

PATENT ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	RELEASE BY SECURED PARTY
CONVEYING PARTY DATA	
Name	Execution Date
Silicon Valley Bank	10/03/2001
RECEIVING PARTY DATA	
Name:	Avaya Inc.
Street Address:	211 Mount Airy Road
City:	Basking Ridge
State/Country:	NEW JERSEY
Postal Code:	07920
PROPERTY NUMBERS Total: 10	
Property Type	Number
Patent Number:	5963540
Patent Number:	6266335
Patent Number:	6601084
Patent Number:	6772226
Patent Number:	6779039
Patent Number:	6880089
Patent Number:	7055173
Patent Number:	7062570
Patent Number:	7177945
Patent Number:	7228350
CORRESPONDENCE DATA	
Fax Number:	(303)538-5867
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	303-538-4600
Email:	denveriplaw@avaya.com

CH \$400.00 5963540

Correspondent Name: Kimberly Croft
Address Line 1: 1300 W. 120th Avenue
Address Line 2: Room B1-F53
Address Line 4: Westminster, COLORADO 80234

ATTORNEY DOCKET NUMBER:

CYBERIQ-SILICONVLYRELEASE

NAME OF SUBMITTER:

Douglas M. Grover

Total Attachments: 20

source=CyberIQ - Motion to Sell Redact#page1.tif
source=CyberIQ - Motion to Sell Redact#page2.tif
source=CyberIQ - Motion to Sell Redact#page3.tif
source=CyberIQ - Motion to Sell Redact#page4.tif
source=CyberIQ - Motion to Sell Redact#page5.tif
source=CyberIQ - Motion to Sell Redact#page6.tif
source=CyberIQ - Motion to Sell Redact#page7.tif
source=CyberIQ - Motion to Sell Redact#page8.tif
source=CyberIQ - Motion to Sell Redact#page9.tif
source=CyberIQ Bankruptcy - Schroeder Declaration Redact#page1.tif
source=CyberIQ Bankruptcy - Schroeder Declaration Redact#page2.tif
source=CyberIQ Bankruptcy - Schroeder Declaration Redact#page3.tif
source=CyberIQ Bankruptcy - Schroeder Declaration Redact#page4.tif
source=CyberIQ Bankruptcy - Schroeder Declaration Redact#page5.tif
source=CyberIQ Bankruptcy - Schroeder Declaration Redact#page6.tif
source=CyberIQ Bankruptcy - Schroeder Declaration Redact#page7.tif
source=CyberIQ Bankruptcy Sale record redacted#page1.tif
source=CyberIQ Bankruptcy Sale record redacted#page2.tif
source=CyberIQ Bankruptcy Sale record redacted#page3.tif
source=CyberIQ Bankruptcy Sale record redacted#page4.tif

Perr
PFC
7-18-01
605

D. K. PETERSON
7/18

1 JANICE M. MURRAY (099996)
2 DORIS A. KAELIN (162069)
3 RENEE WATKINS (210021)
4 MURRAY & MURRAY
5 A Professional Corporation
6 19330 Stevens Creek Blvd., Suite 100
7 Cupertino, CA 95014-2526
8 Telephone: (650) 852-9000; (408) 907-9200
9 Facsimile: (650) 852-9244

6 Attorneys for Debtor

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 In re:)
12 CyberIQ Systems, Inc.,)
13 fka HolonTech Corporation,)
14 Debtor,)
15 EIN: 77-0431580)

Case No. 01-51100 msj
Chapter 11
Date: August 10, 2001
Time: 11:00 a.m.
Place: San Jose Bankruptcy Court
Room 3070
Judge: Honorable Marilyn Morgan

MURRAY & MURRAY
A Professional Corporation
19330 Stevens Creek Blvd., Suite 100
Cupertino, CA 95014-2526
Telephone: (650) 852-9000 FACSIMILE: (650) 852-9244
E-MAIL: info@murraylaw.com

17 NOTICE OF MOTION AND MOTION TO SELL CERTAIN OF DEBTOR'S ASSETS
18 OTHER THAN IN THE ORDINARY COURSE OF
19 BUSINESS (11 U.S.C. § 363(b)) AND FREE AND CLEAR OF LIENS, CLAIMS,
20 ENCUMBRANCES, AND INTERESTS (11 U.S.C. § 363(f))

20 Proposed Buyer: Avaya, Inc.

21 I. NOTICE

22 PLEASE TAKE NOTICE that Cyber IQ Systems, Inc., fka Holon Tech Corporation, the
23 Debtor and Debtor-in-Possession in the above-referenced case (the "Debtor") has filed the
24 MOTION TO SELL CERTAIN OF THE DEBTOR'S ASSETS OTHER THAN IN THE
25 ORDINARY COURSE OF BUSINESS (11 U.S.C. § 363(b)) AND FREE AND CLEAR OF
26 LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS (11 U.S.C. § 363(f)). Pursuant to
27 the Motion, the Debtor seeks approval from the Bankruptcy Court to sell certain patents and
28 patent applications identified below to Avaya, Inc. ("Avaya") for the sum of [REDACTED] subject

COPY

1 to (a) the execution of mutually agreeable documents by the Debtor and Avaya regarding the
2 sale and transfer of the patents as defined herein; and (b) the entry of an order of the bankruptcy
3 court approving the sale that is acceptable to Avaya in its sole discretion.

