

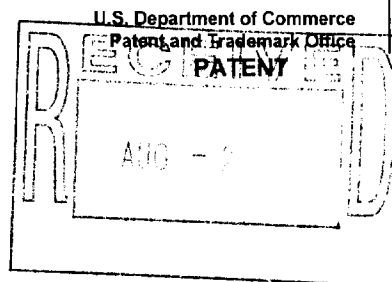
FORM PTO-1619A

Expires 06/30/99
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08-04-1999



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**RECORDATION FORM COVER SHEET
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Submission Type☒ New

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☐ Document ID#

Correction of PTO Error

☐ Reel # Frame #

Corrective Document

☐ Reel # Frame # **Conveyance Type**☐ Assignment ☐ Security Agreement☐ License ☐ Change of Name☐ Merger ☒ Other**Patent Assignment &
License Agreement****U.S. Government**

(For Use ONLY by U.S. Government Agencies)

☐ Departmental File☐ Secret File**Conveying Party(ies)**☐ Mark if additional names of conveying parties attachedName (line 1) **Faybishenko, Yaroslav**Execution Date
Month Day Year**June 25, 1999**Name (line 2) **Second Party**Name (line 1) Execution Date
Month Day YearName (line 2) **Receiving Party**☐ Mark if additional names of receiving parties attachedName (line 1) **Sun Microsystems, Inc.**☐ 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 is attached. (Designation must be a separate document from Assignment.)Name (line 2) **A Corporation of the State of Delaware**Address (line 1) **901 San Antonio Road**Address (line 2) Address (line 3) **Palo Alto** **California** **94303****Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name **Michelle K. Lee, Esq.**Address (line 1) **Fenwick & West LLP**Address (line 2) **Two Palo Alto Square**Address (line 3) **Palo Alto, California 94306**Address (line 4) **(650) 858-7965**

08/03/1999 NTHA11 00000303 5757925

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PATENT
REEL: 010133 FRAME: 0199

Correspondent Name and Address

Area Code and Telephone (650) 858-7965

Name Michelle K. Lee, Esq.

Address (line 1) Fenwick & West LLP

Address (line 2) Two Palo Alto Square

Address (line 3) Palo Alto, California 94306

Address (line 4)

Pages

Enter the total number of pages of the conveyance document including attachments # 14

Application Number(s) or Patent Number(s)☐ Mark if additional numbers attached

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

Patent Application Number(s)

Patent Number(s)

5,757,925		

If this document is being filed together with a new Patent Application, enter the date the patent application was signed by the first named executing inventor.

Month Day Year

Patent Cooperation Treaty (PCT)Enter PCT application number
only if a U.S. Application Number
has not been assigned

PCT

PCT

PCT

PCT

PCT

PCT

Number of Properties

Enter the total number of properties involved.

1

Fee Amount

Fee Amount for Properties Listed (37 CFR 3.41):

\$ 40.00

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:

19-2555

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.*

Michelle K. Lee, Esq.

Name of Person Signing

Michelle K. Lee

Signature

7/28/99

Date

PATENT ASSIGNMENT AND LICENSE AGREEMENT

This Patent Assignment and License Agreement ("Agreement") is made effective as of the 28th day of June, 1999 ("Effective Date"), by and among Sun Microsystems, Inc. a Delaware Corporation with its principal place of business at 901 San Antonio Road, Palo Alto, California 94303 ("Sun"), Yaroslav Faybishenko ("Assignor"), D.B.A. Universe Software ("Licensee"), with its principal place of business at 1066 Grizzly Peak Boulevard, Berkeley, California 94708, Paul A. Witherspoon, Beverly M. Lyon, Isaak Volynsky, Boris A. Faybishenko and Douglas Glen.

RECITALS

A. Assignor is the owner of all right, title and interest in and to U.S. Patent No. 5,757,925, entitled "Secure Platform Independent Cross-Platform Remote Execution Computer System and Method";

B. Assignor desires to assign all right, title and interest in and to U.S. Patent No. 5,757,925 to Sun, provided that Sun grants to Assignor an option to purchase five thousand shares of Sun common stock, pays Universe Software one hundred thousand dollars and grants a limited, non-exclusive, royalty-free license to Universe Software under U.S. Patent No. 5,757,925.

C. Sun desires to obtain all right, title and interest in and to U.S. Patent No. 5,757,925, to pay Universe Software one hundred thousand dollars and to grant to Universe Software a limited, non-exclusive, royalty-free license under U.S. Patent No. 5,757,925.

