

MRD 7.3.03

07-07-2003

Form PTO-1595
Rev. 10/02

REC



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

OMB No. 0651-0027 (exp. 6/30/2005)

102485044

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):

Kionix, Inc.

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

2. Name and address of receiving party(ies)
Name: Cayuga Venture Fund II, LLC
Internal Address:

Street Address: 15 Thornwood Drive

City: Ithaca State: NY Zip: 14850
Additional name(s) & address(es) attached? Yes No

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

Execution Date: 6/30/03

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) 09/745,629
B. Patent No.(s) 6,245,227
Additional numbers attached? Yes No

6. Total number of applications and patents involved: 16
7. Total fee (37 CFR 3.41).....\$ 760.00
 Enclosed
 Authorized to be charged to deposit account

640
+ 120
760

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: Richard E. Honen
Internal Address:

Street Address: Honen & Wood, P.C.
126 State Street, 5th Floor
City: Albany State: NY Zip: 12207

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Richard E. Honen
Name of Person Signing

Signature

July 2, 2003
Date

Total number of pages including cover sheet, attachments, and documents: 11

Continuation of Item 2:

John Alexander
61 Brown Road
Ithaca, New York 14850

Henry Bartels
35 Canterbury Way
Canterbury, Connecticut 06473

Kenneth Bartels
38 Close Road
Greenwich, Connecticut 06831

Philip Bartels
52 Druid Lane
Riverside, Connecticut 06878

Bartrip Realty L.P.
125 Genung Circle
Ithaca, New York 14850

Enhanced NY Issuer, LLC
300 Park Avenue 20th Floor
New York, NY 10022

Richard Farr
31 Aspen Way
Ithaca, New York 14850

Christopher Lux
c/o RQC, Limited
370 South Youngs Road
Williamsville, New York 14221

Donna Prybyl
42 Reach Run
Ithaca, New York 14850

Rand Capital SBIC, LP
2200 Rand Building
Buffalo, New York 14203

James Wells
84 Sperry Lane
Lansing, New York 14882

Continuation of Item 4:

Patent Numbers

6,394,942
6,417,510
6,432,311
6,454,938
6,461,516
6,464,866

Patent Application Numbers

09/745,652
09/746,867
10/082,064
10/322,941
10/322,990
60/356,493
60/390,235
PCTUS02/32993

AMENDED AND RESTATED SECURITY AGREEMENT

THIS AMENDED AND RESTATED SECURITY AGREEMENT (this "Agreement") is entered into this 30th day of June, 2003 between CAYUGA VENTURE FUND II, LLC, a Delaware limited liability company with its principal place of business in Ithaca, New York ("Lender"), as lender and agent for the bridge lenders set forth on Exhibit A (collectively the "Bridge Lenders") and KIONIX, INC., a Delaware corporation with its principal place of business in Ithaca, New York ("Borrower").

1. **RECITALS.** The parties hereby acknowledge the following:

- 1.1 As of December 4, 2002, Borrower executed convertible promissory notes (the "Bridge I Notes") in favor of certain of the Bridge Lenders, in the aggregate principal amount of Two Million Six Hundred Twenty Thousand and 00/100 Dollars (\$2,620,000.00), together with that certain security agreement dated as of December 4, 2002 providing security for each of the respective Bridge I Notes (the "2002 Security Agreement"); and
- 1.2 As of May 8, 2003, Borrower executed promissory notes (the "Bridge II Notes") in favor of certain of the Bridge Lenders, in the aggregate principal amount of Four Hundred Eighty Seven Thousand Five Hundred and 00/100 Dollars (\$487,500.00), together with that certain security agreement dated as of May 8, 2003 providing security for each of the respective Bridge II Notes (the "2003 Security Agreement" and together with the 2002 Security Agreement, are collectively referred to as the "Security Agreements"); and
- 1.3 Borrower has requested and certain Bridge Lenders have agreed to extend additional financing to the Borrower (the "Bridge III Financing"); and
- 1.4 Borrower and all of the Bridge Lenders have agreed to cancel the Bridge I Notes and the Bridge II Notes and to reinvest all principal and any interest due thereunder into new debt instruments of even date herewith ("Bridge III Notes", attached hereto as Exhibit B); and
- 1.5 The parties have agreed to amend and restate the Security Agreements in order to secure Borrower's obligations to the Bridge Lenders as stated in the Bridge III Notes; and
- 1.6 It is a condition precedent to the Bridge Lenders' loans evidenced by the Bridge III Notes (the "Loan") that the Borrower validly execute and deliver this Agreement; and
- 1.7 Borrower's execution and delivery of this Agreement was a material inducement to the Bridge Lenders to extend the Loan to the Borrower.

