

PATENT ASSIGNMENT

Electronic Version v1.1

Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
International Business Machines Corp.	12/26/2006
RECEIVING PARTY DATA	
Name:	Time Warner, Inc.
Street Address:	One Time Warner Center
City:	NY
State/Country:	NEW YORK
Postal Code:	10019
PROPERTY NUMBERS Total: 1	
Property Type	Number
Patent Number:	6891635
CORRESPONDENCE DATA	
Fax Number:	(212)684-3999
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	212-684-3900
Email:	HVuu@grr.com
Correspondent Name:	Gottlieb, Rackman & Reisman, P.C.
Address Line 1:	270 Madison Ave.
Address Line 2:	8th floor
Address Line 4:	NY, NEW YORK 10016
ATTORNEY DOCKET NUMBER:	4630-034
NAME OF SUBMITTER:	Tiberiu Weisz
Total Attachments: 11 source=Agreement_6891635#page1.tif source=Agreement_6891635#page2.tif source=Agreement_6891635#page3.tif source=Agreement_6891635#page4.tif	

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PATENT ASSIGNMENT AGREEMENT ("Agreement") with an Effective Time & Date as defined below, between **INTERNATIONAL BUSINESS MACHINES CORPORATION**, a New York corporation ("IBM"), Time Warner., ("BUYER"), a Delaware corporation.

WHEREAS, IBM has the right to assign its interest in the Assigned Patents as defined below; and
WHEREAS, subject to the reservation by IBM of certain rights, IBM desires to assign its ownership interest in the Assigned Patents and BUYER desires to acquire such ownership interest in the Assigned Patents;

Now therefore, in consideration of the premises and mutual covenants herein contained, IBM and BUYER agree as follows:

Section 1. Assignment

1.1 Subject to all rights granted to others prior to the Effective Time & Date, to IBM's reservation of rights set forth in Section 2, and to the terms in Section 3.1, IBM sells, transfers and assigns to BUYER on the Effective Time & Date all right, title and interest in and to the Assigned Patents that IBM has as of the Effective Time & Date, including the right to sue for injunctive relief and damages for infringement of any of the Assigned Patents accruing on and after the Effective Time & Date.

1.2 Except as expressly set forth in this section, BUYER shall be solely responsible for all actions and all costs whatsoever, including but not limited to taxes, attorneys' fees and patent office fees in any jurisdiction, associated with the perfection of the BUYER's right, title, and interest in and to each Assigned Patent and recordation thereof.

With respect to the Assigned Patents that are pending or issued in the United States, not later than thirty (30) days after the Effective Time & Date IBM shall deliver to BUYER an executed document having the form and substance of Exhibit D and its referenced Exhibits A and C (attached hereto and also titled Exhibits A and C, respectively). IBM's execution of such documents and their timely delivery to BUYER shall fully satisfy IBM's obligations under this Section 1.2 with respect to Assigned Patents that are pending or issued in the United States.

With respect to the Assigned Patents that are pending or issued outside the United States, upon BUYER's written request and at BUYER's expense, IBM shall execute all documents and instruments prepared by BUYER, and shall do all lawful acts, in each case as may be reasonably necessary to perfect BUYER's right, title, and interest in and to such Assigned Patents and recordation thereof, provided that, not later than thirty (30) days after the Effective Time & Date and not later than 15 days prior to BUYER's expected date of recordation, BUYER shall provide IBM with any documents requiring IBM's signature, suitable for recording, having terms and conditions acceptable to IBM and substantially similar to Exhibit D except for any additional or different terms and conditions that would be legally necessary in patent assignments of the local jurisdiction. BUYER shall provide IBM with an English translation of each such document concurrently therewith.

1.3 BUYER shall be solely responsible for all actions and all costs, including attorneys' fees and patent office fees in any jurisdiction, having a Due Date on or after the Effective Time & Date and associated with: (i) maintaining the enforceability of any of the Assigned Patents; or (ii) further prosecution of any of the Assigned Patents. IBM and inventors of the Assigned Patents shall not be obligated to assist in prosecution or maintenance of the Assigned Patents or to execute or have executed additional oaths or declarations after the Effective Time & Date except as required to complete any Assigned Patent Applications filed with missing parts.

1.4 Except with respect to the Assigned Patents as expressly set forth in this Agreement, no license, immunity, ownership interest, or other right is granted under this Agreement, either directly or by implication, estoppel, or otherwise.