D. On April 20, 1999, in partial consideration of the anticipated assignment by Assignor to Sun of all right, title and interest in and to U.S. Patent No. 5,757,925, Sun granted to Assignor an option to purchase two thousand five hundred shares of Sun common stock at \$50.125 per share pursuant to a letter dated April 26, 1999. Sun is willing to grant to Assignor an option to purchase an additional two thousand five hundred shares of Sun common stock at a price per share to be determined at the next Sun board of directors meeting and otherwise on the same terms and conditions.

E. Prior to the Effective Date, Paul A. Witherspoon, Beverly M. Lyon, Isaak Volynsky, and Boris A. Faybishenko loaned various sums of money to Assignor for use in Universe Software and entered into an Investors' Agreement with Assignor, a copy of which is attached hereto in Exhibit A.

F. Prior to the Effective Date, Douglas Glen and Assignor entered into a Consultation and Option Agreement dated July 5, 1996, a copy of which is attached hereto in Exhibit B, in which Douglas Glen agreed to provide certain services to Assignor in exchange for an option to purchase part of Universe Software.

NOW THEREFORE, in consideration of the mutual promises and of the performance of the mutual covenants contained herein, Sun and Assignor agree as follows:

1. DEFINITIONS

1.1 “Licensed Patents” means (i) U.S. Patent No. 5,757,925; (ii) any and all divisions or continuations of U.S. Patent No. 5,757,925; (iii) any and all continuations-in-part of U.S. Patent No. 5,757,925 in existence as of the Effective Date; and (iv) any and all foreign (non-U.S.) patents which claim as their priority date any of the patents or applications specified in the foregoing Nos. i-iii.

1.2 “Licensed Products” means products sold or distributed by or on behalf of Licensee which are or may be covered by one or more claims of the Licensed Patents.

2. ASSIGNMENT OF RIGHTS

2.1 Assignment. Assignor hereby irrevocably assigns and transfers to Sun all right, title, and interest in and to the Licensed Patents.

2.2 Perfection of Assignment. Assignor shall cooperate with Sun, without any additional compensation, to assist Sun in perfecting Sun’s rights in and to the Licensed Patents anywhere in the world. Assignor shall, at its own expense, execute any and all documents and legal instruments as may be requested by Sun from time to time to carry out the terms of this Section 2.2. In the event that Assignor does not execute the requested documents promptly after Sun’s request, Assignor hereby appoints Sun as Assignor’s attorney in fact for the limited purpose of executing any and all such documents in Assignor’s name as if Assignor had actually signed the same himself.

3. REPRESENTATION, WARRANTIES AND QUITCLAIM

3.1 Representations and Warranties. Assignor represents and warrants to Sun that: (i) it owns all right, title and interest in and to the Licensed Patents; (ii) except for the grant of rights to Sun under this Agreement, Assignor has not previously granted and will not attempt to grant any rights in and to the Licensed Patents to any other entity or individual including, but not limited to, Universe Software, Paul A. Witherspoon, Beverly M. Lyon, Isaak Volynsky, Boris A. Faybishenko or Douglas Glen; (iii) Assignor, Licensee, Paul A. Witherspoon, Beverly M. Lyon, Isaak Volynsky, Boris A. Faybishenko or Douglas Glen have full power to enter into this Agreement, to carry out each of their respective obligations under this Agreement; (iv) Assignor is not aware of any other person or entity infringing any of the Licensed Patents; and (v) as of the Effective Date, Assignor is not aware of and has not received any claim of invalidity or unenforceability of the Licensed Patents.

3.2 Quitclaim. To the extent that Paul A. Witherspoon, Beverly M. Lyon, Isaak Volynsky, Boris A. Faybishenko, and Douglas Glen, collectively or individually, have any right,

title or interest in or to the Licensed Patents by virtue of any ownership rights in Universe Software or otherwise, Paul A. Witherspoon, Beverly M. Lyon, Isaak Volynsky, Boris A. Faybishenko, and Douglas Glen hereby quitclaim and assign to Sun any and all such right, title and interest in and to the Licensed Patents.

