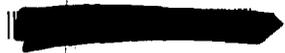


IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

CENDIAN CORPORATION, )  
)  
Petitioner, )  
)  
v. )  
)  
QUENDIAN INTERNATIONAL, INC., )  
)  
Applicant. )



06-17-2003

U.S. Patent & TMO/TM Mail Rpt Dt. #22

OPPOSITION NO. 91155249

**CONFIDENTIALITY STIPULATION**

The discovery sought by the parties in the above-styled proceeding is likely to involve production of documents and things containing confidential information and witness testimony containing confidential information. Accordingly, the parties hereby agree to enter into this Confidentiality Stipulation to govern the production of documents and testimony that contains confidential information and agree to be mutually bound by its terms.

**Definitions**

1. All words or phrases have their ordinary dictionary definition unless defined below.
2. "Party" or "Parties" means any parent, subsidiary or affiliate corporation of the named parties, their successors-in-interest and predecessors-in-interest, and their employees, agents and representatives.
3. "Person" means any legal or natural person directed to produce documents or information in this litigation.

4. "Outside Counsel" means a firm of attorneys with clients other than a party hereto, none of whose members or associates are employees, officers, directors, or owners in any capacity of a party hereto and whose offices are not located on the premises of a party hereto.

5. "Independent Expert" and "Independent Consultant" mean a person who is not an employee, officer, director, or owner in any capacity of a party and who is retained by a party or a party's outside counsel for the purpose of assisting in this litigation.

6. "Confidential Information" means information in written, oral, electronic or other form, whether it be a document, information contained in or derived from a document, information revealed during a deposition, or information revealed in responding to a discovery request, that:

- (a) a party or person believes, in good faith, reveals business, competitive, proprietary, trade secret or other information of a sensitive nature about the party (or of another person which information the party is under a duty to maintain in confidence); and
- (b) a party or person designates as "Confidential" in accordance with this Confidentiality Stipulation.

7. "Confidential-Attorney's Eyes Only" means information in written, oral, electronic or other form, whether it be a document, information contained in or derived from a document, information revealed during a deposition, or information revealed in responding to a discovery request, that:

(a) a party or person believes, in good faith, reveals business, competitive, proprietary, trade secret or other information of a highly sensitive nature about the party (or of another person which information the party is under a duty to maintain in confidence); and

(b) a party or person designates as "Confidential-Attorney's Eyes Only" in accordance with this Confidentiality Stipulation.

8. "Protected Information" means both Confidential Information and Confidential-Attorney's Eyes Only Information.

9. "Litigation" means this Opposition Proceeding, Opposition No. 91155249.

10. "TTAB" means the Trademark Trial and Appeal Board of the United States Patent and Trademark Office.

#### **Designation of Protected Information**

11. *Designation of Tangible Material.* Documents and other tangible material claimed to be or to contain Protected Information shall, prior to production, be marked by the producing party as "Confidential" or "Confidential-Attorney's Eyes Only." Placement of the "Confidential" or "Confidential-Attorney's Eyes Only" designation on each protected page or on the initial page of a protected document when it is produced shall constitute the notice and shall designate the document as Confidential or Confidential-Attorney's Eyes Only material. Copies, extracts, summaries, notes, and other derivatives of Confidential or Confidential-Attorney's Eyes Only material also shall be deemed Confidential or Confidential-Attorney's Eyes Only material and shall be subject to the provisions of this Confidentiality Stipulation. The foregoing sentence,

however, does not include indices or other documents that do not contain the substantive Protected Information.

12. *Designation of Intangible Material.* Intangible material claimed to be or contain Protected Information shall be designated by the producing party as “Confidential” or “Confidential-Attorney’s Eyes Only” in a writing provided to the receiving party at the time of production.

13. *Subsequent Designation.* Documents produced in the litigation that are not identified as Protected Information when they were initially produced may within a reasonable time thereafter be designated as Confidential or Confidential-Attorney’s Eyes Only by the producing party, or by the party or parties receiving the production, or by a person, by providing written notice to counsel for all other parties and to any person who may be involved. Each party or person who receives such written notice shall endeavor to retrieve any Protected Information that may have been disseminated, shall affix a “Confidential” or “Confidential-Attorney’s Eyes Only” designation to it, as the case may be, and shall thereafter distribute it only as allowed by this Confidentiality Stipulation. No distribution prior to the receipt of such written notice shall be deemed a violation of this Confidentiality Stipulation.

14. *Designation of Interrogatory Responses.* If an answer to an interrogatory is to contain Protected Information, such Protected Information shall be stated on a separate page to be incorporated by reference in the body of the interrogatory response. Only the separate page containing the Protected Information shall be designated as “Confidential” or “Confidential-Attorney’s Eyes Only” as provided in this Confidentiality Stipulation.