4 The Motion will be based upon this Notice, the Motion itself, the Declaration of
5 William J. Schroeder (the "Schroeder Declaration") in support thereof, the pleadings and papers
6 on file herein, and upon such oral and documentary evidence as may be presented at the hearing
7 on the Motion.

8 Any opposition to the Motion must be filed with the United States Bankruptcy Court,
9 United States Courthouse & Federal Building, 280 South First Street, Room 3035, San Jose,
10 California, 95113, and served on Debtor's counsel, Doris A. Kaelin, Esq., Murray & Murray, A
11 Professional Corporation, 19330 Stevens Creek Blvd., Suite 100, Cupertino, CA 95014-2526, and
12 served on the potential buyer, Gene Potkay, Ph.D., Avaya, Inc., Rm 3D02, 150 Allen Road, Liberty
13 Corner, NJ 07938-0875., no later than July 27, 2001.

14 PLEASE TAKE FURTHER NOTICE that persons wishing to present a competing bid
15 may do so at the hearing.

16 Any party wishing further information may contact the Debtor's counsel, Doris A. Kaelin,
17 at (408) 852-9200.

18 II. THE MOTION

19 A. Summary of Relief Sought

20 The Debtor is requesting the Court to approve its sale of the following remaining
21 patents and patent applications including any foreign applications (collectively, the "Patents") of
22 the Debtor:

23 <u>Patent Application Title</u>	<u>Remarks</u>
24 Cross Platform Server Clustering Using a Network Flow Switch	Allowed--Issue Fee paid on 1/31/01
25 Dynamic Load Balancer for Multiple Network Servers 26 Router Pooling In A Network Flowswitch	Pending U.S. Patent No. 5,963,540 issued on 10/5/99
27 Active-Passive Flow Switch Failover Technology 28 Router Clustering For Multiple Network Firewall Pooling In A Network Flowswitch	Allowed--Issue Fee paid Pending Pending

MURRAY & MURRAY
A Professional Corporation
19330 Stevens Creek Blvd., Suite 100
Cupertino, CA 95014-2526
TELEPHONE (650) 852-9000 FACSIMILE (650) 852-9244
E-MAIL: mail@murrayfw.com

1 Firewall Clustering For Multiple Network Servers Pending
2 VPN Device Clustering For Multiple Network Pending
3 System and Method of Network Independent Remote Configuration Pending

4 Avaya has agreed to pay the sum of [REDACTED] ("Purchase
5 Price") subject to (a) the execution of mutually agreeable documents by the Debtor and Avaya
6 regarding the sale and transfer of the patents as defined herein; and (b) the entry of an order of
7 the bankruptcy court approving the sale that is acceptable to Avaya in its sole discretion. Avaya
8 (or the ultimate purchaser should there be a successful overbid) shall bear the cost of preparing
9 any and all documents necessary to accomplish the transfer of the Patents.

10 The sale shall be "as is", "where is" basis without express or implied warranties of any
11 kind except that the Debtor warrants and represents (a) it is the owner and title holder of the
12 Patents; (b) there are no challenges to the validity of the Patents to the best of the Debtor's
13 knowledge, information and belief; and (c) it has disclosed all licenses associated with the
14 Patents to the best of the Debtor's knowledge, information and belief. Avaya (or the ultimate
15 purchaser should there be a successful overbid) shall bear the cost of preparing any and all
16 documents necessary to accomplish the transfer of the Patents.

17 Payment of the Purchase Price will be paid by Avaya or the successful bidder to the
18 Debtor in cash, by wire transfer of funds to a bank account designated by the Debtor at the
19 closing.

20 The sale shall be free and clear of all liens, claims and encumbrances with said interests
21 attaching only to the sales proceeds to the extent valid and in their respective order of priority.
22 Furthermore, the sale of the patents to Avaya or other potential buyers shall take subject to the
23 terms and conditions of the existing licenses as follows: (1) Hewlett-Packard Co.; (2) Turnkey
24 Korea Co., Ltd; (3) Nauticus Networks, Inc.; and (4) RedCreek Communications, Inc. The
25 Debtor does not believe that the patents are encumbered by any liens. The Debtor contends that
26 the proposed sale is supported by the Debtor's sound business judgment and that the sale is in
27 the best interest of creditors.

28 ///

///

MURRAY & MURRAY
A Professional Corporation
1999 Stevens Creek Blvd., Suite 100
Cupertino, CA 95014-2526
TELEPHONE (408) 852-9000 FACSIMILE (408) 852-9244
E-MAIL: mail@murrayise.com

IRW:dak:irw:mdk-09
I:\daily\irw\CyberIQ\MotionSellAssets-Avaya.wpd

III. INTRODUCTION

1
2 1. On March 12, 2001, (the "Petition Date"), the Debtor filed its Voluntary Petition
3 under Chapter 11 and is presently conducting its affairs as a debtor-in-possession pursuant to the
4 provisions of Sections 1107 and 1108 of the Bankruptcy Code.

5 2. Prior to the Petition Date, CyberIQ Systems was a global provider of intelligent
6 policy-driven systems that accelerate performance, automate management and increase the
7 availability of e-sites. The company's focus was in the Internet Traffic and Content Management
8 ("ITCM") market. Today's e-sites face increasing demands from the growing use of media rich
9 content and increasing volumes of secure transactions. CyberIQ delivered to e-site systems
10 administrators a variety of solutions based on its switching and content processing architecture.

