

PATENT ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	Corrective Recording Confirming Title Remains with Solera Networks, Inc.
CONVEYING PARTY DATA	
Name	Execution Date
Solera Networks, Inc.	03/08/2010
RECEIVING PARTY DATA	
Name:	Solera Networks, Inc.
Street Address:	10713 South Jordan Gateway
Internal Address:	Suite 100
City:	South Jordan
State/Country:	UTAH
Postal Code:	84095
PROPERTY NUMBERS Total: 1	
Property Type	Number
Application Number:	11632249
CORRESPONDENCE DATA	
Fax Number:	(303)629-3450
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	303-629-3400
Email:	asaro.elissa@dorsey.com
Correspondent Name:	Gregory P. Durbin / Dorsey & Whitney LLP
Address Line 1:	370 Seventeenth Street
Address Line 2:	Republic Plaza Building, Suite 4700
Address Line 4:	Denver, COLORADO 80202-5647
ATTORNEY DOCKET NUMBER:	P200667.US.02
NAME OF SUBMITTER:	Elissa Asaro fbo Gregory P. Durbin
<p>Total Attachments: 28</p> <p>source=CorrectiveRecordingConfirmingTitleRemainswithSoleraNetworks#page1.tif</p> <p>source=CorrectiveRecordingConfirmingTitleRemainswithSoleraNetworks#page2.tif</p>	

CH \$40.00 11632249

501113098

PATENT
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Applicant: Merkey et al.	
App. No.: 11/632,249	Con. No.: 4619
Filed: Jan 11, 2007	Art Unit: 2416
Title: METHOD AND APPARATUS FOR NETWORK PACKET CAPTURE DISTRIBUTED STORAGE SYSTEM	Examiner: Nugyen, Steven H. D.

**CORRECTIVE RECORDING CONFIRMING TITLE REMAINS
WITH SOLERA NETWORKS, INC.**

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Solera Networks, Inc. ("Solera") by and through the undersigned, hereby records this document along with the attached exhibits in the chain-of-title of U.S. Application No. 11/632,249 in order to confirm Solera's ownership of this application.

Introduction

Jeffery Vernon Merkey ("Merkey") has recorded two false and materially misleading documents in the chain-of-title of U.S. Application No. 11/632,249 (the "Application") claiming to revoke a properly conveyed assignment to Solera Networks, Inc. of the Application. Further, one of these documents has been misleadingly characterized by the PTO as a "stipulated and court approved and entered release of ownership/claims." The recorded documents contain numerous unsubstantiated allegations, the allegations are false, and the nature of the conveyance selected by the PTO is not only incorrect but misleading to anyone but an experienced patent practitioner; such improprieties imbuing the chain-of-title with a false sense that Merkey owns or may have a legitimate claim to the Application. Solera is the rightful owner of the Application and therefore records this document in the chain-of-title in order to confirm the same for any third party assessing the chain-of-title.

Legal Framework Requiring Submission of these Documents

The Patent Office acts in a ministerial capacity in recording documents that have been submitted for recordation. See 35 U.S.C. § 261. It is important to understand that recordation by the Patent Office is not a determination by the Patent Office of the validity of the recorded document or the effect the document has on title. See 37 C.F.R. § 3.54. The Patent Office maintains a complete history of claimed interests in property and only in the very rarest of circumstances does it expunge records. See MPEP § 323 and § 323.01(d). Indeed, the Patent Office will not expunge assignment records “even if subsequently found to be invalid.” See MPEP § 323.

Analysis

The Application was filed on January 11, 2007, as a 371(c) United States national phase application claiming priority to PCT/US2005/045566 titled “Method and Apparatus for Network Packet Capture Distributed Storage System” filed on December 16, 2005, naming inventors Bryan W. Sparks and Merkey. See *Exhibit A (First page of published Application)*. Sparks and Merkey, on the same day of filing the PCT application, executed assignments of all right title and interest to Solera Networks, Inc. See *Exhibit B (Copies of Sparks and Merkey assignments)*. These assignments were duly recorded on the same day of execution. See *Exhibit C (Patent Assignment Abstract of Title, Assignment:1)*. Hence, on December 16, 2005, Solera was assigned all right and title in the PCT application and all “Patents which may be granted therefore in the United States,” including the Application. See also *Exhibit D (Sworn Affidavit of Steve Shillingford, President and CEO of Solera Networks)*.

A. The Allegations in Merkey’s first and second fraudulently submitted documents are completely unsubstantiated and Solera hereby denies all of Merkey’s allegations

On October 1, 2008, Merkey fraudulently recorded a first document in the chain-of-title of the Application. See *Exhibit C (Abstract of Title, Assignment:2)*. The document is a letter to the PTO “revoking any previous assignments to Solera Networks ... based upon a settlement agreement between Jeffrey Merkey and Solera Networks entered by the ... Court.” See *Exhibit E (First Fraudulent Merkey Document)*. Notably, Merkey does not provide a copy of the referenced court entered settlement agreement. Solera submits that there has been no such court ordered settlement. Merkey’s allegation is simply false.

