

11-01-1999

FORM PTO-1595 **MRD 10-28-99** RE
(Rev. 6-93)
OMB No. 0651-0011 (exp. 4/94)



U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

101187786

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

1. Name of conveying party(ies):
Trek Diagnostic Systems, Inc.
Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies):
Name: Fleet Capital Corporation
Internal Address: _____

3. Nature of conveyance:
 Assignment Merger
 Security Agreement Change of Name
 Other
Execution Date: January 29, 1999

Street Address: 20800 Swenson Drive, Suite 350
City: Waukesha State: Wisconsin ZIP: 53187
Additional name(s) & address(es) attached? Yes No

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)
SEE ATTACHED SCHEDULE B

B. Patent No.(s)
SEE ATTACHED SCHEDULE A
Additional numbers attached? Yes No

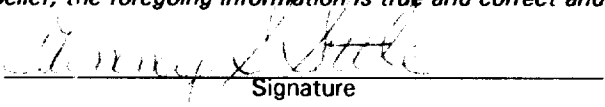
5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Tammy S. Settle
Internal Address:
Company Name: Vedder, Price, Kaufman & Kammholz
Street Address: 222 North LaSalle Street Suite 2600
City: Chicago State: IL ZIP: 60601

6. Total number of applications and patents involved: 14

7. Total Fee (37 CFR 3.41) \$560.00
 Enclosed
 Authorized to be charged to deposit account (Any Deficiencies)

8. Deposit account number: 22-0259
(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.
Tammy S. Settle
Name of Person Signing  Signature Date: October 27, 1999
Total number of pages including cover sheet, attachments, and document:

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents and Trademarks
Assignments Division 1213 Jefferson Davis Highway
Arlington, VA 22202

10/29/1999 MTHA11 00000185 5232839

01 FC:581 560.00 OP

**SCHEDULE A
PATENTS
PATENT AND LICENSE SECURITY AGREEMENT**

PATENT NUMBER
5,232,839
5,672,484
5,501,959
4,364,718
4,798,788
4,935,347
5,064,756
5,079,144
5,652,143
5,607,860
5,580,786
5,573,951

**PATENT APPLICATIONS
SCHEDULE B
PATENT AND LICENSE SECURITY AGREEMENT**

PATENT APPLICATION NUMBER
08/584,287
08/576,050

PATENT AND LICENSE SECURITY AGREEMENT

This PATENT AND LICENSE SECURITY AGREEMENT (as amended, modified or otherwise supplemented from time to time, the "Agreement"), dated as of January 29, 1999, is made and granted by Trek Diagnostic Systems, Inc., formerly known as AMI Acquisition Corp., a Delaware corporation having its principal place of business at 29299 Clemens Road, Westlake, Ohio 44145, (together with its successors and assigns, "Grantor") in favor of Fleet Capital Corporation, a Rhode Island corporation having an office at 20800 Swenson Drive, Suite 350, Waukesha, Wisconsin 53187 (together with its successors and assigns, "Lender").

WITNESSETH:

WHEREAS, pursuant to that certain Loan and Security Agreement dated as of January 29, 1999 by and between Grantor (as "Borrower") and Lender (as the same may hereafter be amended or otherwise modified from time to time, the "Loan Agreement"), the Lender has agreed, subject to certain conditions precedent, to make loans, advances and other financial accommodations (collectively, the "Loans") to the Grantor; and

WHEREAS, the Lender has required as a condition, among others, to the making of the Loans to the Grantor, in order to secure the prompt and complete payment, observance and performance of all of Grantor's obligations and liabilities hereunder, under the Loan Agreement, and under all of the other instruments, documents and agreements executed and delivered by the Grantor to the Lender in connection with the Loan Agreement (all such obligations and liabilities being hereinafter referred to collectively as the "Obligations"), that Grantor execute and deliver this Agreement to the Lender;

NOW, THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor agrees as follows:

1. Defined Terms.

(a) Unless otherwise defined herein, the capitalized terms used herein which are defined in the Loan Agreement shall have the meanings specified in the Loan Agreement.

(b) The words "hereof", "herein", and "hereunder" and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section and schedule references are to this Agreement unless otherwise specified.

(c) All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural, and vice versa unless otherwise specified.

