

06-27-2002

BOX ASSIGNMENTS

DO NOT USE FOR TRADEMARKS



SHEET
S ONLY

102137955

TO THE ASSISTANT COMMISSIONER OF PATENTS AND TRADEMARKS:
SIR: PLEASE RECORD THE ATTACHED ORIGINAL DOCUMENTS OR COPY THEREOF.

1. NAME OF CONVEYING PARTY(IES) (ASSIGNORS(S)):

1. SyberSay Communications Corporation

3.
4.
5.

06/20/02

ADDITIONAL NAME(S) OF CONVEYING PARTY(IES) ATTACHED? YES NO



2. PARTY(IES) (ASSIGNEE(S)) RECEIVING INTEREST:

NAME: Fellowes, Inc.

ADDRESS: 1789 Norwood Avenue
Itasca, IL 60143-1095

ADDITIONAL NAME(S) & ADDRESS(ES) ATTACHED? YES NO

3. NATURE OF CONVEYANCE (DOCUMENT):

(Submit herewith only one document for recordation—multiple copies of same Assignment signed by different inventors is one document)

- ASSIGNMENT OF WHOLE PART INTEREST
- ORIGINAL FACSIMILE/PHOTOCOPY
- CHANGE OF NAME VERIFIED TRANSLATION
- SECURITY MERGER OTHER: License

EXEC. DATE: May 6, 2002

EXECUTION DATE(S) ON THE DECLARATION IF FILED HEREWITH: (**NOTE:** IF DATES ON DECLARATION AND ASSIGNMENT DIFFER SEE ATTY!)

4.5 APPL. NO.(S) OR PAT NO.(S). OTHERS ON ADDITIONAL SHEET(S) attached? YES NO

A. PAT. APP. NO.(S) series code/serial no	M#	1 st INVENTOR if not in item 1	B. PATENT NO(S)	M#	1 st INVENTOR if not in item 1
09/593998		Adelman, Roger A.	D457156		Nguyen, Thanh Q.
09/870398		Connors, Michael Patrick			

5. Name & Address of Party to Whom Correspondence Concerning Document Should be Mailed:

Pillsbury Winthrop LLP
Intellectual Property Group
1600 Tysons Boulevard
McLean, VA 22102

6. NUMBER INVOLVED:

APPLNS 2 + PATS 1 = TOTAL 3

7. AMOUNT OF FEE DUE: (Code 581)
ABOVE TOTAL x \$40 = \$120

5.5 ATTY DKT:

P 0000010

8. PLEASE CHARGE TO OUR DEPOSIT ACCOUNT
NUMBER: 03-3975

UNDER ORDER NO	082135	0000010
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MATTER NO.

CLIENT REF.

dup. sheet not required

CLIENT NO.

MATTER NO.

9. 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, except for the omission of certain confidential information.

06/26/2002 INVELLER 00000255 033975 09393998

01 FC:581 120.00 CH

Signature

Attorney: Kerry Hartman

Reg. No. 41,818

Atty/Sec: KH/emg

TEL: (703) 905-2085

Date: June 20, 2002

FAX: (703) 905-2500

10. Total number of pages including this cover sheet, attachments and document (do not file dup. Cover sheet)

17

FILE WITH PTO RETURN RECEIPT (PAT-103A)

LICENSE AGREEMENT

This License Agreement (the "Agreement") dated as of May 6, 2002 (the "Agreement Date") is entered into by and between Fellowes, Inc., an Illinois corporation, and SyberSay Communications Corporation, a California corporation, ("SyberSay"), (each a "Party", and together, the "Parties").

RECITALS

WHEREAS, SyberSay has developed and continues to further develop a line of cellular phone, cordless phone, and personal computer accessory earpieces based upon proprietary technology; and

WHEREAS, Fellowes has developed a substantial distribution channel for cellular phone and computer accessories, including significant penetration into national chains for both consumer electronics and office supplies, and further has developed brand recognition in its own brand name; and

WHEREAS, SyberSay now wishes to grant, and Fellowes wishes to receive, the right to manufacture, market, sell and distribute its line of wired earsets on the terms set forth below.

NOW THEREFORE, for good and adequate consideration, receipt of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Definitions.** The following capitalized terms shall be defined as set forth below:

"Additional Patent Rights" shall include any and all utility patents for full duplex earpieces that issue from the currently pending utility patent applications (including U.S. Patent Application Numbers 09/593,998 and 09/870,398) relating to the Products, as well as any other Patents that cover any aspect of the Product, together with any and all corresponding patents or industrial design registrations, utility models, and other corresponding intellectual property protection, issued anywhere in the world, and all extensions, continuations, continuations-in-part, divisions and reissues issued thereof.