11 3. CyberIQ Systems was incorporated as HolonTech Corporation ("HolonTech") in July
12 1996 and was initially engaged primarily in contract R&D services on behalf of the company's then
13 principal shareholder, NEC Corporation. The company raised several rounds of financing as it
14 developed and marketed its own product lines.

15 4. The company learned in early December 2000 that it did not have the necessary
16 commitments to close the Series D round of financing that was originally scheduled to close in mid-
17 November. As a result, management structured a major downsizing of its business around the
18 company's new SSL product line, CyberSSL. The organization of this downsizing was implemented
19 on Monday, December 11, 2000 at which time approximately 55%-60% of the company's work
20 force was terminated.

21 5. The company attempted to arrange bridge financing in December 2000. While the
22 company had some commitments, the company did not have sufficient commitments from other
23 investors to close the bridge financing. As a result, the company terminated its remaining
24 employees, including officers, on December 28, 2000.

25 6. Commencing in January and through the Petition Date, a number of ex-officers and
26 former employees worked as part-time consultants to convert working capital assets (inventory,
27 accounts receivable) to cash; to sell the company's product lines, intellectual property and other
28 assets with value; and to prepare for a Chapter 11 bankruptcy filing to protect other assets, such as

MURRAY & MURRAY
A Professional Corporation
19330 Stevens Creek Blvd., Suite 100
Livermore, CA 94551-2526
TELEPHONE (925) 957-9000 FACSIMILE (925) 957-9244
E-MAIL info@murraylaw.com

1 the company's lease and leasehold improvements, for the benefit of its creditors.

2 7. As a result of the efforts of its consultants and former officers, the company realized
3 proceeds from the sale of certain intellectual property, inventory, equipment and licenses in excess
4 of \$5 million. From these proceeds, the company paid off its secured creditors who held liens on the
5 assets sold and its employees (exclusive of severance claims).

6 8. The Debtor has sold or licensed substantially all of its remaining assets within this
7 bankruptcy case after notice and Court approval thereof. With the completion of such liquidation,
8 the Debtor intends to convert the within case to a case under Chapter 7 of the Bankruptcy Code.

9 IV. SALE OF ASSETS

10 A. Sale of Assets Other than in the Ordinary Course of Business.

11 Section 363 of the Bankruptcy Code provides that the Debtors, "[a]fter notice and a
12 hearing, may use, sell, or lease, other than in the ordinary course of business, property of the
13 estate." 11 U.S.C. § 363(b). Most courts that have addressed the issue of sales outside the
14 ordinary course of business have required a "business justification" for the transaction. See, eg.,
15 In re Lionel Corp., 722 F.2d 1063, 1070 (2nd Cir. 1983).

16 The Debtor has determined, in its business judgment, that the sale to Avaya is in the
17 best interest of the estate. As supported by the Schroeder Declaration, the Debtor has been
18 marketing its assets since January 2001. No other person has presented a bid for the Patents.
19 However, the Debtor intends to provide a copy of this Motion on all persons who the Debtor
20 believes might be interested in presenting an overbid on the Patents. Additionally, all overbids
21 will only be accepted for the entire group of assets. The disposition of the Patents as proposed
22 herein, with the opportunity for overbids to be submitted at the time of the hearing, affords
23 additional assurance that the highest and best price will be realized for the Patents.

24 B. Sale Free and Clear of Liens and Interests.

25 11 U.S.C. § 363(f) provides for the sale of property free and clear of liens and
26 interests in such property. 11 U.S.C. § 363(f) provides that when such an interest is a lien, the
27 property may be sold free and clear of the lien if: (1) applicable non-bankruptcy law permits the
28 sale of such property free and clear of such interest; (2) the lien holder consents thereto; (3) such

MURRAY & MURRAY
A Professional Corporation
17930 Stevens Creek Blvd., Suite 100
Cupertino, CA 95014-2526
TELEPHONE (650) 842-0800 FACSIMILE (650) 952-9714
E-MAIL: mm@mmurraylaw.com

1 interest is a lien and the price at which such property is to be sold is greater than the aggregate
 2 value of all liens on such property; (4) the lien is in bona fide dispute; or (5) the lien holder
 3 could be compelled to accept a money satisfaction of such interest.

4 **C. Good Faith Purchaser**

5 Avaya is not an "insider" of the Debtor. Avaya purchased certain intellectual property,
 6 inventory, equipment and licenses from the Debtor prior to the Petition Date but otherwise has no
 7 prior relationship with the Debtor. The Debtor's negotiations with Avaya concerning the
 8 transaction contemplated in this Motion were arms-length, and Avaya provided the best bid on
 9 the Patents. Therefore, the Court should find that Avaya has acted in good faith within the
 10 meaning of Section 363(m) of the Bankruptcy Code. See, e.g., Marin v. Coated Sales, Inc. (In re
 11 Coated Sales, Inc.), No. 89 Civ. 3704 (KNW), 1990 WL 212899 (S.D.N.Y. Dec. 13, 1990
 12 (holding that to show lack of good faith, a party must demonstrate "fraud, collusion, or an
 13 attempt to take grossly unfair advantage of other bidders"). Similarly, if a competing bidder is
 14 ultimately approved by the Court after submitting a higher or better bid, such bidder should be
 15 found to have acted in good faith in accordance with Section 363(m).

