

12-01-2000



101534626

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

1. Name of conveying party(ies):

nStor Corporation, 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: Oct. 30, 2000

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

Name: Wells Fargo Credit, Inc.

Internal Address: attn: nStor Account Officer

Street Address: 245 S. Los Robles Ave., Ste 600

City: Pasadena State: CA ZIP: 91101

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)

09/670,117  
09/614,655

B. Patent No.(s)

n/a

Additional numbers attached? ☐ Yes ☒ No

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

Name: Sheppard, Mullin, Richter & Hampton LLP

Internal Address: attn: J. Cravitz

Street Address: 333 S. Hope St., 48th Floor

City: Los Angeles State: CA ZIP: 90071

6. Total number of applications and patents involved: 2

7. Total fee (37 CFR 3.41):..... \$ 80.00

- ☐ Enclosed  
☐ Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

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80.00 OP

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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.

John E. Friedrichs, Esq.

Name of Person Signing

Signature

Date

11/28/00

Total number of pages comprising cover sheet: 8

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

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Commissioner of Patents and Trademarks  
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Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington, D.C. 20503.

PATENT

REEL: 011281 FRAME: 0888

# PATENT COLLATERAL ASSIGNMENT AGREEMENT

THIS PATENT COLLATERAL ASSIGNMENT AGREEMENT (this "Agreement") is entered into as of 08 30, 2000, by and between nStor Corporation, Inc., a Delaware corporation ("Debtor"), and Wells Fargo Credit, Inc. ("Bank").

## RECITALS

WHEREAS, Bank has extended or will hereafter extend credit to Debtor, and to secure its obligations to Bank, Debtor has executed various agreements, including without limitation, that certain Security Agreement dated as of April 30, 1998 between anDATAco of California, Inc., a California corporation (predecessor in interest to Debtor) and Wells Fargo Bank, National Association (predecessor in interest to Bank), covering among other items, various proprietary rights and patents (which security agreement, together with any and all amendments and modifications thereto from time to time entered into, and any security agreements at any time hereafter executed in replacement and/or in substitution thereof and/or in addition thereto, shall be referred to herein as the "Security Agreement"); and

WHEREAS, Debtor and Bank wish to further clarify their respective rights and obligations with regard to certain collateral in an instrument to be recorded with the United States Patent and Trademark Office and elsewhere.

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged, Debtor and Bank hereby agree as follows:

1. Collateral Assignments. Pursuant to the Security Agreement and subject to and upon the additional terms, covenants and conditions hereof, Debtor hereby grants, assigns, conveys, mortgages and transfers to Bank, Debtor's entire right, title and interest in and to all of the following (the "Property"):

(a) all patent applications and patents (collectively the "Patents") in which Debtor now has or at any time hereafter acquires an interest, including without limitation, all proceeds thereof, including without limitation, license royalties and proceeds of infringement suits.

(b) the right to sue, in Bank's name or joined with Debtor, for past, present or future infringements of the Patents, all rights corresponding thereto throughout the world and all reissues, divisions, continuations, renewals, extensions and continuations thereof in whole or in part.

The Property shall include without limitation: (i) all Patents described in Exhibit A attached hereto and incorporated herein by this reference, and (ii) all reissues and/or extensions of any of the Patents now existing or hereafter acquired. The patent rights assigned to Bank as security hereunder shall be held by Bank for the full term for which said Patents are granted,

and for the term or terms of each and every extension thereof, as fully as the same would have been held by Debtor if this Agreement had not been executed.

2. Obligations Secured. The collateral assignment established by this Agreement secures payment of all indebtedness and performance of all obligations which may now or at any time hereafter be owed by Debtor to Bank, including without limitation, all obligations now existing or arising under or in connection with the Security Agreement, and/or in connection with any promissory note and/or loan agreement now or at any time hereafter executed by Debtor with Bank, including but not limited to that certain Loan Agreement between anDATAco of California, Inc., a California corporation (predecessor in interest to Debtor) and Wells Fargo Bank, National Association (predecessor in interest to Bank) dated as of April 30, 1998, and all amendments modifications and extensions thereto and substitutions and replacements therefor (the "Loan Agreement").

Upon payment and performance in full of all of Debtor's obligations under the Loan Agreement, any security interest created by this Agreement shall be automatically released and Bank, at Debtor's cost and expense, shall execute, deliver, record and file all instruments and documents, and do all other acts and things, reasonably required to evidence or document the release of Bank's interests arising under this Agreement, as reasonably requested by, and at the sole expense of, Debtor, including without limitation a reassignment to Debtor without recourse and without any warranty or representation of any kind or nature, of all right, title and interest that Bank may then have in the Patents, free and clear of any claims by Bank, in a form acceptable to counsel for Bank, and upon such reassignment, the license and rights granted hereunder shall terminate, and the entire right, title and interest in all such Patents and the rights to bring action for past infringement or interference and/or for past profits and damages based on such infringement shall be reinvested in Debtor, as fully as if this Agreement and license had not been made.

