

9/22/03

09-24-2003



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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):

Vitex Systems, Inc.

- 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 31, 2003

2. Name and address of receiving party(ies)

Name: Battelle Memorial Institute

Internal Address: 505 King Avenue

Street Address: 505 King Avenue

City: Columbus State: OH Zip: 43201

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

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No

Additional name(s) & address(es) attached? Yes No

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

A. Trademark Application No.(s) 76/278,222; 76/278,219; 76/325,657; 76/325,660 76/278,218

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: Nicole S. Bradley

Internal Address: Pillsbury Winthrop LLP

09/23/2003 LMUELLER 00000080 76278222

01 FC:0521 40.00 DP 02 FC:0522 100.00 DP

Street Address: 725 S. Figueroa Street

Suite 2800

City: Los Angeles State: CA Zip: 90017

6. Total number of applications and registrations involved: 5

7. Total fee (37 CFR 3.41) \$ 200.00

- Enclosed, Authorized to be charged to deposit account

8. Deposit account number:

16-1805

(Attach duplicate copy of this page if paying by deposit account)

OFFICE OF PUBLIC RECORDS 2003 SEP 22 PM 4: 06 FINANCE SECTION

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.

Nicole S. Bradley

Name of Person Signing

Signature

September 18, 2003

Date

Refund Ref: 09/23/2003 LMUELLER 0000130972

Total number of pages including cover sheet, attachments, and document: 17

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

CHECK Refund Total: \$60.00

American LegalNet, Inc. www.USCourtForms.com

TRADEMARK REEL: 002829 FRAME: 0119

2. Name and Address of Receiving Parties: (Continued)

Mitsubishi Corporation
6-3, Marunouchi Z-chome,
Chiyoda-ku
Tokyo 100-8086
Japan

Designation of Domestic Representative forms for each referenced trademark is attached.

SECURITY AGREEMENT

This Security Agreement ("**Agreement**") is made and entered into this 31st day of July, 2003, by and among Battelle Memorial Institute, an Ohio corporation ("**Battelle**"), Mitsubishi Corporation ("**Mitsubishi**"), and such other persons and entities as may from time to time purchase Secured Convertible Bridge Funding Notes pursuant to the Note Restructuring and Purchase Agreement, dated July 31, 2003 (the "**Purchase Agreement**"), and deliver a counterpart signature page hereto (individually a "**Secured Party**", or together, the "**Secured Parties**"), and Vitex Systems, Inc., a Delaware corporation ("**Debtor**"), and is made with reference to the following facts:

- A. Pursuant to the Purchase Agreement, the Secured Parties have loaned or have agreed to loan up to a total of US \$15,000,000 to Debtor by restructuring certain existing indebtedness and providing to Debtor additional bridge funding for its operations until it raises additional capital. Debtor has, in consideration for such loans, executed Secured Convertible Bridge Funding Notes pursuant to the Purchase Agreement (the "**Notes**").
- B. Each Secured Party has required, as a condition to becoming a party to and performing its obligations under the Purchase Agreement, that Debtor contemporaneously grant to such Secured Party security interests in all Debtor's tangible and intangible assets and proceeds, increases, substitutions, replacements, repairs, additions, and accessions thereof and thereto, to secure prompt and complete payment of the debts evidenced by the Notes.
- C. Debtor has agreed to grant such security interests to the Secured Parties to secure prompt and complete payment of the debt evidenced by the Notes.