16 **V. PRE-PETITION SECURED DEBT**

17 Searches of the records of the California Secretary of State disclose the following liens
 18 and security interests on the Debtor's pre-petition property:

19	20	21	22
	SECURED PARTY	DATE OF FILING	COLLATERAL COVERAGE
21	<u>Holen Tech</u>		
22	FNF Capital, Inc.	1/27/00	Specific Equipment (returned to leasing company)
23	Sumitomo Bank Leasing and Finance, Inc.	12/27/96	Specific Equipment (Debtor believes paid in full)
24	Oce-USA, Inc.	1/18/96	Specific Equipment (photocopiers; returned to leasing company)
25			
26			
27			
28			

MURRAY & MURRAY
 A Professional Corporation
 19930 Stevens Creek Blvd., Suite 100
 Cupertino, CA 95014-2526
 TELEPHONE (650) 852-0900 FACSIMILE (650) 852-9244
 E-MAIL: mm@murphyllaw.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

**COLLATERAL
COVERAGE**

SECURED PARTY DATE OF FILING

CyberIQ

Colliers International	3/09/01	Furniture and equipment located at 225 Baypointe Parkway, San Jose, CA (secures commission under listing agreement) (release filed 6/27/01)
BCL Capital	9/12/00	Specific Equipment
The Manifest Group	9/19/00	Specific Equipment
Silicon Valley Bank	11/13/00	Substantially all of Assets (release filed 2/13/01)
CIT Technology Financing Services, Inc.	12/1/00	Specific Equipment
Sunrise Leasing Corporation	12/12/00	Specific Equipment
GATX Ventures, Inc.	12/14/00	Substantially all of Assets (release filed 2/13/01)

A true and correct copy of the searches of the California Secretary of State are attached to the Schroeder Declaration as Exhibit "A" and incorporated herein by this reference.

**VI. GROUNDS TO SELL ASSETS
FREE AND CLEAR OF LIENS
(11 U.S.C. § 363(f)(4))**

Based on the Debtor's records and the search performed with the California Secretary of State's Office, reflecting that any blanket liens have been released, the Debtors believe that any other alleged lien against or interest in the Patents is in bona fide dispute and that the Patents may be conveyed free and clear of any such lien, claim, encumbrance or interest pursuant to Section 363(f)(4) of the Bankruptcy Code.

WHEREFORE, the Debtor prays that this Court enter its Order:

1. Approving this Motion;
2. Authorizing the Debtor to enter into the sale of the Patents with Avaya or the ultimate purchaser and to execute such documents and to take such action as is necessary to sell the Patents upon the terms and conditions as set forth herein other than in the ordinary course of business and free and clear of all liens, claims, encumbrances, and interests;

MURRAY & MURRAY
A Professional Corporation
1990 Jovens Creek Blvd., Suite 100
Cupertino, CA 95014-3326
TELEPHONE (650) 852-9000 FACSIMILE (650) 852-9244
E-MAIL: mel@murraylaw.com

MURRAY & MURRAY
A Professional Corporation
19940 Stevens Creek Blvd., Suite 100
Cupertino, CA 95014-2526
TELEPHONE (408) 452-9698 FACSIMILE (408) 852-9244
E-MAIL: mm@murraymw.com

1 3. Directing that any and all liens on the Patents shall attach only to the proceeds of
2 the sale of the Patents to the extent valid and in their respective order of priority;

3 4. Directing that the sale of Patents to Avaya or the ultimate buyer shall be "as is",
4 "where is", and without other warranty except that the Debtor warrants and represents (a) it is
5 the owner and title holder of the Patents; (b) there are no challenges to the validity of the
6 Patents to the best of the Debtor's knowledge, information and belief; (c) it has disclosed all
7 licenses associated with the Patents to the best of the Debtor's knowledge, information and
8 belief; and (d) the Debtor will contact Skjerven Morrill MacPherson, LLP and NewTechLaw
9 and request confirmation that there are no challenges to the validity of the Patents or the
10 existence of undisclosed licenses associated with the Patents and will provide Avaya with
11 written confirmation as to the results of the request. Avaya or the ultimate buyer shall bear the
12 expense of drafting any and all documents necessary to consummate the transactions
13 contemplated herein;

14 5. Directing that the sale of Patents to Avaya or the ultimate buyer shall take subject
15 to the terms and conditions of the existing licenses as follows: (1) Hewlett-Packard Co.; (2)
16 Turnkey Korea Co., Ltd; (3) Nauticus Networks, Inc.; and (4) RedCreek Communications, Inc;

17 6. Directing that expenses from Skjerven Morrill MacPherson, LLP San Jose, CA
18 with respect to the first eight (8) items under Patents, and NewTechLaw, Palo Alto, CA with
19 respect to the ninth (9th) item or other such law firms that may have information, that are the
20 direct result of requested investigation by Avaya, the ultimate buyer, or other requesting parties
21 into the validity, usefulness or value of the patents be paid directly to such law firms by the
22 requesting investigating party.

23 7. Finding that the Avaya or the ultimate buyer is a good faith purchaser such that 11
24 U.S.C. § 363(m) will be applicable; and

25 ///

26 ///

27 ///

28 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

8. For such other and further relief as the Court deems necessary and appropriate.

Dated: July 13, 2001

MURRAY & MURRAY
A Professional Corporation

By: Renee Watkins
RENEE WATKINS
Attorneys for Debtor
CYBERIQ SYSTEMS, INC.

