

08-05-2002

Form PTO-1595
(Rev. 03/01)

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

Tab settings ⇄ ⇄ ⇄ ▼



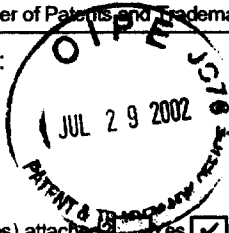
102178537

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

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

1. Name of conveying party(ies):

1463946 Ontario Limited



2. Name and address of receiving party(ies)

Name: Bank of Montreal

7/29/02

Internal Address: Attn: John Quigley

Special Accounts Management Unit

First Canadian Place, 11th Floor

Street Address: 100 King Street West

Toronto, Ontario M5X 1A1 CANADA

City: _____ State: _____ Zip: _____

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

3. Nature of conveyance:

- Assignment Merger
- Security Agreement Change of Name
- Other Decision of Commissioner, Order of Superior Court, and Petition

Execution Date: 02/27/02

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

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.(s) 5,791,101

Additional numbers attached? Yes No

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

Name: John S. Hale

Internal Address: Gipple & Hale

Street Address: 6665-A Old Dominion Drive

City: McLean State: VA Zip: 22101

6. Total number of applications and patents involved: 1

7. Total fee (37 CFR 3.41).....\$ 40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number:

07-1340 **Only for Deficiencies**

DO NOT USE THIS SPACE

9. Signature.

John S. Hale

Name of Person Signing

Signature

07/24/2002

Date

Total number of pages including cover sheet, attachments, and documents: 16

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

08/02/2002 TDIAZ1 00000119 5791101

01 FC:581

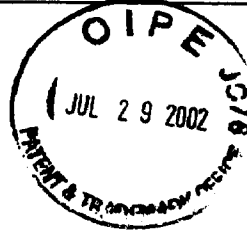
40.00 DP

PATENT
REEL: 013138 FRAME: 0427



UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
WASHINGTON, D.C. 20231
www.uspto.gov



JOHN S HALE
GIPPLE & HALE
6665-A OLD DOMINION DRIVE
MCLEAN VIRGINIA 22101

COPY MAILED

JUN 19 2002

OFFICE OF PETITIONS

In re Patent No. :
5,791,101 :
Issue Date: August 11, 1998 :
Application No. 08/661,873 :
Filed: June 11, 1996 : ON PETITION
For: STAIN SUPPORT SYSTEM :

This is a decision on the petition filed under 37 CFR 1.182 or 1.183 on March 28, 2002, and resubmitted on June 18, 2002, requesting that the USPTO "void" an assignment previously recorded against the above-identified patent.

The petition is **dismissed**. This is not a final agency action.

Petitioner (the Bank of Montreal) complains that a previously recorded assignment which purportedly conveyed title from VSTEP Company ("VSTEP") to 1463946 Ontario Limited reflects an improper attempt by VSTEP to avoid a security agreement which pledged, *inter alia*, this patent as collateral for a loan from petitioner. Petitioner points to an enclosed copy of a judgment dated February 21, 2002, from the Ontario [Canada] Superior Court of Justice (Dkt No. 01-CV-222466) that petitioner holds a valid and enforceable security [interest] in the above-identified patent, and that the assignment from VSTEP to 1463946 Ontario Limited is void.

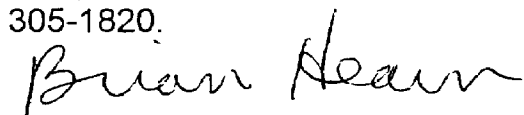
Initially, while petitioner seeks an extraordinary remedy under 37 CFR 1.182 or 1.183, it is pointed out that the USPTO will not normally resort to an extraordinary remedy under 37 CFR 1.182 or 1.183 if the rules of practice and the procedures before the USPTO already provide an avenue for the requested relief. See Cantello v. Rasmussen, 220 USPQ 664, 664 (Comm'r Pats. 1982).