On April 20, 2009, Merkey fraudulently recorded a second document in the chain-of-title of the Application. *See Exhibit C (Abstract of Title, Assignment:3)*. The document is a letter making factually false statements, including "admitting in a confidential settlement that Solera Networks ... forged this inventors signature and were ordered to remove my signature from these documents by the 4th Judicial District." *See Exhibit F (Second Fraudulent Merkey Document)*. As with the first fraudulently submitted document, Merkey provides no factual evidence in support of his various accusations. No such admission has occurred and no court has ordered Solera to take any action relative to Merkey's assignment to Solera.

B. The Fourth Judicial District Court, Utah County, State of Utah, has dismissed Merkey's claims against Solera, ruling that Solera was not a party to the settlement agreement Merkey references in his first and second fraudulently submitted documents

The Fourth Judicial District Court, Utah County, State of Utah, has dismissed Merkey's claims against Solera. While the order dismissing the claims is sealed, the nature of the false statements in this matter are so egregious that Solera has asked the Assistant United States Attorney in Utah to investigate the matter. *See Exhibit G*. In Solera's letter to the Assistant United States Attorney, it is noted that (1) the court dismissed Mr. Merkey's lawsuit in its entirety, ruling that Solera was not a party to the lawsuit, (2) that Solera is merely a third party beneficiary of the settlement agreement, and (3) that on its face and as a matter of law, the settlement agreement indicates that Solera (a) undertook no obligations to Merkey and (b) released Merkey of no obligations. Hence, a Utah state court has concluded that the settlement agreement Merkey references did not involve Solera, and Solera undertook no obligations to Merkey. Therefore, various basis upon which Merkey claims to revoke his assignment are false. Moreover, the PTO's characterization of the nature of the first fraudulent Merkey document as a "stipulated and court approved and entered release of ownership/claims" is simply incorrect.

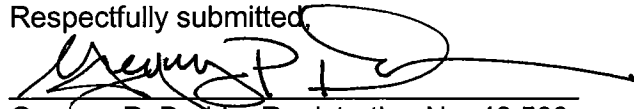
Conclusion

Solera has recorded properly executed assignments and further notes that the assignments were witnessed by a Notary Public. There is simply no evidence submitted by Merkey to provide a basis to dispute his original notarized assignment. More importantly, Merkey relies on an alleged settlement agreement as the basis for accusations set forth in both the first and second fraudulently recorded documents. However, a Utah court has dismissed his claims and has specifically indicated that Solera was not a party to any settlement agreement.

Hence, Merkey's claims are not only unsubstantiated, but have been dismissed by a court of law. Accordingly, Solera is the rightful and sole owner of the Application and any U.S. or foreign patents issuing therefrom.

Dated: March 8, 2010

Respectfully submitted,



Gregory P. Durbin, Registration No. 42,503
Attorney for Applicant
USPTO Customer No. 20686

DORSEY & WHITNEY LLP
Republic Plaza Building, Suite 4700
370 Seventeenth Street
Denver, Colorado 80202-5647
Phone: (303) 629-3400
Fax: (303) 629-3450

EXHIBIT A



US 20070248029A1

(19) **United States**(12) **Patent Application Publication**
Merkey et al.(10) **Pub. No.: US 2007/0248029 A1**(43) **Pub. Date: Oct. 25, 2007**(54) **METHOD AND APPARATUS FOR NETWORK
PACKET CAPTURE DISTRIBUTED
STORAGE SYSTEM****Publication Classification**(51) **Int. Cl.**
H04L 12/28 (2006.01)
(52) **U.S. Cl.** 370/255(76) Inventors: **Jeffrey V. Merkey**, Lindon, UT (US);
Bryan W. Sparks, Lindon, UT (US)Correspondence Address:
J. HARRISON COLTER
333 SOUTH 520 WEST
SUITE 310
LINDON, UT 84042 (US)(57) **ABSTRACT**

This invention comprises a method and apparatus for Infinite Network Packet Capture System (INPCS). The INPCS is a high performance data capture recorder capable of capturing and archiving all network traffic present on a single network or multiple networks. This device can be attached to Ethernet networks via copper or SX fiber via either a SPAN port (101) router configuration or via an optical splitter (102). By this method, multiple sources or network traffic including gigabit Ethernet switches (102) may provide parallelized data feeds to the capture appliance (104), effectively increasing collective data capture capacity. Multiple captured streams are merged into a consolidated time indexed capture stream to support asymmetrically routed network traffic as well as other merged streams for external consumption.

(21) Appl. No.: **11/632,249**(22) PCT Filed: **Dec. 16, 2005**(86) PCT No.: **PCT/US05/45566**§ 371(c)(1),
(2), (4) Date: **Jan. 11, 2007****Related U.S. Application Data**

(60) Provisional application No. 60/638,707, filed on Dec. 23, 2004.