Section 2. Reserved Rights

2.1 IBM reserves and retains, for the benefit of itself and its Subsidiaries and its and their successors and assigns, an irrevocable, nonexclusive, worldwide, fully paid-up, royalty free right and license under the Assigned Patents, to make, have made, use, have used, import, license, offer to sell, sell, lease, and otherwise transfer any product or service, and to practice and have practiced any method. Such reserved right and license includes the right to grant, without notice or accounting, sublicenses of the same or lesser scope to: (a) any entities that are on the Effective Time & Date, or thereafter become, a Subsidiary of IBM or a Subsidiary of one of IBM's Subsidiaries, such sublicenses including the right of sublicensed Subsidiaries to sublicense their Subsidiaries and surviving in the event any such Subsidiary ceases to be a Subsidiary of IBM; (b) any third parties with respect to which IBM or any of its Subsidiaries has or incurs a duty or obligation to grant or otherwise provide a license, immunity, covenant not to sue, or similar right under any Assigned Patents, where such duty or obligation is based upon any agreement existing prior to the Effective Time & Date or upon any promise, representation, conduct or action occurring prior to the Effective Time & Date; (c) any third parties to which, on or after the Effective Time & Date, IBM transfers a product line, a service line or a Subsidiary; and (d) third parties with respect to IBM's rights in Section 4.2.

2.2 IBM reserves and retains, for the benefit of itself and its Subsidiaries and its and their successors and assigns, an irrevocable, nonexclusive, worldwide, fully paid-up, royalty free right to grant third parties an immunity from suit under each Assigned Patent, where the suit is based on products or services provided or designed by IBM or its Subsidiaries, or designees of IBM or its Subsidiaries or where such suit, if brought by IBM, would breach a promise or covenant not to sue made by IBM prior to the Effective Time & Date.

2.3 IBM reserves and retains, for the benefit of itself and its Subsidiaries and its and their successors and assigns, all rights to past, present, and future royalties and other consideration given or to be given in exchange for rights with respect to any Assigned Patent arising or accruing under agreements executed by IBM or IBM's Subsidiaries prior to the Effective Time & Date. IBM further reserves and retains all such royalties and other consideration arising out of or accruing under any release, license, sublicense, immunity or other right granted by IBM or its Subsidiaries pursuant to Sections 2.1, 2.2 and 2.7.

2.4 BUYER shall not knowingly or intentionally use the Assigned Patents to interfere with: (i) any contract or contractual relationship between IBM and its Licensees or the receipt of any right, or the performance of any duty or obligation, by or between IBM and its Licensees; and (ii) any benefits that IBM or any Licensee of IBM gains through such contract or contractual relationship, the receipt of any right, or the performance of any duty and obligation thereunder. For avoidance of doubt, this provision shall not be interpreted to provide additional remedies for conduct that would not constitute a tortious act under the laws of any state or country having jurisdiction over such conduct.

BUYER, for itself, its Subsidiaries, and its and their successors and assigns, agrees not to challenge the validity and enforceability of such contracts, duties or obligations on the grounds that they were not of record, or that BUYER, its Subsidiaries, or its or their successors in interest or assigns had no notice of or were otherwise unaware of such contracts, duties or obligations.

BUYER shall make all rights granted and all assignments made by BUYER with respect to the Assigned Patents subject to the licenses and other rights reserved by IBM and to the agreements, rights, duties, and obligations between IBM and its Licensees.

2.5 With respect to the licenses and other rights reserved by IBM and to the agreements, rights, duties, and obligations between IBM and its Licensees, BUYER agrees to compel its successors in interest and assigns of

each Assigned Patent to abide by terms that are the same as the terms of this Agreement and to ensure that IBM and its Licensees are designated as third party beneficiaries with respect to said terms in all subsequent transfer of rights and assignments.

2.6 If BUYER or any of its successors in interest or assigns to any of the Assigned Patents makes a claim under any Assigned Patent against IBM or any of its Licensees, BUYER shall indemnify IBM and its Licensees from all losses arising therefrom including, but not limited to, attorneys' fees.

2.7 IBM reserves the right to license or re-license any Licensees that, by operation of law or for any other reason, lose rights under the Assigned Patents due to a transfer of rights or assignment of any Assigned Patent.

2.8 <Intentionally Left Blank>

2.9 BUYER shall execute all documents and instruments, and shall do all lawful acts, in each case as may be reasonably necessary, at IBM's request, to record or perfect the reserved rights of IBM and its Licensees under this agreement. Any acts undertaken by BUYER solely under this section 2.9 shall be at IBM's expense.

2.10 The term of rights and licenses reserved hereunder shall be from the Effective Time & Date until the date that the last Assigned Patent expires.

