

04-26-2001

FORM PTO-1594
1-31-92



U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

To the Honorable Commissioner of I

1. Name of conveying party(ies):

101688415

ached original documents or copy thereof.

address of receiving party(ies):

OptiMark US Equities, Inc.

Softbank Capital Partners LP
1188 Centre Street, Newton, MA 02459

4.1301

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

- Individual(s) citizenship: _____
- Association _____
- General Partnership _____
- Limited Partnership -- Delaware _____
- Corporation - _____
- Other: _____

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

3. Nature of conveyance:

- Assignment Merger
- Security Agreement Change of Name
- 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

Execution Date: April 11, 2001

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

A. Trademark Application No.(s)
See attached Schedule A.

B. Trademark Registration No.(s)
See attached Schedule A.

2327047

Additional numbers attached? Yes No

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

Name: William Harmon, Esq.
Internal Address:
Street Address: Vierra Magen Marcus Harmon & DeNiro LLP
685 Market Street, Suite 540
City: San Francisco **State:** California **Zip:** 94105
Telephone: 415-369-9660 x206

6. Total number of applications and registrations involved:..... [17]

7. Total fee (37 CFR 3.41): \$680
 Enclosed
 Deficiency, if any, authorized to be charged to deposit account

8. Deposit account number: 50-1056
(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.

Signature Neil G. Cohen
Name: Neil G. Cohen, Reg. No. 35,100

April 12, 2001

Total number of pages comprising cover sheet: [3]
Total number of pages: [23]

Do not detach this portion

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

Commissioner of Patents and Trademarks
Box Assignments
Washington, D.C. 20231

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: 002280 FRAME: 0650

ADDITIONAL NAMES AND ADDRESSES OF RECEIVING PARTIES

Softbank Capital Advisors Fund LP
1188 Centre Street
Newton, MA 02459

and

Softbank Capital LP
1188 Centre Street
Newton, MA 02459

each a Delaware Limited Partnership

GENERAL GUARANTEE

GENERAL GUARANTEE, dated April 11, 2001, by OptiMark US Equities, Inc., a Delaware corporation (the "Guarantor"), in favor of each of SOFTBANK Capital Partners LP, SOFTBANK Capital Advisors Fund LP and SOFTBANK Capital LP (together "Softbank").

1. Guarantee. For value received, and to induce Softbank to make loans or otherwise extend credit from time to time to or for the account of OptiMark Holdings, Inc. (herein called the "Borrower"), the Guarantor unconditionally and irrevocably guarantees to Softbank, its successors, endorsees and assigns, the prompt payment when due of all obligations and liabilities of the Borrower on account of principal, interest (including interest at the Default Rate, as defined in the Loan Agreement hereinafter referred to), Costs and Fees (as defined in the Loan Agreement), obligations for indemnification and all other obligations and liabilities pursuant to the Loan Agreement, dated as of April 11, 2001 (the "Loan Agreement"), between the Borrower and Softbank and the Related Documents (as defined in the Loan Agreement) (the "Obligations"). Notwithstanding the foregoing, if the obligations of the Guarantor hereunder would otherwise be held or determined to be void, invalid or unenforceable on account of the amount of its liability under this Guarantee, then notwithstanding any other provision of this Guarantee to the contrary, the amount of such liability shall, without any further action by the Guarantor or any other person, be automatically limited and reduced to the highest amount which is valid and enforceable as determined in such action or proceeding.

2. Absolute Guarantee. The Guarantor's obligations hereunder shall not be affected by the genuineness, validity, regularity or enforceability of the Obligations or any instrument evidencing any Obligations, or by the existence, validity, enforceability, perfection, or extent of any collateral therefor or by any other circumstance relating to the Obligations which might otherwise constitute a defense to this Guarantee. Softbank makes no representation or warranty in respect to any such circumstance and has no duty or responsibility whatsoever to the Guarantor in respect to the management and maintenance of the Obligations

or any collateral therefor. Softbank shall not be obligated to file any claim relating to the Obligations in the event that the Borrower becomes subject to a bankruptcy, reorganization or similar proceeding, and the failure of Softbank to so file shall not affect the Guarantor's obligations hereunder. This Guarantee shall remain in full force and effect and continue to be effective should any petition be filed by or against the Borrower for liquidation or reorganization, should the Borrower become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of the Borrower's assets, and shall, to the fullest extent permitted by law, continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Obligations, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored, returned or forfeited by Softbank whether as a "voidable preference," "fraudulent transfer," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored, returned or forfeited, the Obligations shall, to the fullest extent permitted by law, be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored, returned or forfeited.