2. **SECURITY INTEREST.** As security for all present and future indebtedness, guarantees, liabilities, and other obligations of Borrower to the Bridge Lenders, existing, pursuant to the Bridge III Notes, and hereafter arising, including future advances, howsoever evidenced or created, actual, direct, contingent or otherwise (collectively, the "Obligations"), Borrower hereby grants the Bridge Lenders, a continuing security interest in all of Borrower's right, title and interest in the following types of property, whether now owned or hereafter acquired, and wherever located (collectively, the "Collateral"): All assets including but not limited to all "accounts", "general intangibles", "contract rights" (including but not limited to any of Borrower's right in or to any agreements that Borrower is now a party to or hereafter enters into), "chattel paper", "documents", "letters of credit", "instruments", "deposit accounts", "inventory", "investment property", "fixtures" and "equipment", as such terms are defined in the Uniform Commercial Code in effect on the date hereof or as hereafter amended, and all products, proceeds and insurance proceeds of the foregoing; and all patents issued or granted by the United States Patent and Trademark Office ("PTO") owned by Borrower that show "Kionix, Inc." as assignee as set forth on Exhibit C, and all other "patent rights" (as such term is defined in the Uniform Commercial Code in effect on the date hereof or as hereafter amended) and all licenses, sublicenses, permits, agreements of any kind or nature pursuant to which the Borrower possesses, uses or has authority to possess or use property (whether tangible or intangible) of others including those items set forth on that certain Kionix Patent Status Report for Selected Patents and Applications as of April 15, 2003 provided to Lender on even date herewith (whether tangible or intangible) of Borrower that Borrower has or can obtain authority to pledge as security pursuant to the relevant license, sublicense, permit or agreements, including, without limitation, utility, model and design

patents, patents of addition, patents of importation, improvement patents, reissues and re-examined patents, all renewals and extensions thereof, and all applications for such patents (including original, divisional, continuation, and continuation in part applications) pending before the PTO and which have not been abandoned or expired and which are now or hereafter owned by the Debtor, including without limitation those described on Exhibit C attached hereto (such "patent rights" and all other intellectual property referred to herein is collectively referred to as "Intellectual Property").

REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF DEBTOR. With the understanding that the Bridge Lenders shall rely upon these representations and warranties in making the Loan and entering into this Agreement, Borrower hereby represents and warrants to Lender as follows, and Borrower agrees that the following representations and warranties will continue to be true, and that Borrower will comply with all of the following agreements throughout the term of this Agreement.

