

6/24/04

06-29-2004

Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005)

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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.

<p>1. Name of conveying party(ies): Harvey Research, Inc.</p> <p><input type="checkbox"/> Individual(s) <input type="checkbox"/> Association <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input checked="" type="checkbox"/> Corporation-State <input type="checkbox"/> Other _____</p> <p>Delaware Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>2. Name and address of receiving party(ies)</p> <p>Name: <u>Cephas Capital Partners, L.P.</u> Internal Address: _____</p> <p>Street Address: <u>50 Monroe Avenue, Suite D</u> City: <u>Pittsford</u> State: <u>NY</u> Zip: <u>14534</u></p> <p><input type="checkbox"/> Individual(s) citizenship _____ <input type="checkbox"/> Association _____ <input type="checkbox"/> General Partnership _____ <input checked="" type="checkbox"/> Limited Partnership <u>New York</u> <input type="checkbox"/> Corporation-State _____ <input type="checkbox"/> Other _____</p> <p>If assignee is not domiciled in the United States, a domestic representative designation is attached: <input type="checkbox"/> Yes <input type="checkbox"/> No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>3. Nature of conveyance:</p> <p><input type="checkbox"/> Assignment <input type="checkbox"/> Merger <input checked="" type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input type="checkbox"/> Other _____</p> <p>Execution Date: <u>May 5, 2004</u></p>	<p>4. Application number(s) or registration number(s):</p> <p>A. Trademark Application No.(s) B. Trademark Registration No.(s) <u>2,039,106</u></p> <p>Additional number(s) attached <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p>
<p>5. Name and address of party to whom correspondence concerning document should be mailed:</p> <p>Name: <u>Neal L. Slifkin</u> Internal Address: <u>Harris Beach LLP</u> _____ _____ Street Address: <u>99 Garnsey Road</u> <u>06/28/2004 MS2ACH00000078 2039106</u> <u>01 FC:8521 40.00 OP</u> <u>02 FC:8522 25.00 OP</u> City: <u>Pittsford</u> State: <u>NY</u> Zip: <u>14534</u></p>	<p>6. Total number of applications and registrations involved: <u>2</u></p> <p>7. Total fee (37 CFR 3.41).....\$ <u>65.00</u></p> <p><input checked="" type="checkbox"/> Enclosed <input type="checkbox"/> Authorized to be charged to deposit account</p> <p>8. Deposit account number: <u>08-0865</u></p> <p>(Attach duplicate copy of this page if paying by deposit account)</p> <p style="writing-mode: vertical-rl; transform: rotate(180deg);">OPR/FINANCE 2004 JUN 24 11 58 AM</p>
DO NOT USE THIS SPACE	
<p>9. Statement and signature. <i>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.</i></p> <p><u>Neal L. Slifkin</u> <u><i>Neal Slifkin</i></u> <u>6/23/04</u> Name of Person Signing Signature Date</p> <p style="text-align: right;">Total number of pages including cover sheet, attachments, and document: <u>12</u></p>	

Mail documents to be recorded with required cover sheet information to: Mail Stop Assignment Recordation Services Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450

TRADEMARK REEL: 002999 FRAME: 0048

**Attachment for Recordation Form Cover Sheet
Trademarks Only (Form PTO-1594)**

Continuation of Item 4. Additional Application Number(s) or Registration Number(s)

A. Trademark Application No.(s):

B. Trademark Registration No.(s): 2,555,686

CONTINGENT TRADEMARK AND LICENSE ASSIGNMENT

THIS AGREEMENT IS SUBJECT TO THE TERMS OF A THIRD PARTY SUBORDINATION AGREEMENT DATED AS OF MAY 5, 2004 AMONG ASSIGNOR, ASSIGNEE, AND CITIZENS BANK OF MASSACHUSETTS (AS AMENDED, SUPPLEMENTED, OR OTHERWISE MODIFIED FROM TIME TO TIME, "THE SUBORDINATION AGREEMENT")

THIS CONTINGENT TRADEMARK AND LICENSE ASSIGNMENT ("*Collateral Assignment*") is made by HARVEY RESEARCH, INC., a Delaware corporation having its principal office and place of business at 6800 Pittsford-Palmyra Road, Cedarwood Office Park, Suite 400, Fairport, New York 14450 ("*Assignor*"), in favor of CEPHAS CAPITAL PARTNERS, L.P., a New York limited partnership having its principal office and place of business at 50 Monroe Avenue, Suite D, Pittsford, New York 14534 ("*Assignee*");

WITNESSETH:

WHEREAS, Assignor and Assignee are parties to a certain Note and Warrant Purchase Agreement among Assignor, Assignee and Shareholders named therein of even date herewith (as such agreement may hereafter be amended, supplemented, amended and restated, renewed or otherwise modified from time to time, the "*Purchase Agreement*"), which Purchase Agreement provides for the Assignee to extend credit to the Assignor, and for the grant by Assignor to Assignee of a security interest in certain of Assignor's assets, including, without limitation, its service marks, service mark applications, service names, trademarks, trademark applications, trade names, goodwill and licenses; and

WHEREAS, this Collateral Assignment and all of the rights and remedies of the Assignee hereunder are expressly subordinate to the rights and remedies of the Senior Creditor (as defined in the Purchase Agreement), as provided in the Subordination Agreement;

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor and Assignee agree as follows:

1. Security Interest in Trademarks, Goodwill, and Licenses. To secure the complete and timely satisfaction of all of the liabilities and obligations of every kind or nature of Assignor to Assignee under or related to the Purchase Agreement and all notes, agreements, and documents delivered in connection therewith, including as extended, modified, or replaced from time to time (the "*Obligations*"), Assignor hereby grants and conveys to Assignee a lien and security interest in all of the Assignor's right, title and interest in and to all of its now owned or existing and filed and hereafter acquired or arising and filed:

(i) trademarks, trademark registrations, trade names and trademark applications, service marks, service mark registrations, service names and service mark applications, including, without limitation, the trademarks, trademark registrations, trade names

and trademark applications, service marks, service mark registrations, service names and service mark applications listed on Schedule A, attached hereto and made a part thereof, and (a) renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payment for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of which foregoing trademarks, service marks, trademark and service mark registrations, trade names, service names and applications, together with the items described in clauses (a)-(d), are sometimes hereinafter individually and/or collectively referred to as the "*Trademarks*");

(ii) the goodwill of Assignor's business including but not by way of limitation such goodwill connected with and symbolized by the Trademarks (the "*Goodwill*"); and

(iii) rights under license agreements, including without limitation those listed on Schedule B attached hereto and made a part hereof, with any other party relating to Intellectual Property or proprietary rights of any kind or nature, whether Assignor is a licensor or licensee under any such license agreement (the "*Licenses*").

The collateral assignment, lien, rights, and interests granted hereunder are hereby subordinated to any assignment, lien, rights, and interests which are granted by the Assignor to secure the Senior Indebtedness (as defined in the Purchase Agreement) and the rights of Assignee hereunder are subject to the provisions of Article 5 of the Purchase Agreement and to the terms and provisions of the Subordination Agreement.

2. Restrictions on Future Assignments. Assignor agrees that until the Obligations shall have been satisfied in full and the Purchase Agreement shall have been terminated, Assignor will not, without Assignee's prior written consent, enter into any agreement relating to the Trademarks, Goodwill, or Licenses which would limit or restrict the rights of Assignee hereunder and Assignor further agrees that it will not take any action, or permit any action to be taken by others subject to its control, including licensees, or fail to take any action which would affect the validity or enforcement of the rights granted to Assignee under this Collateral Assignment. Notwithstanding the foregoing, Assignor may enter into any and all agreements with holders of Senior Indebtedness related to the grant of liens on, or the assignment of, the Trademarks, Goodwill, and Licenses.

3. New Trademarks. Assignor represents and warrants that the Trademarks and Licenses listed on Schedules A and B, respectively, constitute all of the service marks, trademarks, and applications now owned by Assignor, and all licenses to which Assignor is a party, in each case as of the date hereof. If, before the Obligations shall have been satisfied in full, Assignor shall (i) obtain rights to any new trademarks, trademark registrations, trade names, service marks, service mark registrations, service names, or licenses, or (ii) become entitled to the benefit of any service mark or trademark application, service mark, service mark registration, trademark, trademark registration, or license renewal, the provisions of this Collateral Assignment shall automatically apply thereto and Assignor shall give to Assignee prompt written notice thereof. Assignor hereby authorizes Assignee as attorney in fact to modify this Collateral Assignment by amending Schedules A and B, as applicable, to include any future service marks,

service mark registrations, service mark applications, service names, trademarks, trademark registrations, trademark applications, trade names and licenses which are Trademarks or Licenses, as applicable, under Sections 1 and 2 above or under this Section 3, and to file or refile this Collateral Assignment with the United States Patent and Trademark Office.

