MRD 11-26-2003

Attorney's Docket. No. 11

IN THE UNITED STA 01-13-2004 FICE

BOX ASSIGNMENT
Commissioner of Patents and Trademarks
Washington. D.C. 20231

102612634

Please record the attached original document or copy thereof and return the recorded instrument to the undersigned.

1. Name of party(ies) conveying an interest:

   Aviv, LLC

2. Name and address of party(ies) receiving an interest:

   Excel Innovations, Inc.
   2570 North First Street, Suite 230
   San Jose. CA 94131

3. Description of the interest conveyed:

   X Assignment ☐ Change of Name ☐ Security Agreement ☐ Merger

   Date of execution of attached document: November 10, 2003

4. Application number(s) or patent number(s). Additional sheet attached? Yes X

A. Patent Application No.	B. Filed	C. Patent No.	D. Issued
08/442,895	5-17-95	5,613,012	3-18-97
08/345,523	11-28-94	5,615,277	3-25-97
08/722.629	9-27-96	5,764,789	6-09-98
08/818.872	3-17-97	5,802,199	9-01-98
08/820.008	3-18-97	5,805,719	9-08-98
08/687,251	7-25-96	5,838,812	11-17-98
08/705.399	8-29-96	5,870,723	2-09-99
09/244,784	2-05-99	6,012,039	1-04-00
09/098,318	6-16-98	6,131,464	10-17-00
09/245,501	2-05-99	6,154,879	11-28-00
09/243,208	2-02-99	6,192,142	2-20-01
09/239,595	1-29-99	6,230,148	5-08-01
09/239,570	1-29-99	6,269,348	7-31-01
09/183,215	10-30-98	6,366,682	4-02-02
09/357,718	7-20-99	6,397,198	5-28-02
08/739,313	10-29-96	5,737,439	4-07-98
09/330,253	6-10-99	6,411,728	6-25-02
08/902,151	7-29-97	5,982,914	11-09-99
09/848,867	5-03-01	6,581,042	6-17-03
10/114,587	4-01-02	6,594,376	7-15-03
09/398,914	9-16-99		
09/441,107	11-16-99		
09/731,536	12-06-00		
09/639,948	8-17-00		
10/056,982	1-23-02		
09/215,058	12-17-98		
09/879,370	6-11-01		
09/815,434	3-22-01		
10/120,328	4-10-02		
10/241,374	9-10-02		

Fee Pd.

09/794,810	2-26-01		
10/143,430	5-09-02	6,591,002	7-8-03
29/097,014	11-25-98	D425,873	5-30-00
09/871,241	5-30-01		
10/619,990	7-14-03		

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

   David Tichane, Esq. – Registration No. 37,741
   Registered Patent Attorney
   979 Pinto Palm Terance, Suite 24
   Sunnyvale, CA 94087
   Telephone: (408) 368-1759

6. Number of applications and patents involved: 35

7. Enclosed is our check for $1,400 in patent assignment recording fees.

8. Any overpayment should be refunded to: Excel Innovations, Inc., 2570 North First Street, Suite 230, San Jose, CA 94131

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.

Dated: November 10, 2003

Respectfully submitted,
EXCEL INNOVATIONS, INC.

By: _____
Ned Hoffman
President Excel
Innovations, Inc.

EXCEL INNOVATIONS, INC.
2570 North First Street, Suite 230
San Jose, CA 94131
Tel: (408) 273-4500
Fax: (408) 273-4555

Total number of pages comprising cover sheet and attached assignment: _____

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

POWER OF ATTORNEY

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

Sir:

I hereby appoint Practitioner named below:

Practitioner Name	Registration Number
David M. Tichane, Esq.	37,741

As my attorney to prosecute the applications identified below, and to transact all business in the United States Patent and Trademark Office connected therewith.

Patent Application No.

09/398,914
09/441,107
09/871,241
09/731,536
09/794,810
09/815,434
09/639,948
09/879,370
10/056,982
60/334,390
10/241,374
10/120,328
09/215,058
10/619,990

Please change the correspondence address for the above-identified applications to:

Firm and Practitioner Name	Registration Number
David M. Tichane Registered Patent Attorney 979 Pinto Palm Terrace, #24 Sunnyvale, CA 94087 Tel: (408) 368-1759	37,741

Respectfully submitted,

Dated: 11/10/03

By: _____

Ned Hoffman
President Excel
Innovations, Inc.
2570 North First Street, Suite 230
San Jose, CA 94131
Tel: (408) 273-4500
Fax: (408) 273-4555

TERMINATION OF LICENSE AND RESCISSION OF CONDITIONAL ASSIGMENTS

As of June 16, 2003, Excel Innovations, Inc., a California corporation, of 708 Gravenstein Highway North, Suite 111, Sebastopol, CA 95472 and 2570 North First Street, Suite 111, San Jose, CA 95131 (herein "Excel" or "Licensor"), and Aviv, LLC, a California limited liability company having LLC Number 200302210096, of 400 West Third Street, Suite D108, Santa Rosa, CA 95401 (herein "Aviv" or "Licensee"), hereby do jointly and mutually agree to the following (the "Agreement"):

1. Excel is in the business of granting licenses on inventions it has developed and patents related thereto in which it owns the rights and interest, and Excel as Licensor has granted to Aviv as Licensee, a license and a conditional assignment to use Excel's patents on tokenless biometric computer systems pursuant to the Patent and Trademark Office Notice of Recordation of Assignment dated February 3, 2003 (attached hereto as Exhibit A, and hereinafter referred to as "Patents") and;

2. Aviv has, as the Licensee of the Patents, sought to focus on the business of raising capital and commercializing the Patents, and;

3. Indivos Corporation and Solidus Networks (herein collectively referred to as "Infringers") are knowingly and publicly persisting in the infringement of the Patents, and said Infringers are purposefully committing slander of title against Excel's Patents, and;

4. The actions of the Infringers have irreparably harmed Aviv and interfered with Aviv's business of raising capital and commercializing the Patents, and;

5. Excel has deemed it necessary to file suit in Federal Court for patent infringement against the Infringers, and;

6. It is in the best mutual interests of both Excel and Aviv, effective immediately, that:

   6.1. Excel hereby terminates any and all licenses granted by Excel to Aviv relating to the Patents, and;
   6.2. Excel hereby rescinds any and all conditional assignments granted by Excel to Aviv relating to the Patents, and;
   6.3. Excel execute and file with the Patent and Trademark Office any and all re-recording of any/all such assignments relating to the Patents.

7. Entire Agreement. This termination and rescission of conditional assignments hereby constitutes the entire understanding and agreement between Excel and Aviv, and shall supersede all previous communications, negotiations, proposals, representations, conditions, warranties or agreements, either oral or written, between Excel and Aviv hereto with respect to the subject matter hereof, and may not be modified unless in writing and signed by both Excel and Aviv the Parties, with: copies for Excel to Thomas A. Maier, Esq. of Reed Smith Crosby Heafey, 1999 Harrison Street, Oakland, CA 94612, and Jefferson Stamp Esq., and; copies for Aviv to Ali Kamarei, Esq., 280 Colorado Ave, Palo Alto, CA 94301, and Jonathan Bornstein, Esq. of 2590 Geary Boulevard San Francisco, CA 94115.

8. Confidentiality. Excel and Aviv agree to keep in confidence, not disclose, and not use (except to employees or agents on a need-to-know basis as contemplated by this Agreement) all proprietary information of the other that each party receives under this Agreement. These obligations do not apply to any confidential information that: (a) is now or becomes generally available to the public without violation of these obligations; (b) is already known or is independently developed by the receiving party; or (c) becomes available to the receiving party who did not receive such information directly or indirectly in confidence from the disclosing party.

9. Preparation of the Agreement. Representatives for each of the parties, as specified under Section 7 hereinabove, have participated in the negotiating and preparing of this Agreement. Therefore, this Agreement shall not be construed against either party on the grounds of that party's participation in preparing this Agreement.

10. Interpretation. In the event of conflict between provisions herein or ambiguity, specific terms shall prevail over general terms in the interpretation of this Agreement. In the event of any conflict between the terms of this Agreement and the terms of any Purchase Order, Letter of Credit, or other document delivered pursuant to this Agreement, the terms of this Agreement shall control. This Agreement shall be construed under the laws of the State of California.

11. Severability. If any term, clause, or provision of this Agreement shall be judged to be invalid or unenforceable, the validity or unenforceability of any other term, clause or provision shall not be affected; and such invalid or unenforceable term, clause or provision shall be deemed deleted from this contract.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in Sonoma County, California, ON THIS DAY, June 16, 2003:

For Excel Innovations, Incorporated:

By: _____ Date: 6/16/03
Ned Hoffman, President

For Aviv, LLC:

By: _____ Date: 6/16/03
Ned Hoffman, Manager

Jefferson T. Stamp (SBN 187975)
Attorney at Law
15650-A Vineyard Blvd., #146
Morgan Hill, CA 95037
Tel: (408) 623-8414

Attorney for Plaintiff
EXCEL INNOVATIONS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

EXCEL INNOVATIONS, INC., Plaintiff, v. INDIVOS CORPORATION, SOLIDUS NETWORKS, INC., AND DOES 1 TO 100, inclusive, Defendants.	CASE NO. C-03-3125 MMC **COMPLAINT FOR PATENT INFRINGEMENT AND BREACH OF CONTRACT** **DEMAND FOR JURY TRIAL**

Plaintiff, Excel Innovations, Inc. ("Excel") through its undersigned counsel and by way of Complaint against Defendants Indivos Corporation (Indivos) and its licensee, Solidus Networks, Inc. ("Solidus"), hereby alleges and avers as follows:

JURISDICTION AND VENUE

1. This is an action for patent infringement committed by Defendants that arises under the United States patent laws (35 U.S.C. §§ 1 et seq.). Therefore, this Court has jurisdiction under 28 U.S.C. §§ 1331 and 1338(a).

2. Defendants are, and at all times herein mentioned were corporations, incorporated in Delaware, with their principal places of business, respectively, for Indivos at 650 Harrison Street, 2nd Floor, San Francisco, California, 94107, and for Solidus at One Market Street, Spear Tower, 41st Floor, San Francisco, California 94105. Defendant Indivos was previously known as Veristar, Inc., and

SmartTouch, Inc. Smart Touch, Inc., was formed to continue the business of Smart Touch LLC. The Defendants are doing business and are actively soliciting business in the State of California. Therefore, this Court has personal jurisdiction over Indivos and Solidus.

3. Because a substantial part of the events giving rise to Excel's claim occurred in this judicial district and because the intellectual property at issue is situated in this judicial district, venue is proper in this judicial district under 28 U.S.C. §§ 1391(b) and (c).

THE PARTIES

4. Plaintiff Excel is a California corporation having a place of business at 2570 North First Street, Suite 200, San Jose, CA 95131. Excel is in the business of developing technologies, intellectual property and offering services involving tokenless biometric computer systems.

5. On information and belief, Defendants are Delaware corporations having places of business in San Francisco, CA.

INTRADISTRICT ASSIGNMENT

6. Because Plaintiff Excel has a place of business in Santa Clara County, and because the intellectual property is situated in Santa Clara County, this action should be assigned to the San Jose Division of this Court pursuant to Civil Local Rules 3-2(c) and 3-2(d).

FACTS

7. Plaintiff Excel is in the business of developing technologies, intellectual property and offering services involving access to various accounts and content relating to tokenless biometric computer systems.

8. Excel continues to strive for further improvement in the development of tokenless biometric applications and to this end, continues to file new patents on its inventions. Excel has obtained numerous patents in the United States and abroad.

9. Excel's patent portfolio includes numerous U.S. patents that cover a wide range of business models and applications in tokenless biometrics, including enabling point-of-sale, online and wireless financial transactions, and related loyalty and reward programs by use of biometric identification without the use of any cards or tokens of any kind.

10. On February 17, 1994, the predecessors to Excel Innovations, Inc. ("Excel") entered into an employment agreement with Ned Hoffman ("Hoffman Employment Agreement") in which Excel was given the rights to Mr. Hoffman's work product, including all creations and inventions. The business of Excel has been, and continues to be, to prototype, patent-protect, and then license Mr. Hoffman's work products to distributors for recurring revenues to Excel and its approximately 40 shareholders. The Hoffman Employment Agreement has never been terminated, and remains operative to this very day.

11. From February 1994 to November 1994, while employed by Excel, Mr. Hoffman developed the original tokenless biometrics technology for financial transactions and other applications (the "Invention"). The first patent on the Invention was filed in November 1994, and title therein vested in Excel under the Hoffman Employment Agreement.

12. On December 9, 1994, Excel entered into a consulting agreement with David Pare and Jonathan Lee for assistance in the development of the Invention ("Consulting Agreement"). The Consulting Agreement granted Excel ownership over all work product produced by Mr. Pare and Mr. Lee relating to improvements in the Invention. The Pare-Lee Consulting Agreement has never been terminated and is still operative to this very day.

13. On March 7, 1995, Excel entered into a similar Consulting Agreement with Phil Lapsley, wherein Excel was granted ownership to all work product produced by Mr. Lapsley relating to improvements in the Invention. The Lapsley Consulting Agreement has never been terminated and is still operative to this very day.

14. From November 1994 to May 1995, Mr. Hoffman, Mr. Pare, Mr. Lee and Mr. Lapsley (the "Inventors") worked for Excel under their respective Consulting Agreements to develop improvements to the Invention for a second patent application.

15. In May 1995, Excel and Mr. Hoffman co-founded SmartTouch, LLC, later known as VeriStar Incorporated and now as Indivos Corporation ("Indivos"). Indivos was formed for the purpose of licensing Excel's Invention and commercializing the Invention and the improvements thereon.

16. Concurrent with the May 1995 formation of Indivos, Excel entered into an agreement with Indivos, wherein Excel granted to Indivos a non-exclusive, non-assignable license to Excel's

intellectual property relating to the Invention, including patents, and permitting Indivos to have a conditional assignment on this intellectual property ("IP-Patent License").

17. In the IP-Patent License, Excel granted to Indivos a 6 year, non-exclusive royalty-free conditional assignment on the Invention and all of the Work Product related to and/or derived therefrom by the Inventors, subject to Excel's controlling rights under the Hoffman Employment Agreement and the Consulting Agreements. Such Work Product includes, but is not limited to, all of the following: patents; trademarks; copyrights; computer software, and computer hardware.

18. In addition, per the IP-Patent License: Excel granted Indivos "The permission to utilize the services of the Consultants and to have Ned Hoffman and/or Consultants conditionally assign patents to [Indivos]..., with the restriction that any termination of this Agreement ... shall result in the immediate termination of both said Permission and of any/all said conditional assignments, whereby any/all such conditional assignments are automatically and immediately rescinded."

19. Among the conditions set forth in the License Agreement for maintaining the patents, Indivos agreed to dedicate "Best Efforts" to achieve the following performance guarantees: (1) generate at least $20 Million in annual sales from the Invention, (2) pay Excel an aggregate total of at least $20 Million resulting from the commercialization of the Invention ("Performance Guarantees").

20. Further, Indivos agreed that all Performance Guarantees would be "guaranteed and secured by any and all Work Product related to and/or derived from the Consultants, the Consulting Agreements, and the Invention, including, but not limited to, all of the following: patents; trademarks; copyrights; conditional assignments...."

21. Finally, the IP-Patent License provides that "all Work Product shall revert immediately, unconditionally and completely to [Excel] in the event of a material breach by [Indivos] of any term" including without limitation bankruptcy, financial failure and/or insolvency. "In such event, all conditional assignments ... hereinabove are automatically and immediately rescinded...." Under the IP-Patent License the re-assignments of the patents occur automatically by operation of law, and Excel is designated and appointed Indivos' agent to complete and facilitate any re-assignment of the patents back to Excel.

22. Pursuant to the IP-Patent License, Excel permitted Indivos to file additional patent applications on the Invention and the Work Product created by the Inventors under their controlling Consulting Agreements with Excel, subject to Excel's reversionary interests to the Work Product, including without limitation the patents.

23. Indivos has breached the IP-Patent License with Excel by failing to achieve the Performance Guarantees, including: (1) failing to generate $20 million in annual sales from the Invention, (2) failing to pay Excel an aggregate of $20 million, and (3) general financial failure.

24. On or about November 12, 2002, Excel notified Indivos of the breach of the IP-Patent License, the termination thereof and the forfeiture of the patents and other Work Product. By virtue of the automatic forfeiture of the conditionally assigned patents, including the reversion of the Work Product created by Excel's consultants as provided in the IP-Patent license, title to all patents as described herein have automatically vested in Excel by Excel's own declaration, and any previous assignment by Excel to Indivos, or any of Excel's consultants as permitted by Excel under the IP-Patent License, have been rendered null and void.

25. The present action involves the infringement by both of the Defendants Indivos and its licensee Solidus, of numerous patents owned by Excel that cover various embodiments of tokenless biometric computer systems. Specifically, Excel asserts that Defendants have infringed, and are continuing to infringe, the following fifteen U.S. patents ("Excel Patents"):

U.S. Patent No.	Inventor	Title
6,581,042	Pare, et al.	Tokenless biometric electronic check transactions
6,397,198	Hoffman, et al	Tokenless biometric electronic transactions using an audio signature to identify the transaction processor
6,366,682	Hoffman, et al	Tokenless electronic transaction system
6,269,348	Pare, et al	Tokenless biometric electronic debit and credit transactions
6,230,148	Pare, et al	Tokenless biometric electric check transaction
6,192,142	Pare, et al	Tokenless biometric electronic stored value transactions
6,154,879	Pare, et al	Tokenless biometric ATM access system

6,012,039	Hoffman, et al	Tokenless biometric electronic rewards system
5,870,723	Pare, et al	Tokenless biometric transaction authorization method and system
5,838,812	Pare, et al	Tokenless biometric transaction authorization system
5,805,719	Pare, et al	Tokenless identification of individuals
5,802,199	Pare, et al	Use sensitive identification system
5,764,789	Pare, et al	Tokenless biometric ATM access system
5,615,277	Hoffman, et al	Tokenless security system for authorizing access to a secured computer system
5,613,012'	Hoffman, et al	Tokenless identification system for authorization of electronic transactions and electronic transmissions

26. Excel is the owner of all rights granted by the '042 patent, the '198 patent, the '682 patent, the '348 patent, the '148 patent, the '142 patent, the '879 patent, the '039 patent, the '723 patent, the '812 patent, the '719 patent, the '199 patent, the '789 patent, the '277 patent, and the '012 patent.

27. Upon information and belief, the Defendants have offered for sale a biometric-based electronic financial transaction system which infringes Excel's patents. Thus, Excel is filing the present patent infringement action to enforce its intellectual property rights against the Defendants.

FIRST CLAIM FOR RELIEF –
INFRINGMENT OF THE '042 PATENT

28. Excel incorporates by reference paragraphs 1 – 27 above as if set for herein.

29. Upon information and belief, the Defendants have used apparatus and performed methods through their biometric-based systems that directly infringe one of more claims of the '042 patent. Thus, the Defendants are liable to Excel for patent infringement under 35 U.S.C. § 271(a).

30. Upon information and belief, and by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based systems in the United States, thus infringing one or more claims of the '042 patent.

31. The Defendants have therefore induced, and are actively inducing, various third parties to infringe claims of the '042 patent by encouraging use of their biometric-based systems in the United States. Thus the Defendants are liable to Excel under 35 U.S.C. § 271(b).

32. Upon information and belief and, by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based system in the United States, which has contributed to the infringement of one or more claims of the '042 patent.

33. The Defendants' biometric-based systems constitute a material part of the invention covered under the '042 patent. The Defendants know that their biometric-based systems are especially made and adapted for use in infringement of such patent, and that it is not a staple article or commodity of commerce suitable for such substantial noninfringing uses. Thus, the Defendants are liable to Excel for contributory infringement under 35 U.S.C. § 271(c).

34. The Defendants' acts of direct, contributory and inducement of infringement have been with full and complete knowledge of Excel's intellectual property rights. Accordingly, the Defendants' conduct and activities have been, and will continue to be willful, deliberate and in total disregard of Excel's rights in the '042 patent. Thus this case should be considered "exceptional" pursuant to 35 U.S.C. § 285.

35. The Defendants' foregoing conduct has left Excel with no adequate remedy at law and has cause, is causing, irreparable damage to Excel.

SECOND CLAIM FOR RELIEF – INFRINGMENT OF THE '198 PATENT

36. Excel incorporates by reference paragraphs 1 – 27 above as if set for herein.

37. Upon information and belief, the Defendants have used apparatus and performed methods through their biometric-based systems that directly infringe one of more claims of the '198 patent. Thus, the Defendants are liable to Excel for patent infringement under 35 U.S.C. § 271(a).

38. Upon information and belief, and by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based systems in the United States, thus infringing one or more claims of the '198 patent.

39. The Defendants have therefore induced, and are actively inducing, various third parties to infringe claims of the '198 patent by encouraging use of their biometric-based systems in the United States. Thus the Defendants are liable to Excel under 35 U.S.C. § 271(b).

40. Upon information and belief and, by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based system in the United States, which has contributed to the infringement of one or more claims of the '198 patent.

41. The Defendants' biometric-based systems constitute a material part of the invention covered under the '198 patent. The Defendants know that their biometric-based systems are especially made and adapted for use in infringement of such patent, and that it is not a staple article or commodity of commerce suitable for such substantial noninfringing uses. Thus, the Defendants are liable to Excel for contributory infringement under 35 U.S.C. § 271(c).

42. The Defendants' acts of direct, contributory and inducement of infringement have been with full and complete knowledge of Excel's intellectual property rights. Accordingly, the Defendants' conduct and activities have been, and will continue to be willful, deliberate and in total disregard of Excel's rights in the '198 patent. Thus this case should be considered "exceptional" pursuant to 35 U.S.C. § 285.

43. The Defendants' foregoing conduct has left Excel with no adequate remedy at law and has cause, is causing, irreparable damage to Excel.

THIRD CLAIM FOR RELIEF – INFRINGMENT OF THE '682 PATENT

44. Excel incorporates by reference paragraphs 1 – 27 above as if set for herein.

45. Upon information and belief, the Defendants have used apparatus and performed methods through their biometric-based systems that directly infringe one of more claims of the '682 patent. Thus, the Defendants are liable to Excel for patent infringement under 35 U.S.C. § 271(a).

46. Upon information and belief, and by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based systems in the United States, thus infringing one or more claims of the '682 patent.

47. The Defendants have therefore induced, and are actively inducing, various third parties to infringe claims of the '682 patent by encouraging use of their biometric-based systems in the United States. Thus the Defendants are liable to Excel under 35 U.S.C. § 271(b).

48. Upon information and belief and, by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based system in the United States, which has contributed to the infringement of one or more claims of the '682 patent.

49. The Defendants' biometric-based systems constitute a material part of the invention covered under the '682 patent. The Defendants know that their biometric-based systems are especially made and adapted for use in infringement of such patent, and that it is not a staple article or commodity of commerce suitable for such substantial noninfringing uses. Thus, the Defendants are liable to Excel for contributory infringement under 35 U.S.C. § 271(c).

50. The Defendants' acts of direct, contributory and inducement of infringement have been with full and complete knowledge of Excel's intellectual property rights. Accordingly, the Defendants' conduct and activities have been, and will continue to be willful, deliberate and in total disregard of Excel's rights in the '682 patent. Thus this case should be considered "exceptional" pursuant to 35 U.S.C. § 285.

51. The Defendants' foregoing conduct has left Excel with no adequate remedy at law and has cause, is causing, irreparable damage to Excel.

FOURTH CLAIM FOR RELIEF – INFRINGMENT OF THE '348 PATENT

52. Excel incorporates by reference paragraphs 1 – 26 above as if set for herein.

53. Upon information and belief, the Defendants have used apparatus and performed methods through their biometric-based systems that directly infringe one of more claims of the '348 patent. Thus, the Defendants are liable to Excel for patent infringement under 35 U.S.C. § 271(a).

54. Upon information and belief, and by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based systems in the United States, thus infringing one or more claims of the '348 patent.

55. The Defendants have therefore induced, and are actively inducing, various third parties to infringe claims of the '348 patent by encouraging use of their biometric-based systems in the United States. Thus the Defendants are liable to Excel under 35 U.S.C. § 271(b).

56. Upon information and belief and, by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based system in the United States, which has contributed to the infringement of one or more claims of the '348 patent.

57. The Defendants' biometric-based systems constitute a material part of the invention covered under the '348 patent. The Defendants know that their biometric-based systems are especially made and adapted for use in infringement of such patent, and that it is not a staple article or commodity of commerce suitable for such substantial noninfringing uses. Thus, the Defendants are liable to Excel for contributory infringement under 35 U.S.C. § 271(c).

58. The Defendants' acts of direct, contributory and inducement of infringement have been with full and complete knowledge of Excel's intellectual property rights. Accordingly, the Defendants' conduct and activities have been, and will continue to be willful, deliberate and in total disregard of Excel's rights in the '348 patent. Thus this case should be considered "exceptional" pursuant to 35 U.S.C. § 285.

59. The Defendants' foregoing conduct has left Excel with no adequate remedy at law and has cause, is causing, irreparable damage to Excel.

FIFTH CLAIM FOR RELIEF – INFRINGMENT OF THE '148 PATENT

60. Excel incorporates by reference paragraphs 1 – 27 above as if set for herein.

61. Upon information and belief, the Defendants have used apparatus and performed methods through their biometric-based systems that directly infringe one of more claims of the '148 patent. Thus, the Defendants are liable to Excel for patent infringement under 35 U.S.C. § 271(a).

62. Upon information and belief, and by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based systems in the United States, thus infringing one or more claims of the '148 patent.

63. The Defendants have therefore induced, and are actively inducing, various third parties to infringe claims of the '148 patent by encouraging use of their biometric-based systems in the United States. Thus the Defendants are liable to Excel under 35 U.S.C. § 271(b).

64. Upon information and belief and, by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based system in the United States, which has contributed to the infringement of one or more claims of the '148 patent.

65. The Defendants' biometric-based systems constitute a material part of the invention covered under the '148 patent. The Defendants know that their biometric-based systems are especially made and adapted for use in infringement of such patent, and that it is not a staple article or commodity of commerce suitable for such substantial noninfringing uses. Thus, the Defendants are liable to Excel for contributory infringement under 35 U.S.C. § 271(c).

