

MND  
12/1/99

12-14-1999



101221601

ET

.Y

Docket No.:

Tab. settings

To the Honorable Commissioner of Pa.

attached original documents or copy thereof.

1. Name of conveying party(ies):

Microsurge, Inc.

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

- Association
- Limited Partnership

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

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other Trademark and License Security Agreement

- Merger
- Change of Name

Execution Date: October 29, 1999

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

Name: BT Commercial Corporation

Internal Address:

Street Address: 233 South Wacker Drive, Suite 8400

City: Chicago State: IL ZIP: 60606

Individual(s) citizenship

Association

General Partnership

Limited Partnership

Corporation-State Delaware

Other

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

(Designations must be a separate document from Assignment)

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

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

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

1,819,436	1,864,234
1,867,566	1,944,739
1,828,839	2,102,740

Additional numbers attached?  Yes  No

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

Name: David J. Richter, Esq.

Internal Address: Piper Marbury Rudnick & Wolfe

Street Address: P.O. Box 64807

City: Chicago State: IL ZIP: 60664

6. Total number of applications and registrations involved:.....

6

7. Total fee (37 CFR 3.41):.....\$ 165.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number:

18-2284

12/14/1999 TTON11 00000037 1819436

DO NOT USE THIS SPACE

01 FC:481	40.00 OP
02 FC:482	125.00 OP

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.

David J. Richter

Name of Person Signing

Signature

November 19, 1999

Date

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

13

## TRADEMARK AND LICENSE SECURITY AGREEMENT (BORROWER)

This **TRADEMARK AND LICENSE SECURITY AGREEMENT** ("Agreement") is entered into as of October 29, 1999, by and between **MICROSURGE, INC.**, a Delaware corporation ("Borrower"), and **BT COMMERCIAL CORPORATION**, having offices at 233 South Wacker Drive, Suite 8400, Chicago, Illinois 60606, as agent (the "Agent"), for the "Lenders" (as such term is defined in the Credit Agreement referred to below).

### W I T N E S S E T H:

**WHEREAS**, the Agent, the Lender, Borrower and certain Affiliates thereof, have entered into that certain Credit Agreement of even date herewith (as the same may hereafter be amended or otherwise modified from time to time, the "Credit Agreement"), pursuant to which the Lenders have, subject to certain conditions precedent, agreed to make loans, advances and other financial accommodations (collectively, the "Loans") to the Borrower; and

**WHEREAS**, the Agent and the Lenders have required as a condition, among others, to the making of the Loans to the Borrower, in order to secure the prompt and complete payment, observance and performance of all of Borrower's obligations and liabilities hereunder, under the Credit Agreement, the Revolving Notes and under all of the other instruments, documents and agreements executed and delivered by the Borrower to the Agent or the Lenders in connection with the Credit Agreement (all such obligations and liabilities being hereinafter referred to collectively as the "Obligations"), that Borrower execute and deliver this Agreement to the Agent for the benefit of the Lenders;

**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, Borrower agrees as follows:

1. **Defined Terms.**

(a) Unless otherwise defined herein, the capitalized terms used herein which are defined in the Credit Agreement shall have the meanings specified in the Credit Agreement.

(b) The words "hereof," "herein" and "hereunder" and words of like import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section and schedule references are to this Agreement unless otherwise specified.

(c) All terms defined in this Agreement in the singular shall have comparable meanings when used in the plural, and vice versa, unless otherwise specified.