The Guarantor represents that it has made its own credit analysis with respect to the Borrower and the Obligations and has made such arrangements with the Borrower not inconsistent with the provisions hereof as it has deemed appropriate. The Guarantor further represents that it has full power and authority to execute, deliver and perform this Guarantee in accordance with its terms.

3. Consents, Waivers and Renewals. The Guarantor agrees that Softbank may at any time and from time to time, either before or after the maturity thereof, without notice to or further consent of the Guarantor extend the time of payment of, exchange or surrender any collateral for, or renew any of the Obligations, and may also make any agreement with the Borrower or with any other party to or person liable on any of the Obligations, or interested therein, for the extension, renewal, payment, compromise, discharge or release thereof, in whole or in part, or for any modification of the terms thereof or of any agreement between Softbank and the Borrower or any of such other party or person, without in any way impairing or affecting this

Guarantee. The Guarantor agrees that Softbank may resort to the Guarantor for payment of any of the Obligations, whether or not Softbank shall have resorted to any collateral security, or shall have proceeded against any other obligor principally or secondarily obligated with respect to any of the Obligations.

The Guarantor hereby agrees that its obligations hereunder shall be unconditional, irrespective of the validity, regularity or enforceability of the Loan Agreement or the Related Documents, the absence of any action to enforce the foregoing, any election by Softbank in any proceeding under the U.S. Bankruptcy Code, any borrowing or grant of a security interest by the Borrower, as debtor-in-possession, under the U.S. Bankruptcy Code, the disallowance, under the U.S. Bankruptcy Code, of all or any portion of the claims of Softbank for payment of the Obligations, any waiver of consent by Softbank with respect to any provisions of the Loan Agreement or of any Related Documents, the obtaining of any judgment against Borrower or any action to enforce the same or any other circumstances which might otherwise constitute a legal or equitable discharge or defense of a guarantor. The Guarantor hereby waives the benefits of diligence, presentment, demand of payment, or exhaustion of any right or the taking of any action against the Borrower or any other Person, filing of claims with a court in the event of insolvency or bankruptcy of the Borrower, any right to require a proceeding first against the Borrower, protest or notice with respect to the Loan Agreement or the Related Documents and all demands whatsoever, and covenants that this Guarantee will not be discharged except by complete performance of the obligations contained in the Loan Agreement and the Related Documents.

4. Security. The Guarantor hereby grants to Softbank a security interest in and lien on all Collateral (as defined below) of the Guarantor; and with respect to all of such Collateral, Softbank shall have all the rights and remedies of a secured party under the Uniform Commercial Code and under any other applicable law, as the same may from time to time be in effect in the State of New Jersey, in addition to those rights granted herein and in any other agreement now or hereafter in effect between the Guarantor and Softbank. "Collateral" shall mean all items described in Schedule A hereto.

The Guarantor has full corporate power and authority to enter into this Guarantee Agreement and to grant to Softbank a security interest therein as herein provided, all of which have been duly authorized by all necessary corporate action; the execution and delivery and the performance hereof are not in contravention of any charter or by-law provision or of any indenture, agreement or undertaking to which the Guarantor is a party or by which the Guarantor or its property are bound; this Guarantee Agreement constitutes the valid and legally binding obligation of the Guarantor enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization and other laws of general applicability relating to or affecting creditors' rights and, as to enforcement, to general equity principles.

As long as any amount remains unpaid on any of the Obligations, the Guarantor will not enter into or execute any security agreement or any financing statement covering the Collateral, other than those security agreements and financing statements in favor of Softbank hereunder, and further will not file in any public office any financing statement or statements (or any documents or papers filed as such) covering the Collateral, other than financing statements in favor of Softbank hereunder, unless in any case the prior written consent of Softbank shall have been obtained.

