

04-14-2004

Form PTO-1595

(Rev. 10/02)

OMB No. 0651-0027 (exp. 6/30/2004)

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HEET

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

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

1. Name of conveying party(ies):

Paul Kristen, Inc.

4.12.04

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

3. Nature of conveyance:

☐

Assignment

☐

Merger

☒

Security Agreement

☐

Change of Name

☐

Other _____

Execution Date: March 18, 2004

2. Name and address of receiving party(ies)

Name: HSBC Bank USA

Internal Address: _____

Street Address: One HSBC Center

City: Buffalo State: NY Zip: 14203

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

4. Application number(s) or patent number(s):

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

A. Patent Application No.(s) _____

B. Patent No.(s) _____

see attached Schedule A

Additional numbers attached? ☒ Yes ☐ No

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

Name: Phillips Lytle LLP

Internal Address: Intellectual Property Group

Street Address: 3400 HSBC Center

City: Buffalo State: NY Zip: 14203

6. Total number of applications and patents involved: 13

7. Total fee (37 CFR 3.41).....\$520.00

☒

Enclosed

☐

Authorized to be charged to deposit account

8. Deposit account number:

2004 APR 12 PM 1:57
OPR/FINANCE

DO NOT USE THIS SPACE

9. Signature.

Carolyn C. McGrath

Name of Person Signing

Signature

April 8, 2004

Date

Total number of pages including cover sheet, attachments, and documents: 10

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents & Trademarks, Box Assignments
Washington, D.C. 20231

04/13/2004 MGETACHE 00000023 6138793

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520.00 OP

PATENT
REEL: 015190 FRAME: 0678

Schedule A
Schedule of Patents

Patent No.	Issued to	Dated
6,138,793	Lambros Apostolopoulos	October 31, 2000
5,730,248	Lambros Apostolopoulos	March 24, 1998
6,003,634	Lambros Apostolopoulos	December 21, 1999
5,921,346	Lambros Apostolopoulos	July 13, 1999
6,135,240	Lambros Apostolopoulos	October 24, 2000
6,227,331	Lambros Apostolopoulos	May 8, 2001
6,523,644	Lambros Apostolopoulos	February 25, 2003
6,386,319	Lambros Apostolopoulos	May 14, 2002
6,302,237	Lambros Apostolopoulos	October 16, 2001
6,264,002	Lambros Apostolopoulos	July 24, 2001

Application of	Dated	App. No.
Lambros Apostolopoulos	August 24, 2000	09/645,242
Lambros Apostolopoulos	August 24, 2000	09/645,243
Lambros Apostolopoulos	October 24, 2000	09/695,338

PATENT SECURITY AGREEMENT

THIS AGREEMENT, made as of the 19th day of March, 2004 is between PAUL KRISTEN, INC., a New York corporation having its principal office and place of business at 252 Fillmore Avenue, Tonawanda, New York 14150, ("Owner"), SAFESPAN PLATFORM SYSTEMS, INC. with an address at 252 Fillmore Avenue, Tonawanda, New York ("Debtor") and HSBC BANK USA, a banking corporation having its principal office and place of business at One HSBC Center, Buffalo, New York 14203 ("Bank").

WHEREAS, Debtor is obligated to Bank pursuant to certain loan agreements, notes, guaranties, and related documents including, without limitation, the General Security Agreement between Debtor and Bank dated April 6, 2001, the General Security Agreement between Debtor and Bank dated May 14, 1999, the Continuing General Security Agreement between Debtor and Bank dated November 12, 2002, the Continuing General Security Agreement between Debtor and Bank dated March 14, 2003, the Continuing General Security Agreement between Debtor and Bank dated April 22, 2002, the Continuing General Security Agreement between Debtor and Bank dated February 6, 2002, the Security Agreement (Equipment, Consumer Goods, Fixtures) between Debtor and Bank dated May 19, 1999 and all Schedules (collectively, the "Loan Documents"); and

WHEREAS, Debtor has made certain requests of Bank;

WHEREAS, Bank is willing to respond to those requests on the basis of the Forbearance Agreement dated as of March 18, 2004 only if, among other things, Owner grants to Bank a security interest in the United States patents or patent applications described on Schedule A attached hereto and made a part hereof (individually a "Patent" and collectively the "Patents") as collateral for indebtedness, liabilities and obligations of Debtor to Bank;

NOW, THEREFORE, in consideration of the premises and covenants herein contained, Owner and Bank hereby agree as follows:

1. Collateral Assignment. Owner hereby grants, mortgages, pledges, assigns and conveys to Bank a security interest in and to each Patent, the invention set forth in each Patent, all foreign patent rights corresponding to each Patent throughout the world, all re-issues, divisions, continuations, renewals, extensions and continuations-in-part of each Patent and all products and proceeds of the foregoing (including, without limitation, license royalties, proceeds or infringement suits and the right to sue for past, present and future infringements) (collectively the "Collateral") as continuing and collateral security for the payment of indebtedness, liabilities and obligations for the payment of money regardless of kind and whether for the payment of principal or of interest or otherwise, now existing or hereafter arising, created directly or by any assignment or other transfer, direct or indirect, absolute or contingent, due or not due, contractual or tortious, liquidated or unliquidated or arising by operation of law or otherwise, that are now or hereafter owing by Owner or Debtor to Bank in any capacity, whether or not allowed as a claim against Debtor in any case or other proceeding pursuant to any bankruptcy law (collectively the "indebtedness"). The security interest created pursuant to this Agreement is a continuing

security interest, independent of and in addition to any other security or guaranty held by Bank for the indebtedness or any part thereof.

2. Warranties. With the exception of information otherwise disclosed in writing to the Bank, Owner warrants and represents to Bank that:

- (a) Each Patent is subsisting and has not been adjudged or declared invalid or unenforceable, in whole or in part, by any court or by any government agency;
- (b) Each Patent is valid and enforceable, except Owner does not warrant that any Patent might not be declared invalid by a court of competent jurisdiction if challenged;
- (c) There is no litigation or administrative proceeding pending and, to the best of Owner's knowledge, there is no litigation or administrative proceeding threatened which questions the validity or enforceability of any Patent;
- (d) Owner is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each Patent, free and clear of any security interests, liens, claims and encumbrances whatsoever (including, without limitation, shop rights and covenants by Owner not to sue third persons), other than the security interest of Bank granted by this Agreement, except an exclusive license which has been granted by Owner to Debtor in said Patents;
- (e) Debtor and Owner have the unqualified right to enter into this Agreement and perform its terms and have entered and will enter into written agreements with each of its present and future employees, agents and consultants which will enable it to comply with the covenants herein contained;
- (f) Debtor and Owner are duly organized and existing under the laws of the State of New York; and
- (g) The execution, delivery and performance of this Agreement are within Debtor's and Owner's corporate powers, have been duly authorized and are not in contravention of any applicable law or the provisions of Debtor's or Owner's certificate of incorporation or by-laws, or of any indenture or undertaking to which Debtor or Owner is a party or by which they are bound and there are no provisions in the certificates of incorporation of Debtor and Owner requiring any vote or consent of shareholders to any mortgage or pledge of, or to the creation of a security interest in, any property of Debtor or Owner (including, without limitation, any Patent).

3. Covenants. Owner agrees that:

- (a) Owner shall not mortgage, pledge, grant a security interest in, otherwise encumber, or suffer a security interest or other encumbrance to exist in the Collateral, excepting only a security interest in favor of Bank.
- (b) If Owner shall obtain rights to any new patentable inventions, or become entitled to the benefit of any patent application or to any reissue, division, continuation, renewal, extension or continuation-in-part of any Patent or any improvement on or to the invention set forth in any Patent (collectively "Additional Collateral"), all of the provisions of this Agreement shall automatically apply thereto, Debtor and Owner shall give to Bank notice of the existence thereof in writing and such Additional Collateral shall be included in the term Collateral as used in this Agreement.
- (c) Owner will not sell, transfer, assign, license, deliver, renounce or otherwise dispose of any Collateral or any interest therein without the prior written consent of the Bank or except as permitted under the Loan Documents.
- (d) Owner will notify the Bank promptly in writing of any change in Owner's business address or chief executive office specified above or in any change in its state of organization.

4. Perfection. Debtor and Owner shall execute and deliver to Bank all documents (including, without limitation, financing statements) which Bank may deem necessary or desirable in order to perfect its interest in the Collateral. Debtor and Owner hereby authorize Bank to file any financing statements, signed only by Bank, as Bank may deem necessary or desirable under the Uniform Commercial Code or any other applicable law. In addition, Debtor and Owner hereby authorize Bank to file a copy of this Agreement with the United States Patent and Trademark Office and to take any other actions or to make any other filings which Bank may deem necessary or desirable in order to perfect its interest in the Collateral.

