

REC

10-23-2006



To the Director of the U.S. Patent and Trademark Office

103325561

Comments or the new address(es) below.

10-20-06

1. Name of conveying party(ies):

Hyperformix, Inc.

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

Additional name(s) of conveying parties attached? Yes No

3. Nature of conveyance/ Execution Date(s):

Execution Date(s): 08/04/06

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

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

Additional name(s) of conveying parties attached? Yes No

Name: **Silicon Valley Bank**
Internal Address Loan Documentation HF 154

Street Address: 3003 Tasman Dr.

City **Santa Clara**
State **CA**
Country **USA**
Zip **95054**

- Association Citizenship
- General Partnership Citizenship
- Limited Partnership Citizenship
- Corporation Citizenship
- Other Citizenship

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)

OFR/FINANCE
OCT 20 AM 11:39

4. Application number(s) or registration number(s) and identification or description of the Trademark:

A. Trademark Application No.(s)

75/802,928 78/408,713 75/879,637

76/071,827 78/494,295 75/879,636

76/312/664 78/494,293 75/748,995

78/267,023 78/494,290 78/408,720

78/267,035 75/879,638

B. Trademark Registration No.(s)

2,784,602 3,078,802 2,425,384

2,729,729 1,842,582

3,101,031 2,782,612 2,614,451

1,804,624 3,068,983 2,111,343

4,534,747 3,068,984 2,082,440

C. Identification or Description of Trademark(s) (and Filing Date if Application or Registration Number is unknown):

Additional sheets attached? Yes No

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

Name: **Silicon Valley Bank**
Internal Address: **Loan Collateral HF154**
Street Address: **3003 Tasman Dr.**
City: **Santa Clara** State: **CA** ZIP: **95054**
Phone Number: **(408) 654-4042**
Fax Number: **(408) 654-6313**
Email Address: **ldc@svbank.com**

6. Total number of applications and registrations involved: **28**

7. Total fee (37 CFR 2.6 (b)(6) & 3.41): \$: **715.--**

- Authorized to be charged by credit card
- Authorized to be charged to deposit account
- Enclosed

8. Payment Information:

a. Credit Card Last 4 Numbers
Expiration Date

b. Deposit Account Number
Authorized User Name

40.00 DP
675.00 DP

9. Signature. Maibela Higuera
Signature

10/13/06
Date

Maibela Higuera c/o Amy Zahn
Name of Person Signing

Total number of pages including cover sheet, attachments, and document: **10**

10/20/2006 DATE
06000133 75802928

01 FC:8521
02 FC:8524

AMENDED AND RESTATED INTELLECTUAL PROPERTY SECURITY AGREEMENT

This Amended and Restated Intellectual Property Security Agreement dated August 4, 2006 is between SILICON VALLEY BANK ("Bank") and HYPERFORMIX, INC. ("Grantor").

RECITALS

- A. Bank will make advances to Grantor ("Loans") as described in the Loan and Security Agreement by and between Bank and Grantor dated November 26, 2002 (as the same has been, and may further be, amended, restated or replaced, the "Loan Agreement"). Pursuant to the terms of that certain Intellectual Property Security Agreement dated November 26, 2002 (the "Original IP Security Agreement"), Grantor has granted Bank a security interest in its Copyrights, Trademarks, Patents, and Mask Works and other intellectual property (the "Intellectual Property Collateral"). Capitalized terms not otherwise defined herein have the meaning assigned thereto in the Loan Agreement.
- B. In connection with that certain Eighth Amendment to Loan and Security Agreement dated of even date herewith by and between Bank and Grantor, Bank and Grantor have agreed to amend and restate the Original IP Security Agreement.
- C. Grantor has granted Bank a security interest in all of its right, title and interest, presently existing or later acquired to all the Collateral.

AGREEMENT

Grantor grants Bank a security interest in all of its right, title and interest in its Intellectual Property Collateral (such as the Copyrights, Patents, Trademarks and Mask Works listed on Schedules A, B, C and D), and all proceeds (such as license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements rights throughout the world and all reissues, divisions, continuations, renewals, extensions and continuations-in-part. To the extent that Intellectual Property Collateral is any license or contract right of Grantor, the security interest herein granted extends only to Borrower's interest therein, and does not extend to such licenses or contract rights to the extent that the granting of a security interest therein would be prohibited by applicable law, or that such rights are nonassignable by their terms (but only to the extent the prohibition is enforceable under applicable law, including, without limitation, Section 9.406(d) of the Code) without the consent of the licensor or other party (but only to the extent such consent has not been obtained). Except as disclosed on the Perfection Certificate, Grantor is not a party to, nor is bound by, any material license or other material agreement that prohibits or otherwise restricts Grantor from granting a security interest in Grantor's interest in such license or agreement or any other property. Without prior notice to Bank, Grantor shall not enter into, or become bound by, any such license or agreement which is reasonably likely to have a material impact on Grantor's business or financial condition. Grantor shall take such steps as Bank requests to obtain the consent of, or waiver by, any person whose consent or waiver is necessary for such licenses or contract rights to be deemed "Collateral" and for Bank to have a security interest in it that might otherwise be restricted or prohibited by law or by the terms of any such license or agreement, whether now existing or entered into in the future

