

05-25-2001



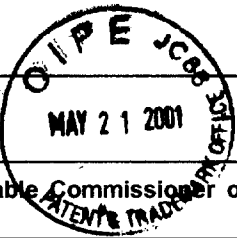
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FORM PTO-1594
(Rev. 6-93)

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U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office



5/21/01

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

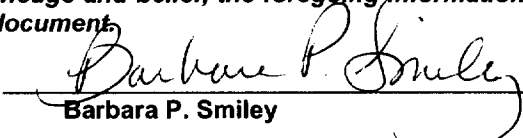
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|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>1. Name of conveying party(ies): Intraware, Inc..</p> <p><input type="checkbox"/> Individual(s) <input type="checkbox"/> Association <input type="checkbox"/> General Partnership <input type="checkbox"/> Limited Partnership <input checked="" type="checkbox"/> Corporation -- <u>Delaware</u> <input type="checkbox"/> Other _____</p> <p>Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <hr/> <p>3. Nature of conveyance:</p> <p><input type="checkbox"/> Assignment <input type="checkbox"/> Merger <input checked="" type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input type="checkbox"/> Other _____</p> <p>Execution Date: <u>July 29, 1998</u></p> | <p>2. Name and address of receiving party(ies):</p> <p>Name: <u>Imperial Bank</u></p> <p>Internal Address: _____</p> <p>Street Address: <u>225 Airport Parkway</u></p> <p>City: <u>San Jose</u> State: <u>CA</u> Zip: <u>95110</u></p> <p><input type="checkbox"/> Individual(s) citizenship _____ <input type="checkbox"/> Association _____ <input type="checkbox"/> General Partnership _____ <input type="checkbox"/> Limited Partnership _____ <input type="checkbox"/> Corporation - _____ <input checked="" type="checkbox"/> Other - a California state-chartered bank _____</p> <p>If assignee is not domiciled in the United States, a domestic representative designation is attached: <input type="checkbox"/> Yes <input type="checkbox"/> No (Designation must be a separate document from Assignment). Additional name(s) & address(es) attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> |
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|-------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------|
| <p>4. Application number(s) or registration number(s):</p> <p>A. Trademark Application No.(s) 75/894,368; 75/623,548; 75/569,660</p> | <p>B. Trademark Registration No.(s) 2,413,746; 2,343,141; 2,351,351; 2,403,718</p> |
| <p>Additional numbers attached? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> | |

| | |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>5. Name and address of party to whom correspondence concerning document should be mailed:</p> <p>Name: <u>Cooley Godward LLP</u></p> <p>Internal Address: _____ <u>Barbara P. Smiley</u></p> <p>Street Address: <u>One Freedom Square</u> <u>11951 Freedom Drive, Reston Town Center</u></p> <p>City: <u>Reston</u> State: <u>VA</u> ZIP <u>20190-5601</u></p> | <p>6. Total number of applications and registrations involved: 1</p> <hr/> <p>7. Total fee (37 CFR 3.41): <u>\$190.00</u></p> <p><input checked="" type="checkbox"/> Enclosed <input checked="" type="checkbox"/> Authorized to be charged to deposit account</p> <hr/> <p>8. Deposit account number: <u>03-3118</u> (Attach duplicate copy of this page if paying by deposit account)</p> |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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.


Barbara P. Smiley Date 5/18/01

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

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

05/24/2001 GTDN11 00000195 75894368

01 FC:481 40.00 DP
02 FC:482 150.00 DP

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TRADEMARK
REEL: 002302 FRAME: 0738

COLLATERAL ASSIGNMENT AS COLLATERAL, PATENT MORTGAGE AND SECURITY AGREEMENT

THIS COLLATERAL ASSIGNMENT AS COLLATERAL, PATENT MORTGAGE AND SECURITY AGREEMENT is made as of July 29, 1998 ("*Security Agreement*"), by and between INTRAWARE, INC., a Delaware corporation ("*Debtor*"), and IMPERIAL BANK ("*Bank*").

RECITALS

A. Bank has agreed to lend to Debtor certain funds (the "*Loan*"), and Debtor desires to borrow such funds from Bank pursuant to the terms of a Loan Agreement dated of even date herewith (as the same may be modified, amended, supplemented, restated or superceded from time to time, the "*Loan Agreement*"). Terms not defined herein shall the meanings ascribed to them in the General Security Agreement.

B. In order to induce Bank to make the Loan, Debtor has agreed to assign as collateral certain intangible property to Bank for purposes of securing the obligations of Debtor to Bank.

