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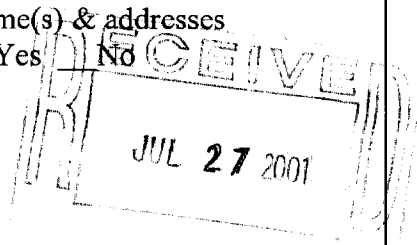
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**RECORDATION FORM COVER SHEET
PATENTS ONLY**

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

1. Name of conveying party: 07/27/01 MRT 4.49.01
Name: William M. Pitts
Virginia N. Pitts
Address: 780 Mora Drive
Los Altos, California 94024
Name: _____
Address: _____
Additional name(s) of conveying party(ies)
attached? ☐ Yes ☐ No

2. Name and address of receiving party:
Name: Network Caching Technology, L.L.C.
Address: 1550 Waverley Street,
Palo Alto, California 94301
Additional name(s) & addresses
attached? ☐ Yes ☒ No



3. Nature of conveyance:
Assignment
Execution Date(s): April 5, 2001

4. Patent Application number(s):
5,611,049; 5,892,914, 6,026,452
Execution Date(s): 11/28/94; 2/26/97; 8/31/98

5. Name and address of party to whom
correspondence concerning document
should be mailed:
Name: Blaney Harper
Address: Jones, Day, Reavis & Pogue
51 Louisiana Ave., N.W.
Washington, DC 20001-2113

6. Total number of applications
involved:
1
7. Total fee (37 CFR 3.41): \$40.00
-check enclosed

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DO NOT USE THIS SPACE

8. State 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 original document.*

Blaney Harper, Reg. No. 33,897

Blaney Harper

April 17, 2001

Name of Person Signing

Signature

Date

Total number of pages comprising cover sheet: 1

PATENT ASSIGNMENT AND LICENSE AGREEMENT

This AGREEMENT is made and effective the last date set forth below ("Effective Date") by and between **William M. Pitts** (Individual), **Virginia N. Pitts** (Individual), **Inca Technology, Inc.** ("**Inca**"), a Delaware corporation, having an office at 780 Mora Drive, Los Altos, California 94024, and **Network Caching Technology, L.L.C.** ("**NCT**"), a Virginia limited liability company with offices at 1550 Waverley Street, Palo Alto, California, 94301.

WHEREAS, during 1996, William M. Pitts and Virginia N. Pitts granted Inca a nonexclusive license under:

1. all patent applications, all divisions, reissues, continuations and extensions; and
2. all Letters Patent and all Convention and Treaty Rights of all kinds, in all countries throughout the world, for such subject matter;

that originate in International Patent Application no. PCT/US92/04939 entitled "System For Accessing Distributed Data Cache Channel At Each Network Node To Pass Requests And Data," which patent application was published by the World Intellectual Property Organization ("WIPO") on 9 December 1993 (09.12.93), International Publication Number WO 93/24890 ("the Caching Patents");

WHEREAS, during 1999, William M. Pitts and Virginia N. Pitts granted NCT a license under the Caching Patents that, subject to the pre-existing license to Inca, is exclusive;

WHEREAS, United States Patent No. 6,085,234, entitled "Remote File Services Network Infrastructure Cache" that issued July 4, 2000, ("Network Infrastructure Patent") were at the time of filing assigned by the inventors thereof to Inca by documents recorded with the United States Patent and Trademark Office ("USPTO");

WHEREAS, NCT desires to acquire all right, title and interest in and to the Caching Patents and the Network Infrastructure Patent and all rights to enforce the Caching Patents and the Network Infrastructure Patent against any infringer thereof, and will expend considerable funds and effort in carrying out a patent enforcement program concerning the above listed patents which will be mutually beneficial to William M. Pitts, Virginia N. Pitts, Inca and NCT; and

WHEREAS, Inca desires to acquire certain rights in the licensing of the above listed patents in the File System Field (as defined below);

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, together with other good and valuable consideration, the parties agree as follows:

SECTION A
ASSIGNMENT AND LICENSE

1. Patent Assignment to NCT. William M. Pitts and Virginia N. Pitts, individually and/or collectively, hereby assign to NCT all of their right, title, and interest, including the right to sue for past and future damages from infringing companies, in and to the Caching Patents, including without limitation, United States Patent Nos. 5,611,049; 5,892,914 and 6,026,452 and all divisions, reissues, continuations and extensions thereof anywhere in the world.

