dated as of July 14, 2003, whereby the Lenders have appointed the Lead Lender as the Collateral Agent for the Lenders for the purposes of such agreement, the Security Agreement (as defined below) and this Agreement.
- B. Debtor shall issue the Notes (as defined below) in favor of the Lenders, evidencing loans to be made by each of the Lenders to Debtor pursuant to the Purchase Agreement, which are to be secured by this Agreement and the Security Agreement.
- C. Pursuant to the Purchase Agreement, Debtor is obligated to execute and deliver this Agreement to the Collateral Agent, on behalf of the Lenders.

**NOW, THEREFORE**, Debtor and Collateral Agent hereby agree as follows:

### SECTION 1 Definitions; Interpretation.

(a) Terms Defined in Security Agreement. All capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings assigned to them in the Security Agreement.

(b) Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Collateral" has the meaning set forth in Section 2.

"Lenders" has the meaning ascribed to such term in the Purchase Agreement.

"PTO" means the United States Patent and Trademark Office.

"Purchase Agreement" means that certain Note and Warrant Purchase Agreement dated as of the date hereof, by and among the Debtor and the Lenders.

"Security Agreement" means the Security Agreement dated as of the date hereof between Debtor and Collateral Agent.

(c) Terms Defined in UCC. Where applicable and except as otherwise defined herein, terms used in this Agreement shall have the meanings assigned to them in the UCC.

(d) Interpretation. The rules of interpretation applicable to the Security Agreement shall also be applicable to this Agreement and are incorporated herein by this reference.

## SECTION 2 Security Interest.

(a) Grant of Security Interest. As security for the payment and performance of the Obligations, Debtor hereby grants to Collateral Agent a security interest in all of Debtor's right, title and interest in, to and under the following property, in each case whether now or hereafter existing or arising or in which Debtor now has or hereafter owns, acquires or develops an interest and wherever located; provided, however, that Collateral Agent hereby understands and agrees that such security interest shall be subordinated to that certain Loan and Security Agreement dated as of the "Effective Date" (as defined therein) by and between Silicon Valley Bank (including its successors and assigns) and the Company, for an aggregate principal amount of up to \$500,000, along with all attachments thereto (collectively, the "Collateral"):

(i) all patents and patent applications, domestic or foreign (including such patents and patent applications as described in Schedule A), all licenses relating to any of the foregoing, all rights to sue for past, present or future infringement thereof, all rights arising therefrom and pertaining thereto and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof;

(ii) all state (including common law), federal and foreign trademarks, service marks and trade names, and applications for registration of such trademarks, service marks and trade names (including such marks, names and applications as described in Schedule B), all licenses relating to any of the foregoing, whether registered or unregistered and wherever registered, all rights to sue for past, present or future infringement or unconsented use thereof, all rights arising therefrom and pertaining thereto and all reissues, extensions and renewals thereof; provided, however, that the Collateral hereunder shall not include any trademark application that is at the "intent to use stage" if and to the extent that a security interest therein would adversely affect such application or the related trademark;

(iii) the entire goodwill of or associated with the businesses now or hereafter conducted by Debtor connected with and symbolized by any of the aforementioned properties and assets;

(iv) all commercial tort claims associated with or arising out of any of the aforementioned properties and assets;

(v) all accounts, all intangible intellectual or other similar property and other general intangibles associated with or arising out of any of the aforementioned properties and assets and not otherwise described above, including all license payments and payments

under insurance (whether or not Collateral Agent is the loss payee thereof) or any indemnity, warranty or guaranty payable by reason of loss or damage to or otherwise with respect to the foregoing Collateral; and

(vi) all products, proceeds and supporting obligations of or with respect to any and all of the foregoing Collateral.

(b) Continuing Security Interest. Debtor agrees that this Agreement shall create a continuing security interest in the Collateral, which shall remain in effect until terminated in accordance with Section 12.

SECTION 3 Supplement to Security Agreement. This Agreement has been granted in conjunction with the security interests granted to Collateral Agent under the Security Agreement. The rights and remedies of Collateral Agent with respect to the security interests granted herein are without prejudice to, and are in addition to those set forth in the Security Agreement, all terms and provisions of which are incorporated herein by reference.

SECTION 4 Representations and Warranties. Debtor represents and warrants to Collateral Agent that:

(a) Patents. A true and correct list of all of the existing Collateral consisting of U.S. patents and patent applications and/or registrations owned by Debtor, in whole or in part, is set forth in Schedule A.

(b) Trademarks. A true and correct list of all of the existing Collateral consisting of U.S. trademarks, trademark registrations and/or applications owned by Debtor, in whole or in part, is set forth in Schedule B.

SECTION 5 Further Acts. On a continuing basis, Debtor shall make, execute, acknowledge and deliver, and file and record in the proper filing and recording places, all such instruments and documents, and take all such action as may be necessary or advisable or may be requested by Collateral Agent to carry out the intent and purposes of this Agreement, or for assuring, confirming or protecting the grant or perfection of the security interest granted or purported to be granted hereby, to ensure Debtor's compliance with this Agreement or to enable Collateral Agent to exercise and enforce its rights and remedies hereunder with respect to the Collateral, including any documents for filing with the PTO and/or any applicable state office. Collateral Agent may record this Agreement, an abstract thereof, or any other document describing Collateral Agent's interest in the Collateral with the PTO, at the expense of Debtor.