15.           *Designation of Depositions.* Depositions or portions thereof upon oral or written questions may be classified as Protected Information either by an examining party's attorney or by an attorney defending or attending the deposition. The testimony and the transcript of that testimony are to be treated as Confidential until thirty (30) days after receipt of the transcript by counsel for the disclosing party. At that time, the transcript, to the extent not designated as "Confidential" or "Confidential-Attorney's Eyes Only" in a writing served on other counsel, shall be considered Nonconfidential. If only a portion of a deposition is designated as Confidential or Confidential-Attorney's Eyes Only: (a) the Confidential-Attorney's Eyes Only portion(s) shall be transcribed and bound separately from a complete version of such deposition and shall be labeled "Confidential-Attorney's Eyes Only" and treated as such pursuant to this Confidentiality Stipulation, (b) the Confidential portion(s) shall be transcribed and bound separately from a complete version of the deposition and shall be labeled "Confidential" and treated as such pursuant to this Confidentiality Stipulation, (c) the portions that do not contain Protected Information shall be transcribed and bound separately from a complete version of the transcript, and (d) the complete version shall be labeled "Confidential-Attorney's Eyes Only" and treated as Confidential-Attorney's Eyes Only material pursuant to this Confidentiality Stipulation.

16.           *Designation not Determinative.* The fact that information or material has been designated Confidential or Confidential-Attorney's Eyes Only is not determinative of whether such information is, in fact, entitled to be deemed as such.

17.           *Modification of Designation.* The designation of Protected Information by the producing party shall not be determinative and may be modified or eliminated at any time in

three ways, as explained below, provided that the parties or persons must negotiate in good faith regarding any disputes over designation of Protected Information before presenting the dispute to the TTAB.

- (a) The producing party or person may, on its own accord, downgrade or eliminate the Confidential or Confidential-Attorney's Eyes Only designation on any information or material it produced.
- (b) The receiving party or person may request in writing that the producing party downgrade or eliminate the Confidential or Confidential-Attorney's Eyes Only designation on any information or material and the producing party or person may, but is not required to, downgrade such information.
- (c) If the parties or persons cannot agree as to the designation of any particular information or material, the receiving party or person may move the TTAB to downgrade or eliminate the Confidential or Confidential-Attorney's Eyes Only designation. The burden of proving that the information has been properly designated as protected shall be on the party or person who made the original designation.

18. *Information that is Not Protected.* Information shall not be protected and shall not be designated as such if:

- (a) at the time of the production or disclosure, such information is in the public domain, as evidenced by a written document;
- (b) such information, through no wrongful act or fault of the receiving party, subsequently becomes part of the public domain;

- (c) at the time of the production or disclosure, the receiving party can show it already lawfully possessed such information; or
- (d) such information is disclosed to the receiving party by a person without breach of an obligation of confidence by the person to the producing party.

Any party desiring to disclose designated Protected Information on the grounds that such information does not constitute Protected Information pursuant to the terms of this paragraph must, prior to disclosing the designated Protected Information, obtain written permission from the designating party or a court order permitting such disclosure.

#### **Access to Protected Information**

19. *General Access.* Except as otherwise expressly provided herein or ordered by the TTAB, Protected Information may be revealed only as follows:

- (a) To the TTAB and TTAB staff.
- (b) To outside counsel for a party hereto, provided that outside counsel who are not of record first must sign and deliver to counsel of record for each other party or parties a letter in the form of Exhibit A hereto, before being permitted access to Protected Information.
- (c) To secretaries, paralegals, and other staff employed in the offices of such outside counsel who are working on the case.
- (d) To court reporters transcribing a deposition, hearing, or other proceeding in this matter as provided in paragraph 21 below.

- (e) To witnesses who, at the time they testify or are deposed, are employed by or retained by the party that produced the Protected Information or designated the information as protected.
- (f) To witnesses in depositions other than those employed or retained by the producing party, subject to the terms of paragraph 25 below.
- (g) To independent experts and independent consultants retained by counsel in good faith to assist in the preparation, settlement, or trial of this case, but only if the following conditions are met: a party who proposes to reveal Protected Information to any independent expert or independent consultant shall, before revealing any Protected Information to such person, obtain an agreement in the form of Exhibit A hereto signed by such person.
- (h) To such other persons as hereafter may be agreed upon in writing or on the record among counsel for all parties and who sign Exhibit A attached hereto.

20. *Officer/Director Access.* Information designated Confidential, but not Confidential-Attorney's Eyes Only, may also be revealed to officers, directors, and employees of any party, provided that, prior to such disclosure, outside counsel of record for all other parties in the action shall have received an agreement in the form of Exhibit A hereto signed by the officer, director, or employee who is to be granted access to the Confidential Information.