The Guarantor authorizes Softbank to file, in its discretion, in jurisdictions where this authorization will be given effect, a financing statement signed only by Softbank covering the Collateral, and hereby appoints Softbank as the Guarantor's attorney-in-fact to sign and file any such financing statements covering the Collateral. At the request of Softbank, the Guarantor will join Softbank in executing such documents as Softbank may reasonably determine, from time to time to be necessary or desirable under provisions of any applicable Uniform Commercial Code in effect where the Collateral is located or where the Guarantor conducts business; without limiting the generality of the foregoing, the Guarantor agrees to join Softbank, at Softbank's request, in executing one or more financing statements in form reasonably satisfactory to Softbank, and the Guarantor will pay the costs of filing or recording the same, or of filing or recording this Guarantee Agreement, in all public offices at any time and from time to time, whenever filing or recording of any such financing statement

or of this Guarantee Agreement is reasonably deemed by Softbank to be necessary or desirable. In connection with the foregoing, it is agreed and understood between the parties hereto (and Softbank is hereby authorized to carry out and implement this agreement and understanding and the Guarantor hereby agrees to pay the costs thereof) that Softbank may, at any time or times, file as a financing statement any counterpart, copy or reproduction of this Guarantee Agreement.

Softbank may from time to time:

(a) Following the occurrence and during the continuance of an Event of Default, transfer any of the Collateral into the name of Softbank or its nominee.

(b) Following the occurrence and during the continuance of an Event of Default (as defined in the Loan Agreement), notify parties obligated on any of the Collateral to make payment to Softbank of any amounts due or to become due thereunder.

(c) Following the occurrence and during the continuance of an Event of Default, enforce collection of any of the Collateral by suit or otherwise; surrender, release or exchange all or any part thereof, or compromise or extend or renew for any period (whether or not longer than the original period) any obligation of any nature of any party with respect thereto, all to the extent reasonable; and exercise all other rights of the Guarantor in any of the Collateral, except as hereinafter provided with respect to income from or interest on the Collateral.

(d) Following the occurrence and during the continuance of an Event of Default, take possession or control of any proceeds of the Collateral.

Until the occurrence of an Event of Default, the Guarantor shall have the right to receive all income from or interest on the Collateral, and if Softbank receives any such income or interest prior to the occurrence of an Event of Default, Softbank shall pay the same promptly to the Guarantor. Upon the occurrence and during the continuance of an Event of Default, if Guarantor receives any income from or interest on the Collateral, the same shall be held by Guarantor in trust for Softbank in the same medium in

which received, shall not be commingled with any assets of Guarantor and shall be delivered to Softbank in the form received, properly endorsed to permit collection, not later than the next business day following the day of its receipt. Softbank shall apply the net cash received from such income or interest to payment of any of the Obligations, provided that Softbank shall account for and pay over to Guarantor any such income or interest remaining after payment in full of the Obligations then outstanding.

So long as no Event of Default shall have occurred and be continuing:

(i) The Guarantor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Collateral or any part thereof for any purpose not inconsistent with the terms of this Guarantee or the Loan Agreement; provided, however, that the Guarantor shall not exercise or refrain from exercising any such right pertaining to Pledged Securities if, in Softbank's reasonable judgment, such action would have an adverse effect on the value of the Collateral or any part thereof; and, provided, further, that the Guarantor shall give Softbank at least five days' written notice of the manner in which it intends to exercise, or the reasons for refraining from exercising, any such rights pertaining to Pledged Securities.

(ii) Softbank shall execute and deliver (or cause to be executed and delivered) to the Guarantor all such proxies and other instruments as the Guarantor may reasonably request for the purpose of enabling the Guarantor to exercise the voting and other rights which it is entitled to exercise pursuant to paragraph (i).

Softbank shall never be under any obligation to collect, attempt to collect, protect or enforce the Collateral or any security therefor, which Guarantor agrees and undertakes to do at Guarantor's expense, but Softbank may do so in its reasonable discretion at any time after the occurrence of an Event of Default and at such time Softbank shall have the right to take any steps by judicial process or otherwise it may deem proper to effect the collection of all or any portion of the Collateral or to protect or to enforce the Collateral or any security therefor. All reasonable expenses (including, without limitation,

attorneys' fees and expenses) incurred or paid by Softbank in connection with or incident to any such collection or attempt to collect the Collateral or actions to protect or enforce the Collateral or any security therefor shall be borne by the Guarantor or reimbursed by the Guarantor to Softbank upon demand. The proceeds received by Softbank as a result of any such actions in collecting or enforcing or protecting the Collateral shall be held by Softbank without liability for interest thereon and shall be applied by Softbank toward payment of the Obligations secured hereby.

