

12-22-1998

FORM PTO-1594

1-31-92



HEET

U.S. DEPARTMENT OF COMMERCE

Patent and Trademark Office

Tab settings 000

To the Honorable Commissioner of

100926599

Attached original documents or copy thereof.

83-61-21-28
MED

1. Name of conveying party(ies):

D&L, Inc.

- Individual(s)
- General Partnership
- Corporation-State Delaware
- Other
- Association
- Limited Partnership

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

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

Name: Mellon Bank, N.A.

Internal Address: 6th Floor

Street Address: 1735 Market Street

City Philadelphia State PA ZIP 19101-7899

- Individual(s) citizenship
- Association National Association
- General Partnership
- Limited Partnership
- Corporation-State
- Other

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No

(Designation must be a separate document from Assignment)

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

3. Nature of conveyance:

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

Execution Date: 12/4/98

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

A. Trademark Application No.(s)

B. Trademark registration No.(s)

Additional numbers attached? Yes No See Attached Exhibit A

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

Name: Craig Heryford

Internal Address: Klett Lieber Rooney & Schorling

Street Address: One Oxford Centre 40th Fl.

City: Pittsburgh State: PA ZIP 15219

6. Total number of applications and registrations involved: 13

7. Total fee (37 CFR 3.41): \$ 340.00

Enclosed

Authorized to be charged to deposit account for any fee deficiency.

8. Deposit account number: 11-1163

(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.

Craig Heryford

Name of Person Signing

Signature

12/15/98

Date

Total number of pages comprising cover sheet: 13

OMB No. 0651-0011 (exp. 4/94)

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

12/21/1998 SPURNS 00000000 1919311

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

40.00 BP
300.00 BP

01 FC:401
02 FC:402

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project, (0651-0011), Washington, D.C. 20503

TRADEMARK
REEL: 1830 FRAME: 0496

EXHIBIT A

1,919,311
1,974,761
74/444,951
1,455,435
1,882,317
2,080,528
1,931,814
1,318,975
1,116,883
1,194,483
1,442,196
2,088,252
1,745,850

KLRSPGHI:

**COLLATERAL ASSIGNMENT OF PATENTS,
TRADEMARKS, LICENSES AND COPYRIGHTS**

THIS COLLATERAL ASSIGNMENT OF PATENTS, TRADEMARKS, LICENSES AND COPYRIGHTS is made effective as of December 4, 1998 by **D&L, INC.**, a Delaware corporation (“Assignor”) in favor of **MELLON BANK, N.A.**, in its capacity as Agent for the Lenders (the “Agent”).

BACKGROUND

A. Pursuant to that certain Loan and Security Agreement dated of even date herewith, by and among Borrower, Guarantors, Lenders and Agent (as it may be amended, modified or supplemented, the “**Loan Agreement**”), the Lender Group agreed to extend to Borrower certain credit facilities.

B. The obligation of the Lender Group to extend such credit facilities to Borrower under the Loan Agreement is conditioned on the execution and delivery of this Assignment by Assignor.

C. The Loan Agreement provides, inter alia, that Assignor will grant to Agent a security interest in all of Assignor’s assets, including, without limitation, its patents, patent rights, patent applications, servicemarks, trademarks, service trademark applications, service trade names, goodwill, copyrights and licenses.

NOW THEREFORE, in consideration of the premises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Assignor agrees as follows:

1. Incorporation of Loan Agreement. The Loan Agreement and the terms and provisions thereof are hereby incorporated herein in their entirety by this reference thereto. All capitalized terms not otherwise defined herein shall have the meanings set forth in the Loan Agreement.

2. Collateral Assignment. To secure the complete and timely payment and satisfaction of all Obligations, Assignor hereby collaterally assigns, mortgages, pledges, grants a security interest in, and transfers to Agent, as and by way of a first mortgage and security interest having priority over all other security interests, with power of sale, to the extent permitted by law, all of such Assignor’s right, title and interest in and to all of its intellectual property now owned or existing or filed and hereafter acquired or arising or filed, including:

2.1 inventions, improvements, patents and patent applications, including, without limitation, the inventions and improvements described and claimed therein, and those patents listed on **Exhibit “A”**, attached hereto and made a part hereof, and (a) the reissues, divisions,

continuations, renewals, extensions and continuations-in-part thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable under and with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing, together with the items described in clauses (a)-(d), are sometimes hereinafter individually and/or collectively referred to as the "**Patents**");