MURRAY & MURRAY
A Professional Corporation
19930 Stevens Creek Blvd., Suite 100
Cupertino, CA 95014-2579
TELEPHONE (408) 857-9000 FACSIMILE (408) 852-9244
E-MAIL: cm@mmurray.com

1 JANICE M. MURRAY (099996)
ROBERT A. FRANKLIN (091653)
2 DORIS A. KAELIN (162069)
MURRAY & MURRAY
3 A Professional Corporation
19330 Stevens Creek Blvd., Suite 100
4 Cupertino, CA 95014-2526
Telephone: (650) 852-9000; (408) 907-9200
5 Facsimile: (650) 852-9244

6 Attorneys for Debtor

7
8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN JOSE DIVISION

11 In re:) Case No. 01-51100 msj
12 CyberIQ Systems, Inc.,) Chapter 11
fka HolonTech Corporation,)
13 Debtor,) Date: August 10, 2001
14 EIN: 77-0431580) Time: 11:00 a.m.
15) Place: San Jose Bankruptcy Court
16) Room 3070
17) Judge: Honorable Marilyn Morgan

18 **DECLARATION OF WILLIAM J. SCHROEDER IN SUPPORT OF MOTION TO SELL**
19 **CERTAIN OF DEBTOR'S ASSETS OTHER THAN IN THE ORDINARY COURSE OF**
20 **BUSINESS (11 U.S.C. § 363(b)) AND FREE AND CLEAR OF LIENS, CLAIMS,**
21 **ENCUMBRANCES, AND INTERESTS (11 U.S.C. § 363(f))**

22 **Proposed Buyer: Avaya, Inc.**

23 I, William J. Schroeder, declare:

24 I am the President and designated Responsible Individual of CyberIQ Systems, Inc., the
25 Debtor and Debtor-in-Possession herein (the "Debtor") and am authorized to make this
26 Declaration on its behalf. I have personal knowledge of the facts set forth in this Declaration,
27 except where stated upon information and belief, and if called upon to testify, I would and could
28 competently testify to the following:

1. This Declaration is provided in support of the MOTION TO SELL CERTAIN OF
THE DEBTOR'S ASSETS OTHER THAN IN THE ORDINARY COURSE OF BUSINESS

MURRAY & MURRAY
A Professional Corporation
19330 Stevens Creek Blvd., Suite 100
Cupertino, CA 95014-2526
TELEPHONE: (650) 852-9000 FACSIMILE: (650) 852-9244
E-MAIL: omall@murraylaw.com

TELEPHONE 1-800-833-9888 FAX 813-851-9314
E-MAIL: mail@netgear.com

A Redmond Corporation
1920 Stevens Court Blvd., Suite 100
Cherokee, VA 22624-0104

1 (11 U.S.C. § 363(b)) AND FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES
2 AND INTERESTS (11 U.S.C. § 363(f)).

3 2. Pursuant to the Motion, the Debtor seeks approval from the Bankruptcy Court to
4 sell certain patents and patent applications identified below to Avaya, Inc. ("Avaya") for the sum
5 of [REDACTED] subject to (a) the execution of mutually agreeable documents by the Debtor and
6 Avaya regarding the sale and transfer of the patents as defined herein; and (b) the entry of an
7 order of the bankruptcy court approving the sale that is acceptable to Avaya in its sole
8 discretion.

9 I. THE MOTION

10 A. Summary of Relief Sought

11 The Debtor is requesting the Court to approve its sale of the following
12 remaining patents and patent applications including any foreign applications (collectively, the
13 "Patents") of the Debtor:

14 <u>Patent Application Title</u>	15 <u>Remarks</u>
16 Cross Platform Server Clustering Using a Network Flow Switch	17 Allowed--Issue Fee paid on 1/31/01
18 Dynamic Load Balancer for Multiple Network Servers	19 Pending
19 Router Pooling In A Network Flowswitch	20 U.S. Patent No. 5,963,540 issued on 10/5/99
21 Active-Passive Flow Switch Failover Technology	22 Allowed--Issue Fee paid
23 Router Clustering For Multiple Network	24 Pending
25 Firewall Pooling In A Network Flowswitch	26 Pending
27 Firewall Clustering For Multiple Network Servers	28 Pending
VPN Device Clustering For Multiple Network	Pending
System and Method of Network Independent Remote Configuration	Pending

Avaya has agreed to pay the sum of [REDACTED] ("Purchase Price") subject to (a) the execution of mutually agreeable documents by the Debtor and Avaya regarding the sale and transfer of the patents as defined herein; and (b) the entry of an order of the bankruptcy court approving the sale that is acceptable to Avaya in its sole discretion.

The sale shall be "as is", "where is" basis without express or implied warranties of any kind except that the Debtor warrants and represents (a) it is the owner and title holder of the Patents; (b) there are no challenges to the validity of the Patents to the best of the Debtor's knowledge, information and belief; and (c) it has disclosed all licenses associated with the

1 Patents to the best of the Debtor's knowledge, information and belief. Avaya (or the ultimate
2 purchaser should there be a successful overbid) shall bear the cost of preparing any and all
3 documents necessary to accomplish the transfer of the Patents.

4 Payment of the Purchase Price will be paid by Avaya or the successful bidder to the
5 Debtor in cash, by wire transfer of funds to a bank account designated by the Debtor at the
6 closing.

