

02-19-2003

Form PTO-1595 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings



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

102358921

To the Honorable Commissioner of Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Indivos Corporation

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

3. Nature of conveyance:

- Assignment, Merger, Security Agreement, Change of Name, Other

Execution Date: February 3, 2003

2. Name and address of receiving party(ies)

Excel Innovations, Inc.

Internal Address:

Street Address: 708 Gravenstein Highway North

Suite 111 Tel: (510) 390-0670

City: Sebastopol State: CA Zip: 95472

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

4. Application number(s) or patent number(s):

If this document is being filed together with a new application, the execution date of the application is:

A. Patent Application No.(s) 09/398,914 09/441,107

B. Patent No.(s) 5,613,012 5,615,277

Additional numbers attached?  Yes  No

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

Name: Otto Lee, Esq. - Reg. No. 37,871 INTELLECTUAL PROPERTY LAW GROUP LLC Internal Address:

Street Address: 12 South First Street, 12th Floor Tel: (408) 286-8933

City: San Jose, State: CA Zip: 95113

6. Total number of applications and patents involved: 23

7. Total fee (37 CFR 3.41).....\$ 920.00

- Enclosed, Authorized to be charged to deposit account

8. Deposit account number:

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Otto Lee, Esq. Name of Person Signing

Signature

February 3, 2003 Date

Total number of pages including cover sheet, attachments, and documents: 24

Mail documents to be recorded with required cover sheet information to: Commissioner of Patents & Trademarks, Box Assignments Washington, D.C. 20231

02/11/2003 6TON11 00000043 09398914

01 FC:8021 920.00 DP 02 FC:8023 120.00 DP

PATENT REEL: 013429 FRAME: 0325

ARO 2/10/03

MRO 2/10/03

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

## BOX ASSIGNMENT

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

Please record the attached original document or copy thereof and return the recorded instrument to the undersigned.

1. Name of party(ies) conveying an interest:

Indivos Corporation

2. Name and address of party(ies) receiving an interest:

Excel Innovations, Inc.  
708 Gravenstein Highway North, Suite 111  
Sebastopol, CA 95472

3. Description of the interest conveyed:

Assignment     Change of Name     Security Agreement     Merger

Date of execution of attached document: February 3, 2003

- 4 **(CONT.)** Application number(s) or patent number(s). Additional sheet attached? Yes  No

<u>A. Patent Application No.</u>	<u>B. Filed</u>	<u>C. Patent No.</u>	<u>D. Issued</u>
08/722,629	9-27-96	5,764,789	6-09-98
08/818,872	3-17-97	5,802,199	9-01-98
08/820,008	3-18-97	5,805,719	9-08-98
08/687,251	7-25-96	5,838,812	11-17-98
08/705,399	8-29-96	5,870,723	2-09-99
09/244,784	2-05-99	6,012,039	1-04-00
09/245,501	2-05-99	6,154,879	11-28-00
09/243,208	2-02-99	6,192,142	2-20-01
09/239,595	1-29-99	6,230,148	5-08-01
09/183,215	10-30-98	6,366,682	4-02-02
09/239,570	1-29-99	6,269,348	7-31-01
09/357,718	7-20-99	6,397,198	5-28-02
08/739,313	10-29-96	5,737,439	4-07-98
09/330,253	6-10-99	6,411,728	6-25-02
08/902,151	7-29-97	5,982,914	11-09-99
09/731,536	12-06-00		
09/639,948	8-17-00		
10/056,982	1-23-02		
09/215,058	12-17-98		

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

INTELLECTUAL PROPERTY LAW GROUP LLP  
Otto Lee, Esq. – Registration No. 37,871  
12 South First Street  
12<sup>th</sup> Floor  
San Jose, California 95113  
Telephone: (408) 286-8933

6. Number of applications and patents involved: 23

7. Enclosed is our check for \$920.00 in patent assignment recording fees.

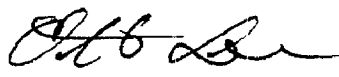
8. Any overpayment should be refunded to: Excel Innovations, Inc., 708 Gravenstein Highway North, Suite 111, Sebastopol, CA 95472

9. To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Dated: February 3, 2003

Respectfully submitted,  
INTELLECTUAL PROPERTY LAW GROUP LLP

INTELLECTUAL PROPERTY LAW GROUP LLP  
12 South First Street, 12<sup>th</sup> Floor  
San Jose, CA 95113  
Telephone: (408) 286-8933

By:   
\_\_\_\_\_  
Otto Lee, Esq.  
Registration No. 37,871

Total number of pages comprising cover sheet and attached assignment and attached copy: 26

ASSIGNMENT OF LETTERS PATENT

WHEREAS, Indivos Corporation, 635 Harrison Street, San Francisco, California, 94107, a corporation of the State of Delaware, hereinafter referred to as "ASSIGNOR", is owner of the invention as described and set forth in the below-identified United States Letters Patents, identified as:

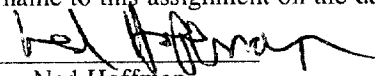
- Patent No.
- 5,613,012
- 5,615,277
- 5,764,789
- 5,737,439
- 5,802,199
- 5,805,719
- 5,838,812
- 5,870,723
- 6,012,039
- 6,154,879
- 6,192,142
- 6,230,148
- 6,411,728
- 5,982,914
- 6,366,682
- 6,269,348
- 6,397,198

WHEREAS, Excel Innovations, Inc., 708 Gravenstein Highway North, Suite 111, Sebastopol, California 95472, a corporation of the State of California, hereinafter referred to as "ASSIGNEE", is desirous of acquiring the entire right, title and interest in the said invention and the Letters Patent which has been granted on the same;

NOW, THEREFORE, TO ALL WHOM IT MAY CONCERN: Be it known that, for and in consideration of the sum of One Dollar (\$1.00) lawful money paid to Assignor by Assignee for each of the above-identified United States Letters Patent, receipt of which is hereby acknowledged, Assignor has sold, assigned and transferred, and by these presents does sell, assign and transfer unto said Assignee, and Assignee's successors and assigns, all right, title and interest in and to the said invention, any and all foreign applications related to said United States Letters Patent, and any Letters Patent which may hereafter be granted on the same invention in any and all countries throughout the world including any divisions, renewals, continuations in whole or in part, substitutions, conversions, reissues, prolongations or extensions thereof, the said interest to be held and enjoyed by said Assignee as fully and exclusively as it would have been held and enjoyed by said Assignor had this assignment and transfer not been made, to the full end and term of any Letters Patent.