NOW THEREFORE, in consideration of the foregoing and the mutual promises and agreements hereinafter contained, the parties hereto agree as follows:

1. Grant of Security Interest. As security for the obligations evidenced by the Notes, Debtor hereby grants to the Secured Parties and their respective successors, endorsees and assignees a continuing security interest in and to the following described property, together with any and all proceeds, increases, substitutions, replacements, repairs, additions and accessions thereof and thereto, all of the foregoing being hereinafter collectively referred to as the "**Collateral**". With respect to each particular item of Collateral, the security interest herein granted shall attach immediately upon Debtor's execution hereof or as soon as Debtor acquires rights in and to such item of Collateral, whichever is later:
 - a. All of Debtor's right, title and interest in and to any and all assets, both tangible and intangible, including but not limited to: intellectual property (including, but not limited to, all inventions, trade secrets, patents, copyrights, trademarks, software (including source code and object code), works, files, reports, designs, programs, specifications, documentation, manuals and visual aids patents, tradenames, and all licenses pertaining thereto); licenses and permits; contracts;

accounts receivable; money and rights to receive money or other consideration and claims thereto; general intangibles; bank or other deposit or investment accounts; documents and records; instruments (whether or not negotiable); equipment; fixtures; and inventory.

- b. To the extent not included in the items of Collateral specified in Section 1a above, any and all proceeds, substitutions, replacements, repairs, additions and accessions thereto or of such items of Collateral, including, without limitation, all insurance and the proceeds thereof, all condemnation proceeds or the proceeds of any other form of taking thereof, and all real property, equipment, inventory, accounts, general intangibles, contract rights, documents, instruments, chattel paper, money, deposit accounts and other tangible or intangible property received upon the sale or disposition of any of the foregoing now existing or hereafter arising.

2. Nothing in this Agreement shall be deemed to constitute an assumption by the Secured Parties of any liability or obligation with respect to or for any of the Collateral, and Debtor shall perform and remain liable to perform all obligations and duties owed to third parties with respect to any and all items of Collateral to the same extent as if this Agreement had not been executed. Specifically, and not by means of limitation, the exercise by the Secured Parties of any of their rights under this Agreement shall not release Debtor from any of its obligations with respect to any item of Collateral.

3. This Agreement secures, and the Collateral is security for, the prompt payment or performance in full and when due, whether at stated maturity, by acceleration or otherwise, of all obligations of any nature now or hereafter arising under the Notes, whether for principal or interest or otherwise, and all obligations of Debtor now or hereafter arising under this Agreement (all such obligations being the "**Secured Obligations**"). Upon the payment in full of the Secured Obligations or the conversion of the Notes in accordance with their terms, the security interest granted hereby shall terminate and all rights to the Collateral shall revert to the Debtor. Upon any such termination, the Secured Parties shall, at Debtor's expense, promptly execute and deliver to the Debtor such documents as the Debtor may reasonably request to evidence such termination.

4. Debtor hereby represents and warrants to the Secured Parties that:

- a. Debtor is a corporation incorporated and validly existing under the laws of the State of Delaware, and is duly qualified or licensed to conduct business in each jurisdiction in which the nature of its business or assets requires such qualification or licensing under applicable law. Debtor has the requisite power and authority to own its assets and to transact the business in which it is presently engaged and in which it proposes to engage and to grant to the Secured Parties the security interests in the Collateral as herein provided.
- b. This Agreement has been duly authorized and constitutes the legal, valid and binding obligation of Debtor, and is enforceable against Debtor in accordance

with its terms, except to the extent limited by bankruptcy and insolvency laws affecting the rights of creditors generally.