5. Remedies. If any Default (under any agreement between or among Debtor, Owner or Bank) shall have occurred and be continuing, the Bank shall have, in addition to all other rights and remedies given to it pursuant to this Agreement and pursuant to applicable law, the rights and remedies of a secured party under the Uniform Commercial code as enacted in the State of New York. Without limiting the generality of the immediately preceding sentence, Bank may immediately, without the demand of performance and without any other notice (except as set forth below) or demand whatsoever to Debtor or Owner, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon, the whole or any part of the Collateral, or any interest which Debtor or Owner may have therein. All costs and expenses of collection, notification and enforcement (including, without limitation, the fees and disbursement of a broker and legal counsel) shall be borne solely by Debtor and Owner, whether the same shall be incurred by Debtor, Owner or Bank. All proceeds received by Bank pursuant to the exercise of its rights under this paragraph shall be applied to the payment of such costs and expenses, with the balance, if any, to be applied to such of the indebtedness and in such order of application as Bank may in its sole discretion elect,

whether or not then due. Any proceeds remaining after payment in full of the indebtedness shall be paid over to Debtor. Notice of any sale or other disposition of any of the Collateral shall be given to Debtor at least five (5) days before the time of any intended public or private sale or other disposition of any of the Collateral is to be made, which Debtor and Owner hereby agrees shall be reasonable notice of such sale or other disposition.

6. Payment. At such time as Debtor shall completely pay all of the Indebtedness, Bank shall, upon the written request of Debtor, execute and deliver to Debtor or Owner all assignments, documents and other instruments as may be necessary to reconvey to Debtor or Owner full title to the Collateral, subject to any disposition thereof which may have been made by Bank pursuant to the provisions of this Agreement; provided, however, that any such assignment, document or instrument shall be in form and substance reasonably acceptable to Bank.

7. Expenses. All costs and expenses of whatever kind or nature (including, without limitation, fees and disbursements of legal counsel) incurred by Bank in connection with the preparation of this Agreement and all other documents relating hereto and consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving the Collateral, or in defending or prosecuting any actions arising out of or related to the Collateral, shall be borne and paid by Debtor and Owner on demand by Bank and until so paid shall be part of the indebtedness.

8. Protection of the Collateral. Debtor and Owner shall have the duty, through legal counsel of Debtor's choice and reasonably acceptable to Bank, to prosecute diligently any patent application of the Collateral pending as of the date of this Agreement or thereafter until the indebtedness shall have been paid in full, to make application on unpatented but patentable inventions and to preserve and maintain all right in patent applications and patents of the Collateral. Any expenses incurred in connection with such an application shall be borne by Debtor and Owner. Debtor and Owner shall not abandon any right to file a patent application or any pending patent application (except where a continuation or continuation-in-part application is being filed as a replacement for the application being abandoned) or patent without the consent of Bank, which consent shall not be unreasonably withheld. Except as provided hereinafter, Owner and Debtor shall have the sole right to bring suit to enforce any Patent and any license thereunder. In the event of Default (as such term is defined in any security agreement between Debtor and/or Owner and Bank) which shall have occurred and be continuing for a period of not less than thirty (30) days, Bank shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce any Patent and any license thereunder, in which event Debtor and Owner shall at the request of Bank do any and all lawful acts and execute any and all proper documents required by Bank in aid of such enforcement, and all costs and expenses incurred by Bank in the exercise of its rights under this paragraph shall be recoverable from the proceeds of any judgment or settlement of such suit. Debtor shall not be liable for any excess of such costs and expenses of such suit over such proceeds of any judgment or settlement of such suit.

9. Notice. Debtor shall immediately notify Bank in writing of any suit for infringement brought against Debtor or Owner or other proceeding which questions the validity or enforceability of any Patent and Debtor shall promptly deliver to Bank copies of all documents relating to such suit or other proceeding.

10. Failure, Delay or Waiver. No failure of Bank to require, and no delay by Bank in requiring, Debtor or Owner to comply with any requirement of this Agreement shall constitute a waiver of the right to require such compliance or compliance with any other requirement of this Agreement. No failure of Bank to exercise, and no delay by Bank in exercising, any right or remedy, whether under this Agreement or otherwise, shall constitute a waiver of such right, such remedy or any other right or remedy, whether under this Agreement or otherwise, shall be limited to the specific instance and shall not constitute a waiver of such right or remedy in the future or of any other right or remedy, whether under this Agreement or otherwise.

11. Cumulative Rights. All of Bank's rights and remedies under this Agreement are cumulative and not exclusive of any other rights or remedies which Bank may otherwise have, and all such rights and remedies may be exercised and pursued singularly or concurrently.

12. Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under any applicable law or regulation. If, however, any provision of this Agreement shall be prohibited by or invalid under any such law or regulation, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder thereof or any of the remaining provisions of this Agreement.

13. Binding. This Agreement shall be binding upon and inure to the benefit of Debtor and Bank and each of their legal representatives, successors and assignees.