2.2 servicemarks, trademarks, servicemark and trademark registrations, trade names and trademark applications, including, without limitation, the servicemarks and trademarks and registrations and applications listed on **Exhibit "B"**, attached hereto and made a part hereof, and (a) all renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including without limitation, damages and payments for past or future infringements thereof, (c) the right to sue for past, present and future infringements thereof, and (d) all rights corresponding thereto throughout the world (all of the foregoing servicemarks, trademarks, servicemark and trademark registrations, servicemark and trade names and applications together with the items described in clauses (a)-(d), are sometimes hereinafter individually and/or collectively referred to as the "**Trademarks**");

2.3 copyrights, copyright registrations, copyright applications and all copyrightable works, including computer programs, operating systems, application systems, hardware or software of any nature whatsoever owned by Assignor, whether operational, under development or inactive, including all object codes, source codes, modules, technical manuals, user manuals, operating instructions and procedures, in-put and out-put formats, program listings, narrative descriptions, program flow charts, file layouts, report layouts, screen layouts and other documentation therefor (including internal notes, memoranda, status evaluations, marketing information and write-ups), and all improvements, modifications, enhancements, new releases and revisions thereof, whether in machine-readable form, programming language or any other language or symbols, and whether stored, encoded, recorded or written on disk, tape, film, memory device, paper or other media of any nature; together with all tangible media upon which any of the foregoing are recorded or encoded, including, without limitation, all chips, disks, tapes, film and paper; including, without limitation, the copyrights, copyrights registrations and copyrights applications listed on **Exhibit "C"** attached hereto and made a part hereof, and (a) all renewals thereof, (b) all income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, damages and payments for past or future infringements thereof, and (c) the right to sue for past, present and future infringements thereof (all of the foregoing items are sometimes referred to herein collectively as the "**Copyrights**");

2.4 license agreements with any other party, whether Assignor is a licensor or licensee under any such license agreement, including, without limitation, the licenses listed on **Exhibit "D"** attached hereto and made a part hereof, and the right to prepare for sale, sell and advertise for sale all inventory now or hereafter owned by Assignor and now or hereafter covered by such licenses (all of the foregoing is hereinafter referred to collectively as the "**Licenses**"); and

2.5 the goodwill of Assignor's business connected with and symbolized by the Trademarks.

3. **Restrictions on Future Agreements.** Assignor agrees that until all Obligations shall have been satisfied in full and the Loan Agreement shall have been terminated, Assignor will not, without Agent's prior written consent, enter into any agreement (including, without limitation, any license or royalty agreement) which is inconsistent with Assignor's obligations under this Assignment or which is prohibited under the terms of the Loan Agreement, and Assignor further agrees that it will not take any action, or permit any action to be taken by others, subject to its control, including licensees, or fail to take any action, which would affect the validity or enforcement of the rights of the Agent under this Assignment.

4. **New Patents, Trademarks, Copyrights and Licenses.** Assignor represents and warrants that the Patents, Trademarks, Copyrights and Licenses listed on **Exhibits "A", "B", "C" and "D"**, respectively, constitute all of the patents, trademarks, applications, copyrightable works, copyrights and licenses now owned by Assignor. If, before all Obligations shall have been satisfied in full and the Loan Agreement shall have been terminated, Assignor shall (i) obtain rights to any new patentable inventions, technology, trademarks, trademark registrations, trade names, copyrightable works, copyrights or licenses, or (ii) become entitled to the benefit of any patent or trademark application, trademark, trademark registration, copyrightable works, copyright or license renewal, or patent for any reissue, division, continuation, renewal, extension, or continuation-in-part of any Patent or any improvement on any Patent, the provisions of **Section 2** above shall automatically apply thereto and Assignor shall give to Agent prompt written notice thereof. Assignor hereby authorizes Agent to modify this Assignment by amending **Exhibit "A", "B", "C" and/or "D"**, as applicable, to include any future patents, patent applications, technology, trademarks, trademark registrations, trademark applications, trade names, copyrightable works, copyrights and licenses which are Patents, Trademarks, Copyrights or Licenses, as applicable, under **Section 2** above or under this **Section 4**.