3. New Patent Rights. If before the obligations secured hereby shall have been satisfied in full, Debtor shall obtain rights to any new patentable inventions, or become entitled to the benefit of any patent application and/or patent for any reissue, division, continuation, renewal, extension or continuation in whole in part of any Patent and/or any improvement on any Patent, the provisions of Paragraph 1 hereof shall apply automatically thereto and Debtor shall give to Bank prompt notice thereof in writing.

4. Amendment of Exhibit A. Debtor authorizes Bank to modify this Agreement by amending Exhibit A from time to time to include any future patents and patent applications which are or become Patents under either of Paragraphs 1 or 3 hereof, and Debtor agrees to execute each amendment to Exhibit A at Bank's request; provided however, that such execution by Debtor shall not be necessary to fully incorporate by reference and make a part of this Agreement any such amendment prepared by Bank from time to time.

5. Grant of Rights. Unless and until there shall have occurred and be continuing an Event of Default (as defined in the Security Agreement) or an Event of Default (as defined in the Loan Agreement), and Bank shall have given written notice to Debtor that the rights, license and privilege granted under this Paragraph have been terminated (provided

that the following rights shall be automatically reinstated upon the cure or waiver of such Event of Default (as defined in the Security Agreement) or Event of Default (as defined in the Loan Agreement), as applicable), Bank hereby grants to Debtor:

(a) the exclusive, non-transferable, non-assignable royalty-free right and license under the Patents to make, have made for it, use and sell the inventions disclosed and claimed in the Patents for Debtor's own benefit and account and for none other; and

(b) the right to sue for past, present or future infringements of the Patents, all rights corresponding thereto throughout the world and all reissues, divisions, continuations, renewals and extensions thereof in whole or in part; provided however, that no such suit shall be brought in the name of Bank unless Debtor shall have first received the written consent of Bank thereto, which consent shall not be unreasonably withheld in instances where applicable law requires that the Patent owner be joined as a necessary party in infringement suits.

Debtor agrees neither to sell or assign its interest in, nor grant any sublicense under, the license granted by Bank in this Paragraph 5, without the prior written consent of Bank; provided however, that Debtor may grant such bona fide sublicenses for good and valuable consideration as are necessary and usual in the ordinary course of Debtor's business as it is presently conducted and as it may be legally expanded, on condition that such sublicenses so granted shall be subject to the terms and conditions of the Security Agreement and this Agreement.

6. Warranties. In addition to the representations and warranties made by Debtor in the Security Agreement, Debtor represents and warrants that:

(a) the patents are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;

(b) to the best of Debtor's knowledge, each of the Patents is valid and enforceable;

(c) Debtor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Patents, free and clear of any liens, charges and encumbrances except those in favor of Bank, including without limitation, pledges, assignments, licenses, shop rights and covenants by Debtor not to sue third persons;

(d) Debtor has the unqualified right to enter into this Agreement and perform its terms;

(e) the Patents listed on Exhibit A hereto represent all of the patents and applications therefor in which Debtor has any rights as of the date hereof; and

(f) the information set forth in Exhibit A hereto is entirely correct.

7. Covenants. Until the obligations secured hereby shall have been paid in full (or released by Bank), Debtor hereby covenants and agrees to cooperate with Bank in whatever manner may be necessary or which Bank may deem necessary or appropriate so that Bank may enjoy its rights and interests hereunder to the fullest extent. Such cooperation shall include, without limitation:

(a) prompt preparation and execution (at Debtor's expense) of all petitions, oaths, specifications, declarations or other papers that may be necessary or which Bank may deem necessary or appropriate for prosecuting any Patents and for prosecuting interference proceedings involving any such Patents; and

(b) prompt assistance and cooperation (at Debtor's expense) in the prosecution of any legal actions or other proceedings involving any Patents, including without limitation, oppositions, cancellation proceedings, priority contests, public use proceedings and court actions alleging infringement or any other cause of action.

8. Defense of Property; Indemnity; Prosecution of Patent Applications.

Until the obligations secured hereby shall have been paid in full (or released by Bank), Debtor hereby covenants and agrees promptly upon request of Bank to defend the Property and Bank's rights and interests therein and to promptly notify Bank of any event, occurrence or legal action which affects the Property or the rights of the parties in relation thereto. Debtor acknowledges that Bank may, but shall have no obligation whatsoever to, commence any legal action or other proceeding to defend the Property or to contest the use by any other party of the Property or any portion thereof. Debtor shall unconditionally indemnify Bank and hold Bank harmless from and against all claims, causes of action, damages, liability, costs and expenses, including reasonable attorneys' fees, that Bank may be subject to in connection with this Agreement, including without limitation, patent infringement and contributory patent suits that may be brought against Bank, except those arising from the gross negligence or willful misconduct of Bank.