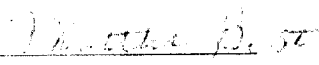
Assignor further agrees that he will, without charge to said Assignee, but at Assignee's expense, cooperate with Assignee in the prosecution of said application and/or applications, execute, verify, acknowledge and deliver all such further papers, including applications for Letters Patent and for the reissuc thereof, and instruments of assignment and transfer thereof, and will perform such other acts as Assignee lawfully may request, to obtain or maintain Letters Patent for said invention and improvement in any and all countries, and to vest title thereto in said Assignee, or Assignee's successors and assigns.

IN TESTIMONY WHEREOF, Assignor has hereunto signed his name to this assignment on the date indicated below.

  
 \_\_\_\_\_  
 Ned Hoffman  
 President Excel For  
 Indivos Corporation

STATE of: CALIFORNIA  
 COUNTY of: SANTA CLARA

On this 3<sup>rd</sup> day of FEBRUARY, in the year of 2003, before me, the undersigned notary public, personally appeared the above-named assignor, known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to the within instrument, and acknowledged that they executed the same.

  
 \_\_\_\_\_  
 Notary Public



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

POWER OF ATTORNEY

Honorable Commissioner of Patents and Trademarks Washington, D.C. 20231

Sir:

I hereby appoint Practitioner named below:

Practitioner Name Registration Number Otto Lee, Esq. 37871

As my attorney to prosecute the applications identified below, and to transact all business in the United States Patent and Trademark Office connected therewith.

Table with 4 columns: A. Patent App. No., B. Filed, C. Patent No., D. Issued. Lists various patent application numbers and their corresponding filing and issue dates.

Please change the correspondence address for the above-identified application to the above-mentioned patent application.

Firm and Practitioner Name Registration Number Otto Lee, Esq. 37871 Intellectual Property Law Group, LLP 12 South First Street, 12th Floor San Jose, CA 95113 USA Telephone: 408-286-8933 Fax: 408-286-8932

Respectfully submitted,

Dated: 2/03/03

By: Ned Hoffman President Excel For Indivos Corporation

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**STATEMENT UNDER 37 CFR 3.73(b)**Applicant/Patent Owner: Excel Innovations, Inc.Application No./Patent No.: 6,230,148 Filed/Issue Date: 5-08-2001Entitled: Tokenless biometric electronic check transactionExcel Innovations, Inc., a Corporation,  
(Name of Assignee) (Type of Assignee, e.g., corporation, partnership, university, government agency, etc.)

states that it is:

1.  the assignee of the entire right, title, and interest; or
2.  an assignee of less than the entire right, title and interest.  
The extent (by, percentage) of its ownership interest is \_\_\_\_\_ %

in the patent application/patent identified above by virtue of either:

- A. [ ] An assignment from the inventor(s) of the patent application/patent identified above. The assignment was recorded in the United States Patent and Trademark Office at Reel \_\_\_\_\_, Frame \_\_\_\_\_, or for which a copy thereof is attached.

OR

- B. [  ] A chain of title from the inventor(s), of the patent application/patent identified above, to the current assignee as shown below:

Hoffman, Ned, Lee, Jonathan Alexander;

1. From: Pare, David Ferrin, Jr. To: SmartTouch Inc.  
The document was recorded in the United States Patent and Trademark Office at Reel 010614, Frame 0239, or for which a copy thereof is attached.
2. From: SmartTouch, Inc. To: VeriStar Corporation  
The document was recorded in the United States Patent and Trademark Office at Reel 012010, Frame 0454, or for which a copy thereof is attached.
3. From: VeriStar Corporation To: Indivos Corporation  
The document was recorded in the United States Patent and Trademark Office at Reel 012263, Frame 0077, or for which a copy thereof is attached.

[ ] Additional documents in the chain of title are listed on a supplemental sheet.

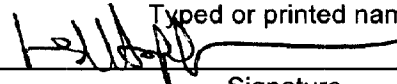
[ ] Copies of assignments or other documents in the chain of title are attached.

[NOTE: A separate copy (*i.e.*, the original assignment document or a true copy of the original document) must be submitted to Assignment Division in accordance with 37 CFR Part 3, if the assignment is to be recorded in the records of the USPTO. See MPEP 302.08]

The undersigned (whose title is supplied below) is authorized to act on behalf of the assignee.

February 3, 2003  
DateNed Hoffman

Typed or printed name



Signature

President Excel ForIndivos Corporation

Title

Burden Hour Statement: This form is estimated to take 0.2 hours to complete. Time will vary depending upon the needs of the individual case. Any comments on the amount of time you are required to complete this form should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, Washington, DC 20231. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Assistant Commissioner for Patents, Washington, DC 20231.

# AGREEMENT

The parties to this agreement are Omnilock Incorporated, a California corporation of 46 Shattuck Square, Suite 14, Berkeley, CA 94704, (hereinafter "Omnilock") and SmartTouch LLC, a California company of 46 Shattuck Square, Suite 14, Berkeley, CA 94704 (hereinafter "SmartTouch").