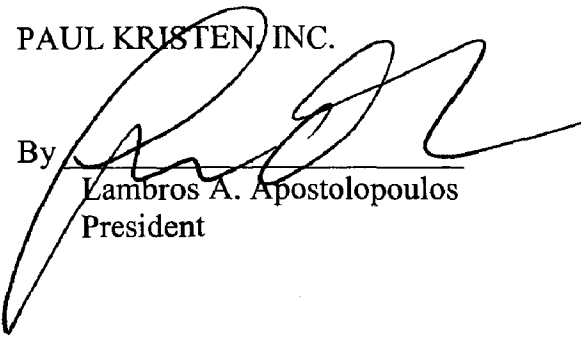
14. Applicable Law. This Agreement shall be governed by and interpreted, construed and enforced in accordance with the internal laws of the State of New York, without regard to principles of conflict of law.

15. Entire Agreement. This Agreement constitutes the entire agreement between Debtor and Bank with respect to the matters dealt with in this Agreement, and supercedes all oral and written proposals, representations, understandings and agreements previously made or existing with respect to any such matter, other than the Security Agreement. The headings of the paragraphs of this Agreement have been added for convenience only and shall not be substantive part of this Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the day and year first above written.

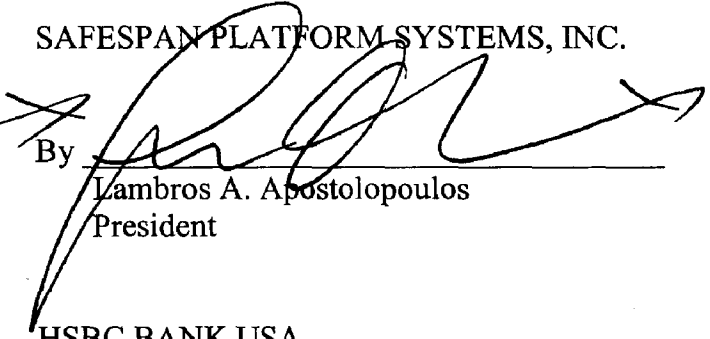
PAUL KRISTEN, INC.

By


Lambros A. Apostolopoulos
President

SAFESPAN PLATFORM SYSTEMS, INC.

By


Lambros A. Apostolopoulos
President

HSBC BANK USA

By

Mark F. Zeis, Vice President

BFLO Doc. # 1370948.1

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the day and year first above written.

PAUL KRISTEN, INC.

SAFESPAN PLATFORM SYSTEMS, INC.

By _____
Lambros A. Apostolopoulos
President

By _____
Lambros A. Apostolopoulos
President

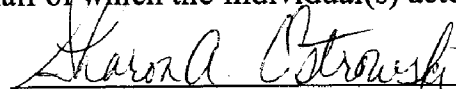
HSBC BANK USA

By Salvatore J. Gulllo
~~Mark F. Zeis, Vice President~~
Salvatore J. Gulllo

BFLO Doc. # 1370948.1

STATE OF NEW YORK)
) SS:
COUNTY OF ERIE)

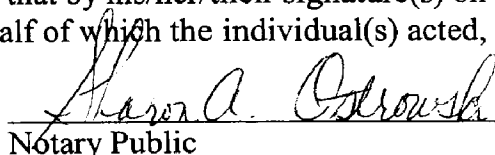
On the 24 day of March in the year 2004, before me, the undersigned, a notary public in and for said state, personally appeared LAMBROS A. APOSTOLOPOULS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public
SHARON A. OSTROWSKI
Notary Public, State of New York
Qualified in Erie County
My Commission Expires December 28, 2005

STATE OF NEW YORK)
) SS:
COUNTY OF ERIE)

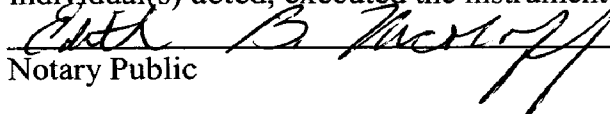
On the 24 day of March in the year 2004, before me, the undersigned, a notary public in and for said state, personally appeared LAMBROS A. APOSTOLOPOULS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.



Notary Public
SHARON A. OSTROWSKI
Notary Public, State of New York
Qualified in Erie County
My Commission Expires December 28, 2005

STATE OF NEW YORK)
) SS:
COUNTY OF ERIE)

On the 7 day of ^{April} ~~March~~ in the year 2004, before me, the undersigned, a notary public in and for said state, personally appeared ~~MARK F. ZEIS~~ ^{Salvatore J. Gullio}, personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) acted, executed the instrument.



EDITH B. NICOLOFF
Notary Public, State of New York
Qualified in Erie County
My Commission Expires 10/31/2005