21. *No Copies/Notes.* Except for internal use by outside counsel for the parties hereto, for TTAB and deposition copies, and for such use as is expressly permitted under the terms hereof, no person granted access to Protected Information shall make copies,

reproductions, transcripts, or facsimiles of the same or any portion thereof or shall take notes or otherwise summarize the contents of such Protected Information.

22.           *Agreements to Provide Access.* The parties may agree in writing to permit access to Protected Information to persons not otherwise granted access by the terms of this Confidentiality Stipulation. The writing must identify the particular person to whom the Protected Information will be disclosed and specify, by Bates number if possible, the Protected Information to be disclosed. Prior to such disclosure, outside counsel of record for all parties in the action must have received an agreement in the form of Exhibit A hereto signed by the particular person.

23.           *Access by Court Reporters.* Excluding court proceedings or court-appointed court-reporters or transcribers, any court reporter or transcriber who reports or transcribes testimony in this litigation shall agree by a statement on the record, before recording or transcribing any such testimony, that all testimony and information revealed at the deposition is and shall remain confidential. The reporter or transcriber shall further affirm that such information will not be disclosed by such reporter or transcriber except to the attorneys for each party, and copies of any transcript, reporter's notes or any other transcription records of any such testimony shall be retained in absolute confidentiality by such reporter or transcriber or shall be delivered to the undersigned attorneys.

24.           *Disputes over Access.* If a dispute arises as to whether a particular person should be granted access to Protected Information, the party seeking disclosure may move the TTAB to permit the disclosure. The party seeking to disclose Protected Information to a

particular person shall have the burden of persuasion, although the designating party shall always have the burden of persuasion as to the propriety of the designation.

### **Use of Protected Information**

25. *Use in this Litigation Only.* Protected information may be used only for purposes of this litigation, or to enforce any party's legal rights at issue in this litigation, and specifically shall not be used or referred to, directly or indirectly, (a) for any business or competitive purpose, (b) for publicity, (c) in any advertising, or (d) in any material disseminated to any person not authorized to receive such material under the terms hereof, except as set forth above and in this Confidentiality Stipulation. Each person to whom the disclosure of any Protected Information is made shall not, directly or indirectly, use, disclose, or disseminate, or attempt to use, disclose, or disseminate, any of the same except as expressly provided herein.

26. *Use at Depositions.* No party that has designated information or material as Confidential or Confidential-Attorney's Eyes Only shall examine a witness about that Protected Information unless the witness has knowledge of or had access to the Protected Information prior to the deposition. If Protected Information is to be discussed or disclosed during a deposition, the producing party shall have the right to exclude from attendance at the deposition, during the time the Protected Information is to be discussed, any person not entitled under this Confidentiality Stipulation to receive the Protected Information.

27. *Use at TTAB Hearings and Trial.* Subject to the Federal Rules of Evidence, Protected Information may be offered into evidence at trial or at any hearing or oral argument, provided that the proponent of the evidence containing Protected Information gives

reasonable advance notice to the TTAB and counsel for the producing or designating party. Any party may move the TTAB for an order that the evidence be received *in camera* or under other conditions to prevent unnecessary disclosure, including, but not limited to, removal from the courtroom of persons not authorized by this Confidentiality Stipulation to receive Protected Information. If presented at trial, the status of evidence as Protected Information shall not be disclosed to the finder of fact.

#### **Other Provisions**

28. *Filing Under Seal.* Each document filed with the TTAB that contains any Protected Information shall be filed in a sealed envelope or other appropriate sealed container on which shall be set forth the title and number of this action, a general description or title of the contents of the envelope, and a statement that the contents are Confidential or Confidential-Attorney's Eyes Only and subject to a Confidentiality Stipulation and that the envelope is not to be opened nor the contents thereof revealed except to counsel of record in the case or court personnel, or pursuant to order of the Court. Copies of such documents served on counsel for other parties shall be marked as Confidential or Confidential-Attorney's Eyes Only.

29. *Maintaining Sealed Documents.* The clerk is directed to maintain under seal all documents and transcripts of deposition testimony designated as Protected Information that are filed in this litigation.

30. *Reasonable Precautions.* Counsel for each party shall take reasonable precautions to prevent unauthorized or inadvertent disclosure of any Protected Information.

31. *Storage.* Protected Information subject to the terms of this Confidentiality Stipulation shall, when not in use, be stored in a such a manner that persons not in the employment or service of those possessing Protected Information will be unlikely to obtain access to the Protected Information.