"Affiliate" of, or a Person "affiliated" with, a specified Person, shall mean a Person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with the Person specified. For purposes of the foregoing, control of a Person shall include either the right to control the vote of at least 49% of the Person's outstanding voting power or the ownership of equity interests in a Person representing at least 49% of the outstanding equity interests in such Person.

"Date of First Shipment" shall mean the earlier to occur of (i) the date upon which Fellowes first ships Products manufactured by Fellowes to its customers in accordance with this Agreement, or (ii) September 30, 2002.

"Fellowes" shall mean Fellowes, Inc. and any or all of its Affiliates.

"SyberSay" shall mean SyberSay Communications Corporation and any or all of its Affiliates.

"Net Sales" shall mean for any stated period the gross sales by Fellowes to its customers, of Products manufactured by or for Fellowes after the Agreement Date, before discounts, rebates and allowances but less transportation and insurance costs, sales use and other similar taxes and import export and excise taxes, customer duties and consular fees, and the sales value of credits reasonably issued for returns. Net Sales shall not include sales to Fellowes and its Affiliates, or to SyberSay and its Affiliates, for purposes of resale. Selling prices not denominated in U.S. dollars shall first be determined in the currency in which the goods were sold and shall then be converted into the equivalent value in U.S. dollars in accordance with Fellowes' internal accounting policies for foreign currency exchange, applied on a consistent basis.

"Patent Rights" shall include any and all design patents that issue from the currently pending design patent application (U.S. Patent Application No. 29/142,655) relating to the Products, together with any and all corresponding patents or industrial design registrations, utility models, and other corresponding intellectual property protection, issued anywhere in the world, and all extensions, continuations, continuations-in-part, divisions and reissues issued thereof.

"Permitted Sales" shall mean sales of wired earpieces by SyberSay as provided for under this Agreement, including sales to the OEM customers listed on the attached Exhibit A and/or to such other OEM customers as may be mutually agreed upon by the Parties in writing from time to time. Fellowes shall agree to such other OEM customers as are proposed by SyberSay if Fellowes in good faith reasonably believes that sales by SyberSay to such other OEM customers are not likely to adversely impact Fellowes' sales of Products.

"Person" shall mean any individual, partnership, corporation, limited liability company, or other entity, including a corporate body.

"Products" shall mean wired earsets, incorporating a directional microphone and an in-the-ear speaker, currently designated as the Earlite™ 500 series and Earlite™ 200 series. "Products" shall also include any other products that the Parties may from time to time mutually agree to include as "Products", except as the term "Products" is used in Section 2.c., where the meaning of "Products" shall be limited to the Earlite™ 500 and 200 series of Products unless the Parties specifically and expressly agree in writing that the license to use Earlite™ will, thereafter, include such other specified products.

“Technology” shall mean, in each case which is now or hereafter owned by or controlled by (with the right to license others) SyberSay, all (i) trade secrets relating to the Products and their manufacture and testing, including access to SyberSay’s suppliers, drawings, bills of material, process instructions, and specifications, (ii) all existing documentation regarding the Products and testing equipment, and (iii) trade dress and copyright rights relating to the Products. It is understood that Technology does not include any information which (a) was known to Fellowes prior to disclosure hereunder other than as a result of a previous confidential disclosure by SyberSay, (b) is in the public domain or comes into the public domain through no fault of Fellowes, (c) is disclosed to Fellowes by a third party under no obligation of confidentiality to SyberSay with respect thereto, or (d) is independently developed by or for Fellowes by Persons who have not accessed the Technology.

“Term” shall have the meaning set forth in Section 7 of this Agreement.

“Territory” shall mean and include all countries and territories of the world.

2. Licenses.

a. Subject to the terms of this Agreement, SyberSay hereby grants to Fellowes the sole and exclusive worldwide right, privilege and license to make, reproduce, modify, use, import, offer to sell, and/or sell, to have made, reproduced, modified, used and/or sold, and to sublicense others to make, reproduce, modify, use, import, offer to sell and/or sell (except that the right to sublicense is conditioned upon all of the terms and conditions of any sublicense being consistent with the terms and conditions of this Agreement) the Products anywhere in the world. SyberSay shall not manufacture, import, sell or offer to sell the Products and shall not license any other Person to manufacture, import, sell or offer to sell the Products, except in support of Permitted Sales.

