

01-14-2004

11/14/04

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

Tab settings

102646074

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

1. Name of conveying party(ies):

Table Talk Pies, Inc.

- Individual(s) Association General Partnership Limited Partnership Corporation-State Delaware 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: December 23, 2003

2. Name and address of receiving party(ies)

Name: Commerce Bank & Trust Company

Internal Address:

Street Address: 386 Main Street

City: Worcester State: MA Zip: 01608

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

Other Massachusetts banking corporation

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)

1,512,918 and 0319117

Additional number(s) attached Yes No

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

Name: Brian M. Chandley, Vice President

Internal Address: Commerce Bank & Trust Company

Street Address: 386 Main Street

City: Worcester State: MA Zip: 01608

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:

50-1935

(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.

Christos Cocaine Name of Person Signing

Signature

December 23, 2003 Date

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

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

01/15/2004 LMUELLER 00000032 1512918

01 FC:8521 40.00 DP 02 FC:8522 25.00 DP

## INTELLECTUAL PROPERTY SECURITY AGREEMENT

This Intellectual Property Security Agreement (this "IP Agreement") is made as of the 23<sup>rd</sup> day of December, 2003 by and between **TABLE TALK PIES, INC.**, a Delaware corporation with its principal place of business at 120 Washington Street, Worcester, Massachusetts 01610 (the "Debtor") and **COMMERCE BANK & TRUST COMPANY**, a Massachusetts banking corporation with an office at 386 Main Street, Worcester, Massachusetts 01608 (the "Lender").

### RECITALS

A. Lender has agreed to make advances of money and to extend certain financial accommodations to Debtor and other parties (the "Loan"), pursuant to a certain Loan and Security Agreement of even date herewith by and among Debtor, Holdings, the Guarantors and Lender (as amended from time to time, the "Loan and Security Agreement"). The Loan is secured pursuant to the terms of the Loan and Security Agreement. Lender is willing to enter into certain financial accommodations with Debtor, but only upon the condition, among others, that Debtor shall grant to Lender a continuing security interest in certain Copyrights, Trademarks, Patents, and Mask Works to secure the obligations of Debtor under the Loan and Security Agreement. Defined terms used but not defined herein shall have the same meanings as in the Loan and Security Agreement.

B. Pursuant to the terms of the Loan and Security Agreement, Debtor has granted to Lender a security interest in all of Debtor's right, title and interest, whether presently existing or hereafter acquired, in, to and under all of the Collateral (as defined in the Loan and Security Agreement).

**NOW, THEREFORE**, for good and valuable consideration, receipt of which is hereby acknowledged and intending to be legally bound, as collateral security for the prompt and complete payment when due of Debtor's Indebtedness (as defined below), Debtor hereby represents, warrants, covenants and agrees as follows:

1. Grant of Security Interest. As collateral security for the prompt and complete payment and performance of all of Debtor's present or future indebtedness, obligations and liabilities to Lender (hereinafter, the "Indebtedness"), including, without limitation, under the Loan and Security Agreement, Debtor hereby grants a continuing security interest in all of Debtor's right, title and interest in, to and under its intellectual property, now or hereafter existing, created, acquired or held (all of which shall collectively be called the "Intellectual Property Collateral"), including without limitation, the following:

(a) Any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade

secret, including without limitation those set forth on Exhibit A attached hereto (collectively, the “Copyrights”);

(b) Any and all trade secrets and any and all intellectual property rights in computer software and computer software products;

(c) Any and all design rights which may be available to Debtor;

(d) All patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, including without limitation the patents and patent applications set forth on Exhibit B attached hereto (collectively, the “Patents”);

(e) Any trademark and service mark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Debtor connected with and symbolized by such trademarks, including without limitation those set forth on Exhibit C attached hereto (collectively, the “Trademarks”);

(f) All mask works or similar rights available for the protection of semiconductor chips, now owned or hereafter acquired including without limitation those set forth on Exhibit D attached hereto (collectively, the “Mask Works”);

(g) Any and all claims for damages by way of past, present and future infringements of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

(h) All licenses or other rights to use any of the Copyrights, Patents, Trademarks or Mask Works and all license fees and royalties arising from such use to the extent permitted by such license or rights, including without limitation those set forth on Exhibit E attached hereto;

(i) All amendments, extensions, renewals and extensions of any of the Copyrights, Trademarks, Patents or Mask Works; and

(j) All proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

2. Authorization and Request. Debtor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this IP Agreement or evidence of same.

