

12-15-1999

FORM PTO-1594 (Rev. 8-93)

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

RECORD 1 TRA



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U.S. DEPARTMENT OF COMMERCE Patent and Trademark Office

Tab settings

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

1. Name of conveying party(ies):

Triple Point Technology, Inc.

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

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

3. Nature of conveyance:

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

Execution Date: October 26, 1999

2. Name and address of receiving party(ies)

Name: First Union National Bank

Internal Address:

Street Address: 300 Main Street

City: Stamford State: CT ZIP: 06904

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

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 patent number(s):

A. Trademark Application No.(s)

See attached Schedule "A"

B. Trademark Registration No.(s)

See attached Schedule "A"

Additional numbers attached? Yes No

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

Name: Michael Smith, Esq.

Internal Address: Shipman & Goodwin LLP

Street Address: One Landmark Square

City: Stamford State: CT ZIP: 06901

6. Total number of applications and registrations involved:

11

7. Total fee (37 CFR 3.41).....\$ 240.00

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

01 FC:481 02 FC:482

40.00 OP 250.00 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.

Name of Person Signing

Signature

Date

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

11

Mail documents to be recorded with required cover sheet information TRADEMARK

REEL: 001998 FRAME: 0769

**SCHEDULE A**

<b>Mark</b>	<b>Application/Serial Number</b>
Options Booster	75/401,943
Tempest 2000	Registration #2,240,452
Tempest Trader	75/401,945
Tango	75/519,188
Franklin	75/401,275
Franklin 2000	*
Interflex 2000	*
Physical Booster	2,227,883
Triple Point Technology (Class No. 42)	75/567,083
Triple Point Technology (Class No. 9)	75/567,081
Misc. Design (Class No. 42)	75/567,084
Misc. Design (Class No. 9)	75/567,082
PowerSavant	75/500,820

\*Applicant Process Pending.

**PATENT AND TRADEMARK SECURITY AGREEMENT**

AGREEMENT dated as of the 26<sup>th</sup> day of October, 1999, by **TRIPLE POINT TECHNOLOGY, INC.**, a Delaware corporation, having an office at 301 Riverside Avenue, Westport, Connecticut 06880 (the "Borrower") and **FIRST UNION NATIONAL BANK**, with an office at 300 Main Street Stamford, Connecticut 06904 (the "Lender").

**WITNESSETH:**

**WHEREAS**, pursuant to the terms and provisions of a certain Loan Agreement dated March 5, 1999 (the "Loan Agreement") and documentation related thereto (collectively, the "Loan Documents") between the Borrower and the Lender, the Lender has agreed to make loans to the Borrower in a maximum amount of \$3,000,000 (collectively, the "Loans"); and

**WHEREAS**, the Lender believes that the Borrower has failed to provide to the Lender timely and/or in form acceptable to the Lender as provided in the Loan Agreement, audited annual financial statements for the fiscal year ended December 31, 1998, quarterly statements for the three months ended March 31, 1999, and monthly Accounts Payable and Accounts Receivable agings, and the Borrower disputes the Lender's aforementioned belief; and

**WHEREAS**, notwithstanding the aforementioned, the Borrower and the Lender have agreed to resolve the dispute without resorting to litigation by agreeing that the Lender will waive such disputed noncompliance and the Borrower will: (i) comply with all financial reporting requirements under and for the term of the Loan Agreement; (ii) reaffirm its obligations under the Loan Documents; and (iii) grant to the Lender additional interests in property of the Borrower that may not be included in the Collateral as defined in the Loan Documents; and

**WHEREAS**, the Borrower agrees that payment of the Loans and the performance of any other obligations of the Borrower to the Lender pursuant to the Loan Documents or any other obligations of the Borrower to the Lender, whether now existing or hereafter arising (collectively the "Obligations") are to be secured by, among other things, the security interests created hereby.