b. Subject to the terms of this Agreement, and in support of the provisions of this Agreement, SyberSay hereby grants to Fellowes an *exclusive* license (except that such exclusivity shall not act to limit, prevent or restrict Permitted Sales) to use the Patent Rights, the Additional Patent Rights, and the Technology in furtherance of this Agreement, to manufacture, use, import, and to offer to sell and/or sell headsets anywhere in the world. SyberSay shall not utilize the Patent Rights, or license the Patent Rights to any other Person, except for the manufacture of Products in support of Permitted Sales. *Notwithstanding the foregoing, SyberSay shall not be limited in its ability to use or to further license the Additional Patent Rights or Technology with respect to the manufacture, use, importation, offering to sell or sale of products other than wired headsets.*

c. Subject to the terms of this Agreement, SyberSay hereby grants to Fellowes a limited, *non-exclusive*, non-transferable, revocable, non-royalty bearing, license to reproduce the trademark “Earlite™” in association with the Products in the Territory, and in advertisements, and other promotional materials for the Products, during the term of this Agreement. Such license is granted for the sole purpose of assisting Fellowes in promoting the sale and use of the Products in the Territory. Such license shall expire

immediately upon the expiration or any termination of this Agreement. Fellowes shall use such mark in a manner consistent with SyberSay's ownership of the mark, and shall cooperate (at SyberSay's expense) with SyberSay's efforts to protect the mark. SyberSay shall retain unimpaired all other rights and benefits of ownership of such mark. All goodwill associated with such mark, whether now existing or hereafter arising, shall inure to the benefit of SyberSay. Upon the written request of SyberSay, Fellowes shall, from time to time, execute and deliver any and all documents in such forms as are provided by SyberSay and at SyberSay's expense, acknowledging SyberSay's exclusive ownership of "Earlite™", and assigning any such rights to SyberSay as may arise by action of law in the Territory from Fellowes' use of "Earlite™". Fellowes acknowledges that SyberSay makes no representation or warranty as to the ownership of, or right to use "Earlite™" in the Territory. SyberSay acknowledges that notwithstanding any provision to the contrary contained in this Section 2.c. of this Agreement, in the event that the use of "Earlite™" by Fellowes in any part of the Territory is prohibited by the laws of any part of the Territory, then Fellowes shall not be obligated to use "Earlite™" in the portion of the Territory where such use is prohibited. In the event that the use of "Earlite™" by Fellowes in a portion of the Territory is prohibited by the laws of the Territory, SyberSay shall have the right to terminate the license to use "Earlite™", or to geographically limit the license to use "Earlite™", effective immediately. Fellowes shall not use any of SyberSay's trademarks or trade names or any part thereof, or any mark or name confusingly similar thereto, as part of its corporate or business name or in any other manner except as provided in this Section 2.c. of this Agreement. Fellowes shall not register the Earlite™ mark or any mark or name that is likely to cause confusion with the Earlite™ mark.

d. In the event that during the Term, SyberSay develops, by itself or through other Persons, or otherwise acquires rights to manufacture, use, sell or offer to sell any new behind-the-ear wired earsets, incorporating a directional microphone and an in-the-ear speaker, ("New Product"), then, except for Permitted Sales, SyberSay shall not, by itself or through another Person, sell/distribute the New Product to any Person other than Fellowes unless and until SyberSay has provided notice to Fellowes of the intent to so sell and/or distribute ("Notice"), and, either: (a) Fellowes has declined to become the exclusive distributor of such New Product; (b) Fellowes has failed to respond to the Notice within thirty (30) days, in which case Fellowes shall be deemed to have declined to sell and/or distribute such New Product; or (c) Fellowes and SyberSay have conducted good faith negotiations regarding Fellowes acquiring exclusive rights to sell and distribute the New Product, and the Parties have failed to reach an agreement as to Fellowes' exclusive sale and distribution of the New Product within thirty (30) days of the Notice. If SyberSay establishes a right to sell New Products to Persons other than Fellowes in accordance with the provisions of this section, such sales shall be included in Permitted Sales.

e. In the event that during the Term, SyberSay develops, by itself or through other Persons, or otherwise acquires rights to manufacture, use, sell or offer to sell any new wireless earsets, incorporating a directional microphone and an in-the-ear speaker, ("New Wireless Product"), and if SyberSay desires to offer such New Wireless Product for distribution as a stand alone accessory product to the consumer products market, then

SyberSay shall notify Fellowes of such product availability prior to SyberSay entering into any agreement for distribution of that New Wireless Product.

f. If within six months after SyberSay becomes aware of infringement by a third party, of the Patent Rights, the Additional Patent Rights, the Earlite™ trademark, or proprietary rights in the Technology, SyberSay does not secure cessation of the infringement or file suit against the infringing party, Fellowes shall have the right, but not the obligation, to bring any action to defend and/or enforce against any infringing party, the Patent Rights, the Additional Patent Rights, the Earlite™ trademark or proprietary rights in the Technology, at its own expense and to collect for its own use, all damages profits, and awards of whatever nature recoverable for such infringement. Upon request of Fellowes, SyberSay shall cooperate in any such action, provided that SyberSay shall not be required to financially contribute.

