

Docket No.: TRC-044075

FORM PTO-1596 (Modified) (Rev. 6-93)  
 OMB No. 0651-0011 (exp. 4/94)  
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 P09A/REV02

**RECORDATION FORM COVER SHEET**

U.S. DEPARTMENT OF COMMERCE  
Patent and Trademark Office

## PATENTS ONLY

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

<p>1. Name of conveying party(ies):  <b>ViaSpace Radio, Inc., a California corporation</b>  <b>Omicron Technologies, Inc., a Florida corporation</b></p> <p>Additional names(s) of conveying party(ies) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>2. Name and address of receiving party(ies):</p> <p>Name: <u>ViaSpace Technologies, LLC, a Delaware limited</u></p> <p>Address: <u>liability company</u></p> <p><u>2400 Lincoln Avenue</u></p> <hr/> <p>City: <u>Altadena,</u> State/Prov.: <u>CA</u></p> <p>Country: <u>U.S.A.</u> ZIP: <u>91001</u></p> <p>Additional name(s) &amp; address(es) <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>
<p>3. Nature of conveyance:</p> <p><input type="checkbox"/> Assignment <span style="margin-left: 150px;"><input type="checkbox"/> Merger</span></p> <p><input type="checkbox"/> Security Agreement <span style="margin-left: 100px;"><input type="checkbox"/> Change of Name</span></p> <p><input checked="" type="checkbox"/> Other <u>Forbearance, Release and Security Agreement</u></p> <p>Execution Date: <u>July 28, 2000</u></p>	

4. Application number(s) or registration numbers(s):

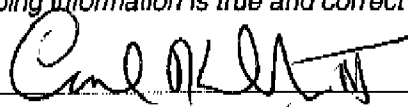
If this document is being filed together with a new application, the execution date of the application is: \_\_\_\_\_

Patent Application No.	Filing date	B. Patent No.(s)
<u>09/459,025</u>	<u>12/10/99</u>	<u>5,303,393</u> <u>5,455,823</u> <u>5,689,245</u>
Additional numbers		<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

<p>5. Name and address of party to whom correspondence concerning document should be mailed:</p> <p>Name: <u>Carl A. Kukkonen, III, Esq.</u></p> <p>Registration No. <u>42,773</u></p> <p>Address: <u>PRETTY, SCHROEDER &amp; POPLAWSKI, P.C.</u></p> <p><u>444 So. Flower Street, 19th Floor</u></p> <hr/> <p>City: <u>Los Angeles,</u> State/Prov.: <u>CA</u></p> <p>Country: <u>U.S.A.</u> ZIP: <u>90071-2909</u></p>	<p>6. Total number of applications and patents involved: <span style="border: 1px solid black; padding: 2px 5px;">4</span></p> <p>7. Total fee (37 CFR 3.41):.....\$ <u>160.00</u></p> <p><input type="checkbox"/> Enclosed - Any excess or insufficiency should be credited or debited to deposit account</p> <p><input checked="" type="checkbox"/> Authorized to be charged to deposit account</p> <p>8. Deposit account number:</p> <p><u>16-2460</u></p>
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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.*

Carl A. Kukkonen, III, Esq.  August 9, 2000

Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments, and 7 PATENT

## FORBEARANCE, RELEASE AND SECURITY AGREEMENT

THIS FORBEARANCE, RELEASE AND SECURITY AGREEMENT (this "Agreement") is entered into as of July 28, 2000, by and among the following parties (the "Parties"): ViaSpace Technologies LLC, a Delaware limited liability company ("ViaSpace"), on the one hand, and Omicron Technologies, Inc., a Florida corporation ("Omicron"), and ViaSpace Radio, Inc., a California corporation also known as "Interactive Radio Corporation" or "IRC" ("VSR") and a wholly-owned subsidiary of Omicron, on the other hand.

