

# PATENT ASSIGNMENT

Electronic Version v1.1  
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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
<b>CONVEYING PARTY DATA</b>	
Name	Execution Date
BANK OF NEW YORK	10/02/2006
THE BANK OF NEW YORK COMPANY, INC.	10/02/2006
<b>RECEIVING PARTY DATA</b>	
Name:	BNY CONVERGEX GROUP, LLC
Street Address:	1633 BROADWAY
Internal Address:	48TH FLOOR
City:	NEW YORK
State/Country:	NEW YORK
Postal Code:	10019
<b>PROPERTY NUMBERS Total: 2</b>	
Property Type	Number
Patent Number:	7769658
Application Number:	12847236
<b>CORRESPONDENCE DATA</b>	
Fax Number:	(888)415-3481
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
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Correspondent Name:	C. ANDREW IM, IM IP LAW PLLC
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ATTORNEY DOCKET NUMBER:	BNY201.1US
NAME OF SUBMITTER:	C. ANDREW IM
Total Attachments: 7 source=ASGN1#page1.tif	

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## INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

THIS INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT ("Agreement"), dated as of October 2, 2006 (the "Effective Date"), is made by and among The Bank of New York Company, Inc., a New York corporation, the Bank of New York, a New York banking company (collectively, "BNY"), and BNY ConvergeEx Group, LLC, a Delaware limited liability company (the "Company"). BNY and the Company are sometimes referred to herein collectively as the "Parties" and individually as a "Party."

WHEREAS, this Agreement is being entered into in connection with, and as a condition to, the closing of the transactions ("Transactions") contemplated by (i) that certain Contribution Agreement by and between ConvergeEx Holdings, LLC ("Holdings") and BNY dated as of June 30, 2006 (the "Contribution Agreement"), and (ii) that certain Agreement and Plan of Merger by and among Holdings, Eze Castle Software, Inc., a Delaware corporation, and the other parties named therein dated as of June 30, 2006 (including, but not limited to, the rollover transactions to occur in connection therewith);

WHEREAS, BNY and its Affiliates own certain Intellectual Property (as defined below) used exclusively in the businesses of the Acquired Companies; and

WHEREAS, BNY wishes to assign to the Company, and Company wishes to acquire from BNY the Assigned IP.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and obligations herein undertaken, adequacy and receipt of which is hereby acknowledged, the Parties agree as follows:

ARTICLE I  
DEFINITIONS

When used in this Agreement, the following terms have the meanings set forth below. Capitalized terms used in this Agreement but not defined herein shall have the meanings set forth in the Contribution Agreement.

"Affiliate" of any particular Person means any other Person controlling, controlled by or under common control with such particular Person, where "control" means the possession, directly or indirectly, of the power to direct the management and policies of a Person whether through the ownership of voting securities or otherwise; it being understood and agreed that for purposes of this Agreement, (i) the Company shall not be deemed to be an "Affiliate" of BNY, and (ii) BNY shall not be deemed to be an "Affiliate" of the Company.

"Assigned IP" means: (i) the Intellectual Property that (a) is owned by BNY or any of its Affiliates, (b) has been used exclusively in the business of the Acquired Companies, and (c) is not otherwise named and provided for in any of the Transaction Documents, but in all events excluding any trademarks, service marks, and Internet domain names that contain the names "BNY" or "The Bank of New York"; (ii) the Sonic Trading System and all Intellectual Property rights in and related thereto; and (iii) the Intellectual Property listed on Exhibit A.

"Intellectual Property" means any and all of the following in any jurisdiction throughout the world: (i) patents, patent applications, patent disclosures, as well as any reissues, continuations, continuations-in-part, divisions, extensions or reexaminations thereof ("Patents"); (ii) trademarks (registered or unregistered), trademark applications, service marks, trade dress, trade names, logos, slogans, and corporate names (and all translations, adaptations, derivations and combinations of the foregoing) and Internet domain names, together with all of the goodwill associated therewith ("Trademarks"); (iii) copyrights (registered or unregistered), copyright applications, and copyrightable works (including, without limitation, rights in software, data and databases) ("Copyrights"); (iv) trade secrets and other confidential information (including, without limitation, ideas, formulas, compositions, inventions (whether patentable or unpatentable and whether or not reduced to practice), know-how, research and development information, drawings, specifications, designs, plans, proposals, technical data, financial and marketing plans, and customer and supplier lists and information); and (v) all other intellectual property rights.

"Sonic Trading System" means the software acquired from Sonic Trading Management, LLC, et. al. in that certain Asset Purchase Agreement dated March 23, 2004 (in source code and object code form) and all components, modifications, improvements, enhancements, versions and releases of such software, and all programmer and user documentation, including user manuals and training materials, relating to any of the foregoing.

## ARTICLE II ASSIGNMENT OF OWNERSHIP

**Section 2.1 Assignment.** BNY, on behalf of itself and its Affiliates, hereby sells, assigns, transfers and sets over to the Company, and hereby causes its Affiliates to sell, assign, transfer and set over to the Company, BNY's and its Affiliates' entire right, title and interest in and to the Assigned IP for the use and enjoyment of the Company, and for the use and enjoyment of its respective successors, assigns or other legal representatives, as fully and entirely as the same would have been held and enjoyed by BNY and its Affiliates if this assignment had not been made, together with all income, royalties or payments due or payable as of the Effective Date or thereafter, including, without limitation, all claims for damages by reason of past, present or future infringement or other unauthorized use of the Assigned IP, with the right to sue for, and collect the same.

**Section 2.2 Acknowledgement.** The Company acknowledges BNY's representation that an Affiliate of BNY has independently developed (without access to the Sonic Trading System) an electronic trading and order management system that may coincidentally have functionality and features similar to those of the Sonic Trading System. This Agreement does not include the assignment of any rights to such an independently developed system.