32. *Return/Destruction After Litigation.* Within sixty (60) days of the final termination of this litigation by judgment, appeal, settlement, or otherwise, or sooner if so ordered by the TTAB, counsel for each party shall return to counsel for the party who furnished the same (or shall supervise and certify the destruction of), all items constituting, containing, or reflecting the other party's Protected Information; provided, however, that outside counsel for each party may retain one set of the Protected Information for their files.

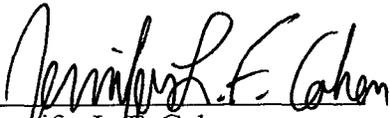
33. *Continuing Obligation.* Neither the termination of this action nor the termination of the employment, engagement, or agency of any person who had access to any Protected Information shall relieve any person from the obligation of maintaining both the confidentiality and the restrictions on use of any Protected Information disclosed pursuant to this Confidentiality Stipulation. The TTAB shall retain jurisdiction to enforce the terms of this Confidentiality Stipulation.

34. *Not an Admission.* Nothing in this Stipulation or done by the parties pursuant to this Stipulation shall constitute an admission by the party, or shall be used as evidence, that information designated as Confidential or Confidential-Attorney's Eyes Only is actually Protected Information. Furthermore, nothing contained herein shall preclude the parties or a person from raising any available objection, or seeking any available protection with respect

to any Protected Information, including but not limited to the grounds of admissibility of evidence, materiality, trial preparation materials and privilege.

35.           *Effective Date.* This Confidentiality Stipulation shall serve as a stipulation and agreement between the parties, and shall be effective immediately upon signature by counsel for all parties.

So stipulated and agreed this 6<sup>th</sup> day of June, 2003.



Jennifer L. Cohen  
Georgia Bar No. 174380

POWELL, GOLDSTEIN, FRAZER  
& MURPHY LLP

191 Peachtree Street, 16th Floor  
Atlanta, Georgia 30303-1741  
(404) 572-6600 phone  
(404) 572-6999 facsimile

Counsel for Cendian Corporation



John Cyril Malloy, III  
Florida Bar No. 964,220  
DAVID GAET FBN 176,567

MALLOY & MALLOY, P.A.

2800 S.W. 3<sup>rd</sup> Avenue  
Miami, Florida 33129  
(305) 858-8000 phone  
(305) 858-0008 facsimile

Counsel for Quendian International, Inc.

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

CENDIAN CORPORATION, )

Petitioner, )

v. )

OPPOSITION NO. 91155249

QUENDIAN INTERNATIONAL, INC., )

Applicant. )

**EXHIBIT A**

**AGREEMENT CONCERNING INFORMATION COVERED BY  
CONFIDENTIALITY STIPULATION**

I have been designated by \_\_\_\_\_ [PARTY NAME] \_\_\_\_\_ as a person who may have access to Confidential and/or Confidential-Attorney's Eyes Only information as those terms are defined in the Confidentiality Stipulation entered in the above-entitled consolidated proceeding.

Having read the Confidentiality Stipulation, I agree to comply fully with it and to be bound by its terms with respect to all Protected Information as defined therein. I agree not to copy or disclose to any nonqualified person or entity any Protected Information that has been disclosed to me.

If I violate any terms of that Confidentiality Stipulation with respect to the treatment of Protected Information, I agree to submit myself to the jurisdiction of the United States Patent and Trademark Office before the Trademark Trial and Appeal Board, for the purpose of enforcement of the terms of the Confidentiality Stipulation.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this \_\_\_\_\_ day of \_\_\_\_\_, 2003.

\_\_\_\_\_  
Name

\_\_\_\_\_  
Address

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Job Title

POWELL  
GOLDSTEIN  
FRAZER &  
MURPHY LLP  
ATTORNEYS AT LAW

ATLANTA ■ WASHINGTON

RESIDENT IN ATLANTA OFFICE  
DIRECT DIAL: (404) 572-6683  
JCOHEN@PGFML.COM

June 9, 2003



06-17-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

**VIA CERTIFIED MAIL/RETURN RECEIPT REQUESTED**

Commissioner for Trademarks  
2900 Crystal Drive  
Arlington, VA 22202  
Box TTAB

Re: In the United States Patent and Trademark Office  
Before the Trademark Trial and Appeal Board  
CENDIAN CORPORATION vs. QUENDIAN INTERNATIONAL, INC.  
**Opposition No. 91155249**

Dear Sir or Madam:

We request that the Court file the attached CONFIDENTIALITY STIPULATION in the record for the above-referenced Opposition.

Should you have any questions or concerns about the Stipulation, please contact me.

Sincerely,

Jennifer L. F. Cohen  
For Powell, Goldstein, Frazer & Murphy LLP

JLFC:djb  
Enclosure  
684659v1

03 JUN 20 AM 9:31  
REGISTERED MAIL AND  
CERTIFIED MAIL