

05-14-2003



Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings

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

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

1. Name of conveying party(ies): 5-12-03 ADVANCED PRODUCTION SYSTEMS, INC. [] Individual(s) [] Association [] General Partnership [] Limited Partnership [x] Corporation-State [] Other Additional name(s) of conveying party(ies) attached? [] Yes [x] No

2. Name and address of receiving party(ies) Name: HUBBARD & HUBBARD, INC. Internal Address: Street Address: 832 Garfield Drive City: Petaluma State: CA Zip: 94952 [] Individual(s) citizenship [] Association [] General Partnership [] Limited Partnership [x] Corporation-State California [] 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

3. Nature of conveyance: [x] Assignment [] Merger [] Security Agreement [] Change of Name [] Other Execution Date: 02/24/2003

4. Application number(s) or registration number(s): A. Trademark Application No.(s) B. Trademark Registration No.(s) 2,015,082; 2,273,518 Additional number(s) attached [] Yes [x] No

5. Name and address of party to whom correspondence concerning document should be mailed: Name: Craig M. Stainbrook Internal Address: Johnson & Stainbrook, LLP Street Address: 3550 Round Barn Bl., Ste. 203 City: Santa Rosa State: CA Zip: 95403

6. Total number of applications and registrations involved: 2 7. Total fee (37 CFR 3.41).....\$ 80.00 [x] Enclosed [] Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature. Craig M. Stainbrook Name of Person Signing [Signature] Signature May 7, 2003 Date Total number of pages including cover sheet, attachments, and document: 6

05/14/2003 01 FC:0521 02 FC:0522

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

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TRADEMARK REEL: 002731 FRAME: 0570

PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement ("Agreement") is entered into as of February ____, 2003 by and between Advanced Production Systems, Inc., a Kentucky corporation with its principal place of business at 8016 Vinecrest Avenue, Louisville, Kentucky 40222 ("Seller"), and Hubbard & Hubbard, Inc., a _____ corporation with its principal place of business at _____ ("Purchaser").

RECITALS

WHEREAS, Seller is the owner of certain rights in software known as QMAPS and related documentation (the "Software"), including rights in copyrights, copyright registrations, trademarks, service marks, trademark and service mark registrations, product names, distribution rights, and proprietary materials and trade secrets relating to the Software, as more fully described below (the "Intellectual Property Rights"); and

WHEREAS, Seller wishes to transfer to Purchaser, and Purchaser wishes to acquire, the Software and the Intellectual Property Rights as set forth herein;

NOW, THEREFORE, in consideration of payment by Purchaser to Seller of the amounts provided below, and subject to the terms and conditions set forth below, Seller agrees to sell, grant, convey, and assign to Purchaser, its successors and assigns, all of its right, title, and interest in and to the Intellectual Property Rights and to all of the assets, properties, contracts, and rights relating thereto, including without limitation, any renewals and/or extensions of the copyrights and trademark registrations, for all territories of the world in perpetuity, all as more fully set forth below.

I PROPERTIES TO BE ASSIGNED

- A. The Copyright: Seller is a joint owner of copyrights in the source code for the Software, and of U.S. Copyright Registration Nos. TXu 676-007 and TX 4-482-512 for the Software. Upon receipt of a down payment of \$10,000 as set forth below, Seller shall assign, transfer, and convey all of its worldwide rights in the Software, including source code, object code, source code documentation, and user documentation, to Purchaser. The rights to be assigned include, without limitation, all of Seller's rights in the copyright in the Software and the copyright registrations listed above, whether such rights arise under the U.S. Copyright Act or applicable international treaties or agreements governing copyrights, and related rights, including rights of attribution and rights to alter or amend the Software.