2. Security Interest in Patents. To secure the complete and timely payment, performance and satisfaction of all of the Obligations, Grantor hereby grants to Lender a first priority security interest, having priority over all other security interests, with power of sale to the extent permitted by applicable law, all of Grantor's now owned or existing and filed and hereafter acquired or arising and filed:

- (i) patents and patent applications, and the inventions and improvements described and claimed therein, including, without limitation, those patents and patent applications listed on Schedule A and (a) the reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing patents and applications, together with the items described in the foregoing clauses (a)-(d), being sometimes hereinafter individually and/or collectively referred to as the "Patents"); and
- (ii) license agreements with any other party in connection with any Patents or such other party's patents or patent applications, whether Grantor is a licensor or licensee under any such license agreement, including, but not limited to, the license agreements listed on Schedule B, and the right upon the occurrence and during the continuance of an Event of Default to use the foregoing in connection with the enforcement of Lender's rights under the Loan Agreement (all of the foregoing being hereinafter referred to collectively as the "Licenses"). Notwithstanding the foregoing provisions of this Section 2, the Licenses shall not include any license agreement which by its terms prohibits the grant of the security interest contemplated by this Agreement.

3. Restrictions on Future Agreements. Grantor will not, without Lender's prior written consent, which shall not be unreasonably withheld, enter into any agreement, including, without limitation, any license agreement, which is inconsistent with this Agreement, and Grantor further agrees that it will not take any action, and will use its best efforts not to permit any action to be taken by others subject to its control, including licensees, or fail to take any action, which would in any material respect affect the validity or enforcement of the rights transferred to Lender under this Agreement or the rights associated with those Patents which are necessary or desirable in the operation of Grantor's business.

4. New Patents. Grantor represents and warrants that the Patents and Licenses listed on Schedules A and B, respectively, include all of the patents, patent applications and license

agreements in connection with patents or patent applications now owned or held by Grantor. If prior to the termination of this Agreement, Grantor shall (i) obtain rights to any new patentable inventions or license agreements in connection with patents or patent applications or (ii) become entitled to the benefit of any patent, patent application or patent for any reissue, division, continuation, renewal, extension or continuation-in-part of any Patent or any improvement on any Patent, the provisions of Section 2 shall automatically apply thereto and Grantor shall give to Lender prompt written notice thereof. Grantor hereby authorizes Lender to modify this Agreement by (a) amending Schedules A or B, as the case may be, to include any future patents, patent applications and license agreements in connection with patents and patent applications that are Patents or Licenses under Section 2 or under this Section 4 and (b) filing, in addition to and not in substitution for, this Agreement, a duplicate original of this Agreement containing on Schedules A or B thereto, as the case may be, such future patents, patent applications and license agreements which are Patents or licenses, as the case may be, under Section 2 or this Section 4.

5. Royalties. Grantor hereby agrees that the use by Lender of the Patents and Licenses as authorized hereunder shall be coextensive with Grantor's rights thereunder and with respect thereto and without any liability for royalties or other related charges from Lender to Grantor.

6. Nature and Continuation of Lender's Security Interest. This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Patents and the Licenses and shall remain in full force and effect until the Obligations have been paid in full and the Loan Agreement terminated.

7. Right to Inspect: Further Assignments and Security Interests. Lender shall have the right, at any reasonable time and from time to time, upon reasonable notice, to inspect Grantor's, premises and to examine Grantor's books, records and operations relating to the Patent; *provided, that* in conducting such inspections and examinations, Lender shall use its best efforts not to disturb unnecessarily the conduct of Grantor's ordinary business operations. Except as permitted by the Loan Agreement, Grantor agrees not to sell or assign its respective interests in, or grant any license under, the Patents without the prior written consent of Lender, which shall not be unreasonably withheld.

8. Duties of Grantor. Grantor shall have the duty to the extent desirable in the normal conduct of Grantor's business and consistent with Grantor's current business practices: (i) to prosecute diligently any patent application that is part of the Patents pending as of the date hereof or thereafter until the termination of this Agreement, (ii) to make application on such unpatented but patentable inventions as Grantor deems appropriate, and (iii) to take reasonable steps to preserve and maintain all of Grantor's rights in the patent applications and patents that are part of the Patents. Any expenses incurred in connection with the foregoing shall be borne by Grantor. Grantor shall not abandon any right to file a patent application or any pending patent application or patent which is or, to Grantor's knowledge, shall be necessary or economically desirable in the operation of Grantor's business. Grantor agrees to retain an experienced patent attorney reasonably acceptable to Lender for the filing and prosecution of all such applications and other proceedings. Lender shall have no

duty with respect to the Patents and Licenses. Without limiting the generality of the foregoing, Lender shall be under no obligation to take any steps necessary to preserve rights in the Patents or Licenses against any other parties, but may do so at its option during the continuance of an Event of Default, and all expenses incurred in connection therewith shall be for the sole account of Grantor and added to the Obligations secured thereby.

9. Lender's Right to Sue. From and after the occurrence and during the continuance of an Event of Default, and subject to the terms of the Loan Agreement, Lender shall have the right, but shall not be obligated, to bring suit to enforce the Patents and the Licenses, and, if Lender shall commence any such suit, Grantor shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents required by Lender in aid of such enforcement Grantor shall, upon demand, promptly reimburse and indemnify Lender for all costs and reasonable expenses incurred by Lender in the exercise of its rights under this Section (including, without limitation, all reasonable attorneys' and paralegals' fees). If for any reason whatsoever, Lender is not reimbursed with respect to the costs and expenses referred to in the preceding sentence, such costs and expenses shall be added to the Obligations secured hereby.