### RECITALS:

Whereas, in June 1999, ViaSpace, VSR, and certain related entities and individuals (the "ViaSpace Entities") were, and had been, in the process of developing a certain digital audio broadcasting technology sometimes referred to as the "Interactive Radio technology" (the "Technology"); and

Whereas, in or about June 1999, ViaSpace and Omicron entered into discussions for the purpose of entering into a transaction by which Omicron would acquire an interest in VSR and/or the Technology; and

Whereas, as a result of those discussions, effective on or about October 21, 1999, the Parties entered into a merger transaction (the "IRC Merger"), memorialized in that certain Merger Agreement, dated as of September 8, 1999 (the "IRC Merger Agreement"), whereby, *inter alia*, VSR was merged with Interactive Radio Corporation, a Nevada corporation ("IRC") and a wholly-owned subsidiary of Omicron; VSR, which was the surviving entity in the merger, became a wholly-owned subsidiary of Omicron; and the ViaSpace Entities received equity shares of Omicron; and

Whereas, a purpose of the IRC Merger was to facilitate efforts to obtain funding for the development and commercial production of the Technology; and

Whereas, after the IRC Merger, a dispute arose between ViaSpace and Omicron concerning the above-mentioned funding and development and commercial production of the Technology, and other matters related to the IRC Merger Agreement; and

Whereas, on or about June 12, 2000, ViaSpace gave written notice to Omicron of ViaSpace's election to rescind the IRC Merger Agreement, pursuant to California Civil Code Section 1691(b) on grounds of fraud in the inducement and failure of consideration (the "Notice of Rescission"), and thereby offered to return to Omicron anything of value received in the IRC Merger, and demanded that Omicron return anything of value received from the ViaSpace Entities in the IRC Merger, including but not limited to any and all patents to, or other right, title or interest in, the Technology (collectively, the "Technology Assets"); and

Whereas, in that certain Technology Transfer Agreement (the "Technology Transfer Agreement") executed concurrently with this Agreement, VSR has agreed, *inter alia*, to transfer the

Technology Assets to Wireless APS, Inc., a Delaware corporation ("Wireless APS") and a subsidiary of ViaSpace, in exchange for the issuance of equity securities of Wireless APS to VSR; and

Whereas, in connection with the Technology Transfer Agreement, the Parties otherwise wish to fully resolve any and all Claims relating to or arising out of the IRC Merger Agreement, the Notice of Rescission, and/or allegations raised or rights created therein, including but not limited to any claims for indemnity by ViaSpace against VSR or Omicron pursuant to Section 8.2(a) of the IRC Merger Agreement.

NOW THEREFORE, for valuable consideration, the receipt of which is hereby acknowledged, the parties agree as follows:

1. Forbearance and Release.

A. Effective four years and one day after the "Closing" (as such term is defined in the Technology Transfer Agreement), and, as an express condition precedent, provided that neither Omicron nor VSR has breached, or otherwise is in default under, this Agreement or the Technology Transfer Agreement, ViaSpace shall fully and forever release and discharge Omicron and VSR, and each of them, and their respective employees, officers, directors, agents, attorneys, successors, assigns, parent companies, affiliates, and subsidiaries, from all Claims relating to or arising out of the IRC Merger Agreement, the Notice of Rescission, and/or allegations raised or rights created therein ("Covered Claims").

B. The period beginning at Closing and ending four years and one day after Closing shall be the "Forbearance Period"; provided however, that said Forbearance Period shall terminate immediately if and in the event that Omicron or VSR has breached, or otherwise is in default under, this Agreement or the Technology Transfer Agreement (and the absence of such breach or default shall be an express condition precedent to the forbearance obligations set forth herein below). During the Forbearance Period, ViaSpace agrees and covenants that it shall not seek to enforce, file suit or other action based upon, or otherwise take any other action to collect upon, and shall in all other respects forbear from bringing, filing, or taking action to enforce or collect upon, any Covered Claims, against Omicron and VSR, and each of them, and their respective employees, officers, directors, agents, attorneys, successors, assigns, parent companies, affiliates, and subsidiaries. Any and all statutes of limitation applicable to the Covered Claims shall be tolled during the Forbearance Period, and Omicron and VSR hereby waive any defenses to the Covered Claims based upon laches or similar equitable bases.

2. Grant of Security Interest.

To secure the due and punctual performance of VSR's obligations under (i) the IRC Merger Agreement and (ii) the Technology Transfer Agreement, VSR hereby grants to ViaSpace a continuing security interest in and to, and a lien upon, all of VSR's right, title and interest in and to the following, whether now owned and existing or hereafter acquired or arising:

- 1) U.S. Patent Number 5,303,393, entitled "Integrated Radio Satellite Response System and Method," issued on April 12, 1994, to Noreen et al.;

- 2) U.S. Patent Number 5,455,823, entitled "Integrated Communications Terminal," issued on October 3, 1995, to Noreen et al.;
- 3) U.S. Patent Number 5,689,245, entitled "Integrated Communications Terminal," issued on November 18, 1997, to Noreen et al.; and
- 4) Pending U.S. Patent Application Serial Number 09/459,025, entitled "Internet-Based Interactive Radio System for Use with Broadcast Radio Stations," filed on December 10, 1999, by Crosby et al.