4. LICENSE GRANT

4.1 License Grant. Subject to the terms and conditions contained herein, and during the term of this Agreement, Sun grants Licensee a limited, nonexclusive, nontransferable, royalty-free license (with right to sublicense) to make, use, sell, offer for sale, and otherwise distribute and transfer the Licensed Products under the Licensed Patents. The parties acknowledge and agree that the foregoing license does not give Licensee the right to sublicense the Licensed Patents, but only the Licensed Products which embody the invention claimed in the Licensed Patents.

4.2 No Other Licenses. Except as expressly set forth in this Section 4, no license or other right is granted herein by Sun to Licensee, directly or by implication, estoppel or otherwise, and no such license or other right will arise from the consummation of this Agreement or from any acts, statements or dealings leading to such consummation.

5. PAYMENT

5.1 Payment to Universe Software. Within sixty (60) days of the Effective Date of this Agreement, Sun shall pay Licensee one hundred thousand dollars (\$100,000) in partial consideration of the rights granted to Sun under this Agreement.

5.2 Stock Options. The parties acknowledge and agree that, in partial consideration of the rights granted to Sun under this Agreement, Sun granted to Assignor an option to purchase two thousand five hundred (2,500) shares of Sun common stock at \$50.125 per share on April 20, 1999. Within sixty (60) days of the Effective Date of this Agreement, Sun agrees to grant to Assignor an option to purchase an additional two thousand five hundred shares of Sun common stock at a price per share to be determined at the next Sun board of directors meeting and otherwise on the same terms and conditions of the grant on April 20, 1999.

6. LABELING, TRADEMARKS AND TRADENAMES

6.1 Patent Numbers. Licensee shall, to the extent required by applicable law, affix or cause to be affixed proper statutory marking notices to the body, or if this cannot be done, on the container or packaging, of each Licensed Product and on each box shipped with such Licensed Product. If there is any issued division or continuation of the Licensed Patents that covers a Licensed Product, Sun will so notify Licensee, and Licensee will promptly add the additional patent numbers to such notice on such Licensed Product.

6.2 Use of Sun Trademarks or Tradename. Nothing in this Agreement shall grant any party the right, title or interest in the trademarks or trade name of any other party, or in any other

trademarks, words, symbols, or other marks or names adopted or owned by the other parties, either alone or in association with other words or names.

7. INDEMNIFICATION. Assignor agrees to indemnify, defend and hold harmless Sun from and against any and all costs and damages suffered or incurred by Sun (including, but not limited to, attorneys' fees) as a result of and arising from any third-party claim of: (i) misappropriation or infringement of intellectual property rights by the Licensed Products (including, but not limited to, patent, copyright and trade secret); and (ii) any breach of the warranties specified in Section 3 above and the provision in the second sentence of Section 4.1 above.

8. DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY

8.1 Disclaimer of Warranty. SUN HEREBY EXPRESSLY DISCLAIMS ANY WARRANTY WITH RESPECT TO THE ADEQUACY OF THE LICENSED PATENTS, INCLUDING WITHOUT LIMITATION ANY WARRANTY OR REPRESENTATION AS TO THE SCOPE, VALIDITY, PERFECTION OR DOMINANCE OF THE LICENSED PATENTS. SUN HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT.

8.2 Limitation of Liability. IN NO EVENT SHALL SUN BE LIABLE TO ANY OTHER PARTY FOR LOST PROFITS, LOSS OF USE, SPECIAL, CONSEQUENTIAL OR INDIRECT DAMAGES OF ANY KIND BASED UPON A CLAIM OF BREACH OF CONTRACT, BREACH OF WARRANTY, TORT OR ANY OTHER LEGAL THEORY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. ROLE OF PARTIES. Nothing contained herein shall be construed as creating any agency, partnership or other form of joint enterprise between Sun and the other parties. Licensee is solely and individually liable for any and all claims, liabilities, damages and debts of any type whatsoever that may arise on account of Licensee's activities, or those of its employees or agents, in connection with the performance of this Agreement or the manufacture, distribution, sale, offer for sale, or transfer of the Licensed Products and the use of the other rights granted under this Agreement.

10. OWNERSHIP. Upon assignment by Assignor to Sun pursuant to Section 2.1 above, Sun shall own and retain all title and ownership in and to the Licensed Patents. Sun does not transfer any portion of such title or ownership to Licensee.

11. TERM AND TERMINATION

11.1 Term. Unless otherwise terminated pursuant to the provisions of Section 11.2, the term of this Agreement shall continue until the date of expiration of the last to expire of the Licensed Patents.

