

09-23-2003

Form PTO-1594

(Rev. 03/01)

OMB No. 0651-0027 (exp. 5/31/2002)

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

102556419

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

1. Name of conveying party(ies):

Applied Research & Technology, Inc.

☐ Individual(s)☐ Association☐ General Partnership☐ Limited Partnership☒ Corporation-State New York☐ Other

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

Name: HSBC Bank USA

Internal Address:

Street Address: One HSBC Plaza

City: Rochester State: NY Zip 14639

☐ Individual(s) citizenship☐ Association☐ General Partnership☐ Limited Partnership☒ Corporation-State New York☐ OtherIf 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 ☒ NoAdditional name(s) of conveying party(ies) attached? ☐ Yes ☐ No

3. Nature of conveyance:

☐ Assignment☐ Merger☐ Security Agreement☐ Change of Name☒ Other Peaceful Possession Agreement

Execution Date: November 29, 1999

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,431,855; 2,096,347; 1,483,226; 1,453,001;
1,507,904Additional number(s) attached ☐ Yes ☒ No

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

Name Harter, Secrest & Emery LLP

Internal Address:

Street Address: 1600 Bausch & Lomb Place

City: Rochester State NY Zip 14604

6. Total number of applications and regulations involved

7. Total fee (37 CFR 3.41).....\$ 140.00

☒ Enclosed☐ Authorized to be charged to deposit account

8. Deposit account number:

03-3875

DO NOT USE THIS SPACE

9. Signature.

Stephen B. Salai

Name of Person Signing

Signature

September 15, 2003

Date

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

09/22/2003 LMUELLER 00000008 1431055

Mail documents to be recorded with required cover sheet information to:
Commissioner of Patent & Trademarks, Box Assignments
Washington, D.C. 2023101 FC:8521
02 FC:852240.00 DP
100.00 DPTRADEMARK
REEL: 002828 FRAME: 0356

PEACEFUL POSSESSION AGREEMENT

This Agreement is made as of November 29, 1999 in favor of **HSBC Bank USA** (the "Bank"), a New York banking corporation with an office at One HSBC Plaza, Rochester, New York 14639 by **Applied Research & Technology, Inc.** (the "Borrower"), a New York corporation with its principal place of business and chief executive office at 215 Tremont Street, Rochester, NY 14608 and by **Philip Betette, Anthony A. Gambacurta, Jr., Richard A. Neatrour, and Terry Sherwood** (each a, and collectively the "Guarantor(s)") and by **Joyce D. Gambacurta and Beverly J. Neatrour** (each a, and together with the Guarantors collectively the, "Mortgagor(s)").

RECITALS:

A. Debt. The Borrower is indebted to the Bank. The Borrower owes the Bank \$959,371.75 for unpaid principal and interest through November 23, 1999, plus interest from November 23, 1999 at the rate \$245.56 per day, plus the costs and expenses incurred by the Bank in connection with that indebtedness including, without limitation, reasonable attorneys fees. All of this debt is now due or past due (the "Indebtedness").

B. Security Interests. To secure any and all indebtedness at any time owed by the Borrower to the Bank, the Borrower has granted to the Bank security interests in all of its equipment, inventory, accounts, general intangibles, chattel paper, and personal property of every kind and description, whenever owned, and of every nature, kind and description including but not limited to that described on Schedule A attached hereto (the "Collateral"). The security interests granted to the Bank by the Borrower remain in full force and effect, without defense or offset of any kind.

C. Guaranties. To further secure the indebtedness at any time owed by the Borrower to the Bank, each Guarantor executed and delivered to the Bank one or more continuing guaranties of any and all indebtedness owed to the Bank by the Borrower. Those guaranties given by the Guarantors to the Bank have not been terminated and remain in full force and effect, without defense or offset of any kind.

D. Mortgages. To further secure all indebtedness at any time owed by the Borrower to the Bank and the obligations of the Guarantors under their guaranties of the Borrower's indebtedness to the Bank, each Guarantor and Mortgagor executed and delivered to the Bank one or more collateral security mortgages. Those mortgages given by the Guarantors and Mortgagors to the Bank have not been terminated and remain in full force and effect, without defense or offset of any kind.