- 3.1 **CORPORATE EXISTENCE AND AUTHORITY.** Borrower is, and will continue to be, duly authorized, validly existing and in good standing under the laws of the State of Delaware. Borrower is, and will continue to maintain all required registrations and permits as required in and be in good standing other jurisdictions where it conducts its business and owns or leases its property. The execution, delivery and performance by Borrower of this Agreement, and all other documents contemplated hereby have been duly and validly authorized, and do not violate any law or any provision of, and are not grounds for acceleration under, any agreement or instrument which is binding upon Borrower. Borrower has not granted any security interest or similar right in the Collateral to any party other than Lender that remain effective as of the making of this Agreement. Borrower has obtained all necessary consents required to be obtained pursuant to any other agreement to which it is a party.
- 3.2 **NAME, PLACES OF BUSINESS.** The name of Borrower set forth in this Agreement is its only and correct name. Borrower shall give Lender 15 days' prior written notice before changing its name. The address set forth in the heading to this Agreement is Borrower's chief executive office. In addition, to the extent Borrower has any places of business and/or Collateral located at any locations other than its chief executive office, Borrower shall disclose such locations in an Exhibit to this Agreement. Borrower will give Lender at least 15 days' prior written notice before changing its chief executive office or locating the Collateral at any other location.
- 3.3 **COLLATERAL.** Lender has and will at all times continue to have a first-priority perfected security interest in all of the Collateral. Borrower shall retain possession of the Collateral until all of Borrower's Obligations to the Bridge Lenders have been satisfied in full, and Borrower shall not sell, exchange, assign, loan, deliver, lease, mortgage, transfer, convey, encumber or otherwise dispose of the Collateral or any part thereof without the prior written consent of Lender, except for transactions in the ordinary course of business. Borrower shall maintain the Collateral free and clear of all liens, charges, encumbrances, taxes and assessments at all times except as set forth expressly herein, except as to the creation of rights subordinate to the Lender created with the prior written consent of Lender, which shall not be unreasonably withheld. Borrower shall at all times keep an accurate and current fixed asset ledger of all material "equipment" and maintain an accurate and current list of all other Collateral including but not limited to (i) Intellectual Property Collateral, (ii) accounts, (iii) general intangibles, (iv) contract rights, (v) chattel paper, (vi) documents, (vii) letters of credit, (viii) instruments, (ix) deposit accounts, (x) inventory, (xi) investment property, and (xii) fixtures. Borrower will immediately advise Lender in writing of any material loss or damage to the Collateral. Upon Lender's request Borrower will execute, and Borrower hereby expressly authorizes Lender to complete and file, form UCC-1 financing statements and such other documentation as may be required for perfecting its security interest by filing with the PTO. Further, Borrower shall reasonably assist in the perfection and continuation of the Lender's rights, and will take any other necessary or appropriate action to effectuate the purposes of this Agreement and to secure the performance of Borrower's Obligations, upon the reasonable request of the Lender.
- 3.4 **FINANCIAL CONDITION AND STATEMENTS.** All financial statements that have been or are in the future delivered to Lender have been, and will be, prepared in conformity with generally accepted accounting principles consistently applied. All such statements previously delivered by Borrower

to Lender are true, accurate and complete in all material respects as of the date of delivery of same. Since the last date covered by any such statement previously delivered to Lender, there has been no material adverse change in the financial condition or business of Borrower or the occurrence of any event that with the passage of time is likely to cause a material adverse change. Borrower will provide Lender: (i) within 30 days after the end of each month, a monthly financial statement prepared by Borrower, and such other information as Lender shall reasonably request; and (ii) other financial information as reasonably requested by Lender from time to time.

3.5 TAXES, COMPLIANCE WITH LAW. Borrower has filed, and will file, when due, all tax returns and reports required by applicable law, and Borrower has paid, and will pay, when due, all taxes, assessments, deposits and contributions now or in the future owed by Borrower. Borrower has complied, and will comply, in all material respects, with all applicable laws, rules and regulations.

3.6 INSURANCE. Borrower shall keep all tangible Collateral insured against loss by fire (including extended coverage), theft and other hazards as Lender may reasonably require. Policies shall be in such form and amounts to insure the replacement cost of the tangible Collateral. Policies shall be obtained from responsible insurers authorized to do business in the state in which the Collateral is located. Certificates of insurance or policies, naming the respective parties as their interest may appear, shall be delivered to Lender upon request. Lender is authorized, but under no duty, to obtain such insurance upon failure of Borrower to do so. Borrower shall give prompt written notice to Lender and to insurers of loss or damage to the Collateral and shall promptly file proofs of loss with insurers as necessary.

3.7 ACCESS TO COLLATERAL AND BOOKS AND RECORDS. At reasonable times, on at least one business days' notice, Lender, or its agents, shall have the right to inspect the Collateral and/or Borrower's books and records during normal business hours.

3.8 ADDITIONAL AGREEMENTS. Borrower shall not, without Lender's prior written consent: (i) enter into any transaction outside the ordinary course of business except for the sale of Common Stock and/or Series A Preferred Stock to investors; (ii) pay or declare any dividends on Borrower's stock (except for dividends payable solely in stock of Borrower); or (iii) redeem, retire, purchase or otherwise acquire, directly or indirectly, any of Borrower's stock other than the repurchase of up to five percent (5%) of Borrower's then-issued stock in any fiscal year from Borrower's employees or directors pursuant to written agreement with Borrower.

