

05-08-2001

Docket No.:

FORM PTO-1595 (Modified)
(Rev. 6-93)
OMB No. 0651-0011 (exp. 4/94)
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P08/REV02



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U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

101706858

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

1. Name of conveying party(ies):

ComTier

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

Name: Andrew Corporation

Internal Address: _____

Additional names(s) of conveying party(ies) ☐ Yes ☒ No

3. Nature of conveyance:

4-27-01

☐ Assignment☐ Merger☒ Security Agreement☐ Change of Name☐ Other _____Street Address: 10500 West 153rd StreetCity: Orland Park State: IL ZIP: 60462Execution Date: 17 April 2001Additional name(s) & address(es) attached? ☐ Yes ☒ No

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: _____

A. Patent Application No.(s)

B. Patent No.(s)

5,974,091

05/07/2001 LMUELLER 00000234 5974091

01 FC:581

40.00 DP

Additional numbers attached? ☐ Yes ☒ No

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

6. Total number of applications and patents involved: 1Name: Michael R. Osterhoff7. Total fee (37 CFR 3.41):.....\$ 40.00Internal Address: GARDNER, CARTON & DOUGLAS☒ Enclosed - Any excess or insufficiency should be credited or debited to deposit account☐ Authorized to be charged to deposit accountStreet Address: 321 North Clark, Suite 3400

8. Deposit account number:

07-0181City: Chicago State: IL ZIP: 60462

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.

Michael R. Osterhoff
April 24, 2001

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments, and document:

14

PATENT
REEL: 011751 FRAME: 0489

PATENT AND LICENSE SECURITY AGREEMENT

THIS PATENT AND LICENSE SECURITY AGREEMENT, dated as of April 17, 2001, is between ComTier, a California corporation ("ComTier") and Andrew Corporation, a Delaware corporation ("Andrew").

WITNESSETH:

WHEREAS, ComTier and Andrew have entered into that certain Demand Note dated as of April 17, 2001 (as amended, supplemented or otherwise modified from time to time, the "Note"); and

WHEREAS, as a condition precedent to Andrew making Loans to ComTier under the Note, Andrew requires that ComTier enter into this Agreement to secure its Obligations owing to Andrew;

NOW, THEREFORE, the parties hereto agree as follows:

1. DEFINITIONS.

As used in this Agreement:

"Collateral" means, collectively, (i) the Patents, (ii) Patent licenses, (iii) any renewal, reissue, re-examination certificate or extension with respect to the Patents and Patent licenses, (iv) all income, royalties, damages and payments now and hereafter due or payable under and with in connection with any licensing agreement concerning the Patents or Patent licenses with third parties and (v) all proceeds, insurance proceeds and products of any of the foregoing including without limitation, any claim by ComTier against third parties for past, present or future infringement of any Patent.

"Default" means an event described in Section 6.1.

"Patents" means collectively, (i) each patent of ComTier, including the patents listed on Exhibit A-1 hereto and (ii) each patent application of ComTier.

"Agreement" means this Patent and License Security Agreement, as it may be amended or modified and in effect from time to time.

"Unmatured Default" means an event which but for the lapse of time or the giving of notice, or both, would constitute a Default.

The foregoing definitions shall be equally applicable to both the singular and plural forms of the defined terms. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Note.

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2. GRANT OF SECURITY INTEREST.

ComTier hereby pledges and grants to Andrew a continuing lien and security interest in and right of setoff against the Collateral to secure the full and complete payment and performance of all obligations owed to Andrew by ComTier or any Guarantor howsoever created, arising or evidenced, whether direct or indirect, absolute or contingent, or now or hereafter existing, or due or to become due, including, without limitation, under the Note, under the Security Agreement and hereunder (the "Obligations"); provided, however, that the grant of a security interest shall not extend to ComTier's rights under any license agreement to the extent that a grant of a security interest in such license agreement is prohibited by a valid, enforceable restriction thereon, unless the necessary consents shall have been obtained or such restriction shall have been rendered ineffective by reason of law, court proceedings or otherwise.

3. BORROWER REMAINS OBLIGATED.

The security interest created hereunder shall not relieve ComTier from the performance of any term, covenant, condition or agreement on its part to be performed or observed (including exercise by Andrew of any of its rights hereunder), or from any liability to any person, under or in respect of any of the Collateral or impose any liability on Andrew for any act or omission on the part of ComTier.