As background, the USPTO simply acts in a ministerial capacity in recording documents that have been submitted for recordation. See 35 USC 261 and 37 CFR 3.11. However, the recording of a document pursuant to 37 CFR 3.11 is **not** a determination by the USPTO of the validity of the document *per se* or the effect that document has on the title to a patent or application. See 37 CFR 3.54. As such, it is not necessary, or desirable, for the USPTO to "void" the assignment of which petitioner complains. For example, an error(s) in a recorded assignment document is not corrected by "voiding" the previous document, but simply by recording a corrected document. See MPEP 323. Rather, as

noted in MPEP 323, it is USPTO policy to maintain a complete history of claimed interests in a given property, and, as such, a recorded assignment document will not be expunged, even if it is subsequently found to be invalid. In re Raney, 24 USPQ2d 1713 (Comm'r Pat. 1992)

Nevertheless, as the judgment is, under the circumstances of this case, an "other document" within the meaning of 37 CFR 3.11(a) that affects title of this patent, it is considered, on petition, recordable. Accordingly, petitioner may wish to resubmit the copy of the judgement (herewith returned for petitioner's convenience) along with a cover sheet and fee to Assignments Branch for recordation to further supplement the history of claimed interests in this patent.

Telephone inquires related to this decision should be directed to the undersigned at (703) 305-1820.



Brian Hearn
Senior Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner for
Patent Examination Policy

Enclosure: Petitions and papers filed March 28, 2002 and June 18, 2002

CERTIFY THAT THIS
EACH PAGE OF
STAMPED WITH THE
THE SUPERIOR COURT
JUSTICE AT TORONTO, IS A
COPY OF THE DOCUMENT
FILE IN THIS OFFICE

LA PRÉSENT ATTEST QUE CE
DOCUMENT, DONT CHACUNE
DES PAGES EST REVÊTUE DU
SCÉAU DE LA COUR SUPÉRIEURE
DE JUSTICE A TORONTO, EST UNE
COPIE CONFORME DU DOCUMENT
CONSERVÉ DANS CE BUREAU

Court File No. 01-CV-222466

FILED AT TORONTO THIS 27 DAY OF Feb 20 02
AT TORONTO LE 27 JOUR DE

ONTARIO

SUPERIOR COURT OF JUSTICE

GREFFIER

Mr. THE HONOURABLE
JUSTICE CAMERON

)
)
)

THURSDAY, THE 21ST DAY OF
FEBRUARY, 2002

BETWEEN:

BANK OF MONTREAL

Applicant

and

THE VSTEP COMPANY INC., 1463946 ONTARIO LIMITED
and PETER DOUGLAS SWIRE

Respondents

APPLICATION UNDER Section 67 of the *Personal Property Security Act*, R.S.O. 1990, c. P. 10
and Rules 14.05(2) and (3)(d) of the *Rules of Civil Procedure*

ORDER

THIS APPLICATION, brought by the Applicant for, *inter alia*, an Order setting aside the
assignment of Canada Patent No. 2178785 and US Patent No. 5791101 (the "Patents") from The
VStep Company Inc. to 1463946 Ontario Limited was heard this day at Toronto, Ontario.

UPON READING the Affidavit of John Quigley, sworn December 21, 2001, and upon
hearing the submissions of counsel for the Applicant, no one appearing for the Respondents,

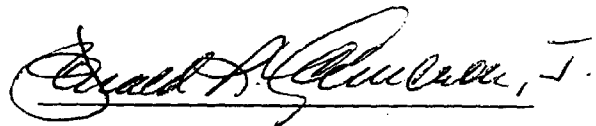
1. **THIS COURT ORDERS AND DECLARES** that the Applicant holds valid and enforceable security in respect of the Patents.

2. **THIS COURT ORDERS AND DECLARES** that the assignment of Canada Patent No. 2178785 from The VSTEP Company Inc. to 1463946 Ontario Limited dated May 4, 2001 be and the same is hereby set aside and void.

3. **THIS COURT ORDERS** that the assignment of U.S. Patent No. 5791101 from The VSTEP Company Inc. to 1463946 Ontario Limited dated May 4, 2001 be and the same is hereby set aside and void.


4. **THIS COURT ORDERS** that the Respondents shall not transfer, convey, assign or otherwise deal with the Patents without the consent of the Applicant or further Order of the Court.

5. **THIS COURT ORDERS** that the costs of the Application shall be fixed in the amount of \$1500⁰⁰, payable forthwith by the Respondents to the Applicant.