This security interest is granted in conjunction with the security interest granted under the Loan Agreement. Bank's rights and remedies in the security interest are in addition to those in the Loan Agreement and the other Loan Documents, and those available in law or equity. Bank's rights powers and interests are cumulative with every right, power or remedy provided here. Bank's exercise of its rights, powers or remedies in this Agreement, the Loan Agreement or any other Loan Document, does not preclude the simultaneous or later exercise of any or all other right, power or remedy. Upon Grantor's satisfaction of all obligations secured hereby, Bank will, upon request of Grantor, execute and deliver to Grantor, for filing in all applicable jurisdictions, a UCC-3 or similar instrument (including any instrument required by the United States Patent and Trademark Office) to terminate the security interest granted hereunder. Additionally, Bank will promptly upon request of Grantor execute and deliver to Grantor for filing in all applicable jurisdictions a UCC-3 or similar instrument to terminate the security interest granted hereunder with respect to Collateral which Borrower is entitled to transfer under Section 7.1 of the Loan Agreement.

BANK:

SILICON VALLEY BANK

Scott Downey
(Signature)

Vice President
(Title)

GRANTOR:

HYPERFORMIX, INC.

[Handwritten Signature]
(Signature)

CEO
(Title)

EXHIBIT C

Trademarks (Registered)

<u>Description</u>	<u>Registration/Application Number</u>	<u>Registration/Application Date</u>
OBJECTBENCH®	U.S. Registration No. 1,906,361	® Registered 7/18/95; Renewal due 7/18/15
CODE GENESIS®	U.S. Registration Nos. 2,111,343, 2,082,440	2,111,343 - ® Registered 11/4/97; Renewal due 11/4/07 2,082,440 -® Registered 7/22/97; Renewal due 7/22/07
SES/OBJECTBENCH®	U.S. Registration No. 1,891,985	® Registered 5/2/95; Renewal due 5/2/15
SES/SCOPE®	U.S. Registration No. 2,425,384	® Registered 1/30/01; 8 & 15 due 1/30/07; Renewal due 1/30/11
SES/RTL®	U.S. Registration No. 2,076,631	® Registered 7/8/97; Renewal due 7/8/07
SES/SIM®	U.S. Registration No. 2,076,630	® Registered 7/8/97; Renewal due 7/8/07
SES/DESIGN®	U.S. Registration No. 2,076,629	® Registered 7/8/97 Renewal due 7/8/07
SES® & design	U.S. Registration No. 2,076,628	® Registered 7/8/97;

		Renewal due 7/8/07;
SES WORKBENCH®	U.S. Registration No. 1,592,820	® Registered 4/24/90 Renewal due 4/24/10
SES/WORKBENCH (France)	Registration No. 1,685,566	® Registered 8/7/91; Renewal due 8/7/11
SES/WORKBENCH (Great Britain)	Registration No. 1,473,199	® Registered 8/8/91; Renewal 8/8/08; An Assignment needs to be done
SES & Design (France)	Registration No. 1650930	® Registered 3/19/91; Renewal due 3/19/11;
SES/WORKBENCH (Germany)	Registration No. 2,020,267	® Registered 9/8/92; Renewal due 8/31/11
SES/WORKBENCH (Japan)	Registration No. 4067926	® Registered 10/9/97; Renewal due 10/9/07; Need to do an Assignment
SES & Design (Great Britain)	Registration No. 1459085	® Registered 9/24/90; Renewal due 9/24/07; Need to do an Assignment
SES & Design (Germany)	Registration No. 2013446	® Registered 4/29/92; Renewal due 3/31/11
SES & Design (Japan)	Registration No. 2721063	® Registered 4/25/97; Renewal due 4/25/07; Need to do an Assignment
HYPERFORMIX®	U.S. Registration No. 3,101,031	® Filed 6/16/00; Registered 6/6/06