## ARTICLE III REPRESENTATIONS AND WARRANTIES

**Section 3.1 Sonic Software.** BNY represents and warrants that (i) it has taken steps reasonable under the circumstances to protect, and has not pledged or assigned, any portion of its interest in the Sonic Trading System; (ii) BNY has the right to assign its interest in the Sonic Trading System to the Company; and (iii) to the extent that BNY created or developed any

portion of the Sonic Trading System after March 23, 2004, BNY has not misappropriated any of the Intellectual Property rights included in such developments from any third party.

**Section 3.2 Other Assigned IP.** BNY represents and warrants that (i) BNY and its Affiliates have taken steps reasonable under the circumstances to protect, and have not pledged or assigned, any portion of its or their interest in the Assigned IP; (ii) BNY and its Affiliates have not misappropriated any of the Assigned IP from any third party; (iii) all Assigned IP was original by BNY or its Affiliates; and (iv) BNY and its affiliates have the right to assign the Assigned IP to the Company.

#### **ARTICLE IV DISCLAIMER; LIMITATION OF LIABILITY**

**Section 4.1 Disclaimer.** EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT OR OTHER AGREEMENTS BETWEEN THE PARTIES, EACH PARTY HEREBY EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE ASSIGNED IP.

**Section 4.2 Limitation of Liability.** IN NO EVENT SHALL BNY OR ITS AFFILIATES HAVE ANY LIABILITY FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, RELIANCE OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE ASSIGNED IP, REGARDLESS OF THE FORM OF ACTION IN WHICH SUCH LIABILITY IS ASSERTED, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND REGARDLESS OF WHETHER BNY OR ANY SUCH AFFILIATE KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.

#### **ARTICLE V FURTHER ASSURANCES**

BNY and its Affiliates shall, upon reasonable request of the Company, take such further actions, and provide to the Company, its Affiliates, and its and their successors, assigns or other legal representatives, all such cooperation and assistance (including, without limitation, the execution and delivery of any and all affidavits, declarations, oaths, samples, exhibits, specimens, assignments, powers of attorney or other documentation), at the expense of the Person making the request, as may be necessary or desirable to more fully and effectively effectuate the purposes of this Agreement, including with respect to the following: (1) reasonable assistance in the preparation and prosecution of any application for a patent or Intellectual Property registration, or any application for renewal of the same, relating to any of the rights assigned herein; (2) reasonable assistance with the prosecution or defense of any interference, opposition, infringement or other proceedings that may arise in connection with any of the rights assigned herein, including, without limitation, testifying as to any facts relating to the Assigned IP and this Agreement; and (3) reasonable assistance with obtaining any additional Intellectual Property protection relating to rights assigned herein that the Company reasonably

may deem appropriate that may be secured under the laws now or hereafter in effect in the United States or in any foreign country.

## **ARTICLE VI MISCELLANEOUS**

**Section 6.1 Entire Agreement.** This Agreement and the documents referred to herein contain the entire agreement between the Parties and supersede any prior understandings, agreements, or representations by or between the Parties, written or oral, which may have related to the subject matter hereof in any way. If there is a conflict between this Agreement and the Contribution Agreement or any other agreement between the Parties with respect to the subject matter hereof, then the terms of this Agreement shall control.

**Section 6.2 Counterparts.** This Agreement may be executed in multiple counterparts (including by means of telecopied signature pages), each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

**Section 6.3 Governing Law.** All issues and questions concerning the construction, validity, interpretation and enforceability of this Agreement and the exhibits and schedules hereto shall be governed by, and construed in accordance with, the laws of the State of New York, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York.

**Section 6.4 Submission to Jurisdiction; Choice of Forum.** Each of the parties submits to the nonexclusive jurisdiction of the United States District Court for the Southern District of New York and of any New York State court sitting in the Borough of Manhattan, in any action or proceeding arising out of or relating to this Agreement or the transactions contemplated herein and agrees that all claims in respect of such action or proceeding may be heard and determined in any such court. Each of the parties waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought and waives any bond, surety or other security that might be required of any other party with respect thereto. Nothing in this Section 6.4, however shall affect the right of any party to serve legal process in any other manner permitted by law. Each party agrees that a final judgment (after giving effect to any timely appeals) in any action or proceeding so brought shall be conclusive and may be enforced by suit on the judgment or in any other manner provided by law. Each Party waives the right to trial by jury in any action arising out of or relating to this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Intellectual Property Assignment Agreement as of the date first written above.

BNY:

THE BANK OF NEW YORK COMPANY,  
INC.

The Company:

BNY CONVERGEX GROUP, LLC

By: Bruce Van Saun

By: \_\_\_\_\_

Name: Bruce Van Saun

Name: \_\_\_\_\_

Its: Vice Chairman

Its: \_\_\_\_\_

THE BANK OF NEW YORK

By: Bruce Van Saun

Name: Bruce Van Saun

Its: Vice Chairman

*{Signature Page to the Intellectual Property Assignment Agreement}*

IN WITNESS WHEREOF, the Parties have executed this Intellectual Property Assignment Agreement as of the date first written above.

BNY:  
THE BANK OF NEW YORK COMPANY,  
INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

The Company:  
BNY CONVERGEX GROUP, LLC

By: \_\_\_\_\_

Name: Joseph Velli

Its: Chief Executive Officer

THE BANK OF NEW YORK

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

*[Signature Page to the Intellectual Property Assignment Agreement]*



Exhibit A

U.S. PATENT APPLICATIONS

<u>Title</u>	<u>Serial No.</u>	<u>Filing Date</u>	<u>Publication Number</u>
Commission Management System	10/437,513	May 14, 2003	20030225666

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