4. Representations and Warranties. Assignor represents and warrants to and agrees with Assignee that:

(i) the Trademarks and Licenses are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;

(ii) to the best knowledge of Assignor, each of the Trademarks and Licenses is valid and enforceable;

(iii) Assignor is the owner of the Trademarks, and to the extent indicated therein, is a party to the Licenses, and has the power and authority to make, and will continue to have authority to perform, this Collateral Assignment according to its terms;

(iv) to the best knowledge of Assignor, this Collateral Assignment does not violate and is not in contravention of any other agreement to which Assignor is a party or any judgment or decree by which Assignor is bound and does not require any consent under any other agreement to which Assignor is a party or by which Assignor is bound except under the Senior Loan Agreement (as defined in the Purchase Agreement); and

(v) there has been no prior sale, pledge, encumbrance, assignment or other transfer or disposition of any of the Trademarks or Licenses or any part thereof, and the same are free from all liens, charges and encumbrances of any kind, including but not limited to licenses, shop rights and covenants not to sue third persons, other than liens permitted by the Purchase Agreement.

Notwithstanding anything to the contrary contained herein, however, Assignor has granted and in the future may grant liens and rights to holders of Senior Indebtedness, and the rights of Assignee and such holders shall be subject to the Subordination Agreement and any future intercreditor agreement.

5. Royalties/Term. Assignor hereby agrees that the use by Assignee of all Trademarks and Licenses as provided herein shall be worldwide and without any liability for royalties or other related charges from Assignee to the Assignor. The term of the security interests granted herein shall extend until the earlier of (i) the expiration of each of the respective Trademarks and Licenses assigned hereunder, or (ii) the Obligations have been paid in full and the Purchase Agreement has been terminated.

6. Rights of Assignor. Unless and until an Event of Default shall have occurred and the Assignee shall exercise its rights and remedies with respect to the Trademarks and Licenses as permitted under the Purchase Agreement and hereunder, Assignor may use the Trademarks and Licenses for Assignor's own benefit and account and for none other. Assignor agrees not to sell or assign its interest in, or grant any sublicense with respect to the Trademarks and Licenses

without the prior written consent of Assignee except in favor of holders of the Senior Indebtedness. From and after the occurrence of an Event of Default and the exercise by Assignee of its rights and remedies with respect to the Trademarks and Licenses as permitted under the Purchase Agreement and hereunder, Assignor's rights to use the Trademarks and Licenses as set forth in this Section 6 shall terminate forthwith, and Assignor authorizes Assignee, and grants a power of attorney in favor of Assignee to act on Assignor's behalf, subject however to the rights of holders of the Senior Indebtedness, to take all actions necessary to transfer the Trademarks and Licenses into the name of Assignee. Assignee shall have, in addition to all other rights and remedies given it by this Collateral Assignment, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Trademarks and Licenses may be located, including, but not by way of limitation, the location of Assignee's headquarters.

7. Release. Upon payment in full of the obligations and termination of the Purchase Agreement, Assignee shall execute and deliver to Assignor releases and terminations as may be necessary or proper to terminate the interests in the Trademarks and Licenses granted hereby, subject to any disposition thereof which may have been made by Assignee after the occurrence of an Event of Default pursuant hereto or pursuant to the Purchase Agreement and Subordination Agreement.

8. Duties of Assignor. So long as the Trademarks and Licenses, or interests therein, are owned or held by Assignor, Assignor shall have the duty to (i) prosecute diligently any trademark or service mark application of the Trademarks made by it pending as of the date hereof or thereafter until the Obligations shall have been paid in full, (ii) make application on trademarks and service marks, as appropriate, and (iii) preserve and maintain all of its rights in trademark applications, trademarks, trademark registrations, service mark applications, service marks, and service mark registrations of the Trademarks. Any expenses incurred in connection with such applications shall be borne by Assignor. Assignor shall not abandon any right to file a Trademark application, or any pending Trademark application or Trademark, without the consent of Assignee which will not be unreasonably withheld.

9. Financing Statements/Documents. Assignor authorizes the Assignee to execute and file, and at the request of Assignee, Assignor will join with Assignee in executing one or more financing statements pursuant to the Uniform Commercial Code as adopted in the State of New York in form satisfactory to Assignee, and will pay the costs of filing and/or recording this Collateral Assignment and all financing, continuation and termination statements in all public offices where filing or recording is deemed necessary or desirable by Assignee. Assignor will execute and deliver to Assignee from time to time such supplemental assignments or other instruments, including, but not by way of limitation, additional assignments to be filed with the United States Patent and Trademark office, as Assignee may require for the purpose of confirming Assignee's interest in the Trademarks and Licenses; provided, however, that any actual assignment (which is not collateral in form securing indebtedness to the Assignee) shall be executed and delivered only after an Event of Default in connection with the exercise by Assignee of its rights and remedies and shall at all times be subject to the rights of the holders of the Senior Indebtedness. After an Event of Default and the exercise by Assignee of its rights and remedies with respect to the Trademarks and Licenses as permitted under the Purchase

Agreement and hereunder and subject to the rights of the holders of the Senior Indebtedness, upon request of Assignee, Assignor hereby authorizes the Commissioner of Patents and Trademarks to issue any and all certificates of registration on all Trademarks to Assignee as assignee of Assignor's entire interest.

