

TRA



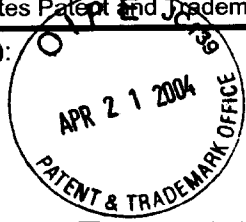
102729146

Tab settings → → → ▼

To the Director of the United States Patent and Trademark Office: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Nightingale Corp.
2301 Dixie Road
Mississauga, Ontario
Canada, L4Y 1Z9



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

Additional names(s) of conveying party(ies) Yes No

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other
- Merger
- Change of Name

Execution Date: July 31, 2002

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

Name: Canadian Imperial Bank of Commerce

Internal Address: -

Street Address: Commerce Court West, 3rd Floor

City: Toronto State: ON ZIP: M5L 2S5

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

If assignee is not domiciled in the United States, a domestic designation is Yes N
(Designations must be a separate document from Additional name(s) & address(es) Yes N

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

A. Trademark Application No.(s)

78/160,816

Additional numbers

B. Trademark Registration No.(s)

Yes No

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

Name: Robert Graham

Internal Address: -

04/23/2004 6TON11 00000012 071750 78160816

01 FC:8521 40.00 BA

Street Address: Gowling Lafleur Henderson LLP

Suite 4900, Commerce Court West

City: Toronto State: ON ZIP: M5L 1S3

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:

07-1750

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.

Robert Graham

Name of Person Signing

Signature

20 April 2004

Date

Total number of pages including cover sheet, attachments, and

16

INTELLECTUAL PROPERTY SECURITY AGREEMENT

Intellectual Property Security Agreement dated as of July 31, 2002 (the "**IP Agreement**") made by and between **CANADIAN IMPERIAL BANK OF COMMERCE**, in its capacity as lender and as agent (collectively, the "**Bank**") and **NIGHTINGALE CORP.** (the "**Borrower**") pursuant to a credit agreement dated as of July 31, 2002 between the Borrower and the Bank (as amended, restated, supplemented or replaced from time to time, the "**Credit Agreement**").

CONTEXT OF THIS AGREEMENT

A. Bank has agreed to make certain credit facilities available to Borrower upon the terms and subject to the conditions set forth in the Credit Agreement. All references to the Credit Agreement contained herein shall include all supplements, amendments, restatements and modifications thereto entered into from time to time.

B. Borrower has agreed to execute and deliver security to Bank, including without limitation, this IP Agreement as security for the payment and performance of the obligations, present and future, direct or indirect, absolute or contingent, matured or unmatured, of Borrower to Bank under the Credit Agreement and each of the other loan, security and guarantee documents relating to the Credit Agreement to which Borrower is a party (collectively, the "**Loan Documents**").

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 Borrower's Indebtedness (as defined below), Borrower 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 Borrower's present or future indebtedness, obligations and liabilities to Bank (hereinafter, the "**Indebtedness**"), including, without limitation, under the Credit Agreement and the other Loan Documents, Borrower hereby grants a first priority security interest in all of Borrower's right, title and interest in, to and under its registered and unregistered intellectual property (all of which shall collectively be called the "**Intellectual Property**"), 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, now or hereafter existing, created, acquired or held 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, including source code and object code, now or hereafter existing, created, acquired or held. Software means all computer programs and databases and portions of each of the foregoing owned by Borrower in whatever form and on whatever medium those programs or databases are expressed, fixed, embodied or stored from time to time, and the copyright therein including, without limitation, those set forth on **EXHIBIT "A"**. Software includes both the object code and the source code versions of each such program and portions thereof and all corrections, updates, enhancements, translations, modifications, adaptations and new versions thereof together with both the media upon or in which such programs, databases and portions thereof are expressed, fixed, embodied or stored (such as disks, diskettes, tapes and semiconductor chips) and all flow charts, manuals, instructions, documentation and other material relating thereto;

(c) All patents, patent applications, like protections and inventions now or hereafter existing, created, acquired or held 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"** hereto (collectively, the "**Patents**");

(d) Any trademark and service mark rights, slogans, trade dress, and tradenames, registered or not, applications to register and registrations of the same and like protections (excluding any intent to use filings) now or hereafter existing, created, acquired or held, and the entire goodwill of the business of Borrower associated therewith including, without limitation, those set forth on **EXHIBIT "C"** attached hereto (collectively the "**Trademarks**");

(e) Any and all design rights which may be available to Borrower now or hereafter existing, created, acquired or held including, without limitation, those set forth on **EXHIBIT "D"** (collectively, the "**Designs**");

(f) All licenses or other rights to use any of the Copyrights, Patents, software, Designs, 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;

(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 amendments, extensions, renewals and extensions of any of the Copyrights, Trademarks, Patents or Designs; and

(i) 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. **Exception Regarding Last Day.** The last day of the term of each license granted to Borrower pursuant to any license agreement shall be excepted from this IP Agreement and shall not form part of the Intellectual Property. Borrower shall stand possessed of that day in trust to assign and dispose of it as Bank directs.

