

06-23-1999

FORM PTO-1594

RE

U.S. DEPARTMENT OF COMMERCE

Patent and Trademark Office

(Rev. 6-93) 6-22-99



101072842

inal documents or copy thereof.

1. Name of conveying party(ies):

Sutmyn Storage Corporation

URD 6-22-99

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

Additional name(s) of conveying party(ies) attached? Yes No

3. Nature of conveyance:

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other Collateral Assignment, Patent Mortgage and Security Agreement

Execution Date: June 18, 1999

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

Name: Multimedia Access & Retrieval Corp.

Internal Address: _____
Internal Address: _____
Street Address: 2000 Alameda De Las Pulgas, Suite 250

City: San Mateo, State: CA Zip: 94403

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

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designation 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)

Please see attached

B. Trademark Registration No.(s)

Please see attached

Additional numbers attached? Yes No

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

Name: Cooley Godward LLP

Internal Address: Attn: Diana R. Sanchez

Street Address: 5 Palo Alto Square
3000 El Camino Real

City: Palo Alto State: CA ZIP 94306

6. Total number of applications and registration involved: 4

7. Total fee (37 CFR 3.41):..... \$ 115.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: 03-3115

(Attach duplicate copy of this page if paying by deposit account)

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.

Diana R. Sanchez

6-21-99
Date

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

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

06/23/1999 DNGUYEN 00000052 75465737

01 FC:481
02 FC:482

40.00 DP
75.00 DP

406083 v1/PA
8PC301!.DOC

TRADEMARK
REEL: 001917 FRAME: 0107

**EXHIBIT C
 TRADEMARK APPLICATIONS**

Mark Title	Application Number	Registration Number	Filing Date	Owner of Record	Assignment History
S	75-465,737		4/9/98	Sutmyn Storage Corporation	
SUTMYN	75-465,381		4/9/98	Sutmyn Storage Corporation	

TRADEMARKS

Mark Title	Application Number	Registration Number	Filing Date	Owner of Record	Assignment History
SCIMITAR		2,131,721	1/27/98	Sutmyn Storage Corporation	original applicant: Memorex Telex, N.V. assigns entire interest and good will, recorded 6/3/97
SULTAN		2,050,540	4/8/97	Sutmyn Storage Corporation	original applicant: Memorex Telex, N.V. assigns entire interest and good will, recorded 6/3/97

COLLATERAL ASSIGNMENT, PATENT MORTGAGE AND SECURITY AGREEMENT

THIS COLLATERAL ASSIGNMENT, PATENT MORTGAGE AND SECURITY AGREEMENT is made as of June 12, 1999 ("*Security Agreement*"), by and between SUTMYN STORAGE CORPORATION, a California corporation ("*Debtor*"), and MULTIMEDIA ACCESS & RETRIEVAL CORPORATION ("*Secured Party*").

RECITALS

A. Secured Party has agreed to lend to Debtor and Sutmyn America ("*Sutmyn America*") certain funds (the "*Loans*"), and Debtor desires to borrow such funds from Secured Party pursuant to the terms of those certain Senior Secured Convertible Debenture(s) executed by Debtor and Sutmyn America and delivered to Secured Party (collectively, as the same may be modified, amended, supplemented, restated or superceded from time to time, the "*Debenture*"). Terms not defined herein shall have the meanings ascribed to them in that certain General Security Agreement dated of even date herewith (as the same may be modified, amended, supplemented, restated or superceded from time to time, the "*General Security Agreement*"), executed by Debtor in favor of Secured Party.

B. In order to induce Secured Party to make the Loans, Debtor has agreed to assign certain intangible property to Secured Party for purposes of securing the obligations of Debtor and/or Sutmyn America to Secured Party.