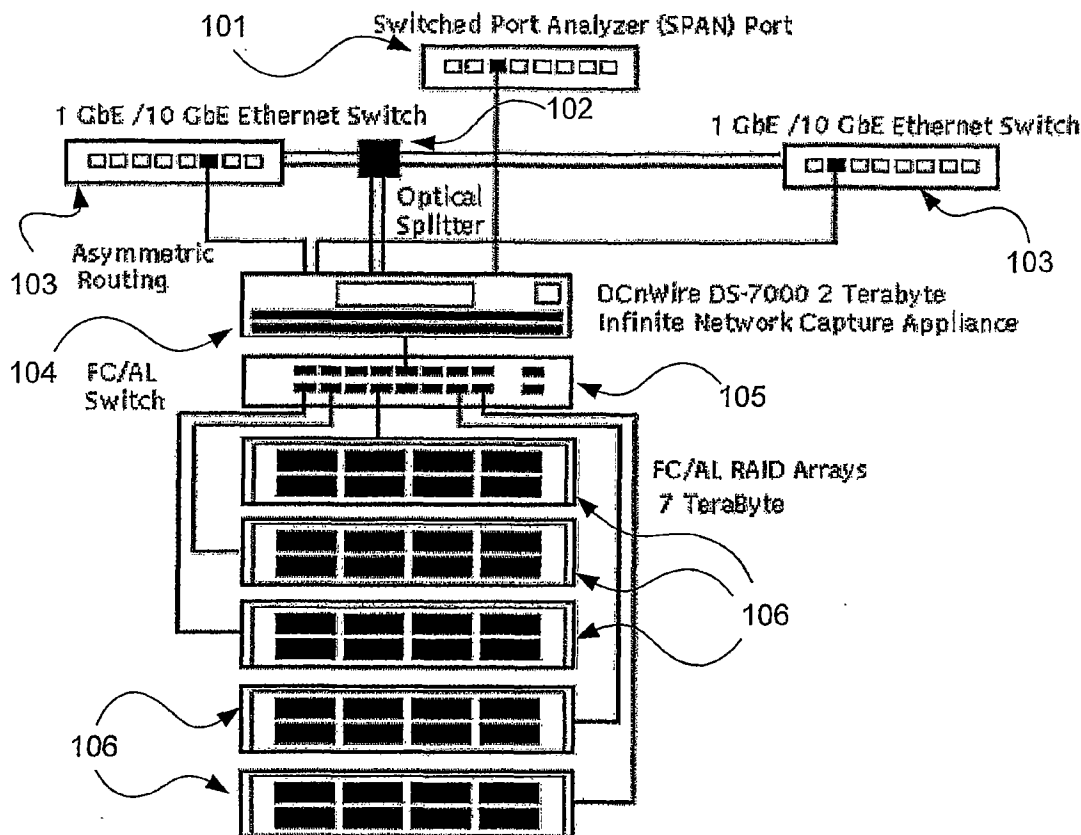
**PATENT****REEL: 024056 FRAME: 0035**

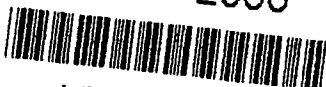
EXHIBIT B

IAP3 Rec'd PCT/PTO - 6 DEC 2005
PCT/US05/45566

Form PTO-1595 (Rev. 03/05)
OMB No. 0651-0027 (exp. 6/30/2005)

01-09-2006

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



103152883

To the Director of the U.S. Patent and Trademark Office: Please

documents or the new address(es) below.

1. Name of conveying party(ies)

Jeffery V. Merkey
Bryan W. Sparks

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

3. Nature of conveyance/Execution Date(s):

Execution Date(s) December 16, 2005

- ☒ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☐ Joint Research Agreement
☐ Government Interest Assignment
☐ Executive Order 9424, Confirmatory License
☐ Other

2. Name and address of receiving party(ies)

Name: Solera Networks, Inc.

Internal Address: _____

Street Address: 379 South 520 West

City: London

State: Utah

Country: USA

Zip: 84042

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

4. Application or patent number(s):

☒ This document is being filed together with a new application.

A. Patent Application No.(s)

B. Patent No.(s)

12/21/2005 MKAYPAGH 00000125 PCT/US05/45566

06 FC:8021

40.00 DP

Additional numbers attached? ☐ Yes ☒ No

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

Name: J. Harrison Colter

Internal Address: Suite 350

Street Address: 333 South 520 West

City: London

State: Utah

Zip: 84042

Phone Number: (801) 932-6162

Fax Number: (801) 932-6161

Email Address: harrison@colterjennings.com

6. Total number of applications and patents involved: One

7. Total fee (37 CFR 1.21(h) & 3.41) \$ 40.00

- ☐ Authorized to be charged by credit card
☐ Authorized to be charged to deposit account
☒ Enclosed
☐ None required (government interest not affecting title)

8. Payment Information

a. Credit Card Last 4 Numbers _____
Expiration Date _____

b. Deposit Account Number _____

Authorized User Name _____

9. Signature:

J. Harrison Colter
Signature

December 16, 2005

Date

J. Harrison Colter

Name of Person Signing

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

Three

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O.Box 1450, Alexandria, V.A. 22313-1450

PATENT
REEL: 017418 FRAME: 0092
PATENT
REEL: 024056 FRAME: 0037

ASSIGNMENT OF APPLICATION

Docket Number (Optional)

Whereas, I/We, Bryan W. Sparks of Orem, Utah, hereafter referred to as applicant, have invented certain new and useful improvements in METHOD AND APPARATUS FOR NETWORK PACKET CAPTURE DISTRIBUTED STORAGE SYSTEM

☐ for which an application for a United States Patent was filed on _____
Application Number _____ / _____.

