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02-20-2004

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



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

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...ed original documents or copy thereof.

1. Name of conveying party(ies):

Motion Watch LLC

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

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

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: 12/31/2003

2. Name and address of receiving party(ies)

Name: Bi-State Investment Group 1, LLC

Internal Address:

Address:

Street Address: 9875 Widner

City: Lenexa State: KS Zip: 66215

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

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) Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration number(s):

A. Trademark Application No.(s) 75/424,431

B. Trademark Registration No.(s)

Additional number(s) attached Yes No

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

Name: I. Edward Marquette

Internal Address:

Street Address: Spencer Fane Britt & Browne

1000 Walnut Street, Suite 1400

City: Kansas City State: MO Zip: 64106

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 3.41) \$ 40.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

500354

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9. Signature I. Edward Marquette 00000195 500354 75424431

I. Edward Marquette Name of Person Signing

[Signature]

Signature

February 17, 2004

Date

Total number of pages including cover sheet, attachments, and document: 8

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

TRADEMARK REEL: 002915 FRAME: 0932

## ASSIGNMENT IN LIEU OF FORECLOSURE

**WHEREAS**, Bi-State Investment Group I, LLC ("Bi-State Investment Group") and KTEC Holdings hold a convertible debenture issued by MotionWatch LLC ("Motion Watch") on February 26, 2001 (the "Instrument"), which is secured by certain collateral as described in the Instrument, including intellectual property rights owned by MotionWatch (the "Collateral"); and

**WHEREAS**, MotionWatch has defaulted on the terms of the Instrument prior to executing and authenticating this assignment, which default entitles Bi-State Investment Group and KTEC Holdings to foreclose on the Collateral according to the terms of the Instrument and the relevant provisions of the Kansas Uniform Commercial Code; and

**WHEREAS**, Bi-State Investment Group and KTEC Holdings desire to accept a transfer of the Collateral in lieu of foreclosure.

**NOW, THEREFORE**, in consideration for Bi-State Investment Group and KTEC Holdings forbearance of its right to foreclose on the Collateral, MotionWatch hereby assigns and transfers all of its right, title and interest in and to the Collateral, including the inventions described in the patents listed in Exhibit A attached hereto and all revisions, refilings, continuances and modifications thereto whether made in the United States or elsewhere (collectively, the inventions and the patents describing them shall be referred to as the "Patents") and any and all copyrights owned by MotionWatch (the "Copyrights"), whether registered or unregistered, whether listed in Exhibit A as a registered copyright or unlisted and unregistered, according to the following terms and conditions:

1. **ASSIGNMENT.** MotionWatch hereby assigns, transfers, sells, conveys, and delivers to Bi-State Investment Group and KTEC Holdings, its successors and assigns, all the interest of MotionWatch throughout the world in the Collateral, including the Patents and the Copyrights. The rights assigned include, but are not limited to, all rights under the United States or foreign patent and copyright laws; all reproduction, performance, display, distribution, and other intellectual property rights; the right to modify, distort, or alter the Collateral; the right to produce derivative works; the right to practice the inventions; and all so-called moral rights. To the extent moral rights may not be assigned, MotionWatch hereby waives the benefit or protection of same. The rights assigned also include the right to sue for infringement (past, present, or future) and to recover damages therefor, free of any claims of others, including Motion Watch. MotionWatch agrees to cooperate with Bi-State Investment Group and KTEC Holdings in any such infringement action at its expense.
2. **RIGHT TO COMMERCIAL USE AND COPYRIGHT.** MotionWatch further grants to Bi-State Investment Group and KTEC Holdings the right to publish, reproduce, distribute, modify, publicly perform, publicly display, and register all claims to copyright and patent rights in the Collateral or cause the Collateral to be published, reproduced, distributed, modified, publicly displayed, publicly performed, practiced and registered, in any and all countries of the world, in any form or media, including commercial use. As used herein, the right "to register" claims to copyright in the Collateral includes the right to register a claim to copyright with the United States Copyright Office and corresponding offices in all other countries of the world.
3. **REPRESENTATIONS.** MotionWatch warrants and represents that:
  - 3.1 In so far as Motion Watch's contributions are concerned, the Collateral are original works.

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**TRADEMARK**  
**REEL: 002915 FRAME: 0933**

3.2 MotionWatch is the sole owner of the Patents.

3.3 MotionWatch has the full power, right, and authority to make this Assignment, and this Assignment will not violate or constitute a default under any order, decree, contract, agreement, license, or covenant to which MotionWatch is a party or of which MotionWatch has any knowledge. MotionWatch has made no agreement with respect to the Collateral that is in conflict with this Assignment or the rights granted Bi-State Investment Group hereunder.

3.4 In so far as Motion Watch's contributions are concerned, no rights in the Collateral are currently being infringed by any other work or person and do not infringe the privacy, publicity, copyright, trademark, patent, trade secret, or other intellectual property or other rights of any other person anywhere in the world.

