

06-16-2004

6-16-04

Form PTO-1594

(Rev. 10/02)

OMB No. 0651-0027 (exp. 6/30/2005)

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

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

## 1. Name of conveying party(ies):

DIGITAL EXCHANGE 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: 6/11/04

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

Name: The CIT Group/Business Credit, Inc.

Internal

Address: \_\_\_\_\_

Street Address: 1211 Avenue of the Americas

City: New York State: NY Zip: 10036

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

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) 2664174, 2567446

Additional number(s) attached ☐ Yes ☒ No

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

Name: Joseph Makseyn

Internal Address: Otterbourg, Steindler

Street Address: 230 Park Avenue

City: New York State: NY Zip: 10169

## 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:

DO NOT USE THIS SPACE

## 9. Signature.

Joseph Makseyn

Name of Person Signing

Signature

Date

6/15/04

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

11

06/16/2004 6TON11

00000079 2664174

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

01 FC:8521  
02 FC:852240.00 OP  
25.00 OP

TRADEMARK  
 REEL: 002990 FRAME: 0382

**GRANT OF SECURITY INTEREST IN  
PATENTS, TRADEMARKS AND LICENSES**

THIS GRANT OF SECURITY INTEREST IN PATENTS, TRADEMARKS AND LICENSES (herein the "Agreement") made as of this 11th day of June, 2004, by DIGITAL EXCHANGE SYSTEMS, INC., a Delaware corporation with a principal place of business at 9051 Florida Mining Boulevard, Suite 108-110, Tampa, Florida 33634 (herein the "Company"), and The CIT Group/Business Credit, Inc., a New York corporation, with offices at 1211 Avenue of the Americas, New York, New York 10036, in its capacity as agent (in such capacity, together with its successors and assigns, "Agent") pursuant to the Financing Agreement (hereinafter defined) acting for and on behalf of the financial institutions which are parties thereto as lender (each a "Lender" and collectively, the "Lenders").

**W I T N E S S E T H:**

WHEREAS, TRI BORO, INC., a New Jersey corporation with a principal place of business at 777 Terrace Avenue, Hasbrouck Heights, New Jersey 07604, BEST WHOLESALE, INC., a Florida corporation with a principal place of business at 455 Fairway Drive, Suite 102, Deerfield Beach, Florida 33441, VALU TRADING GROUP, INC. a Florida corporation with its principal place of business at 455 Fairway Drive, Suite 102, Deerfield Beach, Florida 33441, CHESAPEAKE SALES COMPANY, INC., a Maryland corporation with its principal place of business at 26720 Arcadia Shores Road, Easton, Maryland 21601, ABACUS SALES, INC., a Florida corporation with its principal place of business at 455 Fairway Drive, Suite 102, Deerfield Beach, Florida 33441, MARKET LOGISTICS COMPANY, INC., a New Jersey corporation with its principal place of business at 777 Terrace Avenue, Hasbrouck Heights, New Jersey 07604, DEXSI FINANCE COMPANY, LLC, a Delaware limited liability company with its principal place of business at 777 Terrace Avenue, Hasbrouck Heights, New Jersey 07604, and SIREN SALES COMPANY, Inc., a California corporation (herein each a "Borrower" and collectively, the "Borrowers"), Agent and the Lenders are parties to a certain Financing Agreement of even date herewith, as the same may be amended from time to time (herein the "Financing Agreement"), which Financing Agreement provides (i) for Agent and the Lenders to make certain loans, advances and extensions of credit, all to or for the account of the Borrowers and (ii) for the grant by the Borrowers to Agent on behalf of the Lenders of a security interest in certain of the Borrowers' assets;

WHEREAS, as an inducement to the Agent and the Lenders to make loans or advances to the Borrowers or otherwise to extend credit or financial accommodations to the Borrowers, the Company has entered into a Security Agreement of even date herewith, as the same may be amended from time to time (herein, the "Security Agreement"), which Security Agreement provides that the Company grants to Agent on behalf of the Lenders a security interest in certain of the Company's assets, including, without limitation, its patents, patent applications and/or registrations, trademarks, trademark applications and/or registrations, tradenames, goodwill and licenses, all as more fully set forth therein, as security for the prompt payment and performance of all (i) Obligations (as defined in the Guaranty dated of even date herewith between the Company and Agent) of the Company to Agent and (ii) Obligations (as defined in the Financing Agreement) of the Borrowers to Agent and the Lenders.