3. Other Agreements.

a. Effective on the Agreement Date, SyberSay shall transfer all of its applicable existing distributors and retail and carrier customers for the Products to Fellowes, and shall promptly turn over any orders subsequently received to Fellowes for fulfillment of such orders. SyberSay shall fulfill any orders received from customers prior to the Agreement Date.

4. Payments.

b. Fellowes shall provide preliminary reports to SyberSay on or before the 30th of each calendar month, stating in detail, broken down by model/version/SKU; the sales by quantity, invoiced sales amounts, in-transit insurance costs, sales use and other similar taxes, import export and excise taxes, customer duties and consular fees, actual returns, and Net Sales amounts, for all sales and distribution during the second month preceding the current calendar month.

c. A royalty equal to, (i) during the first year following the Date of First Shipment, [REDACTED] and (ii) during the next two years [REDACTED] of Fellowes' Net Sales (excluding sales by Fellowes to SyberSay and sales by Fellowes to Fellowes' Affiliates for purposes of resale) (the "Royalty") shall accrue to SyberSay. Such accrual shall be determined as soon as practicable following each calendar quarter. Payment of this Royalty shall be due on or before the 60th day following the end of each such quarter (each, a "Royalty Payment Date"). Any payment to which Fellowes shall be entitled to pursuant to Section 10 below may, at Fellowes' option, be setoff against any unpaid Royalty calculated in accordance with this paragraph. Effective as of the third anniversary of the Date of First Shipment, the licenses set forth in Section 2 shall become fully paid and perpetual, provided Fellowes has made all payments due SyberSay under this Section 4 of the Agreement. Notwithstanding any provision herein to the contrary, SyberSay shall not be obligated to return Royalties as a result of returns by customers received by Fellowes subsequent to the end of the third anniversary of the Date of First Shipment.

f. Fellowes may withhold, and remit to the proper taxing authority, any taxes due to a foreign taxing authority as a result of SyberSay's Royalty derived from sales in such country. Fellowes shall not be liable for any such taxes or the failure to pay such taxes, except to the extent that it withholds such amounts.

g. Fellowes agrees to keep full and accurate books of account, records, data and memoranda respecting the manufacture and sale of Products in sufficient detail to enable the payments hereunder to SyberSay to be determined and Fellowes gives SyberSay the right, upon five (5) business days advanced written notification to examine said books, records, data and memoranda, only insofar as they concern the manufacture and sales of Products for the purpose of verifying the reports provided for in this Agreement. Such examination shall be limited to two (2) times in any 18-month period unless discrepancies are discovered, and shall be performed during normal business hours. Such examination of Fellowes' books of account, records, data and memoranda shall be at SyberSay's expense unless SyberSay discovers a variance greater than ten percent (10%) between Fellowes' payments and the royalty and license fee payments due for the period covered by such examination (which has not been remedied prior to such examination), in which case Fellowes shall reimburse SyberSay for the reasonable cost of the entire examination of books of account, records, data and memoranda, including travel and third party expenses. Such expense reimbursement, and all amounts determined to have not been properly reported and paid, shall be immediately due and payable to SyberSay, or in the case of overpayment, shall be a credit to Fellowes against future Royalty payments. In the event that SyberSay shall examine the records, documents and materials in the possession or under the control of Fellowes with respect to the subject matter, such examination shall be conducted in such a manner as to not unduly interfere with the business of Fellowes. SyberSay and its representatives shall treat all information acquired through any such examination as confidential under Section 9 of this Agreement. If an examination is made, SyberSay shall provide Fellowes with a written report setting forth the findings of the investigation.