## RECITALS:

WHEREAS, Omnilock has certain rights and interest in and to Ned Hoffman's Tokenless Biometric Computer System invention (hereinafter "Invention"), and has the right to grant non-exclusive sublicenses; and

WHEREAS, SmartTouch desires to obtain a non-exclusive, non-assignable, conditional sublicense pertaining to Invention; and

WHEREAS, Omnilock is willing to conditionally grant such a non-exclusive sublicense in pursuant to the terms and conditions set forth hereinbelow; and

NOW, THEREFORE, in consideration of the mutual promises, covenants, and undertakings contained herein, and for other good and valuable consideration the receipt of which is hereby acknowledged, the parties hereby agree as follows:

1. **DEFINITIONS.** As used herein, the terms set forth below shall have the following meanings:

1.1. "Parties" means Omnilock Inc., a California corporation of 46 Shattuck Square, Suite 14, Berkeley, CA 94704 (hereinafter "Omnilock" or "MasterLicensee"), and SmartTouch LLC, a California limited liability company of 46 Shattuck Square, Suite 14, Berkeley, CA 94704 (hereinafter "SmartTouch" or "SubLicensee").

1.2. "Agreement" means this contract between the Parties, which is a non-exclusive, non-assignable, conditional sublicense.

1.3. "Effective Date" means May 8, 1995, the date on which this Agreement is executed by both parties.

1.4. "Inventor" means Ned Hoffman (hereinafter "Inventor", "Ned Hoffman" or "NH")

1.4.1. "Inventor Employment Agreement" or "NH Employment Agreement" means Ned Hoffman's executed employment agreement with Omnilock, which is attached hereto as Addendum I.

1.5. "Consultant(s)" means David F. Pare, Jr. (hereinafter "Consultant" or "DP"), Philip D. Lapsley (hereinafter "Consultant" or "PL"), Raymond Cranfill ("Consultant" or "RC"), Ali Kamarei ("Consultant" or "AK"), and/or Jonathan Lee (hereinafter "Consultant" or "JL")

1.5.1. "Consultant Agreement(s)" means and includes all executed agreements between each Consultant and Ned Hoffman, and/or between each Consultant and Omnilock, which are attached hereto as Addendum II.

1.6. "Invention" means Ned Hoffman's tokenless system using biometrics to authorize access to computers for purpose of conducting electronic communications, including transmissions and financial transactions, including but not limited to all embodiments described in the Addenda hereinbelow and attached hereto:

1.6.1. Addendum III attached hereto, dated 9/22/94 and entitled "Print Money: A new, patentable technology for consumer financial transactions", and;

1.6.2. Addendum IV attached hereto, dated 11/28/94 and entitled "Consultant Confidentiality Agreement" incorporating "Exhibit A" attached hereto, and;



- 1.6.3. Addendum V attached hereto, dated 5/08/95 and entitled "Tokenless identification system for authorization of electronic transactions and electronic transmissions", and;
- 1.6.4. All work product by Ned Hoffman pursuant to NH Employment Agreement and all work product by Consultants pursuant to Consultant Agreements, pertaining to and/or based upon Ned Hoffman's tokenless system using biometrics to authorize access to computers for purpose of conducting electronic communications, including transmissions and financial transactions (known collectively herein as "Work Product"). Said Work Product includes, but is not limited to, any and all of the following, encompassing both the United States for domestic filings, and international counterparts for foreign filings: issued patents, pending patent applications, continuations, continuations-in-part, reissues, foreign counterparts, copyrights, trade secrets, know-how, trademarks, utility models, prototypes, CAD designs, engineering specifications, computer software, and computer hardware.
- 1.7. "Contract Year" means each 12 (twelve) month period commencing on the Effective Date of this Agreement.
- 1.8. "Quarterly Reports" means the schedule of performance reports and payments due to Omnilock from SmartTouch, in order for SmartTouch to satisfy the "Performance Guarantees" as defined in Section 4 hereinbelow. Such Quarterly Reports shall be promptly provided to Omnilock on the first day of July, October, January and April of each Contract Year.

## 2. GRANTS.

- 2.1. Subject to all of the terms and conditions of this Agreement, Omnilock hereby grants to SmartTouch:
- 2.1.1. A non-exclusive, non-transferable, conditional sublicense to the Invention, to make, use and sell the Invention throughout the United States and the world, and;
- 2.1.2. The permission to utilize the services of Consultants and to have Ned Hoffman and/or Consultants conditionally assign patents to SmartTouch (herein "Permission"), with the restriction that any termination of this Agreement pursuant to Section 6 hereinbelow shall result in the immediate termination of both said Permission and of any/all said conditional assignments, whereby any/all such conditional assignments are automatically and immediately rescinded.

## 3. REPRESENTATIONS AND WARRANTIES OF OMNILOCK AND SMARTTOUCH.

3.1. Omnilock, as the MasterLicensee, represents and warrants that:

- 3.1.1. Pursuant to the Inventor-Omnilock License Agreement dated May 8, 1995 and attached hereto as Addendum VI, the Inventor has granted to Omnilock an exclusive, non-transferable license to the Invention, to have made, use and sell the Invention throughout the United States and the world, and;
- 3.1.2. Pursuant to the Inventor's express consent to Omnilock, attached hereto as Addendum VII, Omnilock has the right to grant to SmartTouch a non-exclusive, non-transferable, conditional sublicense.

3.2. SmartTouch, as the SubLicensee, understands and agrees that the Invention has uniquely valuable commercial potential, and hereby represents and warrants that SmartTouch will dedicate Best Efforts to diligently perform all of its duties pursuant to this Agreement, including to:

- 3.2.1. Make, use and sell the Invention on behalf of Omnilock, and;
- 3.2.2. Meet and exceed the Performance Guarantees as defined in Section 4 hereinbelow.



4. PERFORMANCE GUARANTEES.

4.1. SmartTouch will dedicate Best Efforts to achieve the following performance guarantees ("Performance Guarantees"):

4.1.1. Within 6 (six) Contract Years from the Effective Date, to generate at least \$20 Million (twenty million dollars) in annual sales from the Invention, and;

4.1.2. Within 6 (six) Contract Years from the Effective Date, to pay Omnilock an aggregate total of at least \$20 Million (twenty million dollars) in cash resulting from SmartTouch's commercialization of the Invention.