3.9 PAYMENT. Borrower shall pay and perform all of the Obligations secured by this Agreement according to their terms, including, but not limited to, by delivery to the Bridge Lenders of all payments when due in accordance with the terms of the Note.

4. TERM. This Agreement shall continue in effect until all of the Borrower's Obligations have been paid and performed in full.

5. NOTE. The Bridge III Note executed by Borrower and held by the Lender concurrently with this Agreement is a separate instrument and may be negotiated by the applicable Bridge Lender without releasing Borrower or the Collateral from the terms of this Agreement.

6. EVENTS OF DEFAULT. The occurrence of any of the following shall constitute an "Event of Default" under this Agreement:

- (a) Any material representation, statement, report or other communication to Lender made by Borrower or any of its officers, employees or agents, now or in the future, is untrue, incomplete or misleading in a material respect, or fails to disclose material information about Borrower under circumstances where such information should have been disclosed; or
- (b) Borrower fails to pay when due any monetary Obligation owed to Lender; or
- (c) Borrower fails to perform any other non-monetary Obligation owed to Lender, which failure is not cured for a period of at least five (5) business days after receipt of notice of the failure; or
- (d) The occurrence of any of the following that is not cured by Borrower within thirty (30) days

of such occurrence: dissolution, termination of existence, insolvency or business failure of Borrower; or appointment of a receiver, trustee or custodian, for all or any part of the property of, assignment for the benefit of creditors by, or the commencement of any proceeding by or against Borrower under any reorganization, bankruptcy, insolvency, arrangement, readjustment of debt, dissolution or liquidation law or statute of any jurisdiction, now or in the future in effect; or

- (e) Default by Borrower in any other respect under the terms of any Bridge III Note which is not cured within any applicable grace period.

7. **REMEDIES ON DEFAULT.** Upon any default by Borrower and at the option of Lender, the obligations secured by this Agreement shall immediately become due and payable in full without notice or demand, and Lender shall have all the rights, remedies and privileges with respect to repossession, retention and liquidation of the Collateral and disposition of the proceeds as are accorded by the applicable sections of the New York Uniform Commercial Code with respect to "default". Upon any default and upon demand by Lender, Borrower shall assemble the Collateral and make it available to Lender at the place and at the time designated in the demand. Upon any default, Lender's reasonable attorneys' fees and the legal and other expenses for pursuing, searching for, receiving, taking, keeping, storing, advertising and selling the Collateral shall be chargeable with interest to Borrower and added to the indebtedness secured hereby. Borrower shall remain liable for any deficiency resulting from a sale of the Collateral and shall pay any such deficiency forthwith on demand. If Borrower shall default in the performance of any of the provisions of this Agreement on Borrower's part to be performed, Lender may perform same for Borrower's account and any monies expended in so doing shall be chargeable with interest to Borrower and added to the indebtedness secured hereby.
8. **INDEMNIFICATION.** Borrower shall indemnify Lender for, and shall hold Lender harmless from, any and all costs incurred by Lender as a result of or in any manner related to Lender's taking, receiving, keeping, storing, possessing or selling the Collateral, unless such costs arose from Lender's gross negligence or intentional misconduct.
9. **NOTICES.** Notices to either party shall be in writing and shall be delivered personally, by Certified Mail, Return Receipt Requested, or by nationally-recognized overnight courier service addressed to the party at the address herein set forth or otherwise designated in writing.
10. **SUCCESSORS AND ASSIGNS.** The terms, warranties and agreements contained in this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.
11. **GENERAL.** If any provision of this Agreement is held to be unenforceable, the remainder of this Agreement shall still continue in full force and effect, and any such unenforceable provision shall be deemed to be redrafted in as limited manner as possible in order to render such provision enforceable. This Agreement and any other written agreements, documents and instruments executed in connection herewith, including, but not limited to, the Bridge III Notes, constitute the complete agreement between Borrower and the Lender and supersede all prior and contemporaneous negotiations and oral representations and agreements, all of which are merged and integrated in this Agreement and the Bridge III Notes. There are no oral understandings, representations or agreements between the parties which are not in this Agreement, in the Bridge III Notes or in other written agreements signed by the parties in connection this Agreement. The captions in this Agreement are provided only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Agreement nor the intent of any provision hereof. The failure of Lender at any time to require Borrower to comply strictly with any of the provisions of this Agreement shall not waive Lender's right later to demand and receive strict compliance. Lender's waiver of a default shall not be deemed to waive any other default. None of the provisions of this Agreement may be waived except by a specific written waiver signed by an officer of Lender and delivered to Borrower. The provisions of this Agreement may not be amended, deleted or waived, except in a writing signed by Borrower and the Lender. Borrower shall reimburse Lender for all reasonable attorneys' fees and all other costs incurred by Lender, in connection with this Agreement, whether or not a lawsuit is filed. If Lender or Borrower files any