E. Default. The Borrower is now in default on all of the Indebtedness owed to the Bank by the Borrower and under the terms of the applicable notes, loan agreements, and security agreements (collectively, the "Loan Documents") given to the Bank by the Borrower. The Borrower has defaulted by, *inter alia*, not paying the outstanding loans at maturity.

F. Operating Status. The Borrower is unable to make the payments due under the Loan Documents and has determined that its business is unable to generate, from operations or

otherwise, cash flow sufficient to operate its business and pay its debts. The Borrower has exhausted its efforts to raise additional working capital.

G. Management. The Bank has not participated in the management or operational decisions of the Borrower nor has the Bank controlled the operations of the Borrower. The Borrower's decision to enter into this Agreement and surrender the Collateral to the Bank represents the independent judgment of the Borrower based upon various facts including those recited in paragraph F above, and the fact that the Borrower's business is not generating sufficient cash flow to meet the obligations of the Borrower.

H. Best Interest. The Borrower, Guarantors and Mortgagors believe that (i) it is in the best interest of each of them, and (ii) it would facilitate realization of the best net recovery from the Collateral, for the Borrower, Guarantors and Mortgagors to execute and deliver to the Bank this Peaceful Possession Agreement (the "Agreement").

TERMS AND CONDITIONS

In Witness Whereof, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by the Borrower, the Guarantors and the Mortgagors, the Borrower, the Guarantors and the Mortgagors each hereby agrees as follows:

1. **Recitals.** The Borrower, Guarantors and Mortgagors, each, jointly and severally, represents and warrants that each of the recitals set forth above is true and accurate.

2. **Access to Collateral.** The Borrower and Guarantors each represent and warrant to the Bank that all of the Collateral and all records related thereto are located, and the business operations of the Borrower have been conducted, at the Premises described on Schedule B attached hereto (the "Premises"), with the exception of certain computer codes held in escrow by DSI Technology Escrow Services, Inc. ("DSI") pursuant to a Preferred Escrow Agreement (Account Number 0116054-00001-081900J) effective June 28, 1999 among DSI, the Borrower, and the Bank (the "Escrow Agreement"). The Borrower and Guarantors each hereby agrees that the Bank, its officers, agents, employees, attorneys, consultants, independent contractors, and invitees may at any time and from time to time enter upon the Premises for any purpose related to the enforcement of the Bank's rights under its security agreements. Without limiting the basis for the access granted hereby, the Borrower and Guarantors each specifically agrees that access is granted for the purposes of inspection, collection, sale, preservation, removal or other disposition of the Collateral or any part thereof.

3. **Peaceful Possession.** Upon the Bank's execution of this Agreement, the Borrower and Guarantors each hereby grants to the Bank exclusive and peaceful possession of the Collateral and all records relating to the Collateral. Upon accepting peaceful possession of the Collateral the Bank may continue to have unlimited access to the Premises until the earlier of December 15, 1999 or the completion of the sale, disposition and removal of the Collateral. The Borrower may retain possession and control of its stockholder and operating records but shall allow the Bank access thereto for copying and other purposes. The Borrower hereby acknowledges and agrees that the Bank is entitled to the transfer of the deposited materials under the terms of the Escrow Agreement.

4. **Access vis-à-vis Peaceful Possession.** The Borrower, Guarantors and Mortgagors each hereby acknowledges and agrees that by exercising any right of access granted by the terms of this agreement and/or any security agreement given to the Bank by the Borrower or the execution of this Agreement, the Bank shall not be deemed to have taken control of or assumed any responsibility for the Premises nor shall it be deemed to have any responsibility for the Collateral. It is the intention of the parties that substantially simultaneously, the Bank shall take peaceful possession of the Collateral and conduct a private sale of the Collateral.

