

06-20-2000

U.S. Department of Commerce  
Patent and Trademark Office  
**PATENT**



101385465

**RECORDATION FORM COVER SHEET  
PATENTS ONLY**

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

**Submission Type**

- ☒ New
- ☐ Resubmission (Non-Recordation)  
Document ID#
- ☐ Correction of PTO Error  
Reel #  Frame #
- ☐ Corrective Document  
Reel #  Frame #

**Conveyance Type**

- ☐ Assignment ☒ Security Agreement
- ☐ License ☐ Change of Name
- ☐ Merger ☐ Other
- 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 attached

Name (line 1) EATONI Ergonomics, Inc.

Name (line 2) a corporation of Delaware

**Second Party**

Name (line 1)

Name (line 2)

**Receiving Party**

☐ Mark if additional names of receiving parties attached

Name (line 1) Bayway Partners - V, LLC

Name (line 2) a Delaware corporation

Address (line 1) 374 Millburn Avenue

Address (line 2) Suite 205E

Address (line 3) Millburn

NJ / USA

07041

☐ 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.)

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

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Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

**PATENT**  
REEL: 010848 FRAME: 0697

**Correspondent Name and Address**

Area Code and Telephone Number 800-833-9845

Name Amy Lee Brady

Address (line 1) CSC

Address (line 2) 80 State Street, 6th FL.

Address (line 3)

Address (line 4) Albany NY 12207

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments.

# 15

**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)**

60111665

09347188

**Patent Number(s)**

5365589

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.

# 3

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41): \$ 120.00

Method of Payment:  
Deposit Account

Enclosed ☒ Deposit Account ☐

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

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.

Howard Gutowitz

Name of Person Signing

Howard Gutowitz  
Signature

5/17/2000  
Date

**THIS NOTE AND THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED. THEY MAY NOT BE SOLD, OFFERED FOR SALE, PLEDGED OR HYPOTHECATED IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT AS TO THE SECURITIES UNDER SAID ACT OR AN OPINION OF COUNSEL SATISFACTORY TO THE CORPORATION THAT SUCH REGISTRATION IS NOT REQUIRED.**

**CONVERTIBLE PROMISSORY NOTE**

\$20,000.00

March 15, 2000

**FOR VALUE RECEIVED, EATONI Ergonomics, Inc., a Delaware corporation (the "Company"), with an address at 50 Park Terrace #2F, New York, New York, 10034, hereby promises to pay to Bayway Partners-V, LLC ("Holder"), with an address at 374 Millburn Avenue, Suite 205E, Millburn, New Jersey 07041, or its registered assigns, on March 14, 2001, or such later date as demanded by Holder, the Principal Value, unless this Convertible Promissory Note has prior thereto been converted into Series A Preferred Stock or Common Stock pursuant to the provisions hereof.**

As collateral for the repayment in full of the principal of and interest on this Note, together with all costs of enforcement of this Note (the "**Obligations**"), the undersigned does hereby grant to the Holder a first priority security interest in the property set forth on Schedule 1 hereto together with all proceeds thereof (the "**Collateral**"). Upon the occurrence and continuance of an Event of Default, the Holder shall have all the rights and remedies of a secured party under the Uniform Commercial Code of the State of New York (the "**UCC**"). The Company shall file the necessary UCC-1 financing statements and United States Patent and Trademark Office filings in order to perfect the security interest in the Collateral and will perform any other acts reasonable and necessary to perfect the security interest created hereby, including the entry into a patent security agreement. The Company shall take such steps from time to time as may be requested by the Holder to ensure that the security interest created hereby shall constitute a first priority security interest under applicable law, including the UCC.

The Company represents and warrants that it is the owner of the Collateral, except as set forth on Schedule 7 hereto. The Company further represents and warrants that the Collateral set forth in items B and C on Schedule 1 hereto (the "**Patents Pending**") is held of record in the name of the Company and, except as set forth on Schedule 2 hereto, is free and clear of all liens, encumbrances and other claims, and are not the subject of any cancellation or reexamination proceeding or any other proceeding challenging their validity. The Company further represents and warrants that it has not granted any security interest in the Collateral to any third party, other than as set forth herein. The Company further represents and warrants that it has not received notice of, and knows of no reasonable basis for any claim, demand, suit, judgment, order or decree, whether or not embodied in an action past or present, alleging that either of the Patents Pending infringes, conflicts with, or otherwise violates any