NOW, THEREFORE, the parties hereto agree as follows:

1. COLLATERAL ASSIGNMENT, PATENT MORTGAGE AND GRANT OF SECURITY INTEREST. As collateral security for the prompt and complete payment and performance of all of Debtor's present or future indebtedness, obligations and liabilities to Bank, including, without limitation, such indebtedness, obligations and liabilities under the Loan Agreement and the other documents executed in connection therewith (as the same may be modified, amended, supplemented, restated or superceded from time to time, collectively, the "*Loan Documents*"), Debtor hereby assigns as collateral, transfers, conveys and grants a security interest and mortgage to Bank, as security, in and to Debtor's entire right, title and interest in, to and under the following, now or hereafter existing, created, acquired or held by Debtor (all of which shall collectively be called the "*Collateral*"):—

(a) Any and all copyright rights, copyright applications, copyright registrations and like protections in each work of authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, including, without limitation, those set forth on Exhibit A attached hereto and incorporated herein by this reference (collectively, the "*Copyrights*").

(b) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products;

(c) Any and all design rights which may be available to Debtor;

(d) All patents, patent applications and like protections including, without limitation, improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, including, without limitation, those set forth on Exhibit B attached hereto and incorporated herein by this reference (collectively, the "*Patents*");

(e) Any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of

Debtor connected with and symbolized by such trademarks, including, without limitation, those set forth on Exhibit C attached hereto and incorporated herein by this reference (collectively, the "Trademarks");

(f) Any and all claims for damages by way of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

(g) All licenses or other rights to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use to the extent permitted by such license or rights;

(h) All amendments, renewals and extensions of any of the Copyrights, Patents or Trademarks; and

(i) All proceeds and products of the foregoing, including, without limitation, all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

THE INTEREST IN THE COLLATERAL BEING ASSIGNED HEREUNDER SHALL NOT BE CONSTRUED AS A CURRENT ASSIGNMENT, BUT AS A CONTINGENT ASSIGNMENT TO SECURE ALL OF DEBTOR'S PRESENT OR FUTURE INDEBTEDNESS, OBLIGATIONS AND LIABILITIES TO BANK, INCLUDING, WITHOUT LIMITATION, SUCH INDEBTEDNESS, OBLIGATIONS AND LIABILITIES UNDER THE LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS.

2. AUTHORIZATION AND REQUEST. Debtor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this Security Agreement.

3. COVENANTS AND WARRANTIES. Debtor represents, warrants, covenants and agrees as follows:

(a) Debtor is now the sole owner of the Collateral, except for non-exclusive licenses granted by Debtor to its customers in the ordinary and normal course of business as now conducted;

(b) Performance of this Security Agreement does not conflict with or result in a breach of any agreement to which Debtor is a party or by which Debtor is bound, except to the extent that certain intellectual property agreements prohibit the assignment of the rights thereunder to a third party without the licensor's or other party's consent and this Security Agreement constitutes as assignment;

(c) During the term of this Security Agreement, Debtor will not sell, transfer, assign or otherwise encumber any interest in the Collateral, except for (i) non-exclusive licenses granted by Debtor in the ordinary and normal course of its business as now conducted or as set forth in this Security Agreement and (ii) subject to Debtor's execution of appropriate documents, in form acceptable to Bank, to perfect or continue the perfection of Bank's interest in the Collateral, transfers to affiliates of Debtor;

(d) To its knowledge, each of the Patents is valid and enforceable, and no part of the Collateral has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Collateral violates the rights of any third party;

(e) Debtor shall promptly advise Bank of any material changes in the composition of the Collateral, including but not limited to any subsequent ownership right of Debtor in or to any Copyright, Patent or Trademark not specified in this Security Agreement;

(f) Debtor shall (i) protect, defend and maintain the validity and enforceability of the Copyrights, Patents and Trademarks, (ii) use its best efforts to detect infringements of the Copyrights, Patents and Trademarks and promptly advise Bank in writing of material infringements detected and (iii) not allow any Copyrights, Patents or Trademarks to be abandoned, forfeited or dedicated to the public without the written consent of Bank, which shall not be unreasonably withheld, unless Debtor determines that reasonable business practices suggest that abandonment is appropriate;

(g) Debtor shall promptly register the most recent version of Debtor's material Copyrights, if not so already registered, as Bank may reasonably request from time to time based on its review of the Quarterly Report (as hereinafter defined) and shall, from time to time, execute and file such other instruments, and take such further actions as Bank may reasonably request from time to time to perfect or continue the perfection of Bank's interest in the Collateral;

(h) This Security Agreement creates, and in the case of after acquired Collateral, this Security Agreement will create at the time Debtor first has rights in such after acquired Collateral, in favor of Bank a valid and perfected first priority security interest in the Collateral in the United States securing the payment and performance of all present or future indebtedness, obligations and liabilities of Debtor to Bank, including, without limitation, such indebtedness, obligations and liabilities under the Loan Agreement and the other Loan Documents, upon making the filings referred to in Section 3(i) below, subject only to Permitted Liens (as defined in the Loan Agreement);

