

11-23-1998

Form PTO-1594 (Rev. 8-93)
Attorney Docket No.: 517-4



U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

MFD
11-4-98

100909174
RECOMMENDATION FORM COVER SHEET
TRADEMARKS ONLY

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

1. Name of conveying party(ies):

NEW VISION MICROELECTRONIC
MANUFACTURING SYSTEMS, INC.

(a Delaware Corp.)

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

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

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

Name: USTRUST
Street Address: 30 Court Street
City: Boston State: MASS Zip: 02108

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State Massachusetts

If assignee is not domiciled in the United States, a domestic representative designation is attached YES NO

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

11-04-1998

U.S. Patent & TMO/TM Mail Rcpt Dt. #70

4. Application no(s). or trademark no.(s):

A. Trademark Application No.(s)

B. Trademark Registration No. 1,613,654
MONO-LITH

Additional numbers attached? Yes NO

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

Name: Rocco S. Barrese, Esq.
Street Address: DILWORTH & BARRESE
333 Earle Ovington Blvd.
City: Uniondale State: NY Zip: 11553

6. Total number of applications and trademarks involved: 1 *40E*

7. Total fee (37 C.F.R. §3.41): \$40.00
 Enclosed
 Authorized to be charged to deposit account

8. Deposit account number:
04-1121
(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.

Mark S. Leonardo
Reg. No. 41,433

Name of Person Signing

Signature

November 2, 1998
Date

Total number of pages including cover sheet, attachments, and document: 9

11/23/1998 DNGUYEN 00000005 1613654

01 FC:481

40.00 DP

Do not detach this portion

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

Assistant Commissioner of Trademarks
Box Assignments8
2900 Crystal Drive
Arlington, VA 22202-3513

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: 1817 FRAME: 0562

TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT

TRADEMARK COLLATERAL ASSIGNMENT AND SECURITY AGREEMENT dated as of October 23, 1998 between NEW VISION MICROELECTRONIC MANUFACTURING SYSTEMS, INC. a Delaware corporation with its principal office at 350 Mass Avenue, Cambridge, Massachusetts 02139 (the "Assignor"), and USTRUST, with an office at 30 Court Street, Boston, Massachusetts 02108 (the "Bank").

WHEREAS, the Assignor has been granted those United States trademarks listed on *Schedule A* hereto, which trademarks have been registered with the United States Trademark and Trademark Office;

WHEREAS, the Assignor has entered into a borrowing arrangement with the Bank pursuant to promissory notes dated September 1, 1995 and as of the date hereof, in the original cumulative principal amount of \$200,000.00 (as amended and in effect from time to time, the "Note"), made by the Assignor in favor of the Bank;

WHEREAS, the Assignor and the Bank have entered into a Security Agreement, dated September 1, 1995 and reaffirmed as of the date hereof (as amended and in effect from time to time, the "Security Agreement"), pursuant to which the Assignor has granted to the Bank a security interest in the trademarks listed on *Schedule A* attached hereto to secure the obligations of the Assignor under the Note.

WHEREAS, this Agreement is supplemental to the provisions contained in the Security Agreement.

NOW, THEREFORE, in consideration of the premises contained herein and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

§1. Definitions. All capitalized terms used herein without definitions shall have the respective meanings provided therefor in the Security Agreement.

§2. Assignment of Trademarks. To secure the payment and performance in full of all Obligations, the Assignor hereby grants, assigns and conveys to the Bank **BY WAY OF COLLATERAL SECURITY**, the Assignor's entire right, title and interest in and to the trademarks listed in *Schedule A* hereto (as the same may be amended pursuant hereto from time to time), including without limitation all proceeds thereof (such as, by way of example, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements, all rights corresponding thereto throughout the world and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof (collectively called the "*Trademarks*"). **THE BANK ASSUMES NO LIABILITY ARISING BY REASON OF ITS HOLDING SUCH COLLATERAL SECURITY.**

§3. Assignor's Representations and Warranties. The Assignor represents, warrants and covenants that:

(a) The Trademarks are subsisting and have not been adjudged invalid or unenforceable, in whole or in part;