**NOW THEREFORE**, to induce the Lender to enter into the Loan Agreement and to induce the Lender to make its extensions of credit to the Borrower under the Loan Agreement and in consideration of the mutual covenants and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Borrower and the Lender, intending to be bound legally, agree as follows:

1. Grant of Security Interest. To secure payment and performance of the Obligations, the Borrower pledges, assigns and grants to the Lender a continuing security interest in and first priority lien on: (i) all of the Borrower's patents, copyrights and trademarks, servicemarks,

computer programs, including without limitation, source codes, object codes, registrations therefor and the goodwill and other rights associated therewith (including, but not limited to, those listed on the attached SCHEDULE A) (the "Intellectual Property"), (ii) all common law rights to the Intellectual Property, (iii) the right to sue in the Lender's own name or joined with the Borrower, for past, present or future infringements thereof, (iv) all reissues, renewals and extensions thereof, (v) all rights corresponding to any of the foregoing throughout the world, (vi) all whether now existing or hereafter arising, and (vii) all proceeds of any of the foregoing, (collectively, including the Intellectual Property, the "Collateral"). Without limiting the generality of the foregoing, the Borrower further grants, assigns and conveys to the Lender an exclusive license under and to the Collateral for the purpose of enforcing all of the Lender's rights and remedies under this Agreement and the Loan Documents. Any right to sue shall be discretionary and not an obligation of the Lender.

2. Covenants and Warranties of the Borrower. The Borrower covenants and warrants that:

(a) the Intellectual Property is subsisting and has not been adjudged invalid or unenforceable, in whole or in part;

(b) to the Borrower's knowledge, each item of Intellectual Property is valid and enforceable;

(c) to the Borrower's knowledge, the Borrower is the sole and exclusive owner of the entire and unencumbered right, title and interest in and to each item of Intellectual Property, free and clear of any liens, security interests, or infringements of any nature whatsoever, except as set forth on the attached SCHEDULE B;

(d) the Borrower has the unqualified right to enter into this Agreement and perform its terms;

(e) the Borrower will, within its reasonable business judgment, warrant and defend, the title to the Collateral and the lien of the Lender therein against all infringements thereof and all claims of all persons;

(f) the Borrower shall not permit or suffer to exist any lien or security interest upon the Collateral, except for the security interest granted herein, without written permission from the Lender, not to be unreasonably withheld; and

(g) until the Obligations have been satisfied in full, the Borrower will not, inconsistent with this Agreement, sell, assign or transfer its interests in the Intellectual Property or enter into any agreement with respect thereto.

3. Additional Intellectual Property. If, before the Obligations shall have been satisfied in full, the Borrower shall obtain rights to any new Intellectual Property or become entitled to the benefit of any Intellectual Property application or any reissue, renewal and

extension of any Intellectual Property, the Borrower shall give to the Lender prompt notice thereof in writing and the provisions of this Agreement shall apply thereto.

4. Modifications. The Borrower authorizes the Lender to modify this Agreement by amending SCHEDULE A to include any renewals, extensions or additions to any Intellectual Property utilized by the Borrower or applied for or obtained hereafter and any renewals, extensions, or additions thereto and any improvements thereon.

5. Power of Attorney. The Borrower hereby authorizes the Lender to act as the Borrower's true and lawful attorney-in-fact, with power to execute, acknowledge, deliver, file, register, record, and deposit any and all further instruments required by law or reasonably necessary to confirm or further assure the interest of the Lender hereunder, including but not limited to filings with the United States Patent and Trademark Office and the United States Copyright Office.

6. Maintenance of Intellectual Property. The Borrower will take all necessary steps, within its reasonable business judgment, including in any proceeding before the United States Patent and Trademark Office or any similar office or agency in any other country or any political subdivision thereof, to maintain and pursue any application (and to obtain the relevant registration) filed with respect to, and to maintain any registration of, all of the Intellectual Property, including the filing of applications for renewal, affidavits of use, affidavits of incontestability and opposition, interference and cancellation proceedings.

7. Release of Lien. At such time as the Borrower shall completely satisfy all of the obligations under the Loan Agreement, the Lender shall execute and deliver to the Borrower all deeds, releases, assignments and other instruments as may be necessary or proper to re-vest in the Borrower full rights and title to the Collateral, subject to any disposition thereof that may have been made by the Lender pursuant hereto.

8. Events of Default. An Event of Default shall mean (i) failure of the Borrower to fully comply with any of the terms contained herein, and (ii) the occurrence of an Event of Default under the Loan Documents, as such term is defined therein, which definition is incorporated herein by reference.