HYPERFORMIX (CTM-Europe) Registration No. 1804624 8 & 15 due 6/6/12
Renewal due 6/6/16
® Application filed 8/11/00;
Registered 2/4/05
Renewal due 8/11/10

HYPERFORMIX (Japan) Registration No. 4534747 ® Filed 8/9/00;
Registered 1/11/02
Renewal due 1/11/12

HYPERFORMIX (Texas) Registration Nos. 800094290, 800094276 ® Registered 6/13/02
Renewal due 6/13/12

MAKING EBUSINESS
PERFORM® U.S. Registration Nos. 2,784,602, 2,729,729 2,784,602 - ® Filed 6/16/00;
Registered 11/18/03
8 & 15 due 11/18/09
Renewal due 11/18/13
2,729,729 - ® Filed 6/16/00;
Registered 6/24/03
8 & 15 due 6/24/09
Renewal due 6/24/13

WHEN PERFORMANCE
COUNTS, COUNT ON
HYPERFORMIX!® U.S. Registration No. 2,782,612 ® Filed 9/12/01
Registered 11/11/03
8 & 15 due 11/11/09
Renewal due 11/11/13

MAKING ENTERPRISES
PERFORM® U.S. Registration Nos. 3,068,983, 3,068,984 ® Filed 6/25/03
Registered 3/14/06
8 & 15 due 3/14/12
Renewal due 3/14/16

IPS® U.S. Registration No. 3,078,802 ® Filed 10/4/04

Registered 4/11/06

8 & 15 due 4/11/12

Renewal due 4/11/16

Trademarks (Applications)

<u>Description</u>	<u>Registration/Application Number</u>	<u>Registration/Application Date</u>
HYPERFORMIX	U.S. Application Nos. 75/802,928, 76/071,827	75/802,928 - TM Filed 9/20/99 SOU filed 2/8/06 Office action received 5/8/06 (need substitute specimen for class 42) Response due 11/6/06 76/071,827 - TM Filed 6/16/00; Notice of Allowance received 6/6/06 SOU due 12/6/06
WHEN PERFORMANCE COUNTS, COUNT ON HYPERFORMIX!	U.S. Application No. 76/312,664	TM Filed 9/12/01 Notice of Allowance received 4/18/06 SOU due 10/18/06
HYPERFORMIX READINESS ASSESSMENT	U.S. Application Nos. 78/267,023, 78/267,035	78/267,023 - TM Filed 6/25/03 Notice of Allowance received 6/13/06 SOU due 12/13/06 78/267,035 - TM Filed 6/25/03 Notice of Allowance received 2/21/06 SOU due 8/21/06
ALIGNIT	U.S. Application No. 78/408,713	Filed 4/27/04 Published for opposition 2/1/05

HYPERFORMIX ALIGNIT

U.S. Application No. 78/408,720

Filed 4/27/04

Notice of Allowance received 1/3/06

SOU due 7/3/06

IPS ENTERPRISE CAPACITY
PLANNER

U.S. Application No. 78/494,295

Filed 10/4/04

IPS APPLICATION
PERFORMANCE OPTIMIZER

U.S. Application No. 78/494,293

Filed 10/4/04

IPS APPLICATION
PERFORMANCE DESIGNER

U.S. Application No. 78/494,290

Filed 10/4/04

Trademarks (Unregistered)

Description

Registration/Application
Number

Registration/Application
Date

STRATEGIZER

WE MAKE ECOMMERCE
PERFORM

S/N 75/879,638

WE MAKE EBUSINESS
PERFORM

S/N 75/879,637

WE MAKE ERETAIL PERFORM

S/N 75/879,636

ESIM

S/N 75/748,995

MAKING EBUSINESS PERFORM
(CTM)

1842582

MAKING EBUSINESS PERFORM
(JAPAN)

87942/00

HYPERFORMIX WORKBENCH

HYPERFORMIX PERFORMANCE
PROFILER

HYPERFORMIX PERFORMANCE
DASHBOARD

HYPERFORMIX

INFRASTRUCTURE OPTIMIZER

HYPERFORMIX INTEGRATED
PERFORMANCE SUITE

HYPERFORMIX APPLICATION
ADVISOR

HYPERFORMIX MODELER

SOFTWARE THAT ENGINEERS
PERFORMANCE

WHEN PERFORMANCE
COUNTS, COUNT ON
HYPERFORMIX! (CTM)

2614451

Filed 3/12/02

EXHIBIT D

Mask Works

<u>Description</u>	Registration/Application <u>Number</u>	Registration/Application <u>Date</u>
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N/A