NOW, THEREFORE, the parties hereto agree as follows:

1. COLLATERAL ASSIGNMENT, PATENT MORTGAGE AND GRANT OF SECURITY INTEREST. As collateral security for the prompt and complete payment and performance of all of Debtor's and/or Sutmyn America's present or future indebtedness, obligations and liabilities to Secured Party, including, without limitation, such indebtedness, obligations and liabilities under the Debenture and the other documents executed in connection therewith (as the same may be modified, amended, supplemented, restated or superceded from time to time, collectively, the "*Transaction Documents*"), Debtor hereby assigns, transfers, conveys and grants a security interest and mortgage to Secured Party, as security, in and to Debtor's entire right, title and interest in, to and under the following, now or hereafter existing, created, acquired or held by Debtor (all of which shall collectively be called the "*Collateral*"):

(a) Any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, including, without limitation, those set forth on **Exhibit A** attached hereto and incorporated herein by this reference (collectively, the "*Copyrights*").

(b) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products;

(c) Any and all design rights which may be available to Debtor;

(d) All patents, patent applications and like protections including, without limitation, improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-

part of the same, including, without limitation, those set forth on **Exhibit B** attached hereto and incorporated herein by this reference (collectively, the "*Patents*");

(e) Any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Debtor connected with and symbolized by such trademarks, including, without limitation, those set forth on **Exhibit C** attached hereto and incorporated herein by this reference (collectively, the "*Trademarks*");

(f) Any and all claims for damages by way of past, present and future infringement 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;

(g) All licenses or other rights to use any of the Copyrights, Patents or Trademarks, (collectively, the "*Intellectual Property*") and all license fees and royalties arising from such use;

(h) All amendments, renewals and extensions of any of the Intellectual Property;
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.

THE INTEREST IN THE COLLATERAL BEING ASSIGNED HEREUNDER SHALL NOT BE CONSTRUED AS A CURRENT ASSIGNMENT, BUT AS A CONTINGENT ASSIGNMENT TO SECURE ALL OF DEBTOR'S PRESENT OR FUTURE INDEBTEDNESS, OBLIGATIONS AND LIABILITIES TO SECURED PARTY, INCLUDING, WITHOUT LIMITATION, SUCH INDEBTEDNESS, OBLIGATIONS AND LIABILITIES UNDER THE DEBENTURE AND THE OTHER TRANSACTION DOCUMENTS.

2. AUTHORIZATION AND REQUEST. Debtor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this conditional assignment.

3. COVENANTS AND WARRANTIES. Debtor represents, warrants, covenants and agrees as follows:

(a) Debtor is now the sole owner of the Collateral, except for non-exclusive licenses granted by Debtor to its customers in the ordinary and normal course of business as now conducted;

(b) Performance of this Security Agreement does not conflict with or result in a breach of any agreement to which Debtor is a party or by which Debtor is bound;

(c) During the term of this Security Agreement, Debtor will not sell, transfer, assign or otherwise encumber any interest in the Collateral, except for non-exclusive licenses granted by Debtor in the ordinary and normal course of its business as now conducted;

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

(e) Debtor shall promptly advise Secured Party of any material changes in the composition of the Collateral, including but not limited to any subsequent ownership right of Debtor in or to any Copyright, Patent or Trademark not specified in this Security Agreement;

(f) Debtor shall (i) protect, defend and maintain the validity and enforceability of the Intellectual Property, (ii) use its best efforts to detect infringements of the Intellectual Property and promptly advise Secured Party in writing of material infringements detected and (iii) not allow any of its Intellectual Property to be abandoned, forfeited or dedicated to the public without the prior written consent of Secured Party;

(g) Debtor shall promptly register the most recent version of Debtor's material Copyrights, and shall, from time to time, execute and file such other instruments, and take such further actions as Secured Party may reasonably request from time to time to perfect or continue the perfection of Secured Party's interest in the Collateral;

(h) This Security Agreement creates, and in the case of after acquired Collateral, this Security Agreement will create at the time Debtor first has rights in such after acquired Collateral, in favor of Secured Party a valid and perfected first priority security interest in the Collateral in the United States securing the payment and performance of all present or future indebtedness, obligations and liabilities of Debtor to Secured Party, including, without limitation, such indebtedness, obligations and liabilities under the Debenture and the other Transaction Documents, upon making the filings referred to in **Section 3(i)** below;