10. Assignee's Right to Sue. Upon failure of Assignor to enforce the Trademarks and Licenses after notice from Assignee requesting such enforcement, after an Event of Default and the exercise of its rights and remedies, Assignee shall have the same rights, if any, as Assignor has, but shall in no way be obligated, to bring suit in its own name to enforce the Trademarks and Licenses, and, if Assignee shall commence any such suit, Assignor shall, at the request of Assignee, do any and all lawful acts and execute any and all proper documents required by Assignee in aid of such enforcement and Assignor shall promptly, upon demand and as a part of the obligations, reimburse and indemnify Assignee for all costs and expenses incurred by Assignee in the exercise of its rights under this Section 10. After first giving Assignee a reasonable opportunity to bring suit in its own name to enforce the Trademarks and Licenses, Assignor may bring such suit in its own name.

11. Waivers. No course of dealing between Assignor and Assignee nor any failure to exercise nor any delay in exercising, on the part of Assignee, any right, power or privilege hereunder or under the Purchase Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

12. Severability. The provisions of this Collateral Assignment are severable, and if any clause or provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Collateral Assignment in any jurisdiction.

13. Modification. This Collateral Assignment cannot be altered, amended or modified in any way, except as specifically provided in Section 3 hereof or by a writing signed by the parties hereto.

14. Cumulative Remedies/Effect on Purchase Agreement. All of Assignee's rights and remedies with respect to the Trademarks and Licenses, whether established hereby or by the Purchase Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Assignor acknowledges and agrees that this Collateral Assignment is not intended to limit or restrict in any way the rights and remedies of Assignee under the Purchase Agreement but rather is intended to facilitate the exercise of such rights and remedies.

15. Binding Effect/Benefits. This Collateral Assignment shall be binding upon the Assignor and its respective successors and assigns, and shall inure to the benefit of Assignee, its successors and assigns.

16. Governing Law. This Collateral Assignment has been delivered and accepted in, and shall be governed by and construed in accordance with the laws of, the State of New York without giving effect to principles of conflicts of laws.

17. Capitalized Terms. Capitalized terms not otherwise defined in this Collateral Assignment shall have the meanings given to them by the Purchase Agreement.

IN WITNESS WHEREOF, the Assignor, by its duly authorized officer, has executed this Collateral Assignment as of May 5, 2004.

[Signature Pages Follow]

HARVEY RESEARCH, INC.

By:



William M. McBride

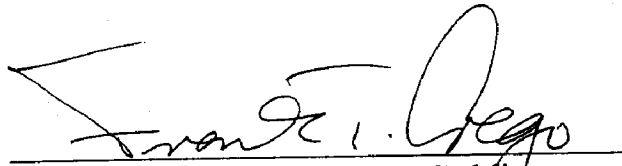
President

STATE OF NEW YORK)

)SS.:

COUNTY OF MONROE)

On the 28th day of April in the year 2004 before me, the undersigned, a notary public in and for said state, personally appeared William M. McBride, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s), or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public

FRANK T. CREGO
Notary Public in the State of New York
Monroe County, Reg. # D2CR4501071
Commission Expires November 30, 2005

TRADEMARK

REEL: 002999 FRAME: 0056

Accepted at Rochester, New York
as of ~~April 29, 2004~~ May 5, 2004

CEPHAS CAPITAL PARTNERS, L.P.

By: Chephas LLC, General Partner

By: 

Managing Member

**SCHEDULE A
(Trademarks)**

- “AD-Q” Registered on February 18, 1997 with the United State Patent and Trademark Office - Registration Number 2,039,106
- “MAGtrack” Registered on June 15, 1993 with the Trade Marks Registry (Great Britain and Northern Ireland) - Registration Number 1,538,540. Renewed on June 15, 2000.
- “Harvey” Registered on April 2, 2002 with the United State Patent and Trademark Office - Registration Number 2,555,686
- “AD-Q” Registered on July 11, 1997 with the Trade Marks Registry (Great Britain and Northern Ireland) - Registration Number 2,138,792
- “AD-Q” Registered on July 23, 1998 with the Canadian Intellectual Property Office - Registration Number TMA497,656. File Number 850091.

**SCHEDULE B
(Licenses)**

None other than off the shelf software licenses