7 The sale shall be free and clear of all liens, claims and encumbrances with said interests
8 attaching only to the sales proceeds to the extent valid and in their respective order of priority.
9 Furthermore, the sale of the patents to Avaya or other potential buyers shall take subject to the
10 terms and conditions of the existing licenses as follows: (1) Hewlett-Packard Co.; (2) Turnkey
11 Korea Co., Ltd; (3) Nauticus Networks, Inc.; and (4) RedCreek Communications, Inc. The
12 Debtor does not believe that the patents are encumbered by any liens. The Debtor contends that
13 the proposed sale is supported by the Debtor's sound business judgment and that the sale is in
14 the best interest of creditors.

15 III. INTRODUCTION

16 1. On March 12, 2001, (the "Petition Date"), the Debtor filed its Voluntary Petition
17 under Chapter 11 and is presently conducting its affairs as a debtor-in-possession pursuant to the
18 provisions of Sections 1107 and 1108 of the Bankruptcy Code.

19 2. Prior to the Petition Date, CyberIQ Systems was a global provider of intelligent
20 policy-driven systems that accelerate performance, automate management and increase the
21 availability of e-sites. The company's focus was in the Internet Traffic and Content Management
22 ("iTCM") market. Today's e-sites face increasing demands from the growing use of media rich
23 content and increasing volumes of secure transactions. CyberIQ delivered to e-site systems
24 administrators a variety of solutions based on its switching and content processing architecture.

25 3. CyberIQ Systems was incorporated as HolonTech Corporation ("HolonTech") in July
26 1996 and was initially engaged primarily in contract R&D services on behalf of the company's then
27 principal shareholder, NEC Corporation. The company raised several rounds of financing as it
28 developed and marketed its own product lines.

MURRAY & MURRAY
A Professional Corporation
19930 Stevens Creek Blvd., Suite 100
Cupertino, CA 95014-2526
TELEPHONE: (650) 852-9000 FACSIMILE: (650) 852-9394
E-MAIL: mail@murraylaw.com

1 decrease the amount that the Debtor can realize from a sale. The Debtor believes that the
2 proposed sale to Avaya or the ultimate buyer is in the best interest of creditors and should be
3 approved.

4 **B. Sale Free and Clear of Liens and Interests.**

5 Based on my knowledge, information and belief, the patents are not encumbered
6 by any liens.

7 **C. Good Faith Purchaser**

8 Prior to the Petition Date, the Debtor sold certain intellectual property, inventory,
9 equipment and licenses to Avaya, but otherwise had no prior relationship with Avaya.

10 I do not believe that Avaya is an "insider" of the Debtor and the existence of the
11 Debtor's prior relationship with Avaya is provided solely for disclosure purposes. The Debtor's
12 negotiations with Avaya concerning the transaction contemplated in this Motion were arms-
13 length, and Avaya provided the best bid on the Patents.

14 **V. PRE-PETITION SECURED DEBT**

15 Searches of the records of the California Secretary of State disclose the following liens
16 and security interests on the Debtor's pre-petition property:

17 SECURED PARTY	18 DATE OF FILING	19 COLLATERAL 20 COVERAGE
21 <u>Holen Tech</u>		
22 FNF Capital, Inc.	23 1/27/00	24 Specific Equipment (returned to leasing company)
25 Sumitomo Bank Leasing and Finance, Inc.	26 12/27/96	27 Specific Equipment (Debtor believes paid in full)
28 Oce-USA, Inc.	1/18/96	Specific Equipment (photocopiers; returned to leasing company)
<u>CyberIQ</u>		
Colliers International	3/09/01	Furniture and equipment located at 225 Baypointe Parkway, San Jose, CA (secures commission under listing agreement) (release filed 6/27/01)

MURRAY & MURRAY
A Professional Corporation
19910 Stevens Creek Blvd., Suite 106
Cupertino, CA 95014-2576
TELEPHONE (650) 852-9000 FACSIMILE (650) 852-9244
E-MAIL: info@murraylaw.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SECURED PARTY	DATE OF FILING	COLLATERAL COVERAGE
BCL Capital	9/12/00	Specific Equipment
The Manifest Group	9/19/00	Specific Equipment
Silicon Valley Bank	11/13/00	Substantially all of Assets (release filed 2/13/01)
CIT Technology Financing Services, Inc.	12/1/00	Specific Equipment
Sunrise Leasing Corporation	12/12/00	Specific Equipment
GATX Ventures, Inc.	12/14/00	Substantially all of Assets (release filed 2/13/01)

A true and correct copy of the searches of the California Secretary of State are attached hereto as Exhibit "A" and incorporated herein by this reference.

**VI. GROUNDS TO SELL ASSETS
FREE AND CLEAR OF LIENS
(11 U.S.C. § 363(f)(4))**

Based on the Debtor's records and the search performed with the California Secretary of State's Office, reflecting that any blanket liens have been released, the Debtors believe that any other alleged lien against or interest in the Patents is in bona fide dispute and that the Patents may be conveyed free and clear of any such lien, claim, encumbrance or interest pursuant to Section 363(f)(4) of the Bankruptcy Code.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Executed on July ____, 2001 at Atherton, County of San Mateo, State of California.