REGISTERED PATENT & TRADEMARK OFFICE
UNIT 17 ST. JACQUES
MONTREAL, QUEBEC H2Y 1R9

FEB 24 2002

ALL DOCUMENTS NO:
A FILE OF DOCUMENTS NO:
REGISTERED 

PATENT

REEL: 013138 FRAME: 0431

BANK OF MONTREAL
Applicant

-and-

THE VSTEP COMPANY INC. and others
Respondents

Court File No. 01-CU-222466

**ONTARIO
SUPERIOR COURT OF JUSTICE**

PROCEEDING COMMENCED AT TORONTO

ORDER

TORKIN MANES COHEN ARBUS LLP
Barristers & Solicitors
151 Yonge Street, Suite 1500
Toronto, Ontario M5C 2W7

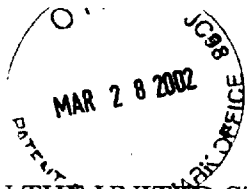
M. Scott Martin (36805K)
Tel : (416) 863-1188
Fax: (416) 863-0305

Solicitors for the applicant
Bank of Montreal

File Number: 13036/195

PATENT

REEL: 013138 FRAME: 0432



72-DA-5
2/1

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Letters Patent :
:
WALLACE, BRENT L. :
:
Patent Number: 5,791,101 :
08661873 :
Issue Date: August 11, 1998 :
:
For: STAIN SUPPORT SYSTEM :
:

Attn: Petitions Information
Crystal Park One, Suite 520

RECEIVED
APR 01 2002
OFFICE OF PETITIONS

The Honorable Commissioner of
Patents and Trademarks
Washington, D.C. 20231

Sir:

**PETITION TO THE COMMISSIONER UNDER 37 CFR 1.182 OR 1.183
TO VOID ASSIGNMENT OF MAY 4, 2001 FROM THE VSTEP COMPANY
INC. TO 1463946 ONTARIO LIMITED**

Petitioner Bank of Montreal through its undersigned attorney hereby petitions and requests that an assignment dated May 4, 2001 from The VSTEP Company Inc. to 1463946 Ontario Limited recorded in the United States Patent and Trademark Office on May 7, 2002, Reel 011770 Frame 0474/5 be set aside and voided for the following reasons.

1. The prior owner of record, The VSTEP Company Inc. (Reel 009764 Frame 00354) pledged United States Patent No. 5,791,101 together with other collateral as security for a loan from the Bank of Montreal.

2. The prior owner of record The VSTEP Company Inc. transferred the '101 Patent to 1463946 Ontario Limited, a shell company owned by the principal(s) of The VSTEP Company Inc. without the consent or knowledge of the Bank of Montreal contrary to the terms of a security agreement between The VSTEP Company Inc. and the Bank of Montreal.

3. That the security agreement between The VSTEP Company Inc. and the Bank of Montreal was still in force at the time of the transfer of the '101 Patent to 1463946 Ontario Limited and the transfer was an attempt by the prior owner to transfer pledged assets to an unencumbered company which was owned by the prior owner.

4. That the Bank of Montreal brought suit against THE VSTEP COMPANY INC., 1463946 ONTARIO LIMITED and Peter Douglas Swire, the principal of both corporations in the Ontario Superior Court of Justice.

5. That the Ontario Superior Court of Justice ruled in case No 01-CV-222466 that:

(a) The Bank of Montreal holds valid and enforceable security in respect of the Patents (naming U.S. Patent No. 5,791,101); and

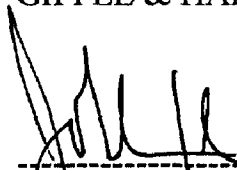
(b) That the assignment of U.S. Patent No. 5791101 from The VSTEP Company Inc. to 1463946 Ontario Limited dated May 4, 2001 be and the same is hereby set aside and void.

WHEREBY PETITIONER PETITIONS AND REQUESTS THE COMMISSIONER OF PATENTS OF THE UNITED STATES PATENT AND TRADEMARK OFFICE GRANT THIS PETITION AND HONOR THE DECISION OF THE ONTARIO SUPERIOR COURT OF JUSTICE AND SET ASIDE AND VOID THE ASSIGNMENT OF MAY 4, 2001 FROM THE VSTEP COMPANY INC. TO 1463946 ONTARIO LIMITED

Petitioner hereby includes a check for the Petition Fee in the amount of \$130.00 together with a sealed copy of the Decision of the Ontario Superior Court of Justice holding in part that the assignment dated May 4, 2001 be set aside and void and copies of the assignments in questions.. If any additional fee is required, please charge Deposit Account No. 07-1340.