(i) To its knowledge, except for, and upon, the filings with, as applicable, (1) the United States Patent and Trademark office with respect to the Patents and Trademarks, (2) the Register of Copyrights with respect to the Copyrights and (3) the UCC Division of the California Secretary of State, necessary to perfect the security interests and assignment as collateral created hereunder, and except as has been already made or obtained, no authorization, approval or other action by, and no notice to or filing with, any United States governmental authority or United States regulatory body is required either (a) for the grant by Debtor of the security interest granted hereby or for the execution, delivery or performance of this Security Agreement by Debtor in the United States or (b) for the perfection in the United States or the exercise by Bank of its rights and remedies hereunder;

(j) All information heretofore, herein or hereafter supplied to Bank by or on behalf of Debtor with respect to the Collateral is accurate and complete in all material respects;

(k) Debtor shall not enter into any agreement that would materially impair or conflict with Debtor's obligations hereunder without Bank's prior written consent, which consent shall not be unreasonably withheld. Debtor shall not permit the inclusion in any material contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a security interest in Debtor's rights and interests in any property included within the definition of the Collateral acquired under such contracts, except that certain contracts may contain anti-assignment provisions that could in effect prohibit the creation of a security interest in such contracts; and

(l) Upon any executive officer of Debtor obtaining actual knowledge thereof, Debtor will promptly notify Bank in writing of any event that materially adversely affects the value of any Collateral, the ability of Debtor to dispose of any Collateral or the rights and remedies of Bank in relation thereto, including the levy of any legal process against any of the Collateral.

4. **BANK'S RIGHTS.** Bank shall have the right, but not the obligation, to take, at Debtor's sole expense, any actions that Debtor is required under this Security Agreement to take but which Debtor fails to take, after fifteen (15) days' notice to Debtor. Debtor shall reimburse and indemnify Bank for all

reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this Section 4.

5. **INSPECTION RIGHTS.** Debtor hereby grants to Bank and its employees, representatives and agents the right to visit, during reasonable hours upon prior reasonable written notice to Debtor, any of Debtor's plants and facilities that manufacture, install or store products (or that have done so during the prior six-month period) that are sold utilizing any of the Collateral, and to inspect the products and quality control records relating thereto upon reasonable written notice to Debtor and as often as may be reasonably requested.

6. **FURTHER ASSURANCES; ATTORNEY IN FACT.**

(a) On a quarterly basis, Debtor agrees to deliver to Bank a report, in form acceptable to Bank and certified by an officer of Debtor, which lists all Copyrights, Patents and Trademarks that are material to the operation of Debtor's business on an on-going basis, and in which Bank does not already have a perfected security interest (the "*Quarterly Report*"); *provided, however*, Debtor may provide a general description of the Copyrights by type. Based upon review of the Quarterly Report, Bank shall, in its reasonable discretion, identify which Copyrights, Patents and Trademarks it deems material to the operation of Debtor's business on an on-going basis or the value of the Collateral.

(b) On a continuing basis, Debtor will make, execute, acknowledge and deliver, and file and record in the proper filing and recording places in the United States, all such instruments, including appropriate financing and continuation statements and collateral agreements and filings with the United States Patent and Trademark Office and the Register of Copyrights, and take all such action as may reasonably be necessary or advisable, or as reasonably requested by Bank, to perfect Bank's security interest in all Copyrights, Patents and Trademarks, which Bank reasonably identifies pursuant to Section 6(a) above as material to the operation of Debtor's business on an on-going basis or the value of the Collateral, and otherwise to carry out the intent and purposes of this Security Agreement, or for assuring and confirming to Bank the grant or perfection of a security interest in all Collateral.

(c) Debtor hereby irrevocably appoints Bank as Debtor's attorney-in-fact, with full authority in the place and stead of Debtor and in the name of Debtor, from time to time in Bank's discretion, to take any action and to execute any instrument which Bank may reasonably deem necessary or advisable to accomplish the purposes of this Security Agreement, including (i) to modify, in its reasonable discretion, this Security Agreement without first obtaining Debtor's approval of or signature to such modification by amending Exhibit A, Exhibit B or Exhibit C hereof, as appropriate, to include reference to any material right, title or interest in any Copyrights, Patents or Trademarks acquired by Debtor after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents or Trademarks in which Debtor no longer has or claims any right, title or interest, (ii) to file, in its reasonable discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of Debtor where permitted by law and (iii) after the occurrence and during the continuance of an Event of Default, to transfer the Collateral into the name of Bank or a third party to the extent permitted under the California Uniform Commercial Code.