SECTION 6 Authorization to Supplement. If Debtor shall obtain rights to any new trademarks, any new patentable inventions or become entitled to the benefit of any patent application or patent for any reissue, division, or continuation, of any patent, the provisions of this Agreement shall automatically apply thereto. Debtor shall give prompt notice in writing to Collateral Agent with respect to any such new trademarks or patents, or renewal or extension of any trademark registration. Without limiting Debtor's obligations under this Section 6, Debtor authorizes Collateral Agent to modify this Agreement by amending Schedules A or B to include

any such new patent or trademark rights. Notwithstanding the foregoing, no failure to so modify this Agreement or amend Schedules A or B shall in any way affect, invalidate or detract from Collateral Agent's continuing security interest in all Collateral, whether or not listed on Schedule A or B.

**SECTION 7 Binding Effect.** This Agreement shall be binding upon, inure to the benefit of and be enforceable by Debtor, Collateral Agent and their respective successors and assigns and shall bind any Person who becomes bound as a debtor to this Agreement.

**SECTION 8 Notices.** All notices or other communications hereunder shall be in writing (including by facsimile transmission or by email) and mailed, sent or delivered to the respective parties hereto at or to their respective addresses, facsimile numbers or email addresses set forth below their names on the signature pages hereof, or at or to such other address, facsimile number or email address as shall be designated by any party in a written notice to the other parties hereto. All such notices and other communications shall be deemed to be delivered when a record (within the meaning of the UCC) has been (i) delivered by hand; (ii) sent by mail upon the earlier of the date of receipt or five business days after deposit in the mail, first class (or air mail as to communications sent to or from the United States); (iii) sent by facsimile transmission; or (iv) sent by email.

**SECTION 9 Governing Law.** This Agreement shall be governed by, and construed in accordance with, the law of the State of California, except as required by mandatory provisions of law and to the extent the validity or perfection of the security interests hereunder, or the remedies hereunder, in respect of any Collateral are governed by the law of a jurisdiction other than California.

**SECTION 10 Amendment; Conflict.** This Agreement is subject to modification only by a writing signed by the parties, except as provided herein. To the extent that any provision of this Agreement conflicts with any provision of the Security Agreement, the provision giving Collateral Agent greater rights or remedies shall govern, it being understood that the purpose of this Agreement is to add to, and not detract from, the rights granted to Collateral Agent under the Security Agreement.

**SECTION 11 Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

**SECTION 12 Termination.** Upon payment and performance in full of all Obligations, the security interests and any and all Liens created by this Agreement shall terminate, and this Agreement and all obligations hereunder shall terminate (other than those expressly stated to survive such termination), all without delivery of any instrument or performance of any act by any party, and all rights to the Collateral shall revert to Debtor. Collateral Agent shall promptly execute and deliver to Debtor such documents and instruments reasonably requested by Debtor as shall be necessary to evidence termination of all such security interests given by Debtor to Collateral Agent hereunder, including cancellation of this

Agreement by written notice from Collateral Agent to the PTO. At Debtor's request and sole expense following termination, Collateral Agent shall deliver to Debtor any Collateral held by Collateral Agent hereunder.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement,  
as of the date first above written.

**“Collateral Agent”**

MOORE MACRO FUND, L.P.


By: \_\_\_\_\_  
Name:  
Title:

Address: 1251 Avenue of the  
Americas, 53<sup>rd</sup> Floor  
New York, NY 10020

Fax: \_\_\_\_\_  
Email: \_\_\_\_\_

**“Debtor”**

AVEXUS, INC., a Delaware corporation

By:  \_\_\_\_\_  
Name: Andrew Dumke  
Title: Chief Executive Officer

Address: 10182 Telesis Court, Suite 600  
San Diego, CA 92121

Fax: (838) 352-3301  
Email: [adumke@avexus.com](mailto:adumke@avexus.com)

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement, as of the date first above written.

**“Collateral Agent”**

MOORE MACRO FUND, L.P.

By:   
Name: \_\_\_\_\_  
Title: **ANTHONY GALLAGHER**  
**DIRECTOR OF OPERATIONS**

Address: 1251 Avenue of the Americas, 53<sup>rd</sup> Floor  
New York, NY 10020

Fax: (212) 382-9852  
Email: tony.gallagher@moorecap.com

**“Debtor”**

AVEXUS, INC., a Delaware corporation

By: \_\_\_\_\_  
Name: Andrew Dumke  
Title: Chief Executive Officer

Address: 10182 Telesis Court, Suite 600  
San Diego, CA 92121

Fax: (838) 352-3301  
Email: adumke@avexus.com



**SCHEDULE A  
to the Patent and Trademark Security Agreement**

**Issued U.S. Patents of Debtor**

None

**Pending U.S. Patent Applications of Debtor**

None

**SCHEDULE B**  
**to the Patent and Trademark Security Agreement**

Debtor owns the following registered trademarks for the "Impressa" mark:

Country	Appl. No/ Appl. Date	Regis. No./ Regis. Date	Renewal Date	Class(es)	Status/ Comments
AUSTRALIA	807090 9/15/99	807090 11/03/00	9/15/09	9,42	Registered
EUROPEAN COMMUNITY	822031 5/12/98	822031 11/19/99	5/12/08	9,16,42	Registered
UNITED STATES	75/328,918 7/22/97	2,364,907 7/4/00	7/4/10	9	Registered
UNITED KINGDOM	2138653 7/10/97	2138653 7/10/97	7/10/07	9	Registered