2. **Security Interest in Trademarks.** To secure the complete and timely payment, performance and satisfaction of all of the Obligations, Borrower hereby grants to the Agent, for the benefit of the Lenders, a security interest in, as and by way of a mortgage and security interest having priority over all other security interests, with power of sale to the extent permitted by applicable law, all of Borrower's now owned or existing and hereafter acquired or arising:

(i) trademarks, registered trademarks and trademark applications, trade names, trade styles, service marks, registered service marks and service mark applications including, without limitation, the registered trademarks, trademark applications, registered service marks, service mark applications and unregistered trademarks listed on Schedule A attached hereto and made a part hereof, and (a) all renewals thereof, (b) all accounts receivable, income, royalties, damages and payments now and hereafter due and/or payable with respect thereto, including, without limitation, payments under all licenses entered into in connection therewith and damages and payments for past or future infringements or dilutions thereof, (c) the right to sue for past, present and future infringements and dilutions thereof, and (d) all of Borrower's rights corresponding thereto throughout the world (all of the foregoing trademarks, registered trademarks, trademark applications, trade names, trade styles, service marks, registered service marks and service mark applications, together with the items described in clauses (a)-(d) in this paragraph 2(i), being sometimes hereinafter individually and/or collectively referred to as the "Trademarks");

(ii) the goodwill of Borrower's business connected with and symbolized by the Trademarks; and

(iii) license agreements with any other party in connection with any Trademarks or such other party's trademarks, registered trademarks and trademark applications, trade names, service marks, registered service marks and service mark applications, whether Borrower is a licensor or licensee under any such license agreement, including, but not limited to, the license agreements listed on Schedule B attached hereto and made a part hereof, and the right upon the occurrence and during the continuance of an Event of Default to use the foregoing in connection with the enforcement of the Agent's and the Lenders' rights under the Credit Agreement (all of the foregoing being hereinafter referred to collectively as the "Licenses"). Notwithstanding the foregoing provisions of this Section 2, the Licenses shall not include any license agreement which by its terms prohibits the grant of the security interest contemplated by this Agreement.

3. **Restrictions on Future Agreements.** Borrower will not, without the Agent's prior written consent, enter into any agreement, including, without limitation, any license agreement, or other agreement which is inconsistent with this Agreement, and Borrower further agrees that it will not take any action, and will use its best efforts not to permit any action to be taken by others subject to its control, including licensees, or fail to take any action, such as the timely filing of maintenance documents and fees, which would in any material respect affect the validity or enforceability of the

rights transferred to the Agent under this Agreement or the rights associated with those Trademarks which are necessary or desirable in the operation of Borrower's business.

4. **New Trademarks**. Borrower represents and warrants that the Trademarks and Licenses listed on Schedules A and B, respectively, include all of the trademarks, trademark registrations, trademark applications, trade names, trade styles, service marks, service mark registrations, service mark applications and license agreements now owned or held by Borrower. Notwithstanding the generality of the foregoing, Borrower further represents and warrants (i) that the Trademarks listed on Schedule A are owned by Borrower free and clear of any liens or encumbrances and all registrations therefor are valid, subsisting and enforceable and all applications therefor are in good standing and (ii) that the Licenses listed on Schedule B are owned by Borrower free and clear of any liens and encumbrances and are in full force and effect. Except as stated on Schedule A, Borrower further represents and warrants that there are no pending lawsuits or other proceedings with respect to the Trademarks, that there have been no claims or threatened claims of infringement or dilution with respect to the Trademarks and that there has been no breach or threatened breach with respect to the Licenses. If, prior to the termination of this Agreement, Borrower shall (i) create or obtain rights to any new trademarks, trademark registrations, trademark applications, trade names, trade styles, service marks, service mark registrations, service mark applications or license agreements or (ii) become entitled to the benefit of any trademark, trademark registration, trademark application, trade name, service mark, service mark registration or service mark application, the provisions of Section 2 shall automatically apply thereto and Borrower shall give to the Agent prompt written notice thereof. Regardless of whether or not such notice from Borrower has been given or received, Borrower hereby authorizes the Agent to modify this Agreement by (i) amending Schedules A or B, as the case may be, to include any future trademarks, trademark registrations, trademark applications, trade names, trade styles, service marks, service mark applications and license agreements that are Trademarks or Licenses under Section 2, or under this Section 4, and (ii) filing, in addition to and not in substitution for, this Agreement, a duplicate original of this Agreement containing on Schedules A or B thereto, as the case may be, such future trade marks, trademark applications, trade names, trade styles, service marks, service mark applications and license agreements which are Trademarks or Licenses under Section 2 or this Section 4 and to take any action Agent otherwise deems appropriate to perfect or maintain the rights and interests of the Agent under this Agreement with respect to such Trademarks and Licenses. Agent agrees to provide Borrower notice after taking such action but the failure to do so shall not impair any rights of Agent or the Lenders. Borrower hereby irrevocably appoints the Agent as Borrower's attorney-in-fact, with full authority in the place and stead of Borrower and in the name of Borrower or otherwise to carry out the acts described above. Borrower hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until this Agreement shall have been terminated pursuant to Section 6.

