

11-17-2000



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RECORDATION FORM COVER SHEET TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

New 11-6-00

Resubmission (Non-Recordation)
Document ID #

Correction of PTO Error
Reel # Frame #

Corrective Document
Reel # Frame #

Conveyance Type

Assignment License

Security Agreement Nunc Pro Tunc Assignment

Merger Effective Date
Month Day Year

Change of Name

Other

Conveying Party

Mark if additional names of conveying parties attached

Name

Execution Date
Month Day Year

Formerly

Individual General Partnership Limited Partnership Corporation Association

Other

Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)

City

State/Country

Zip Code

Individual General Partnership Limited Partnership Corporation Association

Corporation Association

Other

Citizenship/State of Incorporation/Organization

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

FOR OFFICE USE ONLY

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

TRADEMARK

REEL: 002177 FRAME: 0518

Domestic Representative Name and Address

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Correspondent Name and Address

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

Pages

Enter the total number of pages of the attached conveyance document including any attachments. #

Trademark Application Number(s) or Registration Number(s)

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)

Registration Number(s)

<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

<input type="text" value="2227404"/>	<input type="text"/>	<input type="text"/>
<input type="text" value="2227405"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

Number of Properties

Enter the total number of properties involved. #

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41): \$

Method of Payment: Enclosed Deposit Account

Deposit Account (Enter for payment by deposit account or if additional fees can be charged to the account.)

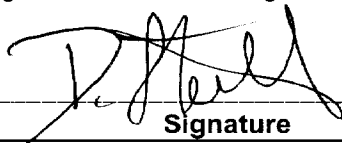
Deposit Account Number: #

Authorization to charge additional fees: Yes No

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. Charges to deposit account are authorized, as indicated herein.

David E. Stoll, Esq.
Name of Person Signing


Signature

11/6/00
Date Signed

**COLLATERAL ASSIGNMENT PATENT MORTGAGE
AND SECURITY AGREEMENT**

This Collateral Assignment, Patent Mortgage and Security Agreement is made as of July 21, 2000, by and between AUDIBLE MAGIC CORPORATION, a California corporation ("**Assignor**"), and MUSCLE FISH LLC, a California limited liability company ("**Assignee**").

RECITALS

A. Assignee has agreed to accept a promissory note from Assignor for payment (the "**Note**") pursuant to an Asset Purchase Agreement between the parties and the members of Assignee dated as of July 13, 2000 (the "**Asset Purchase Agreement**").

B. In order to induce Assignee to accept the Note, Assignor has agreed to assign certain intangible property to Assignee for purposes of securing the obligations of Assignor to Assignee pursuant to the Note.

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. **Assignment, Patent Mortgage and Grant of Security Interest.** As collateral security for the prompt and complete payment and performance of all of Assignor's obligations pursuant to the Note, Assignor hereby assigns, transfers, conveys and grants a security interest and mortgage to Assignee, as security, in and to Assignor's entire right, title and interest in, to and under the following (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 or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, transferred to Assignor pursuant to the Asset Purchase Agreement, as set forth on Exhibit A attached hereto (collectively, the "**Copyrights**").

(b) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products transferred to Assignor pursuant to the Asset Purchase Agreement;

(c) All patents and patent applications transferred to Assignor pursuant to the Asset Purchase Agreement as set forth on Exhibit B attached hereto (collectively the "**Patents**"); and

(d) Any trademark and servicemark rights, transferred to Assignor pursuant to the Asset Purchase Agreement as set forth on Exhibit C attached hereto (collectively, the "**Trademarks**").

THE INTEREST IN THE COLLATERAL BEING ASSIGNED HEREUNDER SHALL NOT BE CONSTRUED AS A CURRENT ASSIGNMENT, BUT AS A CONTINGENT ASSIGNMENT TO SECURE ASSIGNOR'S OBLIGATIONS TO ASSIGNEE UNDER THE LOAN AGREEMENT.

2. **Authorization and Request.** Assignor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this conditional assignment.