William J. Schroeder

MURRAY A. MURRAY
A Professional Corporation
1893F Stevens Creek Blvd., Suite 100
Cupertino, CA 95014-2556
TELEPHONE: (650) 851-9000 FACSIMILE: (650) 857-6344
E-MAIL: mad@murraylaw.com

SECURED PARTY	DATE OF FILING	COLLATERAL COVERAGE
BCL Capital	9/12/00	Specific Equipment
The Manifest Group	9/19/00	Specific Equipment
Silicon Valley Bank	11/13/00	Substantially all of Assets (release filed 2/13/01)
CIT Technology Financing Services, Inc.	12/1/00	Specific Equipment
Sunrise Leasing Corporation	12/12/00	Specific Equipment
GATX Ventures, Inc.	12/14/00	Substantially all of Assets (release filed 2/13/01)

A true and correct copy of the searches of the California Secretary of State are attached hereto as Exhibit "A" and incorporated herein by this reference.

VI. GROUNDS TO SELL ASSETS FREE AND CLEAR OF LIENS (11 U.S.C. § 363(f)(4))

Based on the Debtor's records and the search performed with the California Secretary of State's Office, reflecting that any blanket liens have been released, the Debtors believe that any other alleged lien against or interest in the Patents is in bona fide dispute and that the Patents may be conveyed free and clear of any such lien, claim, encumbrance or interest pursuant to Section 363(f)(4) of the Bankruptcy Code.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information and belief. Executed on July 13, 2001 at Atherton, County of San Mateo, State of California.

William J. Schroeder
 William J. Schroeder

MURRAY & MURRAY
 A Professional Corporation
 13520 Shimmick Blvd., Suite 100
 Cupertino, CA 95014-2210
 TELEPHONE (408) 951-9800 FACSIMILE (408) 951-9144
 E-MAIL: info@murray.com

FILED

OCT 03 2001

CLERK
United States Bankruptcy Court
San Jose, California

JANICE M. MURRAY (099996)
ROBERT A. FRANKLIN (091653)
DORIS A. KAELIN (162069)
MURRAY & MURRAY
A Professional Corporation
19330 Stevens Creek Blvd., Suite 100
Cupertino, CA 95014-2526
(650) 852-9000; (408) 907-9200

Attorneys for Debtor

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re:)
CyberIQ Systems, Inc.,)
fka HolonTech Corporation,)
Debtor,)
EIN: 77-0431580)

Case No. 01-51100 msj
Chapter 11
Date: August 10, 2001
Time: 11:00 a.m.
Place: San Jose Bankruptcy Court
Room 3070
Judge: Honorable Marilyn Morgan

ORDER AUTHORIZING SALE OF CERTAIN OF DEBTOR'S
ASSETS OTHER THAN IN THE ORDINARY COURSE OF BUSINESS
AND FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES
AND INTERESTS PURSUANT TO 11 U.S.C. § 363

Upon the MOTION TO SELL CERTAIN OF DEBTOR'S ASSETS OTHER THAN IN
THE ORDINARY COURSE OF BUSINESS (11 U.S.C. § 363(b)) AND FREE AND CLEAR
OF LIENS, CLAIM, ENCUMBRANCES AND INTERESTS (11 U.S.C. § 363(f) (the
"Motion") filed July 13, 2001 by CyberIQ Systems, Inc., fka HolonTech Corporation, the debtor
and debtor-in-possession herein (hereinafter the "Debtor"), seeking this Court's authorization
pursuant to various provisions of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (as
amended, the "Bankruptcy Code") and Rules 6004 and 9014 of the Federal Rules of Bankruptcy
Procedure (the "Bankruptcy Rules"), to sell certain assets other than in the ordinary course of
business and free and clear of all liens, claims, encumbrances and interests pursuant to 11 U.S.C.

19330 Stevens Creek Blvd., Suite 100
Cupertino, CA 95014-2526
TELEPHONE (650) 852-9000 FACSIMILE (650) 852-9244
E-MAIL msj@murraym.com

QW IRW DAK jak-1
Pending Cyber IQ Cr
September 13, 2001

COPY -1-

Order Authorizing Sale of Certain of Debtor's Assets Other Than
in the Ordinary Course of Business and Free and Clear of Liens,
Claims, Encumbrances and Interests Pursuant to 11 U.S.C. § 363
EXHIBIT A

1 § 363(b) and (f), Trimans Diversified, Inc. ("TDI") having submitted a competing bid, the Court
2 having received multiple bids from TDI and Avaya, Inc ("Avaya"), Avaya having increased its
3 purchase price to [REDACTED] the increased offer being in excess of TDI's highest bid; due and
4 sufficient notice of the Motion under the circumstances having been given; the Court finding that
5 Avaya, or TDI should it be the ultimate purchaser with its back-up bid, is a good faith purchaser
6 within the meaning of Section 363(m) of the Bankruptcy Code; the Court finding the proposed
7 sale is in the best interest of the estate, and good cause appearing therefore.

8 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

- 9 1. The Motion is granted and any opposition to the Motion is overruled;
- 10 2. The Debtor is expressly authorized and empowered to sell the Patents (as defined
11 in the Motion) to Avaya for [REDACTED] and to execute and deliver such documents as are
12 reasonably necessary to complete the sale transaction as contemplated by the Motion;
- 13 3. The sale of the Patents shall be free and clear of all liens, claims, encumbrances or
14 interests, provided, however that the sale is subject to the terms and conditions of the existing
15 licenses as follows: (a) Hewlett-Packard Co.; (b) Turnkey Korea Co., Ltd; (c) Nauticus
16 Networks, Inc.; and (d) RedCreek Communications, Inc.;
- 17 4. Any and all liens, claims, encumbrances or interests on or in the Patents shall
18 attach only to the proceeds of the sale to the extent valid and in their respective order of priority;
- 19 5. The sale of Patents is "as is", "where is", and without other warranty except that
20 the Debtor has warranted and represented (a) it is the owner and title holder of the Patents; (b)
21 there are no challenges to the validity of the Patents to the best of the Debtor's knowledge,
22 information and belief; (c) it has disclosed all licenses associated with the Patents, to the best of
23 the Debtor's knowledge, information and belief; and (d) the Debtor has provided written
24 confirmation to Avaya that there are no challenges to the validity of the Patents, by having
25 contacted Skjerven Morrill MacPherson, LLP and NewTechLaw;
- 26 6. In the event Avaya does not consummate the sale of the Patents within ten days of
27 this order becoming a final, non-appealable order, the Patents may be sold to the next highest
28 bidder, Trimans Diversified, Inc. ("TDI"), in the amount of [REDACTED] in accordance with the