- c. Neither the execution and delivery of this Agreement by Debtor nor the effectuation by the Secured Parties of any of their rights and remedies hereunder, whether upon default or otherwise, will result in a material breach of, or constitute a default under, any provision of Debtor's Certificate of Incorporation or By-Laws, or any material agreement, instrument, or restriction to which Debtor is a party or is otherwise bound, nor violate any law or any rule or regulation of any administrative agency, or any order, writ, injunction, or decree of any court or administrative agency which violation could reasonably be expected to cause a material adverse effect on Debtor's business, nor require the consent of any person, entity or governmental agency or any notice or filing with any governmental or regulatory body (except as may be required under laws governing sales of securities).
- d. Except for the security interests granted herein and Permitted Liens (as defined below), Debtor has, and will at all times during the term hereof, have good and marketable title to all and every part of the Collateral, free and clear of any mortgage, pledge, lien, security interest, encumbrance, adverse claim, and/or conditional sales contract. As used in this Agreement "Permitted Liens" means: (i) liens for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or being contested in good faith appropriately reserved for in accordance with GAAP; (ii) liens of carriers, warehousemen, mechanics, landlords, materialmen, and vendors arising by operation of law for sums not overdue or being contested in good faith appropriately reserved for in accordance with GAAP; (iii) deposits under workers' compensation, unemployment insurance and social security laws; (iv) licenses and sublicenses granted in the ordinary course of Debtor's business and any interest or title of a licensor or under any license or sublicense; (v) liens from judgments and attachments not resulting in a Default under the Notes; and (vi) other liens that are subordinated to those of Secured Parties on terms reasonably acceptable to Secured Parties.
- e. Upon the execution and delivery of this Agreement by Debtor and the filing of appropriate financing statements with the proper governmental agencies, the Secured Parties shall have a perfected security interest in and to the Collateral, subject to Permitted Liens, and a valid first priority lien on the Collateral, securing the Secured Obligations.
- f. There is no action or legal, administrative or other proceeding pending or threatened against Debtor's title to the Collateral or against Debtor's grant of a security interest therein hereunder, nor does Debtor know of any basis for the assertion of any such claim.
- g. The principal place of business of Debtor and the location of its business records is 3047 Orchard Parkway, San Jose, California 95134.

- h. The Debtor conducts no business under any name or trade name other than its proper corporate name.

5. Affirmative Covenants of Debtor:

- a. Debtor shall concurrently herewith and from time to time at the request of any Secured Party, whether before or after the occurrence of a Default (as defined in the Notes) under the Notes, execute and deliver to the Secured Parties such financing statements, amendments thereto, continuation statements and other agreements, instruments, and documents as the Secured Parties may request, in form and substance satisfactory to the Secured Parties, showing Debtor as debtor and the Secured Parties as secured parties, and Debtor shall do all other acts and things as any Secured Party shall reasonably deem necessary or desirable, in order to create, perfect, continue and preserve the Secured Parties' security interests in the Collateral and to preserve the priority thereof.
- b. Debtor hereby authorizes the Secured Parties to file one or more financing or continuation statements, and amendments thereto pursuant to the Uniform Commercial Code, relative to all or any part of the Collateral without the signature of Debtor where permitted by law. A carbon, photographic or other reproduction of this Security Agreement, as executed by all parties, or any financing statement covering the Collateral or any part thereof shall be sufficient as a financing statement where permitted by law.
- c. Debtor shall maintain its principal place of business and the location of its business records in San Jose, California, unless a Secured Party has granted prior consent to relocation.
- d. Debtor shall, at its own expense, take any and all actions reasonably necessary to preserve, protect, and defend the security interests of the Secured Parties in the Collateral and the perfection and priority thereof against all adverse claims other than Permitted Liens, including appearing in and defending any and all actions which purport to affect any of the foregoing. Debtor shall promptly reimburse the Secured Parties for all sums, including costs, expenses, and reasonable attorneys' fees, which the Secured Parties may pay or incur in defending, protecting or enforcing their security interests in the Collateral or perfection or priority thereof.

6. Debtor hereby irrevocably appoints the Secured Parties as Debtor's attorney-in-fact, with full authority in the place and stead of Debtor and in the name of Debtor, after the occurrence and during the continuance of a Default (as defined in the Notes), to take any action and to execute any instrument which any Secured Party reasonably may deem necessary or advisable to accomplish the purposes of this Security Agreement, including, without limitation:

- a. To ask, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral;

- b. To receive, endorse, assign, and collect any and all checks, notes, drafts and other negotiable and non-negotiable instruments, documents and chattel paper, in connection with clause (a) above, and Debtor waives notice of presentment, protest and non-payment of any instrument, document or chattel paper so endorsed or assigned;
- c. To file any claims or take any action or institute any proceedings which the Secured Parties may deem reasonably necessary or desirable for the collection of any of the Collateral or otherwise to enforce the rights of the Secured Parties with respect to any of the Collateral; and
- d. To sell, transfer, assign or otherwise deal in or with the Collateral or the proceeds or avails thereof, as full and effectually as if the Secured Parties were the absolute owners thereof.