☒ for which an application for a United States Patent was executed on December 16, 2005, and

Whereas, Solera Networks, Inc. of Lindon, Utah herein referred to "assignee" whose mailing address is 379 South 520 West, Lindon, Utah 84042, USA is desirous of acquiring the entire right, title and interest in the same;

Now, therefore, in consideration of the sum of Ten dollars (\$ 10.00), the receipt whereof is acknowledged, and other good and valuable consideration, I/We, the applicant(s), by these presents do sell, assign and transfer unto said assignee the full and exclusive right to the said invention in the United States and the entire right, title and interest in and to any and all Patents which may be granted therefor in the United States, I/We hereby authorize and request the Commissioner of Patent and Trademarks to issue said United States Patent to said assignee, of the entire right, title, and interest in and to the same, for his sole use and behoof; and for the use and behoof of his legal representatives, to the full end of the term for which said Patent may be granted, as fully and entirely as the same would have been held by me had this assignment and sale not been made.

Executed this 16th day of December, 20 05
at Lindon, Utah

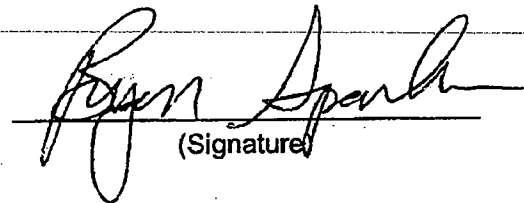
State of Utah)

County of Utah)

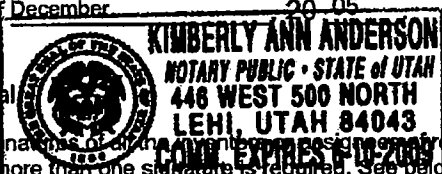
SS:

Before me personally appeared said Bryan W. Sparks

and acknowledged the foregoing instrument to be his free act and deed this 16th
day of December, 20 05


(Signature)

Seal





(Notary Public)

Note: Signatures of all the parties and their representatives or record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required. See below.

* ☐ Total of 2 forms are submitted.

This form offers a sample or suggested format for an assignment document. This sample form is not an OMB officially approved form.

PATENT
REEL: 017418 FRAME: 0093
PATENT
REEL: 024056 FRAME: 0038

ASSIGNMENT OF APPLICATION

Docket Number (Optional)

Whereas, I/We, Jeffery V. Merkey of Lindon, Utah, hereafter referred to as applicant, have invented certain new and useful improvements in METHOD AND APPARATUS FOR NETWORK PACKET CAPTURE DISTRIBUTED STORAGE SYSTEM

☐ for which an application for a United States Patent was filed on _____
Application Number _____ / _____.

☒ for which an application for a United States Patent was executed on December 16, 2005, and

Whereas, Solera Networks, Inc. of Lindon, Utah herein referred to "assignee" whose mailing address is 379 South 520 West, Lindon, Utah 84042, USA is desirous of acquiring the entire right, title and interest in the same;

Now, therefore, in consideration of the sum of Ten dollars (\$ 10.00), the receipt whereof is acknowledged, and other good and valuable consideration, I/We, the applicant(s), by these presents do sell, assign and transfer unto said assignee the full and exclusive right to the said invention in the United States and the entire right, title and interest in and to any and all Patents which may be granted therefor in the United States, I/We hereby authorize and request the Commissioner of Patent and Trademarks to issue said United States Patent to said assignee, of the entire right, title, and interest in and to the same, for his sole use and behoof; and for the use and behoof of his legal representatives, to the full end of the term for which said Patent may be granted, as fully and entirely as the same would have been held by me had this assignment and sale not been made.

Executed this 16th day of December, 20 05
at Lindon, Utah

State of Utah

County of Utah

SS:

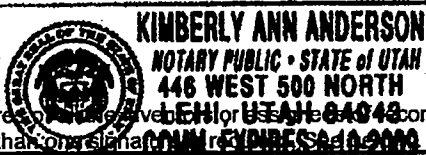
Before me personally appeared said Jeffery V. Merkey

and acknowledged the foregoing instrument to be his free act and deed this 16th

day of December, 20 05

(Signature)

Seal



Note: Signatures of all persons having or claiming an interest in the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required.

* ☐ Total of 3 forms are submitted.

