

04-03-2002

Form PTO-1595
(Rev. 03/01)

RE



U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

OMB No. 0651-0027 (exp. 5/31/2002)

102041416

Tab settings ⇨ ⇨ ⇨

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

1. Name of conveying party(ies):
Holistix, Inc. *3-11-02*

Additional name(s) of conveying party(ies) attached? Yes No

2. Name and address of receiving party(ies)
Name: Empirix Inc.
Internal Address: _____
Street Address: 1430 Main Street
City: Waltham State: MA Zip: 02451

Additional name(s) & address(es) attached? Yes No

OFFICE OF THE COMMISSIONER OF PATENTS AND TRADEMARKS
FINANCE SECTION
MAR 11 PM 12:43

3. Nature of conveyance:
 Assignment Merger
 Security Agreement Change of Name
 Other _____
August 31, 2001

Execution Date: _____

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)
09/740,804

Additional numbers attached? Yes No

B. Patent No.(s)

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Daly, Crowley, & Mofford LLP
Internal Address: David W. Rouille
Street Address: 275 Turnpike Street, Suite 101
City: Canton State: MA Zip: 02021

6. Total number of applications and patents involved:

7. Total fee (37 CFR 3.41).....\$ 40.00
 Enclosed
 Authorized to be charged to deposit account

8. Deposit account number:
500845
(Attach duplicate copy of this page if paying by deposit account)

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.

David W. Rouille *David W. Rouille* *28-Feb-02*
Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments, and documents: 5

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

04/02/2002 TDIAZI 00000235 09740804
01 FC:581 40.00 OP

PATENT
REEL: 012730 FRAME: 0820

**NOTICE OF
PATENT APPLICATION ASSIGNMENT**

WHEREAS, Holistix, Inc. a Washington corporation ("ASSIGNOR"), having its principal place of business at 1500 Dexter Avenue North, Seattle, Washington 98109 is the owner of the invention Method and Apparatus for Providing Measurement, and Utilization of, Network Latency in Transaction-Based Protocols for which an application for a United States Patent was filed on _____, with Serial no. 09/740,804, and

WHEREAS, Empirix Inc., a Delaware corporation ("ASSIGNEE"), is desirous of obtaining the entire right, title and interest in, to and under the said invention, the said application, and any patent which may have been granted therefrom;

WHEREAS, Assignor and Assignee are parties, to that certain Asset Purchase Agreement, dated as of August 31, 2001 (the "Purchase Agreement"), the terms, conditions and representations and warranties of which are incorporated herein by reference as if set forth in full;

WHEREAS, pursuant to the Purchase Agreement, Assignor conveyed to Assignee substantially all of the assets of a going business;

NOW, THEREFORE, in consideration of the premises set forth above and in the Purchase Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **ASSIGNOR** has sold, assigned, transferred and set over, and by these presents does hereby sell, assign, transfer and set over, unto the said **ASSIGNEE**, its successors, legal representatives and assigns, the entire right, title and interest in, to and under the said invention, and the said United States application and all divisions, renewals and continuations thereof, and all Patents of the United States which have been or may be granted thereon and all reissues and extensions thereof; and all applications for industrial property protection, including, without limitation, all applications for patents, utility models, and designs which may hereafter be filed for said invention in any country or countries foreign to the United States, together with the right to file such applications and the right to claim for the same the priority rights derived from said United States application under the Patent Laws of the United States, the International Convention for the Protection of Industrial Property, or any other international agreement or the domestic laws of the country in which any such application is filed, as may be applicable; and all forms of industrial property protection, including, without limitation, patents, utility models, inventors' certificates and designs which may be granted for said invention in any country or countries foreign to the United States and all extensions, renewals and reissues thereof;

AND ASSIGNOR HEREBY authorizes and requests the Commissioner of Patents and Trademarks of the United States, and any official of any country or countries foreign to the United States whose duty it is to issue patents or other evidence or forms of industrial property protection on applications as aforesaid, to issue the same to the said **ASSIGNEE**, its successors, legal representatives and assigns, in accordance with the terms of this instrument.

AND ASSIGNOR HEREBY covenants and agrees that its has full right to convey the entire interest herein assigned, and that it has not executed, or will not execute, any agreement in conflict herewith.

AND ASSIGNOR HEREBY further covenants and agrees that it will communicate to the said **ASSIGNEE**, its successors, legal representatives and assigns, any facts known to it respecting said invention, and testify in any legal proceeding, sign all lawful papers, execute all divisional, continuing, reissue and foreign applications, make all rightful oaths, and generally do everything possible to aid the said **ASSIGNEE**, its successors, legal representatives and assigns, to obtain and enforce proper protection for said invention in all countries.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed by their respective duly authorized representatives this 31st day of August, 2001.

ASSIGNOR:

HOLISTIX, INC.

By: 

Name: Candy J. Marshall, secretary

ASSIGNEE:

EMPIRIX INC.

