

ATTORNEY DOCKET NO: M-11682 US

RECORDATION FORM COVER SHEET PATENTS ONLY

U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE

TO THE HONORABLE DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE. PLEASE RECORD THE ATTACHED ORIGINAL DOCUMENTS OR COPY THEREOF.

1. Name of conveying parties: (a) Silicon Valley Bank (b) GATX Ventures, Inc. ("GATX") (c) Sequel Entrepreneurs' Fund II, L.P. 2. Name and address of receiving party: Name: DPHI Acquisitions, Inc. Street Address: 2580 55th Street City: Boulder State: CO 80301 Country: U.S.A.

3. Nature of Conveyance: [X] Assignment [ ] Merger [ ] Security Agreement [ ] Change of Name [ ] Other Execution Date: March 5, 2003

4. Application number(s) or patent number(s): If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s) - 09/946,845 B. Patent No.(s) Title: Data Cartridge Load/Unload Mechanism For Disk Drive

Additional numbers attached? [ ] Yes [X] No

5. Name and address of party to whom correspondence concerning document should be mailed: Name: Theodore P. Lopez Internal Address: MACPHERSON, KWOK CHEN & HEID LLP Street Address: 1762 Technology Drive, Suite 226 City: San Jose State: CA Zip: 95110

6. Total number of applications and patents involved: 1 7. Total fee (37 CFR 3.41): \$40.00 [X] Authorized to be charged to Deposit Account 50-2257. [X] Charge Deposit Account 50-2257 for any additional fees required for this conveyance and credit deposit account 50-2257 any amounts overpaid

DO NOT USE THIS SPACE

8. Statement and signature. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document. Theodore P. Lopez 44,881 June 4, 2004

Total number of pages including cover sheet: 10

PATENT

CH \$40.00 602267 09946845

## ASSIGNMENT

This Assignment ("Assignment") is effective as of the date of execution hereof by SILICON VALLEY BANK ("SVB") having a place of business at 3003 Tasman Drive, Santa Clara, California 95054, GATX VENTURES, INC ("GATX") having a place of business at 3687 Mt. Diablo Boulevard, Suite 200, Lafayette, California 94549, and SEQUEL ENTREPRENEURS' FUND II, L.P., in its capacity as Collateral Agent ("Sequel") having a place of business at 4430 Arapahoe Avenue, Suite 220, Boulder, Colorado 80303 (SVB, GATX and Sequel hereinafter collectively referred to as "Assignors"). The rights assigned herein will be owned by DPHI Acquisitions, Inc., a Delaware corporation, (hereinafter "Assignee"), with its principal place of business located at 2580 55<sup>th</sup> Street, Boulder, Colorado 80301.

WHEREAS, Assignors have acquired all rights, title and interest to technologies ("Technology") including, but not limited to, all versions of any software, firmware, hardware, chip layout and design, manufacturing processes, methods and system (including, without limitation, computer applications), ideas, inventions, disclosures, original works of authorship, developments, improvements, modifications, or enhancements, created, acquired and/or developed by or on behalf of DataPlay, Inc., including, without limitation, all object code and source code; all designs, drawings, specifications, models, data, algorithms, documentation, diagrams, flow charts and development plans, know-how and techniques, trade secrets and materials; all derivative works of the foregoing by whomever created (in object code, source code, or any other form and/or any media); and all tangible embodiments of the foregoing (in whatever form or media); and

WHEREAS, Assignors hereby desire to irrevocably assign to Assignee all rights, title and interest in and to the Technology.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignors make the following assignment:

1. Assignors hereby irrevocably assign to Assignee all of Assignors' rights, title and interest in and to the Technology, said rights, title and interest including, but not limited to, all patent rights, copyrights, trademark rights, mask rights, trade secret rights and all other intellectual and industrial property rights anywhere in the world thereto, to have and to hold the same unto Assignee, its successors and assigns. In addition, Assignors hereby assign to Assignee and waives any and all moral rights Assignors may have in and to the Technology or any portion thereof.