5. **No Liability.** The Borrower, Guarantors and Mortgagors each agrees that the Bank shall have no liability for any loss, injury or damage to any person, entity or the Premises resulting from (i) the access to the Premises or Collateral granted pursuant to this Agreement, (ii) the Bank's acceptance of peaceful possession of the Collateral under the terms of this Agreement or any other agreement heretofore entered into, or (iii) any action or inaction taken by the Bank under the authority of this Agreement or any of the security agreements given to the Bank by the Borrower. Throughout any period of access or peaceful possession, the Bank shall not be deemed to have assumed any obligations of the Borrower, Guarantors or Mortgagors; and, the Bank shall have no obligation to pay rent or be liable for any charge of any kind in connection with any access to, or occupancy of, the Premises granted by the terms of this agreement or any security agreement given to the Bank by the Borrower. The Borrower, Guarantors and Mortgagors shall jointly and severally indemnify the Bank from any claim or loss of or in favor of and landlord or other third party arising from any such access or peaceful possession.

6. **Insurance.** The Borrower and Guarantors each represents and warrants that there is presently in full force and effect adequate insurance with respect to the Collateral which insurance will remain in full force and effect through completion of the disposition of the Collateral and that the policies providing for such insurance name the Bank as an additional insured and loss payee. The Borrower and Guarantors each acknowledges that any insurance obtained by the Bank with respect to the Collateral will ensure only the Bank's interest in the Collateral and not the interest of the Borrower or Guarantors. The Borrower and Guarantors each agrees that the Bank will have no liability for any failure to insure the Collateral or the Premises.

7. **Security.** The Borrower and Guarantors each represents and warrants to the Bank that the Premises now provide reasonable security for the Collateral without the requirement of the Bank taking any steps to secure or safeguard any of the Collateral.

8. **Cash Collateral.** The Borrower represents and warrants to the Bank that the Borrower presently maintains no balances or deposits in any checking, savings, bank, depository or other accounts or certificates of deposit with any bank or financial institution other than the Bank, except for an account at Prudential Securities with a balance of approximately \$1,660 and except for an account at Fleet Bank with a balance of approximately \$4,300. The Prudential and Fleet accounts will be closed and the full balances thereof shall be paid and delivered to the Bank in kind on or before December 3, 1999. The Borrower and Guarantors each agrees that should any of them come into possession of any cash, checks, or instruments representing proceeds of

the Collateral, each will deliver such proceeds to the Bank or its assignee in kind within 24 hours of their receipt.

9. **Cooperation.** The Borrower and Guarantors each agrees to fully cooperate with the Bank and its assignee in connection with their efforts to realize value from the Collateral. Without limiting the generality of the foregoing, the Borrower and Guarantors each agrees to fully cooperate with the Bank's and its assignee's efforts to collect accounts receivable of the Borrower and notice account debtors of the Borrower. The Borrower represents that none of the accounts receivable of the Borrower represents trust funds under Article 3a of the New York Lien Law. Further, the Borrower and Guarantors shall fully cooperate with the Bank in its efforts to realize the cash value of the life insurance assigned to the Bank and will execute any and all documents necessary or desirable in connection therewith.

10. **Sale of Collateral.** Without limiting the generality of any of the foregoing, the Borrower, Guarantors, and Mortgagors each hereby agrees that the Bank may conduct any public or private sale or sales of the Collateral at the Premises, or elsewhere, as the Bank may determine, whether such sale is by auction, private negotiation, in bulk, in lots, or in any combination of the foregoing. The Borrower, the Guarantors and the Mortgagors hereby acknowledges the Bank's intention to sell the Collateral in a private sale to Yorkville Sound Inc. at a purchase price of \$500,000 in cash at closing and for a possible additional \$200,000 to be paid from future profits realized by the buyer from the Collateral being sold, and further agrees and acknowledges that such sale is commercially reasonable in all respects, including without limitation, method, manner, time, place and terms. The Bank, Borrower and Mortgagors acknowledge that the buyer is or may be an existing or new customer of the Bank and that the Bank may or may not loan the buyer the purchase price of the Collateral.

11. **Waiver of Notice of Sale.** In order to facilitate any and all sales of the Collateral, whether public or private, whether in satisfaction in whole or in part of the Borrower's outstanding obligations to the Bank, the Borrower, the Guarantors and the Mortgagors each hereby waives any notice of any sale of the Collateral that may be required under Article 9-504 of the Uniform Commercial Code, or under any applicable agreement, law, rule, or regulation.