VSR agrees that this is a continuing security interest and shall remain in full force for the term of the Forbearance Period. VSR shall, at its own expense, perform on request of ViaSpace such acts as may be necessary or advisable to establish, perfect, give notice of or ensure the priority of any lien or security interest provided for in this Agreement.

**3. Miscellaneous.**

A. This Agreement is made for the purpose of, *inter alia*, compromising a disputed claim. None of the Parties admit that they have breached any term or condition of, or otherwise have any liability arising out of, the IRC Merger Agreement or the Notice of Rescission.

B. This Agreement is the product of the informed negotiation between the parties hereto, involving the compromised settlement of a disputed claim. Each of the Parties has participated in the drafting of this Agreement, or has agreed to the terms of this Agreement after consulting with counsel. Therefore, the language of this Agreement shall not be construed either in favor of or against either of the Parties to this Agreement.

C. This Agreement is the complete and entire agreement of the Parties with respect to the matters addressed herein, and may not be modified, changed, contradicted, edited or altered in any way by any previous written or oral agreement, or by any subsequent agreement except as expressly provided herein below.

D. By its signing of this Agreement, each of the Parties warrants that it has not assigned any of its rights or obligations under the IRC Merger Agreement, including but not limited to any right, title, or interest in the Technology Assets, to any other entity or individual.

E. The Parties each represent that the person signing this Agreement on their behalf is duly authorized to do so, and that this Agreement constitutes a valid and binding obligation upon it.

F. In the event of any litigation involving the Parties to enforce any provision of this Agreement, to enforce any remedy hereunder, or to seek a declaration of the rights of either Party, the Party, if any, most nearly sustaining its pre-litigation position, shall be entitled to recover from the other reasonable attorneys fees and expenses.

G. If any term, covenant, condition, or provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be held by a court of competent jurisdiction to be invalid, void or unenforceable, the Parties will revise such term, covenant,

condition or provision to effect its original intent in a manner which is not invalid, void or unenforceable. The remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any other person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

H. This Agreement may be changed, modified or discharged only by an agreement in writing signed by the Parties hereto. Except as expressly set forth in this Agreement, no claim of waiver, modification, or acquiescence with respect to any of the provisions of this Agreement shall be made against any of the Parties, except on the basis of a written instrument executed by and on behalf of the Parties. No failure or delay by any of the Parties to exercise any right it may have by reason of the default of any other Party shall operate as a waiver of default or modification of this Agreement or shall prevent the exercise of any right by the first Party while the other Party or Parties continue to be so in default. The waiver by one Party of the performance of any covenant, condition or promise shall not invalidate this Agreement, nor shall it be considered to be a waiver by it of any other covenant, condition or promise. The waiver by any Party at the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at a later time.

I. Headings and titles of articles and sections and other subparts of this Agreement are for convenience of reference only and shall not be considered in interpreting the text of this Agreement.

J. This Agreement shall be governed by the laws of the State of California, and venue for any dispute hereunder shall be proper in the County of Los Angeles, California.

K. This Agreement shall be binding upon the successors and assigns of the Parties, and each of them.

IN WITNESS WHEREOF, the Parties acting through their duly authorized representatives have executed this Agreement on the date first hereinabove written.

**VIASPACE TECHNOLOGIES LLC**

By: *Amjad Abdallat*  
Name: AMJAD ABDALLAT  
Title: Vice President

**OMICRON TECHNOLOGIES, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**VIASPACE RADIO CORPORATION  
(Interactive Radio Corporation)**

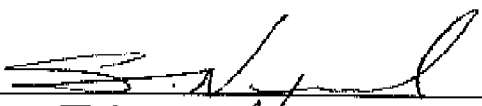
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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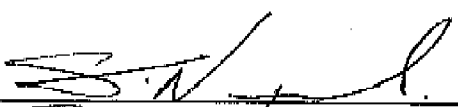
**VIASPACE TECHNOLOGIES LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**OMICRON TECHNOLOGIES, INC.**

By:   
Name: SAK NARWAL  
Title: PRESIDENT

**VIASPACE RADIO CORPORATION**  
(Interactive Radio Corporation)

By:   
Name: SAK NARWAL  
Title: CFO