Purchaser understands and acknowledges that Seller is not the sole owner of the copyright in the Software. Seller is a joint owner with Quality Management Associates, Inc. ("QMA") of the copyright in the Software, including without limitation Reg. No. TXu 676-007. The Assignment provided for in this Agreement will convey Seller's rights only. Purchaser acknowledges that QMA will retain the rights of a copyright owner with respect to the Software, including the right to own, use, sell, distribute, license, modify, create derivative works, and assign the Software and QMA's rights in

the Software, without any obligation to account to Seller or Purchaser for any income earned from use of the copyright or the Software.

- B. The Trademark: Seller is an owner of certain trademark rights in the QMAPS product name, mark, and logo (the "Mark"), including the registrations listed in Exhibit A hereto (the "Registrations"). Upon receipt of the down payment as set forth below, Seller shall assign to Purchaser all of Seller's right, title, and interest in the Mark in the United States and throughout the world, together with all of Seller's right, title, and interest in the Registrations and the goodwill of the business symbolized by the Mark.

Purchaser understands and agrees that Seller is not the sole owner of rights in the Mark. By agreement, APS and QMA retain equal rights to the Mark. APS is the owner, by assignment, of Registration No. 2,015,082 for the QMAPS logo mark. If that registration is to remain in force, it will be necessary to file documents with the U.S. Patent and Trademark Office no later than May 12, 2003. It is Seller's intent not to file those documents, and Seller does not undertake by this Agreement to do so. APS is the owner of Registration No. 2,273,518 for the QMAPS word mark. Documents to maintain that registration in force will be due by August 31, 2005 and filing of those documents will be the sole responsibility of Purchaser.

- C. The QMA Agreement: APS's and QMA's rights, *inter se*, in the Intellectual Property Rights are set forth in a Letter of Agreement for Dissolution of the QMAPS Joint Venture dated October 10, 1996, and a letter dated December 14, 1998. Copies of those documents are attached at Exhibit B. Upon receipt of down payment, Seller shall assign to Purchaser all of Seller's right, title, and interest in and arising from those agreements.

- D. Install Base: Seller assigns to Purchaser all of Seller's right to service the Software installed with Seller's customers, and to retain any service fees earned thereby. Seller makes no representation or warranty as to the existence or continuation of any ongoing service business. The rights acquired by Purchaser under this Agreement shall be subject to the continuing rights of existing customers to use the Software.

- E. Deliverables: Within ten days after execution of this Agreement, Seller shall provide the following to Purchaser:

1. Software: One executable copy of the Software on electronic media. Seller will perform programming work necessary to change the splash screen display to show the METRIC LINK mark, or such other mark as Purchaser may designate, prior to delivery.
2. Documentation: All of Seller's existing copy(ies) of the source code documentation and user documentation relating to the Software.
3. Source Code: One complete copy of the source code for the Software on electronic media.

4. Customer List: All of Seller's list of customers for the Software, including any list of prospective customers or sales leads, if any, and documentation necessary to identify and communicate with Seller's current install base.