66. The Defendants' acts of direct, contributory and inducement of infringement have been with full and complete knowledge of Excel's intellectual property rights. Accordingly, the Defendants' conduct and activities have been, and will continue to be willful, deliberate and in total disregard of Excel's rights in the '148 patent. Thus this case should be considered "exceptional" pursuant to 35 U.S.C. § 285.

67. The Defendants' foregoing conduct has left Excel with no adequate remedy at law and has cause, is causing, irreparable damage to Excel.

SIXTH CLAIM FOR RELIEF –
INFRINGMENT OF THE '142 PATENT

68. Excel incorporates by reference paragraphs 1 – 27 above as if set for herein.

69. Upon information and belief, the Defendants have used apparatus and performed methods through their biometric-based systems that directly infringe one of more claims of the '142 patent. Thus, the Defendants are liable to Excel for patent infringement under 35 U.S.C. § 271(a).

70. Upon information and belief, and by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based systems in the United States, thus infringing one or more claims of the '142 patent.

71. The Defendants have therefore induced, and are actively inducing, various third parties to infringe claims of the '142 patent by encouraging use of their biometric-based systems in the United States. Thus the Defendants are liable to Excel under 35 U.S.C. § 271(b).

72. Upon information and belief and, by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based system in the United States, which has contributed to the infringement of one or more claims of the '142 patent.

73. The Defendants' biometric-based systems constitute a material part of the invention covered under the '142 patent. The Defendants know that their biometric-based systems are especially made and adapted for use in infringement of such patent, and that it is not a staple article or commodity of commerce suitable for such substantial noninfringing uses. Thus, the Defendants are liable to Excel for contributory infringement under 35 U.S.C. § 271(c).

74. The Defendants' acts of direct, contributory and inducement of infringement have been with full and complete knowledge of Excel's intellectual property rights. Accordingly, the Defendants' conduct and activities have been, and will continue to be willful, deliberate and in total disregard of Excel's rights in the '142 patent. Thus this case should be considered "exceptional" pursuant to 35 U.S.C. § 285.

75. The Defendants' foregoing conduct has left Excel with no adequate remedy at law and has cause, is causing, irreparable damage to Excel.

SEVENTH CLAIM FOR RELIEF – INFRINGMENT OF THE '879 PATENT

76. Excel incorporates by reference paragraphs 1 – 26 above as if set for herein.

77. Upon information and belief, the Defendants have used apparatus and performed methods through their biometric-based systems that directly infringe one of more claims of the '879 patent. Thus, the Defendants are liable to Excel for patent infringement under 35 U.S.C. § 271(a).

78. Upon information and belief, and by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based systems in the United States, thus infringing one or more claims of the '879 patent.

79. The Defendants have therefore induced, and are actively inducing, various third parties to infringe claims of the '879 patent by encouraging use of their biometric-based systems in the United States. Thus the Defendants are liable to Excel under 35 U.S.C. § 271(b).

80. Upon information and belief and, by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based system in the United States, which has contributed to the infringement of one or more claims of the '879 patent.

81. The Defendants' biometric-based systems constitute a material part of the invention covered under the '879 patent. The Defendants know that their biometric-based systems are especially made and adapted for use in-infringement of such patent, and that it is not a staple article or commodity of commerce suitable for such substantial noninfringing uses. Thus, the Defendants are liable to Excel for contributory infringement under 35 U.S.C. § 271(c).

82. The Defendants' acts of direct, contributory and inducement of infringement have been with full and complete knowledge of Excel's intellectual property rights. Accordingly, the Defendants' conduct and activities have been, and will continue to be willful, deliberate and in total disregard of Excel's rights in the '879 patent. Thus this case should be considered "exceptional" pursuant to 35 U.S.C. § 285.

83. The Defendants' foregoing conduct has left Excel with no adequate remedy at law and has cause, is causing, irreparable damage to Excel.

EIGHTH CLAIM FOR RELIEF –
INFRINGMENT OF THE '039 PATENT

84. Excel incorporates by reference paragraphs 1 – 27 above as if set for herein.

85. Upon information and belief, the Defendants have used apparatus and performed methods through their biometric-based systems that directly infringe one of more claims of the '039 patent. Thus, the Defendants are liable to Excel for patent infringement under 35 U.S.C. § 271(a).

86. Upon information and belief, and by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based systems in the United States, thus infringing one or more claims of the '039 patent.

87. The Defendants have therefore induced, and are actively inducing, various third parties to infringe claims of the '039 patent by encouraging use of their biometric-based systems in the United States. Thus the Defendants are liable to Excel under 35 U.S.C. § 271(b).

88. Upon information and belief and, by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based system in the United States, which has contributed to the infringement of one or more claims of the '039 patent.

89. The Defendants' biometric-based systems constitute a material part of the invention covered under the '039 patent. The Defendants know that their biometric-based systems are especially made and adapted for use in infringement of such patent, and that it is not a staple article or commodity of commerce suitable for such substantial noninfringing uses. Thus, the Defendants are liable to Excel for contributory infringement under 35 U.S.C. § 271(c).

90. The Defendants' acts of direct, contributory and inducement of infringement have been with full and complete knowledge of Excel's intellectual property rights. Accordingly, the Defendants' conduct and activities have been, and will continue to be willful, deliberate and in total disregard of Excel's rights in the '039 patent. Thus this case should be considered "exceptional" pursuant to 35 U.S.C. § 285.

91. The Defendants' foregoing conduct has left Excel with no adequate remedy at law and has cause, is causing, irreparable damage to Excel.

NINTH CLAIM FOR RELIEF – INFRINGMENT OF THE '723 PATENT

92. Excel incorporates by reference paragraphs 1 – 27 above as if set for herein.

93. Upon information and belief, the Defendants have used apparatus and performed methods through their biometric-based systems that directly infringe one of more claims of the '723 patent. Thus, the Defendants are liable to Excel for patent infringement under 35 U.S.C. § 271(a).

94. Upon information and belief, and by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based systems in the United States, thus infringing one or more claims of the '723 patent.

95. The Defendants have therefore induced, and are actively inducing, various third parties to infringe claims of the '723 patent by encouraging use of their biometric-based systems in the United States. Thus the Defendants are liable to Excel under 35 U.S.C. § 271(b).

96. Upon information and belief and, by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based system in the United States, which has contributed to the infringement of one or more claims of the '723 patent.

97. The Defendants' biometric-based systems constitute a material part of the invention covered under the '723 patent. The Defendants know that their biometric-based systems are especially made and adapted for use in infringement of such patent, and that it is not a staple article or commodity of commerce suitable for such substantial noninfringing uses. Thus, the Defendants are liable to Excel for contributory infringement under 35 U.S.C. § 271(c).

98. The Defendants' acts of direct, contributory and inducement of infringement have been with full and complete knowledge of Excel's intellectual property rights. Accordingly, the Defendants' conduct and activities have been, and will continue to be willful, deliberate and in total disregard of Excel's rights in the '723 patent. Thus this case should be considered "exceptional" pursuant to 35 U.S.C. § 285.

99. The Defendants' foregoing conduct has left Excel with no adequate remedy at law and has cause, is causing, irreparable damage to Excel.

TENTH CLAIM FOR RELIEF – INFRINGMENT OF THE '812 PATENT

100. Excel incorporates by reference paragraphs 1 – 27 above as if set for herein.

101. Upon information and belief, the Defendants have used apparatus and performed methods through their biometric-based systems that directly infringe one of more claims of the '812 patent. Thus, the Defendants are liable to Excel for patent infringement under 35 U.S.C. § 271(a).

102. Upon information and belief, and by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based systems in the United States, thus infringing one or more claims of the '812 patent.

103. The Defendants have therefore induced, and are actively inducing, various third parties to infringe claims of the '812 patent by encouraging use of their biometric-based systems in the United States. Thus the Defendants are liable to Excel under 35 U.S.C. § 271(b).

104. Upon information and belief and, by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based system in the United States, which has contributed to the infringement of one or more claims of the '812 patent.

105. The Defendants' biometric-based systems constitute a material part of the invention covered under the '812 patent. The Defendants know that their biometric-based systems are especially made and adapted for use in infringement of such patent, and that it is not a staple article or commodity of commerce suitable for such substantial noninfringing uses. Thus, the Defendants are liable to Excel for contributory infringement under 35 U.S.C. § 271(c).

106. The Defendants' acts of direct, contributory and inducement of infringement have been with full and complete knowledge of Excel's intellectual property rights. Accordingly, the Defendants' conduct and activities have been, and will continue to be willful, deliberate and in total disregard of Excel's rights in the '812 patent. Thus this case should be considered "exceptional" pursuant to 35 U.S.C. § 285.

107. The Defendants' foregoing conduct has left Excel with no adequate remedy at law and has cause, is causing, irreparable damage to Excel.

ELEVENTH CLAIM FOR RELIEF – INFRINGMENT OF THE '719 PATENT

108. Excel incorporates by reference paragraphs 1 – 27 above as if set for herein.

109. Upon information and belief, the Defendants have used apparatus and performed methods through their biometric-based systems that directly infringe one of more claims of the '719 patent. Thus, the Defendants are liable to Excel for patent infringement under 35 U.S.C. § 271(a).

110. Upon information and belief, and by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based systems in the United States, thus infringing one or more claims of the '719 patent.

111. The Defendants have therefore induced, and are actively inducing, various third parties to infringe claims of the '719 patent by encouraging use of their biometric-based systems in the United States. Thus the Defendants are liable to Excel under 35 U.S.C. § 271(b).

112. Upon information and belief and, by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based system in the United States, which has contributed to the infringement of one or more claims of the '719 patent.

113. The Defendants' biometric-based systems constitute a material part of the invention covered under the '719 patent. The Defendants know that their biometric-based systems are especially made and adapted for use in infringement of such patent, and that it is not a staple article or commodity of commerce suitable for such substantial noninfringing uses. Thus, the Defendants are liable to Excel for contributory infringement under 35 U.S.C. § 271(c).

114. The Defendants' acts of direct, contributory and inducement of infringement have been with full and complete knowledge of Excel's intellectual property rights. Accordingly, the Defendants' conduct and activities have been, and will continue to be willful, deliberate and in total disregard of Excel's rights in the '719 patent. Thus this case should be considered "exceptional" pursuant to 35 U.S.C. § 285.

115. The Defendants' foregoing conduct has left Excel with no adequate remedy at law and has cause, is causing, irreparable damage to Excel.

TWELTH CLAIM FOR RELIEF – INFRINGMENT OF THE '199 PATENT

116. Excel incorporates by reference paragraphs 1 – 27 above as if set for herein.

117. Upon information and belief, the Defendants have used apparatus and performed methods through their biometric-based systems that directly infringe one of more claims of the '199 patent. Thus, the Defendants are liable to Excel for patent infringement under 35 U.S.C. § 271(a).

118. Upon information and belief, and by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based systems in the United States, thus infringing one or more claims of the '199 patent.

119. The Defendants have therefore induced, and are actively inducing, various third parties to infringe claims of the '199 patent by encouraging use of their biometric-based systems in the United States. Thus the Defendants are liable to Excel under 35 U.S.C. § 271(b).

120. Upon information and belief and, by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based system in the United States, which has contributed to the infringement of one or more claims of the '199 patent.

121. The Defendants' biometric-based systems constitute a material part of the invention covered under the '199 patent. The Defendants know that their biometric-based systems are especially made and adapted for use in infringement of such patent, and that it is not a staple article or commodity of commerce suitable for such substantial noninfringing uses. Thus, the Defendants are liable to Excel for contributory infringement under 35 U.S.C. § 271(c).

122. The Defendants' acts of direct, contributory and inducement of infringement have been with full and complete knowledge of Excel's intellectual property rights. Accordingly, the Defendants' conduct and activities have been, and will continue to be willful, deliberate and in total disregard of Excel's rights in the '199 patent. Thus this case should be considered "exceptional" pursuant to 35 U.S.C. § 285.

123. The Defendants' foregoing conduct has left Excel with no adequate remedy at law and has cause, is causing, irreparable damage to Excel.

THIRTEENTH CLAIM FOR RELIEF – INFRINGMENT OF THE '789 PATENT

124. Excel incorporates by reference paragraphs 1 – 27 above as if set for herein.

125. Upon information and belief, the Defendants have used apparatus and performed methods through their biometric-based systems that directly infringe one of more claims of the '789 patent. Thus, the Defendants are liable to Excel for patent infringement under 35 U.S.C. § 271(a).

126. Upon information and belief, and by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based systems in the United States, thus infringing one or more claims of the '789 patent.

127. The Defendants have therefore induced, and are actively inducing, various third parties to infringe claims of the '789 patent by encouraging use of their biometric-based systems in the United States. Thus the Defendants are liable to Excel under 35 U.S.C. § 271(b).

128. Upon information and belief and, by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based system in the United States, which has contributed to the infringement of one or more claims of the '789 patent.

129. The Defendants' biometric-based systems constitute a material part of the invention covered under the '789 patent. The Defendants know that their biometric-based systems are especially made and adapted for use in infringement of such patent, and that it is not a staple article or commodity of commerce suitable for such substantial noninfringing uses. Thus, the Defendants are liable to Excel for contributory infringement under 35 U.S.C. § 271(c).

130. The Defendants' acts of direct, contributory and inducement of infringement have been with full and complete knowledge of Excel's intellectual property rights. Accordingly, the Defendants' conduct and activities have been, and will continue to be willful, deliberate and in total disregard of Excel's rights in the '789 patent. Thus this case should be considered "exceptional" pursuant to 35 U.S.C. § 285.

131. The Defendants' foregoing conduct has left Excel with no adequate remedy at law and has cause, is causing, irreparable damage to Excel.

FOURTEENTH CLAIM FOR RELIEF – INFRINGMENT OF THE '277 PATENT

132. Excel incorporates by reference paragraphs 1 – 27 above as if set for herein.

133. Upon information and belief, the Defendants have used apparatus and performed methods through their biometric-based systems that directly infringe one of more claims of the '277 patent. Thus, the Defendants are liable to Excel for patent infringement under 35 U.S.C. § 271(a).

134. Upon information and belief, and by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based systems in the United States, thus infringing one or more claims of the '277 patent.

135. The Defendants have therefore induced, and are actively inducing, various third parties to infringe claims of the '277 patent by encouraging use of their biometric-based systems in the United States. Thus the Defendants are liable to Excel under 35 U.S.C. § 271(b).

136. Upon information and belief and, by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based system in the United States, which has contributed to the infringement of one or more claims of the '277 patent.

137. The Defendants' biometric-based systems constitute a material part of the invention covered under the '277 patent. The Defendants know that their biometric-based systems are especially made and adapted for use in infringement of such patent, and that it is not a staple article or commodity of commerce suitable for such substantial noninfringing uses. Thus, the Defendants are liable to Excel for contributory infringement under 35 U.S.C. § 271(c).

138. The Defendants' acts of direct, contributory and inducement of infringement have been with full and complete knowledge of Excel's intellectual property rights. Accordingly, the Defendants' conduct and activities have been, and will continue to be willful, deliberate and in total disregard of Excel's rights in the '277 patent. Thus this case should be considered "exceptional" pursuant to 35 U.S.C. § 285.

139. The Defendants' foregoing conduct has left Excel with no adequate remedy at law and has cause, is causing, irreparable damage to Excel.

FIFTEENTH CLAIM FOR RELIEF – INFRINGMENT OF THE '012 PATENT

140. Excel incorporates by reference paragraphs 1 – 27 above as if set for herein.

141. Upon information and belief, the Defendants have used apparatus and performed methods through their biometric-based systems that directly infringe one of more claims of the '012 patent. Thus, the Defendants are liable to Excel for patent infringement under 35 U.S.C. § 271(a).

142. Upon information and belief, and by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based systems in the United States, thus infringing one or more claims of the '012 patent.

143. The Defendants have therefore induced, and are actively inducing, various third parties to infringe claims of the '012 patent by encouraging use of their biometric-based systems in the United States. Thus the Defendants are liable to Excel under 35 U.S.C. § 271(b).

144. Upon information and belief and, by virtue of the Defendants' acts as set forth above, the Defendants have made, used, offered to sell, and sold their biometric-based system in the United States, which has contributed to the infringement of one or more claims of the '012 patent.

145. The Defendants' biometric-based systems constitute a material part of the invention covered under the '012 patent. The Defendants know that their biometric-based systems are especially made and adapted for use in infringement of such patent, and that it is not a staple article or commodity of commerce suitable for such substantial noninfringing uses. Thus, the Defendants are liable to Excel for contributory infringement under 35 U.S.C. § 271(c).

146. The Defendants' acts of direct, contributory and inducement of infringement have been with full and complete knowledge of Excel's intellectual property rights. Accordingly, the Defendants' conduct and activities have been, and will continue to be willful, deliberate and in total disregard of Excel's rights in the '012 patent. Thus this case should be considered "exceptional" pursuant to 35 U.S.C. § 285.

147. The Defendants' foregoing conduct has left Excel with no adequate remedy at law and has cause, is causing, irreparable damage to Excel.

SIXTEENTH CLAIM FOR RELIEF – BREACH OF CONTRACT

148. Plaintiff incorporates paragraphs 1-27 herein by reference.

149. The IP-Patent License constitutes a written agreement, wherein Defendants promised to pay Excel $20 million for a 6 year non-exclusive conditional assignment of the patents.

150. Plaintiff has performed all conditions, covenants, and promises required on his part to be performed in accordance with the terms and conditions under the IP-Patent License.

151. Defendant breached the IP-Patent License by failing to pay Plaintiff Excel $20 million and generally by its financial failure.

152. As a result of Defendant's breach of the IP-Patent License, Plaintiff has sustained damages of $20 million.

WHERFORE, Plaintiff prays judgment against Defendants for the following relief:

A. An Order adjudging Defendants to be liable for direct infringement, inducing infringement and contributory infringement of Plaintiff Excel patents as described herein;

B. An award of compensatory and trebled damages resulting from the infringing conduct complained of herein, as permitted under 35 U.S.C. Section 284 for willful acts of infringement, together with interests and costs;

C. An award of compensatory damages of at least $20 million for breach of contract;

D. A preliminary and permanent injunction enjoining Defendants, together with their officers, agents, employees and attorneys, and upon those persons in active concert or participation with Defendants who receive actual notice of the Order from directly, inducing or contributorily, infringing the claims of Plaintiff Excel's patents at issue herein;

E. A declaration that this case is "exceptional" under 35 U.S.C. Section 285, and thus an award of attorney's fees; and

F. Such other relief as the Court deems just and proper.

Dated: _____

Respectfully submitted,

By: _____

Jefferson T. Stamp, Esq.

DISCLOSURE OF INTERESTED PARTIES OR ENTITIES

PURSUANT TO GENERAL ORDER NO. 48

Pursuant to General Order No. 48, the undersigned certifies that as of this date there is no such interest to report.

Dated: _____

Respectfully submitted,

By: _____
Jefferson T. Stamp, Esq.

DEMAND FOR JURY TRIAL

Plaintiff Excel Innovations, Inc. hereby demands a jury trial in this action.

Dated: _____

Respectfully submitted,

By: _____
Jefferson T. Stamp, Esq.

Jefferson T. Stamp (SBN 187975)
Attorney at Law
15650-A Vineyard Blvd., #146
Morgan Hill, CA 95037
Tel: (408) 623-8414

Attorney for Plaintiff
EXCEL INNOVATIONS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

EXCEL INNOVATIONS, INC., Plaintiff, v. INDIVOS CORPORATION, SOLIDUS NETWORKS, INC., AND DOES 1 TO 100, inclusive, Defendants.	CASE NO. C-03-3125 MMC **DECLARATION OF THOMAS F. SMEGAL, JR. IN OPPOSITION TO MOTION TO DISMISS** Date: October 3, 2003 Time: 9:00 a.m. Dept: Courtroom 7 Judge: Hon. Maxine M. Chesney

I, Thomas F. Smegal, Jr. do hereby declare:

I am an attorney duly licensed and authorized to practice law in the State of California, the State of Virginia, the District of Columbia and registered to practice before the United States Patent and Trademark Office. I make this declaration of my own personal knowledge and could competently testify to the facts set forth herein of called as a witness to do so.

1. I have been an attorney for more than 40 years practicing predominantly in the area of patents and other intellectual property law. I was the managing partner of Townsend & Townsend for 15 years, and thereafter a partner with Graham & James, and presently am a partner of Knobbe, Martens, Olson & Bear. I have served on the Legal Service Corporation Board of Directors, first on the nomination of President Reagan (1984-1990), and more recently on the nomination of President

Clinton (1993-2003), both nominations having been confirmed by the U.S. Senate. I obtained my J.D. degree in 1961 from the George Washington University School of Law.

2. I have numerous Professional Memberships and Affiliations, including service on the Advisory Committee of the U.S. Court of Appeals for the Federal Circuit from 1992-1997 and Senior Advisor to the U.S. Delegation to Diplomatic Conference on Patent Harmonization in 1984 and 1991. I have attached a list of my other memberships and affiliations as Exhibit A to this declaration. Also included in Exhibit A is a list of a number of the articles, speeches and seminars in the area of patents and intellectual property law.

3. Based on my experience, education and writings, I am a qualified to serve as an expert witness in the area of patents and patent ownership and the practices of the Patent and Trademark Office.

4. At the request of Plaintiff Excel Innovations, Inc., I reviewed the documents identified in my letter dated August 14, 2003. I concluded, based on those documents, that Excel is the present owner of the patents set forth in Attachment A to that letter. My August 14, 2003 letter and Attachment A are attached as Exhibit B.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 9/10/03

Thomas F. Smegal, Jr.

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EXHIBIT A

THOMAS F. SMEGAL, JR.
Partner, San Francisco Office

AREA OF PRACTICE:	Intellectual Property
EDUCATION:	J.D., George Washington University Law School, *cum laude* (1961), Distinguished Alumnus 1995 B.S.Ch.E., Michigan College of Mining & Technology (1957)
ADMITTED:	California, Virginia, the District of Columbia, the United States Supreme Court, the United States District Courts for the Northern, Eastern, Central and Southern Districts of California, and the U.S. Patent and Trademark Office
BORN:	Eveleth, Minnesota - 1935

Mr. Smegal joined the Newport Beach law firm of Knobbe, Martens, Olson & Bear as a lateral partner to open their San Francisco office in 1998, and his practice focuses on intellectual property and litigation matters.

Prior to joining Knobbe, Martens, Olson & Bear, Mr. Smegal was a senior partner in charge of the intellectual property department at the law firm of Graham & James (1992-1998) and of Townsend and Townsend (1965-1992). Mr. Smegal served as the managing partner of Townsend and Townsend from 1974 until 1989. Prior to his association with Townsend & Townsend, Mr. Smegal was a patent attorney with Shell Development Company.

During the past 41 years, while engaged in the full-time practice of intellectual property law, Mr. Smegal has prepared and prosecuted over 1,000 U.S. patent and trademark applications, rendered over 300 infringement and validity opinions regarding U.S. patents, participated as lead trial counsel in United States District Court trials involving patent validity and infringement and served as an arbitrator, mediator, special master and expert witness in many intellectual property disputes.

Mr. Smegal has been nominated by two presidents to serve on the Board of Directors of the Legal Services Corporation. His 1984 nomination, made by President Reagan, resulted in Mr. Smegal's service on the eleven-member Board through 1990. The nomination made by President Clinton in 1993 has resulted in Mr. Smegal's second term of present service on the Board. Mr. Smegal also served on the American Bar Association Board of Governors, as its member

representing the lawyers of California (1994-1997); the American Bar Association House of Delegates (1987-2001); Chair of the ABA Section Officers Conference (1992-1994); Vice President of the Board of Directors of the International Association of Intellectual Property Lawyers (1987-1995) and its President (1995-2001); and on the Advisory Committee to the Court of Appeals for the Federal Circuit (1991-1997).

From 1985-1987, Mr. Smegal was one of 15 elected lawyer members of the Board of Governors of the State Bar of California, serving as Vice President in his final year. He was also a member of the California State Bar Conference of Delegates Executive Committee (1981-1984); Chairman of the Patent, Trademark and Copyright Section of the California State Bar (1979-1980); Past President of the Bar Association of San Francisco (1979); Past President of the American Intellectual Property Law Association (1986); Past Chairman of the American Bar Association Section of Patent, Trademark and Copyright Law (1990-1992); Past Chairman of the Board of Directors of the National Council of Intellectual Property Law (1988); Past President of the National Inventors Hall of Fame Foundation (1987); Past President Board of Directors of the Legal Aid Society of San Francisco (1982-1984); Past President San Francisco Bar Association Foundation (1976); Past President San Francisco Institute of Criminal Justice (OR Project); and Past President Patent Law Association of San Francisco (1974).

Mr. Smegal is the author of the following articles, "Management of an Intellectual Property Law Organization," American Patent Law Association Professional Development Program, January 1979; "Tax Considerations Relevant to Domesitc and International Transfer of Industrial Property Rights," Practising Law Institute: Technology Licensing, Volume e, 1982; "Industrial Property/La Propriete Industrielle," World Intellectual Property Organization magazine, Special Issue, October 1982; "Exporting Patent Litigation to China," The San Francisco Attorney, August/September 1987; "Proving Commercial Success - Is Nexus Still Required?" American Intellectual Property Law Association, Continuing Legal Education Institute, January 1989; "High Court Considers Trade Dress Issues," The National Law Journal, April 27, 1992; "Legality of 'Interim Copying' is Disputed," The National Law Journal, July 6, 1992; "Federal Circuit CLarifies Laches Defense," The National Law Journal, September 28, 1992; "Inequitable Conduct, Caches and Estoppel," Practising Law Institute, November 1992; "The Misuse Defense in Copyright Litigation," The National Law Journal, February 15, 1993; "Questions Persist on Security Interests," The National Law Journal, June 28, 1993; "Russian Software: New Laws, New Risks," The National law Journal, September 13, 1993; "The Current Re-Examination Process for Compton's NewMedia Patent May Redefine and Substantially Limit the Company's...," The National Law Journal, April 4, 1994; "By Taking Precautions Sellers of CD ROMS and Multimedia Products Can Minimize the Risks in Using Public Domain Works," The National Law Journal, June 1994; "Proposed Amendments to the Copyright Act Would Address Concerns Raised by the Emergence of the National Information Infrastructure", The National Law Journal, November 7, 1994; "A Licencee's Rights in an Original Work that Secures a Loan Will Hinge on Whether and When the Security Interest was Properly Perfected", The National Law Journal, March 6, 1995.; "Access to Justice - The Critical Issue for the ABA", George Washington Magazine, November 1996; "Trade Secrets in the United States", Patent World, October 1998 Issue 106

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August 14, 2003

Jefferson T. Stamp
Attorney At Law
15650-A Vineyard Blvd., #146
Morgan Hills, CA 95037

Re: Title to Tokenless Biometrics Technology Patents Under Title 33, U.S.C.