In the event Softbank shall reasonably pay any taxes, assessments, interests, costs, penalties or expenses incident to or in connection with the collection of the Collateral or protection or enforcement of the Collateral, Guarantor, upon demand of Softbank, shall pay to Softbank the full amount thereof with interest at a rate per annum equal to thereon from the date expended by Softbank until repaid at a rate per annum equal to the interest rate set forth in Section 3.2 of the Loan Agreement and calculated in the manner described in Section 4.2 of the Loan Agreement and so long as Softbank shall be entitled to any such payment, this Guarantee shall operate as security therefor as fully and to the same extent as it operates as security for payment of the other Obligations secured hereunder, and for the enforcement of such repayment Softbank shall have every right and remedy provided for enforcement of payment of the Obligations.

The Guarantor agrees to take such actions and to execute such stock or bond powers and such other or different writings as Softbank may in writing reasonably request (and in the event it shall fail to do so, or if there shall have occurred and be continuing an Event of Default, irrevocably authorizes Softbank to execute such writings as the Guarantor's agent and attorney-in-fact) further to perfect, confirm and assure Softbank's security interest in the Collateral and to assist Softbank's realization thereon including, without limitation, the right following occurrence and during continuance of an Event of Default to receive, indorse, and collect all instruments made payable to the Guarantor representing any dividend, interest payment or other distribution in respect of the Collateral or any part thereof to the extent provided herein.

If an Event of Default shall have occurred and be continuing:

(a) Softbank shall have and may exercise with reference to the Collateral and the Obligations any or all of the rights and remedies of a secured party under the Uniform Commercial Code in effect in the State of New Jersey, and as otherwise granted herein or under any other applicable law or under any other agreement now or hereafter in effect executed by Guarantor in favor of Softbank, including, without limitation, the right and power to sell, at public or private sale or sales, or otherwise dispose of, or otherwise utilize the Collateral and any part or parts thereof in any manner authorized or permitted under said Uniform Commercial Code after default by a debtor, and to apply the proceeds thereof toward payment of any reasonable costs and expenses and reasonable attorneys' fees and expenses thereby incurred by Softbank and toward payment of the Obligations. Specifically and without limiting the foregoing, Softbank shall have the right to take possession of all or any part of the Collateral and of all books, records, papers and documents of Guarantor or in Guarantor's possession or control relating to the Collateral which are not already in Softbank's possession, and for such purpose may enter upon any premises upon which any of the Collateral or any security therefor or any of said books, records, papers and documents are situated and remove the same therefrom without any liability for trespass or damages thereby occasioned. To the extent permitted by law, Guarantor expressly waives any notice of sale or other disposition of the Collateral and all other rights or remedies of Guarantor or formalities prescribed by law relative to sale or disposition of the Collateral or exercise of any other right or remedy of Softbank existing after default hereunder; and to the extent any such notice is required and cannot be waived, Guarantor agrees that if such notice is given in the manner provided in Section 13 hereof at least five (5) calendar days before the time of the sale or disposition, such notice shall be deemed reasonable and shall fully satisfy any requirement for giving of said notice. Softbank shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. Softbank may adjourn any public or private sale.

(b) Upon notice by Softbank to Guarantor, Softbank or its nominee or nominees shall have the sole and exclusive right to exercise all voting and consensual powers pertaining to the Collateral or any part thereof and may exercise such powers in such manner as Softbank may elect.

(c) All dividends, payments of interest and other distributions of every character made upon or in respect of the Collateral or any part thereof shall be deemed to be Collateral and shall be paid directly to and shall be held by Softbank as additional Collateral pledged under and subject to this Pledge and Security Agreement.

(d) All rights to marshalling of assets of Guarantor, including any such right with respect to the Collateral, are hereby waived by Guarantor.