Until the obligations secured hereby shall have been paid in full, Debtor shall have the duty, through qualified patent counsel, to prosecute diligently any patent applications of the Patents pending as of the date of this Agreement or at any time thereafter, to make application on unpatented but patentable inventions and to preserve and maintain all rights in Patents, including without limitation, the payment of all maintenance fees. Any expenses incurred in connection with such an application shall be borne by Debtor. Debtor shall not abandon any right to file a patent application, or any pending Patent without the prior written consent of the Bank, which consent shall not be unreasonably withheld.

9. Defaults. Upon the failure of Debtor to pay when due any sums owing to Bank or upon the occurrence of any Event of Default as defined in the Security Agreement or upon the occurrence of any Event of Default as defined in the Loan Agreement and/or in any contract or instrument pursuant to which Debtor has incurred or may at any time hereafter incur any liabilities, indebtedness or other obligations to Bank, subject to applicable cure

provisions, if any, Bank shall have the rights and remedies available to a secured party under law and/or expressly provided in the Security Agreement, the Loan Agreement and/or any such other contract or instrument. In addition, Bank shall have the right to sue for past infringement of the Property and to collect all damages and profits for past infringements.

If any Event of Default (as defined in the Security Agreement) or Event of Default (as defined in the Loan Agreement) shall have occurred and be continuing, and following the giving of any notices required hereby (and notices required by the Security Agreement and the Loan Agreement), Debtor's license under the Patents as set forth in Paragraph 5 shall terminate forthwith (subject to reinstatement as set forth in such Paragraph 5), and Bank shall have, in addition to all other rights and remedies given it by this Agreement and the Security Agreement, those 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 and, without limiting the generality of the foregoing, Bank may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to Debtor, all of which are expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon the whole or from time to time any part of the Property or any interest which the Debtor may have therein, and after deducting from the proceeds of sale or other disposition of the Property all expenses (including all reasonable expenses for brokers' fees and legal services), shall apply the residue of such proceeds toward the payment of the obligations secured hereby. Any remainder of the proceeds after payment in full of such obligations shall be paid over to the Debtor. Notice of any sale or other disposition of the Property shall be given to Debtor at least five (5) days before the time any intended public or private sale or other disposition of the Property is to be made, which Debtor hereby agrees shall be reasonable notice of such sale or other disposition. At any such sale or other disposition, any holder of any note or Bank may, to the extent permissible under applicable law, purchase the whole or any part thereof.

10. Relation to Security Agreement. This Agreement is a supplement to the Security Agreement, and Bank's rights and remedies, and Debtor's obligations and waivers, under the Security Agreement, and the interpretive principles stated in the Security Agreement shall be applicable hereunder; provided however, that this Agreement and the Security Agreement shall be construed together so as to grant Bank the greatest rights and remedies with regard to the Property; and provided further, that Bank's rights and remedies hereunder may be expressly modified by amendments to the Security Agreement from time to time.

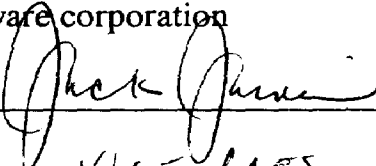
11. Successors; Assigns. This Agreement shall be binding upon and inure to the benefit of the heirs, executors, administrators, legal representatives, successors and assigns of the parties; provided however, that Debtor may not assign this Agreement or any interest herein without Bank's prior written consent.

12. Enforceability. If any provision of this Agreement shall for any reason be unenforceable in any respect, such unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such unenforceable provisions had not been contained herein.

13. Governing Law. Except to the extent that Federal law preempts, this Agreement shall be governed by and construed in accordance with the laws of the State of California.

IN WITNESS WHEREOF, Debtor and Bank hereby have executed this Agreement as of the date first written above.

nStor Corporation, Inc.,  
a Delaware corporation

By:   
Title: VICE PRES

Wells Fargo Credit, Inc.

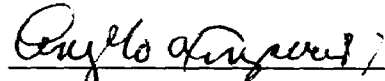
By:   
Title: VICE PRESIDENT

EXHIBIT A  
to  
PATENT COLLATERAL ASSIGNMENT AGREEMENT  
Dated as of 08/30, 2000

<u>Application or Patent Number</u>	<u>Title</u>	<u>Issue or Filing Date</u>
Application Number: 09/670,117	Data Storage Chassis With Adjustable Rack Mounting	Filing Date: 9/26/00
Application Number: 09/614,655	Disk Drive Storage Enclosure With Isolated Cooling Path For Storage Media	Filing Date: 7/13/00