2. Assignors irrevocably assign to Assignee all of Assignors' rights, title and interest in and to all patent applications and issued patents so derived from the Technology, together with any reissue, continuation, division, continuation-in-part or extension thereof, filed in the United States, as listed in Attachment A, and Internationally, as listed in Attachment B. In addition, Assignors irrevocably assign to Assignee all of Assignors' rights, title and interest in all invention disclosures as listed in Attachment C.

3. At any time, and from time to time after the date of execution of this Assignment, Assignors shall forthwith, upon Assignee's request, take any and all steps to

execute, acknowledge and deliver to Assignee any and all further instruments and assurances necessary or expedient in order to vest the aforesaid rights and causes of action more effectively in Assignee and to facilitate Assignee's enjoyment and enforcement of said rights and causes of action.

4. Assignors hereby constitute and appoint Assignee as Assignors' true and lawful attorney-in-fact, with full power of substitution in Assignors' name and stead, to take any and all steps, including proceedings at law, in equity or otherwise, to execute, acknowledge and deliver any and all instruments and assurances necessary or expedient in order to vest or perfect the aforesaid rights and causes of action more effectively in Assignee or to protect the same or to enforce any claim or right of any kind with respect thereto. This includes, but is not limited to, any rights with respect to the Technology that may accrue or have accrued in Assignors' favor from the respective date of creation of the Technology to the date of this Assignment. Assignors hereby declare that the foregoing power is coupled with an interest and is irrevocable.

5. To the extent, if any, that Assignors retain any right, title or interest with respect to the Technology or rights in any technology or materials that would be infringed by Assignee's use, sale, offer for sale, modification, making, maintenance, support, reproduction or distribution of any of the Technology, Assignors hereby grant to Assignee an exclusive, irrevocable, perpetual, fully paid-up, royalty-free, transferable, sublicensable, worldwide right and license to exploit and exercise all such technology and materials (i) to use, sell, offer to sell, modify, make, maintain, support, reproduce and distribute all or any portion of the Technology including, without limitation, the making of additions to or deletions from the Technology, regardless of the medium (now or hereafter known) into which the Technology may be modified.

6. No waiver of any breach or condition of this Assignment shall be deemed to be a waiver of any other or subsequent breach or condition, whether of like or different nature. If any provision of this Assignment is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Assignment shall otherwise remain in full force and effect and enforceable. This Assignment shall be governed by and construed in accordance with the laws of the State of California applicable to contracts entered into and to be wholly performed within California, without regard to conflicts of laws provisions thereof.

WITHOUT LIMITING IN ANY WAY THE PROVISIONS OF THE ASSET PURCHASE AGREEMENT DATED FEBRUARY 19, 2003, BETWEEN ASSIGNORS AND ASSIGNEE, INCLUDING THE ASSIGNORS' REPRESENTATIONS AND WARRANTIES SET FORTH THEREIN, ALL OF WHICH APPLY TO THIS ASSIGNMENT AND ALL OF WHICH TERMS OF THE ASSET PURCHASE AGREEMENT ARE APPLICABLE TO THIS ASSIGNMENT AND THE CONVEYANCE EFFECTUATED PURSUANT HERETO, ASSIGNORS MAKE NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING, BUT NOT LIMITED TO: THE TITLE TO THE TECHNOLOGY; THE CONDITION, DESIGN, OR QUALITY OF THE TECHNOLOGY; THE FITNESS OF THE TECHNOLOGY FOR USE OR FOR A PARTICULAR PURPOSE; THE MERCHANTABILITY OF THE TECHNOLOGY; COMPLIANCE OF THE

TECHNOLOGY WITH THE REQUIREMENTS OF ANY LAWS, RULES, SPECIFICATIONS OR CONTRACTS PERTAINING THERETO; PATENT INFRINGEMENT; LATENT DEFECTS; THE QUALITY OF THE MATERIAL OR WORKMANSHIP OF THE TECHNOLOGY OR THE CONFORMITY OF THE TECHNOLOGY TO THE PROVISIONS AND SPECIFICATIONS OF ANY PURCHASE ORDER RELATING THERETO; THE OPERATION, USE, OR PERFORMANCE OF THE TECHNOLOGY; OR ANY OTHER REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE TECHNOLOGY. ASSIGNEE ALSO ACKNOWLEDGES THAT ASSIGNORS HAVE MADE NO REPRESENTATION OR WARRANTY OF ANY KIND, NATURE OR DESCRIPTION, EXPRESS OR IMPLIED, WITH RESPECT TO THE OPERATION, USE OR PERFORMANCE OF THE TECHNOLOGY.