4. REPRESENTATIONS AND WARRANTIES.

ComTier represents and warrants to Andrew that:

4.1. Authorization, Validity and Enforceability. The execution and delivery by ComTier of this Agreement and all financing statements and other filings contemplated by this Agreement create a security interest which is enforceable against ComTier in all now owned and hereafter acquired Collateral, except as enforceability may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

4.2. Principal Location. ComTier's mailing address for notices hereunder, and the location of its chief executive office and principal place of business and of its books and records relating to the Collateral is 1199 E. Arques Avenue, Sunnyvale, CA 94085.

4.3. No Other Names. Comtier previously conducted business under the names "Communication Network Systems" and "CNS." Other than as set forth in the presenting sentence, ComTier has not conducted business under any name except the name in which it has executed this Agreement.

4.4. No Default. No Default or Unmatured Default exists.

4.5. No Financing Statements. ComTier is and shall continue to be the lawful owner of the entire right, title and interest in and to the Collateral, subject to any licenses of Patents

or other Collateral. No financing statement or filing describing all or any portion of the Collateral which has not lapsed or been terminated naming ComTier as debtor has been filed in any jurisdiction except financing statements and filings naming Andrew as secured party. The Collateral is free and clear of all liens other than the liens created in this Agreement. ComTier has no right, title or interest in any Patent other than those listed on the Exhibits hereto.

4.6. Security Interest. This Agreement creates a valid security interest in or collateral assignment of the Collateral, enforceable against ComTier and all third parties, securing payment of the Obligations, which security interest will be a perfected first priority security interest upon (i) the recording of this Agreement in the Office of the Commissioner of Patents and Trademarks and (ii) the filing of Uniform Commercial Code financing statements with the Secretary of State of Illinois.

5. COVENANTS.

So long as any Obligations remain outstanding, ComTier covenants as follows:

5.1. Delivery of Certificates. ComTier shall deliver to Andrew copies of all existing official certificates of registration for the Patents, and shall deliver to Andrew copies of the official certificates of registration for Patents for which applications are now or hereafter pending, promptly upon receipt by ComTier of such certificates.

5.2. Notice of Proceedings. ComTier shall promptly notify Andrew of the institution of, and any adverse determination in, any proceeding in the United States Patent and Trademark Office of any agency of any state or any court regarding ComTier's right, title and interest in any Patent or ComTier's right to register any Patent.

5.3. Security Interest and Lien. ComTier shall protect, preserve, renew and maintain, all rights of ComTier in all Collateral, including the duty to prosecute and/or defend against any and all suits concerning substantial and material infringement or dilution of such Collateral and any suits against ComTier asserting the invalidity of such Collateral. ComTier will (i) preserve, warrant, and defend the lien created hereby in the Collateral against the claims of all persons whomsoever, (ii) will not at any time assign, transfer, or otherwise dispose of its right, title and interest in and to any of the Collateral, (iii) will not at any time, directly or indirectly, create, assume, or suffer to exist any lien, or other rights of third persons and restrictions, other than (a) the liens created by this Agreement in and to the Collateral or any part thereof and (b) licenses entered into by ComTier in the ordinary course of its business, including licenses granted to distributors and end users, licenses entered into in connection with the development of products and other license arrangements customary in ComTier's line of business.

5.4. Further Assurances. ComTier, at its expense, shall from time to time execute and deliver to Andrew all such other assignments, certificates, supplemental documents, and financing statements, and shall do all other acts or things as Andrew may reasonably request in

order to more fully create, evidence, perfect, continue, and preserve the priority of the lien herein created and to exercise and enforce its rights and remedies hereunder, with respect to any Collateral. Without limiting the generality of the foregoing, ComTier will execute and file such financing or continuation statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as Andrew may request, in order to perfect and preserve the assignments and security interest granted or purported to be granted hereby. ComTier hereby authorizes Andrew to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of ComTier where permitted by law.

5.5. Change of Name, Identity, etc. ComTier shall not change its name, jurisdiction of incorporation, identity or corporate structure without giving Andrew at least thirty (30) days' prior written notice.

6. DEFAULT.

6.1. The occurrence of any one or more of the following events shall constitute a Default:

6.1.1. Any representation or warranty made by or on behalf of ComTier to Andrew under or in connection with this Agreement shall be materially false as of the date on which made.

6.1.2. The breach by ComTier of any of the terms or provisions of Section 5.

6.1.3. The breach by ComTier (other than a breach which constitutes a Default under Sections 6.1.1 or 6.1.2) of any of the terms or provisions of this Agreement which is not remedied within five (5) days after written notice from Andrew.

6.1.4. Any material portion of the Collateral shall be transferred or otherwise disposed of, either voluntarily or involuntarily, in any manner not permitted by Section 5.3.