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RECORDED: 12/16/2005

PATENT
REEL: 017418 FRAME: 0094
PATENT
REEL: 024056 FRAME: 0039

EXHIBIT C



United States Patent and Trademark Office

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Assignments on the Web > Patent Query

Patent Assignment Abstract of Title

**NOTE: Results display only for issued patents and published applications.
For pending or abandoned applications please consult USPTO staff.**

Total Assignments: 5

Patent #: NONE Issue Dt: Application #: 11632249 Filing Dt: 01/11/2007
Publication #: 20070248029 Pub Dt: 10/25/2007 PCT #: US0545566
Inventors: Jeffrey V. Merkey, Bryan W. Sparks
Title: Method and Apparatus for Network Packet Capture Distributed Storage System

Assignment: 1

Reel/Frame: 017418/0092 Recorded: 12/16/2005 Pages: 3

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignors: MERKEY, JEFFERY V.
SPARKS, BRYAN W.

Exec Dt: 12/16/2005

Exec Dt: 12/16/2005

Assignee: SOLERA NETWORKS, INC.
379 SOUTH 520 WEST
LINDON, UTAH 84042

Correspondent: J. HARRISON COLTER
SUITE 350
333 SOUTH 520 WEST
LINDON, UTAH 84042

Assignment: 2

Reel/Frame: 021619/0743 Recorded: 10/01/2008 Pages: 2

Conveyance: STIPULATED AND COURT APPROVED AND ENTERED RELEASE OF OWNERSHIP/CLAIMS

Assignor: MERKEY, JEFFREY V

Exec Dt: 09/18/2008

Assignee: MERKEY, JEFFREY V
1058 EAST 50 SOUTH
LINDON, UTAH 84042

Correspondent: JEFFREY VERNON MERKEY
1058 EAST 50 SOUTH
LINDON, UT 84042

Assignment: 3

Reel/Frame: 022569/0767 Recorded: 04/20/2009 Pages: 2

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: MERKEY, JEFFREY VERNON

Exec Dt: 04/20/2009

Assignee: MERKEY, JEFFREY VERNON
1058 EAST 50 SOUTH
LINDON, UTAH 84042

Correspondent: JEFFREY VERNON MERKEY
1058 EAST 50 SOUTH
LINDON, UT 84042

Assignment: 4

Reel/Frame: 022606/0926 Recorded: 04/27/2009 Pages: 7

Conveyance: ASSIGNMENT OF ASSIGNORS INTEREST (SEE DOCUMENT FOR DETAILS).

Assignor: MERKEY, JEFFREY VERNON

Exec Dt: 04/27/2009

Assignee: SOLERA NETWORKS, INC.

355 SOUTH 520 WEST
SUITE 150
LINDON, UTAH 84042

Correspondent: RAJ ABHYANKER
1580 W. EL CAMINO REAL
SUITE 8
MOUNTAIN VIEW, CA 94040

Assignment: 5**Reel/Frame:** 022725/0912**Recorded:** 05/20/2009**Pages:** 3**Conveyance:** SWORN AFFIDAVIT TO CORRECT ASSIGNEE**Assignors:** MERKEY, JEFFREY V.**Exec Dt:** 05/08/2009SPARKS, BRYAN W.**Exec Dt:** 05/08/2009**Assignee:** SOLERA NETWORKS, INC.

355, S. 520 W.
LINDON, UTAH 84042

Correspondent: RAJ ABHYANKER, LLP
1580 W. EL CAMINO REAL
SUITE B
MOUNTAINVIEW, CA 94040

Search Results as of: 01/07/2010 12:29 PM

If you have any comments or questions concerning the data displayed, contact PRD / Assignments at 571-272-3350.
Web interface last modified: October 18, 2008 v.2.0.2

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EXHIBIT D

Electronic Acknowledgement Receipt

EFS ID:	5319544
Application Number:	11632249
International Application Number:	
Confirmation Number:	4619
Title of Invention:	Method and Apparatus for Network Packet Capture Distributed Storage System
First Named Inventor/Applicant Name:	Jeffrey V. Merkey
Customer Number:	55952
Filer:	Raj Vasant Abhyanker/Abhishek Sharma
Filer Authorized By:	Raj Vasant Abhyanker
Attorney Docket Number:	00095.00017US1
Receipt Date:	12-MAY-2009
Filing Date:	11-JAN-2007
Time Stamp:	15:04:58
Application Type:	U.S. National Stage under 35 USC 371

Payment information:

Submitted with Payment	no
------------------------	----

File Listing:

Document Number	Document Description	File Name	File Size(Bytes)/ Message Digest	Multi Part /.zip	Pages (if appl.)
1	Miscellaneous Incoming Letter	Sworn_Affadavit.pdf	888435 d4f9917bae1c647ffb9c0c57ee23ea2b81e b1d3	no	2

Warnings:

Information:

This Acknowledgement Receipt evidences receipt on the noted date by the USPTO of the indicated documents, characterized by the applicant, and including page counts, where applicable. It serves as evidence of receipt similar to a Post Card, as described in MPEP 503.

New Applications Under 35 U.S.C. 111

If a new application is being filed and the application includes the necessary components for a filing date (see 37 CFR 1.53(b)-(d) and MPEP 506), a Filing Receipt (37 CFR 1.54) will be issued in due course and the date shown on this Acknowledgement Receipt will establish the filing date of the application.

