

3/28/02

OFFICE OF THE COMMISSIONER OF PATENTS AND TRADEMARKS

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04-10-2002

DEPARTMENT OF COMMERCE

Patent and Trademark Office
Docket No. 279640000044

102049445

FINALISE SECTION

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

1. Name of conveying party: Egghead.com, Inc., formerly known as
Onsale, Inc., and formerly known as Intermail, Inc.

- ☐ Individual(s) ☐ Association
☐ General Partnership ☐ Limited Partnership
☒ Corporation-State ☐ Other

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

2. Name and address of receiving party:

Name: PC Mall, Inc.
 Internal Address: Same as Below
 Street Address: 2555 West 190th Street
 City: Torrance State: CA ZIP: 90504

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

3. Nature of conveyance:

- ☐ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☒ Other: License Agreement

Execution Date: March 8, 2002

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)

B. Patent No. 5,835,896 issued November 10, 1998

Additional numbers attached? ☐ Yes ☒ No5. Name and address of party to whom correspondence concerning
document should be mailed:

Erwin J. Basinski
 Morrison & Foerster LLP
 425 Market Street
 San Francisco, California 94105-2482

6. Total number of applications and patents involved: 1

7. Total fee (37 C.F.R. § 3.41): \$40.00

- ☐ Enclosed
☒ Authorized to be charged to deposit account, referencing
 Attorney Docket 279640000044

8. Deposit account number: 03-1952

The Commissioner is hereby authorized to charge any fees under 37 C.F.R. § 1.21 that may be required by this paper, or to credit any overpayment to Deposit Account No. 03-1952.

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.

Name: Erwin J. Basinski
 Registration No: 34,773

Signature

Date

Total number of pages comprising cover sheet, attachments and document: 7

04/09/2002 GTOW11 00000194 031952 5835896

01 FC:581 40.00 CH

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

sf-1271424

PATENT
 REEL: 012754 FRAME: 0923

PATENT LICENSE AGREEMENT

This Patent License Agreement (this "**Agreement**") is dated and made effective as of March 8, 2002 ("**Effective Date**") by and between Egghead.com, Inc., which is a Delaware corporation, formerly known as Onsale, Inc., a California corporation, formerly known as Intermall, Inc., a California corporation, and which also is a successor in interest to Surplus Software, Inc., having its principal place of business at 1350 Willow Road, Menlo Park, California, by and through its Chief Executive Officer and its duly-appointed trustee, Charles E. Sims, in *In re Egghead.com, Inc.*, United States Bankruptcy Court, Northern District of California (the "**Court**"), Case No. 01-32125 SFC 11 ("**Licensor**"), and PC Mall, Inc., is a Delaware corporation with its principal place of business at 2555 West 190th Street, Torrance, California 90504 ("**Licensee**").

RECITALS

WHEREAS, Licensor owns the Onsale Auction Patents, identified below, as to which Licensor desires to grant a license to Licensee; and

WHEREAS, Licensee desires to receive such license as hereinafter provided;

NOW, THEREFORE, for good and valuable consideration, including the mutual covenants, representations, warranties and other terms and conditions contained herein, and including the payments made by the Licensee to the Licensor for the purchase of the Onsale Assets, the parties hereto agree as follows:

AGREEMENT

1. DEFINITIONS

As used in this Agreement:

- 1.1 "Onsale Auction Patents" means shall mean any of Licensor's patents which claim and/or cover inventions, discoveries, apparatus, devices or methods used by or in any of the Onsale Auction Software, including but not limited to patent rights arising under the following: U.S. patent #5,835,896 issued 11/10/98; Australian patent #717594 issued 7/13/00; Canadian patent pending, serial #2,253,543 filed 3/19/97; European patent serial #97916124.7 filed 3/19/97; Israeli patent #126799 issued 2/1/01; U.S. patent #6,243,691 issued 6/5/01; WIPO serial #US97/04535 filed 3/19/97; WIPO serial #US97/13567 filed 7/31/97; U.S. patent #6,047,264 issued 4/4/00; and any patents issued as the result of the two pending United States of

America (U.S.) patent applications U.S. Application Serial No. 09/426,573 (a continuation of U.S. Patent No. 6,047,264); and U.S. Application Serial No. 09/706,849 (a continuation of U.S. Patent No. 6,243,691).

- 1.2 “Onsale Auction Software” shall mean all freely transferable and proprietary Onsale auction software, including ARC, Customer Service and RMA software, Oasis, Auction Manager, Elvis, BidWatch, Bidmaker, G3, Genpage, Onsale Exchange, email programs, and other propriety software or algorithms, which had been used to conduct and process Onsale auctions during the approximate period of the last 6 months prior to the transfer of the Egghead.com auction business to FairMarket, as can be reasonably ascertained, and which can be reasonably still obtained.

