

REC

07-16-1998

HEET

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

Tab settings



100765705

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

CDC TECHNOLOGIES, INC.

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

2. Name and address of receiving party(ies)

Name: SILICON VALLEY BANK

Internal Address: LOAN DOC. GROUP

NC #816 7

Street Address: 3003 TASMAN DRIVE

City: SANTA CLARA State: CA ZIP: 95054

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

3. Nature of conveyance: MLO 7-7-98

Assignment

Merger

Security Agreement

Change of Name

Other _____

Execution Date: 5-22-98

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

If this document is being filed together with a new application, the execution date of the application is: _____

A. Patent Application No.(s)

B. Patent No.(s)

SEE EXHIBIT B ATTACHED HERETO.

Additional numbers attached? Yes No

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

Name: SILICON VALLEY BANK

Internal Address: LOAN DOC. GROUP/NC816

Street Address: 3003 TASMAN DRIVE

City: SANTA CLARA State: CA ZIP: 95054

6. Total number of applications and patents involved: 9

7. Total fee (37 CFR 3.41).....\$ 360.00

Enclosed

Check # 7067

Authorized to be charged to deposit account

8. Deposit account number:

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

~~07/16/1998 INQUIRY 00000053 5187672~~

01 FC:581

360.00 OP

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.

Deena C. Findley
Name of Person Signing

Deena C. Findley
Signature

6-26-98
Date

PATENT

Date

PSE/llw

Total number of pages including cover sheet, attachments, and documents 10 60

COLLATERAL ASSIGNMENT, PATENT MORTGAGE
AND SECURITY AGREEMENT

This Collateral Assignment, Patent Mortgage and Security Agreement ("Collateral Assignment Agreement") is entered into as of May 22, 1998, by and between SILICON VALLEY BANK, a California-chartered bank with its principal place of business at 3003 Tasman Drive, Santa Clara, CA 95054 and with a loan production office located at Wellesley Office Park, 40 William Street, Suite 350, Wellesley, MA 02181, doing business under the name Silicon Valley East ("Bank"), and CDC TECHNOLOGIES, INC., a Connecticut corporation with its principal place of business at One Great Hill Road, Oxford, Connecticut 06478 ("Assignor").

RECITALS

A. Bank has agreed to lend or has lent to Assignor certain funds (the "Loan"), pursuant to a Loan and Security Agreement of even date herewith (the "Loan Agreement") and Assignor desires to borrow such funds from Bank. The Loan will be secured in part pursuant to the terms of the Loan Agreement.

B. In order to induce Bank to make or amend the terms of the Loan, Assignor has agreed to assign certain intangible property to Bank for purposes of securing the obligations of Assignor to Bank.

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 present or future indebtedness, obligations and liabilities to Bank, Assignor hereby assigns, transfers, conveys and grants a security interest and mortgage to Bank, as security, but not as an ownership interest, 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 of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held, including without limitation those 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 now or hereafter existing, created, acquired or held;

(c) Any and all design rights which may be available to Assignor now or hereafter existing, created, acquired or held;

(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 the patents and patent applications set forth on Exhibit B attached hereto (collectively, the "Patents");

(e) Any trademarks and service mark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Assignor connected with and symbolized by such trademarks, including without limitation those set forth on Exhibit C attached hereto (collectively, the "Trademarks").

(f) Any and all claims for damages by way of past, present and future infringements 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, and all license fees and royalties arising from such use to the extent permitted by such licenses or rights; and

(h) All amendments, extensions, renewals and extensions of any of the Copyrights, Trademarks or Patents; 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 ASSIGNOR'S OBLIGATIONS TO BANK 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) Assignor is now the sole owner of the Collateral, except for nonexclusive licenses granted by Assignor to its customers in the ordinary course of business;

(b) Performance of this Collateral Assignment Agreement does not conflict with or result in a breach of any agreement to 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 Collateral Assignment Agreement constitutes an assignment;

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

(d) To its knowledge, each of the Patents is valid and enforceable, and no part of the Collateral 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) Assignor shall promptly advise Bank of any material adverse change in the composition of the Collateral, including but not limited to any subsequent ownership right of the Assignor in or to any Trademark, Patent or Copyright not specified in this Collateral Assignment Agreement;

(f) 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 Bank 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 Bank, which consent shall not be unreasonably withheld, unless Assignor determines that reasonable business practices suggest that abandonment is appropriate;

(g) Assignor shall promptly register 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 Bank may reasonably request from time to time to perfect or continue the perfection of Bank's interest in the Collateral;