6.1.5. Any "Event of Default" under and as defined in the Note.

6.2. Acceleration and Remedies. If any Default occurs and is continuing, then Andrew may exercise any or all of the rights and remedies provided (i) in the Note, the Security Agreement and this Agreement, (ii) to a secured party when a debtor is in default under a security agreement by the Uniform Commercial Code as enacted in the State of Illinois or other applicable jurisdiction, as amended and (iii) as afforded by law, in equity or otherwise, including, without limitation, any law governing the exercise of a bank's right of setoff or banker's lien.

6.3. Right of Sale. Upon the occurrence and during the continuance of a Default, subject to compliance with applicable law, Andrew (i) may appoint a receiver of the Collateral, (ii) may sell the Collateral at a public or private sale, at any of its offices or elsewhere, for cash or credit or for future delivery, and at such price or prices and upon such other terms as it may deem commercially reasonable, (iii) shall not be obligated to make any sale of Collateral regardless of notice of sale having been given and (iv) may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Andrew may be the purchaser at any sale of the Collateral and may pay all or any part of the purchase price thereof by canceling part or all of the Obligations. To the greatest extent provided by applicable law, ComTier hereby waives the right to object to the manner or sufficiency of advertising, preparation of the Collateral for sale, or solicitation of bids in connection with any sales or other dispositions of the Collateral. ComTier hereby expressly waives and releases, to the fullest extent permitted by applicable law, any right of redemption on the part of ComTier.

6.4. Sale Restrictions. ComTier agrees that, in any sale of any of the Collateral, Andrew is authorized to comply with any limitation or restriction in connection with such sale as counsel may advise Andrew (which counsel may be employees of Andrew) is necessary in order to avoid any violation of any applicable law (including compliance with such procedures as may restrict the number of prospective bidders or purchasers, require that such prospective bidders and purchasers have certain qualifications, and restrict such prospective bidders and purchasers to persons who will represent and agree that they are purchasing for their own account or investment and not with a view to the distribution or resale of such Collateral), or in order to obtain any required approval of the sale or of the purchaser by any governmental or regulatory authority or official, and ComTier further agrees that such compliance shall not result in such sale being considered or deemed not to have been made in a commercially reasonable manner, nor shall Andrew be liable or accountable to ComTier for any discount allowed by reason of the fact that the Collateral was sold in compliance with any such limitation or restriction.

6.5. ComTier's Obligations Upon Default. Upon the request of Andrew after the occurrence and during the continuance of a Default, ComTier will:

6.5.1. Assembly of Collateral. Assemble and make available to Andrew the Collateral and all records relating thereto at any place or places reasonably specified by Andrew.

6.5.2. Andrew Access. Permit Andrew, by Andrew's representatives and agents, to enter any premises where all or any part of the Collateral, or the book and records relating thereto, or both, are located, to take possession of all or any part of such Collateral and to remove all or any part of such Collateral.

6.6. Protection of Collateral. To the maximum extent permitted by applicable law, after the occurrence and during the continuance of a Default, Andrew shall have the right,

without taking title to any Collateral, to bring suit to enforce any or all Collateral or the lien granted hereunder, in which event ComTier shall, at the request of Andrew, do any and all lawful acts and execute any and all proper documents required by Andrew in aid of such enforcement. All costs, expenses and other money advanced by Andrew in connection with the foregoing shall be Obligations payable on demand.

7. APPLICATION OF PROCEEDS.

Andrew shall apply the proceeds of the Collateral, including the proceeds of any sales or other disposition of the Collateral, or any part thereof, under this Section 7, in the following order unless a court of competent jurisdiction shall otherwise direct:

(i) **FIRST**, to payment of all reasonable costs and expenses of Andrew incurred in connection with the collection and enforcement of the Obligations or of the security interest granted to Andrew pursuant to this Agreement;

(ii) **SECOND**, to payment of that portion of the Obligations constituting accrued and unpaid interest and fees;

(iii) **THIRD**, to payment of the principal of the Obligations constituting Loans;

(iv) **FOURTH**, to payment of all other Obligations owing to Andrew; and

(v) **FIFTH**, the balance, if any, after all of the Obligations have been satisfied, shall be remitted to ComTier or whomsoever shall be legally entitled thereto.

8. GENERAL PROVISIONS.

8.1. Notice of Disposition of Collateral. ComTier hereby waives notice of the time and place of any public sale or the time after which any private sale or other disposition of all or any part of the Collateral may be made. To the extent such notice may not be waived under applicable law, any notice made shall be deemed reasonable if sent to ComTier, addressed as set forth in Section 9.1, at least five (5) days prior to any such public sale or the time after which any such private sale or other disposition may be made.