3.5 The Collateral include no material created or authored by any person other than Motion Watch.

3.6 MotionWatch has made diligent efforts to license or otherwise capitalize on the value of the Collateral for at least the ten-month period prior to the Effective Date of this Agreement, and has not been able to procure such a license or other investment.

4. **AUTHORITY.** MotionWatch authorizes Bi-State Investment Group and KTEC Holdings to record this assignment in the United States Copyright Office, the United States Patent and Trademark Office, and in similar government offices throughout the world. MotionWatch agrees to sign such other or further documents as Bi-State Investment Group and KTEC Holdings may require in order to perfect Bi-State Investment Group and KTEC Holdings sole and absolute right and title in and to the Collateral, including all intellectual property rights therein and thereto. In this regard, MotionWatch hereby appoints Bi-State Investment Group and KTEC Holdings as its attorney in fact to execute and deliver such instruments as Bi-State Investment Group and KTEC Holdings may deem appropriate to vest complete title in and to the Collateral (including all intellectual property rights therein) in Bi-State Investment Group and KTEC Holdings. This appointment shall be deemed to be a power coupled with an interest, and as such, it is irrevocable.

5. **NO CHALLENGE.** MotionWatch agrees not to challenge or assist or cooperate with any third party in challenging or in taking any position contrary to or inconsistent with Bi-State Investment Group and KTEC Holdings sole and exclusive rights in and to the Collateral or to the validity of Bi-State Investment Group and KTEC Holdings copyright therein.

6. **ACCEPTANCE OF ASSIGNMENT.** Bi-State Investment Group and KTEC Holdings hereby accepts transfer and assignment of the Collateral in full satisfaction of the debt owing by MotionWatch to Bi-State Investment Group.

MOTIONWATCH LLC

By: V. Craig Sizer

Name: V. Craig Sizer

Title: Co-manager

Date: 12/31/03

BI-STATE INVESTMENT GROUP I LLC

By: Joseph M. Kessinger

Name: Joseph M. Kessinger

Title: Manager

Date: 12/31/03

KTEC Holdings

By: Michael D. Peck

Name: Michael D. Peck

Title: President, KTEC Holdings, Inc.

Date: 12/31/03

## **EXHIBIT A**

### **Patents:**

US Patent 6,651,352

US Patent 6,334,852

### **Trademarks:**

Motionwatch—Trademark, serial number 75/424,431

### **Copyrights:**

MotionWatch Device Software

MotionWatch Palm Software

MotionWatch PC Software

STATE OF Kansas )  
 ) SS.  
COUNTY OF Johnson )

Before me, the undersigned Notary Public in and for said county and state, this date personally appeared Michael D. Peck, personally known to me to be the person who executed the foregoing Assignment in Lieu of Foreclosure Agreement, and being first duly sworn, did acknowledge reading and fully understanding the foregoing Assignment in Lieu of Foreclosure Agreement, did acknowledge the facts therein stated to be true and correct and did acknowledge execution of the same as a voluntary act.

Subscribed and sworn to before me this 31 day of December, 2003.

Michelle Myers  
Notary Public

10-08-07

My Commission Expires:  
10-08-07

STATE OF \_\_\_\_\_ )  
 ) SS.  
COUNTY OF \_\_\_\_\_ )

Before me, the undersigned Notary Public in and for said county and state, this date personally appeared \_\_\_\_\_, personally known to me to be the person who executed the foregoing Assignment in Lieu of Foreclosure Agreement, and being first duly sworn, did acknowledge reading and fully understanding the foregoing Assignment in Lieu of Foreclosure Agreement, did acknowledge the facts therein stated to be true and correct and did acknowledge execution of the same as a voluntary act.

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Notary Public

My Commission Expires:  
\_\_\_\_\_

STATE OF Kansas )  
 ) SS.  
COUNTY OF Johnson )

Before me, the undersigned Notary Public in and for said county and state, this date personally appeared V. Craig Seyl, personally known to me to be the person who executed the foregoing Assignment in Lieu of Foreclosure Agreement, and being first duly sworn, did acknowledge reading and fully understanding the foregoing Assignment in Lieu of Foreclosure Agreement, did acknowledge the facts therein stated to be true and correct and did acknowledge execution of the same as a voluntary act.

Subscribed and sworn to before me this 31 day of December, 2003.

Michelle Myers  
Notary Public

10-08-07

My Commission Expires:  
10-08-07

STATE OF Kansas )  
 ) SS.  
COUNTY OF Johnson )

Before me, the undersigned Notary Public in and for said county and state, this date personally appeared Joseph M. Kessinger, personally known to me to be the person who executed the foregoing Assignment in Lieu of Foreclosure Agreement, and being first duly sworn, did acknowledge reading and fully understanding the foregoing Assignment in Lieu of Foreclosure Agreement, did acknowledge the facts therein stated to be true and correct and did acknowledge execution of the same as a voluntary act.

Subscribed and sworn to before me this 31 day of December, 2003.

Michelle Myers  
Notary Public

My Commission Expires:  
10-08-07

10-08-07