3. **Authorization and Request.** Borrower authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this IP Agreement.

4. **Covenants and Warranties.** Borrower represents, warrants, covenants and agrees as follows:

(a) Except for Permitted Encumbrances (as defined in the Credit Agreement), Borrower is now the sole owner of the entire right, title and interest in the Intellectual Property, except for: (i) non-exclusive licenses granted by Borrower to its customers in the ordinary course of business, and (ii) those rights licensed from third parties.

(b) Performance of this IP Agreement does not conflict with or result in a breach of any agreement to which Borrower 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) Except for Permitted Encumbrances, during the term of this IP Agreement, Borrower will not transfer or otherwise encumber any interest in the Intellectual Property, except for non-exclusive licenses granted by Borrower in the ordinary course of business or as set forth in this IP Agreement;

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

(e) Borrower shall promptly advise Bank of any material adverse change in the composition of the Intellectual Property;

(f) Borrower shall promptly advise Bank of any subsequent ownership right of the Borrower in or to any Trademark, Patent, Copyright or Design specified in this IP Agreement.

(g) Borrower shall (i) protect, defend and maintain the validity and enforceability of the Trademarks, Patents, Copyrights, Designs and each item of the Intellectual Property, (ii) use its best efforts to detect infringements of the Trademarks, Patents, Copyrights or Designs thereof and promptly advise Bank in writing of infringements detected and (iii) not allow any item of the Intellectual Property to become abandoned, forfeited or dedicated to the public, or cease to use (whereby "use" is defined by the relevant trademark legislation and common law) any of the trademarks without the prior written consent of Bank, which consent shall not be unreasonably withheld, except where failure to do so would have a material adverse effect;

(h) Borrower shall promptly register the most recent version of any of Borrower'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 Bank may reasonably request from time to time to perfect or continue the perfection of Bank's interest in the Intellectual Property;

(i) This IP Agreement creates and, in the case of any of the Intellectual Property created, acquired or held by the Borrower after the date of this agreement ("**After-Acquired Intellectual Property**"), this IP Agreement will create, at the time Borrower first has rights in such After-Acquired Intellectual Property, in favor of Bank, except for Permitted Encumbrances, a valid and perfected first priority security interest and collateral assignment in the Intellectual Property in the United States and Canada securing the payment and performance of the obligations evidenced by the Credit Agreement upon making the filings referred to in clause (j) below, and, within 30 days of the date of this agreement or the date upon which the Borrower creates, acquires or holds the Intellectual Property or After-Acquired Intellectual Property, as the case may be, the Borrower shall file, or cause to be filed, any and all instruments necessary to perfect the Borrower's right, title and interest in the Intellectual Property, to execute and file, or cause to be executed and filed, any and all instruments necessary to perfect the Bank's security interest therein, and to execute and to deliver to any party as the lender may direct, the collateral assignment thereto;

(j) To its knowledge, except for, and upon, the filing with the Canadian Intellectual Property Office and the United States Patent and Trademark office with respect to the Patents, Trademarks and Designs and the Register of Copyrights with respect to the Copyrights necessary to perfect the security interest 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. or Canadian governmental authority or U.S. or Canadian regulatory body is required either: (i) for the grant by Borrower of the security interest granted hereby, or for the execution, delivery or performance of this IP

Agreement by Borrower in the U.S. and Canada; or (ii) for the perfection in the U.S. and Canada or the exercise by Bank of its rights and remedies thereunder;

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

(l) Borrower shall not enter into any agreement that would materially impair or conflict with Borrower's obligations hereunder without Bank's prior written consent, which consent shall not be unreasonably withheld. Borrower 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 Borrower's rights and interest in any property included within the definition of the Intellectual Property acquired under such contracts; and

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

5. **Bank's Rights.** Bank shall have the right, but not the obligation, to take, at Borrower's sole expense, any actions that Borrower is required under this IP Agreement to take but which Borrower fails to take, after five (5) days' notice to Borrower. Borrower shall reimburse and indemnify Bank for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this section 5.