10. Waivers. No course of dealing between Grantor and Lender, and no failure to exercise or delay in exercising on the part of Lender any right, power or privilege hereunder or under the Loan Agreement, shall operate as a waiver or any of Lender's rights, powers or privileges. No single or partial exercise of any right, power or privilege hereunder or under the Loan Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

11. Lender's Exercise of Rights and Remedies Upon Default. Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence and during the continuance of an Event of Default, Lender may exercise any of the rights and remedies provided in this Agreement, the Loan Agreement, or any other agreement executed in connection therewith. Without limiting the generality of the foregoing, Grantor acknowledges and agrees that (i) the Patents and Licenses comprise a portion of the Collateral and Lender shall have the right to exercise its rights under the Loan Agreement with respect to the Patents and Licenses to the same extent as with respect to all other items of Collateral described therein, and (ii) from and after the occurrence of an Event of Default, Lender or its nominee may use the Patents and Licenses in connection with the conduct of Grantor's business.

12. Severability. The provisions of this Agreement are severable, and if any clause provision shall be held invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Agreement in any jurisdiction.

13. **Modification.** This Agreement cannot be altered, amended or modified in any way, except as specifically provided in Sections 2 and 4 hereof or by a writing signed by the parties hereto.

14. **Cumulative Remedies: Power of Attorney.** All of Lender's rights and remedies with respect to the Patents and the Licenses, whether established hereby, by any other agreement or by law, shall be cumulative and may be exercised singularly or concurrently. Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor or otherwise to carry out the acts described below. Subject to the terms of the Loan Agreement, upon the occurrence and during the continuance of an Event of Default, Grantor hereby authorizes Lender to, in its sole discretion, (i) endorse Grantor's name on all applications, documents, papers and instruments necessary or desirable for Lender in the use of the Patents and the Licenses, (ii) take any other actions with respect to the Patents and the Licenses as Lender deems is in its best interest, (iii) grant or issue any exclusive or non-exclusive license with respect to the Patents to anyone on commercially reasonable terms, and (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Patents and the Licenses to anyone on commercially reasonable terms. Grantor hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until this Agreement shall have been terminated pursuant to Section 6. Grantor acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of Lender under the Loan Agreement, but rather is intended to facilitate the exercise of such rights and remedies. Lender shall have, in addition to all other rights and remedies given it by the terms of this Agreement, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Patents may be located or deemed located.

15. **Binding Effect: Benefits.** This Agreement shall be binding upon Grantor and its successors and assigns and shall inure to the benefit of Lender and its nominees, successors and assigns. Grantor's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession of or for Grantor, *provided, however*, that Grantor shall not voluntarily assign its obligations hereunder without the prior written consent of Lender, which shall not be unreasonably withheld.

16. **Governing Law.** This Agreement shall be governed by and construed in accordance with the internal laws (as distinguished from the conflicts of law provisions) and decisions of the State of Illinois.

17. **Notices.** All notices or other communications hereunder shall be given in the manner and to the addresses set forth in the Loan Agreement.

18. **Section Headings.** The section headings herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.

19. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

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

TREK DIAGNOSTIC SYSTEMS, INC.,
formerly known as AMI Acquisition, Inc.,
a Delaware corporation

By: Michael Burke
Name: Michael Burke
Title: President

Accepted and agreed to as of this 29th day of
January, 1999.

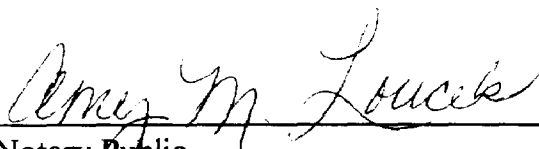
FLEET CAPITAL CORPORATION,
as Lender

By: Michael W. Scolero
Name: Michael W. Scolero
Title: Sr. Vice President

STATE OF Ohio)
) SS
COUNTY OF Cuyahoga)

The foregoing Patent and License Security Agreement was executed and acknowledged before me this 29 day of January, 1999, by Michael Burke personally known to me to be the President of Trek Diagnostic Systems, Inc., formerly known as AMI Acquisition, Inc., a Delaware corporation, on behalf of such corporation.

(SEAL)



Notary Public
My commission expires

AMY M. LOUCEK
Notary Public, State of Ohio Civ. Cty.
My Commission Expires Apr. 21, 2001

VPCHI01/#425328.2 1/28/99

RECORDED: 10/28/1999

PATENT
REEL: 010340 FRAME: 0970