National Stage of an International Application under 35 U.S.C. 371

If a timely submission to enter the national stage of an international application is compliant with the conditions of 35 U.S.C. 371 and other applicable requirements a Form PCT/DO/EO/903 indicating acceptance of the application as a national stage submission under 35 U.S.C. 371 will be issued in addition to the Filing Receipt, in due course.

New International Application Filed with the USPTO as a Receiving Office

If a new international application is being filed and the international application includes the necessary components for an international filing date (see PCT Article 11 and MPEP 1810), a Notification of the International Application Number and of the International Filing Date (Form PCT/RO/105) will be issued in due course, subject to prescriptions concerning national security, and the date shown on this Acknowledgement Receipt will establish the international filing date of the application.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Assignment Division

Title: METHOD AND APPARATUS FOR NETWORK PACKET CAPTURE DISTRIBUTED STORAGE SYSTEM

Applicant: Merkey et al.
Filed: January 11, 2007

Serial No.: 11/632,249
Docket Number: 00095.00017US1

SWORN AFFIDAVIT TO CORRECT ASSIGNEE RECORD

State of Utah
County of Utah County

Statement Date: 5/08, 2009

I, Stephen Shillingford, CEO, Solera Networks Inc., being first duly sworn to oath, do hereby affirm that the following statement is true and accurate to the best of my knowledge and belief:

ISSUE

The United States Patent Office Assignment Division has incorrectly re-assigned interest in the U.S. Patent Application Serial No. 11/632,249 from Solera Networks, Inc. to Mr. Jeffery V. Merkey on April 20, 2009. I am the Chief Executive Officer of Solera Networks, Inc. and I hereby provide this sworn affidavit to request restoration of the assignment record to Solera Networks, Inc.

BACKGROUND OF ASSIGNMENT HISTORY

The U.S. Patent Application Serial No. 11/632,249 referenced herein is a national phase entry of the PCT application (PCT/US2005/045566). The PCT application PCT/US2005/045566 claims priority from a Provisional U.S. Patent Application 60/638,707. The PCT application PCT/US2005/045566 was assigned to Solera Networks, Inc. by Jeffrey V. Merkey, an inventor, through a written and notarized assignment of interest executed on December 16, 2005. The national phase entry of this PCT application PCT/US2005/045566 into the United States, U.S. Patent Application Serial No. 11/632,249, made no changes to the disclosure or claims from the PCT filing. Therefore, the U.S. Patent Application Serial No. 11/632,249 is also assigned to Solera Networks, Inc.

FACTS


The United States Patent and Trademark Office correctly entered that Solera Networks Inc. is the rightful assignee of this case at the time of filing. However, on October 1, 2008 Jeffery V. Merkey falsely cited a stipulated court order and filed for change of assignment. A petition was filed by Solera Networks Inc. on

March 27, 2009 to show that Mr. Jeffery V. Merkey has falsely characterized the stipulated court order and to demonstrate that Solera Networks Inc. is the rightful assignee. Attached is evidence in support of this background.

PRAYER FOR RELIEF

As an officer of the company and Chief Executive Officer of the rightful assignee, Solera Networks, I request that USPTO restore the record to reflect that Solera Networks Inc. as the rightful assignee of Mr. Jeffrey V. Merkey's interest in this patent application. I hereby swear and attest to the best of my knowledge and under the penalty of perjury that Mr. Jeffery V. Merkey has falsely characterized a stipulated court order and that no revocation or release of ownership rights with regards to this patent application has been made. Therefore, I earnestly request that the Assignment record be restored to Solera Networks, Inc. pursuant to this sworn affidavit.

Dated this 8 day of May, 2009.

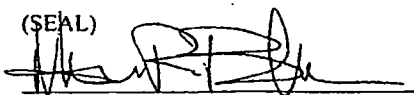

Steve Shillingford AFFIANT
President & CEO TITLE

355 S. 520 W. Ste 225 London
ADDRESS UT
84042

Before me, the undersigned authority, on this day personally appeared {name}, the {title} of {entity}, known to me to be the person whose name is subscribed to the foregoing instrument, and upon his{her} oath acknowledged to me that he{she} executed the same for the purposes and consideration therein expressed and in the capacity therein stated.