6. **Inspection Rights.** Borrower hereby grants to Bank and its employees, representatives and agents the right to visit, during reasonable hours upon prior reasonable written notice to Borrower, any of Borrower'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, and to inspect the products and quality control records relating thereto upon reasonable written notice to Borrower and as often as may be reasonably requested, but not more than once in every six (6) months; provided, however, nothing herein shall entitle Bank access to Borrower's trade secrets and other proprietary information.

7. **Further Assurances; Attorney in Fact.**

(a) On a continuing basis, but subject to Section 16, Borrower 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 and Canada, all such instruments, including appropriate financing and continuation statements and collateral agreements and filings with the Canadian Intellectual Property Office and 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 Bank, to perfect Bank's security interest in all Copyrights, Patents and Trademarks and otherwise to carry out the intent and purposes of this IP Agreement, or for assuring and confirming to Bank the grant or perfection of a security interest in all Intellectual Property.

(b) Borrower hereby irrevocably appoints Bank, after the occurrence of an Event of Default under the Credit Agreement, as Borrower's attorney-in-fact, with full authority in the place and stead of Borrower and in the name of Borrower, Bank or otherwise, from time to time in Bank's discretion, upon Borrower's failure or inability to do so, to take any action and to execute any instrument

which Bank 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 Borrower's approval of or signature to such modification by amending Exhibit "A", Exhibit "B", Exhibit "C", Exhibit "D" and Exhibit "E" hereof, as appropriate, to include reference to any right, title or interest in any Copyrights, Patents or Trademarks acquired by Borrower after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents or Trademarks in which Borrower no longer has or claims any right, title or interest; and

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

8. **Event of Default.** The occurrence of a Default or an Event of Default (as defined in the Credit Agreement) shall constitute an Event of Default under this IP Agreement:

9. **Remedies.** Upon the occurrence and continuance of an Event of Default, Bank shall have the right to exercise all the remedies of a secured party under the *Personal Property Security Act* (Ontario) (the "PPSA") including, without limitation, acceleration of the indebtedness, the right to require Borrower to assemble the Intellectual Property and any tangible property in which Bank has a security interest and to make it available to Bank at a place designated by Bank. Bank shall have a nonexclusive, royalty free license to use the Copyrights, Patents and Trademarks to the extent reasonably necessary to permit Bank to exercise its rights and remedies upon the occurrence of an Event of Default. Borrower will pay any expenses (including reasonable legal and attorney's fees) incurred by Bank in connection with the exercise of any of Bank's rights hereunder, including without limitation any expense incurred in disposing of the Intellectual Property. All of Bank's rights and remedies with respect to the Intellectual Property shall be cumulative.

10. **Appointment of Receiver.** Upon an Event of Default, Bank may appoint or reappoint by instrument in writing, any person or persons, whether an officer or officers or an employee or employees of Bank or not, to be a receiver or receivers (hereinafter called a "Receiver", which term when used herein shall include a receiver and manager) of Intellectual Property (including any proceeds) and may remove any Receiver so appointed and appoint another in his stead. Any such Receiver shall, so far as concerns responsibility for his acts, be deemed the agent of Borrower and not of Bank, and Bank shall not be in any way responsible for any misconduct, negligence, or non-feasance on the part of any such Receiver, its servants, agents or employees. Subject to the provisions of the instrument appointing him, any such Receiver shall have power to take possession of Intellectual Property, to preserve Intellectual Property or its value and to sell, license or otherwise dispose of or concur in selling, licensing or other disposing of Intellectual Property. To facilitate the foregoing powers, any such Receiver may, to the exclusion of all others including Borrower, enter upon, use and occupy all premises owned or occupied by Borrower wherein Intellectual Property may be situated, maintain Intellectual Property upon such premises, borrow money on a secured or unsecured basis and use Intellectual Property as security for loans or advances, as such Receiver shall, in its discretion, determine. Except as may be otherwise directed by Bank, all money received from time to time by such Receiver in carrying out his appointment shall be received in trust for and paid over to Bank. Every such Receiver may, in the discretion of the Bank, be vested with all and any of the rights and powers of Bank.

11. **Exercise of Rights by Bank.** Upon an Event of Default, Bank may, either directly or through its nominees, exercise any or all of the powers and rights given to a Receiver by virtue of Section 10.

12. **Taking Possession of Intellectual Property.** Upon an Event of Default, Bank may take possession of, collect, demand, sue on, enforce, recover and receive Intellectual Property and give valid and binding receipts and discharges therefor and in respect thereof, and, Bank may sell, license or otherwise dispose of Intellectual Property in such manner at such time or times and place or places, for such consideration and upon such terms and conditions as the Bank may deem reasonable.