2. Patent Assignment to NCT. Inca hereby assigns to NCT all of its right, title, and interest, including the right to sue for past and future damages from infringing companies, in and to the Network Infrastructure Patent, including without limitation United States Patent No. 6,085,234, and all divisions, reissues, continuations and extensions thereof anywhere in the world.

3. License Grant to Inca. Upon the assignment of patents to NCT referred to in paragraphs (1) and (2) above, NCT grants Inca a non-exclusive, transferable, irrevocable except if a bankruptcy should occur, worldwide, royalty free license (including the right to grant sublicenses in connection with the sale or other transfer of Inca's proprietary products and/or systems) to make, use, lease, license and/or sell products and/or systems within the File System Field under United States Patent Nos. 5,611,049; 5,892,914; 6,026,452 and 6,085,234 and all divisions, reissues, continuations and extensions thereof anywhere in the world. Inca's license hereunder to sublicense products and/or systems:

- A. does not extend to sublicensing the above referenced patents independent of Inca's proprietary products and/or systems; and
- B. after the effective date of this Agreement, Inca:
 - i) shall grant sublicenses only under the license received from NCT pursuant to this Agreement; and
 - ii) shall not grant any sublicense under the license which Inca received during 1996, from William M. Pitts and Virginia N. Pitts.

Inca's license hereunder shall terminate upon bankruptcy of Inca.

For purposes of this Agreement, unless and until the parties hereto agree otherwise the File System Field shall be limited to only software operating on SMB/CIFS, NFS, AFS, DFS, RFS, AppleShare and/or NCP protocols, including any future protocols derived from the SMB/CIFS, NFS, AFS, DFS, RFS, AppleShare or NCP protocols. The File System Field excludes the HTTP, FTP, TFTP and/or Gopher protocols.

4. Inca Right Of Approval For File System Field License.

A. NCT Web Caching Litigation: If:

- i) NCT notifies an entity that it is infringing the Caching Patents or Network Infrastructure Patent;
- ii) NCT commences litigation against an entity alleging infringement of the Caching Patents or Network Infrastructure Patent; or
- iii) an entity requests a license under the Caching Patents or Network Infrastructure Patent from NCT, without NCT notifying such entity of infringement or initiating litigation as provided for above;

NCT shall not grant a license to such an entity under any of the Caching Patents or the Network Infrastructure Patent in the File System Field without prior notification and consent of Inca. Inca agrees that it will respond within thirty (30) calendar days from NCT's notification and agrees that if Inca does not respond within thirty (30) calendar days, Inca shall be deemed to have granted its consent. Inca further agrees that it will not unreasonably withhold its consent, and to the extent that Inca withholds its consent, Inca agrees to notify NCT in writing of the reason for withholding its consent.

B. Right of Approval Limitations: Notwithstanding anything to the contrary in paragraph (A) above, no approval from Inca is required for NCT to grant any license under the Caching Patents and Network Infrastructure Patent outside the File System Field. Additionally, Inca's limited right of approval described in paragraph (A) above:

- i) is:
 - a) personal to Inca; and
 - b) non-transferrable, except as part of a sale of Inca or a sale of all of Inca's proprietary

products and/or systems which implement the Distributed Data Service ("DDS") and that therefore require a license under the Caching Patents and/or the Network Infrastructure Patent; and

- i) shall terminate upon:
 - a) bankruptcy of Inca; or
 - b) when William M. Pitts no longer exercises active control over the development and/or marketing of Inca's software for use in the File System Field.

Furthermore, Inca's limited right of approval may automatically lapse after three (3) years from the date of this Agreement, if Inca fails to:

- i) pay to NCT the sum of \$5,000.00 annually thereafter within thirty (30) calendar days after receiving a written request for payment from NCT; and
- ii) deliver within thirty (30) calendar days following receipt of a written request therefor from NCT, requested no more frequently than annually commencing three (3) years from the date of this Agreement, a report setting forth Inca's business plan concerning Inca's activities in the File System Field.