(i) To its knowledge, except for, and upon, the filings with, as applicable, (1) the United States Patent and Trademark Office, (2) the U.S. Copyright Office and (3) the UCC Division of the California Secretary of State, necessary to perfect the security interests and assignment 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 United States governmental authority or United States regulatory body is required either (a) for the grant by Debtor of the security interest granted hereby or for the execution, delivery or performance of this Security Agreement by Debtor in the United States or (b) for the perfection in the United States or the exercise by Secured Party of its rights and remedies hereunder;

(j) All information heretofore, herein or hereafter supplied to Secured Party by or on behalf of Debtor with respect to the Collateral is accurate and complete in all material respects;

(k) Debtor shall not enter into any agreement that would materially impair or conflict with Debtor's obligations hereunder without Secured Party's prior written consent. Debtor shall not permit the inclusion in any material contract to which it becomes a party of any provision that could or might in any way prevent the creation of a security interest in Debtor's rights and interests in any property included within the definition of the Collateral acquired under such contracts; and

(l) Upon any executive officer of Debtor obtaining actual knowledge thereof, Debtor will promptly notify Secured Party in writing of any event that materially adversely affects the value of any Collateral, the ability of Debtor to dispose of any Collateral or the rights and remedies of Secured Party in relation thereto, including the levy of any legal process against any of the Collateral.

4. SECURED PARTY'S RIGHTS. Secured Party shall have the right, but not the obligation, to take, at Debtor's sole expense, any actions that Debtor is required under this Security Agreement to take but which Debtor fails to take, after five (5) days' notice to Debtor. Debtor shall reimburse and

indemnify Secured Party for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this **Section 4**.

5. INSPECTION RIGHTS. Debtor hereby grants to Secured Party and its employees, representatives and agents the right to visit, during reasonable hours upon prior reasonable written notice to Debtor, any of Debtor'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 Collateral, and to inspect the products and quality control records relating thereto upon reasonable written notice to Debtor and as often as may be reasonably requested.

6. FURTHER ASSURANCES; ATTORNEY IN FACT.

(a) On a monthly basis, Debtor agrees to deliver to Secured Party a report, in form acceptable to Secured Party and certified by an officer of Debtor, which lists all Intellectual Property that is material to the operation of Debtor's business on an on-going basis, and in which Secured Party does not already have a perfected security interest (the "*Monthly Report*"); *provided, however*, Debtor may provide a general description of the Copyrights by type. Based upon review of the Monthly Report, Secured Party shall, in its reasonable discretion, identify which Intellectual Property it deems material to the operation of Debtor's business on an on-going basis or the value of the Collateral.

(b) On a continuing basis, Debtor will make, execute, acknowledge and deliver, and file and record in the proper filing and recording places in the United States, all such instruments, including appropriate financing and continuation statements and collateral agreements and filings (including applications for registration) with the United States Patent and Trademark Office and the U.S. Copyright Office, and take all such action as may reasonably be necessary or advisable, or as reasonably requested by Secured Party, to perfect Secured Party's security interest in all Intellectual Property, which Secured Party reasonably identifies pursuant to **Section 6(a)** above as material to the operation of Debtor's business on an on-going basis or the value of the Collateral, and otherwise to carry out the intent and purposes of this Security Agreement, or for assuring and confirming to Secured Party the grant or perfection of a security interest in all Collateral.

(c) Debtor hereby irrevocably appoints Secured Party as Debtor's attorney-in-fact, with full authority in the place and stead of Debtor and in the name of Debtor, from time to time in Secured Party's discretion, to take any action and to execute any instrument which Secured Party may reasonably deem necessary or advisable to accomplish the purposes of this Security Agreement, including (i) to modify, in its reasonable discretion, this Security Agreement without first obtaining Debtor's approval of or signature to such modification by amending Exhibit A, Exhibit B or Exhibit C hereof, as appropriate, to include reference to any material right, title or interest in any Intellectual Property acquired by Debtor after the execution hereof or to delete any reference to any right, title or interest in any Intellectual Property in which Debtor no longer has or claims any right, title or interest, (ii) to file, in its reasonable discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of Debtor where permitted by law and (iii) after the occurrence and during the continuance of an Event of Default, to transfer the Collateral into the name of Secured Party or a third party to the extent permitted under the UCC.