(b) To the best of the Assignor's knowledge, each of the issued Trademarks is valid and enforceable and the Assignor has notified the Bank in writing of all material prior art (including public uses and sales) of which it is aware;

(c) There are currently outstanding no claims that the use of any of the Trademarks does or may violate the rights of any third person;

(d) The Assignor is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each of the Trademarks, free and clear of any liens, charges and encumbrances, including without limitation pledges, assignments, licenses, shop rights and covenants by the Assignor not to sue third persons, other than (i) the security contract and mortgage created by the Security Agreement and this Agreement, and (ii) as otherwise described in *Schedule A* hereto;

(e) The Assignor has the unqualified right to enter into this Agreement and perform its terms and has entered and will enter into written agreements with each of its present and future employees, agents and consultants that will enable it to comply with the covenants herein contained.

§4. No Inconsistent Agreements. The Assignor agrees that, until all of the Obligations shall have been finally paid and satisfied in full, it will not enter into any agreement (for example, a license agreement) that is inconsistent with the Assignor's obligations under this Agreement or the Security Agreement, without the Bank's prior written consent.

§5. New Trademark Rights. If, before the Obligations shall have been finally paid and satisfied in full, the Assignor shall obtain rights to any trademark application or trademark or any reissue, division, continuation, renewal, extension, or continuation-in-part of any Trademark or any improvement on any Trademark, the provisions of §2 shall automatically apply thereto and the Assignor shall give to the Bank prompt notice thereof in writing hereof

§6. Modification of Schedule A. The Assignor authorizes the Bank to modify this Agreement by amending *Schedule A* to include any future trademarks and trademark applications that are trademarks under §2 or §5 hereof.

§7. License. Unless and until there shall have occurred and be continuing an Event of Default and the Bank has notified the Assignor that the license granted hereunder is terminated, the Bank hereby grants to the Assignor the sole and exclusive, nontransferable, royalty-free, worldwide right and license under the Trademarks to make, have made for it, use and sell the

worldwide right and license under the Trademarks to make, have made for it, use and sell the inventions disclosed and claimed in the Trademarks for the Assignor's own benefit and account and for none other. The Assignor agrees not to sell or assign its interest in the license granted to the Assignor in this §7, without the prior written consent of the Bank.

§8. Rights on Default. If any events of Default shall have occurred and be continuing, the Assignor's license under the Trademarks as set forth in §7 shall terminate forthwith upon notice by the Bank to the Assignor, and the Bank shall have, in addition to all other rights and remedies given it by this Agreement, the Security Agreement and the other Loan Documents, those allowed by law and the rights and remedies of a secured party under the Uniform Commercial Code as enacted in any jurisdiction and, without limiting the generality of the foregoing, the Bank may immediately, without demand of performance and without other notice (except as set forth next below) or demand whatsoever to the Assignor, all of which are hereby expressly waived, and without advertisement, sell or license at public or private sale or otherwise realize upon the whole or from time to time any part of the Trademarks, or any interest that the Assignor may have therein, and after deducting from the proceeds of sale or other disposition of the Trademarks all expenses (including all reasonable expenses for broker's fees and legal services), shall apply the residue of such proceeds toward the payment of the Obligations as set forth in §9. Notice of any sale, license, or other disposition of the Trademarks shall be given to the Assignor at least five days before the time that any intended public sale or other disposition of the Trademarks is to be made or after which any private sale or other disposition of any of the Trademarks may be made, which the Assignor hereby agrees shall be reasonable notice of such public or private sale or other disposition. At any such sale or other disposition, the Bank may, to the extent permitted under applicable law, purchase or license the whole or any part of the Trademarks or interests therein sold or licensed, free from any right of redemption on the part of the Assignor, which right is hereby waived and released.

§9. Costs, Fees and Expenses. The costs, fees, and expenses of the Bank in preserving or enforcing its rights hereunder and all other claims hereunder of the Bank to reimbursement and indemnification from the Assignor shall constitute a just claim on the Trademarks and be entitled to priority over all other Obligations in respect of all distributions of any proceeds from any portion of the Trademarks.