Section 3. Payment and Communication

3.1 As consideration for the assignment to BUYER under this Agreement, BUYER shall pay to IBM [REDACTED] on signing this Agreement, no portion of which shall be refundable.

If IBM does not receive the total payment set forth in this Section 3.1 before Four O'clock PM (4:00 PM) Eastern Standard time on December 28, 2006, IBM shall have the right to void this Agreement ab initio upon written notice to BUYER.

Payments shall be made by wire transfer to:

Director of Licensing
International Business Machines Corporation
PNC BANK
500 First Avenue
Pittsburgh, PA 15219
Bank Account Number: [REDACTED]
ABA Routing Number: [REDACTED]

3.2 Each party shall pay all taxes imposed by the government, including any political subdivision thereof, of any country in which said party is doing business, as the result of said party's furnishing consideration hereunder. In the event such a tax becomes payable as a result of a party's furnishing consideration in respect of a sublicense granted to any of its Subsidiaries, said party shall be responsible for determining the amount of and paying, or causing said sublicensed Subsidiary to pay, said tax.

3.3 Notices and other communications relevant to this Agreement or to any of the Assigned Patents shall be sent by facsimile, by registered or certified mail or by reputable courier to the following address. Notices and other communications sent by facsimile shall be effective upon sending if followed within twenty-four (24) hours by a mailed confirmation. Notices and other communications sent by mail or courier shall be effective upon deposit with the postal service or with the courier.

For IBM:
Director of Licensing
IBM Corporation
North Castle Drive, MD-NC119
Armonk, NY 10504-1785
United States of America
Facsimile: 01-914-765-4380

For BUYER:
Chief Patent Counsel
Time Warner, Inc.
One Time Warner Center
New York, NY 10019
United States of America
Facsimile: 01-212-484-7279

3.4 An Agreement Reference Number will be assigned to this Agreement upon execution. This number should be included in all communications and wire transfer payments.

Section 4. Miscellaneous

4.1 Nothing contained in this Agreement shall be construed as conferring any right to use in advertising, publicity, or other promotional activities any name, trade name, trademark, trade dress or other designation of either party hereto or of any of its Subsidiaries. Each party hereto agrees not to use or refer to this Agreement or any provision hereof in any promotional activity without the express written approval of the other party.

4.2 As between IBM and BUYER, and subject to restrictions appearing above, BUYER, as the acquirer of IBM's right, title, and interest in each Assigned Patent, has sole discretion whether or not to institute any action or suit against third parties for infringement of any Assigned Patent or to defend any action or suit which challenges or concerns the validity of any Assigned Patent. Notwithstanding the above, Buyer agrees not to commit Acts of Aggression against IBM Strategic Open Source Software or Implementations of IBM Strategic Standards. If Buyer commits such Acts of Aggression, IBM may, at its option, grant licenses to the Assigned Patents for such IBM Strategic Open Source Software or Implementations of IBM Strategic Standards. Nothing in this Section 4.2 shall prevent the Buyer from filing a patent infringement lawsuit as a counterclaim or a cross-claim against a third party in response to a patent infringement lawsuit filed by that party.

BUYER shall indemnify and hold IBM harmless against all losses and expenses (including employee time) arising from BUYER's activities relating to defense, enforcement or licensing of any Assigned Patent. BUYER shall pay all of IBM's costs associated with such activities or that otherwise arise from BUYER's defense, enforcement or licensing of the Assigned Patents, including, without limitation, attorneys' fees.

4.3 IBM represents and warrants that it has the full right and power to assign its rights in each Assigned Patent as set forth in Section 2. **IBM MAKES NO REPRESENTATION OR WARRANTY REGARDING THE VALIDITY OR ENFORCEABILITY OF ANY ASSIGNED PATENT. IBM MAKES NO OTHER REPRESENTATIONS, WARRANTIES, OR COVENANTS, EXPRESS OR IMPLIED, NOR SHALL IBM HAVE ANY LIABILITY WITH RESPECT TO INFRINGEMENT BY BUYER OF PATENTS OR OTHER RIGHTS OF THIRD PARTIES.**

4.4 This Agreement shall not be binding upon the parties until it has been signed by or on behalf of each party. No amendment or modification hereof shall be valid or binding upon the parties unless made in writing and signed as aforesaid.

4.5 If any section of this Agreement is found by competent authority to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such section in every other respect and the remainder of this Agreement shall continue in effect so long as the Agreement still expresses the intent of the parties. If any of the reserved rights of IBM are found to be invalid, illegal or unenforceable in any respect for any reason, at IBM's option this Agreement shall be renegotiated.