5. SyberSay's Representations and Warranties.

SyberSay represents and warrants to Fellowes that:

a. SyberSay is a corporation duly organized and validly existing under the laws of its jurisdiction of incorporation and has the legal power to enter into this Agreement. The making of this Agreement by SyberSay does not violate any agreement or organizational document to which it is a party or by which it or its property is bound, and SyberSay shall not enter into any agreement which is inconsistent with this Agreement and the rights granted hereunder. The execution, performance and delivery of this Agreement have been duly authorized by all necessary corporate action of SyberSay and are binding on SyberSay.

b. SyberSay is the sole and exclusive owner of the Patent Rights, Additional Patent Rights and the Technology licensed under this Agreement. SyberSay has, and will have throughout the term of this Agreement the right to license the Technology in accordance with the terms and conditions of this Agreement.

c. The Patent Rights, the Additional Patent Rights, and the Technology collectively constitute all of the intellectual property rights necessary to manufacture, test, sell and use the Products in their current configurations.

d. The manufacture, testing, use, importation, sale, and/or offer for sale of the Products, and/or the sublicensing of such rights, in accordance with this Agreement will not violate or infringe the patent, copyright, trademark, trade secret or other proprietary rights of any third party.

e. SyberSay has no knowledge, other than information disclosed on Exhibit B hereto, that any of the Patent Rights, Additional Patent Rights or the Technology rights are being infringed by any third party.

f. Except in support of Permitted Sales, SyberSay shall not, directly or indirectly, engage in the manufacture, distribution or sale of wired headsets or earsets during the term of this Agreement, and thereafter provided Fellowes pays all royalties due under this Agreement for the entire period of payments set forth in Section 4.c. of this Agreement.

g. Fellowes has been given an opportunity to fully and completely evaluate the Products, and the Patent Rights, Additional Patent Rights and the Technology that will be licensed to Fellowes under the terms of the Agreement. The Patent Rights, Additional Patent Rights and the Technology licensed to Fellowes under the Agreement will be on an AS-IS BASIS, and Fellowes shall be solely responsible for its manufacturing procedures and practices, and for the quality and performance of the Products Fellowes manufactures. SyberSay shall provide no warranty with respect to Products manufactured by Fellowes, or by contract manufacturers working under contract to Fellowes. NO PRODUCT WARRANTY OF ANY KIND IS PROVIDED WITH THE LICENSE GRANTED UNDER THE AGREEMENT. The pending patents that are licensed, when and if they issue, are licensed without warranty as to validity or scope of protection, and SyberSay shall have the right, but not the obligation, to prosecute any infringement of these patents.

6. Fellowes' Representations and Warranties.

Fellowes represents and warrants to SyberSay that Fellowes is a corporation duly organized and validly existing under the laws of its jurisdiction of incorporation and has the legal power to enter into this Agreement. The making of this Agreement by Fellowes does not violate any agreement or organizational document to which it is a party or by which it or its property is bound, and Fellowes shall not enter into any agreement which is inconsistent with this Agreement and the rights granted hereunder. The execution, performance and delivery of this Agreement have been duly authorized by all necessary corporate action of Fellowes and are binding on Fellowes.

Fellowes represents and warrants that it shall use its commercially reasonable efforts to promote, market and sell the Products during the term of this Agreement.

7. Term and Termination.

a. Subject to the rights to terminate contained in this Agreement, the Term of this Agreement shall commence on the Agreement Date and shall continue in force until the earlier to occur of:

- (i) A termination by either Party as a result of a breach of any material term of this Agreement by the other party which remains uncured for thirty (30) calendar days after that party receives written notice from the other party specifically identifying the breach.
- (ii) A termination by SyberSay in accordance with the provisions of Section 4.d. or Section 4.e., effective upon notice by SyberSay to Fellowes.
- (iii) The Patent Rights and the Additional Patent Rights shall have been held by a court of competent jurisdiction to be invalid or unenforceable.
- (iv) Seven days after written notice of Fellowes' intention to terminate the Agreement at any time after the second anniversary of the Date of First Shipment provided no amounts payable to SyberSay hereunder remain outstanding.
- (v) The seventh anniversary of the Date of First Shipment, provided, however, that Section 4.f. and the licenses set forth in Section 2 shall survive any termination under this Section 7.a.(v).

b. In the event of insolvency, adjudication of bankruptcy or liquidation of SyberSay during the term or any extended term of this Agreement, the licenses provided under Section 2 hereof shall survive such insolvency, and the right to receive Royalties under the Agreement as well as all other rights and privileges granted to SyberSay under this Agreement, shall pass to such party as may be determined by a court of law.

c. Upon termination of the Agreement, except termination pursuant to Section 7.a.(i) for breach of the Agreement by Fellowes or pursuant to Section 7.a.(ii), Fellowes shall have the non-exclusive right to continue to manufacture and sell the Products to