(h) This Collateral Assignment Agreement creates, and in the case of after-acquired Collateral, this Collateral Assignment Agreement will create at the time Assignor first has rights in such after-acquired Collateral, in favor of Bank 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 Loan Agreement upon making the filings referred to in clause (i) below;

(i) To its knowledge, except for and upon the filing with the United States Patent and Trademark office with respect to the Patents and Trademarks, and the Register of Copyrights with respect to the Copyrights 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 U.S. governmental authority or U.S. regulatory body is required either (i) for the grant by Assignor of the security interest granted hereby or for the execution, delivery or performance of this Collateral Assignment Agreement by Assignor in the U.S. or (ii) for the perfection in the United States or the exercise by Bank of its rights and remedies thereunder;

(j) All information heretofore, in this Collateral Assignment Agreement, or hereafter supplied to Bank by or on behalf of Assignor with respect to the Collateral is accurate and complete in all material respects;

(k) Assignor shall not enter into any agreement that would materially impair or conflict with Assignor's obligations hereunder without Bank'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 interest 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.

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

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

5. Inspection Rights. Assignor hereby grants to Bank 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 (or that have done so during the prior six month period) products that are sold utilizing any of the Collateral, and to inspect the products and quality control records relating thereto, as often as may be reasonably requested, but not more than one (1) time in every six (6) months; provided, however, nothing herein shall entitle Bank access to Assignor's trade secrets and other proprietary information.

6. Further Assurances: Attorney in Fact.

(a) On a continuing basis, Assignor will, subject to any prior licenses, encumbrances and restrictions and prospective licenses, 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 Trademarks Office and the Register of Copyrights, and take all such action as may reasonably be deemed necessary or advisable, or as requested by Bank, to perfect Bank's security interest in all Copyrights, Patents and Trademarks and otherwise to carry out the intent and purposes of this Collateral Assignment Agreement, or for assuring and confirming to Bank the grant or perfection of a security interest in all Collateral.

(b) Assignor hereby irrevocably appoints Bank as Assignor's attorney-in-fact, with full authority in the place and stead of Assignor and in the name of Assignor, Bank or otherwise, from time to time in Bank's discretion, upon Assignor's failure or inability to do so, to take any action and to execute any instrument which Bank may deem necessary or advisable to accomplish the purposes of this Collateral Assignment Agreement, including:

(i) To modify, in its sole discretion, this Collateral Assignment Agreement without first obtaining Assignor's approval of or signature to such modification by amending Exhibit A, Exhibit

B and Exhibit C, thereof, as appropriate, to include reference to any right, title or interest in any Copyrights, Patents or Trademarks acquired by Assignor after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents or Trademarks in which Assignor no longer has or claims any right, title or interest; and

(ii) 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.

7. Events of Default. The occurrence of any of the following shall constitute an Event of Default under this Collateral Assignment Agreement:

- (a) An Event of Default occurs under the Loan Agreement; or
- (b) Assignor breaches any warranty, covenant or agreement made by Assignor in this Collateral Assignment Agreement.

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

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

10. Reassignment. At such time as Assignor shall completely satisfy all of the obligations secured hereunder, Bank shall execute and deliver to Assignor all deed, assignments, and other instruments as may be necessary or proper to reinvest in Assignor full title to the property assigned hereunder, subject to any disposition thereof which may have been made by Bank 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 of such right, power or privilege.

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

14. Counterparts. This Collateral Assignment Agreement 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. Applicable Law, Jurisdiction, Jury Trial Waiver. The laws of the Commonwealth of Massachusetts shall apply to this Collateral Assignment Agreement without regard for choice of law provisions. ASSIGNOR ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, UNCONDITIONALLY, THE NON-EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE COMMONWEALTH OF MASSACHUSETTS IN ANY ACTION, SUIT, OR PROCEEDING OF ANY KIND AGAINST IT WHICH ARISES OUT OF OR BY REASON OF THIS AGREEMENT; PROVIDED, HOWEVER, THAT IF FOR ANY REASON BANK CANNOT AVAIL ITSELF OF THE COURTS OF THE COMMONWEALTH OF MASSACHUSETTS, ASSIGNOR ACCEPTS JURISDICTION OF THE COURTS AND VENUE IN SANTA CLARA COUNTY, CALIFORNIA. ASSIGNOR AND BANK EACH HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH PARTY RECOGNIZES AND AGREES THAT THE FOREGOING WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR IT TO ENTER INTO THIS AGREEMENT. EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