Dear Jeff:

In your capacity as counsel for Excel Innovations, Inc.[1] you have asked that I provide my opinion with respect to the ownership of a series of U.S. Patents and applications (hereafter "Inventions") including many of those set forth on Attachment A. In my opinion, most of the Inventions became the property[2] of Excel as a result of Section 2.02(c) of the Hoffman Employment Agreement. In addition, under a consulting agreement between David F. Pare and Jonathan A. Lee and Omnilock, Inc. dated December 9, 1994 and a similar consulting agreement dated March 7, 1995 between Omnilock and Phil Lapsley (hereafter "Consulting Agreements"). Excel became the sole owner of the entire rights, title and interest in and to the Inventions listed in Attachment A covering the Technology in which Hoffman was an inventor or co-inventor with Pare, Lee and/or Lapsley.

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[1] Sports-Mitt International, Inc. who incorporated in California on January 24, 1989 and Omnilock, Inc. who incorporated in California on November 27, 1989, were merged to become Sports-Mitt International, Inc. on November 30, 1995. The name Sports-Mitt International, Inc. was amended to EXCEL INNOVATIONS, INC., on March 12, 1996. The foregoing corporations will hereafter collectively be referred to as "Excel".

[2] The term "property" is used to define the obligation of Hoffman to assigned inventions to Excel under the Hoffman Employment Agreement dated February 17, 1994.

EXHIBIT B

1995 consulting agreement, are either still enforceable or were enforceable at all times relevant to this evaluation.

An initial U.S. Patent Application was filed on November 28, 1994 entitled "Tokenless Security System for Authorizing Access to a Secure Computer System," naming Ned Hoffman as the sole inventor. It issued as U.S. Patent 5,615,277 (the '277 patent") on March 25, 1977.

In spite of Mr. Hoffman's obligation in the Employment Agreement of February 17, 1994, the above-identified '277 patent remained unassigned until October 22, 1998, when a document was recorded by which Mr. Hoffman purported to assign the then issued '277 patent to SmartTouch, Inc.[3] I have not been provided with copies of any instrument in writing where either Mr. Hoffman or any co-inventor has executed an assignment of an Invention directly to Excel.[4] Thus while the Hoffman Employment Agreement and Consulting Agreements set forth such an obligation for Mr. Hoffman, Mr. Pare, Mr. Lee and Mr. Lapsley, it does not appear that such assignment documents to Excel were ever prepared and executed by them, as they have never been recorded with the U.S. Patent and Trademark Office ("PTO").[5]

I have been provided with assignment records from the PTO that indicate each of the Inventions has been the subject of one or more assignments executed by Mr. Hoffman and where appropriate, by his co-inventors. Thus, and to the extent that Mr. Hoffman or any co-inventor has assigned Inventions to a subsequent purchaser "for valuable consideration, without notice," the obligation to assign to Excel, required of Mr. Hoffman and the co-inventors, would now be

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[3] On or about May 12, 1995, Excel and Hoffman co-founded Smart-Touch, LLC which later became Smart-Touch, Inc., thereafter to be succeeded as Veristar and then Indivos (hereafter sometimes collectively referred to as "Indivos").

[4] There are a few earlier U.S. Patents for different technology that had been assigned by Hoffman to Excel. As set forth on Attachment A, they include: U.S. Patent 5,529,357 issued June 25, 1996 entitled "Full Motion Leverage Enhancing Assembly" assigned by a document recorded September 1, 1994; U.S. Patent 5,004,227 issued November 21, 1995, entitled "Exercise Apparatus" assigned by a document recorded March 14, 1991; U.S. Patent 4,923,418 issued May 8, 1990 entitled "Exercise Glove" assigned by a document recorded on October 7, 1998; and U.S. Patent 5,468,200 issued November 21, 1994 entitled "Weighted Exercise Glove Having Web Fingers" assigned by a document recorded March 14, 1991.

[5] Title 35 United States Code §261 provides, in part, that "applications for patent, patents, or any interest therein, shall be assignable in law by an instrument in writing." Section 261 also provides that "an assignment, grant or conveyance shall be void as against any subsequent purchaser or mortgagee for valuable consideration, without notice, unless it is recorded in the U.S. Patent and Trademark Office within 3 months from its date or prior to the date of such subsequent purchase or mortgage."

void as to those Inventions. Thus, if those for whom such assignments were executed were "without notice" of the prior assignment to Excel to transfer title, then such assignments would be affective under 35 U.S.C. § 261. However, other documents provided to me clearly lead to a contrary conclusion.

In particular, the recorded documents appear to have been the result of actions taken in carrying out an agreement (hereafter "non-exclusive" license) date May 8, 1995 between Excel and Indivos. In the negotiation of that agreement, Excel was represented by attorney Thomas A. Maier of Pezzola and Reinke of Oakland, CA while Indivos was represented by attorney Ali Kamarei of Palo Alto, CA. Among the provisions of that agreement were for there to be a "non-exclusive, non-assignable, conditional sublicense" (paragraph 2.1.1) from Excel to Indivos.[6] The non-exclusive license references and has attached copies of the Hoffman Employment Agreement, and the aforementioned Consulting Agreements.

The non-exclusive license additionally provides for a "conditional assignment" of patent applications by Hoffman and the aforementioned consultants to Indivos. In that Hoffman and the co-inventors -- in their respective prior agreements transferred all of their rights to Excel -- they no longer thereafter had the right to assign (even conditionally) such inventions to Indivos. More importantly, however, Indivos did not qualify under Title 35 U.S.C. §261 as a bona fide purchaser without notice because it was well aware of the prior assignment obligations of Mr. Hoffman and the co-inventors to Excel. Thus the original recorded assignments from Mr. Hoffman and co-inventors were void -- as to assignee Indivos -- it having notice (from the attachments to the sublicense agreement) that Mr. Hoffman and the co-inventors were obligated by their respective agreements to assign such Inventions to Excel.

Among the other materials you have provided were copies of a complaint of patent infringement and breach of contract (hereafter "Complaint"), filed by Excel naming Indivos Corporation and Solidus Networks, Inc. and Does 1 to 100, as defendants; and a Notice of Motion and Notice to Dismiss for Failure to State a Claim Upon Which relief can be granted, filed July 28, 2003 (hereafter "Motion") on behalf of Indivos Corporation and Solidus Network, Inc., in that same litigation In that Motion, defendants assert that they have a non-exclusive, non-transferable, conditional sublicense that has not been terminated by a violation of the Performance Guarantees set forth in paragraph 3 of the Indivos License Agreement. Please be advised that I offer no opinion as to the merits to that Motion. Furthermore, I offer no opinion as to the merits of the Complaint asserting patent infringement and breach of contract.

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[6] While a non-exclusive, non-transferable, conditional sublicense is not recordable in the PTO under Title 35 U.S.C. § 261, the PTO does not closely examine documents described as an assignment. It has been my experience that the PTO will record any assignment that is accompanied by the appropriate recording fee. *See*, for example, patent applications listed on Attachment A where the original assignment recorded in March 2003 is from Indivos to Excel (without ever having been assigned to Indivos by Mr. Hoffman and his co-inventors).

You also provided a copy of a Settlement Agreement and General Release (hereafter "Settlement Agreement") between Ned Hoffman and SmartTouch, Inc. dated June 16, 2000, as well as a number of the documents attached thereto. Exhibit B-2, entitled "Employee Proprietary Information and Inventions Agreement" contains, *inter alia*, paragraph 8 where Mr. Hoffman purports to assign SmartTouch, Inc., without further consideration, his entire right, title and interest in and throughout the United States and all foreign countries, free and clear of all leans and encumbrances, into which invention and idea, which shall be the sole property of the company, whether or not patentable." However, such an assignment does not adversely effect Inventions covered by the Hoffman Employment Agreement with Indivos dated February 17, 1994 for the reasons previously stated.[7]

At the date of execution of the Proprietary Information and Inventions Agreement attached to the Settlement Agreement (September 19, 1999) -- as well as on June 16, 2000 when Mr. Hoffman executed the Settlement Agreement -- Mr. Hoffman remained under obligation to Excel by the Hoffman Employment Agreement to assign all "work product" as defined in that agreement to Excel. His execution of the Settlement Agreement and its various attachments could have no adverse legal affect on Excel's rights still existing under the Hoffman Employment Agreement.

The aforementioned Settlement Agreement also contains an Exhibit F entitled Confirmation and Assignment executed by Mr. Hoffman on June 16, 2000. Among its recitals are that Hoffman assigned the entire right, title and interest to SmartTouch, Inc. and further that "Hoffman and the company wish to reaffirm, for the avoidance of doubt, that the intellectual property as set forth in Attachment 1 hereto ("Intellectual Property") has been permanently and irrevocably assigned by Hoffman" to SmartTouch, Inc. In that as previously recited, Mr. Hoffman remains under an ongoing obligation under the Hoffman Employment Agreement to assign to Excel such Inventions, there is no basis by which Mr. Hoffman could have executed a legally enforceable further assignment of his Inventions to SmartTouch, Inc.

In that none of the other documents that you provided support or identify any party as a subsequent purchaser "for a valuable consideration, without notice," Mr. Hoffman's undertakings appended as Exhibits to the Settlement Agreement are of no legal significance. Mr. Hoffman was legally incapable of transferring title to any Inventions defined by the Hoffman Employment Agreement to anyone other than Excel until relieved of that obligation by written agreement of Excel.[8] You have not provided such a document for review.

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[7] The Hoffman Employment Agreement had an initial term of seven years with automatic renewal for succeeding terms of seven years.

[8] This conclusion is equally applicable to the co-inventors.

In the event that the forgoing raises questions that you would like me to further consider, please advise.

Very truly yours,

Thomas F. Smegal, Jr.

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ATTACHMENT A

Patent/Appl. No.	First Assignor	First Assignee	Recordal Date
4,923,418	Hoffman	Excel	10/7/98
5,004,227	Hoffman	Sports-Mitt	1/14/91
5,468,200	Hoffman	Sports-Mitt	3/14/91
5,529,357	Hoffman	Omnilock, LLC	9/1/94
5,613,012	Hoffman, Pare, Lee	SmartTouch, LLC	5/17/95
5,615,277	Hoffman	SmartTouch, Inc.	10/22/98
5,737,439	Hoffman, Pare, Lee, Lapsley	SmartTouch, LLC	10/29/96
5,764,789	Hoffman, Pare, Lee	SmartTouch, LLC	9/27/96
5,862,199	Hoffman, Pare, Lee	SmartTouch, LLC	5/30/97
5,805,719	Hoffman, Pare, Lee	SmartTouch, LLC	3/18/97
5,838,812	Hoffman, Pare, Lee	SmartTouch, LLC	7/25/96
5,870,723	Hoffman, Pare, Lee	SmartTouch, LLC	7/16/97
6,012,039	Hoffman, Pare, Lee	SmartTouch, Inc.	9/28/00
6,154,879	Hoffman, Pare, Lee	SmartTouch, Inc.	1/31/00
6,192,142	Hoffman, Pare, Lee	SmartTouch, Inc.	7/10/00
6,230,148	Hoffman, Pare, Lee	SmartTouch, Inc.	7/29/99
6,269,348	Hoffman, Pare, Lee	SmartTouch, Inc.	7/21/00
6,366,682	Hoffman, Pare, Lee	SmartTouch, Inc.	3/5/01
6,397,198	Hoffman, Pare, Lee, Lapsley	SmartTouch, Inc.	7/24/00
09/398,914	Hoffman, Lapsley	SmartTouch, Inc.	8/21/00
09/441,107	Hoffman	SmartTouch, Inc.	6/27/00
10/056,982	Hoffman	Indivos	5/13/02
09/731,536	Hoffman, Pare, Lee, Lapsley	Veristar	12/6/00
09/639,948	Hoffman	Veristar	5/17/02
09/848,867	Indivos	Excel	3/14/03
09/215,058	Hoffman, Pare, Lee, Lapsley	SmartTouch, Inc.	3/22/02
10/241,374	Indivos	Excel	3/07/03
09/879,370	Indivos	Excel	3/07/03
10/120,328	Indivos	Excel	3/07/03
09/815,434	Indivos	Excel	3/07/03

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Attorney for Plaintiff
EXCEL INNOVATIONS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

EXCEL INNOVATIONS, INC., Plaintiff, v. INDIVOS CORPORATION, SOLIDUS NETWORKS, INC., AND DOES 1 TO 100, inclusive, Defendants.	CASE NO. C-03-3125 MMC **PLAINTIFF'S REPLY MEMORANDUM IN SUPPORT OF CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT** Date: October 24, 2003 Time: 9:00 a.m. Dept: Courtroom 7 Judge: Hon. Maxine M. Chesney

INTRODUCTION

QUOTATION: "Every small company is challenged by large competitors forever trying to take your ideas and build their success out of your imagination, trying to steal away that which you have toiled endless years to create. If such a competitor would work as hard to originate as he does to copy, he would much more quickly gain success."

ATTRIBUTION: Alice Foote MacDougall (1867-1945), leading businesswoman and merchant in New York City. The Autobiography of a Business Woman (1928).

Similarly here, this is a simple case where a small, enterprising company named Excel Innovations, Inc. ("Excel"), created and developed a valuable tokenless biometric invention along with the comprehensive patents related thereto (the "Invention") during the 7 months from November 1994 through May 1995. Then, pursuant to Excel's 15-year business model of licensing its dozens of patented innovations, Excel licensed the Invention to Indivos Corporation ("Indivos"). This licensing agreement integrated 7 Addenda signed by 8 different people, all affirming Excel's sole ownership of the Invention ("IP Patent License")

By late 2002, however, Indivos was facing bankruptcy like many similar high tech ventures, having burned through $18 Million of investors' money through unchecked executive salaries, large Board bonuses and opulent office suites. Indivos' financial failure constituted a material breach under the IP Patent License. Excel immediately exercised its contractual rights to terminate the agreement and rescind all of Indivos' licensing privileges relating to Excel's Invention, including the conditional assignment of the patents from the inventors. Excel also filed suit against Indivos in San Francisco Superior Court for breach of contract and declaratory relief on the issue of patent ownership.

In early 2003, Indivos was facing imminent financial collapse, and in a last-ditch gamble, attempted a fraudulent conveyance of Excel's Invention through an Indivos merger with an unfunded shell called Solidus Networks, Inc. ("Solidus"). Excel thereby immediately brought this infringement action in Federal Court to protect its ownership rights to the Invention and to stop the unauthorized use of Excel's Invention by Indivos and Solidus Networks (the "Defendants").

Now, after Defendants wholly avoided discovery throughout the 9 months of the state court action (which Excel voluntarily dismissed without predudice), and after Defendants avoided discovery throughout the nearly 4 months of this federal infringement action, Defendants themselves brought a motion to dismiss, asking for a "judgment as a matter of law" on the issue of ownership. Defendants are essentially seeking a ruling of summary judgment from this court on ownership, relying on evidence outside the pleadings. Excel thereby responded with its Motion for Summary Judgment on the issue of patent ownership.

On the issue of ownership, Defendants fail to offer any alternative evidence to the IP Patent License which provides the basis for Indivos' rights to use Excel's Invention from the date of Indivos' formation in May 1995 through until at least June 2000. Defendants merely assert that the inventors gave assignments to Indivos that were recorded with the PTO, all of which are in fact fully consistent with and even required under IP Patent License.

In fact, Defendants do not dispute any key facts or evidence affirming Excel's sole ownership to the Invention and all patents related thereto, including the fact that there are multiple agreements signed between Excel and all of the inventors dating from 1994 and 1995, before Indivos was even formed. Beyond that, Defendants fail to address the issue that, absent the IP Patent License, the inventors in fact had no rights in the Invention left to assign to Indivos, given their previous contractual conveyances to Excel.

As defendants prefer to rely on gratuitous insults directed against Excel, its employees and witnesses, rather than emphasizing evidence and facts, it is apparent that no amount of time will sufficiently serve Defendants fervent desire to demean and distract from the volume of facts, evidence and law which support Excel's Motion for Partial Summary Judgement on Ownership.

As a result, Defendants have failed to raise any genuine issue of material fact concerning the conveyance of the Invention to Excel by the inventors in 1994 and 1995. Further, Defendants have failed to meet the standard of diligence in seeking discovery. Therefore, it is increasingly clear that Defendants cannot hope to any longer forestall this ruling confirming Excel's ownership. The court is fully within its authority to grant summary judgment on the issue of patent ownership in favor of Excel.

STATEMENT OF UNDISPUTED FACTS

There is no genuine issue of material fact with respect to the following chain of title to the Invention and resulting patents which are shown to have originally vested in Excel prior to the existence of Indivos and then re-vested in Excel upon Indivos' breach of the IP Patent License:

1. On February 17, 1994, Excel entered into an employment agreement with Ned Hoffman in which any invention by Mr. Hoffman would become "the sole and exclusive property" of Excel. Defendants do not dispute this fact. Hoffman Reply Decl., par. 1.

2. In fact, David Mendelsohn, the former director of both Indivos and Excel, is a signatory to Excel's employment agreement with Mr. Hoffman. Defendants do not dispute this fact. Mendelsohn's direct knowledge of Excel's ownership deems that, due to his Indivos Board membership from 1998 to 2000, and again from 2002 to 2003, Indivos had knowledge of Excel's ownership of Mr. Hoffman's contributions to the Invention. Hoffman Reply Decl., par. 2.

3. In September 1994, Mr. Hoffman, under his employment contract with Excel, created the tokenless biometrics invention, guaranteeing Excel sole ownership rights. Defendants do not dispute this fact. Hoffman's direct knowledge of Excel's ownership deems that, due to his Indivos Board membership from 1997 to 2000, Indivos had knowledge of Excel's ownership of Mr. Hoffman's contributions to the Invention. Hoffman Reply Decl., par. 3.

4. On December 9, 1994, David Pare and Jonathan Lee, under their consulting contracts with Excel, assisted Excel in the development of Excel's Invention, guaranteeing Excel sole ownership rights here again. Specifically, Excel's ownership of the Invention was deemed to include all of David Pare's and Jonathan Lee's "further research, re-design, re-engineering, improvements and changes" relating to the Invention pursuant to these consultant agreements with Mr. Pare and Mr. Lee. Defendants do not dispute these facts. Thus, Mr. Pare's direct knowledge of Excel's ownership deems that, due to his Indivos Board membership from 1997 to 2000, and again from May 2003 through July 2003, Indivos had knowledge of Excel's ownership of Mr. Pare's and Mr. Lee's contributions to the Invention. Hoffman Reply Decl., par. 4.

5. On March 7, 1995, Phil Lapsley, under his consulting contract with Excel, assisted Excel in the development of Excel's Invention, guaranteeing Excel sole ownership rights here again. Specifically, Excel's ownership of the Invention was deemed to include all of Phil Lapsley's "further research, re-design, re-engineering, improvements and changes" relating to the Invention pursuant to a consultant agreement with Mr. Lapsley. Defendants do not dispute these facts. Thus, Lapsley's direct knowledge of Excel's ownership agreement deems that, due to his Indivos Board membership

and his Chief Financial Officer status at Indivos from 1998 to 2000, Indivos had knowledge of Excel's ownership of Mr. Pare's contribution to the Invention. Hoffman Reply Decl., par. 5.

6. From September 1994 to May 1995, Excel invested all of the financial, corporate, personnel and legal resources to fully develop and patent the Invention. In November 1994, with Excel's resources and under Excel's employ, Hoffman completed enabling several embodiments of the Invention, whereby Excel filed its first patent on the Invention. Defendants do not dispute this fact. Then, in May 1995, again relaying solely on Excel resources and remaining solely under Excel's employ, the inventors Hoffman Pare, Lee and Lapsley (the "Inventor Team") completed engineering and fully enabling a comprehensive array of Invention embodiments, whereby all of which were incorporated into the second patent which Excel filed on the Invention. All of these detailed embodiments of the Invention, created and developed by Excel prior to the formation of Indivos, comprise all of the patentable value in the Invention, and are still, to this very day, the controlling embodiments claims in every patent filed and issued on the Invention. Defendants do not dispute these facts. Hoffman Reply Decl., par. 6.

7. In May 1995, Excel committed the $50,000 seed capital to found Indivos. Defendants do not dispute this fact. Hoffman Reply Decl., par. 7.

8. In May 1995, Excel executed the IP Patent License with Indivos as Excel's licensee. This agreement granted to Indivos a license to make, use and sell the Invention and permitting conditional assignments of patents on the Invention to Indivos. Above all, at the time of the IP Patent License's execution in May 1995: (a) Mr. Hoffman was the sole executive at Excel empowered to sign on behalf of Excel for licensing its inventions; (b) Mr. Hoffman was the sole Manager and in fact the only individual member of Indivos (then in its early LLC form), thus being the only person empowered to sign on behalf Indivos for any contract; (c) None of the other inventors were either executives, Board members and/or shareholders in Excel; and (d) None of the other inventors were yet even members of Indivos. Defendants do not dispute any of these facts. Thus, while Defendants attempt to malign the authenticity of the IP Patent License, they fail to provide any genuine basis for their questioning of an agreement which: (a) was negotiated and prepared by attorneys representing the respective parties; (b) was executed by the only authorized representative for each of both parties;

(c) was witnessed by an attorney; and (d) integrates 6 additional agreements executed by 8 different people. Defendants also utterly fail to provide any explanation how, absent this IP Patent License, Indivos was afforded the rights by Excel to use the Invention which Excel had already fully developed and filed patents on prior to the formation of Indivos. Hoffman Reply Decl., par. 8.

9. On November 8, 2002, Excel was notified by Indivos that Indivos was $2 million in debt, had no cash left and was planning to file for bankruptcy in a matter of days. Indivos had become a financial failure, failed to pay Excel any part of the $20 million due under the IP Patent License and failed to generate $20 million in sales also required by the IP Patent License. Defendants have not disputed these facts. Hoffman Reply Decl., par. 9.

10. On November 8, 2002, Excel notified Indivos of the breaches of the IP Patent License, the termination thereof and the forfeiture of the conditionally assigned patents back to Excel. Defendants do not dispute these facts. Hoffman Reply Decl., par. 10.

LEGAL ARGUMENT

A. There is no genuine issue of material fact on the question of Excel's patent ownership.

Based on the foregoing facts, Excel has established its ownership in the Invention and related patents as a matter of law because: (1) the Inventor Team conveyed their ownership interests in the Invention and any improvements thereon to Excel prior to the formation of Indivos, (2) Indivos had knowledge of the Inventor Team's conveyance of the Invention to Excel, and (3) other than the IP Patent License, there are no other documents transferring ownership of the patents from Excel to Indivos.

All of the subsequent assignments by the Inventor Team to Indivos are controlled by the IP Patent License between Excel and Indivos, in which Excel permits assignments by the Inventor Team to Indivos subject to performance by Indivos. Indivos has admittedly not performed under the IP Patent License and, therefore, the Invention and related patents and other work product have reverted to Excel automatically by operation of law.

1. **Defendants do not dispute Excel's 1994 and 1995 agreements with the inventors conveying ownership of the Invention to Excel prior to the existence of Indivos.**

There is no dispute that the Inventor Team was divested of any ownership rights by virtue of their conveyances to Excel of their future inventions. Title to a patent may be transferred by either an "assignment, grant or conveyance" in writing. 35 U.S.C. Sec. 261. "A party that has been granted all substantial rights under the patent is considered the owner regardless of how the parties characterize the transaction that conveyed those rights." Speedplay, Inc. v. Bebop, Inc., 211 F.3d 1245, 1250 (Fed. Cir. 2000). Thus, defendants' argument that Mr. Hoffman conveyed only a "license" to Excel in his employment agreement is undermined by the actual language in the Excel-Hoffman employment agreement. In addition, the actual language of Addendum VI and VII to the IP Patent License is a "confirmation" by Mr. Hoffman that Excel was the owner of the Invention.

The language of each of the inventor agreements with Excel conveys the entire ownership interest in the Invention, including any expectant patent rights, to Excel. See Hoffman Declaration, Exhibits C, D and E. That was the whole point of these agreements, i.e. the inventors were hired to create and improve the Invention for Excel. Thus, after conveying their ownership interests to Excel, the Inventor Team could not subsequently assign, convey or grant, anything to Indivos without the written permission of Excel. Imatec, Ltd. v. Apple Computer, Inc., 81 F.Supp.2d 471, 481 (S.D. N.Y. 2000), citing FilmTec Corp. v. Allied-Signal Inc., 939 F.2d 1568, 1572 (Fed. Cir. 1991).

Indivos is deemed to have knowledge of the previous conveyances by the inventors to Excel through the direct knowledge of several Indivos directors and officers who signed the very inventor agreements containing the conveyances to Excel. A corporation is deemed to have knowledge of a previous assignment or conveyance where the founders, officers and directors of that corporation were signatories to those agreements. FilmTec Corp. v. Allied-Signal Inc., 939 F.2d at 1574. This direct knowledge is confirmed by the following: (1) David Mendelsohn, who served as a director of Indivos was a signatory of Excel's employment agreement with Mr. Hoffman in which all of Mr. Hoffman's inventions are conveyed to Excel; (2) Phil Lapsley, who served as CFO and COO of Indivos was a signatory to his own consulting agreement with Excel which conveyed his rights in the Invention to Excel; (3) David Pare, who served as a director of Indivos, was a signatory to his own

consulting agreement with Excel which conveyed the rights of Mr. Pare and Mr. Lee to Excel; and (4) Mr. Hoffman himself was the general manager and officer of Indivos. At minimum, Indivos was on inquiry notice given the key roles that Indivos founders, officers and directors played at Excel. FilmTec Corp. v. Allied-Signal Inc., 939 F.2d at 1574.

