# TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM547074

| | |
|---|---|
| **SUBMISSION TYPE:** | NEW ASSIGNMENT |
| **NATURE OF CONVEYANCE:** | Security Agreement |

**CONVEYING PARTY DATA**

| Name | Formerly | Execution Date | Entity Type |
|---|---|---|---|
| ICE AIR, LLC | | 10/28/2019 | Limited Liability Company: DELAWARE |

**RECEIVING PARTY DATA**

| | |
|---|---|
| **Name:** | BANK LEUMI USA |
| **Street Address:** | 579 Fifth Avenue |
| **City:** | New York |
| **State/Country:** | NEW YORK |
| **Postal Code:** | 10017 |
| **Entity Type:** | Association: NEW YORK |

**PROPERTY NUMBERS Total: 9**

| Property Type | Number | Word Mark |
|---|---|---|
| **Registration Number:** | 1780158 | ACCUZONE |
| **Registration Number:** | 5182072 | CLOUD CONDITIONING |
| **Registration Number:** | 4354199 | ICE AIR |
| **Registration Number:** | 2695109 | ICE-CAP |
| **Registration Number:** | 4009925 | THERMALGUARD |
| **Serial Number:** | 87758234 | WHO THE HV@C IS ICE AIR |
| **Registration Number:** | 3593170 | WORLD CLASS COMFORT |
| **Registration Number:** | 4325513 | XSTREAM AIR |
| **Registration Number:** | 4262558 | XSTREAM AIR |

OP $240.00 1780158

**CORRESPONDENCE DATA**

**Fax Number:** 8009144240

***Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.***

**Phone:** 800-713-0755
**Email:** Michael.Violet@wolterskluwer.com
**Correspondent Name:** CT Corporation
**Address Line 1:** 4400 Easton Commons Way
**Address Line 2:** Suite 125
**Address Line 4:** Columbus, OHIO 43219

| | |
|---|---|
| **NAME OF SUBMITTER:** | Paul Hahn |
| **SIGNATURE:** | /Paul Hahn/ |
| **DATE SIGNED:** | 10/29/2019 |

**Total Attachments: 12**
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source=2585_001 trademark#page2.tif
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Form **PTO-1594** (Rev. 12-11)
OMB Collection 0651-0027 (exp. 04/30/2015)

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

# RECORDATION FORM COVER SHEET
# TRADEMARKS ONLY

To the Director of the U. S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

**1. Name of conveying party(ies):**
ICE AIR, LLC

☐ Individual(s) ☐ Association
☐ Partnership ☐ Limited Partnership
☐ Corporation- State:
☒ Other limited liability company

Citizenship (see guidelines) Delaware, USA

Additional names of conveying parties attached? ☐ Yes ☐ No

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

Additional names, addresses, or citizenship attached? ☐ Yes ☒ No

Name: BANK LEUMI USA

Street Address: 579 Fifth Avenue

City: New York

State: New York

Country: USA Zip: 10017

☐ Individual(s) Citizenship
☒ Association Citizenship New York, USA
☐ 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)

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

Execution Date(s)

☐ Assignment ☐ Merger
☒ Security Agreement ☐ Change of Name
☐ Other

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

A. Trademark Application No.(s) Text

B. Trademark Registration No.(s)
1780158, 5182072, 4354199, 2695109, 4009925, 87758234

Additional sheet(s) attached? ☒ Yes ☐ No

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

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

Name: Platzer, Swergold, Levine, Goldberg, Katz & Jaslow

Internal Address: 4293-018

Street Address: 475 Fifth Avenue

City: New York

State: New York Zip: 10016

Phone Number: 212-593-3000

Docket Number:

Email Address: phahn@platzerlaw.com

**6. Total number of applications and registrations involved:** 9

**7. Total fee** (37 CFR 2.6(b)(6) & 3.41) $

☐ Authorized to be charged to deposit account
☐ Enclosed

**8. Payment Information:**

Deposit Account Number

Authorized User Name

**9. Signature:**

Signature

October 29, 2019
Date

Paul Hahn, Esq.
Name of Person Signing

Total number of pages including cover sheet, attachments, and document: 11

**Documents to be recorded (including cover sheet) should be faxed to (571) 273-0140, or mailed to:**
**Mail Stop Assignment Recordation Branch, Director of the USPTO, P.O. Box 1450, Alexandria, VA 22313-1450**