Fellowes then current customers until Fellowes' catalog customers have issued new catalogs, delisting the Products, and until Fellowes retail customers have performed a planogram or similar product reset, replacing the Products; provided, however, in any event such right shall terminate eighteen (18) months after the effective date of termination. Upon such termination of this Agreement, Fellowes shall promptly identify each customer to whom it intends to sell Products under the provisions of this Section 7.c., shall notify each such customer that Fellowes will cease to supply the Products to them upon their next issuance of a catalog or performance of a planogram, and shall promptly notify SyberSay when each such customer issues its new catalog and/or performs a planogram or similar product reset. Unless otherwise agreed, Fellowes shall cease all sales to each of those customers upon the earlier of such customer issuing a new catalog or performing a planogram.

d. In the event that the Agreement terminates for any reason after Fellowes pays amounts equal to or exceeding the First Year Minimum Royalty, the Second Year Minimum Royalty, and all royalties due SyberSay during the third year following the Date of First Shipment, the terms of Section 2 and Section 4.f. shall continue in full force and effect unless and until Fellowes terminates such licenses in writing.

8. Ownership of Intellectual Property.

Except as set forth in this Agreement, each of the Parties shall retain all of their respective intellectual property rights, including copyright, trade secret, patent and trademarks, in or relating to their respective products and materials furnished under this Agreement. It is understood that Products do not include any product that Fellowes develops or acquires rights to if the product does not infringe any of the patents issued pursuant to the Patent Rights and the Additional Patent Rights or use or otherwise incorporate any of the Technology.

9. Confidentiality.

During the term of this Agreement, Fellowes and SyberSay will be dealing with trade secrets of the other Party, including but not limited to: inventions, processes, customer lists, concepts, ideas, strategies, research, marketing information, financial information, manufacturing cost information, product information, production and sale volumes, pricing policies, marketing techniques and plans, market structure, equipment, systems, and formulae, all of a confidential nature (collectively, the "Confidential Information"). The exchange of any such Confidential Information shall be governed by a separate and mutual non-disclosure agreement, which shall be maintained in full force and effect during the initial and any extended term of this Agreement and for five (5) years following any expiration or termination of this Agreement, irrespective of the term that may be stated in that non-disclosure agreement.

10. Indemnity.

a. Each Party ("Indemnifying Party") shall indemnify, defend and hold harmless the other Party and each of its agents, officers, directors, managers, members, employees, successors and assigns ("Indemnified Parties"), from and against any and all claims, suits, actions and proceedings, and from and against any and all liabilities, judgments, losses, damages, costs, charges, and expenses of whatever nature or character (including reasonable attorneys' fees and expenses) incurred by the Indemnified Parties resulting from, arising out of or in connection with (i) any breach of this Agreement (including any breach of a representation or warranty) by the Indemnifying Party or (ii) any negligent act or omission or willful misconduct by the Indemnifying Party in connection with the performance of this Agreement ("Indemnifiable Damages"). Notwithstanding the foregoing to the contrary, (i) Indemnifiable Damages arising from a breach of the warranties set forth in Section 5.c. and/or Section 5.d. shall not exceed the amounts paid or payable by Fellowes to SyberSay under this Agreement (excluding all purchases pursuant to Section 3 of this Agreement, including products, equipment, materials, services, and reimbursed expenses) provided such warranty was not known by SyberSay to be false as of the Agreement Date and (ii) the warranties set forth in Section 5 and 6 shall expire on the seventh anniversary of the Date of First Shipment provided that such expiration shall not affect losses for which notice has been provided pursuant to Section 10.b.

b. The Indemnified Party shall promptly notify the Indemnifying Party of any third party notice of any matter that may give rise to a claim for indemnification under Section 10.a. ("Third Party Claim"). Delay in notifying the Indemnifying Party shall not relieve the Indemnifying Party from any obligation hereunder except to the extent the Indemnifying Party is thereby prejudiced. Section 10 of this Agreement shall survive termination of the Agreement with respect to any claim for which notice has been provided in accordance with this Section 10.b. during the term of the Agreement.

c. The Indemnifying Party will have the right to defend the Indemnified Party against the Third Party Claim with the counsel of the Indemnifying Party's choice so long as: (i) the Indemnifying Party notifies the Indemnified Party within twenty (20) days after the Indemnified Party has given notice of the Third Party Claim that the Indemnifying Party will indemnify the Indemnified Party to the fullest extent provided by the provisions of this Section 10; and, (ii) the Third Party Claim involves only money damages and does not seek an injunction or other equitable relief. The Indemnifying Party shall not have the authority to settle a Third Party Claim against the Indemnified Party, or to stipulate to a judgment against the Indemnified Party, except upon the prior written consent of the Indemnified Party, which consent shall not be unreasonably withheld.