12. **Environmental - Personal Property.** The Borrower and the Guarantors each represents and warrants that with respect to any of the Collateral which consists of equipment and/or inventory (hereinafter the "Equipment and/or Inventory"):

- (i) The Borrower and the Guarantors have not caused or permitted the Equipment and/or Inventory to be contaminated by any hazardous or toxic substances;
- (ii) The Borrower and the Guarantors are in compliance with all federal, state and local requirements relating to protection of health or the environment in connection with the ownership or use of the Equipment and/or Inventory; and
- (iii) The Equipment and/or Inventory is not subject to any federal, state or local order relating to protection of health or the environment; and

(iv) Removal of the Equipment and/or Inventory will not violate any federal, state or local law or result in any release of any asbestos or any other hazardous material.

13. **Environmental - Indemnification.** The Borrower and the Guarantors will indemnify, defend and hold the Bank harmless from and against any and all liabilities, claims, damages, penalties, expenditures, losses or charges, including but not limited to, all costs of investigation, monitoring, legal representation, remedial response, removal, restoration or permit acquisition, which may now or in the future be undertaken, suffered, paid, awarded, assessed or otherwise incurred as a result of any contamination by hazardous or toxic substances existing on, in or under the Premise or the Equipment and/or Inventory, or as a result of any investigation, monitoring, clean-up removal, restoration, remedial response, or other remedial work undertaken on, in, or under the Premises or the Equipment and/or Inventory by the Bank.

14. **Reservation of Rights/Deficiency.** This Agreement, and the exercise by the Bank of any rights and remedies provided for herein (a) shall not in any way limit the Bank's rights or remedies as against the Borrower or the Guarantors or the Mortgagors to collect any indebtedness or deficiency balance which may be due on the Indebtedness owed to the Bank by the Borrower either prior to or after the sale of all or any part of the Collateral, and (b) shall not be construed or interpreted to alter, modify or amend any agreement to which the Borrower or the Guarantors, or the Mortgagors, or the Bank, are parties. The Bank reserves all rights including without limitation the rights to demand payment of the Guarantors and the Mortgagors of the Indebtedness owed to the Bank by the Borrower at any time, to abandon to the Borrower or any trustee in a bankruptcy proceeding of the Borrower all or any part of the Collateral, or to liquidate other collateral or enforce other liens at any time.

15. **Title of Assets.** The Borrower represents and warrants to the Bank that it has good and marketable title to the Collateral, free and clear of all liens, encumbrances, security interests of any kind, that have or may have priority over the security interests of the Bank, except any interests described on Exhibit A hereto; and, the Borrower, and the Guarantors will indemnify, defend and hold harmless the Bank, its employees and its successors and assigns from all claims, expenses including without limitation attorneys' fees, losses and/or liabilities resulting from any attack against the Bank concerning title to the Collateral.

16. **Receipt of Copies.** The Borrower, the Guarantors and the Mortgagors acknowledge that they each have received a copy of this Agreement.

17. **General Release.** The Borrower, the Guarantors and the Mortgagors represent to the Bank that they have no defenses, setoffs or counter-claims of any kind or nature whatsoever against the Bank with respect to the Indebtedness, or any instrument evidencing or securing payment of the Indebtedness, or any action previously taken or not taken by the Bank with respect thereto or with respect to any security interest, mortgage, encumbrance, lien or collateral in connection therewith to secure the Indebtedness. Without limiting the generality of the foregoing, the Borrower, the Guarantors and the Mortgagors waive, release and forever discharge the Bank from and against any and all rights, claims or causes of action against the Bank arising out of the Bank's actions or inactions with respect to the Indebtedness, or any security interest, mortgage, encumbrance, lien or collateral in connection therewith as well as any and all rights of setoff, defenses, claims, causes of action and any other bar to enforcement

of the Indebtedness or any instrument evidencing or securing payment of the obligations thereunder, or any action previously taken or not taken by the Bank with respect thereto.

In Witness Whereof, the Borrower, the Guarantors and the Mortgagors have each executed or caused this Agreement to be executed by its duly authorized officer as of the day and year written.