5. Warranties.

- A. Each party hereto represents and warrants that:
 - i) such party has the right, power and authority to enter into this Agreement and to fully perform its obligations hereunder; and
 - ii) the making of this Agreement does not violate any agreement existing between such party and any other person or entity.
- B. Inca represents and warrants that it owns the Network Infrastructure Patent.
- C. William M. Pitts and Virginia N. Pitts, individually and/or collectively, represent and warrant that they own the Caching Patents.

6. Term. Unless terminated earlier under the terms of this

Agreement, this Agreement shall commence upon the Effective Date and shall continue in force until expiration of the last of the Caching Patents or Network Infrastructure Patent.

SECTION B
PATENT ENFORCEMENT

7. Participation In NCT Enforcement Program:

A. Notice: If Inca concludes that an infringement of the Caching Patents and/or the Network Infrastructure Patent is occurring in the File System Field, Inca shall:

- i) immediately notify NCT of that fact in writing ("Notice of Infringement"); and
- ii) provide NCT, or NCT's patent litigation counsel, with all evidence pertinent to the infringement, including, but not limited to, the identity of the putative infringer.

B. Commencing an Enforcement Action. If during a six (6) month interval, or other time that the parties may mutually agree on, immediately following a Notice of Infringement pursuant to paragraph 7(A), NCT has not notified the putative infringer of such infringement, then and only then may Inca, at its own option and expense, independently initiate and prosecute litigation against the putative infringer seeking to enforce the Caching Patents and/or the Network Infrastructure Patent solely in the File System Field. NCT shall join in, and agrees to be bound by the result of, any such action.

C. Cooperation & Participation. If any party to this Agreement commences any litigation seeking to enforce the Caching Patents and/or the Network Infrastructure Patent against a putative infringer, the other parties to this Agreement:

- i) shall cooperate fully with the party commencing the litigation; and
- ii) may, at their option and own expense, actively participate in such litigation to the maximum extent permitted under law including, but not limited to:
 - a) becoming a party to the litigation;
 - b) being represented in the litigation by its own counsel; and

- c) independently conferring with litigation counsel for the other parties to this Agreement.

Notwithstanding any joinder or other participation by the other parties to this Agreement in any lawsuit for patent infringement filed by NCT, or any negotiation or other agreement negotiated by NCT concerning a license to the Caching Patents or Network Infrastructure Patent, except for sublicensing in the File System Space negotiated in conjunction with the sale or use of Inca's proprietary products and/or systems, any payments or other recovery for patent infringement, whether by settlement or otherwise, shall be paid solely and exclusively to NCT and shall not be divided between the parties. In the event that a party hereto other than NCT actively participates in any litigation including a claim other than patent infringement (such as trade secret misappropriation, tortious interference with contractual relations, etc.) related to such party's business interests, then any excess recovery for that claim (other than patent infringement) over and above fees paid to Jones, Day, Reavis & Pogue and/or Mahr Leonard Management Company, shall be paid to such other party.

SECTION C

GENERAL

8. LIMITATION OF LIABILITY: IN NO EVENT SHALL ANY PARTY BE RESPONSIBLE HEREUNDER FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9 Bankruptcy. All rights and licenses granted under or pursuant to this Agreement are, and shall otherwise be deemed to be, for purposes of Section 365(n) of the U.S. Bankruptcy Code (11 U.S.C. 101, et seq.), licenses to rights of "intellectual property" as defined thereunder. Notwithstanding any provision contained herein to the contrary, if NCT is under any proceeding under the Bankruptcy Code and the trustee in bankruptcy of NCT, or NCT, as a debtor in possession, rightfully elects to reject this Agreement, Inca may, pursuant to 11 U.S.C. Section 365(n)(1) and (2), retain any and all rights hereunder, to the maximum extent permitted by law.

10. Governing Law. This Agreement shall be governed by and

interpreted in accordance with the laws of the State of California, without reference to conflict of laws principles.