4.2. For the purpose of verifying the overall quality and function of the Invention, it is agreed that SmartTouch will promptly provide Omnilock with all Quarterly Reports, including: an itemized statement detailing SmartTouch's total revenues, margins and costs relating to the Invention, and; a comprehensive description of SmartTouch's sales and marketing results from the preceding quarter and SmartTouch's projected sales and marketing objectives for the upcoming quarter; a detailed description of all other important activities and accountings related to Invention, along with samples of engineering specifications, public relations, sales and marketing materials which SmartTouch has been using with respect to the Invention, and; the right to preview and the right to approve those products and materials which feature the Invention, including but not limited to prototypes, packaging, advertising, marketing materials and the like, whereby approval of such materials by Omnilock shall not be unreasonably withheld.

5. INFRINGEMENT BY THIRD PARTIES. It is understood and agreed by both Parties that Omnilock is responsible for a diversified portfolio of patented technologies, covering a broad range of markets from sports and fitness to apparel to housewares to computers to automotive accessories. It is the practice of Omni therefore to require that its licensees and/or sublicensees be the primary responsible parties for enforcing infringement. Therefore, it is agreed that:

5.1. If either Party discovers that any patents or patent applications related to the Invention are being or may be infringed, it shall communicate the details of such suspected or potential infringement to the other party. SmartTouch shall thereupon have the right, and first obligation, to take whatever action it deems necessary, including the filing of lawsuits, to protect the rights of the Parties and to terminate any suspected or potential infringement. Omnilock shall fully cooperate, with SmartTouch if SmartTouch takes any such action. All expenses related thereto incurred by the Parties shall be borne by SmartTouch. If SmartTouch recovers any damages or compensation for any action it takes hereunder, SmartTouch shall retain 100% (one hundred percent) of such monies. In the event SmartTouch fails to bring an action at SmartTouch's expense for infringement under any patent or trademark related to the Invention, Omnilock may in its sole discretion, upon ten (10) days written notice to SmartTouch, terminate this Agreement, with SmartTouch thereby being granted six (6) months in which to liquidate any existing inventory.

5.2. SmartTouch hereby agrees not to either: challenge the validity of the Invention ("Invention Validity"), nor; challenge the validity of Omnilock's rights as MasterLicensee to the Invention ("MasterLicensee Validity") pursuant to the Employment Agreement. Further, SmartTouch hereby agrees not to either: participate in any third party attempt to challenge to the Invention Validity, nor; participate in any third party attempt to challenge to the MasterLicensee Validity.

6. TERM AND TERMINATION.

6.1. Unless terminated earlier pursuant to the terms of this Section 6, this Agreement shall automatically terminate upon the expiration of all of the patents pertaining to any and all Work Product related to and/or derived from the Consultants, the Consulting Agreements, and the Invention and/or the Work Product.



6.2. Termination of this Agreement for any reason shall not relieve either Party of any of its obligations to the other Party accrued according to the terms of this Agreement prior to termination.

6.3. Unintentional Breaches. In addition to other rights of termination provided in this Section 6, if either Party breaches this Agreement (hereinafter "Breaching Party") by unintentionally failing to comply with any provision of this Agreement, then upon the discovery of said breach by the other Party, said other Party shall have the right, but not the obligation, to give notice of such breach to the Breaching Party within ten (10) days of the other Party having discovered the occurrence of such breach. In such instance, the Breaching Party shall then have ten (10) calendar days in which to cure such breach. The determination as to whether the breach has been satisfactorily cured shall be within the sole discretion of the other Party, with said determination to be made in good faith. At the expiration of such ten (10) calendar day period, should the other Party determine that the Breaching Party has not or will not cure the breach to the satisfaction of the other Party, the other Party has the right, in its sole discretion, to terminate this Agreement immediately upon providing written notice of such to the other Party.

6.4. Intentional Breaches, Bad Faith, Fraud. In addition to other rights of termination provided in this Section 6, if either Party breaches this Agreement (hereinafter "Breaching Party") by intentionally failing to comply with any provision of this Agreement, then upon the discovery of said breach by the other Party, said other Party shall have the sole right to determine whether the Breaching Party cannot or will not cure the breach to the satisfaction of the other Party. In the event the other Party determines, in its sole discretion, that the Breaching Party has intentionally breached this Agreement, or that the Breaching Party has acted in Bad Faith, or that the Breaching Party has either committed fraud or been complicit in the committing of fraud, the other Party has the right, in its sole discretion, to terminate this Agreement.

6.4.1. Irreparable Harm. Due to the fact that both Parties understand and agree that the Invention has uniquely valuable commercial potential, the Parties hereby agree that breach of this Agreement pursuant to Section 6.3. hereinabove by either party will cause irreparable damage to the other Party. Therefore, each Party agrees that the other Party shall be entitled to injunctive relief in any court of competent jurisdiction for any breach under Section 6.2. hereinabove, in addition to all other remedies and damages said other Party may be due.

6.4.2. Termination of this Agreement for reasons other than a breach pursuant to Section 6.2. and 6.3. hereinabove, shall not prevent SmartTouch from completing, selling and/or delivering any Invention in inventory, in the process of manufacture or on order on the termination date for a period of six (6) months.

6.5. Guarantee; Rights of Reversion/Rescission. All SmartTouch obligations to Omnilock as provided under this Agreement, including all Performance Guarantees, obligations, promises and payments due by SmartTouch to Omnilock pursuant to the terms of this Agreement, shall be guaranteed and secured, by any and all Work Product related to and/or derived from the Consultants, the Consulting Agreements, and the Invention, including, but not be limited to, all of the following: patents; trademarks; copyrights; conditional assignments; computer software and/or computer hardware pertaining to the Invention. Therefore, pursuant to any section or sub-section of Section 6 hereinabove, all Work Product shall revert immediately, unconditionally and completely to Omnilock in the event of a material breach by SmartTouch of any term or provision in this Agreement, including but not limited to SmartTouch's bankruptcy and/or any SmartTouch financial failure and/or insolvency. In such event, all conditional assignments pursuant Section 2.1.2. hereinabove are automatically and immediately rescinded, and SmartTouch hereby automatically and irrevocably designates and appoints Omnilock and its duly authorized officers and agents as its agent and attorney in fact, to act for and in behalf of SmartTouch, to execute and file with the Patent and Trademark Office any re-recording of any/all such assignments, and to do all other lawfully permitted acts to further the application for, prosecution, issuance, maintenance or transfer of letters patent or copyright registrations thereon with the same legal force and effect as if originally executed by SmartTouch.