intellectual property right, including but not limited to any patent, copyright or trade secret right, of any third party, except as set forth on Schedule 6 hereto. The Company further represents and warrants that the Company is the applicant of record in all patent applications in and for the Pending Patents; that no material notice of rejection or refusal to issue has been received in connection with any such application or applications, except as set forth on Schedule 3 hereto; that to the best knowledge of the Company, neither of the Patents Pending infringes, conflicts with, or violates any patent or other intellectual property right (including, without limitation, any trade secret) or similar rights of any third party; and that the execution, delivery and performance of this Note does not conflict with, constitute a breach of, or in any way violate any arrangement, understanding or agreement to or by which the Company is a party or by which the Company is bound. As used herein, a "material notice" is a notification by the United State Patent and Trademark Office of a major technical rejection of the patent applications for the Patents Pending, including but not limited to, rejections based on serious indefiniteness, undue breadth, lack of proper disclosure, or res judicata.

The Holder acknowledges and agrees that the Company makes no representation or warranty regarding the validity or enforceability of the Collateral set forth in item A of Schedule 1 (the "Issued Patent") or any other representation or warranty regarding the Issued Patent, except as set forth herein.

The Company further represents and warrants that on the date hereof, the authorized capital stock of the Company consists of 5,000,000 shares of its Common Stock, par value \$.01 per share (the "Common Stock"), and 5,000,000 shares of preferred stock, par value \$.01 per share, one share of which has been designated as "Junior Preferred Stock" (the "Junior Preferred Stock"). The issued and outstanding shares of capital stock of the Company consists of 1,112,360 shares of Common Stock and one share of Junior Preferred Stock, which shares of Common Stock are held beneficially and of record by the Persons and in the amounts set forth on Schedule 4. Except for the conversion rights which attach to the convertible securities listed on Schedule 5 hereto, there are no shares of Common Stock or any other equity security issuable upon conversion or exchange of any security of the Company nor are there any rights, options or warrants outstanding or other agreements to acquire shares of Common Stock or any other equity security. No stockholder of the Company and its subsidiaries is entitled to any preemptive or similar rights to subscribe for shares of capital stock of the Company and its subsidiaries, except as permitted by applicable law.

The principal place of business of the Holder is at the above address. The principal place of business of the Company is at the above address. The Company will give the Holder notice within 15 days of any change in the foregoing information. The Company will not sell or otherwise dispose of the Collateral or grant or suffer to exist any lien, security interest or other encumbrance on the Collateral without the prior written consent of the Holder.

The following is a statement of the rights of Holder and the conditions to which this Note is subject, and to which Holder, by the acceptance of this Note, agrees:

1. **Definitions.** As used in this Note, the following capitalized terms have the following meanings

- a) **"Company"** shall have the meaning given in the first paragraph hereto.
- b) **"Certificate"** shall mean the Certificate of Incorporation of Company as amended and/or restated and effective immediately prior to the closing of the next round of financing by Company.
- c) **"Collateral"** shall have the meaning given in the second paragraph hereto.
- d) **"First Issuance"** shall have the meaning provided in Section 3.
- e) **"Holder"** shall mean the Person specified in the first paragraph of this Note or any Person who shall at the time be the registered holder of this Note.
- f) **"Obligations"** shall mean and include all loans, advances, debts, liabilities and obligations, howsoever arising, owed by Company to Holder of every kind and description (whether or not evidenced by any note or instrument and whether or not for the payment of money), now existing or hereafter arising under or pursuant to the terms of this Note, including all fees, charges, expenses, attorneys' fees and costs and accountants' fees and costs chargeable to and payable by Company hereunder, in each case, whether direct or indirect, absolute or contingent, due or to become due, and whether or not arising after the commencement of a proceeding under Title 11 of the United States Code (11 U.S.C. Section 101 et seq.), as amended from time to time (including post-petition interests) and whether or not allowed or allowance as a claim in any such proceeding.
- g) **"Person"** shall mean and include an individual, a partnership, a corporation (including a business trust), a joint stock company, a limited liability company, an unincorporated association, a joint venture or other entity or a governmental authority.
- h) **"Principal Value"** shall mean, as of the date hereof, \$20,000, and shall increase in amount on the 14th day of each month beginning on April 14, 2000 by 0.83% of the Principal Value immediately prior to such increase.
- i) **"Series A Preferred Stock"** shall have the meaning provided in Section 3.
- j) **"Subsidiary"** shall mean (i) any corporation of which more than 50% of the issued and outstanding equity securities having ordinary voting power to elect a majority of the Board of Directors of such corporation is at the time directly or indirectly owned or controlled by Company, (ii) any partnership, joint venture, or other