7. **EVENTS OF DEFAULT.** The occurrence of any of the following shall constitute an "Event of Default" under this Security Agreement:

(a) An Event of Default occurs under the Debenture or any of the other Transaction Documents; or

(b) Debtor breaches any warranty or agreement in any material respect made by Debtor in this Security Agreement and, as to any breach that is capable of cure, Debtor fails to cure such breach within five (5) days of the occurrence of such breach if notice thereof has been given to Debtor.

8. **REMEDIES.** Upon the occurrence and during the continuance of an Event of Default, Secured Party shall have the right to exercise all the remedies of a secured party under the UCC, including, without limitation, the right to require Debtor to assemble the Collateral and any tangible property in which Secured Party has a security interest and to make it available to Secured Party at a place designated by Secured Party. Secured Party shall have a nonexclusive, royalty free license or other right, solely pursuant to the provisions of this Section 8, to use, without charge, the Intellectual Property and any property of a similar nature as it pertains to the Collateral, to the extent reasonably necessary to permit Secured Party to exercise its rights and remedies pursuant to this Section 8, including, without limitation, the completion of production, advertising for sale and the sale of any Collateral and, in connection with Secured Party's exercise of its rights hereunder, Debtor's rights under all licenses and all franchise agreements shall inure to the benefit of Secured Party. Debtor will pay any expenses (including reasonable attorneys' fees) incurred by Secured Party in connection with the exercise of any of Secured Party's rights hereunder, including, without limitation, any expense incurred in disposing of the Collateral. All of Secured Party's rights and remedies with respect to the Collateral shall be cumulative.

9. **INDEMNITY.** Debtor agrees to defend, indemnify and hold harmless Secured Party and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Security Agreement and (b) all losses or expenses in any way suffered, incurred, or paid by Secured Party as a result of or in any way arising out of, following or consequential to transactions between Secured Party and Debtor, whether under this Security Agreement or otherwise (including, without limitation, reasonable attorneys' fees and reasonable expenses), except for losses arising from or out of Secured Party's gross negligence or willful misconduct.

10. **REASSIGNMENT.** At such time as Debtor shall completely satisfy all of the obligations secured hereunder, Secured Party shall execute and deliver to Debtor all deeds, assignments and other instruments as may be necessary or proper to revest in Debtor full title to the property assigned hereunder, subject to any disposition thereof which may have been made by Secured Party pursuant hereto.

11. **NO FAILURE OR DELAY.** No failure or delay on the part of Secured Party, in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof.

12. **ATTORNEYS' FEES.** If any action relating to this Security Agreement is brought by either party hereto against the other party, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements.

13. **AMENDMENTS.** This Security Agreement may be amended only by a written instrument signed by the parties hereto.

14. **COUNTERPARTS.** This Security Agreement may be executed in any number of counterparts, each of which when so delivered shall be deemed an original, but all such counterparts shall constitute but one and the same instrument. Each such Security Agreement shall become effective upon the execution of a counterpart hereof or thereof by each of the parties hereto and telephonic notification that such executed counterparts has been received by Debtor and Secured Party.

15. **GOVERNING LAW; JURISDICTION; JURY WAIVER.** This Security Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to principles of conflicts of law. Debtor and Secured Party consent to the exclusive jurisdiction of any state or federal court located in Santa Clara County, California. **DEBTOR AND SECURED PARTY EACH WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS SECURITY AGREEMENT AND ANY OTHER TRANSACTION DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.**

16. **CONFLICT.** In the event of a conflict between any term and/or provision contained in this Security Agreement with any term and/or provision contained in the General Security Agreement (as defined in the Debenture), the term and/or provision of this Security Agreement shall govern.

IN WITNESS WHEREOF, the parties hereto have executed this Security Agreement on the day and year first above written.