7. GENERAL PROVISIONS.

7.1. Indemnifications.

7.1.1. Omnilock hereby indemnifies and agrees to hold SmartTouch harmless from, against and in respect of and shall on demand reimburse SmartTouch for any and all loss, liability or damages incurred or suffered by SmartTouch arising from, or in connection with, any and all actions, settlements, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including, without limitation, legal fees and expenses, relating in any way to any untrue representation set forth by Omnilock in this Agreement, and:

7.1.2. SmartTouch hereby indemnifies and agrees to hold Omnilock harmless from, against and in respect of and shall on demand reimburse Omnilock for any and all loss, liability or damages incurred or suffered by Omnilock arising from, or in connection with, any and all actions, settlements, suits, proceedings, claims, demands, assessments, judgments, costs and expenses, including, without limitation, legal fees and expenses, relating in any way to a breach under this Agreement by SmartTouch, and relating in any way to any untrue representation set forth by SmartTouch pursuant to SmartTouch's fundraising, advertising, manufacture, distribution, or sale of Invention under this Agreement.

7.1.3. The indemnity set forth in this Section 11 shall survive the termination of this Agreement.

7.2. Waiver. The waiver by either Party of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach thereof.

7.3. Entire Agreement. This Agreement constitutes the entire understanding between the Parties and shall supersede all previous communications, negotiations, proposals, representations, conditions, warranties or agreements, either oral or written, between the Parties hereto with respect to the subject matter hereof. This Agreement may not be modified unless in writing and signed by both of the Parties.

7.4. Non-Assignability, Non-Transferability by SubLicensee. Neither this Agreement nor any of the rights, provisions and/or obligations hereunder may be assigned or transferred by the SubLicensee, SmartTouch, without the prior written consent of the MasterLicensee, Omnilock.

7.5. Notices. Any notice or accounting report required to be given hereunder shall be in writing and shall be deemed effective and sufficiently given to the parties listed below upon any of the following: immediately upon hand-delivery, or; immediately upon electronic facsimile, or; upon 1 (one) business day after being sent via Federal Express, or; upon 3 (three) business days after being sent via certified U.S. mail, or; upon 5 (five) business days after being sent via standard first-class U.S. mail:

For Omnilock: Omnilock Incorporated  
46 Shattuck Square, Suite 14  
Berkeley, California 94704

With copies to Omnilock legal representative:

Thomas A. Maier, Esq.  
Pezzola & Remke  
1999 Harrison Street  
Oakland, CA 94612

For SmartTouch: SmartTouch LLC  
46 Shattuck Square, Suite 14  
Berkeley, California 94704

With copies to SmartTouch legal representative:

Ali Kamarei, Esq.  
280 Colorado Ave  
Palo Alto, CA 94301

or to such other address of which one Party may give at least 3 (three) business days written notice to the other Party.

- 7.6. Governing Law. This Agreement and the legal relations covered herein, shall be interpreted, construed and determined in accordance with the laws of the state of California and the parties hereby consent to the jurisdiction of all courts in California having proper subject matter jurisdiction.
- 7.7. Captions. Captions are inserted for convenience of reference only and shall not be considered as being of any significance whatsoever in the construction and interpretation of this Agreement.
- 7.8. Confidentiality. The Parties agree to keep in confidence, not disclose, and not use (except to employees or agents on a need-to-know basis as contemplated by this Agreement) all confidential data of the other that each receives under this Agreement. These obligations do not apply to any Confidential Information that: (a) is now or becomes generally available to the public without violation of these obligations; (b) is already known or is independently developed by the receiving party; or (c) becomes available to the receiving Party who did not receive such information directly or indirectly in confidence from the disclosing Party.
- 7.9. Preparation of the Agreement. Legal representatives for each of the Parties, as respectively specified under Notices, Section 7.5. hereinabove, have participated in the negotiating and preparing of this Agreement. Therefore, this Agreement shall not be construed against either Party on the grounds of that Party's participation in preparing this Agreement.
- 7.10. Interpretation. In the event of conflict between provisions herein or ambiguity, specific terms shall prevail over general terms in the interpretation of this Agreement. In the event of any conflict between the terms of this Agreement and the terms of any Purchase Order, Letter of Credit, or other document delivered pursuant to this Agreement, the terms of this Agreement shall control.
- 7.11. Severability. If any term, clause, or provision of this Agreement shall be judged to be invalid or unenforceable, the validity or unenforceability of any other term, clause or provision shall not be affected; and such invalid or unenforceable term, clause or provision shall be deemed deleted from this contract.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in Berkeley, California, ON THIS DAY, May 8, 1995:

For Omniflock Incorporated:

For SmartTouch LLC:

By: Ned Hoffman  
Ned Hoffman, President

By: Ned Hoffman  
Ned Hoffman, Manager

Date: 5/08/95

Date: 5/08/95

Witnessed By: Ali Kamarei, Esq.

Date: 5-8-1995

Initialed: For Omniflock NT, For SmartTouch NH, Witness R

# State of California



## SECRETARY OF STATE

I, *Kevin Shelley*, Secretary of State of the State of California, hereby certify:

That the attached transcript of \_\_\_\_\_ page(s) was prepared by and in this office from the record on file, of which it purports to be a copy, and that it is full, true and correct.