§10. Power of Attorney. If any Event of Default shall have occurred and be continuing, the Assignor hereby authorizes and empowers the Bank to make, constitute and appoint any officer or agent of the Bank, as the Bank may select in its exclusive discretion, as the Assignor's true and lawful attorney-in-fact, with the power to endorse the Assignor's name on all applications, documents, papers and instruments necessary for the Bank to use the Trademarks, or to grant or issue any exclusive or nonexclusive license under the Trademarks to any third person, or necessary for the Bank to assign, pledge, convey or otherwise transfer title in or dispose of the Trademarks to any third person. The Assignor hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable for the duration of this Agreement.

§11 Reconveyance upon Final Payment. At such time as all of the Obligations have been finally paid and satisfied in full, this Agreement shall terminate and the Bank shall, upon the written request of the Assignor and at the Assignor's expense, execute and deliver to the Assignor all deeds, assignments and other instrument as may be necessary or proper to re-vest in the Assignor the entire right, title and interest to the Trademarks as fully as if this Assignment had not been made, subject to any disposition thereof which may have been made by the Bank pursuant hereto or the Security Agreement.

§12. Reimbursement of Fees and Expenses. Any and all fees, costs and expenses, of whatever kind or nature, including the reasonable attorney's fees and legal expenses incurred by the Bank in connection with the preparation of this Agreement and all other documents relating hereto and the consummation of this transaction, the filing or recording of any documents (including all taxes in connection therewith) in public offices, the payment or discharge of any taxes, counsel fees, maintenance fees, encumbrances or otherwise protecting, maintaining or preserving the Trademarks, or in defending or prosecuting any actions or proceedings arising out of or related to the Trademarks, shall be borne and paid by the Assignor on demand by the Bank and until so paid shall bear interest at the rate of interest on overdue principal set forth in the Note.

§13. Duty to Prosecute. The Assignor shall have the duty, through counsel acceptable to the Bank to prosecute diligently any trademark applications of the Trademarks pending as of the date of this Agreement or thereafter to make application for untrademarked but reasonably Trademarkable inventions that may be useful to the business of the Assignor or any affiliate and to preserve and maintain all rights in Trademark applications and the Trademarks, including without limitation the payment of all maintenance fees. Any expenses incurred in connection with such an application shall be borne by the Assignor. The Assignor shall not abandon any filed Trademark application, or any pending trademark application or Trademark without the consent of the Bank which consent shall not be unreasonably withheld. The Bank hereby appoints the Assignor as its agent for all matters referred to in the foregoing provisions of this §13 and agrees to execute any documents necessary to confirm such appointment. Upon the occurrence of an Event of Default, the Bank may terminate such agency by providing written notice of termination to the Assignor.

§14. Bank's Right to Take Action in Assignor's Name. If the Assignor fails to comply with any of its obligations hereunder, the Bank may elect to do so in the Assignor's name or the Bank's name. The Assignor shall have the right, with the consent of the Bank, which shall not be unreasonably withheld, to bring suit in the Assignor's own name to enforce the Trademarks and any licenses thereof. If necessary, the Bank may, at its option, join such suit so long as the Bank is completely satisfied that such joinder will not subject the Bank to any risk of liability. The Assignor shall promptly, upon demand, reimburse and indemnify the Bank for all damages, costs and expenses, including legal fees, incurred by the Bank pursuant to this §14.

§15. No Waiver. No course of dealing between the Assignor and the Bank nor any failure to exercise, nor any delay in exercising, on the part of the Bank, any right, power or

privilege hereunder or under the Security 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.

§16. No Assumption of Liability. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, THE BANK ASSUMES NO LIABILITIES OF THE ASSIGNOR WITH RESPECT TO ANY CLAIM OR CLAIMS REGARDING THE ASSIGNOR'S OWNERSHIP OR PURPORTED OWNERSHIP OF, OR RIGHTS OR PURPORTED RIGHTS ARISING FROM, THE TRADEMARKS OR ANY USE, LICENSE OR SUBLICENSE THEREOF, WHETHER ARISING OUT OF ANY PAST, CURRENT OR FUTURE EVENT, CIRCUMSTANCE, ACT OR OMISSION OR OTHERWISE.