5. **Royalties; Term.** Assignor hereby agrees that the use by Agent of all Patents, Trademarks, Copyrights and Licenses as described above shall be worldwide and without any liability for royalties or other related charges from Agent to Assignor. The term of the collateral assignment granted herein shall extend until the earlier of (i) the expiration of each of the respective Patents, Trademarks, Copyrights and Licenses assigned hereunder, or (ii) the date on which all Obligations has been paid in full and the Loan Agreement is terminated.

6. **Agent's Right to Inspect.** Agent shall have the right, at any time and from time to time, to inspect Assignor's premises and to examine Assignor's books, records and operations, including, without limitation, Assignor's quality control processes. Assignor agrees that Agent, or a conservator appointed by Agent, shall have the right to establish such additional reasonable product quality controls as Agent, or said conservator, in its sole judgment, may deem necessary to assure maintenance of the quality of products sold by Assignor under the Trademarks. Assignor agrees (i) not to sell or assign its interest in, or grant any license under, the Patents,

Trademarks, Copyrights or Licenses, without the prior written consent of Agent; (ii) to maintain the quality of any and all products in connection with which the Trademarks and/or the Copyrights are used, consistent with quality of said products as of the date hereof; (iii) not to adversely change the quality of said products without Agent's express written consent; and (iv) to provide Agent, upon request, with a certificate of an officer of Assignor certifying Assignor's compliance with the foregoing.

7. **Reassignment.** This Assignment is made for collateral purposes only. Upon payment in full of all Obligations and termination of the Loan Agreement, Agent shall execute and deliver to Assignor all deeds, assignments and other instruments as may be necessary or proper to re-vest in Assignor full title to the Patents, Trademarks, Copyrights and Licenses, subject to any disposition thereof which may have been made by Agent pursuant hereto or pursuant to the Loan Agreement.

8. **Duties of Assignor.** Assignor shall have the duty (i) to prosecute diligently any patent, trademark and copyright application pending as of the date hereof or thereafter until all Obligations shall have been paid in full and the Loan Agreement is terminated, (ii) to make application on unpatented but patentable inventions and on trademarks and copyrightable works, as appropriate, and (iii) to preserve and maintain all rights in patent applications and patents of the Patents, in trademark applications, trademarks and trademark registrations of the Trademarks and in copyright applications and copyrights of the Copyrights. Any expenses incurred in connection with such applications shall be borne by Assignor. Assignor shall not abandon any right to file a patent, trademark or copyright application, or any pending patent, trademark or copyright application, or any Patent, Trademark or Copyright, without the consent of Agent.

9. **Agent's Right to Sue.** Agent shall have the right, but shall in no way be obligated, to bring suit in its own name to enforce the Licenses, Patents, Copyrights and/or Trademarks, and any licenses thereunder, and, if Agent shall commence any such suit, Assignor shall, at the request of Agent, do any and all lawful acts and execute any and all proper documents required by Agent in aid of such enforcement and Assignor shall promptly, upon demand, reimburse and indemnify Agent for all costs and expenses incurred by Agent in the exercise of its rights under this **Section 9**.

10. **Waivers.** No course of dealing between Assignor and Agent, nor any failure to exercise, nor any delay in exercising, on the part of Agent, any right, power or privilege hereunder or under the Loan Agreement shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or thereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

11. **Severability.** The provisions of this Assignment are severable, and if any clause or provision shall be invalid and unenforceable in whole or in part in any jurisdiction, then such invalidity or unenforceability shall affect only such clause or provision, or part thereof, in such

jurisdiction, and shall not in any manner affect such clause or provision in any other jurisdiction, or any other clause or provision of this Assignment in any jurisdiction.

12. **Modification.** This Assignment cannot be altered, amended or modified in any way, except as specifically provided in **Section 4** hereof or by a writing signed by the parties hereto.