2. Defendants have not properly disputed any "material facts".

Defendants opposition to summary judgment must fail because there must be a genuine issue of a "material fact" in order to prevent summary judgment. See British Airways v. Boeing Co., 585 F.2d 946, 951 (9th Cir. 1978). Where a factual dispute is restricted to irrelevant matters, summary judgment is appropriate. Id.

While defendants claim the IP Patent License is not authentic, they fail to explain how that fact alone invalidates Excel's ownership which is originally based on the agreements with the Inventor Team. It is this absolute failure to challenge Excel's agreements with the Inventor Team that negates any attempt by defendants to create a genuine issue of material fact on the issue of ownership.

First, defendants apparently maintain that the patents were assigned by the Inventor Team to Indivos for apparently nothing, since Indivos was not even formed when the Invention was created in 1994 and substantially improved by May 1995. Defendants completely ignore that the entire Inventor Team had conveyed their entire ownership interest in the Invention and any improvements to Excel prior to Indivos' existence and had nothing left to assign.

Next, defendants argue that Indivos came to acquire the Invention and patent rights pursuant to a settlement agreement with Mr. Hoffman relating to Mr. Hoffman's employment signed in June 2000, more than five years after Indivos started using the Invention. However, Indivos' story does not explain by what right Indivos was able to use the Invention from May 1995 to June 2000. Even by Indivos' own account, there must have been some type of license from Excel, even oral or implied, permitting Indivos the right to use of the Invention during this period.

While ignoring this five year gap, defendants assert without any legal authority that Mr. Hoffman must have signed his personal settlement agreement with Indivos in June 2000 on behalf of Excel since Mr. Hoffman was the president and controlling shareholder of Excel. Defendants have vaguely insinuated that Mr. Hoffman was the "alter ego" of Excel, and yet they have failed to cite a

single case demonstrating that the acts of a president or controlling shareholder in his personal capacity may be attributable to a corporation.

To bind a corporation, a contract "executed within the agency power of the officer executing it" must be "made in the name of [the] corporation." Cal. Corp. Code, Sec. 208(b). Furthermore, a contract made solely in the name of an authorized agent may be binding on a corporation only if the contract is made for the benefit of the corporation. Bank of America v. Cryer, 6 Cal. 2d 485, 489 (1936).

Accordingly, the settlement agreement does not bind Excel because it deals solely with Mr. Hoffman's employment status with Indivos, engaging Mr. Hoffman as a consultant for Mr. Hoffman's personal benefit. The settlement agreement does not even mention Excel and Excel receives no benefits thereunder.

In contrast, the voting trust agreement between Indivos, Excel and Mr. Hoffman, signed concurrently with the settlement agreement, specifically recognizes that Excel is a distinct legal entity, accounts for separate ownership of Excel's stock in Indivos and provides separate signature lines for both Excel and Mr. Hoffman. Thus, Indivos' claim that Excel and Mr. Hoffman should be treated as the same legal entity is undermined by the voting trust agreement wherein Indivos acknowledges the different capacities and property rights of Excel and Mr. Hoffman.

In any event, to the extent that Indivos claims the transfer of Excel's property rights from Mr. Hoffman under the settlement agreement, Indivos violates California Labor Code Sections 405 and 406: "Any property put up by an employee, or applicant as part of a contract of employment, directly or indirectly, shall be deemed to be put up as a bond ... regardless of the wording of the agreement under which it is put up." Cal. Labor Code, Sec. 406. Thus, any purported transfer of the patents under the Hoffman settlement agreement could only be held as a "bond" because the settlement guaranteed Mr. Hoffman continuing employment with Indivos as a consultant. The use of the property for any other purpose constitutes "theft". Cal. Labor Code, Sec. 405.

3. Defendants' fail to raise a "genuine" dispute of the IP Patent License

While defendants dispute the authenticity of the IP Patent License, defendants have failed to provide any genuine basis for such a dispute. Rather, defendants merely speculate that Mr. Hoffman could have recently typed up the agreement. Of course, this speculation indirectly accuses both Mr. Hoffman and Mr. Kamarei, who signed the IP Patent License as a witness, of committing perjury and creating falsified documents. Defendants have hurled these accusations without obtaining the declaration of any Indivos officer such as Phil Gioia (the former CEO) or Phil Lapsley (the former CFO and COO) to support their position.

Defendants' opposition evidence must be such that it could cause reasonable persons to disagree on whether the facts claimed by the moving party are true; "enough to require a jury or judge to resolve the parties' differing versions of the truth." Aydin Cor. V. Loral Corp., 718 F.2d 897, 902 (9th Cir. 1983). Here, defendants offer no evidence. They merely speculate that Mr. Hoffman could have recently typed up the agreement. In contrast, plaintiff has provided two sworn declarations by Mr. Hoffman and Mr. Kamarei attesting to the authenticity of the IP Patent License.

Defendants offer only the declaration of Mr. Mendelsohn who purports to be ignorant of the IP Patent License and states his "belief" that it does not exist. This is a prime example of Defendants' faulty attempts to disprove the existence of the IP Patent License simply by asserting that it does not exist. The simple statement that someone does not recall or purports to be ignorant of existing evidence does not rise to either a material factual dispute or a genuine dispute of fact. It is axiomatic that one cannot prove the affirmative existence of a "negative."

Further undermining their opposition, defendants have failed to provide any explanation as to how Indivos came to have the rights to use Excel's Invention from May 1995 until June 2000, which was wholly financed and developed by Excel, its employees and its consulting engineers even before Indivos was formed. So while defendants have attempted to challenge the authenticity of the IP Patent License, they have failed to describe any alternative chain of title that would divest Excel of its ownership derived from Excel's undisputed agreements with each of the Inventors entered into prior to existence of Indivos.

Thus, defendants cannot hope to escape a summary judgment on the issue of ownership because they have not offered any evidence, facts or argument which provide any genuine dispute of the fact that Excel has always had the legal and contractual rights guaranteeing its chain of title and ownership of the Invention and the patents related thereto.

4. Excel has clear standing to sue.

Defendants attempt to argue that Excel does not own the patents because of a previous assignment to Aviv, LLC, in February 2003. Consistent with Excel's business model of 15 years, immediately upon terminating the Indivos license, Excel engaged with another licensee, conferring conditional assignments and the right to make, use and sell the Invention in order to to resurrect the valuable business opportunity that Indivos destroyed. However, it soon became apparent that Indivos and Solidus were disparaging the title of Excel's Invention and irreparably harming Aviv's emerging business. Thus, Excel and Aviv jointly agreed as of June 16, 2003, to: (a) terminate the license and remand back to Excel the Invention, including all patents and conditional assignments related thereto, which have since been duly re-recorded in the name of Excel Innovations, Inc. at the U.S. Patent and Trademark Office, and (b) empower Excel to promptly proceed with its infringement action against the Defendants. Hoffman Reply Declaration, par. 11-13.

5. Defendants have made several misrepresentations undermining their credibility.

Throughout their briefs, defendants have emphasized gratuitous personal attacks against all of the employees and partners of Excel. Defendants have further made a number of blatant misrepresentations which only confirms their lack of credibility and their disregard for the truth. Here is just a sampling of the most obvious misrepresentations:

a. David Mendelsohn, a former director of Indivos and Excel, states that Excel had no employees and no real business. Plaintiff has provided the declarations of Ned Hoffman and Ruth Hamilton showing that Excel has had numerous employees and consultants and been recognized in the media for its business achievements. In addition, Mendelsohn has just yesterday sued Excel in state court claiming that he was never paid for his work he provided as a consultant for Excel, thereby claiming that he himself did work for Excel. See Reply Declaration of Ned Hoffman, par. 14(a).

b. David Mendelsohn also claims that he has never seen the IP patent License and doubts that it exists. However, Mendelsohn's attorney David Bluhm was provided copies of the IP Patent License and all of the inventor agreements earlier this year, and these agreements were openly discussed at an Excel board meeting with both Mendelsohn and David Bluhm in March 2003. See Reply Declaration of Ned Hoffman, par. 14(b).

c. Defendants claim in their papers that Mr. Hoffman had concealed from Indivos investors that Excel owned the patents. However, by their own chronology, defendants admit that: a) Mr. Hoffman was wholly uninvolved with Indivos' management and/or board starting in November 1999, more than one full year before the $18 million investment was received by Indivos. Thus, if there were any misrepresentations and/or concealments, it was done solely by the management and board of Indivos that succeeded Mr. Hoffman, particularly Phil Gioia as Indivos' Board member, President and Chief Executive Officer. This is not to surprising considering it was this same group of individuals who mismanaged and defrauded Indivos' investors of more than $18 million. As admitted by defendants, Mr. Hoffman was removed from Indivos management in 1999 and had no other involvement in making required due diligence disclosures to investors. See Reply Declaration of Ned Hoffman, par. 14(c).

d. Defendants claim in their papers that Mr. Hoffman and Mr. Kamarei have made conflicting statements about the ownership of the patents in challenging the merger. The obvious truth is that none of the documents cited by defendants ever attribute ownership of the patents to Indivos. On the contrary, Excel's patent ownership claim was publicly disclosed in the state court lawsuit in November 2002, wherein Excel requested declaratory relief. Excel, Mr. Hoffman and Mr. Kamarei opposed the merger because Indivos management was trying to cover up the fact that David Mendelsohn, Phil Gioia and other Indivos insiders had wasted or stolen $18 million in 20 months without any benefit to Indivos. In addition, Indivos was attempting to fraudulently convey Excel's patents to Solidus after the IP Patent License had been terminated and the patents had been forfeited to Excel. Solidus was not paying enough to secure the patents from Excel, a point that was negotiated directly between Solidus and Excel for several weeks and confirmed in a drafted settlement

agreement which would have protected Excel's ownership interest in the patents regardless of the merger. See Reply Declaration of Ned Hoffman, par. 14(d).

B. The court should grant Excel's motion for partial summary judgment as no further discovery will materially impact the issue of ownership.

A denial of a request for additional discovery under Rule 56(f) is appropriate except where "the movant diligently pursued its *previous* discovery opportunities, and if the movant can show how allowing *additional* discovery would have precluded summary judgment." Qualls v. Blue Cross of California, 22 F.3d 839, 844 (9th Cir. 1994). Defendants have failed to meet this standard as follows:

- Defendants themselves raised the issue of ownership requesting "judgment as a matter of law" essentially seeking summary judgment on that issue, and thereby sought an accelerated adjudication on the issue of ownership. In knowingly bringing their motion so early, defendants affirm that they: (a) are ready for an immediate adjudication on this issue; (b) have completed all necessary discovery, and (c) have all necessary evidence for the court to rule "as a matter of law." Thus, defendants cannot claim that they were diligent in pursuing previous discovery opportunities. because they knowingly waived any discovery by urging the court to rule on the issue of ownership as "a matter of law."

- Defendants failed throughout the 9 months of Excel v. Indivos, Case No. 414577, in the San Francisco Superior Court, from November 2002 to July 2003, to conduct discovery, to take depositions/interrogatories/declarations, and/or to respond to Excel's discovery demands on issues of ownership. In addition, several witnesses are Indivos' former officers and directors including Mendelsohn, Lapsley, Pare, and Gioia, so there is no basis for their failure to secure declarations and/or evidence to substantiate their claims to disputes of fact.

- Defendants have failed throughout the 4 months of the instant federal case to obtain any declarations from the inventors even though defendants themselves raised the issue of ownership in their motion to dismiss. Again, the inventors the inventors themselves are former directors and officers of Indivos, so there is no basis for their failure to secure declarations and/or evidence to substantiate their claims to disputes relating to the conveyances made by the inventors to Excel.

- None of the depositions which Defendants now seek have any relevance to the already affirmed existence and enforceability of Excel's multiple ownership contracts. Defendants themselves state as much: that in their proposed discovery their best and only hope is that deposed parties may declare their lack memory or lack of knowledge of the IP Patent License, which has no legal impact on the fact that the IP Patent License exists.

- Further, the parties which Defendants propose to depose have no relevance to the negotiation and execution of the IP Patent License: Only Mr. Hoffman, pursuant to his employment contract as the only executive employed by Excel authorized to participate in the execute of licensing contracts for Excel, and only Mr. Hoffman, pursuant to himself being the sole Manager upon the formation of SmartTouch LLC, was empowered by SmartTouch with the authority to participate in the negotiation and execution of licensing contracts for SmartTouch. Defendants do not dispute any of these facts, thus Defendants again have no basis for asserting a genuine dispute of the fact of the IP Patent License agreement.

- Further, much of Defendants requested discovery seems bent on developing personal attacks on Hoffman which are irrelevant. Specifically, defendants want to depose Geoffrey Perel about a stock transaction that occurred prior to the forfeiture of the patents. Defendants have not explained how the personal

stock transactions approved by Indivos undermines the inventor agreements conveying the patents to Excel.

CONCLUSION

For all of the foregoing reasons, Plaintiff Excel should be granted summary judgment on the issue of patent ownership.

Dated: October 10, 2003

Respectfully submitted,

/s/ Jefferson T. Stamp

Jefferson T. Stamp

Jefferson T. Stamp (SBN 187975)
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Morgan Hill, CA 95037
Tel: (408) 623-8414

Attorney for Plaintiff
EXCEL INNOVATIONS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

EXCEL INNOVATIONS, INC., Plaintiff, v. INDIVOS CORPORATION, SOLIDUS NETWORKS, INC., AND DOES 1 TO 100, inclusive, Defendants.	CASE NO. C-03-3125 MMC **PLAINTIFF'S SUPPLEMENTAL BRIEF RE: CHAIN OF TITLE TO THE PATENTS** Date: October 24, 2003 Time: 9:00 a.m. Dept: Courtroom 7 Judge: Hon. Maxine M. Chesney

Plaintiff hereby submits its supplemental brief regarding the chain of title on the patents at issue, including: U.S. Patent No. 6,581,042, U.S. Patent No. 6,397,198, U.S. Patent No. 6,366,682, U.S. Patent No. 6,269,348, U.S. Patent No. 6,230,148, U.S. Patent No. 6,192,142, U.S. Patent No. 6,154,879, U.S. Patent No. 6,012,039, U.S. Patent No. 5,870,723, U.S. Patent No. 5,838,812, U.S. Patent No. 5,805,719, U.S. Patent No. 5,802,199, U.S. Patent No. 5,764,789, U.S. Patent No. 5,615,277, U.S. Patent No. 5,613,012.

The chain of title of the patents at issue confirming Excel's ownership is set forth in following chronological chart.

DATE	EVENT	TITLE
September 1994	Hoffman invents the tokenless biometrics system for financial transactions (the "Invention")	Title to the Invention vests in Omnilock Incorporated ("Excel") pursuant to the Hoffman-Excel employment agreement dated February 17, 1994
November 28, 1994	Patent I is filed on the Invention (Issuing on 3/25/97 as Patent No. 5,615,277)	Title to Patent I vests in Excel pursuant to the Hoffman-Excel employment agreement dated February 17, 1994
November 1994-May 1995	Excel develops comprehensive improvements to the Invention through its employment of Hoffman, Pare, Lee and Lapsley (the "Inventors")	Title to the improvements in the Invention vests in Excel pursuant to (i) Hoffman-Excel employment agreement and (ii) the Excel consulting agreements with Pare, Lee and Lapsley
May 8, 1995	Excel and Hoffman co-found licensee Smarttouch, LLC ("Indivos"); Excel contributes $50,000 for 99% of stock and rights to license Excel's patent property and related technologies (confirmed by SmartTouch Operating Agreement dated **May 16, 1995** and Excel tax records)	Excel did not assign the patents in the formation of the licensee Indivos; neither the original May 16, 1995, operating agreement or any other subsequent amendment or transfer constitutes or even purports to be an assignment or sale agreement relating to Excel's patents
May 8, 1995	Excel grants licensee Indivos conditional assignment of patents pursuant to terms of Excel's IP Patent License	Under the IP Patent License, Excel granted to licensee Indivos certain rights to use Excel's patent property and related technologies, including conditional assignments of the patents; there is no other "writing" or agreement of any kind assigning Excel's patents to licensee Indivos pursuant to 35 USC 261
May 17, 1995	Patent II is filed on the comprehensive improvements to the Invention (Issuing on 3/18/97 as Patent No. 5,613,012) (the "Master Patent")	Pursuant to Excel's IP Patent License, licensee Indivos has conditional title pursuant to licensing rights by Excel and conditional assignments provided by the Inventors as permitted under Excel's IP Patent License
May 1995 to November 2002	Numerous patent applications are filed as continuations / continuations in part of Patent II ("Continuation Patents") issuing as the patents set forth in the	Pursuant to Excel's IP Patent License, licensee Indivos has conditional title pursuant to licensing rights by Excel and conditional assignments provided

[1] U.S. Patent No. 6,581,042, U.S. Patent No. 6,397,198, U.S. Patent No. 6,366,682, U.S. Patent No. 6,269,348, U.S. Patent No. 6,230,148, U.S. Patent No. 6,192,142, U.S. Patent No. 6,154,879, U.S. Patent No. 6,012,039, U.S. Patent No. 5,870,723,

	footnote below[1]	by the Inventors as permitted under Excel's IP Patent License
November 8, 2002	Excel is notified by licensee Indivos that it has burned all of its $18 million investment and will file bankruptcy by November 15, 2003	
November 8, 2002	Excel delivers notice of IP Patent License termination to licensee Indivos and licensee Indivos forfeits all patent rights to Excel's Invention	Pursuant to Excel's IP Patent License, all title to Patent I, Patent II and Continuation Patents reverts to Excel
February 3, 2003	Excel makes conditional assignment of the patents to licensee Aviv, LLC	Pursuant to Excel's conditional assignments, title to Patent I, Patent II and Continuation Patents vests in Aviv
June 16, 2003	Excel and licensee Aviv jointly rescind the conditional assignment of the patents due to infringement and interference of Indivos and Solidus Networks	Title to Patent I, Patent II and Continuation Patents reverts to Excel pursuant to rescission agreement with Aviv

Based on the above-described chain of title, Plaintiff Excel has established standing to sue and should be granted partial summary judgment on the issue of ownership.

INDIVOS ADMITS EXCEL'S ORIGINAL OWNERSHIP OF THE PATENTS AND THEN FAILS TO ESTABLISH "WRITTEN" ASSIGNMENT THEREAFTER

Forced to address how Indivos obtained any patent rights to the Invention created prior to existence, defendants have finally admitted in their supplemental brief that Excel was the undisputed owner of the Invention and pending patents in 1994 and 1995. Nevertheless, defendants have fatally argued that Indivos subsequently obtained the Invention and related patents from Excel as a purported "contribution" described in the operating agreements for SmartTouch, LLC.

The original operating agreement dated May 16, 1995, which defendants failed to reveal, shows in Appendix A that Excel contributed both the $50,000 value of SmartTouch, LLC, for its 99% ownership of SmartTouch, LLC, along with only "patent property rights and other property rights to fingerprint technology" as respectively evidenced by: SmartTouch's $50,000 founding valuation, Excel's tax records showing said $50,000 investment, and the IP Patent License conferring the licensing rights to Excel's Invention and related technologies.

[1] U.S. Patent No. 5,838,812, U.S. Patent No. 5,805,719, U.S. Patent No. 5,802,199, U.S. Patent No. 5,764,789

All of the subsequent operating agreements referenced by defendants refer generally to "patent and other property rights," but all are consistent with the rights conferred by Excel to Indivos in the IP Patent License; these are the only "patent rights" that Excel contributed to the formation of Indivos. Neither the original operating agreement or any other subsequent amendment or transfer constitutes a written assignment of Excel's patent rights pursuant to 35 U.S.C. Section 261.

"A patent, patent application, or any interest in a patent is assignable in law by an instrument in writing." Id. "Though no particular form of words is required the instrument of transfer *must show a clear and unmistakable intent to part with the patent.*" McClaskey v. Harbison-Walker Refractories Co., 138 F.2d 493, 499 (3rd Cir. 1943)(emphasis added).

Here, defendants rely on the SmartTouch operating agreements which indicate that Indivos has received unspecified "patent and other property rights." However, *these operating agreements do not indicate nor even purport to assert that ownership rights have been transferred* from Excel. Thus, the "writings" offered by defendants do not show any "unmistakable intent" by Excel to part with the ownership of the patents at issue herein.

In sum, while defendants' overwhelming paperwork is intended to distract from the simple facts of the inventor agreements which affirm Excel's ownership of the Invention related patents, defendants' newest evidentiary exhibits only underscore the consistency of Excel's IP License and the conditional assignment of the patents until November 2002. It was at that point that licensee Indivos' material breaches of financial failure caused termination of the license and reversion of all rights to the Invention and related patents to Excel.

For all of the foregoing reasons, the court should determine that Excel is the owner of the patents as a matter of law.

Dated: October 22, 2003

Respectfully submitted,

/s/ Jefferson T. Stamp

Jefferson T. Stamp

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Tel: (408) 623-8414

Attorney for Plaintiff
EXCEL INNOVATIONS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

EXCEL INNOVATIONS, INC., Plaintiff, v. INDIVOS CORPORATION, SOLIDUS NETWORKS, INC., AND DOES 1 TO 100, inclusive, Defendants.	CASE NO. C-03-3125 MMC **PLAINTIFF'S CITATION CHART RE: CHAIN OF TITLE TO THE PATENTS** Date: October 24, 2003 Time: 9:00 a.m. Dept: Courtroom 7 Judge: Hon. Maxine M. Chesney

DATE	ASSIGNOR/ ASSIGNEE	AGREEMENT CITE	PROVISION
02-17-94	Hoffman to Excel	Section 2.03(c), Hoffman-Excel employment agreement dated Feb. 17, 1994 (Hoffman Decl., Ex. C)	"Employer shall have the first option rights on all Employee Work Product.... If the Employer's first option rights have not expired on an Employee Work Product, the same shall belong to and be the sole and exclusive property of Employer."
12-09-94	Pare and Lee to Excel	Page 2, first full paragraph, Pare/Lee-Excel consulting agreement dated December 12, 1994 (Hoffman Decl., Ex. D)	"Company and Consultant agree that further research, re-design, re-engineering, improvements and changes ["Work Product"] to the Technology is contemplated by this Agreement and that all such Work Product shall be: ... b) the sole property of Company and shall be owned wholly by Company."
03-07-95	Lapsley to Excel	Page 2, first full paragraph, Pare/Lee-Excel consulting agreement dated December 12, 1994 (Hoffman Decl., Ex. E)	"Company and Consultant agree that further research, re-design, re-engineering, improvements and changes ["Work Product"] to the Technology is contemplated by this Agreement and that all such Work Product shall be: ... b) the sole property of Company and shall be owned wholly by Company."
05-08-95	Excel to Indivos (SmartTouch)	Section 2.1, IP Patent License Agreement dated May 8, 1995 (Hoffman Decl., Ex. F)	"Omnilock [Excel] hereby grants to SmartTouch [Indivos]: 2.1.1. A non-exclusive, non transferable, conditional sublicense to the Invention, to make, use and sell the Invention .... 2.1.2. The permission to utilize the services of Consultants and to have Ned Hoffman and/or Consultants conditionally assign patents to SmartTouch (herein "Permission), with the restriction that any termination of this Agreement pursuant to **Section 6** herein below shall result in the immediate termination of both said Permission and of any/all said conditional assignments whereby any/all such conditional assignments are automatically and immediately rescinded.
11-08-02	Indivos to Excel	Section 6.5, IP Patent License Agreement	"all Work Product shall revert to [Excel] in the event of a material breach by [Indivos] ... including ... financial failure"

Dated: October 23, 2003

Respectfully submitted,

/s/ Jefferson T. Stamp

Jefferson T. Stamp

State of California

OFFICE OF THE SECRETARY OF STATE

SECRETARY OF STATE

I, *Kevin Shelley*, Secretary of State of the State of California, hereby certify:

That the attached transcript of 9 page(s) was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.

IN WITNESS WHEREOF, I execute this certificate and affix the Great Seal of the State of California this day of

JAN 23 2003

Kevin Shelley

Secretary of State

Sec/State Form CE-108 (rev. 1/03)

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CERTIFICATE OF AMENDMENT OF THE AMENDED AND RESTATED ARTICLES OF INCORPORATION OF SPORTS-MITT INTERNATIONAL, INC.

Ned Hoffman and David Silen certify that:

1. They are the President and Secretary, respectively, of SPORTS-MITT INTERNATIONAL, INC., a California Corporation (this "Corporation").

2. Article I of the Amended and Restated Articles of Incorporation of this Corporation is amended to read in its entirety as follows:

"I.

The name of this Corporation is EXCEL INNOVATIONS, INC."

3. The foregoing amendment of the Articles of Incorporation has been duly approved by the Board of Directors.

4. The foregoing amendment of the Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Section 902 of the Corporations Code. The total number of outstanding shares of this Corporation is Six Hundred Fifty-Three Thousand Seven Hundred Seventy-Six (653,776) Common Stock shares. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than fifty percent (50%).

The undersigned further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of their own knowledge.

Date: March 12, 1996

Ned Hoffman, President

Harold Silen, Secretary

FILED
in the office of the Secretary of State
of the State of California

MAR 18 1996

BILL JONES, Secretary of State

OFFICE OF THE SECRETARY OF STATE

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In the office of the Secretary of State
of the State of California

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MARCH FONG EU, Secretary of State

CERTIFICATE OF AMENDMENT
OF
ARTICLES OF INCORPORATION

NED HOFFMAN AND ROBERT N. KATZ certify that

1. They are the president and the secretary, respectively, of SPORTSMITT INTERNATIONAL, INC., a California corporation.

2. Article I of the Articles of Incorporation is amended to read as follows:

> The name of the corporation is SPORTS-MITT INTERNATIONAL, INC.

3. Article IV of the Articles of Incorporation is amended to read as follows:

> The total number of shares which this corporation is authorized to issue is one hundred thousand (100,000). All of the corporation's issued shares of stock shall be held of record by no more than thirty-five (35) persons. This corporation is a close corporation.