NOW THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, the Company agrees as follows:

1. Definitions. Capitalized terms used herein and defined in the Financing Agreement shall have the meanings set forth therein unless otherwise specifically defined herein.

2. Grant of Security Interest. To secure the payment of the Obligations (as defined in the Guaranty), the Company hereby grants to Agent on behalf of the Lenders a security interest, effective immediately, in all of the Company's right, title and interest in and to all of the following described property, whether now owned or hereafter acquired (collectively herein the "Intellectual Property Collateral"):

(i) Patents and patent applications and/or registrations together with the inventions and improvements described and claimed therein including, without limitation, the patents and applications, if any, listed on Schedule A, attached hereto and made a part hereof, and any and all reissues and renewals thereof and all income, royalties, damages and payments now and hereafter due and/or payable in connection therewith including, without limitation, damages and payments for past or future infringements thereof (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Patent Collateral");

(ii) Trademarks, trademark registrations and/or applications and tradenames including, without limitation, the trademarks and applications, if any, listed on Schedule B attached hereto and made a part hereof, and any and all reissues and/or renewals thereof, and all income, royalties, damages and payments now and hereafter due and/or payable in connection therewith including, without limitation, damages and payments for past or future infringements thereof (all of the foregoing are sometimes hereinafter individually and/or collectively referred to as the "Trademark Collateral");

(iii) Any license agreement in which the Company is or becomes licensed to use any patents and/or trademarks owned by a third party including, without limitation, the licenses, if any, listed on Schedule C attached hereto and made a part hereof (all of the foregoing are sometimes referred to herein individually and/or collectively as the "License Collateral");

(iv) The goodwill of the Company's business connected with and symbolized by the Intellectual Property Collateral; and

(v) All cash and non-cash proceeds of the foregoing.

3. Agent's Rights. Upon the occurrence of any Event of Default hereunder, Agent shall have all the rights and remedies of a secured party under the Uniform Commercial Code and any other applicable state or federal laws. Agent will give the Company reasonable notice of the time and place of any public sale of the Intellectual Property Collateral or the time after which any private sale of the Intellectual Property Collateral or any other intended disposition thereof is to be made. Unless otherwise provided by law, the requirement of reasonable notice shall be met if such notice is mailed, postage prepaid to the address of the Company set forth above at least ten (10) days before the date of such sale or disposition. In addition to the foregoing and all other rights and remedies of Agent upon the occurrence of any Event of Default hereunder, Agent shall thereupon have the immediate right to transfer to itself or to sell, assign and transfer to any other person all right, title and interest in and to all or any part of the Intellectual Property Collateral. A formal irrevocable power of attorney (in the form annexed hereto) is being executed and delivered by the Company to Agent concurrently with this Agreement to enable such rights to be carried out, which power of attorney may only be used upon an Event of Default. The Company agrees that, in the event Agent exercises its rights hereunder and/or pursuant to said power of attorney in accordance with its terms, after written notification of such exercise from Agent to the Company, the Company shall never thereafter, without the prior written

authorization of the owner or owners of such Intellectual Property Collateral, use any of such Intellectual Property Collateral. The condition of the foregoing provision is such that unless and until there occurs an Event of Default under this Agreement, the Company shall continue to own and use the Intellectual Property Collateral in the normal course of its business and to enjoy the benefits, royalties and profits therefrom provided, however, that from and after the occurrence of an Event of Default which is not waived in writing by Agent, such right will, upon the exercise by Agent of the rights provided by this Agreement, be revoked and the right of the Company to enjoy the uses, benefits, royalties and profits of said Intellectual Property Collateral will wholly cease, whereupon Agent or its transferee(s) shall be entitled to all of the Company's right, title and interest in and to the Intellectual Property Collateral hereby so assigned. This Agreement will not operate to place upon Agent any duty or responsibility to maintain the Intellectual Property Collateral.

4. Fees. The Company will pay all filing fees with respect to the security interest created hereby which Agent may deem necessary or advisable in order to perfect and maintain the perfection of its security interest in the Intellectual Property Collateral.

5. Representations and Warranties. The Company represents and warrants: that the Company lawfully possesses and owns the Intellectual Property Collateral and that except for the security interest granted hereby and Permitted Encumbrances (as defined in the Financing Agreement), the Intellectual Property Collateral will be kept free from all liens, security interests, claims and encumbrances whatsoever; that the Company has not made or given any prior assignment, transfer or security interest in the Intellectual Property Collateral or any of the proceeds thereof; that the Intellectual Property Collateral is and will continue to be, in all respects, in full force and effect; and that there are no known infringements of the Intellectual Property Collateral.