SUPPLEMENT TO ITEM 4(B) OF THE RECORDATION FORM TRADEMARK COVER SHEET

List of Additional Trademark Registration Numbers

**87758234**
**3593170**
**4325513**
**4262558**

# TRADEMARK COLLATERAL SECURITY AGREEMENT

THIS TRADEMARK COLLATERAL SECURITY AGREEMENT ("Agreement") is made on the 28th day of October 2019 by and between ICE AIR, LLC a Delaware limited liability company having a principal place of business at 80 Hartford Avenue, Mount Vernon, NY 10553 ("Grantor") and Bank Leumi USA a New York state chartered savings bank having a mailing address at 579 Fifth Avenue, New York, NY 10017 (Lender").

## BACKGROUND

Pursuant to that certain Credit Agreement dated as of the date hereof (as amended, restated or otherwise modified, the "Credit Agreement") by and between Grantor and Lender, Lender has agreed to make financial accommodations to or for the benefit of Grantor pursuant to or in connection with the Credit Agreement.

NOW, THEREFORE, in consideration of the premises, Grantor and Lender hereby agree as follows:

1. Defined Terms. All capitalized terms used herein which are not otherwise defined herein shall have the meanings given to them in the Credit Agreement and the following terms shall have the following meanings when used herein, unless the context otherwise requires:

"Collateral" shall have the meaning assigned to it in Section 2 of this Agreement.

"Licenses" shall mean any trademark license agreements of Grantor which are shown in the attached Schedule B, or as may in the future arise.

"Proceeds" shall have the meaning assigned to it under Section 9-102(64) of the Uniform Commercial Code, and in any event, shall include, but not be limited to, (i) any and all proceeds of any insurance, indemnity, warranty or guarantee payable to Grantor from time to time with respect to any of the Collateral, (ii) any and all payments (in any form whatsoever) made or due and payable to Grantor from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of the Collateral by any governmental body, authority, bureau or agency (or any person acting under color of governmental authority), and (iii) any and all other amounts from time to time paid or payable under or in connection with any of the Collateral.

"Trademarks" shall mean the registered trademarks and pending applications shown in the attached Schedule A, and those trademarks which are hereafter adopted or acquired by Grantor, and all right, title and interest therein and thereto, and all registrations, applications, and recordings thereof, including, without limitation, applications, registrations and recordings in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof, or any foreign country, all whether now owned or hereafter acquired by Grantor.

2. Grant of Security Interest. As collateral security for the prompt payment of the Obligations, Grantor hereby grants and conveys to Lender a security interest in and to all of the following (collectively, the "Collateral"): (a) the entire right, title and interest of Grantor in and to the Trademarks, including the registrations and applications appurtenant thereto, listed in Schedule

A hereto (as the same may be amended pursuant hereto from time to time), and in and to any and all Trademarks, and registrations and applications appurtenant thereto, hereafter acquired or filed by Grantor, including, without limitation, all renewals thereof, all proceeds of infringement suits, the rights to sue for past, present and future infringements and all rights corresponding thereto and the goodwill of the business to which each of the Trademarks relates and (b) all of Grantor's right, title and interest in, to and under the following:

(i) all Licenses;

(ii) all accounts, contract rights and general intangibles arising under or relating to each and every License (including, without limitation, (A) all moneys due and to become due under any License, (B) any damages arising out of or for breach or default in respect of any such License, (C) all other amounts from time to time paid or payable under or in connection with any such License, and (D) the right of Grantor to terminate any such License or to perform and to exercise all remedies thereunder); and

(iii) to the extent not otherwise included, all Proceeds and products of any or all of the foregoing.

3. Representations and Warranties. Grantor covenants and warrants that:

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

(ii) To the best of Grantor's actual knowledge, each of the Trademarks is valid and enforceable;

(iii) There is no outstanding claim that the use of any of the Trademarks violates the rights of any third person;

(iv) Grantor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, free and clear of any Liens (including without limitation pledges, assignments, licenses, registered user agreements and covenants by Grantor not to sue third persons), except for the Licenses disclosed on Schedule B attached hereto and any Permitted Liens;

(v) Grantor has the right to enter into this Agreement and perform its terms; and

(vi) Grantor has used, and will continue to use for the duration of this Agreement, proper statutory notice, where appropriate, in connection with its use of the Trademarks.