8.2. Andrew's Performance of Obligations. Without having any obligation to do so, Andrew may perform or pay any obligation in this Agreement which ComTier has agreed to perform or pay but which it has failed to so perform or pay in a timely manner after a request therefor from Andrew and ComTier shall reimburse Andrew for any amounts paid by Andrew pursuant to this Section 8.2. ComTier's obligation to reimburse Andrew pursuant to the preceding sentence shall be an Obligation payable on demand. ComTier hereby appoints Andrew, and any other person that Andrew may designate, as ComTier's attorney-in-fact to

do, or cause to be done, in the name, place and stead of ComTier in any way in which ComTier itself could do, or cause to be done and has failed to do at the request of Andrew.

8.3. Authorization for Andrew to Take Certain Action. ComTier irrevocably authorizes Andrew at any time and from time to time and appoints Andrew as its attorney in fact to act, in the sole discretion of Andrew, on behalf of ComTier (i) at any time (a) to execute on behalf of ComTier as debtor and to file financing statements or other filings with the United States Patent and Trademark Office necessary or desirable in Andrew's sole discretion to perfect and to maintain the perfection and priority of Andrew's security interest in the Collateral, and (b) to file a carbon, photographic or other reproduction of this Agreement or any financing statement with respect to the Collateral as a financing statement in such offices as Andrew in its sole discretion deems necessary or desirable to perfect and to maintain the perfection and priority of Andrew's security interest in such Collateral and (ii) after the occurrence and during the continuance of a Default, to receive, endorse and collect all instruments made payable to ComTier representing any interest payment or other distribution in respect of the Collateral or any part thereof and to give full discharge for the same, and to apply the proceeds of any Collateral received by Andrew to the Obligations when and to the extent permitted by this Agreement.

8.4. Specific Performance of Certain Covenants. ComTier acknowledges and agrees that a breach of any of the covenants contained in Section 5 will cause irreparable injury to Andrew, that Andrew has no adequate remedy at law in respect of such breaches and therefore agrees, without limiting the right of Andrew to seek and obtain specific performance of other obligations of ComTier contained in this Agreement, that the covenants of ComTier contained in Section 5 shall be specifically enforceable against ComTier.

8.5. Dispositions Not Authorized. Except as set forth in Section 5.3, ComTier is not authorized to sell or otherwise dispose of the Collateral or grant any license with respect to the Collateral, and notwithstanding any course of dealing between ComTier and Andrew or other conduct of Andrew, no authorization to sell or otherwise dispose of the Collateral or to grant any license with respect to the Collateral shall be binding upon Andrew unless such authorization is in writing signed by Andrew.

8.6. Definition of Certain Terms. Terms defined in the Illinois Uniform Commercial Code which are not otherwise defined in this Agreement or in the Note are used in this Agreement as defined in the Illinois Commercial Code as in effect from time to time.

8.7. Benefit of Agreement. The terms and provisions of this Agreement shall be binding upon and inure to the benefit of ComTier, Andrew and their respective successors and assigns, except that ComTier shall not have the right to assign its rights under this Agreement or any interest herein, without the prior written consent of Andrew.

8.8. Survival of Representation All representations and warranties of ComTier contained in this Agreement shall survive the execution and delivery of this Agreement.

8.9. Headings. The title of and section headings in this Agreement are for convenience of reference only, and shall not govern the interpretation of any of the terms and provisions of this Agreement.

8.10. Termination. This Agreement shall continue in effect (notwithstanding the fact that from time to time there may be no Obligations or commitments therefor outstanding) until no Obligations or commitments of Andrew which would give rise to any Obligation shall be outstanding.

8.11. Entire Agreement. This Agreement embodies the entire agreement and understanding between ComTier and Andrew relating to the Collateral and supersedes all prior agreements and understandings between ComTier and Andrew relating to the Collateral.

8.12. Releases; Partial Release. Upon termination of this Agreement in accordance with the provisions of Section 8.10 hereof, Andrew shall, at ComTier's request and expense and subject to the foregoing sentence, execute such release as ComTier may reasonably request, in form and upon terms acceptable to Andrew in all respects, and shall deliver all Collateral which is in Andrews' possession.