4. The foregoing amendments of the Articles of Incorporation have been duly approved by the Board of Directors.

5. The foregoing amendments of the Articles of Incorporation have been duly approved by the required vote or shareholders in accordance with Section 902 of the Corporations Code. The total number of outstanding shares of the corporation is 70,000. The number of shares voting in favor of the amendment equalled or exceeded the vote required. The percentage vote required was more than 50%.

Ned Hoffman, President

Robert N. Katz, Secretary

The undersigned declare under penalty of perjury that the matters set forth in the foregoing certificate are true of their own knowledge.

Executed at Berkeley, California, on 8/15, 1990.

Ned Hoffman

Robert N. Katz

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In the office of the Secretary of State
of the State of California

JAN 28 1991

MARCH FONG EU, Secretary of State

CERTIFICATE OF AMENDMENT OF ARTICLES OF INCORPORATION

NED HOFFMAN AND ROBERT N. KATZ certify that:

1. They are the president and the secretary, respectively, of SPORTS-MITT INTERNATIONAL, INC., a California corporation.

2. Article IV of the Articles of Incorporation is amended to read as follows:

The total number of shares which this corporation is authorized to issue is one million (1,000,000). All of the corporation's issued shares of stock shall be held of record by no more than thirty-five (35) persons. This corporation is a close corporation.

3. The foregoing amendments of the Articles of Incorporation have been duly approved by the Board of Directors.

4. The foregoing amendments of the Articles of Incorporation have been duly approved by the required vote of shareholders in accordance with Section 902 of the Corporations Code. The total number of outstanding shares of the corporation is 100,000. The number of shares voting in favor of the amendment equalled or exceeded the vote required. The percentage vote required was more than 50%.

Ned Hoffman, President

Robert N. Katz, Secretary

The undersigned declare under penalty of perjury that the matters set forth in the foregoing certificate are true of their own knowledge.

Executed at Berkeley, California, on Dec 31, 1990.

Ned Hoffman

Robert N. Katz

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FILED
In the office of the Secretary of State
of the State of California

JUL 9 1991

MARCH FONG EU, Secretary of State

AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

SPORTS-MITT INTERNATIONAL, INC.

Ned Hoffman and Robert Katz hereby certify that:

1. They are the President and Secretary of Sports-Mitt International, Inc., a California corporation.

2. The Articles of Incorporation of the corporation are amended and restated to read in their entirety as follows:

"I

The name of this corporation is

Sports-Mitt International, Inc.

II

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

This corporation is authorized to issue only one class of shares of stock, and the total number of shares that this corporation is authorized to issue is four hundred thousand (400,000). Upon amendment of these Articles to read as herein set forth, each outstanding share of stock is split and converted into four (4) shares.

IV

The liability of the Directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

V

The corporation is authorized to provide indemnification of agents (as defined in Section 317 of the Corporations Code) for breach of duty to the corporation and its stockholders through bylaw provisions or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the Corporations Code."

3. The foregoing amendment and restatement of the Articles of Incorporation of the corporation has been duly approved by the Board of Directors of the corporation.

4. The foregoing amendment and restatement of the Article of Incorporation of the corporation has been duly approved by the shareholders of the corporation in accordance with the Section 902 and 903 of the California Corporations Code. The total number of outstanding shares of the corporation is 81,250 shares of Common Stock. The number of shares of Common Stock voting in favor of the amendment and restatement equaled or exceeded the vote required. The percentage vote required was more than two-thirds of the outstanding shares of Common Stock.

The undersigned further declare under penalty of perjury under the laws of the State of California that the matters set forth in the foregoing certificate are true and correct of their own knowledge.

Date: May 29, 1991

Ned Hoffman, President

Robert Katz, Secretary

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FILED
In the office of the Secretary of State
of the State of California

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CERTIFICATE OF AMENDMENT
OF
RESTATED ARTICLES OF INCORPORATION

March Fong Eu
MARCH FONG EU, Secretary of State

NED HOFFMAN AND ROBERT N. KATZ certify that:

1. They are the president and secretary, respectively, of SPORTS-MITT INTERNATIONAL, INC., a California corporation.

2. Article III of the Amended and Restated Articles of Incorporation is amended to read as follows:

This corporation is authorized to issue only one class of shares of stock, and the total number of shares that this corporation is authorized to issue is one million (1,000,000). Upon amendment of these Articles to read as herein set forth, each outstanding share of stock is split and converted into 2.5 (two and one-half) shares.

3. The foregoing amendment and restatement of the Articles of Incorporation of the corporation has been duly approved by the Board of Directors of the corporation.

4. The foregoing amendment of the Articles of Incorporation of the corporation has been duly approved by the shareholders of the corporation in accordance the Section 902 and 903 of the California Corporations Code. The total number of outstanding shares of the corporation is 400,000 (four-hundred thousand) shares of Common stock. The number of shares of common stock voting in favor of the amendment and reststement equaled or exceeded the vote required. The percentage vote required was more than two-thirds of the outstanding shares of common stock.

The undersigned further declare under penalty of perjury under the laws of the State of California that the matters set forth in the foregoing certificate are true and correct of their own knowledge.

Date: Jan. 12, 1993

Ned Hoffman, President

Robert Katz, Secretary

A468822

FILED
In the office of the Secretary of State
of the State of California

NOV 30 1995

BILL JONES, Secretary of State

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CERTIFICATE OF OWNERSHIP
MERGING
OMNILOCK, INC.
INTO
SPORTS-MITT INTERNATIONAL, INC.

Ned Hoffman, President, and Harold Silen, Secretary of Sports-Mitt International, Inc., a California corporation ("this Corporation"), certify that:

1. Sports-Mitt International, Inc. owns all the outstanding stock of Omnilock, Inc., a corporation duly incorporated on November 27, 1989 under the laws of the state of California.

2. The following resolutions were adopted by a majority of the Board of Directors of Sports-Mitt International, Inc.:

WHEREAS, this corporation owns all the outstanding stock of Omnilock, Inc.; and

WHEREAS, it is deemed in the best interests of this corporation and its shareholders that this corporation merge Omnilock, Inc. into itself and assume all of its obligations; it is:

RESOLVED, that this corporation merge Omnilock, Inc. into itself as of the effective date of the Certificate of Ownership to be filed pursuant to Section 1110 of the California Corporations Code, and assume all obligations of the merged corporation.

RESOLVED FURTHER, that the President and Secretary of this Corporation are directed to execute and file a Certificate of Ownership pursuant to Section 1110 of the California Corporations Code and to take such further actions as may be necessary or proper to accomplish such merger.

3. Said resolutions were adopted at a special meeting of the Board of Directors of this corporation held at 2:00P.m. Pacific Daylight Time on ~~October~~ November 9, 1995 by telephonic conference call. This corporation has three directors, all of whom were present via telephone at such meeting, and said resolutions were adopted by unanimous vote of the directors.

By: _____
Ned Hoffman, President

_____
Harold Silen, Secretary

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VERIFICATION

Ned Hoffman and Harold Silen say:

They are the President and Secretary respectively of Sports-Mitt International, Inc., a California Corporation.

They have read the foregoing Certificate of Ownership and know the contents thereof.

The same is true of their own knowledge.

Executed on ~~October~~ November 9, 1995 at Berkeley, Alameda County, California.

We declare under penalty of perjury that the foregoing is true and correct.

Ned Hoffman

Harold Silen

1511372

ARTICLES OF INCORPORATION

OF

OMNILOCK, INC.

FILED
In the office of the Secretary of State
of the State of California

NOV 27 1989

MARCH FONG EU, Secretary of State

I.

The name of the corporation is OMNILOCK, INC.

II.

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III.

The name and address in the State of California of the corporation's initial agent for service of process are Robert N. Katz, 2150 Shattuck Avenue, Berkeley, California, 94704.

IV.

The total number of shares which this corporation is authorized to issue is one hundred thousand (100,000). All of the corporation's issued shares of stock shall be held of record by no more than thirty-five (35) persons. This corporation is a close corporation.

The undersigned declares that the undersigned has executed these Articles of Incorporation and that this instrument is the act and deed of the undersigned.

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FILED
In the office of the Secretary of State
of the State of California

NOV 30 1995

BILL JONES, Secretary of State

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CERTIFICATE OF OWNERSHIP
MERGING
OMNILOCK, INC.
INTO
SPORTS-MITT INTERNATIONAL, INC.

Ned Hoffman, President, and Harold Silen, Secretary of Sports-Mitt International, Inc., a California corporation ("this Corporation"), certify that:

1. Sports-Mitt International, Inc. owns all the outstanding stock of Omnilock, Inc., a corporation duly incorporated on November 27, 1989 under the laws of the state of California.

2. The following resolutions were adopted by a majority of the Board of Directors of Sports-Mitt International, Inc.:

> WHEREAS, this corporation owns all the outstanding stock of Omnilock, Inc.; and
>
> WHEREAS, it is deemed in the best interests of this corporation and its shareholders that this corporation merge Omnilock, Inc. into itself and assume all of its obligations; it is:
>
> RESOLVED, that this corporation merge Omnilock, Inc. into itself as of the effective date of the Certificate of Ownership to be filed pursuant to Section 1110 of the California Corporations Code, and assume all obligations of the merged corporation.
>
> RESOLVED FURTHER, that the President and Secretary of this Corporation are directed to execute and file a Certificate of Ownership pursuant to Section 1110 of the California Corporations Code and to take such further actions as may be necessary or proper to accomplish such merger.

3. Said resolutions were adopted at a special meeting of the Board of Directors of this corporation held at 2:00 p.m. Pacific Daylight Time on ~~October~~ November 9, 1995 by telephonic conference call. This corporation has three directors, all of whom were present via telephone at such meeting, and said resolutions were adopted by unanimous vote of the directors.

By: _____
Ned Hoffman, President

_____
Harold Silen, Secretary

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VERIFICATION

Ned Hoffman and Harold Silen say:

They are the President and Secretary respectively of Sports-Mitt International, Inc., a California Corporation.

They have read the foregoing Certificate of Ownership and know the contents thereof.

The same is true of their own knowledge.

Executed on ~~October~~ November 9, 1995 at Berkeley, Alameda County, California.

We declare under penalty of perjury that the foregoing is true and correct.

Ned Hoffman

Harold Silen

STATE OF CALIFORNIA
FRANCHISE TAX BOARD
P.O. BOX 942857
SACRAMENTO, CA 94257-0541

TAX CLEARANCE CERTIFICATE

September 27, 1995

EXPIRATION DATE: January 15, 1996

PEZZOLA & REINKE
MARY A FITZPATRICK
SUITE 1300
1999 HARRISON ST
OAKLAND CA 94612

ISSUED TO: OMNILOCK, INC.
Corporate Number 1511372 0I4**

This is to certify that all taxes imposed under the Bank and Corporation Tax Law on this corporation have been paid or are secured by bond deposit or other security.

A copy of this Tax Clearance Certificate has been sent to the Office of the Secretary of State. This original Tax Clearance Certificate may be retained in the files of the corporation.

By the Expiration Date noted above, this corporation must have filed the documents required by the Secretary of State to dissolve, withdraw or merge. Requests for the appropriate documents must be directed to: Office of the Secretary of State at 1500 11th Street, 3rd Floor, Sacramento CA 95814. The telephone number is (916) 657-5448.

NOTE: If the required documents are not filed with the Secretary of State prior to the Expiration Date noted above, the corporation will remain subject to the filing requirements of the Bank and Corporation Tax Law.

FRANCHISE TAX BOARD

By H. Hermansen
Special Audit Unit
Corporation Audit Section
Telephone (916) 845-4124

OFFICE OF THE SECRETARY OF STATE

COPY

1506878

FILED
In the office of the Secretary of State
of the State of California
JAN 24 1989
MARCH FONG EU, Secretary of State

ARTICLES OF INCORPORATION
OF
SPORTSMITT INTERNATIONAL, INC.

I.

The name of the corporation is SPORTSMITT INTERNATIONAL, INC.

II.

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III.

The name and address in the State of California of the corporation's initial agent for service of process are Robert N. Katz, 2150 Shattuck Avenue, Berkeley, California, 94704.

IV.

The total number of shares which this corporation is authorized to issue is one hundred thousand (100,000). All of the corporation's issued shares of stock shall be held of record by no more than ten (10) persons. This corporation is a close corporation.

The undersigned declares that the undersigned has executed these Articles of Incorporation and that this instrument is the act and deed of the undersigned.

AGREEMENT

The parties to this agreement are Omnilock Incorporated, a California corporation of 46 Shattuck Square, Suite 14, Berkeley, CA 94704, (hereinafter "Omnilock") and SmartTouch LLC, a California company of 46 Shattuck Square, Suite 14, Berkeley, CA 94704 (hereinafter "SmartTouch").

RECITALS:

WHEREAS, Omnilock has certain rights and interest in and to Ned Hoffman's Tokenless Biometric Computer System invention (hereinafter "Invention"), and has the right to grant non-exclusive sublicenses; and

WHEREAS, SmartTouch desires to obtain a non-exclusive, non-assignable, conditional sublicense pertaining to Invention; and

WHEREAS, Omnilock is willing to conditionally grant such a non-exclusive sublicense in pursuant to the terms and conditions set forth hereinbelow; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, and undertakings contained herein, and for other good and valuable consideration the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. DEFINITIONS. As used herein, the terms set forth below shall have the following meanings:

   1.1. "Parties" means Omnilock Inc., a California corporation of 46 Shattuck Square, Suite 14, Berkeley, CA 94704 (hereinafter "Omnilock" or "MasterLicensee"), and SmartTouch LLC, a California limited liability company of 46 Shattuck Square, Suite 14, Berkeley, CA 94704 (hereinafter "SmartTouch" or "SubLicensee").

   1.2. "Agreement" means this contract between the Parties, which is a non-exclusive, non-assignable, conditional sublicense.

   1.3. "Effective Date" means May 8, 1995, the date on which this Agreement is executed by both parties.

   1.4. "Inventor" means Ned Hoffman (hereinafter "Inventor", "Ned Hoffman" or "NH")

      1.4.1. "Inventor Employment Agreement" or "NH Employment Agreement" means Ned Hoffman's executed employment agreement with Omnilock, which is attached hereto as Addendum I.

   1.5. "Consultant(s)" means David F. Pare, Jr. (hereinafter "Consultant" or "DP"), Philip D. Lapsley (hereinafter "Consultant" or "PL"), Raymond Cranfill ("Consultant" or "RC"), Ali Kamarei ("Consultant" or "AK"), and/or Jonathan Lee (hereinafter "Consultant" or "JL")

      1.5.1. "Consultant Agreement(s)" means and includes all executed agreements between each Consultant and Ned Hoffman, and/or between each Consultant and Omnilock, which are attached hereto as Addendum II.

   1.6. "Invention" means Ned Hoffman's tokenless system using biometrics to authorize access to computers for purpose of conducting electronic communications, including transmissions and financial transactions, including but not limited to all embodiments described in the Addenda hereinbelow and attached hereto:

      1.6.1. Addendum III attached hereto, dated 9/22/94 and entitled "Print Money: A new, patentable technology for consumer financial transactions", and;

      1.6.2. Addendum IV attached hereto, dated 11/28/94 and entitled "Consultant Confidentiality Agreement" incorporating "Exhibit A" attached hereto, and;

1.6.3. Addendum V attached hereto, dated 5/08/95 and entitled "Tokenless identification system for authorization of electronic transactions and electronic transmissions", and;

1.6.4. All work product by Ned Hoffman pursuant to NH Employment Agreement and all work product by Consultants pursuant to Consultant Agreements, pertaining to and/or based upon Ned Hoffman's tokenless system using biometrics to authorize access to computers for purpose of conducting electronic communications, including transmissions and financial transactions (known collectively herein as "Work Product"). Said Work Product includes, but is not limited to, any and all of the following, encompassing both the United States for domestic filings, and international counterparts for foreign filings: issued patents, pending patent applications, continuations, continuations-in-part, reissues, foreign counterparts, copyrights, trade secrets, know-how, trademarks, utility models, prototypes, CAD designs, engineering specifications, computer software, and computer hardware.

1.7. "Contract Year" means each 12 (twelve) month period commencing on the Effective Date of this Agreement.

1.8. "Quarterly Reports" means the schedule of performance reports and payments due to Omnilock from SmartTouch, in order for SmartTouch to satisfy the "Performance Guarantees" as defined in Section 4 hereinbelow. Such Quarterly Reports shall be promptly provided to Omnilock on the first day of July, October, January and April of each Contract Year.

2. GRANTS.

2.1. Subject to all of the terms and conditions of this Agreement, Omnilock hereby grants to SmartTouch:

2.1.1. A non-exclusive, non-transferable, conditional sublicense to the Invention, to make, use and sell the Invention throughout the United States and the world, and;

2.1.2. The permission to utilize the services of Consultants and to have Ned Hoffman and/or Consultants conditionally assign patents to SmartTouch (herein "Permission"), with the restriction that any termination of this Agreement pursuant to Section 6 hereinbelow shall result in the immediate termination of both said Permission and of any/all said conditional assignments, whereby any/all such conditional assignments are automatically and immediately rescinded.

3. REPRESENTATIONS AND WARRANTS OF OMNILOCK AND SMARTTOUCH.

3.1. Omnilock, as the MasterLicensee, represents and warrants that:

3.1.1. Pursuant to the Inventor-Omnilock License Agreement dated May 8, 1995 and attached hereto as Addendum VI, the Inventor has granted to Omnilock an exclusive, non-transferable license to the Invention, to have made, use and sell the Invention throughout the United States and the world, and;

3.1.2. Pursuant to the Inventor's express consent to Omnilock, attached hereto as Addendum VII, Omnilock has the right to grant to SmartTouch a non-exclusive, non-transferable, conditional sublicense.

3.2. SmartTouch, as the SubLicensee, understands and agrees that the Invention has uniquely valuable commercial potential, and hereby represents and warrants that SmartTouch will dedicate Best Efforts to diligently perform all of its duties pursuant to this Agreement, including to:

3.2.1. Make, use and sell the Invention on behalf of Omnilock, and;

3.2.2. Meet and exceed the Performance Guarantees as defined in Section 4 hereinbelow.

4. PERFORMANCE GUARANTEES.

4.1. SmartTouch will dedicate Best Efforts to achieve the following performance guarantees ("Performance Guarantees"):

4.1.1. Within 6 (six) Contract Years from the Effective Date, to generate at least $20 Million (twenty million dollars) in annual sales from the Invention, and;

4.1.2. Within 6 (six) Contract Years from the Effective Date, to pay Omnilock an aggregate total of at least $20 Million (twenty million dollars) in cash resulting from SmartTouch's commercialization of the Invention.

4.2. For the purpose of verifying the overall quality and function of the Invention, it is agreed that SmartTouch will promptly provide Omnilock with all Quarterly Reports, including: an itemized statement detailing SmartTouch's total revenues, margins and costs relating to the Invention, and; a comprehensive description of SmartTouch's sales and marketing results from the preceding quarter and SmartTouch's projected sales and marketing objectives for the upcoming quarter; a detailed description of all other important activities and accountings related to Invention, along with samples of engineering specifications, public relations, sales and marketing materials which SmartTouch has been using with respect to the Invention, and; the right to preview and the right to approve those products and materials which feature the Invention, including but not limited to prototypes, packaging, advertising, marketing materials and the like, whereby approval of such materials by Omnilock shall not be unreasonably withheld.

5. INFRINGEMENT BY THIRD PARTIES. It is understood and agreed by both Parties that Omnilock is responsible for a diversified portfolio of patented technologies, covering a broad range of markets from sports and fitness to apparel to housewares to computers to automotive accessories. It is the practice of Omni therefore to require that its licensees and/or sublicensees be the primary responsible parties for enforcing infringement. Therefore, it is agreed that:

5.1. If either Party discovers that any patents or patent applications related to the Invention are being or may be infringed, it shall communicate the details of such suspected or potential infringement to the other party. SmartTouch shall thereupon have the right, and first obligation, to take whatever action it deems necessary, including the filing of lawsuits, to protect the rights of the Parties and to terminate any suspected or potential infringement. Omnilock shall fully cooperate, with SmartTouch if SmartTouch takes any such action. All expenses related thereto incurred by the Parties shall be borne by SmartTouch. If SmartTouch recovers any damages or compensation for any action it takes hereunder, SmartTouch shall retain 100% (one hundred percent) of such monies. In the event SmartTouch fails to bring an action at SmartTouch's expense for infringement under any patent or trademark related to the Invention, Omnilock may in its sole discretion, upon ten (10) days written notice to SmartTouch, terminate this Agreement, with SmartTouch thereby being granted six (6) months in which to liquidate any existing inventory.

5.2. SmartTouch hereby agrees not to either: challenge the validity of the Invention ("Invention Validity"), nor; challenge the validity of Omnilock's rights as MasterLicensee to the Invention ("MasterLicensee Validity") pursuant to the Employment Agreement. Further, SmartTouch hereby agrees not to either: participate in any third party attempt to challenge to the Invention Validity, nor; participate in any third party attempt to challenge to the MasterLicensee Validity.

6. TERM AND TERMINATION.

6.1. Unless terminated earlier pursuant to the terms of this Section 6, this Agreement shall automatically terminate upon the expiration of all of the patents pertaining to any and all Work Product related to and/or derived from the Consultants, the Consulting Agreements, and the Invention and/or the Work Product.

6.2. Termination of this Agreement for any reason shall not relieve either Party of any of its obligations to the other Party accrued according to the terms of this Agreement prior to termination.

6.3. Unintentional Breaches. In addition to other rights of termination provided in this Section 6, if either Party breaches this Agreement (hereinafter "Breaching Party") by unintentionally failing to comply with any provision of this Agreement, then upon the discovery of said breach by the other Party, said other Party shall have the right, but not the obligation, to give notice of such breach to the Breaching Party within ten (10) days of the other Party having discovered the occurrence of such breach. In such instance, the Breaching Party shall then have ten (10) calendar days in which to cure such breach. The determination as to whether the breach has been satisfactorily cured shall be within the sole discretion of the other Party, with said determination to be made in good faith. At the expiration of such ten (10) calendar day period, should the other Party determine that the Breaching Party has not or will not cure the breach to the satisfaction of the other Party, the other Party has the right, in its sole discretion, to terminate this Agreement immediately upon providing written notice of such to the other Party.

6.4. Intentional Breaches, Bad Faith, Fraud. In addition to other rights of termination provided in this Section 6, if either Party breaches this Agreement (hereinafter "Breaching Party") by intentionally failing to comply with any provision of this Agreement, then upon the discovery of said breach by the other Party, said other Party shall have the sole right to determine whether the Breaching Party cannot or will not cure the breach to the satisfaction of the other Party. In the event the other Party determines, in its sole discretion, that the Breaching Party has intentionally breached this Agreement, or that the Breaching Party has acted in Bad Faith, or that the Breaching Party has either committed fraud or been complicit in the committing of fraud, the other Party has the right, in its sole discretion, to terminate this Agreement.

6.4.1. Irreparable Harm. Due to the fact that both Parties understand and agree that the Invention has uniquely valuable commercial potential, the Parties hereby agree that breach of this Agreement pursuant to Section 6.3. hereinabove by either party will cause irreparable damage to the other Party. Therefore, each Party agrees that the other Party shall be entitled to injunctive relief in any court of competent jurisdiction for any breach under Section 6.2. hereinabove, in addition to all other remedies and damages said other Party may be due.

6.4.2. Termination of this Agreement for reasons other than a breach pursuant to Section 6.2. and 6.3. hereinabove, shall not prevent SmartTouch from completing, selling and/or delivering any Invention in inventory, in the process of manufacture or on order on the termination date for a period of six (6) months.

6.5. Guarantee; Rights of Reversion/Rescission. All SmartTouch obligations to Omnilock as provided under this Agreement, including all Performance Guarantees, obligations, promises and payments due by SmartTouch to Omnilock pursuant to the terms of this Agreement, shall be guaranteed and secured, by any and all Work Product related to and/or derived from the Consultants, the Consulting Agreements, and the Invention, including, but not be limited to, all of the following: patents; trademarks; copyrights; conditional assignments; computer software and/or computer hardware pertaining to the Invention. Therefore, pursuant to any section or sub-section of Section 6 hereinabove, all Work Product shall revert immediately, unconditionally and completely to Omnilock in the event of a material breach by SmartTouch of any term or provision in this Agreement, including but not limited to SmartTouch's bankruptcy and/or any SmartTouch financial failure and/or insolvency. In such event, all conditional assignments pursuant Section 2.1.2. hereinabove are automatically and immediately rescinded, and SmartTouch hereby automatically and irrevocably designates and appoints Omnilock and its duly authorized officers and agents as its agent and attorney in fact, to act for and in behalf of SmartTouch, to execute and file with the Patent and Trademark Office any re-recording of any/all such assignments, and to do all other lawfully permitted acts to further the application for, prosecution, issuance, maintenance or transfer of letters patent or copyright registrations thereon with the same legal force and effect as if originally executed by SmartTouch.

7. GENERAL PROVISIONS.

7.1. Indemnifications.

7.1.1. Omnilock hereby indemnifies and agrees to hold SmartTouch harmless from, against and in respect of and shall on demand reimburse SmartTouch for any and all loss, liability or damages incurred or suffered by SmartTouch arising from, or in connection with, any and all actions, settlements, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including, without limitation, legal fees and expenses, relating in any way to any untrue representation set forth by Omnilock in this Agreement, and;

7.1.2. SmartTouch hereby indemnifies and agrees to hold Omnilock harmless from, against and in respect of and shall on demand reimburse Omnilock for any and all loss, liability or damages incurred or suffered by Omnilock arising from, or in connection with, any and all actions, settlements, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including, without limitation, legal fees and expenses, relating in any way to a breach under this Agreement by SmartTouch, and relating in any way to any untrue representation set forth by SmartTouch pursuant to SmartTouch's fundraising, advertising, manufacture, distribution, or sale of Invention under this Agreement.

7.1.3. The indemnity set forth in this Section 11 shall survive the termination of this Agreement.

7.2. Waiver. The waiver by either Party of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach thereof.

7.3. Entire Agreement. This Agreement constitutes the entire understanding between the Parties and shall supersede all previous communications, negotiations, proposals, representations, conditions, warranties or agreements, either oral or written, between the Parties hereto with respect to the subject matter hereof. This Agreement may not be modified unless in writing and signed by both of the Parties.

