

PATENT ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
Mark Colaio	07/21/2003
RECEIVING PARTY DATA	
Name:	Cantor Fitzgerald, LP
Street Address:	135 East 57th Street
Internal Address:	5th Floor
City:	New York
State/Country:	NEW YORK
Postal Code:	10022
PROPERTY NUMBERS Total: 1	
Property Type	Number
Application Number:	10015739
CORRESPONDENCE DATA	
Fax Number:	(212)596-9090
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	212-596-9000
Email:	jared.kneitel@ropesgray.com
Correspondent Name:	Jared Kneitel
Address Line 1:	Fish & Neave IP Group - Ropes & Gray LLP
Address Line 2:	1251 Avenue of the Americas
Address Line 4:	New York, NEW YORK 10020
NAME OF SUBMITTER:	Jared Kneitel

Total Attachments: 12
 source=CF-36 Colaio#page1.tif
 source=CF-36 Colaio#page2.tif
 source=CF-36 Colaio#page3.tif
 source=CF-36 Colaio#page4.tif

500023523

PATENT
REEL: 015779 FRAME: 0567

CH \$40.00 10015739

source=CF-36 Colaio#page5.tif
source=CF-36 Colaio#page6.tif
source=CF-36 Colaio#page7.tif
source=CF-36 Colaio#page8.tif
source=CF-36 Colaio#page9.tif
source=CF-36 Colaio#page10.tif
source=CF-36 Colaio#page11.tif
source=CF-36 Colaio#page12.tif



Paper No. 12

FISH & NEAVE
1251 AVENUE OF THE AMERICAS
50TH FLOOR
NEW YORK NY 10020-1105

RECEIVED

JUL 24 2003

COPY MAILED

JUL 21 2003

FISH & NEAVE - PATENT DEPT.
REFERRED TO
NOTED BY *[Signature]*

OFFICE OF PETITIONS

In re Application of	:
Mark Colaio	:
Application No. 10/015,739	: DECISION ACCORDING STATUS
Filed: 12 December, 2001	: UNDER 37 CFR 1.47(b)
Atty Dckt No. CF-36	:

This is in response to the twice renewed petition under 37 CFR 1.47(b) filed on 11 June, 2003.

The petition is **GRANTED**.

Petitioner has shown that the legal representative of the deceased sole inventor has refused to join in the filing of the above-identified reissue application after having been sent a copy of the application papers. Specifically, petitioners have established that on 16 January, 2002, a copy of the application and declaration was sent to the deceased sole inventor's legal representative, June Colaio, but Ms. Colaio failed to sign and return the declaration. In addition, petitioners have shown, via the legal memorandum by Joel Weiss, filed with the present renewed petition on 11 June, 2003, that petitioner Cantor Fitzgerald, LP has a proprietary interest in the above-identified application. Lastly, petitioner has submitted a declaration in compliance with 37 CFR 1.63, signed by Howard W. Lutnick, Chairman and CEO of Cantor Fitzgerald, and has demonstrated that such action is necessary to prevent irreparable damage.

This application and papers have been reviewed and found in compliance with 37 CFR 1.47(b). This application is hereby accorded Rule 1.47(b) status.

As provided in Rule 1.47(c), this Office will forward notice of this application's filing to the non-signing legal representative of the deceased sole inventor. Notice of the filing of this application will also be published in the Official Gazette.

Application No. 10/015,739

2

The application file is being forwarded to Technology Center 2100 for examination in due course.

Telephone inquiries regarding this communication should be directed to the undersigned at 703.308.6918.

D Wood

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In Re Application of Mark Colaio)
United States Patent Application)
No. 10/015,739 filed December 12, 2001) DECISION REFUSING
STATUS UNDER 37 C.F.R.
1.47(b)

**PETITIONER'S LEGAL MEMORANDUM IN SUPPORT OF ITS
PROPRIETARY INTEREST IN THE SUBJECT MATTER OF
UNITED STATES PATENT APPLICATION NO. 10/015,739.**

FISH & NEAVE
Joel Weiss
Reg. No. 44,398
1251 Avenue of the Americas
New York, New York 10020
(212) 596-9000

Attorney for Petitioner, Cantor Fitzgerald, LP

INTRODUCTION

Cantor Fitzgerald, L.P. ("Petitioner"), a corporation organized and existing under the laws of Delaware and having an office and place of business at 135 East 57th Street, 5th Floor, New York, New York 10022, files this legal memorandum in response to the Examiner's November 12, 2002 Decision Refusing Status Under 37 C.F.R. 1.47(b). This memorandum shows that, according to the applicable laws in the jurisdiction to which the issue pertains, Petitioner has provided sufficient proof of proprietary interest in the subject matter of U.S. Patent Application No. 10/015,739 to justify filing of the application under 37 C.F.R. 1.47(b).