*IN WITNESS WHEREOF*, I execute this certificate and affix the Great Seal of the State of California this day of \_\_\_\_\_



*Kevin Shelley*  
Secretary of State



STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
P.O. BOX 942857  
SACRAMENTO, CA 94257-0541

# TAX CLEARANCE CERTIFICATE

September 27, 1995

EXPIRATION DATE: January 15, 1996

PEZZOLA & REINKE  
MARY A FITZPATRICK  
SUITE 1300  
1999 HARRISON ST  
OAKLAND CA 94612

ISSUED TO: OMNIOCK, INC.  
Corporate Number 1511372 0I4\*\*

This is to certify that all taxes imposed under the Bank and Corporation Tax Law on this corporation have been paid or are secured by bond deposit or other security.

A copy of this Tax Clearance Certificate has been sent to the Office of the Secretary of State. This original Tax Clearance Certificate may be retained in the files of the corporation.

By the Expiration Date noted above, this corporation must have filed the documents required by the Secretary of State to dissolve, withdraw or merge. Requests for the appropriate documents must be directed to: Office of the Secretary of State at 1500 11th Street, 3rd Floor, Sacramento CA 95814. The telephone number is (916) 657-5448.

NOTE: If the required documents are not filed with the Secretary of State prior to the Expiration Date noted above, the corporation will remain subject to the filing requirements of the Bank and Corporation Tax Law.

FRANCHISE TAX BOARD

By H. Hermansen  
Special Audit Unit  
Corporation Audit Section  
Telephone (916) 845-4124

COPY

PATENT  
REEL: 013429 FRAME: 0338

VERIFICATION

Ned Hoffman and Harold Silen say:

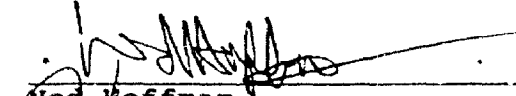
They are the President and Secretary respectively of Sports-Mitt International, Inc., a California Corporation.

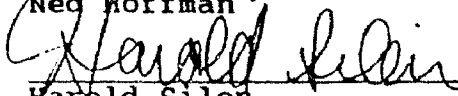
They have read the foregoing Certificate of Ownership and know the contents thereof.

The same is true of their own knowledge.

Executed on ~~October~~ <sup>November 9</sup>, 1995 at Berkeley, Alameda County, California.

We declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Ned Hoffman

  
\_\_\_\_\_  
Harold Silen

1511372 out

CERTIFICATE OF OWNERSHIP  
MERGING  
OMNILOCK, INC.  
INTO  
SPORTS-MITT INTERNATIONAL, INC.

NOV 30 1995

*Bill Jones*  
WILL JONES Secretary of State

Ned Hoffman, President, and Harold Silen, Secretary of Sports-Mitt International, Inc., a California corporation ("this Corporation"), certify that:

1. Sports-Mitt International, Inc. owns all the outstanding stock of Omnilock, Inc., a corporation duly incorporated on November 27, 1989 under the laws of the state of California.
2. The following resolutions were adopted by a majority of the Board of Directors of Sports-Mitt International, Inc.:

WHEREAS, this corporation owns all the outstanding stock of Omnilock, Inc.; and

WHEREAS, it is deemed in the best interests of this corporation and its shareholders that this corporation merge Omnilock, Inc. into itself and assume all of its obligations; it is:

RESOLVED, that this corporation merge Omnilock, Inc. into itself as of the effective date of the Certificate of Ownership to be filed pursuant to Section 1110 of the California Corporations Code, and assume all obligations of the merged corporation.

RESOLVED FURTHER, that the President and Secretary of this Corporation are directed to execute and file a Certificate of Ownership pursuant to Section 1110 of the California Corporations Code and to take such further actions as may be necessary or proper to accomplish such merger.

3. Said resolutions were adopted at a special meeting of the Board of Directors of this corporation held at 2:00 p.m. Pacific Daylight Time on ~~October~~ 9, 1995 by telephonic conference call. This corporation has three directors, all of whom were present via telephone at such meeting, and said resolutions were adopted by unanimous vote of the directors.

By: 

Ned Hoffman, President

  
Harold Silen, Secretary



1511372

ARTICLES OF INCORPORATION  
OF  
OMNILOCK, INC.

FILED  
In the office of the Secretary of State  
of the State of California

NOV 27 1989

*March Fong Eu*  
MARCH FONG EU, Secretary of State

I.

The name of the corporation is OMNILOCK, INC.

II.

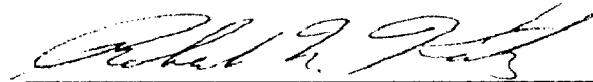
The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III.

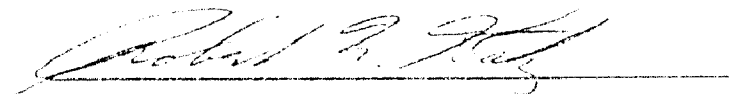
The name and address in the State of California of the corporation's initial agent for service of process are Robert N. Katz, 2150 Shattuck Avenue, Berkeley, California, 94704.

IV.

The total number of shares which this corporation is authorized to issue is one hundred thousand (100,000). All of the corporation's issued shares of stock shall be held of record by no more than thirty-five (35) persons. This corporation is a close corporation.

  
\_\_\_\_\_

The undersigned declares that the undersigned has executed these Articles of Incorporation and that this instrument is the act and deed of the undersigned.

  
\_\_\_\_\_

**VERIFICATION**

Ned Hoffman and Harold Silen say:

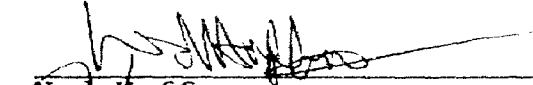

They are the President and Secretary respectively of Sports-Mitt International, Inc., a California Corporation.

They have read the foregoing Certificate of Ownership and know the contents thereof.

The same is true of their own knowledge.

Executed on ~~October~~ <sup>November 9</sup>, 1995 at Berkeley, Alameda County, California.

We declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Ned Hoffman  
  
\_\_\_\_\_  
Harold Silen

A468822

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FILED  
In the office of the Secretary of State  
of the State of California

1100

CERTIFICATE OF OWNERSHIP  
MERGING  
OMNILOCK, INC.  
INTO  
SPORTS-MITT INTERNATIONAL, INC.

NOV 30 1995 -

*Bill Jones*  
WILL JONES, Secretary of State

Ned Hoffman, President, and Harold Silen, Secretary of Sports-Mitt International, Inc., a California corporation ("this Corporation"), certify that:

1. Sports-Mitt International, Inc. owns all the outstanding stock of Omnilock, Inc., a corporation duly incorporated on November 27, 1989 under the laws of the state of California.
2. The following resolutions were adopted by a majority of the Board of Directors of Sports-Mitt International, Inc.:

WHEREAS, this corporation owns all the outstanding stock of Omnilock, Inc.; and

WHEREAS, it is deemed in the best interests of this corporation and its shareholders that this corporation merge Omnilock, Inc. into itself and assume all of its obligations; it is:

RESOLVED, that this corporation merge Omnilock, Inc. into itself as of the effective date of the Certificate of Ownership to be filed pursuant to Section 1110 of the California Corporations Code, and assume all obligations of the merged corporation.

RESOLVED FURTHER, that the President and Secretary of this Corporation are directed to execute and file a Certificate of Ownership pursuant to Section 1110 of the California Corporations Code and to take such further actions as may be necessary or proper to accomplish such merger.

3. Said resolutions were adopted at a special meeting of the Board of Directors of this corporation held at 2:00 p.m. Pacific Daylight Time on ~~October~~ 9, 1995 by telephonic conference call. This corporation has three directors, all of whom were present via telephone at such meeting, and said resolutions were adopted by unanimous vote of the directors.

By: *Ned Hoffman*  
Ned Hoffman, President

*Harold Silen*  
Harold Silen, Secretary

FILED  
In the office of the Secretary of State  
of the State of California

A428723

FEB 1 1993

CERTIFICATE OF AMENDMENT  
OF  
RESTATED ARTICLES OF INCORPORATION

*March Fong Eu*  
MARCH FONG EU, Secretary of State

NED HOFFMAN AND ROBERT N. KATZ certify that:

1. They are the president and secretary, respectively, of SPORTS-MITT INTERNATIONAL, INC., a California corporation.

2. Article III of the Amended and Restated Articles of Incorporation is amended to read as follows:

This corporation is authorized to issue only one class of shares of stock, and the total number of shares that this corporation is authorized to issue is one million (1,000,000). Upon amendment of these Articles to read as herein set forth, each outstanding share of stock is split and converted into 2.5 (two and one-half) shares.

3. The foregoing amendment and restatement of the Articles of Incorporation of the corporation has been duly approved by the Board of Directors of the corporation.

4. The foregoing amendment of the Articles of Incorporation of the corporation has been duly approved by the shareholders of the corporation in accordance the Section 902 and 903 of the California Corporations Code. The total number of outstanding shares of the corporation is 400,000 (four-hundred thousand) shares of Common stock. The number of shares of common stock voting in favor of the amendment and restatement equaled or exceeded the vote required. The percentage vote required was more than two-thirds of the outstanding shares of common stock.

The undersigned further declare under penalty of perjury under the laws of the State of California that the matters set forth in the foregoing certificate are true and correct of their own knowledge.

Date: Jan. 12, 1993

*Ned Hoffman*

Ned Hoffman, President

*Robert N. Katz*

Robert Katz, Secretary


The corporation is authorized to provide indemnification of agents (as defined in Section 317 of the Corporations Code) for breach of duty to the corporation and its stockholders through bylaw provisions or through agreements with the agents, or both, in excess of the indemnification otherwise permitted by Section 317 of the Corporations Code, subject to the limits on such excess indemnification set forth in Section 204 of the Corporations Code."

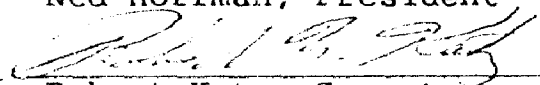
3. The foregoing amendment and restatement of the Articles of Incorporation of the corporation has been duly approved by the Board of Directors of the corporation.

4. The foregoing amendment and restatement of the Article of Incorporation of the corporation has been duly approved by the shareholders of the corporation in accordance with the Section 902 and 903 of the California Corporations Code. The total number of outstanding shares of the corporation is 81,250 shares of Common Stock. The number of shares of Common Stock voting in favor of the amendment and restatement equaled or exceeded the vote required. The percentage vote required was more than two-thirds of the outstanding shares of Common Stock.

The undersigned further declare under penalty of perjury under the laws of the State of California that the matters set forth in the foregoing certificate are true and correct of their own knowledge.

Date: May 29, 1991

  
Ned Hoffman, President

  
Robert Katz, Secretary

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## AMENDED AND RESTATED ARTICLES OF INCORPORATION

OF

JUL 9 1991

SPORTS-MITT INTERNATIONAL, INC.

March Fong Eu  
MARCH FONG EU, Secretary of State

Ned Hoffman and Robert Katz hereby certify that:

1. They are the President and Secretary of Sports-Mitt International, Inc., a California corporation.
2. The Articles of Incorporation of the corporation are amended and restated to read in their entirety as follows:

"I

The name of this corporation is

Sports-Mitt International, Inc.

II

The purpose of this corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III

This corporation is authorized to issue only one class of shares of stock, and the total number of shares that this corporation is authorized to issue is four hundred thousand (400,000). Upon amendment of these Articles to read as herein set forth, each outstanding share of stock is split and converted into four (4) shares.

IV

The liability of the Directors of the corporation for monetary damages shall be eliminated to the fullest extent permissible under California law.