association of which more than 50% of the equity interest having the power to vote, direct or control the management of such partnership, joint venture or other association is at the time directly or indirectly owned and controlled by Company, or (iii) any other entity included in the financial statements of Company on a consolidated basis.

k) "UCC" shall have the meaning given in the second paragraph hereto.

2. **Prepayment.** The Company may not prepay the Principal Value of this Note without the consent of the Holder.

3. **Conversion.**

a) ***Mandatory Conversion.*** Upon issuance (the "First Issuance") by the Company of its Series A Convertible Preferred Stock (the "Series A Preferred Stock") to Holder and B.G. Media Investors, L.P. on terms and conditions and subject to documentation satisfactory to Holder in its sole discretion, the Note shall automatically be converted into 2,236 shares of such Series A Preferred Stock and Holder's security interest in the Collateral shall dissolve.

b) ***Optional Conversion.*** In the event that the First Issuance is not consummated within sixty days of the date hereof, the Note shall at the option of Holder be convertible into 2,792 shares of Common Stock of the Company and Holder's security interest in the Collateral shall dissolve. For conversions pursuant to this Section 3(b), in the event the Company at any time or from time to time after the issuance of the Note fixes a record date for the effectuation of a split or subdivision of the outstanding shares of Common Stock or the determination of holders of shares of Common Stock entitled to receive a dividend or other distribution payable in additional shares of Common Stock or other securities or rights convertible into, or entitling the holder thereof to receive directly or indirectly, additional shares of Common Stock (hereinafter referred to as "Common Stock Equivalents") without payment of any consideration by such holder for the additional shares of Common Stock or Common Stock Equivalents (including the additional shares of Common Stock issuable upon conversion or exercise thereof), then, as of such record date (or the date of such dividend, distribution, split or subdivision if no record date is fixed), the number of shares of Common Stock issuable upon conversion of the Note shall be appropriately increased so that the number of shares of Common Stock issuable on conversion of this Note shall be increased in proportion to such increase in the aggregate number of shares of Common Stock or shares issuable with respect to Common Stock Equivalents. In case the Company shall at any time combine its outstanding Common Stock, the number of shares issuable upon conversion of the Note immediately prior to such combination shall be proportionately decreased by the same ratio as the combination.

If at any time or from time to time there shall be a recapitalization, reorganization, reclassification, consolidation, merger, sale of all or substantially all of the Company's assets or other transaction, in each case which is effected in such a manner that the holders of Common Stock are entitled to receive (either directly or

upon subsequent liquidation) stock, securities or assets with respect to or in exchange for Common Stock (a "Recap"), provision shall be made prior to such Recap in form and substance satisfactory to the Holder of the Note so that the Holder of the Note shall thereafter be entitled to receive, upon conversion of the Note, the number of shares of stock or other securities or property of the Company or otherwise, receivable upon such recapitalization by a holder of the number of shares of Common Stock into which the Note could have been converted immediately prior to such recapitalization. In any such case, appropriate adjustment shall be made in the application of the provisions of this Section 3 with respect to the rights of the Holder of the Note after the recapitalization to the end that the provisions of this Section 3 (including adjustments of the number of shares issuable upon conversion of the Note) shall be applicable after that event as nearly equivalent as may be practicable. The Company shall not effect any such Recap, unless prior to the consummation thereof, the successor entity (if other than the Company) resulting from consolidation or merger or the entity purchasing such assets assumes by written instrument (in form and substance satisfactory to the Holder of the Note), the obligation to deliver to such Holder such shares of stock, securities or assets as, in accordance with the foregoing provisions, such Holder may be entitled to acquire.