9975 Stevens Creek Blvd., Suite 100
Cupertino, CA 95014-3535
TELEPHONE: 408.432.9822 FACSIMILE: (408) 432-9244
E-MAIL: msf@securix.com

UW IRW DAK dal-15
Tending/Cyber 10/01 of Sale Avaya.wpd
September 14, 2001

1 terms of the Motion;

2 7. Avaya, or TDI should it be the ultimate purchaser with its back-up bid, shall bear
3 the expense of drafting any and all documents necessary to consummate the transactions
4 contemplated in the Motion, including the cost to transfer the Patents to the buyer;

5 8. Expenses incurred by Skjerven Morrill MacPherson, L.L.P., San Jose, CA
6 ("Skjerven") with respect to the first eight (8) items listed in the Motion under "Patents" shall be
7 paid directly to Skjerven by Avaya, or by TDI should it be the ultimate purchaser with its back up
8 bid, and are limited solely to (i) services set forth in invoice number 513616 dated August 23,
9 2001 in the amount of [REDACTED] from Skjerven to Avaya, (ii) services performed by Skjerven
10 prior to the August 10, 2001 hearing date on the Motion, not to exceed [REDACTED] that are the direct
11 result of requested information or investigative steps by Avaya, or TDI should it be the ultimate
12 purchaser, and (iii) future services that are the direct result of any future requests made in writing
13 by Avaya, or TDI should it be the ultimate purchaser, to Skjerven for services requested by
14 Avaya, or TDI should it be the ultimate purchaser, with respect to the prosecution, validity,
15 usefulness or value of the Patents.

16 9. Expenses incurred by NewTechLaw, Palo Alto, CA ("NewTech") with respect to
17 the last item listed in the Motion under "Patents" shall be paid by Avaya, or TDI should it be the
18 ultimate purchaser, and are limited solely to copying and postage charges associated with
19 transferring the files with respect to the Patents to Avaya, or TDI should it be the ultimate
20 purchaser.

21 10. Any parties including, but not limited to, the Debtor, Skjerven, and NewTech,
22 shall use reasonable efforts to turn over all files associated with the Patents to Avaya, or TDI
23 should it be the ultimate purchaser, at the closing of the sale of the Patents which is presently
24 contemplated to be twenty (20) days after the filing of this Order. Should the parties agree on an
25 earlier closing date, Skjerven Morrill MacPherson and NewTech shall not be in breach of this
26 Order if all files are not able to be transferred by the earlier closing date.

27 ///

28 ///

1990 Stevens Creek Blvd., Suite 102
Cupertino, CA 95014-2156
TELEPHONE (408) 952-8922 FACSIMILE (408) 952-9244
E-MAIL email@merrilljw.com

UW IRW DAK dak-15
Pending/Cyber IQC
September 14, 2001

-3-

Order Authorizing Sale of Certain of Debtor's Assets Other Than
In the Ordinary Course of Business and Free and Clear of Liens,
Claims, Encumbrances and Interests Pursuant to 11 U.S.C. § 363

09/12/01 WED 09:03 FAX 980 882 8266
SEP 11 '01 05:28PM 453 7879

MURRAY & MURRAY

@005

09/11/01 TUE 18:38 FAX 980 882 8266

MURRAY & MURRAY

R.5

@005

SEP 11 '01 04:34PM

1 11. The Bankruptcy Court shall retain jurisdiction to hear any disputes related to the
2 sale of Patents by the Debtor to Avaya, or TDI should it be the ultimate purchaser.

3 OCT 03 2001

4 Dated: _____

MARILYN MORGAN
UNITED STATES BANKRUPTCY JUDGE

6 APPROVED AS TO FORM AND CONTENT:

7 Lowenstein Sandler P.C.

9 By: Vincent A. D'Agostino
10 Vincent A. D'Agostino, Esq.
11 Attorney for Avaya

12 Skjerven McHugh MacPherson
13 By: Alan M. MacPherson
14 Alan M. MacPherson, Esq.
15 Special Counsel to Debtor

16 NewTechLaw
17 By: Donald B. Rosenberg
18 Donald B. Rosenberg, Esq.
19 Special Counsel to Debtor

Liberty & Justice
A Professional Corporation
1700 Pennsylvania Blvd., Suite 200
Columbia, VA 22504
Telephone: 703-947-7000
Fax: 703-947-7001

09/12/01 09:03 FAX 980 882 8266
SEP 11 '01 05:28PM 453 7879

Order Authorizing Sale of Copyright of Debtor's Assets Being Filed
in the Bankruptcy Court of Southern District of New York and Clerk of United
States, International and Intellectual Property in U.S.D. § 114