7.4. Non-Assignability, Non-Transferability by SubLicensee. Neither this Agreement nor any of the rights, provisions and/or obligations hereunder may be assigned or transferred by the SubLicensee, SmartTouch, without the prior written consent of the MasterLicensee, Omnilock.

7.5. Notices. Any notice or accounting report required to be given hereunder shall be in writing and shall be deemed effective and sufficiently given to the parties listed below upon any of the following: immediately upon hand-delivery, or; immediately upon electronic facsimile, or; upon 1 (one) business day after being sent via Federal Express, or; upon 3 (three) business days after being sent via certified U.S. mail, or; upon 5 (five) business days after being sent via standard first-class U.S. mail:

For Omnilock:
Omnilock Incorporated
46 Shattuck Square, Suite 14
Berkeley, California 94704

With copies to Omnilock legal representative:

Thomas A. Maier, Esq.
Pezzola & Reinke
1999 Harrison Street
Oakland, CA 94612

For SmartTouch:
SmartTouch LLC
46 Shattuck Square, Suite 14
Berkeley, California 94704

With copies to SmartTouch legal representative:

Ali Kamarei, Esq.
280 Colorado Ave
Palo Alto, CA 94301

or to such other address of which one Party may give at least 3 (three) business days written notice to the other Party.

7.6. Governing Law. This Agreement and the legal relations covered herein, shall be interpreted, construed and determined in accordance with the laws of the state of California and the parties hereby consent to the jurisdiction of all courts in California having proper subject matter jurisdiction.

7.7. Captions. Captions are inserted for convenience of reference only and shall not be considered as being of any significance whatsoever in the construction and interpretation of this Agreement.

7.8. Confidentiality. The Parties agree to keep in confidence, not disclose, and not use (except to employees or agents on a need-to-know basis as contemplated by this Agreement) all confidential date of the other that each receives under this Agreement. These obligations do not apply to any Confidential Information that: (a) is now or becomes generally available to the public without violation of these obligations; (b) is already known or is independently developed by the receiving party; or (c) becomes available to the receiving Party who did not receive such information directly or indirectly in confidence from the disclosing Party.

7.9. Preparation of the Agreement. Legal representatives for each of the Parties, as respectively specified under Notices, Section 7.5. hereinabove, have participated in the negotiating and preparing of this Agreement. Therefore, this Agreement shall not be construed against either Party on the grounds of that Party's participation in preparing this Agreement.

7.10. Interpretation. In the event of conflict between provisions herein or ambiguity, specific terms shall prevail over general terms in the interpretation of this Agreement. In the event of any conflict between the terms of this Agreement and the terms of any Purchase Order, Letter of Credit, or other document delivered pursuant to this Agreement, the terms of this Agreement shall control.

7.11. Severability. If any term, clause, or provision of this Agreement shall be judged to be invalid or unenforceable, the validity or unenforceability of any other term, clause or provision shall not be affected; and such invalid or unenforceable term, clause or provision shall be deemed deleted from this contract.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in Berkeley, California, ON THIS DAY, May 8, 1995:

For Omnilock Incorporated:

By: _____
Ned Hoffman, President

Date: 5/08/95

For SmartTouch LLC:

By: _____
Ned Hoffman, Manager

Date: 5/08/95

Witnessed By: _____
Ali Kamarei, Esq.

Date: 5-8-1995

Excel Innovations, Inc.
SOLUTIONS FOR SMARTER LIVING
708 Gravenstein Highway North, Suite 111
Sebastopol, CA 95472

– VIA HAND DELIVERY AND U.S. MAIL –

To: Bob Goldberg, CEO
Indivos Corporation
635 Harrison Street
San Francisco, CA 94107
From: Ned Hoffman
President, Excel Innovations, Inc.
Date: November 8, 2002

This letter is confirming that pursuant to Larry Ginsburg's email notification of today that Indivos Corporation ("Indivos") will be filing for bankruptcy by November 15, 2002, Excel Innovations, Inc. ("Excel") hereby terminates the May 16, 1995 license agreement ("IP Patent License") between Omnilock Inc., now known as Excel, and SmartTouch LLC, now known as Indivos.

Indivos is now in material breach of Section 6.5 contained in the IP Patent License due to Indivos' bankruptcy, financial failure and/or insolvency.

In addition, Indivos is also in material breach of the following sections in the IP Patent License: Section 3.2.2, due to Indivos' failure to meet and exceed the Performance Guarantees, including failure to make the required royalty payment of $20 Million to Excel, and; Section 4.1, due to Indivos' failure to dedicate Best Efforts to achieve the Performance Guarantees.

Excel shall be protecting its rights and pursuing its entitled remedies under the IP Patent License, including: Rescission of patents pursuant to Section 6.5, Section, and; Collection of monies owed by Indivos pursuant to Section 4.1.

Sincerely,

Ned Hoffman, President
Excel Innovations, Inc.

Cc John Mejia, Esq.
Robert L. Anderson, Esq.

EMPLOYMENT AGREEMENT

Omnilock, Incorporated ("Omni") and Sports-Mitt International ("SMI"), California corporations (hereinafter collectively referred to as "Employer(s)"), located at 46 Shattuck Square, #14, Berkeley, California, 94704, and Ned Hoffman (hereinafter referred to as Employee), of 2529A College Avenue, Berkeley,, California, 94704 in consideration of the mutual promises made herein, and in further consideration of the recitals hereinafter set forth and which are an integral part of this Agreement, the Parties agree as follows:

Recitals: Whereas Employee is one of the Founders of the Corporate Employers above set forth, and in that regard has been employed by them regularly and consistently since the inception of their business activity as their President, CEO and Senior Inventor,

and Whereas, Employee has devoted his full time and attention to the Employer's businesses and has worked for several years without adequate or consistent compensation,

and Whereas, Employee has been the primary cause for the Employer's continuance and success to date because of his energy in managing the business and in creating and bringing new inventions and technologies to the business,

and Whereas the Board of Directors of each of the Corporate Employers hereby recognizes that Employee's services have been and are of a special, unique, unusual, extraordinary, and intellectual character that gives Employee a singular value and the Boards desire to properly and adequately secure Employee's continued employment and efforts and to assure that he be properly and reasonably compensated in the future,

Now Therefore the Parties agree to the following terms as an Employment Agreement to bind them in the manner and for the term herein set forth, whereby all previous oral or written understandings or agreements between Employer and Employee shall be null and void.

ARTICLE 1. TERM OF EMPLOYMENT

Specific Period

Section 1.01. Subject to Section 6 of this Agreement (Sections 6.01, 6.03 and 6.05), the employment of the Employee by the Company pursuant to this Agreement shall commence on the date hereof, and continue, unless otherwise terminated as herein provided, for a period of seven years. This Agreement shall be automatically renewed for succeeding terms of seven years each.

"Employment Term" Defined

Section 1.02. As used herein, the phrase "employment" term refers to the entire period of employment of Employee by Employer hereunder, whether for the periods provided above, or whether terminated earlier as provided for herein.

ARTICLE 2. DUTIES AND OBLIGATIONS OF EMPLOYEE

General Duties

Section 2.01. Employee shall serve as the President, CEO and Senior Inventor of Employer. In these capacities Employee shall oversee and review the management of all services, acts, or things necessary to the business of Employer, subject to the guidelines set by the Employer's Board of Directors, and to the consent of the Board when required by the terms of this Agreement. Employee's duties hereunder will include reasonable consultation with the Chairman of the Board of Directors and the Board of Directors of Employer on matters concerning management of Employer's affairs, financial matters and the general conduct of the business and affairs of the Employer. Employee shall serve as a member of the Board of Directors.

Devotion to Employer's Business

Section 2.02.

(a) Employee shall in good faith devote such of his attention, energies and abilities to the proper management and conduct of Employer's business as is necessary to discharge his duties for the benefit of Employer. Employer's business (herein "Employer's Business") shall be defined as licensing or otherwise commercializing creations which lend themselves to protection by patents, trademarks, or copyrighted service industry business plans.

(b) Employee shall not engage in any business duties or business pursuits competing with Employer's Business without the prior consent of Employer's Board of Directors, unless such a duty or pursuit involves commercializing an Employee Work Product (as defined in Sect. 2.03 (a) hereinbelow) after Employer's first option rights on that product have expired. However, the expenditure of reasonable amounts of time for educational, charitable, or professional activities shall not be deemed a breach of this Agreement if those activities do not materially interfere with the services required under this Agreement and shall not require the prior consent of Employer's Board of Directors.

(c) This Agreement shall not be interpreted to prohibit Employee from making passive personal investments or conducting private business affairs if those activities do not materially interfere with the services required under this Agreement. However, Employee shall not directly or indirectly acquire, hold, or retain any interest in any business directly competing with Employer's Business, unless such a business acquires the rights to an Employee Work Product (as defined in Sect. 2.03 (a) hereinbelow) after Employer's first option rights on that product have expired.

(d) Employee hereby represents and agrees that the services to be performed under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual character that gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action at law. Employee therefore expressly agrees that Employer, in addition to any other rights or remedies that Employer may possess, shall be entitled to injunctive and other equitable relief to remedy a material breach of this contract by Employee.

Employee Work Product

Section 2.03.

(a) Employee promises and agrees that he will promptly and fully inform Employer of and disclose to Employer all Employee work product ("Work Product"), defined as Employee's creations which lend themselves to protection by patents, trademarks, or copyrighted service industry business plans. Such an understanding applies to all Work Product from the founding of the Employer through the execution date of this Agreement.

(b) Employee shall make full disclosure to Employer promptly after creating any Work Product, and shall thereafter keep Employer fully informed of all progress in connection therewith.

(c) Employer shall have the right of first option on all Employee Work Product. Employer shall lose its first option on any Employee Work Product at the conclusion of either: (i) Twelve (12) months from the date of Employee's creation of such Work Product in the event that the Work Product has not been protected by a pending patent, a pending trademark, or has not been the subject of a completed, copyrighted service industry business plan, as applicable, including having been perfected to the point that such patent, trademark, or copyright applications (herein defined as "Application(s)") can be filed in good faith; (ii) Twenty-Four (24) months from the date of Employee's creation of such Work Product in the event that the Work Product has not been the subject of an executed licensing agreement with a bona fide third party. In the event that Employer's first option expires with regard to any Employee Work Product, such Work Product shall be come the sole and exclusive property of Employee. If the Employer's first option rights have not expired on an Employee Work Product, the same shall belong to and be the sole and exclusive property of Employer.

Trade Secrets

Section 2.04.

(a) The parties acknowledge and agree that during the term of this Agreement and in the course of the discharge of his duties hereunder, Employee has had and shall continue to have access to and become acquainted with information concerning the operation and processes of Employer, including without limitation, financial, personnel, sales, staff training, and other information that is owned by Employer and regularly used in the operation of Employer's business, and that such information constitutes Employer's trade secrets. Further, Employer hereby agrees to treat Employee Work Products as strictly confidential and shall not misuse or improperly disclose Employee Work Products to any third party.

(b) Employee specifically agrees that he shall not misuse or misappropriate any such trade secrets, directly or indirectly, to any other person or use them in any way, either during the term of this Agreement or at any other time thereafter.

(c) Employee acknowledges and agrees that the unauthorized sale, unauthorized use or unauthorized disclosure of any of Employer's trade secrets obtained by Employee during the course of his employment under this Agreement, including information concerning Employer's

current or any future and proposed work, services, or products, the facts that any such work, services, or products are planned, under consideration, or in production, as well as any descriptions thereof, constitute unfair competition. Employee promises and agrees not to engage in any unfair competition with Employer, either during the term of this Agreement or at any other time thereafter.

(d) Employee further agrees that all files, records, documents, drawings, specifications, equipment, and similar items relating to Employer's Business, whether prepared by Employee or others, are and shall remain exclusively the property of Employer, and that they shall be removed from the premises of Employer only in the normal course of performance of duties hereunder or with the express prior consent of Employer's Board of Directors. However, all files, records, documents, drawings, specifications, equipment, and similar items relating to any Employee Work Product on which Employer's first option rights have expired as per Section 2.03 (c), shall become the sole and exclusive property of Employee.

Use of Employee's Name

Section 2.05.

(a) Employer's name is connected with Employee's name, and has great value within its industry. Employer shall have the right to continue to use the name of Employee as part of the trade name or trademark of Employer on which Employer's first option rights have not expired as per Section 2.03 (b), if it should be deemed advisable to do so. Any trade name or trademark, of which the name of Employee is a part and relating to which Employer's first option rights have not expired, that is adopted by Employer during the employment of Employee may be used thereafter by Employer for as long as Employer deems advisable.

(b) Employee shall not, either during the term of this Agreement or at any time thereafter, use or permit the use of his name in the trade name or trademark of any other enterprise that is engaged in a business directly competitive to Employer's Business, unless that trade name or trademark clearly indicates that the other enterprise is a separate entity entirely distinct from and not to be confused with Employer and unless that trade name or trademark excludes any words or symbols stating or suggesting prior or current affiliation or connection by that other enterprise or its employees with Employer.

ARTICLE 3. OBLIGATIONS OF EMPLOYER

General Description

Section 3.01. Employer shall provide Employee with the compensation, incentives, benefits, and business expense reimbursement specified elsewhere in this Agreement.

Office, Staff, and Funding

Section 3.02. Employer shall in good faith provide Employee with a private office, stenographic help, office equipment, supplies, and all other facilities and services suitable to Employee's position and adequate for the performance of his duties, including providing all funds

needed for the adequate and timely protection and commercialization of all Employee Work Products on which Employer exercises its first option rights.

Indemnification of Losses of Employee

Section 3.03. Employer shall indemnify Employee for all losses sustained by Employee in direct consequence of the discharge of his duties on Employer's behalf.

Guarantee

Section 3.04. All Employer obligations to Employee as provided under this Agreement, including all Compensation, Bonuses or Royalty payments to Employee and Expense Reimbursements to Employee, shall be guaranteed and secured by all Employer's intellectual property, which shall revert immediately and unconditionally to Employee in the event of a material breach by Employer of any term or provision in this Agreement, Employer's bankruptcy or other financial failure. Said security interest shall be evidenced by a UCC filing with the California Secretary of State.

ARTICLE 4. COMPENSATION OF EMPLOYEE

Annual Salary

Section 4.01. For years one, two and three (1994, 1995 & 1996) of this Agreement, Employee shall receive a base salary of sixty-thousand dollars US ($60,000) per year, for years four, five and six (1997, 1998 and 1999) the salary shall be the sum of eighty-thousand dollars US ($80,000) per year; and for the years thereafter commencing with the year 2000, Employee shall receive a base salary of one-hundred thousand dollars US ($100,000) per year. This latter base salary of one-hundred thousand dollars US ($100,000) shall be increased annually by the greater of ten percent (10%) or that year's increase in the San Francisco-Oakland Urban Consumer Price Index up to a maximum base salary of five-hundred thousand dollars US ($500,000).

Section 4.02. All base salary amounts and all compensation benefits may be accrued by Employer prior to Employer having accumulated retained earnings of one hundred thousand dollars US ($100,000). In such event, Employee shall be entitled to the same in cash or in stock or other bonuses as the parties agree. Once Employer has accumulated retained earnings of one-hundred thousand dollars US ($100,000), Employer must pay all salaries currently and all or a substantial portion of accrued compensation, but such payment will not cause retained earnings to fall below one-hundred thousand dollars US ($100,000).

Section 4.03. Such base salary shall be payable in semi-monthly installments on the first and fifteenth day of each month, subject to all necessary and usual withholding and social security, unemployment and other taxes or usual deductions.

Bonuses

Section 4.04. There will be an immediate "Signing Bonus" for Employee of stock in SMI at the book value of a date to be agreed upon by the Board of Directors which will bring Employee to fifty-one percent (51%) ownership of SMI and and which will bring Employee to

sixty-six percent (66%) ownership of Omni and a cash bonus to fully allow for Employee's resulting taxes. When the two Employer companies merge, as is anticipated, Employee shall be entitled to a stock bonus of one and seven tenths percent (1.7%) of the merged Employer companies in each of the coming three years. The merger formula for the Employer shall be as indicated in the attached Exhibit A, wherein the current holdings of the Employee in each of the Employer companies is also indicated and agreed to. In the event that Employee's thirteen thousand one hundred twenty-three (13,123) shares pledged shares being held in escrow by Northern Trust as collateral for the Dan Van Voorhis credit line are kept by Dan Van Voorhis because the Employer defaults on the credit line prior to or on January 27, 1995, six-thousand five hundred and sixty one (6,561) new shares in SMI shall be promptly issued to Employee and Employer will provide cash bonus to fully allow for Employee's resulting taxes.

Section 4.05. As Senior Inventor for Employer, Employee shall be entitled to a total of ten percent (10%) of all the gross income received from any Work Product licensed or otherwise commercialized by Employer which he has created or on which he is credited with inventorship, to include all Work Product retroactive to the founding of Employer. Payments shall commence with funds received for such Work Products after January 1, 1994 and therefore he accounting for which shall commence on January 1, 1994 (herein "Senior Inventor Bonus(es)"). Employee shall be entitled to Senior Inventor Bonus on any such Work Product on the following basis:

3.4% up to completion of an Application on the Work Product.
3.3% from the date when Application is pending on the Work Product.
3.3% upon execution of a license or other agreement commercializing the Work Product.

Said ten percent (10%) Senior Inventor Bonus shall be due to Employee provided that the total gross income deductions from Employer to third parties on the Work Product in question, including Employee, does not exceed twenty-five percent (25%). In this case, all third party gross income deductions from Employer shall be deducted from the twenty-five percent (25%) figure, and the difference shall be the percentage Employee shall receive of Employer's gross income as his Senior Inventor Bonus on the Work Product. All such Senior Inventor Bonuses shall continue undiminished in perpetuity, regardless of termination of Employee.

Section 4.06. As CEO and President of Employer, Employee may be entitled to an "Annual Cash Bonus" in each year. Such bonuses shall be mutually agreed upon by Employee and the Board at the end of that year and shall be based on a good faith joint review by Employee and Employer's Board of Employer's earnings and progress during that year.

Section 4.07. All Bonuses due Employee and not paid on current basis shall be considered accrued by Employer and payable to Employee in cash or in stock or other bonuses as the parties agree. However, Employer must pay all bonuses currently and all or a substantial portion of accrued bonuses once it has accumulated retained earnings of two-hundred and fifty thousand dollars US ($250,000).

Tax Withholding

Section 4.08. Employer shall have the right to deduct or withhold from the compensation due to Employee hereunder any and all sums required for federal income and Social Security taxes

and all state or local taxes now applicable or that may be enacted and become applicable in the future.

Repayment of Disallowed Salary

Section 4.09. In the event that any portion of the compensation paid by Employer to Employee is disallowed as an income tax deduction on an income tax return of Employer, Employee agrees to immediately repay to Employer the full amount of that portion.

Benefits

Section 4.10. Employee shall be entitled to four (4) weeks paid vacation time each year without loss of compensation, and Employee shall inform the Board when he has chosen to take more than two weeks of consecutive vacation. In the event that Employee is unable or unwilling for any reason to take the total amount of vacation time authorized herein during any year, he may accrue that time and add it to vacation time for any following year, at Employee's election, except that no vacation may be deferred for more than two (2) years.

Section 4.11. Employer shall immediately provide Employee with the following:

(a) Full payment of all Social Security and State Disability Income withholdings required of Employer;

(b) Leave of absence of up to two (2) months with full pay, and up to an additional two (2) months without pay, to be taken by Employee any time in 1994 or 1995;

Section 4.12. Employer shall also provide the following benefits to Employee once Employer has retained earnings of two-hundred and fifty thousand dollars US ($250,000):

(a) Employer agrees to obtain a life insurance policy on the life of the Employee in the face amount of fifty thousand dollars US ($50,000). Employer further agrees to make that insurance policy payable to the beneficiary or beneficiaries designated by Employee. Employer agrees to pay all premiums on the policy during the term of employment provided herein. Employee agrees to submit to a physical examination as requested by Employer for the purpose of Employer's obtaining life insurance on the life of Employee for the benefit of Employer, however such exams shall not be conducted more often than one every two years; provided, however, that Employer shall bear the entire cost of that examination.

(b) Employer agrees to include Employee in the coverage of such medical, major medical, hospital, dental, and eye care insurance as Employer maintains throughout the term hereof on all of its employees. Employer further agrees to reimburse Employee for all medical and dental expenses incurred by Employee, his spouse, and those of his children who qualify as his dependents under Section 152 of the Internal Revenue Code of 1986; provided, however, that those reimbursements shall be limited to the expense, or portions thereof, not covered by insurance.

(c) Disability insurance which is mutually agreed upon by Employer and Employee.

(d) Employee agrees to allow Employer to obtain "key man" insurance on him in such amounts and at such time as the Employer decides.

Section 4.13. Employee shall be entitled to ten (10) days per year as sick leave or personal days with full pay. Sick leave or personal days may be accumulated up to a maximum of thirty (30) days total.

Section 4.14. Employee shall be entitled to all Federal and religious holidays each year with full pay.

ARTICLE 5. BUSINESS EXPENSE

Use of Credit Card

Section 5.01.

(a) It is understood and agreed by the parties that the services required by Employer will require Employee to incur travel and entertainment expenses on behalf of Employer. All business expenses reasonably incurred by Employee in promoting the business of Employer, including expenditures for entertainment, gifts, and travel, are to be paid for, insofar as possible, by the use of credit cards in the name of Employer which will be furnished to Employee. Employer hereby agrees to and shall make available to Employee for this purpose all sums necessary to reimburse Employee for all such ordinary, reasonable and necessary business related expenses, payable in such amounts and at such times as Employee shall request. All such expenses must be business related.

(b) Employee shall, however, furnish to Employer adequate records and other documentary evidence required by federal and state statutes and regulations for the substantiation of each such expenditure as an income tax deduction.

Reimbursement of Other Expenses

Section 5.02.

(a) Employer shall promptly reimburse Employee for all other reasonable business expenses incurred by Employee in conjunction with the business of Employer.

(b) Each such expenditure shall be reimbursable only if Employee furnishes to Employer adequate records and other documentary evidence for the substantiation of each such expenditure.

ARTICLE 6. TERMINATION OF EMPLOYMENT

Termination for Cause

Section 6.01.

(a) The Employee's employment hereunder may be terminated by the Employer for cause, effective immediately on the day it sends notice of such termination to the Employee. "Cause" for this purpose shall be defined as: (i) continual and repeated insobriety (after Employer has given Employee at least two notices in writing of such activity); (ii) conviction of a felony or conviction of three misdemeanors involving moral turpitude (an act or behavior that gravely violates moral sentiment or accepted moral standards of community and is of a morally culpable quality, such definition to exclude convictions for disturbance of the peace and to exclude convictions for driving infractions); (iii) conviction of illegal business practices in connection with the Employer's business or embezzlement of Employer company funds; (iv) extended disability or sickness (as per Section 6.02 herein); (v) or any material breach by the Employee of any term or provision of this Agreement. On such termination for cause, the Employee shall be entitled to all Senior Inventor Bonuses in perpetuity, retention of all Employee stock ownership, and a lump sum payment of: (i) all salary accrued by Employer and due to Employee through the date of such termination; (ii) all Annual Cash Bonuses, all Stock Bonuses, and all Senior Inventor Bonuses due Employee through the date of such termination (the latter payable within thirty days of termination).

(b) The notice of termination required by this section shall specify the ground for the termination and shall be supported by a statement of all relevant facts.

(c) Termination under this section shall be considered "for cause" for the purposes of this Agreement.

Salary Continuation During Disability

Section 6.02. If Employee for any reason whatsoever becomes permanently disabled so that he is unable to perform the duties prescribed herein, Employer agrees to immediately pay Employee eighty percent (80%) of Employee's annual salary, payable in the same manner as provided for the payment of salary herein, for a period of three (3) months, followed by sixty percent (60%) of his annual salary for a period of three (3) months; and followed by forty percent (40%) of his annual salary for a period of three (3) months. If the Employee is still disabled after nine months, his salary shall terminate. Upon the termination of Employee's salary, Employee shall continue to be entitled to the Senior Inventor Bonuses in perpetuity, retention of all Employee stock ownership; the proceeds of the disability insurance arranged by the Employer, and a lump sum payment of: (i) all salary accrued by Employer and due to Employee through the date of such termination; (ii) all Annual Cash Bonuses, all Stock Bonuses, and all Senior Inventor Bonuses due Employee through the date of such termination. Employer may provide disability insurance for Employee if it chooses in order to provide the coverage herein set forth. If said coverage is less than set forth, Employer will pay Employee the difference. If the coverage exceeds the provisions set forth Employee will refund the same to Employer.

Termination Without Cause

Section 6.03.

(a) This Agreement shall be terminated upon the death of Employee, whereupon Employee's estate shall be entitled to the proceeds of life insurance acquired by the company (and as the same comes due), Senior Inventor Bonuses in perpetuity, retention of all Employee stock ownership, and a lump sum payment of: (i) all salary accrued by Employer and due to Employee through the date of such death; (ii) all Annual Cash Bonuses, all Stock Bonuses, and all Senior Inventor Bonuses due Employee through the date of such death.

(b) Termination under this section shall not be considered "for cause" for the purposes of this Agreement.

Effect of Merger, Transfer of Assets, or Dissolution

Section 6.04.

(a) This Agreement shall not be terminated by any voluntary or involuntary dissolution of Employer resulting from either a merger or consolidation in which Employer is not the consolidated or surviving corporation, or a transfer of all or substantially all of the assets of Employer.

(b) In the event of any such merger or consolidation or transfer of assets, Employer's rights, benefits, and obligations hereunder shall be assigned to the surviving or resulting corporation or the transferee of Employer's assets.

Termination by Employee

Section 6.05. Employee may terminate his obligations under this Agreement by giving Employer at least sixty (60) days notice in advance. In this event, Employee shall continue to be entitled to the Senior Inventor Bonuses in perpetuity, retention of all Employee stock ownership, and a lump sum payment of: (i) all salary accrued by Employer and due to Employee through the date of such termination; (ii) all Annual Cash Bonuses, all Stock Bonuses, and all Senior Inventor Bonuses due Employee through the date of such termination, payable within thirty (30) days after termination.