11.Survival. This Agreement shall be binding upon and inure to the benefit of the Successors and assigns of the parties hereto.

12.Arbitration. Any dispute or claim arising out of or in connection with this Agreement will be finally settled by binding arbitration in Santa Clara County, California, under the Rules of Arbitration of the American Arbitration Association (AAA) by three (3) arbitrators. Each party shall select one (1) arbitrator and a third arbitrator will be selected by the two arbitrators so selected. If the two (2) arbitrators selected by the parties are unable to select a third arbitrator within ten (10) calendar days of the appointment of the two arbitrators, the parties consent to the selection of the third arbitrator by the AAA administrator. The parties may apply to any court of competent jurisdiction for temporary or permanent injunctive relief, without breach of this Section and without any abridgment of the powers of the arbitrators.

The arbitrators shall, in rendering their decision, apply the substantive law of the State of California, without regard to its conflict of laws provisions, except that the interpretation of and enforcement of this Section shall be governed by the U.S. Federal Arbitration Act. The proceeding shall take place in Santa Clara County, California. The fees of the arbitrators shall be paid by the losing party, which party shall be designated by the arbitrators. If the arbitrators are unable to designate a losing party, they shall so state and the fees shall be split equally between the parties. Judgment on the award rendered by the arbitrators may be entered in any court having jurisdiction thereof.

13.Patent Marking. Inca shall comply with NCT's reasonable instructions regarding the marking of products with a notice reflecting NCT's rights in patents, and shall include a corresponding patent marking requirement in any agreement(s) with third parties that permit either the manufacture, use, sale or offer for sale of product which practice the inventions claimed in any of the Caching Patents, or of the Network Infrastructure Patent.

14.Amendment. No alteration, amendment, waiver, cancellation or any other change in any term or condition of this Agreement shall be valid or binding on either party unless mutually assented to in writing by both parties.

15.No Waiver. The failure of either party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other party of any of the provisions of this Agreement, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the validity of either party to enforce each and every such provision thereafter.

The express waiver by either party of any provision, condition or requirement of this Agreement shall not constitute a waiver of any future obligation to comply h such provision, condition or requirement.

16.Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to give effect to the intent of the parties, and the remainder of this Agreement will continue in full force and effect. The parties agree to negotiate in good faith an enforceable substitute provision for any unenforceable provision that most nearly achieves the intent and economic effect of the unenforceable provision.

17.Notices. All notices, requests, demands, waivers, and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given:

- A. when delivered by hand or confirmed facsimile transmission;
- B. one (1) calendar day after delivery by receipted overnight delivery; or
- C. four (4) calendar_days after being mailed by certified or registered mail, return receipt requested, with postage prepaid to the appropriate address set forth at the beginning of this Agreement or to such other person or address as either party shall furnish to the other party in writing pursuant to the above.

18.Titles and Subtitles. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

19.Entire Agreement. The terms and conditions herein contained herein by this reference, constitute the entire agreement between the parties with respect to the subject matter hereof and supersede

all previous and contemporaneous agreements and understandings, whether oral or written, between the parties hereto with respect to the subject matter hereof but not with respect to unrelated matters, including any royalty obligations defined in Exhibit B of a 1998 Patent Licensing Agreement between NCT and William M. Pitts.

20. Counterparts. This Agreement may be executed in counterparts or duplicate originals, all of which shall be regarded as one and the same instrument, and which shall be the official and governing version in the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed in duplicate by duly authorized officers or representatives as of the dates set forth below.

INCA TECHNOLOGY, INC.

NETWORK CACHING TECHNOLOGY, LLC

By: Hugh Tuck

By: Jane R. Mitchell

Name: Hugh Tuck

Name: Jane Mitchell

Title: President of Inca

Title: President of NCT

Dated: 4/4/01, 2001

Dated: 4/6/01, 2001

William M Pitts

Virginia N Pitts

William M. Pitts

Virginia N. Pitts

In His Individual Capacity

In Her Individual Capacity

Dated: 4/5/01, 2001

Dated: 4/5/01, 2001