Respectfully submitted,

GIPPLE & HALE

A handwritten signature in black ink, appearing to read "John S. Hale", is written over a horizontal dashed line.

John S. Hale

Registration No. 25,209

6665-A Old Dominion Drive
McLean, Virginia 22101
(703) 448-1770 ext. 104
Attorney Reference: L-6797

CERTIFY THAT THIS
EACH PAGE OF
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SEAL OF THE SUPERIOR COURT
JUSTICE AT TORONTO, IS A
TRUE COPY OF THE DOCUMENT
FILED IN THIS OFFICE

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DES PAGES EST REVÊTUE DU
SCÉAU DE LA COUR SUPÉRIEURE
DE JUSTICE A TORONTO, EST UNE
COPIE CONFORME DU DOCUMENT
CONSERVÉ DANS CE BUREAU

Court File No. 01-CV-222466

FILED AT TORONTO THIS 27 DAY OF Feb 20 02
A TORONTO LE JOUR DE

[Signature]
CLERK

GREFFIER

**ONTARIO
SUPERIOR COURT OF JUSTICE**

THE HONOURABLE
Mr. JUSTICE CAMERON

)
)
)

THURSDAY, THE 21ST DAY OF
FEBRUARY, 2002

BETWEEN:

BANK OF MONTREAL

Applicant

and

THE VSTEP COMPANY INC., 1463946 ONTARIO LIMITED
and PETER DOUGLAS SWIRE

Respondents

APPLICATION UNDER Section 67 of the *Personal Property Security Act*, R.S.O. 1990, c. P. 10
and Rules 14.05(2) and (3)(d) of the *Rules of Civil Procedure*

ORDER

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APR 01 2002

OFFICE OF PETITIONS

THIS APPLICATION, brought by the Applicant for, *inter alia*, an Order setting aside the
assignment of Canada Patent No. 2178785 and US Patent No. 5791101 (the "Patents") from The
VStep Company Inc. to 1463946 Ontario Limited was heard this day at Toronto, Ontario.

UPON READING the Affidavit of John Quigley, sworn December 21, 2001, and upon
hearing the submissions of counsel for the Applicant, no one appearing for the Respondents,

[Handwritten mark]

PATENT

REEL: 013138 FRAME: 0436

1. **THIS COURT ORDERS AND DECLARES** that the Applicant holds valid and enforceable security in respect of the Patents.

2. **THIS COURT ORDERS AND DECLARES** that the assignment of Canada Patent No. 2178785 from The VSTEP Company Inc. to 1463946 Ontario Limited dated May 4, 2001 be and the same is hereby set aside and void.

3. **THIS COURT ORDERS** that the assignment of U.S. Patent No. 5791101 from The VSTEP Company Inc. to 1463946 Ontario Limited dated May 4, 2001 be and the same is hereby set aside and void.

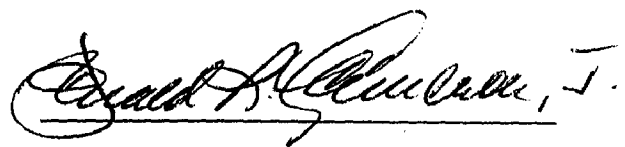
4. **THIS COURT ORDERS** that the Respondents shall not transfer, convey, assign or otherwise deal with the Patents without the consent of the Applicant or further Order of the Court.

5. **THIS COURT ORDERS** that the costs of the Application shall be fixed in the amount of \$1500⁰⁰, payable forthwith by the Respondents to the Applicant.

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APR 01 2002

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APR 01 2002

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OTTAWA ONTARIO
APR 01 2002

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MAR 28 2002
PATENT & TRADEMARK OFFICE

05-11-2001

Docket No.: 92384 plus

FORM PTO-1595 (Modified)
(Rev. 8-93)
OMB No. 0651-0011 (exp. 4/94)
Copyright 1996-97 LegalStar
PC64/REV02