II OTHER TERMS

- A. Support Services: Seller will provide Purchaser support services, including without limitation training, maintenance, and programming of product enhancements, at a cost of \$100/hour to Purchaser; plus any travel expenses, including airfare, lodging, and food, reasonably incurred in connection with provision of those support services. The parties shall make reasonable efforts to schedule such services promptly upon Purchaser's request.
- B. License: Effective upon execution of this Agreement, and until Seller effects the assignments of rights as set forth above, or until this Agreement is terminated in accordance with its terms, Seller grants to Purchaser a worldwide license to use, distribute, modify, and sublicense the Software and the Intellectual Property Rights, subject to the limitations of this Agreement. This license is an exclusive license of Seller's rights in the Intellectual Property Rights.
- C. Payment: The contract price shall be Fifty Thousand Dollars (\$50,000), for the Intellectual Property Rights. Support Services will be invoiced on an as utilized basis and billed at the end of a Quarter – triggered by the down payment. The contract price shall be payable as follows: \$10,000 shall be payable upon delivery of the deliverables listed in paragraph I(E) above, and an additional \$10,000 shall be payable at the end of a Quarter (as defined as 90 days after the down payment) and thereafter at the end of succeeding Quarters, until the entire price is paid.
- D. Right to Market Similar Products: Purchaser acknowledges that the assignments and related provisions set forth above, when effective, will transfer rights in the Software, and not in the concepts relating to or embodied in the Software. Seller retains the right to design, create, build, market, distribute, sell, and service performance management software embodying similar concepts; provided that Seller shall not do so in a manner that will directly compete with Purchaser. Any sales, licensing, or other use of similar software in the manufacturing market shall be deemed non-competitive with Purchaser for purposes of this paragraph. Purchaser agrees not to sell, license, or otherwise use the Software or the Marks in the manufacturing market.
- E. Additional Documents: Each of the parties agrees, at the other's reasonable request, to execute additional papers as may be necessary or appropriate to effect the terms of this Agreement, including the transfer, by complete assignment, of all of Assignor's rights in and to the Intellectual Property Rights and all registrations, renewals, or extensions thereof or applications therefore, and the perfection of a security interest in the properties to be conveyed pursuant to this Agreement. All marketing and presentation-related files will be made available to the Purchaser.

F. Disclaimer of Warranty: Seller provides the Software, Copyrights, Marks and the Intellectual Property Rights on an "AS IS" basis and without warranty. SELLER SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

G. Limitation of Liability: IT IS UNDERSTOOD AND AGREED THAT SELLER'S LIABILITY FOR ANY DAMAGES SUFFERED BY PURCHASER OR ITS CUSTOMERS, WHETHER IN CONTRACT, IN TORT, UNDER ANY WARRANTY THEORY, IN NEGLIGENCE, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT PAID TO SELLER BY PURCHASER PURSUANT TO THIS AGREEMENT. UNDER NO CIRCUMSTANCES SHALL SELLER BE LIABLE FOR ANY SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS) OF PURCHASER, ANY CUSTOMER, OR ANY OTHER THIRD PARTY, EVEN IF SELLER HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NO ACTION, REGARDLESS OF FORM, ARISING OUT OF THE TRANSACTIONS UNDER THIS AGREEMENT MAY BE BROUGHT BY EITHER PARTY MORE THAN TWO (2) YEARS AFTER THE COMPLETION OF PERFORMANCE UNDER, OR TERMINATION OF, THIS AGREEMENT.

H. Governing Law: This Agreement shall be governed by and interpreted in accordance with Kentucky law applicable to agreements and transactions made and to be performed entirely within Kentucky.

I. Waiver: Neither the failure nor any delay to exercise a right, remedy or privilege under this Agreement shall operate as a waiver thereof nor shall any single or partial exercise of a right, remedy or privilege preclude any further exercise of the same.

J. Entire Agreement: This Agreement constitutes the complete and exclusive statement of the agreement between them with respect to the subject matter hereof, and supersedes all proposals, oral or written, and all other communications regarding such subject matter.

IN WITNESS WHEREOF, Purchaser and Seller, expressly intending to be legally bound thereby, have caused this Assignment to be duly executed as of the date first set forth above.

Dated: 2/24/03

Dated: 2/24/03


Advanced Production Systems, Inc.

Hubbard & Hubbard, Inc.

By: [Signature]
Its: PRESIDENT

By: [Signature]
Its: Executive Vice Pres.

EXHIBIT A**Trademarks**

Mark	Registration No.	Goods and Services
QMAPS	2,273,518	Computer software that tracks the progress and impact of business organizational indicators, in International Class 9, and computer software design for others, namely designing business management software, updating of computer software and technical consulting services in the field of computer software, in International Class 42.
	2,015,082	Computer software that tracks the progress and impact of business indicators, in International Class 009, and computer software design for others, namely designing business management software, updating of computer software and technical consulting services in the field of computer software, in International Class 42.