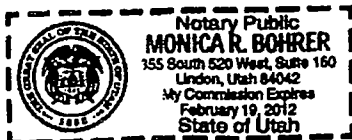
GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 8 DAY OF May, 2009

(SEAL)



NOTARY PUBLIC IN AND FOR {UTAH COUNTY}, Utah

State



Electronic Patent Application Fee Transmittal

Application Number:	11632249			
Filing Date:	11-Jan-2007			
Title of Invention:	Method and Apparatus for Network Packet Capture Distributed Storage System			
First Named Inventor/Applicant Name:	Jeffrey V. Merkey			
Filer:	Raj Vasant Abhyanker/Abhishek Sharma			
Attorney Docket Number:	Solera001			
Filed as Small Entity				
U.S. National Stage under 35 USC 371 Filing Fees				
Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
Basic Filing:				
Pages:				
Claims:				
Miscellaneous-Filing:				
Petition:				
Petition fee- 37 CFR 1.17(g) (Group II)	1463	1	200	200
Patent-Appeals-and-Interference:				
Post-Allowance-and-Post-Issuance:				
Extension-of-Time:				

Description	Fee Code	Quantity	Amount	Sub-Total in USD(\$)
Miscellaneous:				
Total in USD (\$)				200

EXHIBIT E

September 11, 2008

FROM:

Jeffrey Vernon Merkey
1058 East 50 South
Lindon, UT 84042

TO:

United States Patent and Trademark Office
Assignment Division

Re: Revocation of Assignment Patent Application 11/532,249

I do hereby revoke any previous assignments to Solera Networks, Inc. in the basis of a Court ordered release of claims of ownership of this application based upon a settlement agreement between Jeffrey Vernon Merkey and Solera Networks entered by the 4th Judicial District Court, Utah County, Provo, Utah in case number 060400014. Jeffrey Vernon Merkey vs. Solera Networks, Inc., and other named defendants.

I do hereby revoke the previous assignment pursuant to a confidential settlement agreement between myself and Solera Networks, Inc.


Jeffrey Vernon Merkey

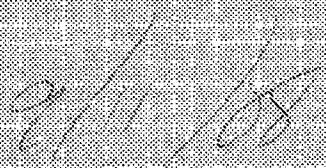


EXHIBIT F

April 20, 2009

FROM:

Jeffrey Vernon Merkey
1058 East 50 South
Lindon, UT 84042

TO:

United States Patent and Trademark Office
Assignment Division

Re: Amendment of Assignment filed 09/2008 for Patent Application 11/632,249

I do hereby amend my previous filing which rescinded assignment of this application to Solera Networks and revoke the original assignment on the grounds of breach of contract, non-payment, and release of claims of ownership by Solera Networks. The letter is amended as follows:

On or about January 4, 2008 I initiated litigation against the Officers of Solera Networks and Solera Networks on the grounds of forgery and securities fraud in their purchase of my technology with worthless unauthorized shares and on the grounds my signature was forged on dozens of Solera Networks documents. On July 2, 2008 Solera Networks, by and through its attorney, Boyd Rogers, admitted in a confidential settlement agreement that Solera Networks and its officers had forged this inventor's signature on numerous documents and were ordered to remove my signature from these documents by the 4th District Court. I later learned that these forgeries included documents filed with the USPTO with the provisional patent application and apparently this assignment document as well.

On September 11, 2008 I again filed suit against Solera Networks for breach of contract for its refusal to relinquish control and ownership of this patent application pursuant to the terms of a stipulated agreement which releases "all claims of any nature, known or unknown, discovered or undiscovered" This would include claims of ownership as well. This inventor has also alleged forgery and tortious interference in matter 080403096. Solera Networks responded by filing counter-suit and filed matter 080403545 alleging misappropriation of trade secrets. These matters are currently on appeal to the Utah Supreme Court civil No. 20090094, and no final adjudication of the interpretation of the settlement agreement has yet been rendered.

I have reviewed the documents filed with the USPTO and I cannot locate any identifiable payment of \$10.00 for this patent application, and in fact, the agreement I have in my possession specifies a payment of \$50,000 and 25% ownership of Solera Networks in exchange for this technology.

I revoke any previous assignments on the grounds of non-payment and on the grounds Solera Networks released their claims of ownership in entering into a confidential settlement agreement which releases "all claims of any nature".

S/Jeffrey Vernon Merkey

Jeffrey Vernon Merkey

RECORDED: 04/20/2009

PATENT
PATENT
REEL: 022569 FRAME: 0768
REEL: 024056 FRAME: 0053

EXHIBIT G

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ANTHONY C. KAYE
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August 12, 2009

By Hand Delivery

Mark Y. Hirata, Esq.
Assistant United States Attorney
U.S. ATTORNEYS OFFICE
185 S. State Street, Suite 300
Salt Lake City, Utah 84111

Re: Solera Network Inc.'s Request for Investigation of Jeffrey Vernon Merkey for Making False Statements to the United States Government

Dear Mr. Hirata:

As counsel for Solera Networks Inc., we write to request that your office commence an investigation of Jeffrey Vernon Merkey ("Mr. Merkey") for violations of 18 U.S.C. § 1001 for making materially false, fictitious and fraudulent statements to the U.S. Patent and Trademark Office ("PTO").

Solera Networks, Inc. ("Solera") is a Delaware corporation, with its principal place of business in Lindon, Utah. Mr. Merkey is a former employee of Solera, who resigned his employment with Solera on May 8, 2007.

Solera has pioneered technology that enables complete visibility into computer network traffic. Solera's products allow network managers to capture, record, search and archive 100% of network traffic at speeds of up to 10Gbps. This complete and searchable record of all network traffic significantly improves network security, data loss prevention, network management, performance optimization, and policy and regulatory compliance. Solera's products have been very well-received in the industry. For example Solera won the 2009 Global Excellence in Network Security Solution Award and recently raised over \$15 million in venture funding.