4. New Trademarks.

If, before the Obligations shall have been irrevocably paid in full, Grantor shall obtain rights to any new Trademarks or become entitled to the benefit of any trademark application or trademark for any reissue, division, continuation, renewal, extension, or continuation in part of

any Trademark or any improvement on any Trademark, the provisions of paragraph 2 shall automatically apply thereto and Grantor shall give Lender prompt written notice thereof.

Grantor grants Lender a power-of-attorney, irrevocable so long as any Obligations are outstanding, to modify this Agreement only by amending Schedule A to include any future trademarks, including trademark registrations or applications appurtenant thereto covered by this Agreement. For the avoidance of doubt, this Agreement shall not be modified for any other purpose without the written consent of both Lender and Grantor.

5. Covenants. Grantor covenants and agrees with Lender that from and after the date of this Agreement and until the Obligations are fully satisfied:

(i) Further Documentation; Pledge of Instruments. At any time and from time to time, upon the written request of Lender, Grantor will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as Lender may reasonably deem desirable in obtaining the full benefits of this Agreement and of the rights and powers herein granted, including, without limitation, the filing of any financing or continuation statements under the Code with respect to the Liens and security interests granted hereby. Grantor also hereby authorizes Lender to file any such financing or continuation statement to the extent permitted by applicable law. If any amount payable under or in connection with any of the Collateral shall be or become evidenced by any promissory note or other instrument, such note or instrument shall be immediately pledged to Lender hereunder, duly endorsed in a manner satisfactory to Lender.

(ii) Maintenance of Trademarks. Grantor will not do any act, or omit to do any act, whereby the Trademarks or any registration or application appurtenant thereto, may become abandoned, invalidated, unenforceable, avoided, avoidable, or will otherwise materially diminish in value (except to the extent such Trademark is no longer useful or necessary for Grantor's business as then conducted), and shall notify Lender promptly if it knows of any reason or has reason to know of any ground under which this result may occur. Grantor shall take appropriate action at its expense to halt the infringement of such Trademarks and shall properly exercise its duty to control the nature and quality of the goods offered by any licensees in connection with the Licenses.

(iii) Indemnification. Grantor assumes all responsibility and liability arising from the use of the Trademarks, and Grantor hereby indemnifies and holds Lender harmless from and against any claim, suit, loss, damage or expense (including reasonable attorneys' fees) arising out of Grantor's operations of its business from the use of the Trademarks, except to the extent any of the foregoing is caused by the gross negligence or willful misconduct of the Lender.

(iv) Limitations on Modifications of Licenses. Grantor will not amend, modify, terminate or waive any provision of any License in any manner which might materially adversely affect the value of such License or the Trademark as Collateral (except to the extent such License or Trademark is no longer useful or necessary for Grantor's business as then conducted) without the written consent of the Lender.

(v) Exercise of Rights. Grantor shall exercise promptly and diligently each and every material right which it may have under each License (other than any right of termination).

6. Lender's Appointment as Attorney-in-Fact.

(a) Grantor hereby irrevocably constitutes and appoints Lender and any officer or agent thereof, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Grantor and in the name of Grantor or in its own name, exercisable at any time during the continuance of an Event of Default, in Lender's reasonable discretion, for the purposes of carrying out the terms of this Agreement, to take any and all appropriate action and to execute any and all documents and instruments which may be necessary or desirable to accomplish the purposes of this Agreement and, without limiting the generality of the foregoing, hereby gives Lender the power and right, on behalf of Grantor, to do the following:

(i) Only upon the occurrence and continuance of an Event of Default, to ask, demand, collect, receive and give acquittances and receipts for any and all moneys due and to become due under any License and, in the name of Grantor or its own name or otherwise, to take possession of and endorse and collect any checks, drafts, notes, acceptances or other instruments for the payment of moneys due under any License and to file any claim or to take any other action or proceeding in any court of law or equity or otherwise deemed appropriate by Lender for the purpose of collecting any and all such moneys due under any License whenever payable; and