13. **Rights and Remedies of Bank under the PPSA.** In addition to those rights granted herein and in any other agreement now or hereafter in effect between Borrower and Bank and in addition to any other rights Bank may have at law or in equity, Bank shall have, after an Event of Default, all rights and remedies of a secured party under the PPSA provided always, that Bank shall not be liable or accountable for any failure to exercise its remedies, take possession of, collect, enforce, realize, sell, license or otherwise dispose of Intellectual Property or to institute any proceedings for such purposes. Furthermore, Bank shall have no obligation to take any steps to preserve rights against prior parties to any Instrument (as defined in the PPSA) or Chattel Paper (as defined in the PPSA) whether Intellectual Property or proceeds and whether or not in Bank's possession and shall not be liable or accountable for failure to do so.

14. **Cooperation of Borrower with respect to Taking Possession.** Borrower acknowledges that Bank or any Receiver appointed by it may take possession of Intellectual Property wherever it may be located and by any method permitted by law and Borrower agrees upon request from Bank or any such Receiver to assemble and deliver possession of Intellectual Property at such place or places as directed.

15. **Costs.** Borrower agrees to pay all cost, charges and expenses reasonably incurred by Bank or any Receiver appointed by it, whether directly or for services rendered (including reasonable legal counsels' and auditors' costs and other legal expenses and Receiver remuneration), in operating Borrower's accounts, in preparing or enforcing this IP Agreement, taking and maintaining custody of, preserving, registering, licensing, preparing for disposition and disposing of Intellectual Property and in enforcing or collecting the Indebtedness and all such costs, charges and expenses, together with any amounts owing as a result of any borrowing by Bank or any Receiver appointed by it, as permitted hereby, shall be a first charge on the proceeds of realization, collection or disposition of Intellectual Property and shall be secured hereby.

16. **Notice of Sale.** Bank will give Borrower such notice, if any, of the date, time and place of any public sale or of the date after which any private disposition of Intellectual Property is to be made, as may be required by the PPSA.

17. **Reassignment.** At such time as Borrower shall completely satisfy all of the obligations secured hereunder or Section 16 shall apply, Bank shall execute and deliver to Borrower all deeds, assignments, and other instruments as may be necessary or proper to reinvest in Borrower full title to the property assigned hereunder, subject to any disposition thereof which may have been made by Bank pursuant hereto.

18. **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.

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

20. **Survival and Reliance.** All representations and warranties of Borrower made in this IP Agreement or in any certificate or other document delivered by or on behalf of Borrower for the benefit of Bank are material and shall continue without time limit. Bank shall be deemed to have relied upon each such representation and warranty despite any investigation Bank may have made.

21. **License/Assignment of Intellectual Property.** For the purpose of enabling Bank or any Receiver to exercise the rights and remedies under Sections 9 and 10 (including without limiting the terms of Sections 9 and 10, in order to take possession of, hold, preserve, process, assemble, prepare for sale, market for sale, sell or otherwise dispose of Intellectual Property) at such time as Bank shall be lawfully entitled to exercise such rights and remedies, Borrower hereby grants to Bank, for the benefit of Bank, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to Borrower) to use, license or sublicense any Intellectual Property now owned or hereafter acquired by Borrower, and wherever the same may be located, and included in such license access to all media in which any of the licensed items may be recorded or stored and to all computer software and programs used for the compilation or printout thereof. In addition, upon receiving written demand from Bank after an Event of Default has occurred, Borrower shall assign the Intellectual Property to whomever Bank directs, including to Bank.

22. **Borrower Remains Liable.** Notwithstanding any other provision in this IP Agreement, Borrower shall remain liable under all license agreements. Borrower shall perform all of its duties and obligations thereunder just as if this IP Agreement had not been executed. Borrower shall not be released from any of its duties or obligations under the license agreements by the exercise of any rights by Bank. Bank shall not have any obligations or liability under the license agreements by reason of this IP Agreement, nor shall Bank be obliged to perform any of the obligations or duties of Borrower thereunder or to take any action to collect or enforce any claim for payment assigned hereunder. The rights and powers conferred on Bank hereunder are solely to protect its interest in the Intellectual Property and shall not impose any duty upon it to exercise any such powers.

23. **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.

24. **Law and Jurisdiction.** This IP Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein.