ARTICLE 7. GENERAL PROVISIONS

Notices

Section 7.01. Any notices to be given hereunder by either party to the other party shall be in writing and may be transmitted by personal delivery or by mail, registered or certified, postage prepaid with return receipt requested. Mailed notices shall be addressed to the parties at the addresses appearing in the introductory paragraph of this Agreement, but each party may change that address by written notice in accordance with this section. Notices delivered personally shall be deemed communicated as of the date of actual receipt; mailed notices shall be deemed communicated as of three (3) days after the date of mailing.

Arbitration

Section 7.02.

(a) Any controversy between Employer and Employee involving the construction or application of any of the terms, provisions, or conditions of this Agreement shall on the written request of either party served on the other be submitted to arbitration. Arbitration shall comply with and be governed by the provisions of the California Arbitration Act.

(b) Employer and Employee shall each appoint one person to hear and determine the dispute. If the two persons so appointed are unable to agree, then those persons shall select a third impartial arbitrator whose decision shall be final and conclusive upon both parties.

(c) The cost of arbitration shall be borne by the losing party or in such proportions as the arbitrators decide.

Attorneys' Fees and Costs

Section 7.03. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, costs, and necessary disbursements in addition to any other relief to which that party may be entitled. This provision shall be construed as applicable to the entire Agreement

Entire Agreement

Section 7.04. This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the employment of Employee by Employer and contains all of the covenants and agreements between the parties with respect to that employment in any manner whatsoever. Each party to this Agreement acknowledges that no representation, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, which are not embodied herein, and that no other agreement, statement, or promise not contained in the Agreement shall be valid or binding on either party. This Agreement has been jointly prepared and shall not be strictly construed against either party.

Modifications

Section 7.05. Any modification of this Agreement will be effective only if it is in writing and signed by both parties.

Effect of Waiver

Section 7.06. The failure of either party to insist on strict compliance with any of the terms, covenants, or conditions of this Agreement by the other party shall not be deemed a waiver of that term, covenant, or condition, nor shall any waiver or relinquishment of any right or power at any one time or times be deemed a waiver or relinquishment of that right or power for all or any other times.

NH DMM HS

Partial Invalidity

Section 7.07. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force without being impaired or invalidated in any way.

Law Governing Agreement

Section 7.08. This Agreement shall be governed by and construed in accordance with the laws of the State of California.

Sums Due Deceased Employee

Section 7.09. If Employee dies prior to the expiration of the term of his employment, any sums that may be due him from Employer under this Agreement as of the date of his death shall be paid to Employee's executors, administrators, heirs, personal representatives, successors, and assigns.

Interpretation

Section 7.10. All specific terms shall control over any related general terms in the interpretation of this Agreement. In the event of any ambiguity between the terms of this Agreement and the terms of any other document delivered pursuant to this Agreement, the terms of this Agreement shall control.

Assignment

Section 7.11. Except as otherwise specifically provided herein, neither party shall assign this Agreement or any rights hereunder without the consent of the other party, and any attempted or purported assignment without such consent shall be void; provided that the Employee's consent shall not be required hereby for any of the transactions to which Section 6.04 hereof refers. This Agreement shall otherwise bind and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, legatees, devisees, executors, administrators and legal representatives.

Force Majeure

Section 7.12. Each party shall be relieved of its obligations herein to the extent that fulfillment of such obligations shall be prevented by acts of God such as war, labor difficulties, riot, fire, flood, hurricane, windstorm, including acts or defaults of common carriers, governmental laws, acts, regulations, shortage of materials, or any other occurrence whether or not similar to the foregoing beyond the reasonable control of the party affected thereby. However, all reasonable efforts will be made the by party affected to remedy such circumstances expeditiously and resume performance according to the terms of this Agreement.

NH DMM HS

Executed on February 17, 1994, at 46 Shattuck Square, Suite 14, Berkeley, California.

EMPLOYER:

By: _____
Hal Silen
Secretary

By: _____
David M. Mendelsohn
Chairman

EMPLOYEE:

By: _____
Ned Hoffman

OMNILOCK INCORPORATED
PROPRIETARY ENGINEERING TECHNOLOGIES
46 Shattuck Square, Suite 14
Berkeley, Calif. 94704
Tel: (510) 549-9924 • Fax: (510) 549-9926

March 7, 1995

Mr. Phil Lapsley
5448 Broadway
Oakland, CA 94618

Dear Phil,

The parties to this letter of agreement (hereinafter "Agreement") are: a) Omnilock Incorporated, a California corporation or its assigned successors (hereinafter "Omni" or "Company") of 46 Shattuck Square, Suite 14, Berkeley, CA 94704, and; b) Phil Lapsley of 5448 Broadway, Oakland, CA 94618 (herein defined and treated for all purposes as "Consultant"). Company is the sole inventor of and sole owner of the entire rights, title and interest in and to the United States Pending Patent for Tokenless Security System for Authorizing Access to a Secured Computer, summarized in Addendum A attached hereto, including any derivative patent and/or trademark applications, any issued patents based thereupon or derived therefrom, any continuations, any continuations-in-part, any re-issues, and any foreign counterparts thereof (collectively hereinafter referred to as "the Technology") and to United States Pending Trademark for "SmartTouch™". Consultant desires to execute the research and development of the Technology pursuant to Addendum B attached hereto. In exchange for these services, Consultant shall earn a percent in the royalties that may eventually accrue from the license of any patent issuing from and based upon the Technology. Company is willing to grant such research and development privileges to Consultant upon the terms and conditions set forth below. Therefore, the parties hereby agree as follows:

Both Company and Consultant agree to conduct all of their business activities under this Agreement in complete good faith. Consultant represents and warrants that he has the capacity, as evidenced by Addendum C attached hereto, to undertake all of his duties pursuant to this Agreement and pursuant to Addendum B attached hereto, and that he will undertake his Best Efforts to diligently perform all of his duties pursuant to this Agreement and pursuant to Addendum B attached hereto. Consultant represents and warrants that he has the full right to enter into this Agreement and that he has not entered into any agreement: a) in conflict with this Agreement; and/or, b) in conflict with his obligations hereunder. Consultant warrants that any third party advice or consultations with colleagues he may undertake in performance of his duties hereunder shall be his own financial responsibility and Company shall have no obligations of any kind to any such third parties.

As used in this Agreement, the terms set forth below shall have the following meanings: "Effective Date" means the date by or on which this Agreement is executed by both parties; "Consultant Licensing Royalty" or "CLR" shall mean the royalty percentage earned by Consultant based on Company's gross licensing revenues on the Technology as received by Company in good funds from any third party licensee in the event that Company licenses the Technology to a third party licensee; "Consultant Sales Royalty" or "CSR" shall mean the royalty percentage earned by Consultant based on Company's Net Sales ("Net Sales" as defined hereinafter) on the Technology as received by Company in good funds from any third party customer in the event that Company sells the Technology to a third party customer, as evidenced by third party purchase orders; "Net Sales" shall mean the total amount received by Company for sales of the Technology to a third party customer, less standard transportation charges, sales tax, use tax, excise tax, value added tax, customs duties, and allowances and credits for return of the Technology.

 Initialed: Consultant PDL; Company NMP

Consultant acknowledges and agrees that Company retains full and exclusive control of, and shall bear all expenses of, the filing and prosecution of intellectual property applications including applications for patents, utility models, design registrations, and trademarks (hereinafter defined as the "Applications") covering said the Technology. Company and Consultant agree that further research, re-design, re-engineering, improvements and changes (hereinafter after "Work Product") to the Technology is contemplated by this Agreement and that all such Work Product shall be: a) reported immediately and in its entirety to Company; and, b) the sole property of Company and shall be owned wholly by Company. Consultant agrees to render all such assistance other than money as Company may reasonably require with respect to prosecuting Applications pertaining to the Technology and the Work Product.

The Consultant shall receive, as full and only compensation: a) a CLR of one-half of one percent ($^1/_2$ %) until such time as Company no longer receives income on the Technology, and; b) a CSR of one-half of one percent ($^1/_2$ %) until such time as Company no longer receives income on the the Technology. Consultant shall receive only one CLR or only one CSR on each unit of the Technology on which Company receives good funds from a third party. All CLR and CSR shall be accrued during each calendar quarter and shall then be payable to Consultant within fifteen (15) days after the end of said calendar quarter. The CLR and CSR schedule becomes operative from the date on which the Technology has been commercialized, as evidenced by good funds received for the Technology by Company from a third party, and remains operative until such time as Company no longer receives income on the Technology, unless Company terminates Consultant at any time prior as provided for elsewhere in this Agreement. Company shall maintain accurate and up to date accounting records with regard to the Technology revenue for up to two (2) years and Consultant shall, upon forty-eight (48) hours prior written notice to Company, have the right during normal business hours to audit at their own expense Company records pertaining to revenue received by Company solely for the Technology. In the event that a new corporation is formed dedicated to commercializing the Technology, Consultant shall receive an equity interest in said new corporation representing one-half of one percent ($^1/_2$ %) of all of the outstanding shares. In such event, Consultant will no longer receive any CLR nor any CSR compensation. In the event that the Technology is not commercialized by Company, Company shall not be responsible for any of Consultant's expenses or time relating to the Technology or relating to the performance of any of his duties under this Agreement, including those duties pursuant to Addendum B, except for those Consultant out-of-pocket expenses for which Company has provided prior written approval.

In the event that any element in Addendum B is deemed in good faith by Company to have been unsatisfactorily completed by Consultant, Company and Consultant will attempt to work together in good faith to achieve satisfactory completion of these elements within an expeditious time frame. However, if Company determines in good faith that Consultant cannot or will not complete these elements within an expeditious time frame and that Consultant's Work Product is unsatisfactory, Company shall have the right to cancel this Agreement at any time upon fifteen (15) days written notice to Consultant. In such event, Consultant hereby agrees and acknowledges that he shall receive no compensation of any kind. Upon written notification from Company to terminate Consultant's advisory and representation privileges, Consultant shall immediately cease all of his efforts on behalf of Company. Upon such notification of termination, neither Company nor Consultant shall have any further obligations of any kind to the other party. Upon request by Company, Consultant shall, within five (5) working days, deliver to Company all notes, writings, lists, materials, files, reports, correspondence, tapes, cards, maps, machines, technical data, and any other tangible product or document which Consultant produced or received while performing his duties pursuant to this Agreement.

Consultant shall not act nor hold himself out as acting as agent, employee, or associate of Company and it is expressly understood and agreed that Consultant shall have no authority to bind or commit Company to any contracts or expenditures. Consultant may not make any assertions, statements, promises or representations on

behalf of Company, except those prior authorized in writing by Company. Consultant further agrees to maintain in strict confidence all confidential and proprietary information he has received or may receive from Company necessary to render his services to Company. No confidential or proprietary information from Company shall be given to any third party by Consultant without Company's prior written approval. Company agrees to indemnify Consultant against product liability claims which may be instituted against the Company regarding the Technology by a third party. Company agrees to seek the advice and consent of Consultant as Company commercializes the Technology, however Consultant agrees that Company has the sole authority to agree to and bind the Company to licensing or sales contracts with any third parties and Consultant agrees that he has no veto power over such Company decisions.

Should there be any dispute arising between Company and Consultant in connection with this Agreement or based upon the interpretation of any part of this Agreement or based upon any matter arising from this Agreement, the point in question shall be first detailed in writing and delivered to the other party within fifteen (15) calendar days of the arising of said dispute. The parties shall attempt in good faith to resolve the dispute among themselves within the subsequent thirty (30) calendar days. In the event that the dispute is not thereby resolved, the point in question shall within thirty (30) calendar days be submitted to mediation in San Francisco, CA administered by the American Arbitration Association under its Commercial Mediation Rules. In the event that the matter is not thereby resolved through such mediation, the point in question shall be settled in a timely manner by binding arbitration in San Francisco, CA administered by the American Arbitration Association under its Commercial Arbitration Rules. Any judgment by the mediators or by the arbitrators shall be entered in any court having jurisdiction thereof. The parties hereto shall equally share the out-of-pocket costs of said mediation and/or arbitration, including the fees for the arbitrator, except that each party shall pay his respective expenses for legal representation and expert witnesses, if any. In the event of termination of this Agreement, Consultant hereby warrant and agree not to assist in or participate in the development and/or commercialization of a product similar to and/or analogous to the Technology for a period of twelve (12) months from the date of termination of this Agreement.

This Agreement constitutes the entire agreement and understanding between the parties and shall supersede all previous communications, negotiations, proposals, representations, conditions, warranties or agreements, either oral or written, between the parties hereto with respect to the subject matter hereof. This Agreement may not be modified unless in writing and signed by both of the parties. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by Consultant without the prior written consent of Company. Company may assign this Agreement to its successor corporation in the event of a merger or sale. This Agreement and the legal relations covered hereinafter shall be interpreted and construed in accordance with the laws of the state of California and the parties hereby consent to the jurisdiction of all courts in California having proper subject matter jurisdiction. If any term, clause, or provision of this Agreement shall be judged to be invalid or unenforceable, the validity or unenforceability of any other term, clause or provision shall not be affected; and such invalid or unenforceable term, clause or provision shall be deemed deleted from this contract. In the event of conflict between provisions hereinafter or ambiguity, specific terms shall prevail over general terms.

Best regards,

Ned Hoffman, President

Understood and Agreed to: By: _____ Date: 7 March 1995

Philip Lapsley

Initialed: Consultant PDL, Company MH

ADDENDUM A: the Technology brief overview

SmartTouch™ /Print Money™: A new, patentable technology for consumer financial transactions

Inventor: Ned Hoffman of 2529-A College Avenue, Berkeley, CA 94704

- The technology: Combining the use of finger print recognition technology with a multi-digit Personal Identification Number ("PIN") to process credit card, telephone card, and ATM consumer transactions.

- How it would work: The consumer would place one or two of their digits (finger-finger combination; finger-thumb combination) or, less optimally, the palm of the hand, on a pattern and heat recognition sensor. This would alert a database as to the identity of the consumer. The consumer then types in a multi-digit code: 1) the first segment would spell out the first four or five letters of the financial institution (bank, credit card company, telephone company) to which the transaction is to be charged (i.e., VISA for Visa card; Wells for Wells Fargo bank ATM; VISAW for Wells Fargo bank issued Visa card; MCI or ATT for phone company, etc.); 2) the second segment of the code would be the consumer's four to seven digit PIN (in either letter or number form -- which can be identical for all financial institutions); 3) the third segment would be an emergency digit or letter which the consumer selects. The purpose here is to immediately alert both the retailer and the financial institution that the transaction is occurring against the wishes of the consumer. People could register their prints at their local bank branch in the same manner that they now register for the photo-ID system being used on credit cards. Note that the use of a finger print would actually be far more confidential than the information people currently divulge in the course of any purchase or credit application (i.e., credit card numbers, personal signatures, photos, driver's license number, date of birth, bank account numbers, home addresses and phone numbers, social security numbers, etc.). While these traditional methods of verification can be easily used by anyone to damage a person's credit or process fraudulant transactions because a paper trail is left behind (i.e., a credit card slip with a signature), the finger-print is read and interpreted exclusively by the sensor pad. Therefore, there is no paper trail left behind which contains confidential information.

- Commercial potential: SmartTouch would offer a win-win-win-win scenario for retailers, financial institutions, computer hardware suppliers, and consumers. The major benefits to all parties are: 1) Convenience; 2) Efficiency; 3) Competitive advantage; 4) Security. The additional benefit of the technology would be the up-line value of the consumer buying pattern/demographics to the retailers and manufacturers: records of what a consumer buys when using the SmartTouch system can be an important database for target-marketing.

- Commercial benefits:

1. Convenience/Efficiency:

1.1 For consumers: a) SmartTouch would obviate the need to carry multiple credit, phone, and ATM cards. Therefore, the consumer does not have to be concerned with losing the cards, having them stolen, mixing them up, having them de-magnetized, nor does the consumer have to be concerned with constantly carrying all of these cards; b) SmartTouch makes transactions more efficient and almost seamless. Instead of locating the correct card, swiping it, waiting for the print-out, and then often having to find a pen, put down whatever they may be holding and sign their name -- with SmartTouch, the consumer would only have to "Press and Pay"; c) With SmartTouch, the consumer always has, literally, "Money At Your Fingertips". If a wallet is

stolen or forgotten, or even if just for convenience a consumer chooses to go out without carrying their pocketbook or wallet, SmartTouch would provide easy and ready access to cash, phone calls, credit card purchases; d) The increased security of the SmartTouch system (see details below) would provide significant peace of mind to consumers, avoiding the hassles and fears about carrying cash and credit cards wherever you go.

1.2 For retailers and financial institutions: a) The user-friendly, personal aspects of SmartTouch would make it easier than ever for consumers to make purchases. The seamless "Press and Pay" transaction would encourage more purchasing since each transaction would be easier and less time consuming -- not just for the one consumer involved, but also for those standing in line; b) the fact that consumers could also buy and spend, under almost any circumstances, would encourage consumer purchases and expenditures: all a consumer would now need is their finger and their PIN.

2. Competitive Advantage:

The financial institutions (i.e., credit card company, telephone company, banks) to which the technology is licensed would have a significant advantage over competitors, whereby they could market a wide range of new, exclusive service products using the SmartTouch system. Computer hardware companies (i.e., NCR) which currently supply the hardware for credit card magnetic strip recognition, would have an enormous new market to commercialize. They would be able to market and sell the SmartTouch finger print and heat sensor pads to all of their existing customers, as well as a world of new customers. Retailers would have substantial incentives to purchase the new system, as discussed herein above and below (i.e., faster and simpler transactions, the potential for more transactions due to the user-friendly appeal of the system to the consumer, and the increased barrier to theft and fraud, etc.)

3. Security:

3.1. Credit, phone and ATM card fraud is an enormous and well documented problem in commerce today, with the expense being borne by retailers, financial institutions, and consumers alike. Therefor, all parties would benefit from the increased security of SmartTouch over existing technology. Unlike current technology, in which fraud or theft only requires access to a credit, phone or ATM card or even just the use of a number on the card, SmartTouch would provide significant barriers to theft and fraud since all of the following would have to be overcome by an unauthorized user: a) print recognition for SmartTouch could require the combination of two digits (finger-thumb combination; finger-finger combination). Therefore, theft would require the accurate lifting of not just one, but of two of the consumer's finger prints; b) print recognition for SmartTouch would be heat sensitive, requiring some heat from the finger as well. Therefore, theft of a print pattern alone would not be successful -- the user's finger would actually have to be applied directly to the sensor; c) SmartTouch would require the use of a PIN, wherein the financial institution would have to also be correctly designated. If a consumer's PIN is stolen, the number can be changed immediately by calling the financial institution, thereby obstructing theft of that portion of SmartTouch's security system; d) If a consumer is forced to use SmartTouch against their will, the emergency digit would be used at the end of the PIN, immediately alerting the retailer and the financial institution that a theft is in progress. The perpetrator of the theft would be unaware that the emergency code has been transmitted, since the authorization PIN can have any number of digits and the last digit could be any letter or number. Therefore, to the thief, the following code would appear normal: VISA66552; however the 2 would be the authorized user's emergency digit at the end (hence, the user's normal code would be: VISA6655). Alerting the retailer and financial institution of the theft would provide not just immediate information of that theft, but also

would reveal theft patterns (i.e., if a series of a emergency codes have been used in a certain area, this would alert authorities to high-crime areas or the modus-operandi of a particular thief). Consumer abuse of this feature could be easily monitored: i.e., if a consumer abuses this feature to avoid paying for valid charges, the consumer's account can be quickly frozen and access could be denied. Hence, the increased security of SmartTouch would decrease the loss of revenue to retailers and financial institutions now occuring from widespread credit, phone, and bank card fraud.

ADDENDUM B: Detail of Consultant's Responsibilities

1) Hardware and Software Computer Consulting:

- Make Company aware newest technology innovations in telecommunications and DSP
- Make Company aware of research results on all computer industry advances relevant to the Technology
- Provide thorough analysis and verification of hardware and software requirements relevant to the Technology

2) Consultant Will Be Responsible For Overall System Design Review including the areas of:

- Security (encryption, computer software anti-fraud innovations, computer hardware anti-fraud innovations, overall system anti-fraud innovations)
- Economics (computer hardware and software cost projections and optimization)

3) Consultant will be a resource for problem solving and innovative enhancements to the Technology, with an emphasis on the most viable commercial embodiment of the Technology

4) Consultant will be available for Company access on a regular basis during the design phase through June 1, 1995 and thereafter on an intermittent basis on reasonable request.

Initialed: Consultant PDL; Company

ADDENDUM C: Consultant qualifications

OMNILOCK INCORPORATED
PROPRIETARY ENGINEERING TECHNOLOGIES
46 Shattuck Square, Suite 14
Berkeley, Calif. 94704
Tel: (510) 549-9924 • Fax: (510) 549-9926

December 9, 1994

Mr. David Pare
Mr. Jonathan Lee
46 Shattuck Square, Suite 10
Berkeley, CA 94704

Dear David and Jonathan,

The parties to this letter of agreement (hereinafter "Agreement") are: a) Omnilock Incorporated, a California corporation or its assigned successors (hereinafter "Omni" or "Company") of 46 Shattuck Square, Suite 14, Berkeley, CA 94704, and; b) David F. Pare, a computer engineer, of 46 Shattuck Square, Suite 10, Berkeley, CA 94704 and Jonathan A. Lee, a computer engineer, of 1430 Josephine Street, Apt. R7, Berkeley, CA 94703 (herein collectively defined and treated for all purposes as a single entity known as "Consultant"). Company is the sole inventor of and sole owner of the entire rights, title and interest in and to the United States Pending Patent for Tokenless Security System for Authorizing Access to a Secured Computer, summarized in Addendum A attached hereto, including any derivative patent and/or trademark applications, any issued patents based thereupon or derived therefrom, any continuations, any continuations-in-part, any re-issues, and any foreign counterparts thereof (collectively hereinafter referred to as "the Technology") and to United States Pending Trademark for "SmartTouch™". Consultant desires to execute the research and development of the Technology pursuant to Addendum B attached hereto. In exchange for these services, Consultant shall earn a percent in the royalties that may eventually accrue from the license of any patent issuing from and based upon the Technology. Company is willing to grant such research and development privileges to Consultant upon the terms and conditions set forth below. Therefore, the parties hereby agree as follows:

Both Company and Consultant agree to conduct all of their business activities under this Agreement in complete good faith. Consultant represents and warrants that he has the capacity, as evidenced by Addendum C attached hereto, to undertake all of his duties pursuant to this Agreement and pursuant to Addendum B attached hereto, and that he will undertake his Best Efforts to diligently perform all of his duties pursuant to this Agreement and pursuant to Addendum B attached hereto. Consultant represents and warrants that he has the full right to enter into this Agreement and that he has not entered into any agreement: a) in conflict with this Agreement; and/or, b) in conflict with his obligations hereunder. Consultant warrants that any third party advice or consultations with colleagues he may undertake in performance of his duties hereunder shall be his own financial responsibility and Company shall have no obligations of any kind to any such third parties.

As used in this Agreement, the terms set forth below shall have the following meanings: "Effective Date" means the date by or on which this Agreement is executed by both parties; "Consultant Licensing Royalty" or "CLR" shall mean the royalty percentage earned by Consultant based on Company's gross licensing revenues on the Technology as received by Company in good funds from any third party licensee in the event that Company licenses the Technology to a third party licensee; "Consultant Sales Royalty" or "CSR" shall mean the royalty percentage earned by Consultant based on Company's Net Sales ("Net Sales" as defined hereinafter) on the Technology as received by Company in good funds from any third party customer in the event that Company sells the Technology to a third party customer, as evidenced by third party purchase orders; "Net Sales" shall mean the total amount received by Company for sales of the Technology to a third party customer, less standard

transportation charges, sales tax, use tax, excise tax, value added tax, customs duties, and allowances and credits for return of the Technology.

Consultant acknowledges and agrees that Company retains full and exclusive control of, and shall bear all expenses of, the filing and prosecution of intellectual property applications including applications for patents, utility models, design registrations, and trademarks (hereinafter defined as the "Applications") covering said the Technology. Company and Consultant agree that further research, re-design, re-engineering, improvements and changes (hereinafter after "Work Product") to the Technology is contemplated by this Agreement and that all such Work Product shall be: a) reported immediately and in its entirety to Company; and, b) the sole property of Company and shall be owned wholly by Company. Consultant agrees to render all such assistance other than money as Company may reasonably require with respect to prosecuting Applications pertaining to the Technology and the Work Product.

The Consultant shall receive, as full and only compensation: a) a CLR of between ten percent (10 %) and twenty percent (20%) until such time as Company no longer receives income on the Technology, and; b) a CSR of between ten percent (10 %) and twenty percent (20%) until such time as Company no longer receives income on the the Technology. The exact percent of the CLR and the CSR shall be determined by the Company, in consultation with Consultant, once Company has determined that Consultant has satisfactorily executed all of his responsibilities and duties pursuant to this Agreement. Consultant shall receive only one CLR or only one CSR on each the Technology on which Company receives good funds from a third party. All CLR and CSR shall be accrued during each calendar quarter and shall then be payable to Consultant within fifteen (15) days after the end of said calendar quarter. The CLR and CSR schedule becomes operative from the date on which the Technology has been commercialized, as evidenced by good funds received for the Technology by Company from a third party, and remains operative until such time as Company no longer receives income on the the Technology, unless Company terminates Consultant at any time prior as provided for elsewhere in this Agreement. Company shall maintain accurate and up to date accounting records with regard to the Technology revenue for up to two (2) years and Consultant shall, upon forty-eight (48) hours prior written notice to Company, have the right during normal business hours to audit at their own expense Company records pertaining to revenue received by Company solely for the Technology. In the event that the Technology is not commercialized by Company, Company shall not be responsible for any of Consultant's expenses or time relating to the Technology or relating to the performance of any of his duties under this Agreement, including those duties pursuant to Addendum B, except for those Consultant out-of-pocket expenses for which Company has provided prior written approval.