(ii) Only upon the occurrence and continuance of an Event of Default, (A) to direct any party liable for any payment under any of the Licenses to make payment of any and all moneys due and to become due thereunder directly to Lender or as Lender shall direct; (B) to receive payment of and receipt for any and all moneys, claims and other amounts due and to become due at any time in respect of or arising out of any Collateral; (C) to commence and prosecute any suits, actions or proceedings at law or in equity in any court of competent jurisdiction to collect the Collateral or any part thereof and to enforce any other right in respect of any Collateral; (D) to defend any suit, action or proceeding brought against Grantor with respect to any Collateral; (E) to settle, compromise, or adjust any suit, action or proceeding described above and, in connection therewith, to give such discharges or releases as Lender may deem appropriate; and (F) generally to sell, transfer, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Lender were the absolute owner thereof for all purposes, and to do, at Lender's option all acts and things which Lender deems necessary to protect, preserve or realize upon the Collateral and Lender's security interest therein, in order to effect the intent of this Agreement, all as fully and effectively as Grantor might do.

(b) This power of attorney is a power coupled with an interest and shall be irrevocable. Notwithstanding the foregoing, Grantor further agrees to execute any additional documents which Lender may reasonably require in order to confirm this power of attorney, or which Lender may reasonably deem necessary to enforce any of its rights contained in this Agreement.

(c) The powers conferred on Lender hereunder are solely to protect its interests in the Collateral and shall not impose any duty upon it to exercise any such powers. Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers and neither it nor any of its officers, directors, employees or agents shall be responsible to Grantor for any act or failure to act, except for its own, gross (not mere) negligence or willful misconduct.

Grantor also authorizes Lender to execute, in connection with the sale provided for in paragraph 8(iii) of this Agreement, any endorsements, assignments or other instruments of conveyance or transfer with respect to the Collateral.

7. Performance by Lender of Grantor's Obligations. If Grantor fails to perform or comply with any of its agreements contained herein and Lender, as provided for by the terms of this Agreement, shall itself perform or comply, or otherwise cause performance or compliance, with such agreement, the reasonable expenses of Lender incurred in connection with such performance or compliance shall be payable by Grantor to Lender on demand and shall constitute Obligations secured hereby.

8. Remedies, Rights Upon Event of Default.

If an Event of Default shall occur and be continuing:

remedies of the Lender, whether under law, in equity or otherwise (all such rights and remedies being cumulative, not exclusive and enforceable alternatively, successively or concurrently):

(i) the Lender has all of the rights and remedies set forth in the Credit Agreement and/or the Security Agreement;

(ii) the Lender may appear before the United States Patent and Trademark Office as owner of the Collateral, without recording or filing any documents to evidence the Lender's ownership in the Collateral; and

(iii) in addition to the foregoing, in order to implement the assignment, sale or other disposal of any of the Collateral, the Lender may, at any time, pursuant to the authority granted in the Special Power of Attorney (such authority becoming effective only upon the occurrence of and during the continuance of an Event of Default), execute and deliver on behalf of the Grantor, one or more instruments of assignment of the Trademarks (or any application or registration thereof), in form suitable for filing, recording or registration in any country. The Grantor agrees to pay when due all reasonable and documented out-of-pocket costs and expenses incurred in any such transfer of the Trademarks, including any taxes, fees and reasonable and documented attorneys' fees, and all such costs shall be added to the Obligations to the Lender. The Lender shall apply the proceeds actually received from any such license, assignment, sale or other disposition to the payment of the Obligations to the Lender as provided for in the Credit Agreement. The Grantor remains liable for any deficiency with respect to the Obligations to the Lender, which bear interest and are payable at the Default Rate of interest under the Credit Agreement. The rights of the Grantor to receive any surplus are subject to any duty of the Lender imposed by law to the holder of any subordinate security interest in the Collateral known to the Lender. Nothing contained herein is to be construed as requiring the Lender to take any such

action at any time.

9. Execution of Special Power of Attorney. Concurrently with the execution and delivery of this Trademark Collateral Security Agreement, the Grantor is executing and delivering to the Lender a certain Special Power of Attorney for the implementation of the sale, assignment, licensing or other disposition of the Collateral pursuant to this Trademark Collateral Security Agreement, in each case during the period in which an Event of Default is continuing.

10. Amendments and Modification. No provision hereof may be modified, altered, waived or limited except by a written instrument expressly referring to this Trademark Collateral Security Agreement and executed by both the Lender and the Grantor.