6. Application of Proceeds. Following an Event of Default, the proceeds of any sale, transfer or disposition of the Intellectual Property Collateral shall be applied first to all costs and expenses, including, but not limited to, reasonable attorneys' fees and expenses and court costs, incurred by Agent in connection with such sale and the exercise of Agent's rights and remedies hereunder and under the Financing Agreement; next, such proceeds shall be applied to the payment, in whole or in part, of the Obligations due Agent in such order as Agent may elect; and the balance, if any, shall be paid to the Company or as a court of competent jurisdiction may direct.

7. Defense of Claims. The Company will defend at its own cost and expense any action, claim or proceeding affecting the Intellectual Property Collateral or the interest of Agent therein. The Company agrees to reimburse Agent for all costs and expenses incurred by Agent in defending any such action, claim or proceeding.

8. Rights Cumulative. This Agreement shall be in addition to the Financing Agreement and shall not be deemed to affect, modify or limit the Financing Agreement or any rights that Agent has under the Financing Agreement. The Company agrees to execute and deliver to Agent (at the Company's expense) any further documentation or papers necessary to carry out the intent or purpose of this Agreement including, but not limited to, financing statements under the Uniform Commercial Code.

9. Construction and Invalidity. Any provisions hereof contrary to, prohibited by or invalid under any laws or regulations shall be inapplicable and deemed omitted herefrom, but shall not invalidate the remaining provisions hereof.

**10. CHOICE OF LAW.** THE COMPANY AGREES THAT THE VALIDITY, INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT AND ALL RIGHTS HEREUNDER SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK. THIS AGREEMENT TOGETHER WITH THE FINANCING AGREEMENT CONSTITUTES THE ENTIRE AGREEMENT OF THE COMPANY AND AGENT WITH RESPECT TO THE INTELLECTUAL PROPERTY COLLATERAL, CAN ONLY BE CHANGED OR MODIFIED IN WRITING AND SHALL BIND AND BENEFIT THE COMPANY, AGENT AND THEIR RESPECTIVE SUCCESSORS AND ASSIGNS. THE COMPANY AND AGENT EACH HEREBY EXPRESSLY WAIVES ANY RIGHT OF TRIAL BY JURY ON ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING HEREUNDER.

**11. Events of Default.** Any of the following constitutes an Event of Default under this Agreement:

- (i) The Company fails to perform or observe any agreement, covenant or condition required under this Agreement;
- (ii) Any warranty or representation made by Company, in this Agreement shall be or becomes false or misleading in any material respect; or
- (iii) The occurrence of any Event of Default under the Guaranty which is not waived in writing by Agent.

**12. Notices.** The Company covenants and agrees that, with respect to the Intellectual Property Collateral, it will give Agent written notice in the manner provided in the Financing Agreement of:

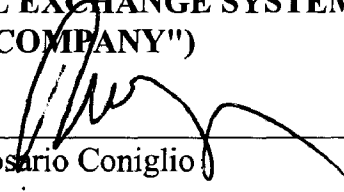
- (i) any claim by a third party that the Company has infringed on the rights of a third party;
- (ii) any suspected infringement by a third party on the rights of the Company; or
- (iii) any Intellectual Property Collateral created, arising or acquired by the Company after the date hereof.

**13. Further Assurances.** The Company will take any such action as Agent may reasonably require to further confirm or protect Agent's rights under this Agreement in the Intellectual Property Collateral. In furtherance thereof, the Company hereby grants to Agent on behalf of the Lenders a power of attorney coupled with an interest which shall be irrevocable during the term of this Agreement to execute any documentation or take any action in the Company's behalf required to effectuate the terms, provisions and conditions of this Agreement.

**14. Termination.** This Agreement shall terminate upon termination of the Financing Agreement and full, final and indefeasible payment of all Obligations thereunder. Upon the Company's request, Agent shall within a reasonable time after any such termination execute and deliver to the Company (at the Company's expense) such documents and instruments as are reasonably necessary to evidence such termination and release of the security interest granted herein on any applicable public record.

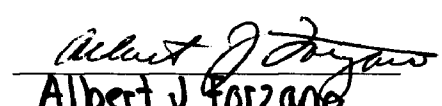
**IN WITNESS WHEREOF**, the parties hereto have duly executed this Agreement as of the 11th day of June, 2004.