11.2 Termination upon Events of Breach. Sun shall have the right to terminate this Agreement immediately upon the occurrence of any of the following events of breach:

11.2.1 involvement by Licensee in any voluntary or involuntary bankruptcy proceeding or any other proceeding concerning insolvency, dissolution, cessation of operations, reorganization of indebtedness or an assignment for the benefit of creditors; and

11.2.2 material breach of any provision of this Agreement if such breach continues for thirty (30) days following the receipt by the defaulting party of written notice from Sun.

11.3 Effect of Termination. Sections 7, 8, 9, 10, 11.3 and 12 shall survive termination of this Agreement.

12. GENERAL PROVISIONS

12.1 Notices. All notices required or permitted under this Agreement will be in writing, will reference this Agreement and will be deemed given when: (i) delivered personally; (ii) when sent by confirmed facsimile; (iii) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (iv) one (1) day after deposit with a commercial overnight carrier, with written verification of receipt. All communications will be sent to the addresses set forth below or such other addresses as may be designated by a party by giving written notice to the other party pursuant to this Paragraph 12.1:

///

Notice to Sun:

Sun Microsystems, Inc.
901 San Antonio Road
Palo Alto, California 94303
Attn: Alexander E. Silverman, Esq.

With a Copy to:

Fenwick & West LLP
Two Palo Alto Square
Palo Alto, CA 94306
Attn: Michelle K. Lee, Esq.

Notice to Licensee:

Universe Software
1066 Grizzly Peak Boulevard
Berkeley, California 94708
Attn: _____

Notice to Assignor:

Yaroslav Faybishenko
1066 Grizzly Peak Blvd.
Berkeley, CA 94708

Notice to Paul A. Witherspoon:

1824 Monterey Ave.
Berkeley, CA 94707

Notice to Beverly M. Lyon:

388 Colusa Ave
Kensington, CA 9470,

Notice to Isaak Volynsky:

458-C So. Rockford Dr
Beverly Hills, CA 90212

Notice to Boris A. Faybishenko:

1066 Grizzly Peak Blvd
Berkeley, CA 94708

Notice to Douglas Glen:

507 Bayview Drive
Manhattan Beach, CA 90266.

12.2 Non-Waiver. The failure of any party at any time to require performance by the other party of any provision hereof shall not affect in any way the full right to require such performance at any time thereafter, nor shall the waiver by any party of a breach of any provision hereof by taken or held to be a waiver of the provision itself.

12.3 Severability. If any term of this Agreement is held invalid or unenforceable for any reason, the remainder of the provisions shall continue in full force and effect, and the parties shall substitute a valid provision with the same intent and economic effect.

12.4 Applicable Law; Venue. The validity, interpretation, and performance of this Agreement shall be controlled by and construed under the laws of the United States and the State of California, as such law is applied by California courts to contracts between California residents entered into and to be performed within the State of California.

12.5 Attorney's Fees. If any dispute arises between or among the parties with respect to the matters covered by this Agreement which leads to a proceeding to resolve such dispute, the non-prevailing party(s) in such proceeding, if any, shall pay the attorney's fees, expert witness fees and out-of-pocket costs incurred by the prevailing party(s) in connection with such proceedings.

12.6 Force Majeure. Neither party shall be liable for failure to perform any part of this Agreement on account of act of God, fire, labor disputes of any nature, accident, or insurrection or other causes beyond the control or without the fault of such party.

12.7 Entire Agreement. Upon execution, this Agreement shall constitute the entire agreement among the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed on behalf of the parties by their respective duly authorized representatives.

12.8 Assignment. No party may assign any rights or obligations hereunder without the prior express written consent of the others, except that Sun may assign this Agreement to a third-party pursuant to a merger, sale of voting control, sale of all or substantially all assets, sale or transfer of one or more of the Licensed Patents, or other corporate reorganization. Subject to the above restrictions on assignment, this Agreement shall inure to the benefit of and bind the successors and assigns of the parties.

12.9 Expenses. Each party shall bear its respective expenses incurred in completing its responsibilities under this Agreement.

12.10 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but which collectively will constitute one and the same instrument.

12.11 Headings and References. The headings and captions used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

12.12 Construction. This Agreement has been negotiated by the parties and their respective counsel. This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against any party. The existence or absence of any terms or conditions of this Agreement shall not be used in the construction or interpretation of any other agreement among the parties.