2. LICENSE GRANT

- 2.1 Licensor hereby grants and agrees to grant to Licensee a current, worldwide, exclusive, fully paid-up, royalty-free, perpetual, irrevocable, freely transferable license under any and all of the Onsale Auction Patents to make, have made, use, offer for sale, sell, import, or otherwise exploit the inventions claimed in the Onsale Auction Patents, but only to the extent necessary to permit Licensee’s use, sale, licensing, reproduction, distribution, performance, display, creation of derivative works based upon, or other disclosure or exploitation of the Onsale Auction Software, in whole or in part, and Licensee will have the right to grant sublicenses (directly or indirectly) under its license to anyone to whom a copy of the Onsale Auction Software is sold, licensed, distributed or otherwise provided, including any future version, release, or enhancement of the Onsale Auction Software, in whole or in part.
- 2.2 As part of the foregoing exclusive licenses, Licensee is also granted the right to sue for infringement of the Onsale Auction Patents, but only to the extent the alleged patent infringement is part of infringement of any copyright(s) in the Onsale Auction Software, or misappropriation of the trade secrets encompassed in the Onsale Auction Software. Licensor or the assignee of the Onsale Auction Patents shall provide all reasonable cooperation to Licensee in prosecuting such suits, provided that Licensee shall pay such parties’ reasonable expenses incurred in cooperating. This license does not grant Licensee the right to sue (i) for infringement of the copyright(s) in the Onsale Auction Software, for misuse or misappropriation of the Onsale Auction Software, or misappropriation of the trade secrets encompassed in the Onsale Auction Software, that occurred before the Effective Date, (ii) for infringement of the Onsale Auction Patents that occurred before the Effective Date, or (iii) for infringement of the Onsale Auction Patents that occurs after the Effective Date and in which the alleged patent infringement is not part of an infringement of the copyright(s) or misappropriation of trade secrets in the Onsale Auction Software.

3. PAYMENT

Licensee has fully paid for the license granted herein as part of its purchase of the assets in the Bill of Sale and Assignment executed on the same date as this License.

4. TERM OF AGREEMENT

This Agreement shall commence on the Effective Date and shall continue until the expiration of the last of the Onsale Auction Patents.

5. MISCELLANEOUS

5.1 Licensors and its successors and assigns, without further consideration or cost to Licensee at any time and from time to time after the date hereof upon the reasonable request of Licensee, will execute and deliver to Licensee such further instruments of sale, conveyance, assignment and transfer and take such other actions that Licensee may reasonably request in order to effect this Agreement, in the usual fashion, and Licensors hereby irrevocably appoints Licensors and any of its officers as Licensee's attorney in fact to undertake such acts in Licensee's name.

5.2 This Agreement will be binding upon and inure to the benefit of the successors and assigns of the parties.

5.3 The parties agree that, pursuant to the Final Judgment entered in *In re EGGHEAD.COM, INC.*, Case No. 01-32125 SFC 11; Adv. No. 01 3253 TC, on March 6, 2002, they shall submit any dispute arising out of or relating to this Agreement to the Bankruptcy Court for the Northern District of California for resolution, and the parties hereby agree to submit to that Court's jurisdiction. If, and only if, that Court should decline to accept jurisdiction over any such dispute, then the parties may submit such dispute to any court of competent jurisdiction, and this Agreement all matters arising out of or relating to this Agreement shall be governed by the internal laws of the State of California without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties.

- 5.4 If for any reason a provision of this Agreement, or portion thereof, is finally determined to be unenforceable under applicable law, that provision, or portion thereof, shall nonetheless be enforced, as to circumstances, persons, places and otherwise, to the maximum extent permissible by applicable law so as to give effect to the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.
- 5.5 The parties hereto acknowledge and agree that the rights granted by Licensor to Licensee and its affiliates hereunder are rights with respect to intellectual property (including, without limitation, "intellectual property" within the meaning of Section 101 of the Bankruptcy Code of the United States). Licensee and its affiliates (and its and their direct or indirect customers and users) shall have all the rights contemplated by Section 365(n) of such Bankruptcy Code with respect to the licenses, immunities, releases and other rights described in this Agreement. On or after the Effective Date, Licensor shall take all steps reasonably requested by Licensee to perfect, and provide constructive notice of, the licenses, immunities, releases and other rights granted hereunder, including, without limitation, filings in the U.S. Patent and Trademark Office and under the Uniform Commercial Code.
- 5.6 The headings and captions used in this Agreement are for convenience only and shall not be considered in construing or interpreting this Agreement.
- 5.7 This Agreement shall be interpreted in accordance with its terms and without any construction in favor of or against either party.
- 5.8 This Agreement may be executed in counterparts, each of which shall be deemed an original, but which collectively shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives:

LICENSOR

By: 

Name: Jeffrey Sheahan

Title: Chief Executive Officer

and

By: _____

Name: Charles E. Sims

Title: Trustee

LICENSEE

By: _____

Name: _____

Title: _____

- 5.4 If for any reason a provision of this Agreement, or portion thereof, is finally determined to be unenforceable under applicable law, that provision, or portion thereof, shall nonetheless be enforced, as to circumstances, persons, places and otherwise, to the maximum extent permissible by applicable law so as to give effect to the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.
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LICENSEE

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Name: _____

Title: Chief Executive Officer

Title: _____

and

By:  _____

Name: Charles E. Sims

Title: Trustee

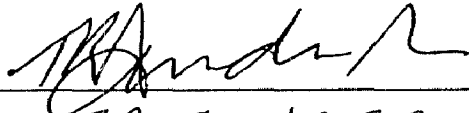
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Name: T.R. SANDERS

Title: Chief Executive Officer

Title: CFO

and

By: _____

Name: Charles E. Sims

Title: Trustee