d. So long as the Indemnifying Party is conducting the defense of the Third Party Claim in accordance with Section 10.c above, the Indemnified Party may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party claim. In the event that any of the conditions in Section 10.c above is or becomes

unsatisfied, however: (i) the Indemnified Party may defend against the Third Party Claim in any manner it reasonably deems appropriate, but may not consent to the entry of any judgment, or enter into any settlement, with respect to the Third Party Claim without prior written consent of the Indemnifying Party, which consent shall not be unreasonably withheld; (ii) the Indemnifying Party shall reimburse the Indemnified Party promptly and periodically for the costs of defending against the Third Party Claim (including reasonable attorneys fees and expenses); and, (iii) the Indemnifying Party shall remain responsible for any Indemnifiable Damages the Indemnified Party may suffer resulting from, arising out of, relating to, in the nature of, and/or caused by, the Third Party Claim, in accordance with the provisions of this Section 10. In no event, however, shall the Indemnifying party be obligated to pay Indemnifiable Damages in an amount greater than required under Section 10.a.

e. If the Indemnifying Party desires to effect a monetary compromise or settlement of any Third Party Claim on terms the opposing party has indicated in writing are acceptable to such opposing party and which provide that the Third Party Claim and any liability of the Indemnified Party with respect thereto is being fully satisfied by reasons of that settlement without any further liability, and the Indemnified Party refuses to consent to such monetary compromise or settlement, then the Indemnified Party may continue to contest such claim, free of any participation by the Indemnifying Party, at the Indemnified Party's sole expense, and the amount of any ultimate liability with respect to which the Indemnifying Party has any obligation to pay hereunder shall be limited to the lesser of: (i) the amount of the settlement offer which the Indemnified Party declined to accept; or, (ii) the ultimate Indemnifiable Damages incurred by the Indemnified Party. In no event, however, shall the Indemnifying party be obligated to pay Indemnifiable Damages in an amount greater than required under Section 10.a.

f. The Parties acknowledge that a Third Party Claim, as to which SyberSay is an Indemnifying Party, may result in a final judgment from which no further appeal is taken or possible and which includes an injunction prohibiting Fellowes from continued manufacture, use, sale or offer for sale of the Products ("Injunction"). In the event of an Injunction, at its expense and prior to the 31st day after the entry of the final judgment which includes an Injunction, SyberSay shall use commercially reasonable efforts to either: (i) procure for Fellowes the right to continue the activity which is the subject of the Injunction; or, (ii) modify the Product which is the subject of the Injunction so that the resulting Product is equally suitable and non-infringing, and pay for the costs and/or expenses incurred in connection with the development of such suitable and non-infringing Product.

11. Governing Law and Disputes.

This Agreement shall be governed and construed according to the internal laws of the State of Illinois, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of Illinois. If any dispute should arise between the Parties, the Parties agree: (a) that they will attempt to reach a resolution through good faith negotiation prior to initiation of any legal action; and, (b)

that the Parties will discuss in good faith the possibility of mediation and/or arbitration prior to either Party initiating any legal action. Any legal action arising out of or relating to this Agreement or the transactions contemplated by this Agreement shall be brought in either Federal District Court or in the applicable state court, in the jurisdiction in which the Party that is the defendant in such action resides. Each of the Parties waives any defense of inconvenient forum to the maintenance of any such action or proceeding so brought, and waives any bond, surety, or other security that might otherwise be required of any party thereto.

12. Notices.

All notices, consents, requests, instructions, approvals, and other communications provided for herein shall be validly given, made, or served if in writing and (a) sent by certified mail, return receipt requested, postage prepaid, (b) sent by overnight courier delivery service, receipt acknowledged, fees prepaid, or (c) transmitted by facsimile transmission to the facsimile numbers set forth, and confirmed by either method (a) or (b) above, and addressed to:

If to SyberSay:
 SyberSay Communications Corporation
 625 River Oaks Parkway
 San Jose, CA 95134
 Facsimile: 408/474-0274
 E-mail: tim-howell@sybersay.com

Attention: Mr. Timothy W. Howell

If to Fellowes:
 1789 Norwood Ave.
 Itasca, IL 60143-1095
 Facsimile: (630) 893-2214
 E-mail: mnaidoff@fellowes.com

Attention: General Manager Computer Accessories
 With copy to: Legal Department

or such other address, facsimile number, or person as shall be designated in writing by like notice given by any Party hereto to all other Parties. All such notices, consents, requests, instructions, approvals, and other communications provided for herein shall be deemed to have been validly given, made, or served when deposited in the U. S. Mail or with the overnight courier delivery service or upon completion of facsimile.