3. Covenants and Warranties. Debtor represents, warrants, covenants and agrees as follows:

(a) Debtor is now the sole owner of the Intellectual Property Collateral except for non-exclusive licenses granted by Debtor to its customers in the ordinary course of business;

(b) Performance of this IP Agreement does not conflict with or result in a breach of any IP Agreement to which Debtor is bound except to the extent that certain intellectual property agreements prohibit the assignment of the rights thereunder to a third party without the licensor's or other party's consent and this IP Agreement constitutes a security interest;

(c) During the term of this IP Agreement, Debtor will not transfer or otherwise encumber any interest in the Intellectual Property Collateral except for non-exclusive licenses granted by Debtor in the ordinary course of business or as set forth in this IP Agreement;

(d) To its knowledge, each of the Patents is valid and enforceable, and no part of the Intellectual Property Collateral has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Intellectual Property Collateral violates the rights of any third party;

(e) Debtor shall promptly advise Lender of any material adverse change in the composition of the Collateral, including but not limited to any subsequent ownership right of the Debtor in or to any Trademark, Patent, Copyright or Mask Work specified in this IP Agreement;

(f) Debtor shall (i) protect, defend and maintain the validity and enforceability of the Trademarks, Patents, Copyrights and Mask Works, (ii) use reasonable efforts to detect infringements of the Trademarks, Patents, Copyrights and Mask Works and promptly advise Lender in writing of material infringements detected, and (iii) not allow any Trademarks, Patents, Copyrights and Mask Works to be abandoned, forfeited or dedicated to the public without the written consent of Lender, which shall not be unreasonably withheld, unless Debtor determines that reasonable business practices suggest that abandonment is appropriate;

(g) Debtor shall promptly register the most recent version of any of Debtor's Copyrights, if not so already registered, and shall, from time to time, execute and file such other instruments and take such further actions as Lender may reasonably request from time to time to perfect or continue the perfection of Lender's interest in the Intellectual Property Collateral;

(h) This IP Agreement creates, and in the case of after-acquired Intellectual Property Collateral, this IP Agreement will create at the time Debtor first has rights in such after-acquired Intellectual Property Collateral in favor of Lender a valid and perfected first priority security interest in the Intellectual Property Collateral in the United States securing the payment and performance of the obligations evidenced by the Loan and Security Agreement upon making the filings referred to in clause (i) below;

(i) To its knowledge, except for, and upon, the filing with the United States Patent and Trademark office with respect to the Patents and Trademarks and the Register of Copyrights with respect to the Copyrights and Mask Works necessary to perfect the security interests created hereunder and except as has been already made or obtained, no authorization, approval or other action by, and no notice to or filing with, any U.S. governmental authority or U.S. regulatory body is required either (i) for the grant by Debtor of the security interest granted hereby or for the execution, delivery or performance of this IP Agreement by Debtor in the U.S. or (ii) for the perfection in the United States or the exercise by Lender of its rights and remedies thereunder;

(j) All information heretofore, herein or hereafter supplied to Lender by or on behalf of Debtor with respect to the Intellectual Property Collateral is accurate and complete in all material respects;

(k) Debtor shall not enter into any agreement that would materially impair or conflict with Debtor's obligations hereunder without Lender's prior written consent, which consent shall not be unreasonably withheld. Debtor shall not permit the inclusion in any material contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a security interest in Debtor's rights and interest in any property included within the definition of the Intellectual Property Collateral acquired under such contracts, except that certain contracts may contain anti-assignment provisions that could in effect prohibit the creation of a security interest in such contracts.

(l) Upon any executive officer of Debtor obtaining actual knowledge thereof, Debtor will promptly notify Lender in writing of any event that materially adversely affects the value of any material Intellectual Property Collateral, the ability of Debtor to dispose of any material Intellectual Property Collateral or the rights and remedies of Lender in relation thereto, including the levy of any legal process against any of the Intellectual Property Collateral.

4. Lender's Rights. Lender shall have the right, but not the obligation, to take, at Debtor's sole expense, any actions that Debtor is required under this IP Agreement to take but which Debtor fails to take, after ten (10) days' notice to Debtor. Debtor shall reimburse and indemnify Lender for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this Section 4.