7. Debtor hereby ratifies and approves all acts of a Secured Party, other than those which result from any Secured Party's gross negligence, willful misconduct, or a breach of any Secured Party's obligations under this Security Agreement or the Notes, as its attorney-in-fact, pursuant to this Section 7, and agrees that such Secured Party, as its attorney-in-fact, will not be liable for any acts of commission or omission, nor for any error of judgment or mistake of fact or law other than those which result from such Secured Party's gross negligence, willful misconduct, or breach of such Secured Party's obligations under this Security Agreement or the Notes. This power, being coupled with an interest, is irrevocable so long as this Security Agreement remains in effect.

8. If Debtor fails to perform any material agreement contained herein, upon prior written notice to Debtor, the Secured Parties may themselves perform, or cause performance of, such agreement at Debtor's expense.

9. The powers conferred on the Secured Parties hereunder are solely to protect their respective interests in the Collateral and shall not impose any duty upon them to exercise any such powers. Except as set forth below and for the safe custody of any Collateral in their possession and the accounting for moneys actually received by them hereunder, the Secured Parties shall have no duty as to any Collateral or as to the taking of any necessary steps to preserve rights against prior parties or any other rights pertaining to any Collateral.

10. If any Default (as defined in the Notes) shall have occurred and is then continuing:

- a. The Secured Parties may exercise in respect of the Collateral, in addition to other rights and remedies provided for herein or otherwise available to them, all the rights and remedies of a secured party on default under applicable law.
- b. All cash proceeds received by the Secured Parties in respect of any sale of, collection from, or other realization upon all or any part of the Collateral may, in the discretion of the Secured Parties, be held by the Secured Parties as collateral for, and/or then or at any time thereafter applied in whole or in part by the Secured Parties against, all or any part of the Secured Obligations in such order as the Secured Parties shall elect. Any surplus of such cash or cash proceeds

received from any source or held by the Secured Parties and remaining after payment in full of all Secured Obligations shall be paid over to Debtor.

11. Intercreditor Agreements.

- a. The Secured Parties agree that they shall share ratably, in accordance with their respective Proportionate Shares (as defined below), in all moneys hereafter received or recovered from the Debtor or any other person or from the enforcement of the Collateral on account of the Secured Obligations, irrespective of the filing date of any financing statement or the order of perfection or priority of any security interest held by any Secured Party. If at any time any Secured Party receives ("receiving Secured Party") (whether by setoff or otherwise) any payment in connection with the Secured Obligations in excess of its Proportionate Share thereof, the receiving Secured Party shall be deemed to be holding the amount of any such payment in excess of receiving Secured Party's Proportionate Share thereof, as trustee for the other Secured Parties, and promptly upon the receiving Secured Party's receipt thereof, the receiving Secured Party shall pay over to the other Secured Parties their Proportionate Share of such excess amount held in trust for the other Secured Party. "Proportionate Share" shall mean, as of the date of calculation, in respect of each Secured Party, a fraction the numerator of which is the aggregate of the Secured Obligations due to such Secured Party under the Notes and the denominator of which is the aggregate of all Secured Obligations.
- b. To the extent that the exercise of any or all of a Secured Party's rights, powers and remedies in accordance herewith requires that any action can or may be taken by any other Secured Party, such other Secured Party shall take such action and cooperate with the other Secured Party to ensure that the rights, powers and remedies of each such Secured Party are exercised in full and are pursued to the greatest possible extent; provided, however, that no such Secured Party shall be required to take any action pursuant to this paragraph which it believes, in good faith, is against its best interests.
- c. The proceeds of the Collateral from any foreclosure on, collection of or other realization on the Collateral shall be applied as follows:
 - (i) First, to the payment of all costs, expenses, taxes and charges incurred by any Secured Party in connection with collection of such sum and foreclosure on the Collateral, whether accruing prior to, or after the institution of, any bankruptcy or similar proceedings;
 - (ii) Second, pro rata to each Secured Party according to its respective Proportionate Share; and
 - (iii) Third, pro rata to such other persons as shall be legally entitled thereto, including, but not limited to the Debtor.