13. Attorney's Fees and Expenses.

Each of the Parties shall be responsible for the payment of his or its own attorney's fees and costs incurred in connection with the negotiation and drafting of this Agreement. If any legal action is brought in connection with, and/or to enforce any provision of this Agreement, the prevailing Party shall be entitled to recover its expenses, including reasonable attorneys fees, in connection with such action. For any dispute between the Parties hereto in connection with any provision of this Agreement that is resolved through negotiation, mediation and/or arbitration, without the filing of a legal action, each Party shall bear its own expenses and attorneys fees incurred in connection with such negotiation, mediation and/or arbitration.

14. Severability.

It is the desire, intent, and agreement of the Parties that this Agreement be enforced to the fullest extent permissible under the law and public policy applied by any jurisdiction applicable to its interpretation. Accordingly if, and to the extent that, any portion of this Agreement shall be invalid and unenforceable under applicable law, such portion shall be deemed amended to delete therefrom or to reform the portion which is otherwise invalid or unenforceable, such deletion or reformation to apply only with respect to the operation of such portion in the particular jurisdiction in which such portion is otherwise invalid or unenforceable. The deemed amendment of any such portion shall not invalidate the remainder of such portion of this Agreement or the remaining provisions of this Agreement.

15. Gender/Singular/Plural.

Words of any gender used in this Agreement shall be held and construed to include any other gender, and words in the singular shall be held to include the plural and words in the plural shall be held to include the singular, unless and only to the extent that the context clearly indicates otherwise.

16. Succession and Assignment.

This Agreement shall be binding upon and inure to the benefit of the Parties named herein and their respective heirs, legal representatives, successors and assigns. Except pursuant to a merger, consolidation, or sale of substantially all its assets to or with a Person who is neither a competitor or an Affiliate of a competitor of the other Party, no Party may assign either this Agreement or any of its rights, interests, or obligations hereunder without the prior written approval of the other Party, which shall not be unreasonably withheld or delayed. Withholding or delaying approval shall not be deemed unreasonable if a Party proposes to assign to a competitor of the other Party. The forgoing notwithstanding, assignment between Affiliates of a Party in conjunction with a corporate reorganization or restructuring shall not require consent of the other Party.

17. Prior Agreements; Entire Agreement.

This Agreement supersedes and terminates all prior agreements, whether written or oral, to which the Parties or any of them are also parties concerning the subject matter of this Agreement, and as of the execution of this Agreement, none of such other agreements shall any longer have any force or effect. The forgoing notwithstanding, the separate and mutual non-disclosure agreement contemplated in Section 9 of this Agreement shall have full force and effect irrespective of the sequence of its execution. This Agreement and the mutual non-disclosure agreement contemplated in Section 9 of this Agreement executed between the Parties contains the entire understanding of the Parties with respect to the subject matter of this Agreement.

18. Execution.

This Agreement shall not become effective until it has been executed by all of the Parties.

19. Counterparts.

This Agreement may be executed in one or more counterparts, and each executed counterpart shall be considered an original of this Agreement.

20. Facsimile Signatures.

In the event this Agreement as signed by a Party is delivered to another Party via facsimile, the transmitting Party intends to be contractually bound by the facsimile signature(s) hereon.

21. Modification.

This Agreement may not be amended, modified, or supplemented except by a written instrument signed by each of the Parties or their respective authorized officers or representatives.

22. Headings.

The section and subsection headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

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This Agreement shall not confer any rights or remedies upon any person or entity other than the Parties and their respective successors and assigns.

24. Exhibits.

The Exhibits hereto are incorporated herein by reference and constitute a part of this Agreement.

25. Construction.

The Parties have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requests otherwise. The word "including" shall mean including without limitation. The words "hereby", "herein", "hereof", "hereto", "hereunder", "hereinafter", and words of similar import refer to this Agreement as a whole and not to any particular section or subsection of this Agreement. The word "hereafter" shall mean after, and the word "heretofore" shall mean before, the Agreement Date.

26. Survival. The provisions of Sections 1, 4, 7.c, 7.d., 8, 9, 11, and 26, along with such provisions as are necessary to interpret the foregoing, and such provisions as survive in accordance with the provisions themselves upon the conditions stated therein, shall survive after the termination of this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Agreement Date.

SyberSay Communications Corporation

Fellowes, Inc.

By Stephan A. Gouveia

By Joseph T Koch

Print Stephan A. Gouveia

Print Joseph T Koch

Its: CEO

Its: Executive VP