8.13. Waivers. Beyond the exercise of reasonable care to assure the safe custody of the Collateral while held hereunder, Andrew and its respective nominees shall have no duty or liability to collect any sums due in respect thereof or to protect or preserve rights pertaining thereto, and shall be relieved of all responsibility for the Collateral upon surrendering them to ComTier. No course of dealing between ComTier and Andrew, nor any failure to exercise nor any delay in exercising, on the part of Andrew, any right, power or privilege hereunder or with respect to any or all of the Obligations shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided and provided in all other agreements, instruments and documents delivered, or to be delivered, pursuant to or in connection with or to evidence any of the Obligations are cumulative and are in addition to, and not exclusive of, any rights and remedies of a secured party under the Illinois Uniform Commercial Code. The provisions of this Agreement are severable and if any clause or provision thereof shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall attach only to such clause or provision, or part thereof, and shall not in any manner affect such clause or provision in any other jurisdiction or any other clause or provision in this Agreement or any jurisdiction.

8.14. Amendments; Waivers. No waiver, amendment or other variation of the terms, conditions or provisions of this Agreement shall be valid unless in writing and signed by Andrew, and then only to the extent as specifically set forth in such writing.

9. NOTICES; COUNTERPARTS.

9.1. Sending Notices. All notices and other communications under this Agreement shall be made at the addresses, in the manner and with the effect provided in the Note.

9.2. Change in Address for Notices. ComTier and Andrew may each change the address for service notice upon it by a notice in writing to the other party hereto.

9.3. Counterparts. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one agreement, and any of the parties hereto may execute this Agreement by signing any such counterpart. This Agreement shall be effective when it has been executed by ComTier and Andrew.

IN WITNESS WHEREOF, the undersigned have executed this Patent and License Security Agreement as of the date first above written.

COMTIER

By: 

Title: President

ANDREW CORPORATION

By: 

Title: Vice President

STATE OF ILLINOIS)
)
COUNTY OF COOK) SS.

I, Susan G. Rust, a notary public in and for said County, in the State aforesaid DO HEREBY CERTIFY that Eugene W. Hammond III, personally known to me to be a President of COMTIER, a California corporation, and personally know to me to be the same person whose name is subscribed to the foregoing Patent and License Security Agreement appeared before me this day in person and acknowledged that he signed and delivered the said agreement as President of said corporation, pursuant to authority given by the Board of Directors of said corporation, as his free and voluntary act, as the free and voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and seal this 19th day of April, 2001.

(SEAL)

Susan G. Rust
Notary Public




STATE OF ILLINOIS)
) SS.
COUNTY OF COOK)

I, Susan G. Kust, a notary public in and for said County, in the State aforesaid, DO
HEREBY CERTIFY THAT James F. Patelle, personally known to me to be the Vice
President of ANDREW CORPORATION, a Delaware corporation, and personally know to me to
be the same name is subscribed to the foregoing Patent and License Security Agreement
appeared before me this day in person and acknowledged that he signed and delivered the said
agreement as Vice President of said corporation, pursuant to authority given by the Board of
Directors and shareholders of said corporation, as his free and voluntary act, and as the free and
voluntary act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN, under my hand and seal this 19th day of April, 2001.

(SEAL)



Notary Public

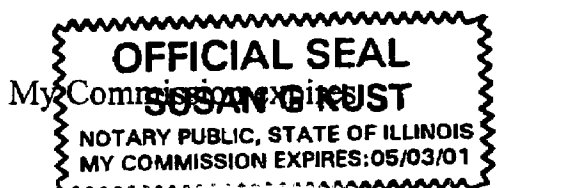


EXHIBIT A-1
TO PATENT AND LICENSE SECURITY AGREEMENT

REGISTERED PATENTS

<u>PATENT</u>	<u>PATENT/SERIAL NO.</u>	<u>COUNTRY</u>	<u>ISSUE DATE</u>
Composite Trellis System and Method*	5,974,091	USA	10/26/99

*including all foreign patents based on this U.S. patent.


CH01/12145947.2

**CERTIFICATE OF MAILING
UNDER 37 CFR 1.8**

April 24, 2001
Date of Deposit

I hereby certify that a Recordation Form Cover Sheet; a check for \$40.00; a Patent and License Security Agreement (13 pages); and a return post card are being deposited with the United States Postal Service with sufficient postage as First Class Mail service under 37 CFR 1.8 on the date indicated above, addressed to: Commissioner for Patents; Box: Assignments, Washington, D.C. 20231.

Diana W. Strong
(Typed or Printed Name of
Person Mailing Application)


(Signature of Person
Mailing Application)

Docket: Andrew

CH02/22123587.1

RECORDED: 04/27/2001

**PATENT
REEL: 011751 FRAME: 0503**