25. **Confidentiality.** All information (other than periodic reports filed by Borrower with any securities commission or regulatory authority) disclosed by Borrower to Bank in writing or through inspection pursuant to this IP Agreement that is marked confidential shall be considered confidential. Bank agrees to use the same degree of care to safeguard and prevent disclosure of such confidential information as Bank uses with its own confidential information, but in any event no less than a reasonable degree of care. Bank shall not disclose such information to any third party (other than Bank's attorneys, counsel, governmental regulators, and auditors, or to Bank's subsidiaries and affiliates for the purposes of evaluating Bank's rights, subject to the same confidentiality obligation set forth herein) and shall use such information only for purposes of evaluation of its investment in Borrower and the exercise of Bank's rights and the enforcement of its remedies and this IP Agreement and the other Loan Documents. The obligations of confidentiality shall not apply to any information that (a) was known to the public prior to disclosure by Borrower under this IP Agreement, (b) becomes known to the public through no fault of Bank, (c) is disclosed to Bank by a third party having a legal right to make such disclosure, or (d) is independently developed by Bank. Notwithstanding the foregoing, Bank's agreement of confidentiality shall not apply if Bank has acquired indefeasible title to any Collateral or in connection with any enforcement or exercise of Bank's rights and remedies under this IP Agreement following an Event of Default, including the enforcement of Bank's security interest in the Intellectual Property.

26. **Termination of this IP Agreement.** Upon termination of all rights of Borrower to receive any additional credit from Bank and fulfillment by Borrower of its obligations, indebtedness and liabilities to the Bank, including all obligations, indebtedness and liabilities under the Credit Agreement and the Loan Documents, this IP Agreement shall become fully ended and terminated and all right, title and interest in and in respect of the Intellectual Property secured by Borrower hereunder shall be released and all covenants and agreements of Borrower hereunder shall be at an end and Bank shall, upon written request of Borrower and at the expense of Borrower, execute such instruments and other documents and give such notifications or assurances as may be necessary to fully release, cancel and discharge this IP Agreement in the circumstances.

27. **Amalgamation.** Borrower acknowledges and agrees that, in the event it amalgamates with any other company or companies, it is the intention of the parties hereto that the security interests created hereby (a) shall extend to the Intellectual Property owned by each of the amalgamating companies and the amalgamated company at the time of amalgamation and to any Intellectual Property thereafter owned or acquired by the amalgamated company, such that the term "**Borrower**" when used herein would apply to each of the amalgamating companies and the amalgamated company and (b) shall secure the Indebtedness of each of the amalgamating companies and the amalgamated company to Bank at the time of amalgamation and any Indebtedness of the amalgamated company to Bank thereafter arising. The security interest shall attach to the additional Intellectual Property at the time of amalgamation and to any Intellectual Property owned or acquired by the amalgamated company when such becomes owned or is acquired.

28. **Attachment.** The Security Interest created hereby is intended to attach when this IP Agreement is signed by Borrower and delivered to Bank.

29. **Acknowledgment.** Borrower hereby acknowledges receipt of a copy of this IP Agreement.

30. **Registration of IP Agreement.** Borrower hereby acknowledges that Bank may register a copy of this IP Agreement or notice thereof. Borrower shall cooperate with and assist Bank, as requested by Bank, with respect to any registrations or notice registrations of or relating to this IP Agreement which Bank deems appropriate.

31. **Severability of Provisions.** Each provision of this IP Agreement shall be several from every other provision of this IP Agreement for the purpose of determining the legal enforceability of any specific provision.


32. **Successors and Assigns.** This IP Agreement shall bind and enure to the benefit of the respective successors and permitted assigns of each of the parties; provided, however, that neither this IP Agreement nor any rights hereunder may be assigned by Borrower without Bank's prior written consent, which consent may be granted or withheld in Bank's sole discretion. Bank shall have the right without the consent of or notice to Borrower to sell, transfer, negotiate, or grant participation's in all or any part of, or any interest in such Bank's rights and benefits hereunder.

33. **Conflict.** In the event that there is any conflict or inconsistency between the provisions contained in this IP Agreement and the provisions contained in the Credit Agreement, then the provisions of the Credit Agreement shall have priority over and shall govern to the extent of such conflict or inconsistency.

IN WITNESS WHEREOF the parties have executed this IP Agreement as of the day and year first written above.

NIGHTINGALE CORP.