STATEMENT OF FACTS

Until the September 11, 2001 attack on the World Trade Center, Petitioner occupied an office and place of business at One World Trade Center, New York, New York. Mark Colaio, the deceased sole inventor of United States Patent Application No. 10/015,739, filed December 12, 2001, was employed by Petitioner at the time of the invention and until September 11, 2001. The invention was made in connection with Colaio's employment with Petitioner and, as a condition of his employment agreement with Petitioner, Colaio was obligated to assign the rights of the invention to Petitioner (as indicated in the unsigned copy of a portion of Colaio's employment agreement, attached hereto as Appendix I). The signed original copy of Colaio's employment agreement was kept at Petitioner's World Trade Center office until September 11, 2001. Colaio is missing and presumed dead, and his original employment agreement was lost or destroyed, as a result of the September 11, 2001 attack that destroyed the World Trade Center. Although the original employment agreement is unavailable, an unsigned copy of a portion of the original agreement (Appendix I) is available as secondary evidence to support Petitioner's proprietary interest in the subject matter of this patent application. A witness' declaration that the copy is a reliable and accurate portrayal of the signed original agreement, attached hereto as Appendix II, is also provided as secondary evidence to prove the existence and substance of the original agreement.

ARGUMENT

Colaio's signed original employment agreement is not available to support Petitioner's proprietary interest in the subject matter of U.S. Patent Application No. 10/015,739. Nevertheless, for the reasons set forth in detail below, a court of competent jurisdiction in the State of New York would award the title of the application to Petitioner.

A. SECONDARY EVIDENCE MAY PROVE THE CONTENTS OF AN UNAVAILABLE ORIGINAL LEGAL DOCUMENT

Under a long-recognized exception to the best evidence rule, both Federal and New York State Law allow for the introduction of secondary evidence to prove the contents of a legal document (e.g., an employment agreement) when the original has been lost or destroyed. See Schozer v. William Penn Life Ins. Co., 84 N.Y.2d 639, 644, (1994); Burroughs Wellcome Co. v. Commercial Union Ins. Co., 632 F.Supp. 1213, 1223 (S.D.N.Y.1986); see also Fed.R. of Evid. § 1004; Fisch, New York Evidence § 81, at 49 [2d ed]. In *Schozer*, the New York State Court of Appeals held that "secondary evidence of the contents of an unproduced original [document] may be admitted upon threshold factual findings by the trial court that the proponent of the substitute has sufficiently explained the unavailability of the primary evidence and has not procured its loss or destruction in bad faith." Schozer at 644; see also Fisch, New York Evidence § 81, at 49 and § 88-89, at 55-56 [2d ed]; Fed.R. of Evid. § 1004.

B. PETITIONER CAN SUFFICIENTLY EXPLAIN WHY COLAIO'S SIGNED ORIGINAL EMPLOYMENT AGREEMENT IS UNAVAILABLE

Colaio's signed original employment agreement was lost or destroyed during the September 11, 2001 attack that destroyed the World Trade Center. Petitioner clearly did not lose or destroy the original document in bad faith. Accordingly, because Petitioner can sufficiently explain why Colaio's original agreement is not available, a New York State Court would be compelled to admit secondary evidence to prove the existence and substance of the original agreement.

C. SECONDARY EVIDENCE OF COLAIO'S SIGNED ORIGINAL
EMPLOYMENT AGREEMENT IS AVAILABLE

As with any other lost original primary evidence, once the absence of the original is excused, "all competent secondary evidence is generally admissible to prove its contents" and "no categorical limitations are placed on the types of secondary evidence that are admissible." See Schozer at 645. The attached unsigned copy of a portion Colaio's original employment agreement is secondary evidence to prove the substance of the original agreement, and expressly states that "[Petitioner] shall have exclusive ownership of any and all right, title, and interest in...patents...associated with any...invention...produced during the course of your employment." The attached Declaration provides further evidence that the copy is a reliable and accurate portrayal of the original agreement. Accordingly, a New York State Court would, based on the terms of the original employment agreement, award the title of U.S. Patent Application No. 10/015,739 to Petitioner.