§17. Rights Cumulative; Supplemental to Security Agreement. All of the Bank's right and remedies with respect to the Trademarks, whether established hereby or by the Security Agreement or by any other agreements or by law, shall be cumulative and may be exercised singularly or concurrency. This Agreement is supplemental to the Security Agreement, and nothing contained herein shall in any way derogate from any of the rights or remedies of the Bank contained therein.

§18. General. 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 clause or provision of this Agreement in any jurisdiction. The headings of each section of this Agreement are for convenience only and shall not define or limit the provisions thereof. The Assignor acknowledges receipt of a copy of this Agreement. This Agreement and any amendment hereof may be executed in several counterparts and by each party on a separate counterpart, each of which when so executed and delivered shall be an original but all of which together shall constitute one instrument. In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart signed by the party against whom enforcement is sought.

§19. Modifications in Writing. This Agreement is subject to modification only by a writing signed by the parties, except as provided in §6.

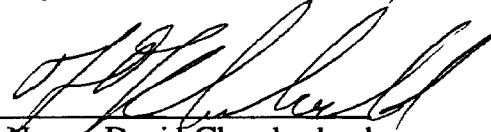
§20. Successors and Assigns. The benefits and burdens of this Agreement shall inure to the benefit of and be binding upon the respective successors and permitted assigns of the parties and the Banks.

§21. Governing Law. THE VALIDITY AND INTERPRETATION OF THIS AGREEMENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES SHALL BE GOVERNED BY THE LAWS OF THE COMMONWEALTH OF


MASSACHUSETTS. THIS AGREEMENT IS INTENDED TO TAKE EFFECT AS A SEALED INSTRUMENT.

IN WITNESS WHEREOF, this Agreement has been executed as of the day and year first above written.

**NEW VISION MICROELECTRONIC
MANUFACTURING SYSTEMS, INC**

By: 
Name: David Chamberland
Title: Treasurer

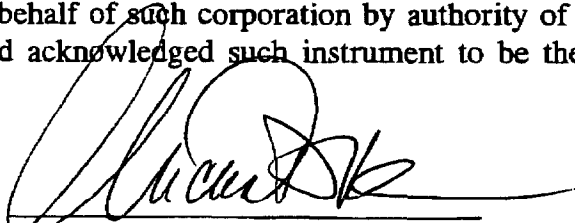
USTRUST

By: 
Name: Margaret V. Dion
Title: Vice President

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OF MASSACHUSETTS)
) SS
COUNTY OF MIDDLESEX)

Before me, the undersigned, a Notary Public in and for the county aforesaid, on this 23rd day of October 1998, personally appeared David Chamberland, Treasurer to me known personally, and who, being by me duly sworn, deposes and says that he is the Treasurer of NEW VISION MICROELECTRONIC MANUFACTURING SYSTEMS, INC., and that such instrument was signed and sealed on behalf of such corporation by authority of its Board of Directors, and such David Chamberland acknowledged such instrument to be the free act and deed of such corporation.

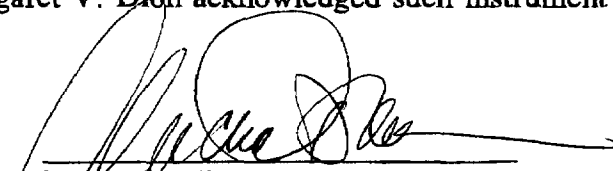


Notary Public
My Commission Expires:

CERTIFICATE OF ACKNOWLEDGMENT

COMMONWEALTH OF MASSACHUSETTS)
) SS
COUNTY OF SUFFOLK)

Before me, the undersigned, a Notary Public in and for the county aforesaid, on this 23rd day of October 1998, personally appeared Margaret V. Dion to me known personally, and who, being by me duly sworn, deposes and says that she is the Vice President of USTrust and that such instrument was signed and sealed on behalf of such bank by authority of its Board of Directors, and such Margaret V. Dion acknowledged such instrument to be the free act and deed of such corporation.



Notary Public
My Commission Expires:

SCHEDULE A

Trademarks

TRADEMARK: MONO-LITH®
COUNTRY: UNITED STATES
FILING DATE: 12/8/89
FILING NUMBER: 74/009120
GRANT DATE: 9/18/90
GRANT NUMBER: 1613654

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