11. Binding Nature. This Trademark Collateral Security Agreement is binding upon and inures to the benefit of the successors, assigns or other legal representatives of the Grantor, and is, together with the rights and remedies of the Lender hereunder, binding upon and inures to the benefit of the Lender, its successors, assigns or other legal representatives.

12. GOVERNING LAW. THIS TRADEMARK COLLATERAL SECURITY AGREEMENT IS TO BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO THE CONFLICT OF LAW PRINCIPLES THEREOF.

13. Notices. All notices, requests, demands and other communications provided for hereunder are to be in writing (unless otherwise expressly provided herein) and sent and deemed to have been received as set forth in the Credit Agreement.

14. Counterparts. This Trademark Collateral Security Agreement may be executed in counterparts, each of which, when taken together, are to be deemed one and the same instrument.

15. Headings. Section headings herein are included for convenience of reference only and do not constitute a part of this Trademark Collateral Security Agreement for any other purpose.

16. Acknowledgment of Receipt. The Grantor acknowledges receipt of a copy of this Trademark Collateral Security Agreement.

17. No Waiver. No course of dealing between the Grantor and the Lender, and no delay or omission of the Lender in exercising or enforcing any of the Lender's rights and remedies hereunder constitute a waiver thereof; and no waiver by the Lender of any Event of Default operates as a waiver of any other Event of Default.

18. Severability. If any of the provisions of this Trademark Collateral Security Agreement contravene or are held invalid under the laws of any jurisdiction, this Trademark Collateral Security Agreement is to be construed as if not containing such provisions and the rights, remedies, warranties, representations, covenants, and provisions hereof are to be construed and enforced accordingly in such jurisdiction and do not in any manner affect such provision in any other jurisdiction, or any other provisions of this Trademark Collateral Security Agreement in any

jurisdiction. In the event of any inconsistency between the provisions of this Trademark Collateral Security Agreement and the Credit Agreement, the terms of the Credit Agreement prevail.

19. Interest Granted to Lender. Notwithstanding any provision of this Trademark Collateral Security Agreement to the contrary, the interest granted to the Lender under this Trademark Collateral Security Agreement is intended to be a pledge and a security interest only, and the execution of this Trademark Collateral Security Agreement is not intended to create an assignment or a transfer of title or any other property rights to the Trademarks.

20. WAIVER OF JURY TRIAL. THE GRANTOR WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS TRADEMARK COLLATERAL SECURITY AGREEMENT.

[Signature Page To Follow]

**IN WITNESS WHEREOF**, the Grantor has caused this Trademark Collateral Security Agreement to be duly executed as of the day and year first above written.

ATTEST/WITNESS:

Print Name: Fredric Nadel
Title: Chairman, CO-CEO

ICE AIR, LLC

By: _____
Print Name: Moshe Siegel
Title: President, CO-CEO

**BE IT REMEMBERED**, that on this 17th day of October, 2019, before me the subscriber, an officer duly authorized to take acknowledgments for use in the State of New York, personally appeared Moshe Siegel who I am satisfied is the persons who executed the within Instrument as the President of ICE AIR, LLC. ,a Delaware limited liability company, and I having first made known to him the contents thereof, he did thereupon acknowledge that said Instrument made by said person is his/her voluntary act and deed and delivered by him/her as said President of ICE AIR, LLC and is the voluntary act and deed of ICE AIR, LLC, made by virtue of authority from its Members for the uses and purposes therein expressed.

(Signature and Office of Individual taking acknowledgment)

[NOTARY STAMP]

**SCHEDULE A**

| Description | Application/Registration No. | Issue Dates |
|---|---|---|
| AccuZone | 1780158 | 07/06/1993 |
| CLOUD CONDITIONING | 5182072 | 04/11/2017 |
| ICE AIR | 4354199 | 06/18/2013 |
| ICE-CAP | 2695109 | 03/11/2003 |
| THERMALGUARD | 4009925 | 08/09/2011 |
| WHO THE HV@C IS ICE AIR | (87758234) | (01/17/2018) |
| WORLD CLASS COMFORT | 3593170 | 03/17/2009 |
| XstreamAir | 4325513 | 04/23/2013 |
| XSTREAM AIR | 4262558 | 12/18/2012 |

# SCHEDULE B

## LICENSES

NONE