Due to the sensitive nature of Solera's products, Solera vigorously protects and enforces its intellectual property, including its patent rights. Solera is the duly recorded Assignee

of U.S. Patent Application 11/632,249, filed with the PTO on January 11, 2007 (the "Application," a copy of the patent application publication is attached hereto as Exhibit A.) By the Application, Solera seeks to patent a method and apparatus for a network packet capture distributed storage system (the "Invention"). Mr. Merkey is one of the Invention's inventors, but he granted all his rights and interests in the Invention to Solera pursuant to an Assignment recorded in the PTO on December 16, 2005. (Assignment dated December 16, 2005, a copy of which is attached hereto as Exhibit B.)

On January 3, 2008, Mr. Merkey, a serial pro se litigant, filed a frivolous lawsuit against former officers, directors and shareholders of Solera, alleging claims for, among other things, violations of securities laws, conversion, breach of contract, undue influence, unjust enrichment, and misappropriation of trade secrets. Merkey v. Sparks, Case No. 080400014 (Fourth Judicial District Court for Utah County, State of Utah). Mr. Merkey did not name Solera as a defendant in that lawsuit, and Solera was not a party to it. Merkey v. Sparks settled on May 23, 2008, and the terms of the settlement are memorialized in a hand-written agreement executed before a notary public (the "Settlement Agreement" a copy of which is attached hereto as Exhibit C.)

Solera is a third-party beneficiary to the Settlement Agreement, in which Mr. Merkey agreed to release any claims he may have had against Solera. Specifically, the Settlement Agreement states that "Mr. Merkey also agrees to release Solera Networks, Inc. from any and all claims or demands, whether known or unknown, discovered or undiscovered, from the beginning of time up to and including the date on which this agreement is exercised." (Settlement Agreement ¶ 7.) However, Solera did not incur any obligations to Mr. Merkey under the Settlement Agreement and, more importantly, did not release Mr. Merkey of any obligations or claims.

Despite the express terms of the Settlement Agreement, in a subsequent lawsuit brought by Mr. Merkey against Solera, Mr. Merkey claimed he was released of all of his obligations to Solera by virtue of the Settlement Agreement, and thus contested, among other things, Solera's assertion of its rights in the Invention and other intellectual property. Merkey v. Solera Networks, Inc., Case No. 080403096 (Fourth Judicial District Court for Utah County, State of Utah). The court dismissed Mr. Merkey's lawsuit in its entirety, ruling that "Solera was not a party to the [Merkey v. Sparks] lawsuit" that "Solera is merely a third-party beneficiary of that Agreement" and that on its face and as a matter of law, the Settlement Agreement indicates that "Solera (1) undertook no obligations to Merkey and (2) released Merkey of no obligations." (Order dated January 16, 2009, Finding of Fact ¶ 13 and Conclusions of Law ¶ 15, a copy of which is attached hereto as Exhibit D.)

Nevertheless, Mr. Merkey has erroneously relied on his release of Solera in the Settlement Agreement as a reinstatement of his rights to the Invention. On September 11, 2008, Mr. Merkey transmitted a letter to the PTO claiming that the Settlement Agreement revoked his assignment of the Invention to Solera. This letter was recorded as a "Stipulated and Court Approved Release of Ownership/Claims" by the PTO on October 1, 2008. (Copies of the foregoing documents are attached hereto as Exhibit E.) On September 18, 2008, Mr. Merkey

Mark Y. Hirata, Esq.
August 12, 2009
Page 3

attempted to revoke the power of attorney for authority to prosecute the patent application before the PTO from Solera's attorneys and transfer that power of attorney to himself. (Revocation of Power of Attorney with a New Power of Attorney filed September 18, 2008, a copy of which is attached hereto as Exhibit F.) When Solera became aware of these false filings, Solera petitioned the PTO pursuant to 37 C.F.R. § 1.59 to expunge the false information and statements made by Mr. Merkey from the patent application file. (A copy of Solera's Petition is attached hereto as Exhibit G).

In spite of Solera's attempts to resolve the inaccuracies presented to the PTO by Mr. Merkey, Mr. Merkey has continued to make false statements to the government. Most recently he recorded a letter with the PTO containing false allegations concerning Solera and purporting to revoke his original assignment to Solera. (Letter recorded with the PTO on April 20, 2009, a copy of which is attached hereto as Exhibit H.) These misrepresentations, in addition to increasing Solera's burden in prosecuting the patent application, have also increased the costs and burden of the PTO in performing its obligations.

In light of Mr. Merkey's repeated misrepresentations to the PTO, Solera requests that a criminal investigation of Mr. Merkey's conduct be commenced. Should you have any questions regarding the foregoing, please do not hesitate to contact me.

Sincerely,



Anthony C. Kaye

ACK/dbs
Enclosures

cc: Mr. Steven Shillingford, Solera Networks, Inc.