CONCLUSION

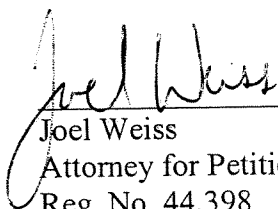
A court of the State of New York would affirm Petitioner's proprietary interest in the subject matter of U.S. Patent Application No. 10/015,739. The court's decision would be based on its consideration of secondary evidence proving the existence and substance of the original agreement between Colaio and Petitioner. Secondary evidence would be admissible in this case because Petitioner can provide a reasonable explanation as to why the original agreement is no longer available. The terms of the employment agreement clearly designate Petitioner as having exclusive ownership of U.S. Patent Application No. 10/015,739.

The foregoing demonstrates that Petitioner has provided sufficient proof of proprietary interest in the subject matter of U.S. Patent Application No. 10/015,739 to justify filing of the application under 37 C.F.R. 1.47(b).

Respectfully Submitted,

Date: _____

6/10/03



Joel Weiss
Attorney for Petitioner
Reg. No. 44,398
Fish & Neave
1251 Avenue of the Americas
New York, New York 10020
(212) 596-9000

APPENDIX I:
UNSIGNED COPY OF A PORTION OF COLAIO'S EMPLOYMENT AGREEMENT

CANTOR FITZGERALD EMPLOYMENT AGREEMENT

Cantor Fitzgerald owns all the tangible and intangible work product originated or developed by employees in connection with their employment, even if developed outside the Firm's premises. As a condition of your employment you agree that Cantor Fitzgerald shall have exclusive ownership of any and all right, title, and interest in (1) all copyright, trademarks, service mark rights, patents or processes associated with any work, mark, invention or process produced during the course of your employment which was originated or developed in connection with such employment; and (2) any such proprietary rights with respect to any invention or process originated or such proprietary rights with respect to any invention or process originated or developed in connection with your employment reduced to practice following the termination of your employment, if the invention or process existed in an intangible form prior to such termination, even if it was not workable at that time.

As further condition of your employment, you agree to execute any and all documents necessary to protect and preserve Cantor Fitzgerald's proprietary rights in copyrights, trademarks, service marks, patents, processes and trade secrets even if you are no longer employed by the Firm and including at Cantor Fitzgerald's request, you agree to confirm such assignment in writing. . . .

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT APPLICATION

Applicant : Mark Colaio
Application No.: 10/015,739 Confirmation No.: 8873
Filed : December 12, 2001
For : METHOD AND SYSTEM FOR TRAINING TRADERS
Group Art Unit : 2123
Examiner : Not yet assigned

Mail Stop DAC
Commissioner for Patents
P.O. Box 1450
Alexandria, Virginia 22313-1450

DECLARATION OF HOWARD W. LUTNICK

Sir:

I, Howard W. Lutnick, hereby declare that:

1. I am Chairman and Chief Executive Office of Cantor Fitzgerald, L.P. ("Cantor Fitzgerald") and its associated companies.

2. I reside at 180 East 64th Street, New York, New York.

3. Unless otherwise stated as being based on information and belief, the facts stated in this declaration are based on my personal knowledge.

4. Until the September 11, 2001 attack on the World Trade Center, Cantor Fitzgerald occupied an office and place of business at One World Trade Center, New York, New York.

5. Mark Colaio, the deceased sole inventor of United States Patent Application No. 10/015,739, filed December 12, 2001, was employed by Cantor Fitzgerald at the time of the invention and until September 11, 2001. The invention was made in connection with Colaio's employment with Cantor Fitzgerald. As a condition of his employment, Colaio was obligated to assign the rights of all inventions made in connection with his employment to Cantor Fitzgerald. A signed original copy of Colaio's employment agreement was kept at Cantor Fitzgerald's World Trade Center office until September 11, 2001.

6. Mark Colaio is missing and presumed dead, and his original employment agreement was lost or destroyed, as a result of the September 11, 2001 attack that destroyed the World Trade Center. Because Cantor Fitzgerald's World Trade Center Office was completely destroyed during the attack, a diligent search for Colaio's original employment agreement was not reasonable or possible.

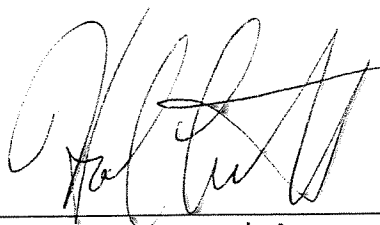
7. I have reviewed the accompanying unsigned copy of a portion of Colaio's original employment agreement. The copy is a reliable and accurate portrayal of the original agreement.

8. I declare, further, that I understand the English language and that all statements made herein of my own knowledge are true, and that all statements made on information and belief are believed to be true; and, further, that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that

such willful false statements may jeopardize the validity of the above-identified patent application.

6/10/2003

Date



Howard W. Lutnick