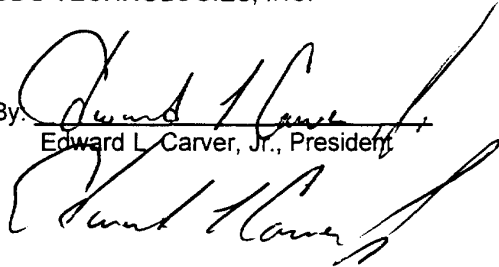
16. Confidentiality. In handling any confidential information, Bank shall exercise the same degree of care that it exercises with respect to its own proprietary information of the same types to maintain the confidentiality of any non-public information received pursuant to this Collateral Assignment Agreement, except that the disclosure of this information may be made (i) to the affiliates of the Bank, (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 delivered a copy to Assignor, (iii) as required by law, regulation, rule or order, subpoena, judicial order or similar order and (iv) as may be required in connection with the examination, audit or similar investigation of Bank.

17. Effectiveness. This Collateral Assignment Agreement shall become effective only when it shall have been executed by Assignor and Bank (provided, however, in no event shall this Collateral Assignment Agreement become effective until signed by an officer of Bank in California)

IN WITNESS WHEREOF, the parties hereto have executed this Collateral Assignment Agreement as in instrument under seal as of the date first set forth above.


"Assignor"

CDC TECHNOLOGIES, INC.

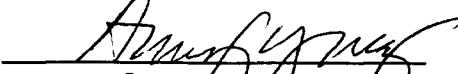
By: 
Edward L. Carver, Jr., President

"Bank"

SILICON VALLEY BANK, doing business
as SILICON VALLEY EAST

By: 
Phillip S. Ernst, VP

SILICON VALLEY BANK

By: 
Title: V.P.

ACKNOWLEDGMENT

State of Connecticut

County of

New Haven

} Oxford

On May 22, 1998 before me, Mary F. Shalvoy, personally appeared Edward L. Carver, Jr., personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies) and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Mary F. Shalvoy
Mary F. Shalvoy
Notary Public
my commission expires 12/31/02

EXHIBIT A
TO COLLATERAL ASSIGNMENT, PATENT MORTGAGE
AND SECURITY AGREEMENT DATED MAY 22, 1998

COPYRIGHTS

NONE

SCHEDULE 2 - PENDING COPYRIGHT APPLICATIONS

NONE

SCHEDULE 3 - UNREGISTERED COPYRIGHTS (NO APPLICATION PENDING)

NONE

EXHIBIT B
TO COLLATERAL ASSIGNMENT, PATENT MORTGAGE
AND SECURITY AGREEMENT DATED MAY 22, 1998

PATENTS

<u>PATENT DESCRIPTION</u>	<u>DOCKET NO.</u>	<u>COUNTRY</u>	<u>PATENT NO.</u>	<u>FILING DATE</u>	<u>STATUS</u>
Method and Apparatus for Determining the Distribution of Constituent Subpopulations within a Population of Particles having Overlapping Subpopulations		USA	5,187,673	2/5/91	Granted 2/16/93
Method for Improved Multiple Species Blood Analysis		USA	5,262,329	5/3/93	Granted 11/16/93
Reagent System for the Improved Determination of White Blood Cell Subpopulations		USA	5,316,725	6/7/91	Granted 5/31/94
Method for the Improved Determination of White Blood Cell Subpopulations		USA	5,316,951	7/22/93	Granted 5/31/94
Method for Determining the Distribution of Constituent Subpopulations within a Population of Particles having Overlapping Subpopulations		USA	5,349,538	2/12/93	Granted 9/20/94
Apparatus for Pumping and Directing Fluids for Hematology Testing		USA	5,380,491	1/21/93	Granted 1/10/95
Reagent System for Improved Multiple Species Blood Analysis		USA	5,486,477	8/11/93	Granted 1/23/96
Valve Assembly		USA	5,542,452	2/7/95	Granted 8/6/96
Apparatus for Making a Plurality of Reagent Mixtures and Analyzing Particle Distributions of the Reagent Mixtures		USA	5,728,351	1/9/95	Granted 5/17/98

EXHIBIT C
TO COLLATERAL ASSIGNMENT, PATENT MORTGAGE
AND SECURITY AGREEMENT DATED MAY 22, 1998

TRADEMARKS

TRADEMARK	<u>COUNTRY</u>	<u>REGISTRATION NO.</u>	<u>REGISTRATION DATE</u>
HEMAVET	USA	1,654,259	8/20/91
CDC TECHNOLOGIES, INC. AND DESIGN	USA	1,736,347	12/1/92
AUTOVET	USA	2,126,823	1/6/98
CHEMVET	USA	2,135,355	2/10/98
FOCUSED FLOW	USA	2,141,668	3/10/98