4.6 This Agreement shall be construed, and the legal relations between the parties hereto shall be determined, in accordance with the law of the State of New York, USA, as such law applies to contracts signed and fully performed in such State, without regard to the principles of conflicts of law thereof. As part of the consideration received hereunder, each of the parties consents to the jurisdiction of any New York State court located in the County of New York and any federal court of the United States of America located in the Southern District of New York. Each of the parties: (i) waives all rights to trial by jury; (ii) waives all objections to New York venue for any action instituted hereunder; and (iii) consents to the granting of such legal and equitable relief as is deemed appropriate by any aforementioned court.

4.7 The headings of sections are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement.

4.8 Each party may disclose the existence of this Agreement and the fact that the Assigned Patents were assigned hereunder by IBM to BUYER. Each party may use similar terms and conditions in other agreements. However, subject to the exceptions provided herein, until the date that the last Assigned Patent expires, each party agrees not to disclose the terms of this Agreement to any third party (other than its Subsidiaries) without the prior written consent of the other party. This obligation is subject to the following exceptions: disclosure is permissible: (a) if required by government or court order or otherwise required by law or any applicable securities exchange rules or regulations; (b) if required to enforce rights under this Agreement; (c) by either party on a confidential basis, to anyone the discloser reasonably determines has a legitimate need to know; (d) to the extent required to record the assignment of the Assigned Patents and the reserved rights contained herein; (e) by IBM to any third party to which IBM has a duty or obligation to grant a license, covenant not to sue, immunity or other right under any Assigned Patent.

4.9 This Agreement and its Exhibits and their attachments, embody the entire understanding of the parties with respect to the Assigned Patents and merges all prior discussions between the parties. Neither party shall be bound by any condition, definition, warranty, understanding or representation with respect to the subject matter hereof other than as expressly provided herein.

4.10 This Agreement may be executed by the parties in one or more counterparts, each of which shall be an original and all of which shall together constitute one and the same instrument.

4.11 EXCEPT AS SET FORTH IN SECTIONS 2.6 AND 4.2, NEITHER BUYER NOR IBM SHALL BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY) OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES ARISING HEREUNDER, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR GOODWILL, BUSINESS INTERRUPTIONS AND CLAIMS OF CUSTOMERS, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

4.12 Nothing contained herein, or done pursuant to this Agreement, will constitute the parties hereto entering into a joint venture or partnership or will constitute either party hereto being the agent of the other party for any purpose or in any sense whatsoever.

4.13 The last signature of this Agreement will be made by IBM in the United States and the parties agree that the Agreement has been executed in the United States.

4.14 Neither party shall be considered the author of this Agreement for the purpose of interpreting any provision herein.

Each party acknowledges that its legal counsel has reviewed and approved this Agreement including its Exhibits and attachments.

Section 5.

Definitions

“Acts of Aggression” shall mean threatening or filing a patent infringement lawsuit that alleges that the development, distribution, sale, import, or use of a product infringe any of the Assigned Patents; provided that, regarding assertions against Implementations of IBM Strategic Standards, it shall be an Act of Aggression only if the asserted claims of the Assigned Patent are necessary (that is, all commercially reasonable implementations of all normative portions of the specification would infringe the asserted claims) to practice the specification. Acts of Aggression do not include filing a patent infringement lawsuit as a counterclaim or a cross-claim against a third party in response to a patent infringement lawsuit filed by that party.

“Assigned Patents” shall mean the Listed Patents, the Assigned Patent Applications, patents issuing from the Assigned Patent Applications, and patents that may reissue from any of the foregoing on or after the Effective Time & Date.

“Assigned Patent Applications” shall mean the patent applications listed in Exhibit C still pending as of the Effective Time & Date.

“Due Date” shall mean the latest date on which a payment can be made or an action taken without incurring a penalty, surcharge or other additional payment.

“Effective Time & Date” shall mean 11:59PM United States Eastern Time on the day IBM receives the total payment specified in Section 3.1.

“IBM Strategic Open Source Software” shall mean OSS produced or distributed by software development communities of which IBM is a member or a contributor, or the code of which IBM uses, distributes, or relies on for its products; OSS which was released prior to five years after the Effective Time & Date (other than code owned by a commercial entity which first qualifies as OSS after that entity is put on notice by Buyer of infringement of an Assigned Patent); and OSS which is included in one or more of the following Linux distributions: RedHat, Fedora, Novell/SUSE, Debian.