12. No amendment or waiver of any provision of this Security Agreement or consent to any departure by Debtor herefrom shall in any event be effective unless the same shall be

in writing and signed by all of the then existing Secured Parties, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given.

13. All notices and other communications required or permitted hereunder shall be in writing and shall be: (a) mailed by registered or certified mail, postage prepaid, (b) delivered by reliable overnight courier service, or (c) otherwise delivered by hand or by messenger, addressed (i) if to a Secured Party, to the address set forth on its signature page hereto; and (ii) if to Debtor, to Vitex Systems, Inc., 3047 Orchard Parkway, San Jose, California 95134, attn: Malcolm Thompson; or to such other address as such party shall have furnished to each of the others in writing. All such notices and communications shall be effective upon receipt.

14. THIS SECURITY AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE EXCEPT TO THE EXTENT THAT THE VALIDITY OR PERFECTION OF THE SECURITY INTEREST HEREUNDER, OR REMEDIES HEREUNDER, IN RESPECT OF ANY PARTICULAR COLLATERAL ARE GOVERNED BY THE LAWS OF A JURISDICTION OTHER THAN THE STATE OF DELAWARE.

15. This Security Agreement is in addition to and not in limitation of any other rights and remedies the Secured Parties may have by virtue of any other document executed by Debtor or by law or otherwise. If any provision of this Security Agreement is contrary to applicable law or general principles of equity, such provision shall be deemed ineffective without invalidating the remaining provisions hereof. The Secured Parties shall not by any delay or omission be deemed to have waived any of its rights or remedies hereunder. A waiver by the Secured Parties of any right or remedy hereunder on any one occasion shall not be construed as a bar to or waiver of any such right or remedy which the Secured Parties would have had on any future occasion nor shall the Secured Parties be liable for exercising or failing to exercise any such right or remedy.

16. This Security Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, Debtor has caused this Agreement to be duly executed and delivered by its duly authorized officer as of the date first above written.

DEBTOR:

VITEX SYSTEMS, INC.

By: 
Malcolm Thompson
Chief Executive Officer

[SIGNATURE PAGE FOR SECURITY AGREEMENT]

Gray Cary\PA\10307371.4
2102837-900000

THE SECURED PARTIES:

BATTELLE MEMORIAL INSTITUTE

By: 

Its: Senior Vice President and General Counsel

Address:
505 King Avenue
Columbus, Ohio 43201
U.S.A.

MITSUBISHI CORPORATION

By: _____

Its: _____

Address:
6-3, Marunouchi 2-Chome, Chiyoda-Ku
Tokyo 100-8086
Japan

By: _____

Its: _____

Address:

[COUNTERPART SIGNATURE PAGE FOR SECURITY AGREEMENT]

Gray Cary\PA\10907371.4
2102837-900000

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TRADEMARK
REEL: 002829 FRAME: 0129

THE SECURED PARTIES:

BATTELLE MEMORIAL INSTITUTE

By: _____

Its: _____

Address:
505 King Avenue
Columbus, Ohio 43201
U.S.A.

MITSUBISHI CORPORATION

By: *[Signature]* _____

Its: *General Manager of Technology &* _____

Address: *Business Development Dept.*
6-3, Marunouchi 2-Chome, Chiyoda-Ku
Tokyo 100-8086
Japan

By: _____

Its: _____

Address: _____

(COUNTERPART SIGNATURE PAGE FOR SECURITY AGREEMENT)

Gray Cery\PA\10307371.4
2102837-900000