By: _____

Name:

**NOTICE OF
PATENT APPLICATION ASSIGNMENT**

WHEREAS, Holistix, Inc. a Washington corporation ("ASSIGNOR"), having its principal place of business at 1500 Dexter Avenue North, Seattle, Washington 98109 is the owner of the invention Method and Apparatus for Providing Measurement and Utilization of Network Latency in Transaction-Based Protocols for which an application for a United States Patent was filed on _____, with Serial no. 09/740,804, and

WHEREAS, Empirix Inc., a Delaware corporation ("ASSIGNEE"), is desirous of obtaining the entire right, title and interest in, to and under the said invention, the said application, and any patent which may have been granted therefrom;

WHEREAS, Assignor and Assignee are parties, to that certain Asset Purchase Agreement, dated as of August 31, 2001 (the "Purchase Agreement"), the terms, conditions and representations and warranties of which are incorporated herein by reference as if set forth in full;

WHEREAS, pursuant to the Purchase Agreement, Assignor conveyed to Assignee substantially all of the assets of a going business;

NOW, THEREFORE, in consideration of the premises set forth above and in the Purchase Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, **ASSIGNOR** has sold, assigned, transferred and set over, and by these presents does hereby sell, assign, transfer and set over, unto the said **ASSIGNEE**, its successors, legal representatives and assigns, the entire right, title and interest in, to and under the said invention, and the said United States application and all divisions, renewals and continuations thereof, and all Patents of the United States which have been or may be granted thereon and all reissues and extensions thereof; and all applications for industrial property protection, including, without limitation, all applications for patents, utility models, and designs which may hereafter be filed for said invention in any country or countries foreign to the United States, together with the right to file such applications and the right to claim for the same the priority rights derived from said United States application under the Patent Laws of the United States, the International Convention for the Protection of Industrial Property, or any other international agreement or the domestic laws of the country in which any such application is filed, as may be applicable; and all forms of industrial property protection, including, without limitation, patents, utility models, inventors' certificates and designs which may be granted for said invention in any country or countries foreign to the United States and all extensions, renewals and reissues thereof;

AND ASSIGNOR HEREBY authorizes and requests the Commissioner of Patents and Trademarks of the United States, and any official of any country or countries foreign to the United States whose duty it is to issue patents or other evidence or forms of industrial property protection on applications as aforesaid, to issue the same to the said **ASSIGNEE**, its successors, legal representatives and assigns, in accordance with the terms of this instrument.

AND ASSIGNOR HEREBY covenants and agrees that its has full right to convey the entire interest herein assigned, and that it has not executed, or will not execute, any agreement in conflict herewith.

AND ASSIGNOR HEREBY further covenants and agrees that it will communicate to the said **ASSIGNEE**, its successors, legal representatives and assigns, any facts known to it respecting said invention, and testify in any legal proceeding, sign all lawful papers, execute all divisional, continuing, reissue and foreign applications, make all rightful oaths, and generally do everything possible to aid the said **ASSIGNEE**, its successors, legal representatives and assigns, to obtain and enforce proper protection for said invention in all countries.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be executed by their respective duly authorized representatives this 31st day of August, 2001.

ASSIGNOR:

HOLISTIX, INC.

By: _____
Name:

ASSIGNEE:

EMPIRIX INC.

By: 
Name: Jeff Hetchkiss, President and CEO

STATE OF WASHINGTON

COUNTY OF KING

) SS.
)

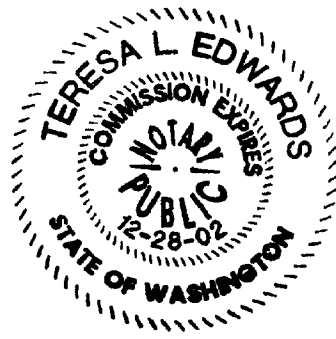
On this 31st day of August, 2001, before me personally appeared Candy S. Mitchell to me personally known, who, being by me duly sworn, did say that (s)he is the Secretary of HOLISTIX, INC., a Washington corporation, and that said instrument was signed and sealed on behalf of said corporation, by all necessary authority; and said Sue acknowledged said instrument to be the free act and deed of said corporation.

In witness whereof, I have hereunto attached my hand and notarial seal, at the County and State aforesaid on the day and year last above written.

Teresa L Edwards

Notary Public

My Commission Expires: 12/28/02



COMMONWEALTH OF MA)

COUNTY OF Middlesex) SS.
)

On this 31st day of August, 2001, before me personally appeared Jeffrey Hotchkiss, to me personally known, who, being by me duly sworn, did say that he is the President and CEO of EMPIRIX INC., a Delaware corporation, and that said instrument was signed and sealed on behalf of said corporation, by all necessary authority; and said Jeffrey Hotchkiss acknowledged said instrument to be the free act and deed of said corporation.

In witness whereof, I have hereunto attached my hand and notarial seal, at the County and Commonwealth aforesaid on the day and year last above written.

David W. Rouille

Notary Public

My Commission Expires: 9/20/07

DAVID W. ROUILLE
Notary Public
My Commission Expires
September 20, 2007

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