5. Inspection Rights. Debtor hereby grants to Lender and its employees, representatives and agents the right to visit, during reasonable hours upon prior reasonable written notice to Debtor, any of Debtor's plants and facilities that manufacture, install or store products (or that have done so during the prior six-month period) that are sold utilizing any of the Intellectual Property Collateral, and to inspect the products and quality control records relating thereto upon reasonable written notice to Debtor and as often as may be reasonably requested, but not more than once in every six (6) months; provided, however, nothing herein shall entitle Lender access to Debtor's trade secrets and other proprietary information.

6. Further Assurances; Attorney in Fact.

(a) On a continuing basis, Debtor will, subject to any prior licenses, encumbrances and restrictions and prospective licenses, make, execute, acknowledge and deliver, and file and record in the proper filing and recording places in the United States, all such instruments, including appropriate financing and continuation statements and collateral agreements and filings with the United States Patent and Trademarks office and the Register of Copyrights, and take all such action as may reasonably be deemed necessary or advisable, or as requested by Lender, to perfect Lender's security interest in all Copyrights, Patents, Trademarks and Mask Works and otherwise to carry out the intent and purposes of this IP Agreement, or for assuring and confirming to Lender the grant or perfection of a security interest in all Intellectual Property Collateral.

(b) Debtor hereby irrevocably appoints Lender as Debtor's attorney-in-fact, with full authority in the place and stead of Debtor and in the name of Debtor, Lender or otherwise, from time to time in Lender's discretion, upon Debtor's failure or inability to do so, to take any action and to execute any instrument which Lender may deem necessary or advisable to accomplish the purposes of this IP Agreement, including:

(i) to modify, in its sole discretion, this IP Agreement without first obtaining Debtor's approval of or signature to such modification by amending Exhibit A, Exhibit B, Exhibit C and Exhibit D hereof, as appropriate, to include reference to any right, title or interest in any Copyrights, Patents, Trademarks or Mask Works acquired by Debtor after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents, Trademarks or Mask Works in which Debtor no longer has or claims any right, title or interest; and

(ii) to file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Intellectual Property Collateral without the signature of Debtor where permitted by law.

7. Events of Default. The occurrence of any of the following shall constitute an Event of Default under this IP Agreement.

(a) An Event of Default occurs under the Loan and Security Agreement or any document from Debtor to Lender, or

(b) Debtor breaches any warranty or agreement made by Debtor in this IP Agreement.

8. Remedies. Upon the occurrence of an Event of Default and at any time thereafter, Lender shall have the right to exercise all the remedies of a secured party under the Massachusetts Uniform Commercial Code, including without limitation the right to require Debtor to assemble the Intellectual Property Collateral and any tangible property in which Lender has a security interest and to make it available to Lender at a place designated by Lender. Lender

shall have a non-exclusive, royalty-free license to use the Copyrights, Patents, Trademarks and Mask Works to the extent reasonably necessary to permit Lender to exercise its rights and remedies upon the occurrence of an Event of Default and at any time thereafter. Debtor will pay any expenses (including reasonable attorney's fees) incurred by Lender in connection with the exercise of any of Lender's rights hereunder, including without limitation any expense incurred in disposing of the Intellectual Property Collateral. All of Lender's rights and remedies with respect to the Intellectual Property Collateral shall be cumulative.

9. Indemnity. Debtor agrees to defend, indemnify and hold harmless Lender and its officers, employees and agents against: (a) all obligations, demands, claims and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this IP Agreement, and (b) all losses or expenses in any way suffered, incurred or paid by Lender as a result of or in any way arising out of, following or consequential to transactions between Lender and Debtor, whether under this IP Agreement or otherwise (including without limitation reasonable attorneys' fees and reasonable expenses), except for losses arising from or out of Lender's gross negligence or willful misconduct.

10. Reassignment. At such time as Debtor shall completely satisfy all of the obligations secured hereunder, Lender shall execute and deliver to Debtor all deeds, assignments and other instruments as may be necessary or proper to reinvest in Debtor full title to the property assigned hereunder, subject to any disposition thereof which may have been made by Lender pursuant hereto.

11. Course of Dealing. No course of dealing, nor any failure to exercise, nor any delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

12. Attorneys' Fees. If any action relating to this IP Agreement is brought by either party hereto against the other party, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements.