(e) All recitals in any instrument of assignment or any other instrument executed by Softbank incident to sale, lease, transfer, assignment or other disposition, lease or utilization of the Collateral or any part thereof hereunder shall be full proof of the matters stated therein and no other proof shall be requisite to establish full legal propriety of the sale or other action taken by Softbank or of any fact, condition or thing incident thereto and all prerequisites of such sale or other action or of any fact, condition or thing incident thereto shall be presumed conclusively to have been performed or to have occurred.

5. Expenses. The Guarantor agrees to pay on demand all reasonable out-of-pocket expenses of Softbank (including the reasonable fees and expenses of its counsel) in any way relating to the enforcement or protection of the rights of Softbank hereunder and further agrees that the Collateral secures such payment.

6. Subrogation. The Guarantor will not exercise any rights which it may acquire by way of subrogation or by any indemnity, reimbursement or other agreement until all the Obligations shall have been paid in full. If any amount shall be paid to the Guarantor in violation of the preceding sentence, such amount shall be held in trust for the benefit of Softbank and shall forthwith be paid to Softbank to be

credited and applied to the Obligations, whether matured or unmatured.

7. Continuing Guarantee. This is a continuing Guarantee and shall remain in full force and effect and be binding upon the Guarantor, its successors and assigns until written notice of its revocation shall actually be received by Softbank. No such revocation shall release the Guarantor or affect in any manner the rights, remedies, powers, security interests and liens of Softbank under this Guarantee with respect to any of the Obligations arising prior to actual receipt by Softbank of such written notice of revocation. If any of the present or future Obligations are guaranteed by persons, partnerships or corporations in addition to the Guarantor, the death, release or discharge in whole or in part, or bankruptcy, liquidation or dissolution of one or more of them shall not discharge or affect the liabilities of the Guarantor under this Guarantee.

8. No Waiver; Cumulative Rights. No failure on the part of Softbank to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Softbank of any right, remedy or power hereunder preclude any other or future exercise of any other right, remedy or power. Each and every right, remedy and power hereby granted to Softbank or allowed it by law or other agreement shall be cumulative and not exclusive the one of any other, and may be exercised by Softbank from time to time.

9. Waiver of Notice. The undersigned waives notice of the acceptance of this guarantee and of the making of any loans or extensions of credit to the Borrower, presentment to or demand or payment from anyone whomsoever liable upon any of the Obligations, presentment, demand, notice of dishonor, protest, notice of any sale of collateral security pledged by any other Person and all other notices whatsoever, in each case to the fullest extent permitted by law.

10. Governing Law. This Guarantee shall be governed by, and construed in accordance with, the internal laws of the State of New York.

11. Consent to Jurisdiction. Each party hereby irrevocably submits to the non-exclusive jurisdiction of any New York State or Federal court in any action or proceeding arising out of or relating to this Guarantee.

12. Termination. This General Guarantee and the security interest created hereunder shall terminate when all the Obligations have been indefeasably paid in full and when Softbank has no further obligation to extend credit under the Loan Agreement or any other agreement relating to Obligations, at which time Softbank shall execute and deliver to the Guarantor all documents which the Guarantor shall reasonably request to evidence termination of such security interest and shall return physical possession of any Collateral then held by Softbank to the Guarantor.

13. Notices. All notices, requests, demands or other communications which are required or may be given pursuant to the terms of this Loan Agreement shall be in writing and shall be deemed to have been duly given: (i) on the date of delivery if personally delivered by hand, (ii) upon the third day after such notice is (a) deposited in the United States mail, if mailed by registered or certified mail, postage prepaid, return receipt requested, or (b) sent by a nationally recognized overnight express courier, or (iii) by facsimile upon written confirmation (other than the automatic confirmation that is received from the recipient's facsimile machine) of receipt by the recipient of such notice:

If to Softbank: SOFTBANK Capital Partners LP
 SOFTBANK Capital Advisors Fund LP
 SOFTBANK Capital LP
 1188 Centre Street
 Newton Center, Massachusetts 02459
 Attention: Ron Fisher
 Facsimile No.: (617) 928-9301

With a copy to: Sullivan & Cromwell
 1870 Embarcadero Road
 Palo Alto, California 94303
 Attention: John L. Savva
 Telephone No.: (650) 461-5600
 Facsimile No.: (650) 461-5700


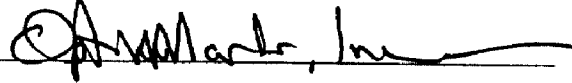
If to Guarantor: OptiMark US Equities, Inc.
 10 Exchange Place

Jersey City, NJ 07032
Attention: General Counsel or
Secretary
Telephone No.: (201) 536-7000
Facsimile No.: (201) 946-0742

With a copy to: Milbank, Tweed, Hadley & McCloy
One Chase Manhattan Plaza
New York, New York 10005
Attn: Mark Weissler
Telephone No: (212) 530-5000
Facsimile No: (212) 530-5219

Such addresses may be changed, from time to time, by means
of a notice given in the manner provided in this Section 13.