5. **Royalties**. Borrower hereby agrees that the use by the Agent of the Trademarks and Licenses as authorized hereunder shall be co-extensive with Borrower's rights thereunder and with respect thereto and without any liability for royalties or other related charges from the Agent or the Lenders to Borrower or anyone.

6. **Nature and Continuation of the Agent's Security Interest.** This Agreement is made for collateral security purposes only. This Agreement shall create a continuing security interest in the Trademarks and Licenses and shall remain in full force and effect until the Obligations have been paid in full and the Credit Agreement terminated.

7. **Right to Inspect; Further Assignments and Security Interests.** The Agent shall have the right, at any reasonable time and from time to time, to inspect Borrower's premises and to examine Borrower's books, records and operations relating to the Trademarks, including, without limitation, Borrower's quality control processes; provided, that in conducting such inspections and examinations, the Agent shall use its best efforts not to disturb unnecessarily the conduct of Borrower's respective ordinary business operations. From and after the occurrence of an Event of Default, and subject to the terms of the Credit Agreement, Borrower agrees that the Agent or a conservator appointed by the Agent, shall have the right to establish such reasonable additional product quality controls as the Agent or such conservator, in its sole judgment, may deem necessary or desirable to assure maintenance of the quality of products sold by Borrower under the Trademarks. Borrower agrees (i) not to sell or assign its respective interests in, or grant any material license under, the Trademarks without the prior written consent of the Agent, (ii) to maintain the quality of any and all products in connection with which the Trademarks are used, consistent with the quality of said products as of the date hereof, and (iii) not to reduce the quality of such products in any material respect without the prior written consent of the Agent, which consent shall not be unreasonably withheld.

8. **Duties of the Borrower.** Borrower shall have the duty (i) to prosecute diligently any trademark application or service mark application that is part of the Trademarks pending as of the date hereof or thereafter until the termination of this Agreement, (ii) to make application for trademarks and service marks as Borrower deem appropriate, and (iii) to preserve and maintain all of Borrower's rights in the trademark applications, service mark applications and trademark registrations and service mark registrations that are part of the Trademarks and Licenses. Any expenses incurred in connection with the foregoing shall be borne by the Borrower. Borrower shall not abandon any trademark or service mark which is the subject of a registered trademark, service mark or application therefor and which is or shall be necessary or economically desirable in the operation of Borrower's business. Borrower agrees to retain an experienced trademark attorney reasonably acceptable to the Agent for the filing and prosecution of all such applications and other proceedings which are material to the business of Borrower and Borrower's current counsel is so acceptable for such purposes at this time. Neither the Agent nor any Lender shall have any duty with respect to the Trademarks. Without limiting the generality of the foregoing, neither the Agent nor any Lender shall be under any obligation to take any steps necessary to preserve rights in the Trademarks and Licenses against any other parties, but may do so at their option during the continuance of an Event of Default, and all reasonable expenses incurred in connection therewith shall be for the sole account of Borrower and added to the Obligations secured hereby. Any recovery from such action taken pursuant to Section 9 shall be credited to Borrower with respect to the Obligations secured hereby but only after reimbursement of all of Agent's reasonable costs and expenses.