13. Amendments. This IP Agreement may be amended only by a written instrument signed by both parties hereto.

14. Counterparts. This IP Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.

15. Law and Jurisdiction. This IP Agreement shall be governed by and construed in accordance with the laws of The Commonwealth of Massachusetts. DEBTOR AGREES THAT ANY SUIT FOR THE ENFORCEMENT OF THIS IP AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS MAY BE BROUGHT IN THE COURTS OF THE COMMONWEALTH OF MASSACHUSETTS OR ANY FEDERAL COURT SITTING THEREIN AND CONSENTS TO THE NONEXCLUSIVE JURISDICTION OF SUCH COURT AND SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON DEBTOR BY MAIL AT THE ADDRESS SET FORTH IN THIS IP AGREEMENT. DEBTOR HEREBY WAIVES ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE

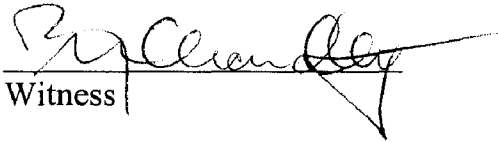
VENUE OF ANY SUCH SUIT OR ANY SUCH COURT OR THAT SUCH SUIT IS BROUGHT IN AN INCONVENIENT FORUM.

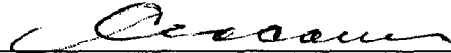
14. **JURY TRIAL WAIVER.** THE DEBTOR WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING, WHETHER BY CLAIM OR COUNTERCLAIM, BROUGHT OR INSTITUTED BY THE DEBTOR, THE LENDER OR ANY OF THEIR SUCCESSORS OR ASSIGNS, WHICH IN ANY WAY RELATES DIRECTLY OR INDIRECTLY TO THIS IP AGREEMENT, THE OBLIGATIONS OR THE RELATIONSHIP BETWEEN OR AMONG THE DEBTOR, THE LENDER, HOLDINGS, THE GUARANTORS, OR ANY OF THEM, OR ANY OTHER GUARANTOR OF THE DEBTOR'S OBLIGATIONS TO THE LENDER.

17. Confidentiality. In handling any confidential information, Lender shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (i) to Lender's subsidiaries or affiliates in connection with their present or prospective business relations with Debtor; (ii) to prospective transferees or purchasers of any interest in the Loans, provided that prior to the occurrence of an Event of Default, Lender shall require that such prospective transferees or purchasers exercise the same standard of care as the Lender is required to hereunder; (iii) as required by law, regulation, subpoena or other order; (iv) as required in connection with Lender's examination or audit; and (v) as Lender considers appropriate in exercising remedies under this IP Agreement. Confidential information does not include information that either: (a) is in the public domain or in Lender's possession when disclosed to Lender, or becomes part of the public domain after disclosure to Lender; or (b) is disclosed to Lender by a third party, if Lender does not know that the third party is prohibited from disclosing the information.

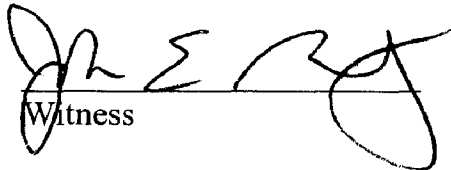
**EXECUTED** as a sealed instrument under the laws of The Commonwealth of Massachusetts on the day and year first written above.

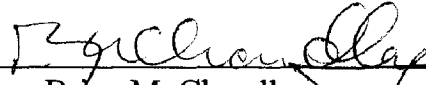
**TABLE TALK PIES, INC.**

  
Witness

By:   
Name: Christos Cocaine  
Title: President and Treasurer

**COMMERCE BANK & TRUST COMPANY**

  
Witness

By:   
Name: Brian M. Chandley  
Title: Senior Vice President



**EXHIBIT A**  
**COPYRIGHTS**

NONE AS OF DECEMBER 23, 2003

**EXHIBIT B**

**PATENTS**

NONE AS OF DECEMBER 23, 2003

**EXHIBIT C**  
**TRADEMARKS**

1,512,918 AND 0319117

**EXHIBIT D**  
**MASK WORKS**

NONE AS OF DECEMBER 23, 2003

**EXHIBIT E**

**LICENSES**

NONE AS OF DECEMBER 23, 2003

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**RECORDED: 01/14/2004**

**TRADEMARK  
REEL: 002897 FRAME: 0035**