IN WITNESS WHEREOF, this Guarantee has been duly executed and delivered by the Guarantor to Softbank as of the date first above written.

OPTIMARK US EQUITIES, INC.

By 

Name: Robert J. Warshaw

Title: President

SCHEDULE A

COLLATERAL

Equipment Etc. All equipment, supplies, fittings, furnishings and other items of any kind ordered, obtained, or possessed by the Guarantor or for its account, whether held by the Guarantor, by sellers under any contracts for the purchase of equipment or by others, together with any product into which such equipment may be processed, manufactured or assembled and together with all substitutions for said equipment and all parts, instruments, accessories, alterations, modifications, replacements, additions and accessions to said equipment; and

Inventory Etc. All inventory and stock in trade of the Guarantor. As used herein, "inventory" means and includes without limitation, all now or hereafter existing goods, services, intangibles, information and any other property, interest, right or thing of value held or being developed (or to be developed) by the Guarantor for sale, lease, license, or furnished or to be furnished under contracts of service ("Items"), including but not limited to all raw materials, work in progress, materials used or consumed in the Guarantor's business, finished Items, returned Items, and Items traded in, and Items in inventory; and

Accounts, Royalties, Contracts, Investment Property, Etc. All (i) accounts, including but not limited to commissions and license fees; (ii) contracts and rights therein, including without limitation rights under software, information and other development contracts, except to the extent the foregoing prohibits the grant of a security interest therein (iii) royalties, (iv) documents, documents of title, drafts, checks, acceptances, bonds, letters of credit, notes and other negotiable and non-negotiable instruments, bills of exchange, security deposits, certificates of deposit, insurance policies and any other writings evidencing a monetary obligation or security interest in or a lease of personal property, (v) licenses, leases, rents, contracts or agreements, government entitlements and subsidies and tax refunds, except to the extent the foregoing prohibits the grant of a security interest therein (vi) investment property, including but not limited to all certificated or uncertificated securities, security entitlements, securities accounts, commodity contracts and commodity accounts, (vii) guarantees, bonds and other personal property securing the payment or

performance of any of the foregoing; (viii) chattel paper, and (ix) all Internet domain names and other identifiers of the Guarantor and all rights connected therewith. As used in this Agreement, "accounts" means and includes without limitation, all now or hereafter existing right to payment for inventory sold, licensed, leased or otherwise disposed of which is not evidenced by an instrument or chattel paper, whether or not it has been earned by performance; and

Intellectual Property and General Intangibles Etc. All federal, state, local and foreign, registered or unregistered:

(i) general intangibles; patents; processes; patent rights; patent applications; inventions; trademarks; tradenames or trade styles; service marks; copyrights; mask works; moral or similar rights; compilations; sui generis rights; rights under treaties, conventions, directives and the like (including but not limited to rights under the Berne Convention for the Protection Of Literary and Artistic Works, GATT, and all European Union directives, including but not limited to directives regarding the legal protection of databases); trade secrets; derivative works; tangible or intangible intellectual property being or to be developed; schematics; know-how; technology; rights in computer software programs or applications (in both source and object code form and in escrow or otherwise); designs; sounds; lyrics; soundtracks; music and musical compositions; motion picture synchronization rights; scripts; continuities; testing procedures and results; fabrication and manufacturing methods; supplier lists; registrations and applications relating to any of the foregoing; employee and independent contractor lists; customer lists; sales prospects; marketing; business and financial information and strategies; proprietary and other information in or with respect to which the Guarantor has any interest or rights of any nature; and data and databases; all property, rights and interests of the Guarantor of any nature; all exclusive and nonexclusive licenses for any of the foregoing to the extent such licenses may be assigned as security without the consent of the licensor (under their terms or, notwithstanding their terms, under existing or future laws), or to the extent the consent of the licensor is now or hereafter obtained by the Guarantor; and all other tangible or intangible information and intellectual property, media (whether now or hereafter existing or invented), copies and languages (including foreign and computer languages) in

which any of the foregoing is now or hereafter recorded, copied, translated, encoded or otherwise stored or utilized in any manner; (collectively, "Intellectual Property"); Intellectual property shall include, without limiting the foregoing, the following patents, patent applications, trademarks and trademark applications to the extent the Guarantor has or may hereafter have any right, title or interest therein:

Patent Applications

<u>Serial No.</u>	<u>Filing Date</u>
09/409,621	10/01/1999
09/430,319	10/29/1999
09/479,035	01/07/2000
09/489,769	01/21/2000
09/495,800	02/01/2000
09/546,341	04/10/2000
09/545,771	04/10/2000
60/195,905	04/10/2000
09/634,458	08/07/2000
09/773,258	01/31/2001

Patents

<u>Patent No.</u>	<u>Issue Date</u>
5,689,652	11/18/1997
5,845,266	12/01/1998
6,016,483	01/18/2000
6,112,189	08/29/2000
5,950,177	09/07/1999
6,012,046	01/04/2000
6,098,051	08/01/2000

Registered Trademarks

<u>Registration No.</u>	<u>Registration Date</u>
2,327,047	03/07/2000
2,251,727	06/08/1999
2,246,384	05/18/1999
2,276,293	09/07/1999
2,298,260	12/07/1999
2,251,728	06/08/1999
2,267,552	08/03/1999

Pending Trademarks Applications

75/315,951	06/27/1997
75/315,872	06/27/1997
75/455,521	03/24/1998
75/955,213	03/07/2000
76/069,485	06/14/2000
78/009,118	05/22/2000
75/955,211	03/07/2000
75/581,768	10/29/1998
75/581,769	10/29/1998
75/955,214	03/07/2000

(ii) advertising and promotional materials and/or other tangible materials relating to the Guarantor's inventory or that incorporate or utilize any element of the Intellectual Property pursuant to any existing or future license or other agreement;

(iii) all other general intangibles, judgments, chooses in action, intellectual property or rights and the like; and

(iv) the right to bring and maintain suit against third parties for infringement or misappropriation of any of the Intellectual Property, whether the infringement occurred before or after the date hereof;

in each case, whether or not the foregoing amounts to a property right, whether or not used or to be used by the Guarantor and all whether registered, filed or recorded or not, or not eligible for intellectual property protection and whether now or hereafter existing, arising or created (tangibly, intangibly or by law, treaty or otherwise); and

Goodwill. All goodwill of the Guarantor's existing and future business (whether or not associated with the Guarantor's trademarks); and

Deposits and Documents Etc. All books, correspondence, credit files, records, invoices, and other documents, including without limitation all tapes, cards, computer runs and other papers or documents in the possession or control of the Guarantor; and all balances, credits, deposits, accounts or monies of or in the name of the Guarantor in the possession or control of, or in transit to the Guarantor; and

Fixtures. All fixtures affixed to or to become affixed to any real property owned, leased or operated by the Guarantor or otherwise used in connection with the business or operations of the Guarantor; and

Attachments, etc. All attachments, accessions, accessories, tools, parts, supplies, increases, upgrades, extensions, modifications, transformations, adaptations, improvements, derivative works or information, and additions to and all replacements of and substitutions for any property described on this Schedule A; and

Insurance, etc. All policies of insurance covering or relating in any manner to any of the property described on this Schedule A, all of which policies are hereby assigned to Softbank as security for the Obligations, to the fullest

extent assignable without the consent of the insurer pursuant to the terms of such policy; and

Records, etc. All records and data relating to anything described in this Schedule A, whether in the form of a writing, photograph, microfilm, microfiche, or electronic or other media, together with all of the Guarantor's assignable right, title, and interest in and to all computer software and hardware required to utilize, create, maintain, and process any such records or data on electronic media; and

Proceeds, etc. All proceeds (including insurance proceeds) from the sale, destruction, loss, or other disposition of any nature of any of the above; and

Products, etc. All products and produce of any of the above.