9. Remedies. If one or more Events of Default shall have occurred, the Lender shall have, in addition to all other rights and remedies given it by this Agreement and the 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 in which the Collateral may be located. All of the Lender's rights and remedies with respect to the Collateral, whether established hereby or by the Loan Documents, or by any other agreements or by law shall be cumulative and may be exercised singularly or concurrently. Without limiting the generality of the foregoing, the Lender may immediately, without demand of performance and without other notice or demand whatsoever to the Borrower, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon, in Connecticut or elsewhere, the whole or from time to time any part of the Intellectual Property, or any interest the

Borrower may have therein, and after deducting therefrom the proceeds of sale or other disposition of the Intellectual Property all expenses (including all expenses for brokers' fees and legal services), shall apply the residue of such proceeds toward payment of the Borrower's obligations under the Loan Agreement. Any remainder of the proceeds after payment in full of the Borrower's obligations under the Loan Agreement shall be paid over to the Borrower. At any such sale or other disposition of the Intellectual Property, the Lender may, to the extent permitted under applicable law, purchase the whole or any part of the Intellectual Property, free from any right or redemption on the part of the Borrower, which right is hereby waived and released.

10. Additional Rights of the Lender. After the occurrence of an Event of Default, the Lender shall have the right, but shall not be obligated, to bring suit in its own name to enforce its rights in the Collateral and any license thereunder, in which event the Borrower shall at the request of the Lender do all lawful acts and execute all proper documents required by the Lender in aid of such enforcement and the Borrower shall promptly, upon demand, reimburse and indemnify the Lender for all costs and expenses incurred by the Lender in the exercise of its rights under this Agreement.

11. No Waiver. No failure on the part of the Lender to exercise, and no delay in exercising any right, remedy or power hereunder shall operate as a waiver thereof, and any single or partial exercise by the Lender of any right, remedy or power hereunder shall not preclude any other or future exercise of any other right, remedy or power. Each and every right, remedy and power granted to the Lender or allowed it by law or other agreement, shall be cumulative and not exclusive of any other, and may be exercised by the Lender from time-to-time.

12. Further Assurances; Filing. The Borrower agrees to execute and deliver to the Lender Uniform Commercial Code financing statements and such other documents, instruments, supplemental security agreements and chattel mortgages as the Lender may deem necessary, proper or desirable in obtaining the benefits of this Agreement. In the event the Borrower does not provide the Lender with such statements within 5 days after the same are requested, the Borrower authorizes the Lender to effect any filing or recording of any such financing statement or statements relating to the Collateral or amendments thereto without the signature of the Borrower, and appoints the Lender as its attorney-in-fact to execute any such financing or other statements in the name of the Borrower, and to perform all other acts which the Lender deems appropriate to perfect and continue the security interests in, and to protect and preserve, the Collateral. The Borrower assigns to the Lender its rights in or under any financing statements relating to the Collateral and filed in favor of the Borrower.

13. Expenses. The Borrower agrees that all costs and expenses, including reasonable attorneys' fees and expenses for legal services of every kind of, or incidental to, the preparation or filing or recording of any documents, including all taxes in connection therewith, in public offices, the payment or discharge of any taxes, custody, care, management, sale or collection of, or realization upon, any of the Collateral or in any way relating to the enforcement or protection of the rights of the Lender, or in defending or prosecuting any actions or proceedings arising or related to the Collateral, shall all be borne and paid by the Borrower within 5 days of demand by the Lender and if not paid within such time shall become part of the Obligations secured hereby.

The Lender may at any time apply to the payment of all such costs and expenses all moneys of the Borrower or other proceeds arising from the possession or disposition of the Collateral.

14. Notices. All notices, requests, approvals, demands and other communications given or made in connection with the terms and provisions of this Agreement shall be deemed to have been given or made when sent in accordance with the provisions of the Loan Agreement

15. Successors. All the provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the respective successors and assigns of the parties hereto.

16. 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.

17. Modification. Except as set forth in Section 4, this Agreement is subject to modification only by a writing signed by the parties hereto.

18. Law. The validity and interpretation of this Agreement and the rights and obligations of the parties shall be governed by and construed in accordance with the laws of the state of Connecticut and the Borrower irrevocably consents to the jurisdiction of the courts of the state of Connecticut and of any federal court located therein in connection with any actions or proceedings arising out of or related to this Agreement.