101714575

COVER SHEET

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

NLY

S-7-01

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

1. Name of conveying party(ies):
The Vstep Company Inc.

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

OTPE
MAY 07 2001
PATENT & TRADEMARK OFFICE

2. Name and address of receiving party(ies):
Name: 1463946 Ontario Limited
Address: 17 Sumac Lane

3. Nature of conveyance:
 Assignment Merger
 Security Agreement Change of Name
 Other _____

Execution Date: May 4, 2001

City: Jerseyville State/Prov.: Ontario
Country: Canada ZIP: L0R 1R0

Additional name(s) & address(es) 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: _____

| Patent Application No. | Filing date | B. Patent No.(s) |
|---|------------------|--|
| <u>05/10/2001 Lmueller 00000338 5791101</u> | <u>01 FD:581</u> | <u>5,791,101 granted August 11, 1998</u> |
| | <u>40.00</u> | |

Additional numbers Yes No

6. Total number of applications and patents involved: 1

7. Total fee (37 CFR 3.41):.....\$ 40.00
 Enclosed - Any excess or insufficiency should be credited or debited to deposit account
 Authorized to be charged to deposit account

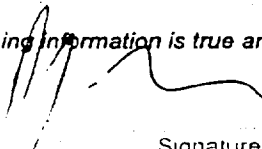
5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Patrick J. Hofbauer
Registration No. 32,336
Address: Suite 205 North
1455 Lakeshore Road
City: Burlington State/Prov.: Ontario
Country: Canada ZIP: L7S 2J1

8. Deposit account number: 08-2460

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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.

Patrick J. Hofbauer  May 4, 2001
Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments, and 2

PATENT
REEL: 011770 FRAME: 0474
PATENT
REEL: 013138 FRAME: 0439

| | | | |
|--|--|--|------------------------|
| Assignment of United States Patent (Single assignor; single assignee) | | | Docket No. 92384pus |
|--|--|--|------------------------|

| | | | |
|------------------------------|-------------------------------|-----------------------------------|------------------------------|
| U.S. Patent No. 5,791,101 | Issue Date August 11, 1998 | Application Serial No. 661,873 | Filing Date June 11, 1996 |
|------------------------------|-------------------------------|-----------------------------------|------------------------------|

Title of Invention: STAIR SUPPORT ASSEMBLY

| | |
|--|--|
| Owner of Record (hereinafter "Assignor") THE VSTEP COMPANY INC. | Residence or Principal Place of Business of Assignor 17 Sumac Lane Jerseyville, Ontario Canada L0R 1R0 |
|--|--|

| | |
|---|--|
| Assignee 1463946 Ontario Limited | Residence or Principal Place of Business of Assignee 17 Sumac Lane Jerseyville, Ontario Canada L0R 1R0 |
|---|--|

Whereas, the above-identified Assignor is the sole owner of record of the above-identified United States Patent, and;
Whereas, the above-identified Assignee is desirous of acquiring the entire right, title and interest in the same;

Now, therefore, in consideration of the sum of one dollars (\$1.00), and other good and valuable consideration, the receipt whereof is hereby acknowledged, Assignor, by these presents does sell, assign and transfer unto said Assignee the entire right, title and interest in and to said Patent; the same to be held and enjoyed by said Assignee for its own use and behoof, and for its legal representatives and assigns, to the full end of the term for which said Patent is granted, as fully and entirely as the same would have been held by Assignor had this assignment not been made.

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OFFICE OF PETITIONS

Executed this 7th day of May, in the year 2001.
at Burlington, Ontario, Canada

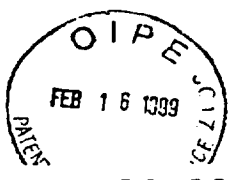
P. Swire
Signature of Assignor (or of authorized signatory if Assignor is a corporation, partnership or association)
PETER DOUGLAS SWIRE, President
THE VSTEP COMPANY INC.

State of Province of Ontario
County of Halton

Before me personally appeared Peter D. Swire who acknowledged the foregoing instrument to be a free act and deed and also represented that he or she is authorized to execute the same this 4th day of May, in the year 2001.

[Signature]
(Notary Public)

MRO
2-16-99



02-22-1999

B/O FORM PTO-1596 (1/31/92)

U.S. Department of Commerce
Patent and Trademark Office



100968060

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

1. Name of Conveying Party(ies):

Peter D. SWIRE

 Additional names of conveying parties attached.

2. Name and Address of Receiving Party(ies):
Name: THE VSTEP COMPANY INC.
Internal Address:
Street Address: 17 Sumac Lane, Jerseyville
City, State, Zip: Ontario, CANADA, L0R 1R0

 Additional name(s) and address(es) attached.