13. **Cumulative Remedies; Power of Attorney; Effect on Loan Agreement.** All of Agent's rights and remedies with respect to the Patents, Trademarks, Copyrights and Licenses, whether established hereby or by the Loan Agreement, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Assignor hereby authorizes Agent to make, constitute and appoint any officer or agent of Agent as Agent may select, in its sole discretion, as Assignor's true and lawful attorney-in-fact, with power to (i) endorse Assignor's name on all applications, documents, papers and instruments necessary or reasonably desirable for the use by Agent or its successors or assigns of the Patents, Trademarks, Copyrights and/or Licenses, or (ii) take any other actions with respect to the Patents, Trademarks, Copyrights and/or Licenses as the Agent reasonably deems in the best interest of the Lender Group, (iii) following an Event of Default, grant or issue any exclusive or non-exclusive license under the Patents or Trademarks to anyone, or (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Patents, Trademarks, Copyrights and/or Licenses to anyone, including Agent. Agent may act under such power of attorney to take the actions referenced in **Section 13** hereof. Agent hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable until all Obligations shall have been paid in full and the Loan Agreement shall have been terminated. Assignor acknowledges and agrees that this Assignment is not intended to limit or restrict in any way the rights and remedies of Agent under the Loan Agreement but rather is intended to facilitate the exercise of such rights and remedies given it by the terms of this Assignment, all rights and remedies allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction in which the Patents, Trademarks, Copyrights or Licenses may be located.

14. **Binding Effect; Benefits.** This Assignment shall be binding upon the Assignor and its successors and assigns, and shall inure to the benefit of the Agent, its nominees, successors and assigns.

15. **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, without regard to any rules or principles regarding conflicts of laws or any rule or canon of construction which interprets agreements against the draftsman.

IN WITNESS WHEREOF, the Assignor has duly executed this Assignment effective as of the day and year first above written.

D&L, INC., a Delaware corporation

By: 

Frank E. Johnson, President

(CORPORATE SEAL)

ACKNOWLEDGMENT

COMMONWEALTH OF PENNSYLVANIA

COUNTY OF *Phila*

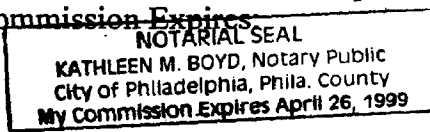
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On this 4th of December, 1998 before me, a Notary Public, personally appeared Frank E. Johnson, who acknowledged himself to be a duly acting President of D&L, Inc. and that he as such President, being duly authorized to do so, executed the foregoing Assignment for the purposes therein contained by signing his name as such President, on behalf of the corporation.

Kathleen M. Boyd

Notary Public

My Commission Expires



**EXHIBITS TO COLLATERAL ASSIGNMENT OF PATENTS, TRADEMARKS<
LICENSES, AND COPYRIGHTS**

Exhibit A: Patents
None.

Exhibit B: Trademarks

<u>Trademark</u> <u>Regis.</u>	<u>Registration #</u>	<u>Registered</u>	<u>Class</u>	<u>Owner</u>	<u>Covered</u>	
ALTEVISION POINT of FIT SYSTEMS	1,919,311	09/19/95	09 & 40	D&L, Inc.	Software	USA
AMHERST & BROCK	1,974,761	05/21/96	25	D&L, Inc.	Clothing	USA
ARCADIA RUSTIC SIMPLICITY (&DESIGN)	(74/444,951)	(10/07/93)	25	D&L, Inc.	Clothing	USA
BROOKCRAFT	1,455,435	09/01/87	25	D&L, Inc.	Clothing	USA
DOMANI UOMO (& DESIGN)	1,882,317	03/07/95	25	D&L, Inc.	Clothing	USA
FIERTE S.R.L.	2,080,528	07/22/97	25	D&L, Inc.	Clothing	USA
GIAN CARLO LAMBERTI	1,931,814	10/31/95	25	D&L, Inc.	Clothing	USA
TODAY'S MAN	1,318,975	02/12/85	09, 14, 18 & 25	D&L, Inc.	Software	USA
TODAY'S MAN (& DESIGN)	1,116,883	04/24/79	25 & 42	D&L, Inc.	Clothing	USA
TODAY'S MAN	1,194,483	04/27/82	42	D&L, Inc.	Services	USA
TODAY'S MAN	1,442,196	06/09/87	25 & 42	D&L, Inc.	Clothing	USA
TODAY'S REWARDS	2,088,252	08/12/97	35	D&L, Inc.	Services	USA
TODAY'S MAN	1,445,349	09/18/92	42	D&L, Inc.		UK
TORRIANI	1,745,850	01/12/93	25	D&L, Inc.	Clothing	USA

Exhibit C: Copyrights
None.

Exhibit D: Licenses

Amended and Restated License Agreement dated September 30, 1993 between D&L, Inc. and Today's Man, Inc.

K:\ROTENBERG\Today's Man\Mellon\Schedules\Collateral Assignment Schedule 1.wpd

RECORDED: 12/17/1998

**TRADEMARK
REEL: 1830 FRAME: 0508**