19. Jury Trial Waiver. THE BORROWER AND THE LENDER WAIVE TRIAL BY JURY IN ANY COURT AND IN ANY SUIT, ACTION OR PROCEEDING ON ANY MATTER ARISING IN CONNECTION WITH OR IN ANY WAY RELATED TO THE FINANCING TRANSACTIONS OF WHICH THIS AGREEMENT IS A PART OR THE ENFORCEMENT OF ANY OF THE LENDER'S RIGHTS AND REMEDIES. THE BORROWER AND THE LENDER ACKNOWLEDGE THAT THEY MAKE THIS WAIVER KNOWINGLY, VOLUNTARILY, WITHOUT DURESS AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER WITH THEIR ATTORNEYS.

The parties have executed this Agreement as of the day and year first written above.

Witnessed:

Sam [Signature]

TRIPLE POINT TECHNOLOGY, INC.

By: [Signature]

Name: Paul M' D'Amico

Title:

FIRST UNION NATIONAL BANK

By: [Signature]

Name: [Signature]

Title: [Signature]

Joanne E. Holcomb  
Joanne E. Holcomb

STATE OF CONNECTICUT) Town of  
) ss. West  
COUNTY OF FAIRFIELD )

Before me, the undersigned, this 26th day of Oct, 1999, personally appeared Paul M' D'Amico, known to me to be the Treasurer of TRIPLE POINT TECHNOLOGY, INC., and that he as such officer, signer and sealer of the foregoing instrument, acknowledged the execution of the same to be his free act and deed individually and as such officer, and the free act and deed of the corporation.

In Witness Whereof, I hereunto set my hand.

[Signature]

Notary Public  
My Commission Expires: 5/31/04  
Commissioner of the Superior Court



STATE OF CONNECTICUT)

) ss. John J. ...

COUNTY OF FAIRFIELD )

Before me, the undersigned, this 28th day of October, 1999, personally appeared William ..., known to me to be the Vice President of FIRST UNION NATIONAL BANK, and that he as such officer, signer and sealer of the foregoing instrument, acknowledged the execution of the same to be his free act and deed individually and as such officer, and the free act and deed of the corporation.

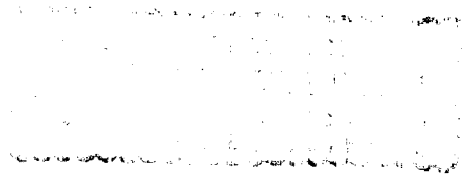
In Witness Whereof, I hereunto set my hand.

John J. ...

Notary Public

My Commission Expires:

Commissioner of the Superior Court



SCHEDULE A

<b>Mark</b>	<b>Application/Serial Number</b>
Options Booster	75/401,943
Tempest 2000	Registration #2,240,452
Tempest Trader	75/401,945
Tango	75/519,188
Franklin	75/401,275
Franklin 2000	*
Interflex 2000	*
Physical Booster	2,227,883
Triple Point Technology (Class No. 42)	75/567,083
Triple Point Technology (Class No. 9)	75/567,081
Misc. Design (Class No. 42)	75/567,084
Misc. Design (Class No. 9)	75/567,082
PowerSavant	75/500,820

\*Applicant Process Pending.

Copyrights:

<b>Title of Work</b>	<b>Reg. No.</b>
Forward Curves Window for Risk Analysis Program	TX 4-799-852
Manshell for Risk Analysis Program	TX 4-799-853
Value at Risk Calculator for Risk Analysis Program	TX 4-799-854
Core Routine File for Risk Analysis Program	TX 4-799-855

## SCHEDULE B

The Borrower is a party to a Development and License Agreement, dated April 15, 1998, with Hess Energy Trading Company, L.L.C. and PFS TradersTools LLC pursuant to which the Borrower has granted a security interest to each of the other parties in the software to be developed pursuant to this Agreement to secure its contingent obligation to pay royalties, if and when such software is licensed to third parties.

The Borrower is a party to a Software Finance Agreement dated June 11, 1999 with International Software Finance Corporation ("ISF") pursuant to which the Borrower has consented to the pledge by a licensee of the Borrower who enters into a financing agreement with ISF of such licensee's rights in the Borrower's Licensed Software. ISF expressly acknowledges that ISF has no interest in the Licensed Software and, if and to the extent that, ISF realizes under the pledge, than all right, title and interest in the license shall revert to the Borrower.