In the event that any element in Addendum B is deemed in good faith by Company to have been unsatisfactorily completed by Consultant, Company and Consultant will attempt to work together in good faith to achieve satisfactory completion of these elements within an expeditious time frame. However, if Company determines in good faith that Consultant cannot or will not complete these elements within an expeditious time frame and that Consultant's Work Product is unsatisfactory, Company shall have the right to cancel this Agreement at any time upon fifteen (15) days written notice to Consultant. In such event, Consultant hereby agrees and acknowledges that he shall receive no compensation of any kind. Upon written notification from Company to terminate Consultant's advisory and representation privileges, Consultant shall immediately cease all of his efforts on behalf of Company. Upon such notification of termination, neither Company nor Consultant shall have any further obligations of any kind to the other party. Upon request by Company, Consultant shall, within five (5) working days, deliver to Company all notes, writings, lists, materials, files, reports, correspondence, tapes, cards, maps, machines, technical data, and any other tangible product or document which Consultant produced or received while performing his duties pursuant to this Agreement.

Consultant shall not act nor hold himself out as acting as agent, employee, or associate of Company and it is expressly understood and agreed that Consultant shall have no authority to bind or commit Company to any

contracts or expenditures. Consultant may not make any assertions, statements, promises or representations on behalf of Company, except those prior authorized in writing by Company. Consultant further agrees to maintain in strict confidence all confidential and proprietary information he has received or may receive from Company necessary to render his services to Company. No confidential or proprietary information from Company shall be given to any third party by Consultant without Company's prior written approval. Company agrees to indemnify Consultant against product liability claims which may be instituted against the Company regarding the Technology by a third party. Company agrees to seek the advice and consent of Consultant as Company commercializes the Technology, however Consultant agrees that Company has the sole authority to agree to and bind the Company to licensing or sales contracts with any third parties and Consultant agrees that he has no veto power over such Company decisions.

Should there be any dispute arising between Company and Consultant in connection with this Agreement or based upon the interpretation of any part of this Agreement or based upon any matter arising from this Agreement, the point in question shall be first detailed in writing and delivered to the other party within fifteen (15) calendar days of the arising of said dispute. The parties shall attempt in good faith to resolve the dispute among themselves within the subsequent thirty (30) calendar days. In the event that the dispute is not thereby resolved, the point in question shall within thirty (30) calendar days be submitted to mediation in San Francisco, CA administered by the American Arbitration Association under its Commercial Mediation Rules. In the event that the matter is not thereby resolved through such mediation, the point in question shall be settled in a timely manner by binding arbitration in San Francisco, CA administered by the American Arbitration Association under its Commercial Arbitration Rules. Any judgment by the mediators or by the arbitrators shall be entered in any court having jurisdiction thereof. The parties hereto shall equally share the out-of-pocket costs of said mediation and/or arbitration, including the fees for the arbitrator, except that each party shall pay his respective expenses for legal representation and expert witnesses, if any. In the event of termination of this Agreement, Consultant hereby warrant and agree not to assist in or participate in the development and/or commercialization of a product similar to and/or analogous to the Technology for a period of twelve (12) months from the date of termination of this Agreement.

This Agreement constitutes the entire agreement and understanding between the parties and shall supersede all previous communications, negotiations, proposals, representations, conditions, warranties or agreements, either oral or written, between the parties hereto with respect to the subject matter hereof. This Agreement may not be modified unless in writing and signed by both of the parties. Neither this Agreement nor any of the rights or obligations hereunder may be assigned by Consultant without the prior written consent of Company. Company may assign this Agreement to its successor corporation in the event of a merger or sale. This Agreement and the legal relations covered hereinafter shall be interpreted and construed in accordance with the laws of the state of California and the parties hereby consent to the jurisdiction of all courts in California having proper subject matter jurisdiction. If any term, clause, or provision of this Agreement shall be judged to be invalid or unenforceable, the validity or unenforceability of any other term, clause or provision shall not be affected; and such invalid or unenforceable term, clause or provision shall be deemed deleted from this contract. In the event of conflict between provisions hereinafter or ambiguity, specific terms shall prevail over general terms.

Best regards,

Ned Hoffman, President

Understood and Agreed to: By: _____ Date: 12/9/94
David F. Pare

By: _____ Date: 12/9/94
Jonathan A. Lee

ADDENDUM A: the Technology description

SmartTouch™ /Print Money™: A new, patentable technology for consumer financial transactions

Inventor: Ned Hoffman of 2529-A College Avenue, Berkeley, CA 94704

- The technology: Combining the use of finger print recognition technology with a multi-digit Personal Identification Number ("PIN") to process credit card, telephone card, and ATM consumer transactions.

- How it would work: The consumer would place one or two of their digits (finger-finger combination; finger-thumb combination) or, less optimally, the palm of the hand, on a pattern and heat recognition sensor. This would alert a database as to the identity of the consumer. The consumer then types in a multi-digit code: 1) the first segment would spell out the first four or five letters of the financial institution (bank, credit card company, telephone company) to which the transaction is to be charged (i.e., VISA for Visa card; Wells for Wells Fargo bank ATM; VISAW for Wells Fargo bank issued Visa card; MCI or ATT for phone company, etc.); 2) the second segment of the code would be the consumer's four to seven digit PIN (in either letter or number form -- which can be identical for all financial institutions); 3) the third segment would be an emergency digit or letter which the consumer selects. The purpose here is to immediately alert both the retailer and the financial institution that the transaction is occurring against the wishes of the consumer. People could register their prints at their local bank branch in the same manner that they now register for the photo-ID system being used on credit cards. Note that the use of a finger print would actually be far more confidential than the information people currently divulge in the course of any purchase or credit application (i.e., credit card numbers, personal signatures, photos, driver's license number, date of birth, bank account numbers, home addresses and phone numbers, social security numbers, etc.). While these traditional methods of verification can be easily used by anyone to damage a person's credit or process fraudulant transactions because a paper trail is left behind (i.e., a credit card slip with a signature), the finger-print is read and interpreted exclusively by the sensor pad. Therefore, there is no paper trail left behind which contains confidential information.

- Commercial potential: SmartTouch would offer a win-win-win-win scenario for retailers, financial institutions, computer hardware suppliers, and consumers. The major benefits to all parties are: 1) Convenience; 2) Efficiency; 3) Competitive advantage; 4) Security. The additional benefit of the technology would be the up-line value of the consumer buying pattern/demographics to the retailers and manufacturers: records of what a consumer buys when using the SmartTouch system can be an important database for target-marketing.

- Commercial benefits:

1. Convenience/Efficiency:

1.1 For consumers: a) SmartTouch would obviate the need to carry multiple credit, phone, and ATM cards. Therefore, the consumer does not have to be concerned with losing the cards, having them stolen, mixing them up, having them de-magnetized, nor does the consumer have to be concerned with constantly carrying all of these cards; b) SmartTouch makes transactions more efficient and almost seamless. Instead of locating the correct card, swiping it, waiting for the print-out, and then often having to find a pen, put down whatever they may be holding and sign their name -- with SmartTouch, the consumer would only have to "Press and Pay"; c) With SmartTouch, the consumer always has, literally, "Money At Your Fingertips". If a wallet is stolen or forgotten, or even if just for convenience a consumer chooses to go out without carrying their

pocketbook or wallet, SmartTouch would provide easy and ready access to cash, phone calls, credit card purchases; d) The increased security of the SmartTouch system (see details below) would provide significant peace of mind to consumers, avoiding the hassles and fears about carrying cash and credit cards wherever you go.

1.2 For retailers and financial institutions: a) The user-friendly, personal aspects of SmartTouch would make it easier than ever for consumers to make purchases. The seamless "Press and Pay" transaction would encourage more purchasing since each transaction would be easier and less time consuming -- not just for the one consumer involved, but also for those standing in line; b) the fact that consumers could also buy and spend, under almost any circumstances, would encourage consumer purchases and expenditures: all a consumer would now need is their finger and their PIN.

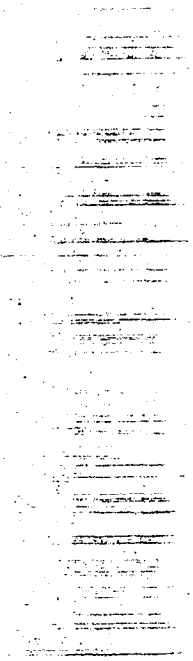
2. Competitive Advantage:

The financial institutions (i.e., credit card company, telephone company, banks) to which the technology is licensed would have a significant advantage over competitors, whereby they could market a wide range of new, exclusive service products using the SmartTouch system. Computer hardware companies (i.e., NCR) which currently supply the hardware for credit card magnetic strip recognition, would have an enormous new market to commercialize. They would be able to market and sell the SmartTouch finger print and heat sensor pads to all of their existing customers, as well as a world of new customers. Retailers would have substantial incentives to purchase the new system, as discussed herein above and below (i.e., faster and simpler transactions, the potential for more transactions due to the user-friendly appeal of the system to the consumer, and the increased barrier to theft and fraud, etc.)

3. Security:

3.1. Credit, phone and ATM card fraud is an enormous and well documented problem in commerce today, with the expense being borne by retailers, financial institutions, and consumers alike. Therefor, all parties would benefit from the increased security of SmartTouch over existing technology. Unlike current technology, in which fraud or theft only requires access to a credit, phone or ATM card or even just the use of a number on the card, SmartTouch would provide significant barriers to theft and fraud since all of the following would have to be overcome by an unauthorized user: a) print recognition for SmartTouch could require the combination of two digits (finger-thumb combination; finger-finger combination). Therefore, theft would require the accurate lifting of not just one, but of two of the consumer's finger prints; b) print recognition for SmartTouch would be heat sensitive, requiring some heat from the finger as well. Therefore, theft of a print pattern alone would not be successful -- the user's finger would actually have to be applied directly to the sensor; c) SmartTouch would require the use of a PIN, wherein the financial institution would have to also be correctly designated. If a consumer's PIN is stolen, the number can be changed immediately by calling the financial institution, thereby obstructing theft of that portion of SmartTouch's security system; d) If a consumer is forced to use SmartTouch against their will, the emergency digit would be used at the end of the PIN, immediately alerting the retailer and the financial institution that a theft is in progress. The perpetrator of the theft would be unaware that the emergency code has been transmitted, since the authorization PIN can have any number of digits and the last digit could be any letter or number. Therefore, to the thief, the following code would appear normal: VISA66552; however the 2 would be the authorized user's emergency digit at the end (hence, the user's normal code would be: VISA6655). Alerting the retailer and financial institution of the theft would provide not just immediate information of that theft, but also would reveal theft patterns (i.e., if a series of a emergency codes have been used in a certain area, this would alert authorities to high-crime areas or the modus-operandi of a particular thief). Consumer abuse of this

feature could be easily monitored: i.e., if a consumer abuses this feature to avoid paying for valid charges, the consumer's account can be quickly frozen and access could be denied. Hence, the increased security of SmartTouch would decrease the loss of revenue to retailers and financial institutions now occuring from widespread credit, phone, and bank card fraud.



ADDENDUM B: Detail of Consultant's services, cost projections, and performance timeline

Re: SmartTouch R&D Plan of Automated Biometric Identification System for Financial Transactions

The following is a three-stage R&D plan resulting in a comprehensive report which will answer three basic questions about constituting a commercially viable automated biometric identification system:

1. Can it be accomplished?
2. If so, how much will it cost in terms of POP hardware, software development (including algorithms and encryption coding), and connectivity hardware?
3. What will be the functional efficiency of the optimal algorithm and how will that impact on the configuration of the system?

The report will provide a general algorithm description and resource consumption information around which systems can be designed, and it will generally describe the cost implications of that information in terms of implementing a commercial model.

We plan to accomplish the above in several stages:

1. Locate or devise a combination of biometric scanning hardware and an algorithm for encoding a biometric input into a digital biometric ID code
2. Hook these elements together to configure a functional prototype
3. Determine the overall performance of said hardware and software under a variety of conditions.

The area of the biometric ID code generation will be a major focus of our R&D. Licensees of this technology will want to use said biometric identification to reliably retrieve a single consumer's record from a large database, with each retrieval being swift and accurate. Therefor, the same exact digital biometric ID code must be generated by the system each time a consumer has to be identified. The difficulty in generating an exact biometric digital ID will come mainly from changing field conditions: we must translate a fingerprint which may have varying degrees of dirt, grease, and moisture, and will be pressed to the scanning plate with varying degrees of pressure and at various angles. Therefore, the hardware and software of our system must produce the same, identical biometric ID code under most "reasonable" conditions.

It would be possible to use a more "fuzzy" or inexact biometric ID code, but this would dramatically increase the amount of time required to perform each identification, this increasing the cost of the system and likely requiring a licensee to re-configure their existing consumer database.

The best-case development scenario would be that a good low-cost biometric ID code generator algorithm together with the requisite scanning hardware currently exists in such a form that, with reasonable customization, our system will be able to reliably encode a customer's print time after time into a unique code. Our initial literature search has hinted at potentially useful algorithms as well as existing appropriate scanning hardware, so there is some hope that this may be the case.

The worst-case scenario is that no such algorithm currently exists, and that we will be forced to become experts in the development of automated fingerprint identification systems in order to develop such an algorithm. Additionally, the scanning hardware could be very primitive at this time or under development.

SmartTouch Project R&D Plan:

1. Phase I: Research (3 weeks)

    1.1. Survey the automated biometric identification industry's current state of the art.

    1.2. Locate an effective, cost-efficient encoding algorithm by scanning available computer science/AFIS literature.

    1.3. Survey the existing fingerprint scanning hardware, acquire specifications, and identify the most suitable technologies for our purposes.

2. Phase II: Development (6 weeks)

    2.1. Purchase hardware for prototype (estimated to be less than $1,000)

    2.2. Implement recognition algorithm.

    2.3. Integrate recognition hardware with recognition algorithm.

    2.4. Determine hardware/algorithm reliability and cost by creating a fingerprint-samples database.

    2.5. Test algorithm's speed and accuracy.

3. Phase III: Comprehensive Report (1 week)

    3.1. Generate algorithm cost and relate this to CPU dollar cost, computer system cost, and derive cost per transaction as well as cost per customer.

    3.2. Detailed description of technical solutions to implement system.

Note:

a) Development schedule could easily exceed six weeks if we were unable to locate a suitable biometric ID algorithm.

b) Development schedule depends on finding and obtaining a functioning, cost-effective fingerprint scanner system and receiving it relatively quickly.

c) The schedule will gain more confidence once the research phase is complete, as we will have a better sense of the industry of both the hardware and the software. As a result, the numbers assigned to development are just guesswork based on things going "relatively well."

d) It is contemplated that additional computer software and hardware engineering services may be required in prosecuting the Applications, in prototyping the Technology, in deploying the Technology for commercial use, and in marketing and licensing the Technology to prospective licensees and customers. Consultant agree to make themselves available for such consultation on an on-going, non-full time basis, assuming that such efforts are reasonably compatible with the expertise of Consultant.

e) Consultant will submit to Company, on each Monday commencing with the Effective Date, a weekly report detailing all Consultant Work Product from that previous week and outlining the research and development to be undertaken in the upcoming week.

f) It is acknowledged and understood by Company and Consultant that the Technology involves research and development on the leading edge of state of the art computer software and hardware. No guarantees can be made that the above schedule will be met or that the Technology can in fact be implemented.

DAVID F. PARE
mr-frog@netgames.com
46 Shattuck Square, #10
Berkeley, Ca. 94704
(510) 843-3939

SUMMARY

Demonstrated management, design, and implementation skills in both business and academic environments.

EXPERIENCE:

Network Games, Ltd; 1.5 years

Network Games designs and implements graphical strategic multi-player games for the Internet.

Co-Founder, (1993-Present)

Responsible for scheduling, financial planning, and contract negotiation and acquisition. Together with Jonathan Lee, designed and implemented Industrial Empire, a multi-player play-by-email game.

Dow Jones Telerate Systems, Inc; 5 years

This division of Dow Jones provides a workstation-based financial trading/information system installed in major banks worldwide. The trading environment requires timely delivery of information, creative presentation, fault tolerance and detection, and automated error recovery.

Development Group Manager, (1991-1993)

Manager of a team responsible for ongoing development and maintenance of the market data distribution system. Planned, scheduled, and managed to completion three software releases of new core software products and maintenance efforts leading a team of five engineers. Participated in product and component design efforts both inside and outside area of responsibility.

Senior Software Engineer, (1988-1991)

Maintained and improved first-generation TCP/IP market data distribution system for three software releases. Architected, designed, implemented, and maintained the second-generation fault-tolerant UDP+TCP/IP broadcast market data distribution system for four software releases. Implementation used UDP and TCP to provide a nonblocking API/protocol layer which ensured rapid reliable ordered delivery of market data in real time to information display applications.

UC San Diego, Center for Research in Language; 6 years.

Dr. Jeff Elman manages leading-edge research projects in speech recognition and neural networks.

Programmer/Analyst III, (1987-1988)

Member of team of two implementing a prototype speech recognition system under research grant from the US Army on INMOS T-800 Transputers in C. Determined system hardware requirements for hardware designers, designed and implemented a INMOS-T800 assembly-level network debugging tool, designed and implemented a SunOS 3.4 device driver for the B011 VME communications card, and co-implemented the speech recognition algorithm.

Programmer/Analyst I-II, (1983-1987)

Student position supported lab research efforts through C/UNIX software development and system administration. Designed and implemented a vector-processor microcode compiler and linker, an A/D device driver, a speech editing/display application on X10R4, and a Sun-ND implementation on 4.2 BSD Vax.

EDUCATION:

BA, Computer Science, UC San Diego.

LANGUAGES

C++, C, (Sparc, INMOS-T800, 68000, VAX-11) assembly

HOBBIES

Tennis, stock trading and investing, writing game software.

 Initialed: Consultants DP and JL; Company MH

Jonathan Alexander Lee
1430 Josephine St., Apt. R/
Berkeley, CA 94703
(510) 843-3939
jonathan@netgames.com

Work Experience

Co-Founder, Network Games, Ltd., July 1993 to present
Co-developing a multi-player strategic computer game. Network Games is devoted to bringing high quality entertainment to the information superhighway.

Consultant, K. K. Kyodo News Service/Telerate, March 1994
Designed and developed a real-time display application for the Tokyo Stock Exchange Brokers' Broker feed.

Principal Software Engineer, Dow Jones/Telerate Systems, Inc., June 1990 to July 1993
Project lead for Whiteboard, an application allowing multiple people to share real-time information on an electronic whiteboard. Other key projects included: a real-time charting/technical analysis application and an integrated price history database.

Programmer/Analyst I, U.C. Berkeley, February 1990 to May 1990
Ported Gabriel, a digital signal processing environment, from Franz Lisp to Common Lisp. Gabriel simulates programs conceived as graphical block diagrams and generates code for a variety of DSP platforms including the Motorola 56000.

Senior Engineering Aide, U.C. Berkeley, August 1988 to May 1990
Tested and wrote software for the VorTeX research group involving multimedia document systems. Wrote programs to convert fonts between PostScript and METAFONT and merge DVI files. Responsibilities included fixing bugs and dealing with technical questions from customers.

Education

BA in Computer Science, University of California, Berkeley, May 1990

Technical Skills

Programming Languages
C, C++, Scheme

Graphical User Interface Toolkits
X11/Motif, zApp Portable Application Framework (Motif and MS Windows)

Software Tools
CodeCenter, ObjectCenter, Purify, PERL, TCL, lex, yacc

References

Available upon request.

Jefferson T. Stamp (SBN 187975)
Attorney at Law
15650-A Vineyard Blvd., #146
Morgan Hill, CA 95037
Tel: (408) 623-8414

Attorney for Plaintiff
EXCEL INNOVATIONS, INC.

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

EXCEL INNOVATIONS, INC., Plaintiff, v. INDIVOS CORPORATION, SOLIDUS NETWORKS, INC., AND DOES 1 TO 100, inclusive, Defendants.	CASE NO. C-03-3125 MMC **DECLARATION OF RUTH HAMILTON IN OPPOSITION TO MOTION TO DISMISS** Date: October 3, 2003 Time: 9:00 a.m. Dept: Courtroom 7 Judge: Hon. Maxine M. Chesney

I, Ruth Hamilton, do hereby declare:

I have been a professional executive assistant and project administrator and office manager for over 20 years, and currently live in Oakland, California. I make this declaration of my own personal knowledge and could competently testify to the facts set forth herein of called as a witness to do so.

1. I have been employed by Excel Innovations, Inc. since 1991, providing diversified administrative support, including my having: Managed the office, conducted market research, directed product sourcing and located international and domestic manufacturers for product lines; Coordinated packaging and shipping of products; Maintained company records including personnel, payroll, bookkeeping and financial records; Reviewed all billings and negotiated fees as appropriate; Prepared annual budgets and income projections, filed payroll tax returns; Paid

bills and reconciled accounts; Coordinated intellectual property reporting for the company and worked with patent counsel (including Raymond Cranfill of Sheldon & Mak and Ali Kamarei of In-House IP Counsel): Prepared patent drawings, maintained patent docketing system and files; Drafted correspondence with the Patent & Trademark Office; Initiated placement of purchase orders and monitored payments by product licensees; Maintained company shareholder records, mailings, annual meeting notices and issued stock certificates; Assisted with filming and editing of product promotional videos and marketing materials; Interviewed and selected graphic artists, photographers, testing labs and the like for various projects; Coordinated all travel arrangements and preparations for trade shows; Interfaced with corporate attorneys (including Thomas A. Maier of Pezzola & Reinke), accountants, engineers, investment bankers and corporate advisors (including Philip Gioia of the Bay Street Group), in preparing all due diligence materials for company transactions.

2. Excel was founded in 1989 for the purpose of developing, patenting and licensing a broad range of inventions created by Excel's founder and president, Ned Hoffman (herein "Hoffman"). Excel's exclusive ownership in all these inventions is secured by employment and assignment agreements executed with Hoffman and with all co-inventors working on Excel's inventions. These agreements, dating from early 1994, remain operative and in force to this day.
3. Excel has licensed its inventions in sports and fitness, automotive safety, homecare accessories, and computer technologies to national corporations including Nike, Warnaco, Guthy-Renker Television, Bollinger Industries, Bell Sports and Telebrands.. Excel's patented innovations have sold over 1.25 Million units, generating over $40 million in retail sales, and earning more than $1.5 million in net royalties. Excel has employed nearly a dozen administrative, engineering and marketing personnel. Excel has corporate offices in both Sebastopol, CA and San Jose, CA.
4. Excel's success in creating and patenting popular new products has been recognized in national media, including features on the Discovery Channel, ABC Good Morning America, CNN, CBS News, the New York Times, USA Today and the San Francisco Examiner. Excel has twice

won the prestigious BusinessWeek International Design Excellence Award, and has been honored in televised ceremonies alongside fellow honorees General Motors, Apple Computers, and Nike.

5. In September, 1994, Excel commenced developing and patenting Hoffman's exciting new invention which enables consumers to conduct a wide range of financial transactions, both at the point-of-sale and over the internet, using only an electronically scanned biometric image, such as a fingerprint, without needing any tokens of any kind, such as credit cards, debit cards, or smart cards (herein "the Invention"). Excel was immediately focused on realizing the enormous financial potential of the Invention, and filed its first broad patent in November, 1994. Excel then hired engineers David Pare, Jonathan Lee, and Phil Lapsley ("the Co-Inventors") to work with Hoffman over the subsequent 9 months in further developing the Invention. Hoffman and the Co-Inventors worked full time in Excel's corporate headquarters in Berkeley, CA, and Excel filed its second broad patent on the Invention in May, 1995.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: 9/10/03

Ruth A. Hamilton

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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

SAN FRANCISCO DIVISION

EXCEL INNOVATIONS, INC., Plaintiff, v. *INDIVOS CORPORATION, SOLIDUS* NETWORKS, INC., AND DOES 1 TO 100, inclusive, Defendants.	CASE NO. C-03-3125 MMC ***DECLARATION OF ALI KAMAREI IN OPPOSITION TO MOTION TO DISMISS AND IN SUPPORT OF CROSS-MOTION FOR PARTIAL SUMMARY JUDGMENT*** Date: October 3, 2003 Time: 9:00 a.m. Dept: *Courtroom* 7 Judge: Hon. Maxine M. Chesney

I, Ali Kamarei, do hereby declare:

I am an attorney duly licensed and authorized to practice law in the State of California, and have worked for various IP law firms in Palo Alto, California. Currently I am general counsel to a multinational company in Santa Clara, California. I make this declaration of my own personal knowledge and could competently testify to the facts set forth herein if called as a witness to do so.

1. In 1995, I served as patent counsel to Indivos Corporation, known at that time as SmartTouch, LLC (referred to herein as "Indivos"), and was also a significant shareholder of Indivos. I was the patent attorney who filed the majority of the patent applications on the Invention.

2. In May 1995, I was asked by Indivos to assist in negotiating a license agreement (the "IP Patent License") with Excel Innovations, Inc. (known at that time as Omnilock, Inc.), concerning a

license to Excel's inventions in tokenless biometric financial transactions (referred to herein as the "Invention")

4. The agreement was negotiated with Thomas Maier, an attorney with the firm Pezzola & Reinke of Oakland, CA, who represented Excel's interests in the negotiations. This eventually resulted in the terms set forth in the IP Patent License attached hereto as Exhibit A.

5. In my opinion, the agreement was favorable to Indivos, a start-up company, as it received a six year right-to-use and conditional assignment on the significantly valuable Licensed Invention, along with seed capital from Excel, Excel's know-how, and expert personnel needed to launch commercialization of the Licensed Invention.

6. Based on the negotiations with Mr. Maier, I believe the agreement reached between Excel and Indivos represents a bona fide arm's length transaction.

7. The IP Patent License had all of the inventor agreements with Excel attached and Indivos knowingly accepted conditional assignments from the inventors of the patents on the Invention.

8. I was a witness to the execution of the IP Patent License signed by Ned Hoffman on behalf of both Excel and Indivos. Mr. Hoffman was the only person with the authority to sign on behalf of both companies at that time.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: September 10, 2003

/s/ Ali Kamarei

Ali Kamarei, Esq.