THE BANK

HSBC Bank USA

By: 

Sarah Mason

Assistant Vice President

THE BORROWER

Applied Research & Technology, Inc.

By: 

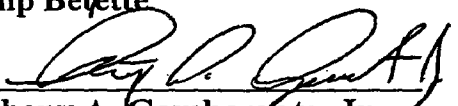
Name: Philip Betette

Title: President

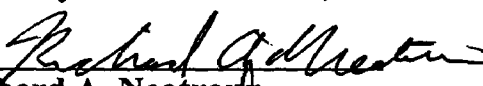
THE GUARANTORS



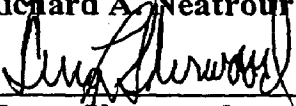
Philip Betette



Anthony A. Gambacurta, Jr.



Richard A. Neatrou



Terry Sherwood

THE MORTGAGORS

Joyce D. Gambacurta

Beverly J. Neatrou

TRADEMARK

REEL: 002828 FRAME: 0362

4:04:112990
Page 6

of the Indebtedness or any instrument evidencing or securing payment of the obligations thereunder, or any action previously taken or not taken by the Bank with respect thereto.

In Witness Whereof, the Borrower, the Guarantors and the Mortgagors have each executed or caused this Agreement to be executed by its duly authorized officer as of the day and year written.

THE BANK

HSBC Bank USA

By: _____
Sarah Mason
Assistant Vice President

THE BORROWER

Applied Research & Technology, Inc.

By: _____
Name: _____
Title: _____

THE GUARANTORS

Philip Betette

Anthony A. Gambacurta, Jr.

Richard A. Neatrou

Terry Sherwood

THE MORTGAGORS

Joyce D. Gambacurta

Joyce D. Gambacurta

Beverly J. Neatrou

Sharon E. Starzyk

SHARON E. STARZYK
Notary Public, State of New York
Monroe County, No. 01ST6061654
Commission Expires 12-10-00

4:04;112999
Page 6

of the Indebtedness or any instrument evidencing or securing payment of the obligations thereunder, or any action previously taken or not taken by the Bank with respect thereto.

In Witness Whereof, the Borrower, the Guarantors and the Mortgagors have each executed or caused this Agreement to be executed by its duly authorized officer as of the day and year written.

THE BANK**HSBC Bank USA**

By: _____
Sarah Mason
Assistant Vice President

THE BORROWER**Applied Research & Technology, Inc.**

By: _____
Name:
Title:

THE GUARANTORS

Philip Betette

Anthony A. Gambacurta, Jr.

Richard A. Neatrou

Terry Sherwood

THE MORTGAGORS

Joyce D. Gambacurta

Beverly J. Neatrou

Beverly J. Neatrou

DALANYA M. GARZONE
NOTARY PUBLIC, STATE OF NEW YORK
Qualified in Monroe County
#01QAS027306
My Commission Expires July 12, 2001

*Sworn to me this 30th day of
November 1999. Dalanya M. Garzone
Notary Public*

SCHEDULE A**The Collateral**

1. All of Borrower's Equipment and Inventory , including, without limitations, the following:

Office/Engineering Area:

Furniture; computers; copiers; files; shelving; facsimile machine; plotters desk top items; etc.

Engineering Electronic Test Equipment

Manufacturing Building:

Office Area: Furniture; printers; copiers; files; shelving; and trade booth

Shop Equipment: Workstations; shelving; pallet jacks; stackers; pallet racking; mezzanines; scales; printers; files; extinguishers; lin bins; racks; soldering irons; screwdrivers; etc.

Capital Machinery:

(3) Rebuilt Universal Machines – 40 station; (1) Radial; (1) Sequencer; (1) I.C. Inserter
(3) Lynx 701 Assembly Machines; Teradyne 21840 Tester with 20+ Fixtures;
Universal Axial Inserter

Test Equipment: Scopes; amplifiers; fixtures

Proprietary Molds

Inventory

2. All of Borrower's accounts.

3. All of Borrower's documents, instruments, investment property, chattel paper, general intangibles.

4. All other assets of Borrower not listed above.

SCHEDULE B

215 Tremont Street
Rochester, NY 14608