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FILED  
in the office of the Secretary of State  
of the State of California

CERTIFICATE OF AMENDMENT  
OF  
ARTICLES OF INCORPORATION

JAN 28 1991

*March Fong Eu*  
MARCH FONG EU, Secretary of State

NED HOFFMAN AND ROBERT N. KATZ certify that:

1. They are the president and the secretary, respectively, of SPORTS-MITT INTERNATIONAL, INC., a California corporation.

2. Article IV of the Articles of Incorporation is amended to read as follows:

The total number of shares which this corporation is authorized to issue is one million (1,000,000). All of the corporation's issued shares of stock shall be held of record by no more than thirty-five (35) persons. This corporation is a close corporation.

3. The foregoing amendments of the Articles of Incorporation have been duly approved by the Board of Directors.

4. The foregoing amendments of the Articles of Incorporation have been duly approved by the required vote of shareholders in accordance with Section 902 of the Corporations Code. The total number of outstanding shares of the corporation is 100,000. The number of shares voting in favor of the amendment equalled or exceeded the vote required. The percentage vote required was more than 50%.

*Ned Hoffman*  
\_\_\_\_\_  
Ned Hoffman, President

*Robert N. Katz*  
\_\_\_\_\_  
Robert N. Katz, Secretary

The undersigned declare under penalty of perjury that the matters set forth in the foregoing certificate are true of their own knowledge.

Executed at Berkeley, California, on Dec 31, 1990.

*Ned Hoffman*  
\_\_\_\_\_  
Ned Hoffman

*Robert N. Katz*  
\_\_\_\_\_  
Robert N. Katz

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FILED

In the office of the Secretary of State  
of the State of California

CERTIFICATE OF AMENDMENT  
OF  
ARTICLES OF INCORPORATION

AUG 20 1990

*March Fong Eu*  
MARCH FONG EU, Secretary of State

NED HOFFMAN AND ROBERT N. KATZ certify that

1. They are the president and the secretary, respectively,  
of SPORTSMITT INTERNATIONAL, INC., a California corporation.

2. Article I of the Articles of Incorporation is amended to  
read as follows:

The name of the corporation is SPORTS-MITT  
INTERNATIONAL, INC.

3. Article IV of the Articles of Incorporation is amended  
to read as follows:

The total number of shares which this corporation  
is authorized to issue is one hundred thousand  
(100,000). All of the corporation's issued shares  
of stock shall be held of record by no more than  
thirty-five (35) persons. This corporation is a  
close corporation.

4. The foregoing amendments of the Articles of Incorporation  
have been duly approved by the Board of Directors.

5. The foregoing amendments of the Articles of Incorporation  
have been duly approved by the required vote or shareholders  
in accordance with Section 902 of the Corporations Code. The  
total number of outstanding shares of the corporation is 70,000.  
The number of shares voting in favor of the amendment equalled or  
exceeded the vote required. The percentage vote required was  
more than 50%.

*Ned Hoffman*  
\_\_\_\_\_  
Ned Hoffman, President

*Robert N. Katz*  
\_\_\_\_\_  
Robert N. Katz, Secretary

The undersigned declare under penalty of perjury that the  
matters set forth in the foregoing certificate are true of their  
own knowledge.

Executed at Berkeley, California, on Aug 20, 1990.

*Ned Hoffman*  
\_\_\_\_\_  
Ned Hoffman

*Robert N. Katz*  
\_\_\_\_\_  
Robert N. Katz



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ARTICLES OF INCORPORATION  
OF  
SPORTSMITT INTERNATIONAL, INC.

FILED  
In the office of the Secretary of State  
of the State of California

JAN 24 1989

*March Fong Eu*  
MARCH FONG EU, Secretary of State

I.

The name of the corporation is SPORTSMITT INTERNATIONAL, INC.

II.

The purpose of the corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation law of California other than the banking business, the trust company business or the practice of a profession permitted to be incorporated by the California Corporations Code.

III.

The name and address in the State of California of the corporation's initial agent for service of process are Robert N. Katz, 2150 Shattuck Avenue, Berkeley, California, 94704.

IV.

The total number of shares which this corporation is authorized to issue is one hundred thousand (100,000). All of the corporation's issued shares of stock shall be held of record by no more than ten (10) persons. This corporation is a close corporation.

*Robert N. Katz*

The undersigned declares that the undersigned has executed these Articles of Incorporation and that this instrument is the act and deed of the undersigned.

*Robert N. Katz*

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**CERTIFICATE OF AMENDMENT OF  
THE AMENDED AND RESTATED ARTICLES OF INCORPORATION OF  
SPORTS-MITT INTERNATIONAL, INC.**

Ned Hoffman and David Silen certify that:

1. They are the President and Secretary, respectively, of SPORTS-MITT INTERNATIONAL, INC., a California Corporation (this "Corporation").

2. Article I of the Amended and Restated Articles of Incorporation of this Corporation is amended to read in its entirety as follows:

"I.

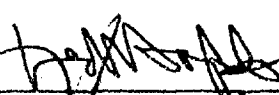
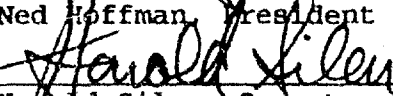
The name of this Corporation is EXCEL INNOVATIONS, INC."

3. The foregoing amendment of the Articles of Incorporation has been duly approved by the Board of Directors.

4. The foregoing amendment of the Articles of Incorporation has been duly approved by the required vote of shareholders in accordance with Section 902 of the Corporations Code. The total number of outstanding shares of this Corporation is Six Hundred Fifty-Three Thousand Seven Hundred Seventy-Six (653,776) Common Stock shares. The number of shares voting in favor of the amendment equaled or exceeded the vote required. The percentage vote required was more than fifty percent (50%).

The undersigned further declare under penalty of perjury under the laws of the State of California that the matters set forth in this certificate are true and correct of their own knowledge.

Date: March 12, 1996

  
\_\_\_\_\_  
Ned Hoffman, President  
  
\_\_\_\_\_  
Harold Silen, Secretary

**FILED**  
In the office of the Secretary of State  
of the State of California

MAR 18 1996

  
BILL JONES, Secretary of State

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