9. **The Agent's Right to Sue.** From and after the occurrence and during the continuance of an Event of Default, and subject to the terms of the Credit Agreement, the Agent shall have the right, but shall not be obligated, to bring suit or take any other action to enforce the Trademarks and Licenses and, if the Agent shall commence any such suit or take any such action, the Borrower shall, at the request of the Agent, do any and all lawful acts and execute any and all proper documents required by the Agent in aid of such enforcement. Borrower shall, upon demand, promptly reimburse and indemnify the Agent for all costs and reasonable expenses incurred by the Agent in the exercise of its rights under this Section 9 (including, without limitation, all attorneys' and paralegals' fees). If, for any reason whatsoever, the Agent is not reimbursed with respect to the costs and expenses referred to in the preceding sentence, such costs and expenses shall be added to the Obligations secured hereby.

10. **Waivers.** No course of dealing between Borrower, the Agent and any of the Lenders, and no failure to exercise or delay in exercising on the part of the Agent any right, power or privilege hereunder or under the Credit Agreement shall operate as a waiver of any of the Agent's rights, powers or privileges. No single or partial exercise of any right, power or privilege hereunder or under the Credit Agreement shall preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

11. **The Agent's Exercise of Rights and Remedies upon Default.** Notwithstanding anything set forth herein to the contrary, it is hereby expressly agreed that upon the occurrence and during the continuance of an Event of Default, the Agent may exercise any of the rights and remedies provided in this Agreement, the Credit Agreement, or any other agreement executed in connection therewith. Without limiting the generality of the foregoing, Borrower acknowledges and agrees that (i) the Trademarks and Licenses comprise a portion of the Collateral and the Agent shall have the right to exercise its rights under the Credit Agreement with respect to the Trademarks and Licenses to the same extent as with respect to all other items of Collateral described therein, and (ii) from and after the occurrence and during the continuance of an Event of Default, the Agent or its nominee may use the Trademarks and Licenses to complete the manufacture of, assemble, package, distribute, prepare for sale and sell the Inventory, or otherwise in connection with the conduct of Borrower's business.

12. **Severability.** The provisions of this Agreement are severable, and if any clause or provision shall be held 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 Agreement in any jurisdiction.

13. **Modification.** This Agreement cannot be altered, amended or modified in any way, except as specifically provided in Sections 2 and 4 hereof or by a writing signed by the parties hereto.

14. **Cumulative Remedies; Power of Attorney.** All of the Agent's rights and remedies with respect to the Trademarks and Licenses, whether established hereby, by any other agreements

or by law, shall be cumulative and may be exercised singularly or concurrently. Borrower hereby irrevocably appoints the Agent as Borrower's attorney-in-fact, with full authority in the place and stead of Borrower and in the name of Borrower or otherwise to carry out the acts described below. Subject to the terms of the Credit Agreement, upon the occurrence and during the continuance of an Event of Default and the giving by the Agent of written notice to the Borrower of the Agent's intention to enforce its rights and claims against Borrower, Borrower hereby authorizes the Agent to, in its sole discretion, (i) endorse Borrower's name on all applications, documents, papers and instruments necessary or desirable for the Agent in the use, maintenance or transfer of the Trademarks and the Licenses, (ii) take any other actions with respect to the Trademarks and the Licenses as the Agent deems is in its or the other Lenders' best interest, (iii) grant or issue any exclusive or nonexclusive license under the Trademarks to anyone on commercially reasonable terms, and (iv) assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to anyone on commercially reasonable terms. The Agent shall take no action pursuant to subsection (i), (ii), (iii) or (iv) of this Section 14 without taking like action with respect to the entire goodwill of Borrower's business connected with the use of, and symbolized by, such Trademarks. Borrower hereby ratifies all that such attorney-in-fact shall lawfully do or cause to be done by virtue hereof. This power of attorney is coupled with an interest and shall be irrevocable until this Agreement shall have been terminated pursuant to Section 6. Borrower acknowledges and agrees that this Agreement is not intended to limit or restrict in any way the rights and remedies of the Agent and the Lenders under the Credit Agreement, but rather is intended to facilitate the exercise of such rights and remedies. The Agent shall have, in addition to all other rights and remedies given it by the terms of this Agreement, 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 Trademarks may be located or deemed located.