c) ***Procedure For Conversion.*** Written notice shall be delivered to Holder, notifying Holder of the conversion to be effected pursuant to Section 3(a), specifying the principal amount of the Note to be converted, the date on which such conversion is expected to occur and calling upon such Holder to surrender to Company, in the manner and at the place designated, the Note. Upon such conversion of this Note, Holder shall surrender this Note, duly endorsed, at the principal office of Company. At its expense, Company shall, as soon as practicable thereafter, issue and deliver to such Holder as such principal office a certificate or certificates for the number of shares to which Holder shall be entitled upon such conversion (bearing such legends as are required by the applicable state and federal securities laws in the opinion of counsel to Company), together with any other securities and property to which Holder is entitled upon such conversion under the terms of this Note, including a check payable to Holder for any cash amounts payable. Any conversion of this Note shall be deemed to have been made immediately prior to the closing of the issuance and sale of equity as described in Section 3(a) and on and after such date the Persons entitled to receive the equity issuable upon such conversion shall be treated for all purposes as the record Holder of such equity.

#### 4. **Redemption**

a) ***Mandatory Redemption.*** If this Note has not theretofore been converted pursuant to Section 3(a) or 3(b) above, the Company shall be required, on the first anniversary of the Note's issuance, to redeem the Note at the Principal Value of the Note on such date. At redemption, the security interest in the Collateral shall dissolve.

b) **Optional Redemption.** If this Note (i) has not theretofore been converted pursuant to Section 3(a) or 3(b) above and (ii) the Company has secured from other investors an aggregate of \$1,000,000 of additional capital, then at the option of Holder, the Company shall redeem the Note at the Principal Value of the Note. At redemption, the security interest in the Collateral shall dissolve.

5. **Exclusivity Period.** The Company and the current shareholders agree that for sixty days from the date hereof they will not negotiate, discuss, solicit offers or engage in any other communications with any other party or enter into any agreement with any other party concerning the combination of the Company with, or the sale of any of its securities or any material portion of its assets to, any other party or any other financing, other than as described herein. The Company will immediately notify the Holder of any contact between the Company, its officers or directors, or the current stockholders, and any other person regarding an offer or proposal or any related inquiry regarding a sale of the Company's assets or securities. If for any reason the closing of the transactions contemplated hereby shall not have occurred prior to the expiration of such sixty day period, these obligations as set forth in this Section 5 shall terminate.

6. **Successors and Assigns.** Subject to the restrictions on transfer described in Sections 7 and 8 below, the rights and obligations of Company and Holder under this Note shall be binding upon and benefit the successors, assigns, heirs, administrators and transferees of the parties.

7. **Waiver and Amendment.** Any provision of this Note may be amended, waived or modified upon the written consent of Company and Holder.

8. **Transfer of this Note or Securities Issuable on Conversion Hereof.** Except in respect of transfers by operation of law, or transfers to any affiliates of Holder, Holder may not sell or otherwise dispose of the Note or the securities to which it may be converted without the prior written consent of the Company, which consent shall not be unreasonably withheld. With respect to any offer, sale or other disposition of this Note or securities into which this Note may be converted, Holder will give written notice to Company prior thereto, describing briefly the manner thereof, together with a written opinion of Holder's counsel, reasonably satisfactory to Company, to the effect that such offer, sale or other distribution may be effected without registration or qualification under any federal or state law then in effect. Promptly, upon receiving such written notice and reasonably satisfactory opinion, if the Company consents to the transfer, the Company, as promptly as practicable, shall notify Holder that Holder may sell or otherwise dispose of this Note or such securities, all in accordance with the terms of the notice delivered to Company. If a determination has been made pursuant to this Section that the opinion of counsel for Holder is not reasonably satisfactory to Company, Company shall so notify Holder promptly after such determination has been made, and Holder may not sell or otherwise dispose of this Note or such securities until a reasonably satisfactory opinion is provided and consent of the Company is obtained. Each Note thus transferred and each certificate representing the securities thus transferred shall bear a legend as to the applicable restrictions on transferability in order to ensure compliance



with the Act, unless in the opinion of counsel for Company such legend is not required in order to ensure compliance with the Act. Company may issue stop transfer instructions to its transfer agent in connection with such restrictions. Subject to the foregoing, transfers of this Note shall be registered upon registration books maintained for such purpose by or on behalf of Company. Prior to presentation of this Note for registration of transfer, Company shall treat the registered holder hereof as the owner and holder of this Note for the purpose of receiving all payments of principal and interest hereon and for all other purposes whatsoever, whether or not this Note shall be overdue and Company shall not be affected by notice to the contrary.