SECURED PARTY

MULTIMEDIA ACCESS & RETRIEVAL CORPORATION

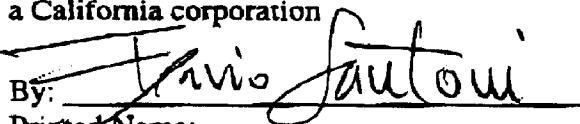
By: _____
Printed Name: _____
Title: _____

Address

2000 Alameda De Las Pulgas, Suite 250
San Mateo, CA 94403

DEBTOR

SUTMYN STORAGE CORPORATION
a California corporation

By: 
Printed Name: _____
Title: _____

Address of Debtor

2251 Lawson Lane, Bldg. 7
Santa Clara, CA 95054

14. **COUNTERPARTS.** This Security Agreement may be executed in any number of counterparts, each of which when so delivered shall be deemed an original, but all such counterparts shall constitute but one and the same instrument. Each such Security Agreement shall become effective upon the execution of a counterpart hereof or thereof by each of the parties hereto and telephonic notification that such executed counterparts has been received by Debtor and Secured Party.

15. **GOVERNING LAW; JURISDICTION; JURY WAIVER.** This Security Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to principles of conflicts of law. Debtor and Secured Party consent to the exclusive jurisdiction of any state or federal court located in Santa Clara County, California. **DEBTOR AND SECURED PARTY EACH WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS SECURITY AGREEMENT AND ANY OTHER TRANSACTION DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.**

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IN WITNESS WHEREOF, the parties hereto have executed this Security Agreement on the day and year first above written.

SECURED PARTY

MULTIMEDIA ACCESS & RETRIEVAL CORPORATION

By: *Gregory T. George*
Printed Name: Gregory T. George
Title: President and CEO

Address

2000 Alameda De Las Pulgas, Suite 250
San Mateo, CA 94403

DEBTOR

SUTMYN STORAGE CORPORATION
a California corporation

By: _____
Printed Name: _____
Title: _____

Address of Debtor

2251 Lawson Lane, Bldg. 7
Santa Clara, CA 95054

EXHIBIT A
COPYRIGHTS

No.	Title	Physical Description	Name of Claimant	Date of Creation	Date of Publication	Eff. Date of Registration	Limitation on Claim
TXu876669	VLS Virtual Library Server	computer program	Sutmyn Storage Corporation	1999		4/14/99	
TXu876668	VTS Virtual Tape System	computer program	Sutmyn Storage Corporation	1999		4/14/99	
TXu876665	LMS Tape Library Management Software	tape library management software	Sutmyn Storage Corporation	1999		4/14/99	Revisions
TX 337875	LMS	tape library management software	Memorex Telex, N.V.	1992			

**EXHIBIT B
 PATENTS**

Patent Application Title	Application Number	Patent Number	Filing Date	Date of Issuance	Owner of Record	Assignment History
Data Serialization	09/098,444		June 18, 1997			
Error Checking Techniques for Use in Mass Storage Systems	09/098,449		June 18, 1997			
Interfaces for an Open Systems Server Providing Tape Drive Emulation	09/111,691		July 9, 1997			
Native Image Data Storage of a Virtual Tape Storage System	09/111,475		July 9, 1997			
System and Method for Performing High Speed Tape Positioning Operations	09/116,151		July 15, 1998			
Tape Drive Emulation System Including Tape Library Interface	09/116,150		July 15, 1998			
Information Memory Apparatus and Library Apparatus Using a Single Magnetic Tape Shared with a Plurality of Tasks	08/658,841		May 31, 1996			co-owned with Fujitsu Limited

**EXHIBIT C
 TRADEMARK APPLICATIONS**

Mark Title	Application Number	Registration Number	Filing Date	Owner of Record	Assignment History
S	75-465,737		4/9/98	Sutmyn Storage Corporation	
SUTMYN	75-465,381		4/9/98	Sutmyn Storage Corporation	

TRADEMARKS

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SULTAN		2,050,540	4/8/97	Sutmyn Storage Corporation	original applicant: Memorex Telex, N.V. assigns entire interest and good will, recorded 6/3/97