3. **Covenants and Warranties.** Assignor represents, warrants, covenants and agrees as follows:

(a) Performance of this Assignment does not conflict with or result in a breach of any agreement to which Assignor is party or by which Assignor is bound, except to the extent that certain intellectual property agreements prohibit the assignment of the rights thereunder to a third party without the licensor's or other party's consent and this Assignment constitutes an assignment;

(b) During the term of this Assignment, Assignor will not transfer or otherwise encumber any interest in the Collateral, except for licenses granted by Assignor in the ordinary course of business or as set forth in this Assignment;

(c) Assignor shall (i) protect, defend and maintain the validity and enforceability of the Trademarks, Patents and Copyrights, (ii) use its best efforts to detect infringements of the Trademarks, Patents and Copyrights and promptly advise Assignee in writing of material infringements detected and (iii) not allow any Trademarks, Patents or Copyrights to be abandoned, forfeited or dedicated to the public without the written consent of Assignee, which shall not be unreasonably withheld, unless Assignor determines that reasonable business practices suggest that abandonment is appropriate.

(d) Assignor shall register as Assignor ordinarily would in the ordinary course of business the most recent version of any of Assignor's Copyrights, if not so already registered, and shall, from time to time, execute and file such other instruments, and take such further actions as Assignee may reasonably request from time to time to perfect or continue the perfection of Assignee's interest in the Collateral:

(e) This Assignment creates in favor of Assignee a valid and perfected first priority security interest in the Collateral in the United States securing the payment and performance of the obligations evidenced by the Note upon making appropriate filings with the United States Patent and Trademark Office, Registrar of Copyrights and the California Secretary of State.

(f) Assignor shall not enter into any agreement that would materially impair or conflict with Assignor's obligations hereunder without Assignee's prior written consent,

which consent shall not be unreasonably withheld. Assignor shall not permit the inclusion in any material contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a security interest in Assignor's rights and interests in any property included within the definition of the Collateral acquired under such contracts, except that certain contracts may contain anti-assignment provisions that could in effect prohibit the creation of a security interest in such contracts.

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

4. **Assignee's Rights.** Assignee shall have the right, but not the obligation, to take, at Assignor's sole expense, any actions that Assignor is required under this Agreement to take but which Assignor fails to take, after fifteen (15) days' notice to Assignor. Assignor shall reimburse and indemnify Assignee for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this Section 4.

5. **Inspection Rights.** Subject to Section 16 hereof, Assignor hereby grants to Assignee and its employees, representatives and agents the right to visit, during reasonable hours upon prior reasonable written notice to Assignor, any of Assignor'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 Assignor and as often as may be reasonably requested.

6. **Further Assurances; Attorney in Fact.**

(a) On a continuing basis, Assignor 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 with the United States Patent and Trademark Office and the Register of Copyrights, and take all such action as may reasonably be deemed necessary or advisable, or as required by Assignee, to perfect Assignee's security interest in all Copyrights, Patents and Trademarks and otherwise to carry out the intent and purposes of this Collateral Assignment, or for assuring and confirming to Assignee the grant or perfection of a security interest in all Collateral.

(b) Assignor hereby irrevocably appoints Assignee as Assignor's attorney-in-fact, with full authority in the place and stead of Assignor and in the name of Assignor, from time to time in Assignee's discretion, to take any action and to execute any instrument which Assignee may deem necessary or advisable to accomplish the purpose of this Collateral Assignment, including (i) to file, in its sole discretion, one or more financing or continuation

statements and amendments thereto, relative to any of the Collateral without the signature of Assignor where permitted by law and (ii) after the occurrence of an Event of Default, to transfer the Collateral into the name of Assignee or a third party to the extent permitted under the California Uniform Commercial Code.

7. **Events of Default.** The occurrence of any of the following shall constitute an Event of Default under the Assignment.

(a) An Event of Default occurs under the Note, or

(b) Assignor breaches any warranty or agreement made by Assignor in this Assignment and, as to any breach that is capable of cure, Assignor fails to cure such breach within five (5) days of the occurrence of such breach.

8. **Remedies.** Upon the occurrence and continuance of an Event of Default, Assignee shall have the right to exercise all the remedies of a secured party under the California Uniform Commercial Code, including without limitation the right to require Assignor to assemble the Collateral and any tangible property in which Assignee has a security interest and to make it available to Assignee at a place designated by Assignee. Assignee shall have a nonexclusive, royalty free license to use the Copyrights, Patents and Trademarks to the extent reasonably necessary to permit Assignee to exercise its rights and remedies upon the occurrence of an Event of Default, Assignor will pay any expenses (including reasonable attorneys' fees) incurred by Assignee in connection with the exercise of any of Assignee's rights hereunder, including without limitation any expense incurred in disposing of the Collateral. All of Assignee's rights and remedies with respect to the Collateral shall be cumulative.