15. **Binding Effect; Benefits**. This Agreement shall be binding upon Borrower and its respective successors and assigns, and shall inure to the benefit of the Agent and each of the Lenders and their respective nominees, successors and assigns. Borrower's successors and assigns shall include, without limitation, a receiver, trustee or debtor-in-possession of or for Borrower; provided, however that Borrower shall not voluntarily assign its obligations hereunder without the prior written consent of the Agent.

16. **Governing Law**. This Agreement shall be governed by, construed and interpreted in accordance with the internal law (as distinguished from the conflicts of law rules) of the State of Illinois.

17. **Notices**. All notices or other communications hereunder shall be given in the manner and to the addresses set forth in the Credit Agreement.

18. **Section Headings**. The section headings herein are for convenience of reference only, and shall not affect in any way the interpretation of any of the provisions hereof.

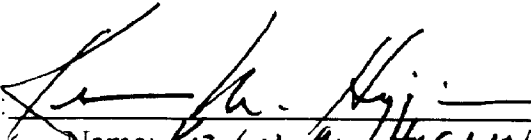
19. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.



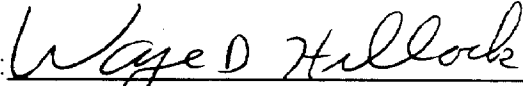
IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

**BORROWER:**

**MICROSURGE, INC.**

By:   
Name: KEVIN M. HIGGINS  
Title: Senior Vice Pres & General Counsel

**BT COMMERCIAL CORPORATION, as Agent  
for Lenders**

By:   
Name: WAYNE HILLOCK  
Title: DIRECTOR

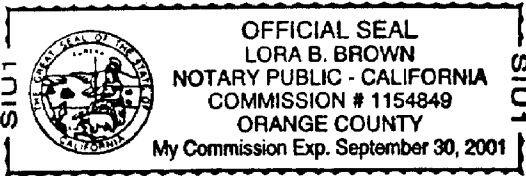
Notice Address:

BT Commercial Corporation  
233 South Wacker Drive, Suite 8400  
Chicago, Illinois 60606  
Attn: Credit Department, Wayne D. Hillock

STATE OF CALIFORNIA )  
 ) SS  
COUNTY OF ORANGE )

The foregoing Patent and License Security Agreement was executed and acknowledged before me as of October 29, 1999, by Kevin M. Higgins personally known to me to be the Sr. Vice President and General Counsel, of Borrower.

(SEAL)



*Lora B. Brown*  
My Commission expires 09-30-01

**Schedule A**  
**to**  
**Trademark and License Security Agreement**

**Dated October 29, 1999,**

**Borrower: Microsurge, Inc.**

**Registered Trademarks and Service Marks**

**None, except:**

<b>MARK</b>	<b>REGISTRATION NO.</b>
MICROSURGE	1,819,436
DIRECTOR	1,867,566
DETACHATIP	1,828,839
VARIFLO	1,864,234
UNIFORCE	1,944,739
BIPOLIGATOR	2,102,740

**Pending Trademark and Service Mark Applications**

**None.**

**Unregistered Trademarks**

**None.**

**Schedule B  
to  
Trademark and License Security Agreement**

**Dated October 29, 1999,**

**Borrower: Microsurge, Inc.**

**License Agreements**

**None.**

**B-1**

3/1314/667605.1

**SCHEDULE A to Trademark and License Security Agreement (Borrowers)**

**Dated October 29, 1999**

**United States Registered Trademarks owned by: Microsurge, Inc.**

<u>Mark</u>	<u>Registration No.</u>	<u>Ref.</u>
MICROSURGE	1,819,436	838
DIRECTOR	1,867,566	837
DETACHATIP	1,828,839	836
VARIFLO	1,864,234	835
UNIFORCE	1,944,739	834
BIPOLIGATOR	2,102,740	630

USTrademarksMICROSURGE102999

**RECORDED: 12/01/1999**

**TRADEMARK  
REEL: 001998 FRAME: 0357**