“Implementations of IBM Strategic Standards” shall mean those portions of a product that implement specifications produced, in whole or in part, by IBM or by organizations of which IBM is a member or the specifications that IBM implements in its products; provided that it shall not include specifications where it is customary in the industry to charge a royalty for necessary patent claims (i.e., one or more other holders of necessary patent claims charge royalties) and where such royalties are condoned by the organization that has promulgated the specification (i.e., the management body of the organization is aware of the practice and has endorsed it or has acquiesced to it; has not requested that the patent holder grant royalty free licenses; and has not begun work to modify the specification to avoid the royalty-bearing patents). Implementations of IBM Strategic Standards shall not include any portions of a product that are not necessary to comply with all normative portions of the specifications being implemented.

“Licensee” shall mean any third party (including Subsidiaries of IBM) to which IBM: (i) has granted or is obligated to grant licenses, immunities, covenants not to sue or any other rights under an Assigned Patent as of the Effective Time & Date; or (ii) reserves the right under this Agreement to grant licenses, immunities, covenants not to sue or any other rights under an Assigned Patent.

“Listed Patents” shall mean the patents listed in Exhibit A or Exhibit B, hereto. A Listed Patent of one country may or may not have a counterpart in another country that is a Listed Patent.

"Open Source Software" or "OSS" shall mean any computer software program whose source code is published and available for inspection and use by anyone, and is made available under a license agreement that permits recipients to copy, modify and distribute the program's source code without payment of fees or royalties. All licenses certified by opensource.org and listed on their website are Open Source Software licenses.

"Subsidiary" shall mean a corporation, company or other entity: (a) more than fifty percent (50%) of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are now or hereafter owned or controlled, directly or indirectly, by a party hereto; or (b) which does not have outstanding shares or securities, as may be the case in a partnership, joint venture or unincorporated association, but more than fifty percent (50%) of whose ownership interest representing the right to make the decisions for such entity is now or hereafter owned or controlled, directly or indirectly by a party hereto.

Agreed to:

BUYER

By

Name Charles Fish
Title VP & Chief Patent Counsel

Date 22 December 2006

Agreed to:

INTERNATIONAL BUSINESS
MACHINES CORPORATION

By

Mark Petersen
Mark Petersen, Director of Finance
Technology & Intellectual Property

Date 26-Dec-2006

EXHIBIT A

LISTED PATENTS (United States)

Patent Number
6891635

Issue Date
May 10, 2005

Application Number
09/726,265

END OF EXHIBIT A

EXHIBIT B

LISTED PATENTS (Non-US Patents)

None

END OF EXHIBIT B

EXHIBIT C

ASSIGNED PATENT APPLICATIONS

US Assigned Patent Applications

None

Non-US Assigned Patent Applications

None

END OF EXHIBIT C

EXHIBIT D

Form of Recordable Patent Assignment and Reservation

For good and valuable consideration, the receipt of which is hereby acknowledged, and subject to the reservations stated in the Patent Assignment Agreement Reference No. L065095B between the parties with an effective time and date of 11:59pm United States Eastern Time on December __, 2006 ("Effective Time and Date") ("Patent Assignment Agreement"), International Business Machines Corporation, a New York corporation having a place of business at Armonk, New York, (hereinafter "ASSIGNOR"), hereby grants and assigns to Time Warner, a Delaware corporation having a place of business at One Time Warner Center, New York, N.Y. (hereinafter "ASSIGNEE"), all of IBM's right, title and interest in and to the United States Letters Patents identified in Exhibit A and the United States patent applications identified in Exhibit C, attached hereto, (hereinafter, collectively, "ASSIGNED PATENTS"), to have and to hold the same, unto ASSIGNEE for its own use and enjoyment and for the use and enjoyment of its successors and assigns, including all damages for infringement of any of the Assigned Patents accruing on and after the Effective Time & Date and the sole right to sue therefore under such Assigned Patents, for the full term or terms of all such ASSIGNED PATENTS, subject to all rights granted under the ASSIGNED PATENTS to third parties by ASSIGNOR prior to said Effective Time & Date.

ASSIGNOR hereby reserves and retains, for the benefit of itself and its subsidiaries and its and their successors and assigns, the rights and licenses set forth in the Patent Assignment Agreement.

IN WITNESS WHEREOF, ASSIGNOR has caused this Patent Assignment and Reservation to be duly signed on its behalf.

Signature: _____

Date: _____

Mark Petersen, Director of Finance
Technology & Intellectual Property

State of)
) S.S.
County of)

Before me this _____ day of _____, 20____, personally appeared _____, to me known to be the person who is described in and who signed the foregoing Assignment and acknowledged to me that he/she signed the same of his/her own free will for the purpose therein expressed.

Notary Public
END OF EXHIBIT D