9. **Indemnity.** Assignor agrees to defend, indemnify and hold harmless Assignee 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 Agreement, and (b) all losses or expenses in any way suffered, incurred, or paid by Assignee as a result of or in any way arising out of, following or consequential to transactions between Assignee and Assignor, whether under this Assignment or otherwise (including without limitation reasonable attorneys' fees and reasonable expenses), except for losses arising from or out of Assignee's gross negligence or willful misconduct.

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

11. **Course of Dealing.** No course of dealing, nor any failure to exercise, nor any delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

12. **Attorneys' Fees.** If any action relating to this Assignment 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 Assignment may be amended only by a written instrument signed by both parties hereto.

14. **Counterparts.** This Assignment may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.

15. **California Law and Jurisdiction Jury Waiver.** This Assignment shall be governed by the laws of the State of California, without regard for choice of law provisions. Assignor and Assignee consent to the exclusive jurisdiction of any state or federal court located in Santa Clara County, California. ASSIGNOR AND ASSIGNEE EACH WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE LOAN AGREEMENT, THIS ASSIGNMENT, 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. **Confidentiality.** In handling any confidential information Assignee and its affiliates shall exercise the same degree of care that Assignee exercises with respect to its own proprietary information of the same types to maintain the confidentiality of any non-public information thereby received or received pursuant to this Assignment except that disclosure of such information may be made (i) subject to this Section 16, to the subsidiaries or affiliates of Assignee in connection with their present or prospective business relations with Assignor; (ii) to prospective transferees or purchasers of an interest in the obligations secured hereby, provided that they have entered into a comparable confidentiality agreement in favor of Assignor and have delivered a copy to Assignor and provided further that Assignee agrees not to sell, assign or otherwise transfer its rights or any interest hereunder to any competitor of Assignor; (iii) as required by law, regulations, rule or order, subpoena, judicial order or similar order, (iv) as may be required in connection with the examination, audit or similar investigation of Assignee, and (v) as Assignee may reasonably determine in connection with the enforcement of any remedies hereunder, provided that Assignee takes reasonable steps to protect such confidential information, including obtaining a signed confidentiality agreement, as appropriate with provisions comparable to those set forth in this Section 16. Confidential information hereunder shall not include information that either: (a) is in the public domain or lawfully in the knowledge or possession of Assignee when disclosed to Assignee; provided that confidential information previously disclosed to Assignee by Assignor shall be kept confidential by Assignee in accordance with this Section 16 or becomes part of the public domain after disclosure to Assignee through no fault of Assignee; or (b) is disclosed to Assignee by a third party, provided Assignee does not have actual knowledge that such third party is prohibited from disclosing such information.

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

Audible Magic Corporation

MuscleFish LLC

By: Vance Keroze
Name: Vance Keroze
Title: President & CEO

By: James A. Wheaton
Name: James A. Wheaton
Its: Member

B002813.

EXHIBIT A

Copyrights

Unregistered copyright notices occur in source code files related to the following Muscle Fish products, which are programming libraries, sometimes referred to as SDKs (software development kits) or APIs (application programming interfaces):

1. AudioObject Library (soundfile utilities)
2. MFDSP Library (audio digital signal processing functions)
3. MFCRB (functions for content-based retrieval of audio)

EXHIBIT B

Patents

US Patent #5,918,223 – Method and Article of Manufacture for Content-based Analysis, Storage, Retrieval, and Segmentation of Broadcast Audio.

US Patent Application #60/186,200 – Method and Article of Manufacture for the Detection and Identification of Broadcast Audio.

EXHIBIT C

Trademarks

California Trademark 102115 – SoundFisher
United States Trademark 2,227,405 – SoundFisher

California Trademark 102118 – Muscle Fish logo
United States Trademark 2,227,404 – Muscle Fish logo

The Muscle Fish logo is the words “Muscle Fish” with the design of a sideview of a fish, facing to the right, whose body has been warped to give the impression of a wave.

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