ASSIGNORS SHALL HAVE NO LIABILITY TO ASSIGNEE OR ANY PERSON WHOMSOEVER (INCLUDING LICENSEES OR PURCHASERS OF ALL OR ANY OF THE TECHNOLOGY) FOR ANY CLAIM, LOSS, DAMAGE OR EXPENSE (INCLUDING ATTORNEY FEES) OF ANY KIND OR NATURE, WHETHER SPECIAL, CONSEQUENTIAL, ECONOMIC OR OTHERWISE, CAUSED OR ALLEGED TO BE CAUSED DIRECTLY, INDIRECTLY, INCIDENTALLY, OR CONSEQUENTIALLY BY THE TECHNOLOGY OR ANY PART THEREOF OR PRODUCTS THEREFROM, BY ANY INADEQUACY OF THE TECHNOLOGY OR DEFECT OR DEFICIENCY THEREIN, BY ANY INCIDENT WHATSOEVER ARISING IN STRICT LIABILITY OR OTHERWISE FROM ASSIGNORS' OR ASSIGNEE'S NEGLIGENCE OR OTHERWISE, OR FOR ANY LOSS OF BUSINESS OR DAMAGE WHATSOEVER AND HOWSOEVER CAUSED, OR ARISING OUT THE TECHNOLOGY.

Assignee acknowledges that Assignors have made no representation or warranty concerning the location of the Technology nor whether all of the Technology is in existence or operational. ASSIGNEE PURCHASES THE TECHNOLOGY AS IS AND WHERESOEVER LOCATED, WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND. Assignee accepts the Technology subject to the terms of this Assignment.

Assignee agrees to be responsible for all taxes, that are now existing or hereafter are incurred, assessed, or imposed on the Technology or as a result of the ownership or sale of the Technology, except as expressly provided otherwise in the Asset Purchase Agreement. Assignee hereby agrees to hold Assignors harmless from and against any and all taxes, that are now existing or are hereafter incurred, assessed or imposed on the Technology or as a result of the ownership of the Technology.

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IN WITNESS WHEREOF, Assignors have caused this Assignment to be signed in Assignors' name.

SILICON VALLEY BANK

Date: 3-4-2003

*Marla Johnson*  
Signature of Assignor

Marla Johnson, Senior Vice President  
Printed Name and Title

GATX VENTURES, INC.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Assignor

\_\_\_\_\_  
Printed Name and Title

SEQUEL ENTREPRENEURS' FUND II, L.P.  
as Collateral Agent

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Assignor

\_\_\_\_\_  
Printed Name and Title

IN WITNESS WHEREOF, Assignors have caused this Assignment to be signed in Assignors' name.

SILICON VALLEY BANK


Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Assignor

\_\_\_\_\_  
Printed Name and Title

GATX VENTURES, INC.

Date: 3-4-2003

  
\_\_\_\_\_  
Signature of Assignor

CARL F. SWANSON, VP  
\_\_\_\_\_  
Printed Name and Title

SEQUEL ENTREPRENEURS' FUND II, L.P.  
as Collateral Agent

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Assignor

\_\_\_\_\_  
Printed Name and Title

IN WITNESS WHEREOF, Assignors have caused this Assignment to be signed in Assignors' name.

SILICON VALLEY BANK

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Assignor

\_\_\_\_\_  
Printed Name and Title

GATX VENTURES, INC.

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature of Assignor

\_\_\_\_\_  
Printed Name and Title

SEQUEL ENTREPRENEURS' FUND II, L.P.  
as Collateral Agent

Date: 3-5-03

  
\_\_\_\_\_  
Signature of Assignor

John T. GREFF MANAGER  
Printed Name and Title

**ATTACHMENT A**

**United States Patent Applications**



**ATTACHMENT B**

**International Patent Applications**

**ATTACHMENT C**

**Disclosures**