**DIGITAL EXCHANGE SYSTEMS, INC.  
(THE "COMPANY")**

By:   
Name: Rosario Coniglio  
Title: Chairman

Agreed and Accepted this  
11th day of June, 2004

**THE CIT GROUP/BUSINESS CREDIT, INC., as Agent**

By:   
Name: Albert J. Forzane  
Title: Vice President

## FORM OF IRREVOCABLE POWER OF ATTORNEY

DIGITAL EXCHANGE SYSTEMS, INC., a Delaware corporation with a principal place of business at 9051 Florida Mining Boulevard, Suite 108-110, Tampa, Florida 33634 (herein the "Company"), hereby grants to THE CIT GROUP/BUSINESS CREDIT, INC., a New York corporation, with offices at 1211 Avenue of the Americas, New York, New York 10036, in its capacity as agent (in such capacity, together with its successors and assigns, the "Agent") for and on behalf of the financial institutions which are parties to that certain Financing Agreement of even date herewith as lender (each a "Lender", and collectively, the "Lenders"), the exclusive Irrevocable Power of Attorney to transfer to Agent or to any designee of Agent all Intellectual Property Collateral listed on the Schedules attached to the Grant of Security Interest in Patents, Trademarks and Licenses (the "Agreement"), dated as of the date hereof, between the Company and Agent including, without limitation, all patents, patent applications and/or registrations, trademarks, trademark applications and/or registrations, and licenses together with the goodwill of the business connected with or symbolized by such Intellectual Property Collateral and the Company's entire inventory of labels and decals bearing any trademarks not affixed to its products, and the right to operate and control, sell, assign, and transfer the business under those trademarks under the following terms and conditions:

1. The Power of Attorney granted hereunder shall be effective as of the date hereof and shall last for as long as any now existing or hereafter arising indebtedness, liabilities or obligations of the Company to Agent and Lenders are outstanding under the Guaranty, dated on or about the date hereof, between the Company and Agent.

2. The Power of Attorney granted herein shall be irrevocable throughout the duration of its life as specified in Paragraph 1 hereinabove;

**IN WITNESS WHEREOF**, the Company has caused this Power of Attorney to be executed as of the \_\_\_ day of June, 2004.

**DIGITAL EXCHANGES SYSTEMS, INC.  
(THE "COMPANY")**

By: \_\_\_\_\_  
Name: Rosario Coniglio  
Title: Chairman

STATE OF NEW YORK     )  
                                      )  
COUNTY OF NEW YORK    )

On June 11, 2004, before me, the undersigned, a notary public in and for said State, personally appeared Rosario Coniglio known to me to be the Chairman of DIGITAL EXCHANGE SYSTEMS, INC., the entity that executed the within instrument, and acknowledged to me that such entities executed the within instrument pursuant to their by-laws and a resolutions of their board of directors.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public



SCHEDULE A TO GRANT OF SECURITY INTEREST IN PATENTS,  
TRADEMARKS AND LICENSES

between

DIGITAL EXCHANGE SYSTEMS, INC.

and

THE CIT GROUP/BUSINESS CREDIT, INC., as Agent

U.S. PATENTS

<u>Title</u>	<u>Patent No.</u>	<u>Issue Date</u>
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**NONE**

SCHEDULE B TO GRANT OF SECURITY INTEREST IN PATENTS,  
TRADEMARKS AND LICENSES

between

DIGITAL EXCHANGE SYSTEMS, INC.

and

THE CIT GROUP/BUSINESS CREDIT, INC., as Agent

U.S. TRADEMARKS

<u>Title or Mark</u>	<u>Serial No.</u>	<u>Registration No.</u>	<u>Registration Date</u>
Dexsi.com	76/158935	2664174	12/17/02
Intellitrader	76/314287	2567446	05/07/02

SCHEDULE C TO GRANT OF SECURITY INTEREST IN PATENTS,  
TRADEMARKS AND LICENSES

between

DIGITAL EXCHANGE SYSTEMS, INC.

and

THE CIT GROUP/BUSINESS CREDIT, INC., as Agent

U.S. LICENSES

<u>Name</u>	<u>Registration No.</u>	<u>Registration Date</u>
-------------	-------------------------	--------------------------

NONE

June 15, 2004

Page 2

cc: Harris J. Diamond, Esq.

RECEIPT ACKNOWLEDGED:

By: \_\_\_\_\_

Title: \_\_\_\_\_

June 15, 2004

Page 2

cc: Harris J. Diamond, Esq.

RECEIPT ACKNOWLEDGED:

By: \_\_\_\_\_

Title: \_\_\_\_\_

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