12.13 Confidentiality of the Agreement. The parties agree to maintain all terms and conditions of this Agreement in confidence, except that: (i) Sun may disclose the fact that it has granted Licensee a license under the Licensed Patents, and Licensee may disclose that it has received such license, and may name the patents to which such license rights apply; (ii) this Agreement may be disclosed to any party's attorneys, financial institutions, accountants or other professional advisors in the course of seeking professional advice; (iii) this Agreement may be

disclosed to the extent required by a court or government agency, or by applicable law, order, rule or regulation; and (iv) this Agreement may be disclosed to entities with which Sun is discussing a proposed sale of its stock, sale of all or substantially all of its assets, assignment of one or more of the Licensed Patents, obtaining financing or entering into a partnering arrangement, provided that an entity to whom the terms of this Agreement is to be disclosed under this clause (iv) has entered into a confidentiality agreement sufficient in scope to protect the parties' rights and interests hereunder.

IN WITNESS WHEREOF, the parties have executed this Agreement as evidenced by the duly authorized signatures below.

SUN:

SUN MICROSYSTEMS, INC.

By: *J. Mitchell*
Name: James G. Mitchell
Title: Vice President of Architecture and Technology
Sun Fellow

Date: 6/28/99

Licensee:

UNIVERSE SOFTWARE

By: *Yaroslav Faybisenko*
Name: Yaroslav Faybisenko, D.B.A.
Universe Software

Date: 6/25/99

Assignor:

YAROSLAV FAYBISHENKO

By: *Yaroslav Faybisenko*
Date: 6/25/99

PAUL A. WITHERSPOON

By: *Paul A. Witherspoon*
Date: 6/25/99

BEVERLY M. LYON

By: *Beverly M. Lyon*
Date: 6/25/99

ISAAK VOLYNSKY

By: *Isaak Volynsky*
Date: 6/26/99

BORIS A. FAYBISHENKO

By: *Boris Faybisenko*
Date: 6/25/99

DOUGLAS GLEN

By: *Douglas Glen*
Date: 25 June 1999

EXHIBIT A
Investors' Agreement

A copy of the Investors' Agreement is attached hereto in the next page.

EXHIBIT A

INVESTORS' AGREEMENT

This agreement is between Yaroslav Faybishenko, D.B.A. Universe Software, and the four initial investors in Universe Software and the program known amongst us as "Y-Java".

It is agreed that if and when a legal entity is formed on the occasion of investment in the company by a third party such as a venture capital company, the money which has been advanced by the four initial investors shall be converted into equity at one-half (1/2) of the post-money valuation.

In the event the legal corporate entity is formed under the circumstances described in the previous paragraph, Doug Glen has been granted an option to purchase two percent (2%) of the common stock of the legal corporate entity at the valuation accorded the initial investors; the option window is one year from the receipt of the funding from the third party described in the previous paragraph.

Date:

8/23/96

Yaroslav Faybishenko
Yaroslav Faybishenko

Initial Investors:

Paul A. Witherspoon
Paul A. Witherspoon

Beverly M. Lyon
Beverly M. Lyon

Isaak Volynsky
Isaak Volynsky

Boris Faybishenko
Boris A. Faybishenko

EXHIBIT B

Consultation and Option Agreement

A copy of the Consultation and Option Agreement is attached hereto in the next page.

EXHIBIT B

Consultation and Option Agreement

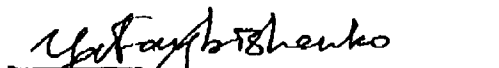
Yaroslav Faybishenko, sole proprietor of Universe Software, 1936 University Avenue, Berkeley, CA, and Douglas Glen, 46 Bayview Avenue, Belvedere, CA, agree as follows:

Glen agrees to (i) serve as a member of the board of directors, as soon as a corporate legal entity for Universe Software is duly formed; (ii) provide business consultation, up to 10 hours per month, at such time as is convenient to Glen; (iii) initiate introductions to prospects for licensing, funding, and otherwise assisting Faybishenko's company in the pursuit of its goals.

Faybishenko agrees to compensate Glen with an option to purchase 2% of the equity of Universe Software, with dilution protection. The option price will be at the valuation offered to the initial investors (the source of the \$120,000 in seed money), and the option window will extend twelve months from the next round of funding.

Understood and agreed to this 5th day of July, 1996.


Douglas Glen


Yaroslav Faybishenko