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11/30/99

12-10-1999



To the Honorable Commissioner of Patents

101219327

all documents or copy thereof.

1. Name of conveying party(ies):

CALICO COMMERCE, INC.

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

3. Nature of Conveyance:

☐ Assignment

☐ Merger

☒ Security Agreement

☐ Change of Name

☐ Other:

Execution Date: October 15, 1999

2. Name and address of receiving party(ies):

Name: COMERICA BANK-CALIFORNIA

Address: 55 ALMADEN BLVD., SECOND FLOOR

City: SAN JOSE State: CA Zip: 95113

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)

N/A

B. Patent No.(s)

5,745,765

Additional numbers attached? ☐ Yes ☒ No

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

Name: Erin O'Brien

Internal Address: GRAY CARY WARE & FREIDENRICH  
401 B Street, Suite 1700  
San Diego, CA 92101-4297

6. Total number of applications and patents involved: 1

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

☐ Enclosed

8. Deposit account number: 07-1895

Please debit any underpayment or credit any overpayment to the above deposit account.

Our Order No. 1030967-901500

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

Erin O'Brien

Name of Person Signing

Signature

November 30, 1999

Date

Total number of pages comprising cover sheet: 1

OMB No. 0651-0011 (exp. 4/94)

Do not detach this portion

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

12/08/1999 DNGUYEN 00000237 071895 5745765

01 FC:581

40.00 CH

U.S. Patent and Trademark Office  
Office of Public Records  
Crystal Gateway 4, Room 335  
Washington, DC 20231

Gray Cary:SD 1324290.1  
1030967-901500

PATENT  
REEL: 010415 FRAME: 0733

COLLATERAL ASSIGNMENT, PATENT MORTGAGE  
AND SECURITY AGREEMENT

This Collateral Assignment, Patent Mortgage and Security Agreement (the "Assignment") is made as of October 15, 1999, between CALICO COMMERCE, INC., a Delaware corporation ("Assignor"), and COMERICA BANK-CALIFORNIA ("Assignee").

RECITALS

A. Assignee has extended credit accommodations (collectively the "Loan") to Assignor pursuant to the terms of an Amended and Restated Loan and Security Agreement and various promissory notes that Assignor has issued to Assignee's order (such documents collectively the "Loan Agreement").

B. Assignor has requested that Assignee make certain modifications to the Loan, and Assignee is willing to agree to such request provided that, among other things, Assignor pledges all of its right, title and interest in its intellectual property as described herein as security for the Loan

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 Assignee, 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, 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 trademark and servicemark 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 infringement 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 license or rights; and

(h) All amendments, 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 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) Assignor is now the sole owner of the Collateral, except for non-exclusive licenses granted by Assignor to its customers in the ordinary course of business and except for liens, encumbrances or security interests described in Schedule 3 attached hereto (Assignee acknowledges that the security interest granted hereunder is subject to the rights of such customers now existing or hereafter arising, and Assignee may not terminate any such licenses as a consequence of Assignee's exercising its rights under this Agreement or the Loan Agreement);

(b) 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;

(c) During the term of this Assignment, Assignor will not transfer or otherwise encumber any interest in the Collateral, except for non-exclusive licenses granted by Assignor in the ordinary course of business;

(d) As of the Closing Date, to the best of Borrower's 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 Assignee of any material 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 Assignment;

(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 Assignee in writing of material infringements detected for which an action is brought or suit is filed and (iii) not allow any Copyrights to be abandoned, forfeited or dedicated to the public without the written consent of Assignee, which shall not be unreasonably withheld;

(g) On or about each anniversary of the date hereof, Assignor shall promptly register the most recent version of any of Assignor's Copyrights, if not so already registered. In addition, Assignor shall register the Copyright for any major revision or version of any of its products within ninety (90) days after such revision or version is made available for sale, licensing or distribution to Assignor's customers. Assignor 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 at Assignor's sole expense;

(h) 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 Assignment by Assignor in the U.S. or (ii) for the perfection in the United States or the exercise by Assignee of its rights and remedies hereunder;

(i) All information heretofore, herein or hereafter supplied to Assignee by or on behalf of Assignor with respect to the Collateral is accurate and complete in all material respects;

(j) 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.

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 Assignment 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.

5. Inspection Rights. 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 Register of Copyrights, and take all such action as may reasonably be deemed necessary or advisable, or as requested 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 Assignment, or for assuring and confirming to Assignee the grant or perfection of a security interest in all Collateral.

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 purposes of this Assignment, including (i) to modify, in its sole discretion, this Assignment without first obtaining Assignor's approval 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, (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 and (iii) 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 this Assignment:

(a) An Event of Default occurs under the Loan Agreement; 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 fifteen (15) days of the occurrence of such breach; or

(c) Any Patents material to Assignor's business are held invalid or infringing and Assignor is unable to continue using the technology, or selling or licensing the products, covered by such Patents, on reasonable terms.

8. Remedies. Upon the occurrence 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 Assignment, 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 and the Loan Agreement has expired or terminated, 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 ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING RELATING TO THIS ASSIGNMENT OR ANY TRANSACTION HEREUNDER, OR CONTEMPLATED HEREUNDER, OR ANY OTHER CLAIM (INCLUDING TORT OR BREACH OF DUTY CLAIMS), OR DISPUTE HOWEVER ARISING BETWEEN ASSIGNOR AND ASSIGNEE.

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

Address of Assignor:

333 W. San Carlos Street, Suite 300  
San Jose, CA 95110

Attn: Arthur F. Knapp, Jr.

ASSIGNOR:

CALICO COMMERCE, INC. 

By: Arthur F. Knapp

Title: VP + CEO

Address of Assignee:

55 Almaden Blvd., 2nd Floor  
San Jose, CA 95113

Attn: Mary Beth Suhr

ASSIGNEE:

COMERICA BANK-CALIFORNIA

By: Mary Beth Suhr

Title: Vice President

ASSIGNOR:

CALICO COMMERCE, INC.

By: Arthur F. Knapp

Title: CEO

EXHIBIT A

Copyrights

<u>Titles</u>	<u>Registration Number</u>	<u>Date of Registration</u>
Calico concinity configurator: version 8 (CTCQ8)	TX4469673	07/03/97
Calico concinity configurator:	TX4469672	07/14/97
Configuration engine.	TX4474606	06/25/97
Corcinity Workbench	TX4474605	06/25/97



EXHIBIT B

Patents

United States

PATENT

STATUS

App. No.  
File Date

Method and apparatus for automatic and interactive  
configuration of customer products

5,745,765

04/28/98

EXHIBIT C

Trademarks

European

MARK

STATUS

App. No.  
File Date

Reg. No.  
Reg. Date

Renewal  
Date

Japan

United States

SCHEDULE 3