lawsuit against the other predicated on a breach of this Agreement, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees from the non-prevailing party. Borrower may not assign any rights under this Agreement without Lender's prior written consent. This Agreement shall be governed by the law of the State of New York.


12. **COORDINATION WITH OTHER AGREEMENTS.** Notwithstanding any and all representations, statements, covenants or other terms to the contrary as may be stated above, the parties hereto agree that all Lender rights created under this Agreement are defined and coordinated by that certain Amended and Restated Intercreditor Agreement executed and delivered by Borrower, Lender and others concurrently herewith (the "Intercreditor Agreement"), and Lender hereby specifically agrees that Borrower may extend rights and privileges to other Bridge Lenders (as defined therein) that are party to that Intercreditor Agreement as contemplated by and on terms consistent with that Agreement and other Bridge III Notes executed therewith without breach of any term of this Agreement. All parties agree to hold Borrower harmless from any intercreditor disputes solely among the Bridge Lenders arising from (i) this Agreement, (ii) any of the Bridge III Notes or (iii) the Intercreditor Agreement executed in connection herewith. In the event of any such intercreditor dispute, performance of this Agreement by Borrower to the reasonable satisfaction of the agent for the Bridge Lenders (as that term is defined in said Intercreditor Agreement) shall be a complete defense to any claim by any Bridge Lender for breach of this Agreement by Borrower.

13. **JURISDICTION AND VENUE.** Borrower agrees to submit to personal jurisdiction in the State of New York in any action or proceeding arising out of this Agreement, and to venue being set in Tompkins County, and, in furtherance of such agreement, Borrower agrees and consents that, without limiting other methods of obtaining jurisdiction, personal jurisdiction over them in any such action or proceeding may be obtained within or without the jurisdiction of any court located in New York and that any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon Borrower by registered or certified mail to, or by personal service at, the last known address of Borrower, whether such address be within or without the jurisdiction of any such court.

14. **REPLACEMENT OF AGREEMENT.** This Agreement amends, restates and replaces those certain Security Agreements dated as of December 4, 2002 and May 8, 2002 between the Borrower, CVF II and such other secured parties as are set forth in each of the referenced Security Agreements.

IN WITNESS WHEREOF, the Parties have respectively executed this Agreement as of the day and year first above written.

KIONIX, INC.

By: 
Gregory J. Galvin
President and CEO

CAYUGA VENTURE FUND II, LLC

By: AP Management Associates, LLC

By: Technical Transfer Investment Associates, LLC

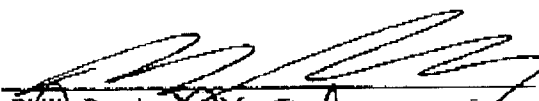

By: 
Philip Proujansky, Manager
By: 
David Ahlers, Executive Director

Exhibit A

BRIDGE LENDERS

Alexander, John

Bartels, Henry

Bartels, Kenneth

Bartels, Philip

Bartrip Realty, LP

Cayuga Venture Fund II, LLC

Enhanced NY Issuer, LLC

Farr, Richard D.

Lux, R. Christopher

Prybyl, Donna D.

Rand Capital SBIC, LP

Wells, James

Exhibit B

BRIDGE III NOTES

Exhibit C

INTELLECTUAL PROPERTY

(Patents Owned by Borrower)

6,245,227

6,394,942

6,417,510

6,432,311

6,454,938

6,461,516

6,464,866

(Patent Applications Owned by Borrower)

09/745,629

09/745,652

09/746,867

10/082,064

10/322,941

10/322,990

60/356,493

60/390,235

PCTUS02/32993