Per:

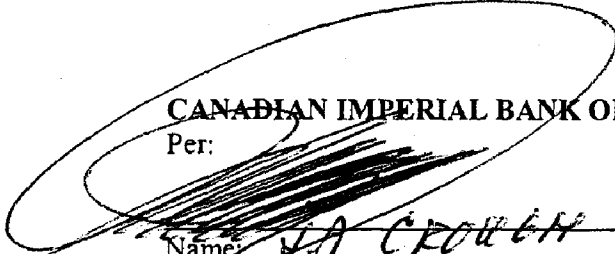

Name: WR BREEN
Title: PRESIDENT

Name:

Title:

CANADIAN IMPERIAL BANK OF COMMERCE

Per:


Name: J.A. CROWE
Title: DIRECTOR COMMERCIAL BANKING

Name:

Title:



P. Farrant
Associate, Commercial Credit

EXHIBIT "A"
COPYRIGHTS

EXHIBIT "B"

PATENTS

Utility Patents U.S.A.

<u>Title</u>	<u>Issue No.</u>	<u>Issued</u>
Chair Control	5,839,784	November 24, 1998
Chair Swivel Arm Rest	5,884,976	March 23, 1999
Chair Swivel Arm Rest	6,086,156	July 11, 2000

Patents Canada

<u>Title</u>	<u>Number</u>	<u>Issued</u>
Chair Swivel Arm Rest	2,229,177	December 4, 2001
Chair Control	2,201,253	August 28, 2001

Exhibit "C"

TRADEMARKS

Canadian Trade-Marks

<u>Trade-mark</u>	<u>Serial No.</u>	<u>Registration No.</u>	<u>Registration Date</u>
Bear	1,016,737	TMA561,902	May 14, 2002
Beetle	1,016,736	TMA539,597	January 12, 2001
Cricket	1,016,735	TMA541,215	February 15, 2001
CXO	1,150,758	TMA600,441	January 23, 2004
Enersorb	863,176	TMA502,712	October 23, 1998
Ergoxtra	850,568	TMA501,240	September 25, 1998
N & Design	331,897	TMA176,108	May 14, 1971
Nightingale	331,831	TMA175,342	April 2, 1971

Canadian Trade-Mark Applications

N & Design 1,102,193

U.S. Trade-Marks

<u>Trade-mark</u>	<u>Serial No.</u>	<u>Registration No.</u>	<u>Registration Date</u>
Beetle	75-787,978	2,513,923	December 4, 2001
Cricket	75-787,975	2,513,922	December 4, 2001
Enersorb	75-495,342	2,337,369	April 4, 2000
Ergoxtra	75-369,742	2,283,881	October 5, 1999
N & Design	75-719,547	2,415,313	December 26, 2000

U.S. Trade-Mark Applications

Bear 75-787,977
Nightingale 76-250,056
CXO 78/160,816

EXHIBIT "D"**DESIGNS*****U.S. Design Patents***

<u>Title</u>	<u>Issue No.</u>	<u>Issued</u>
Chair (Series 500 – Cricket)	Des 334,298	March 30, 1993
Chair (Series 4000)	Des 380,102	August 24, 1997
Side Chair (Series 4000)	Des 380,098	August 24, 1997
Chair (Series 4300)	Des 390,369	February 10, 1998
Stacking Chair (Series 300 Beetle)	Des 393,757	April 28, 1998
Chair (Series 7300)	Des 425,715	May 30, 2000
Chair (Series 6700)	Des 414,951	October 12, 1999
Chair (4100)	Des 440,418	April 17, 2001
Chair	Des 413,027	August 24, 1999
Highback Chair	Des 368,596	April 9, 1996
Back Support Chair	Des 369,259	April 30, 1996
Back Support Chair	Des 391,790	March 10, 1998

Canadian Designs

<u>Title</u>	<u>Application No.</u>	<u>Filed</u>
Side Chair (Mesh Chair)	2001-1502	August 15, 2001
Chair (Mesh Chair)	2001-1503	August 15, 2001

<u>Title</u>	<u>Issue No.</u>	<u>Issued</u>
Chair (Series 4000)	79303	October 25, 1996
Side Chair (Series 4000)	79304	October 25, 1996
Chair (Series 4100)	83488	March 27, 1998
Chair (Series 4300)	84639	August 21, 1998

Chair (Series 300 – Beetle)	86451	April 23, 1999
Chair (Series 4400 - Bear)	88969	March 31, 2000
Chair (Series 6700)	94426	January 18, 2002
Chair (Series 6700)	94427	January 18, 2002
Office Chair	103752	August 29, 2003

EXHIBIT "E"

LICENSES GRANTED

#5065548 v3