3. Nature of Conveyance:
 Assignment Merger
 Security Agreement Change of Name
 Other:
Execution Date: January 27, 1999

4. (A) Patent Application Number(s):

If this document is being filed together with a new application, the execution date of the application is:

 Additional Numbers Attached.

4. (B) Patent Number(s):
5,791,101 granted August 11, 1998

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APR 01 2002

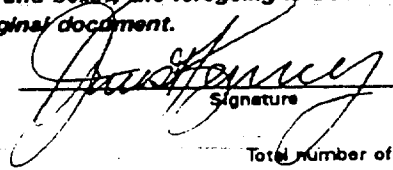
5. Name and Address of Party to whom Correspondence Concerning this Document Should be Mailed:
Name: J. ERNEST KENNEY
Address: Bacon & Thomas, PLLC
625 Slaters Lane - 4th Floor
Alexandria, Va 22314

6. Total Number of Applications and Patents Involved: 1
7. Total Fee: \$40.00
(37 CFR 3.41)
 Enclosed.
 Authorized to be charged to deposit account.
8. Deposit Account Number: 02-0200
ATTACH DUPLICATE COPY OF THIS PAGE IF PAYING BY DEPOSIT ACCOUNT.



OFFICE OF PETITIONS

02/18/99 999 58URHS 00000008 5791101
01 FC: 81 40.00 DP

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9. Statement and Signature:
To the best of my knowledge and belief, the foregoing is true and correct and any attached copy is a true copy of the original document.
J. ERNEST KENNEY, Reg. No. 19,179
Name of Person Signing  Signature February 16, 1999 Date
Total number of pages including cover sheet: 2

RWBTO2.SWIRE .ASG

| | | | | |
|--|-------------------------------|-----------------------------------|---|--|
| Assignment of United States Patent (Single assignor; single assignee) | | | Docket No. 92384pus | |
| U.S. Patent No. 5,791,101 | Issue Date August 11, 1998 | Application Serial No. 661,873 | Filing Date June 11, 1996 | |
| Title of Invention: STAIR SUPPORT ASSEMBLY | | | | |
| Owner of Record (hereinafter "Assignor") | | | Residence or Principal Place of Business of Assignor | |
| PETER D. SWIRE | | | 29 Mistywood Drive Stoney Creek, Ontario Canada L8J 2N6 | |
| Assignee | | | Residence or Principal Place of Business of Assignee | |
| THE VSTEP COMPANY INC. | | | 17 Sumac Lane Jerseyville, Ontario Canada L0R 1R0 | |
| <p><i>Whereas, the above-identified Assignor is the sole owner of record of the above-identified United States Patent, and;</i></p> <p><i>Whereas, the above-identified Assignee is desirous of acquiring the entire right, title and interest in the same;</i></p> <p><i>Now, therefore, in consideration of the sum of</i> <u>ONE</u> <i>dollars (\$</i> <u>1.00</u> <i>), and other good and valuable consideration, the receipt whereof is hereby acknowledged, Assignor, by these presents does sell, assign and transfer unto said Assignee the entire right, title and interest in and to said Patent; the same to be held and enjoyed by said Assignee for its own use and behoof, and for its legal representatives and assigns, to the full end of the term for which said Patent is granted, as fully and entirely as the same would have been held by Assignor had this assignment not been made.</i></p> | | | | |
| <p><i>Executed this</i> 27th <i>day of</i> January <i>, in the year</i> 1999.</p> <p><i>at</i> Burlington, Ontario, Canada</p> <p>State of <u>PROVINCE OF ONTARIO</u></p> <p>County of <u>HALTON</u></p> <p><i>Before me personally appeared</i> Peter D. Swire <i>who acknowledged the foregoing instrument to be a free act and deed and also represented that he or she is authorized to execute the same this</i> 27th <i>day of</i> January <i>, in the year</i> 1999.</p> | | | | |
| | | |  Signature of Assignor (or of authorized signatory of Assignor if a corporation, partnership or association) Peter D. Swire | |
| | | |  (Notary Public) | |

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AS01A/REV01

RECORDED: 02/16/1999

PATENT
REEL: 9764 FRAME: 0354

RECORDED: 07/29/2002

PATENT
REEL: 013138 FRAME: 0442