9. **Assignment by Company.** Neither this Note nor any of the rights, interests or obligations hereunder may be assigned, by operation of law or otherwise, in whole or in part, by Company without the prior written consent of Holder.

10. **Notices.** Any notice, request or other communication required or permitted hereunder shall be in writing and shall be deemed to have been duly given if personally delivered or mailed by registered or certified mail, postage prepaid, or by recognized overnight courier or personal delivery at the respective addresses of the parties as set forth herein or on the register maintained by Company. Any party hereto may by notice so given change its address for future notice hereunder. Notice shall conclusively be deemed to have been given when received.

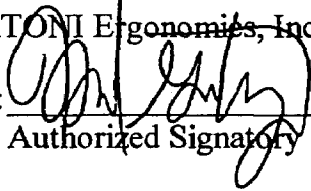
11. **Expenses; Waivers.** If action is instituted to collect under this Note, Company promises to pay all costs and expenses, including, without limitation, reasonable attorneys' fees and costs, incurred in connection with such action. Company hereby waives notice of default, presentment or demand for payment, protest or notice of nonpayment or dishonor and all other notices or demands relative to this instrument.

12. **Governing Law.** This Note and all actions arising out of or in connection with this Note shall be governed by and construed in accordance with the laws of the State of New York without regard to the conflicts of law provisions of the State of New York or any other state.

[Signature Page Follows]

IN WITNESS WHEREOF, this Note has been duly executed as of the date first above written.

EATONI Ergonomics, Inc.

By:  \_\_\_\_\_  
Authorized Signatory

Schedule 1

The Collateral

**A) United States Patent No. 5,365,589, Method and apparatus for encryption, decryption and authentication using dynamical systems (issued November 15, 1994).**

**B) Patent Pending for Touch Typable Devices Based on Ambiguous Codes and Methods to Design Such Devices**

This patent application was submitted as a U.S. provisional application on Dec. 10, 1998, with U.S. provisional application number 60/111,665. It was also submitted as a PCT (International Patent Cooperation Treaty) application on December 9, 1999 with International Application Number PCT/US99/29343.

**C) Patent Pending for Method and Apparatus For Improved Multi-Tap Text Input**

This patent application was filed on July 3, 1999 as a U.S. Utility Application, Serial No. 09/347,188, and also filed as a PCT application on December 9, 1999, with International Application Number PCT/US99/29346.

Both of the patents pending claim a priority date of December 10, 1998. The sole inventor, named on both applications, is Howard Gutowitz.

Schedule 2

David Kosower ("Kosower") is an individual who participated in the conceptualization and development of the Collateral. The Company is not able at this time to ascertain the extent of Kosower's rights, if any, in and to the Collateral as a result of such participation. In the opinion of the Company, there is no reasonable likelihood that there is substantial merit to any claim regarding Kosower's rights to the Collateral.

### Schedule 3

On March 8, 2000, Eatoni received a first, non-final Office Action from the United States Patent and Trademark Office (USPTO) concerning U.S. Utility Application, Serial No. 09/347,188, filed on July 3, 1999. The USPTO examiner initially reviewing the application determined that the methods specified in the patent application were methods known in the art, and rejected all patent claims. Howard Gutowitz is in the process of preparing a response to this first Office Action, explaining how the references cited by the examiner do not teach the methods proposed in this patent application. It is unclear whether the Examiner will accept such explanation.

No Office Action has been received in connection with US provisional application number 60/111,665, filed on December 10, 1998.

It is uncertain whether either patent will be issued.

Schedule 5

Ezra Field      Name

Convertible Securities  
Contingent Warrant to  
purchase 50,787 shares of  
Common Stock, subject to  
consummation of the interim  
financing, First Issuance,  
and Second Issuance

### Schedule 6

David Kosower ("Kosower") is an individual who participated in the conceptualization and development of the Collateral. The Company is not able at this time to ascertain the extent of Kosower's rights, if any, in and to the Collateral as a result of such participation. As of the date hereof, Kosower has not filed any legal action against the Company with respect the Collateral. In the opinion of the Company, there is no reasonable likelihood that there is substantial merit to any claim regarding Kosower's rights to the Collateral.

Schedule 7

The Company has made a decision not to maintain U.S. Patent No. 5,365,589 and such patent will expire.