7. **EVENTS OF DEFAULT.** The occurrence of any of the following shall constitute an "Event of Default" under this Security Agreement:

(a) An Event of Default (as defined in the Loan Agreement) occurs under the Loan Agreement or any of the other Loan Documents (as defined in the Loan Agreement); or

(b) Debtor breaches any warranty or agreement in any material respect made by Debtor in this Security Agreement and, as to any breach that is capable of cure, Debtor fails to cure such breach within fifteen (15) days of the occurrence of such breach if notice thereof has been given to Debtor.

8. **REMEDIES.** Upon the occurrence and during the continuance of an Event of Default, Bank shall have the right to exercise all the remedies of a secured party under the California Uniform Commercial Code, including, without limitation, the right to require Debtor to assemble the Collateral and any tangible property in which Bank has a security interest and to make it available to Bank at a place designated by Bank. Bank shall have a nonexclusive, royalty free license to use the Copyrights, Patents and Trademarks to the extent reasonably necessary to permit Bank to exercise its rights and remedies upon the occurrence and during the continuance of an Event of Default. Debtor will pay any expenses (including reasonable attorneys' fees) incurred by Bank in connection with the exercise of any of Bank's rights hereunder, including, without limitation, any expense incurred in disposing of the Collateral. All of Bank's rights and remedies with respect to the Collateral shall be cumulative.

9. **INDEMNITY.** Debtor agrees to defend, indemnify and hold harmless Bank and its officers, employees, and agents against: (a) all obligations, demands, claims, and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Security Agreement and (b) all losses or expenses in any way suffered, incurred, or paid by Bank as a result of or in any way arising out of, following or consequential to transactions between Bank and Debtor, whether under this Security Agreement or otherwise (including, without limitation, reasonable attorneys' fees and reasonable expenses), except for losses arising from or out of Bank's gross negligence or willful misconduct.

10. **REASSIGNMENT.** At such time as Debtor shall completely satisfy all of the obligations secured hereunder, Bank shall execute and deliver to Debtor all deeds, assignments as collateral and other instruments as may be necessary or proper to revest in Debtor full title to the property assigned as collateral hereunder, subject to any disposition thereof which may have been made by Bank pursuant hereto.

11. **NO FAILURE OR DELAY.** No failure or delay on the part of Bank, in the exercise of any power, right or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof.

12. **ATTORNEYS' FEES.** If any action relating to this Security Agreement is brought by either party hereto against the other party, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements.

13. **AMENDMENTS.** This Security Agreement may be amended only by a written instrument signed by both parties hereto.

14. **COUNTERPARTS.** This Security Agreement may be executed in any number of counterparts, each of which when so delivered shall be deemed an original, but all such counterparts shall constitute but one and the same instrument. Each such Security Agreement shall become effective upon

the execution of a counterpart hereof or thereof by each of the parties hereto and telephonic notification that such executed counterparts has been received by Debtor and Bank.

15. **JUDICIAL REFERENCE.** The terms and provisions of Section 15 of the Loan Agreement are incorporated herein by this reference and made a part hereof.


16. **GOVERNING LAW; JURISDICTION; JURY WAIVER.** This Security Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to principles of conflicts of law. Debtor and Bank consent to the exclusive jurisdiction of any state or federal court located in Santa Clara County, California. DEBTOR AND BANK EACH WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS SECURITY AGREEMENT AND ANY OTHER LOAN DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

17. **CONFLICT.** In the event of a conflict between any term and/or provision contained in this Security Agreement with any term and/or provision contained in the General Security Agreement (as defined in the Loan Agreement), the term and/or provision of this Security Agreement shall govern.

IN WITNESS WHEREOF, the parties hereto have executed this Security Agreement on the day and year first above written.

BANK

IMPERIAL BANK

By: 
Sunita R. Patel
Assistant Vice President

Address of Bank


226 Airport Parkway
San Jose, California 95110

with a copy to:

2460 Sand Hill Road, Suite 102
Menlo Park, California 94025
Attention: Sunita Patel

DEBTOR

INTRAWARE, INC.,
a Delaware corporation

By: 
Donald Freed
Executive Vice President and
Chief Financial Officer

Address of Debtor

25 Orinda Way
Orinda, California 94563
Attention: Donald Freed

Exhibit A

COPYRIGHTS Author/Claimant: INTRAWARE, INC.

| No. | Title | Physical Description | Date of Creation | Date of Publication | Eff. Date of Registration | Limitation on Claim |
|------|-------|----------------------|------------------|---------------------|---------------------------|---------------------|
| None | | | | | | |
| | | | | | | |

Exhibit B

PATENTS

Owner: INTRAWARE, INC.

| | | | | | |
|------------------------------------------------------------------------------------------|--------|-----------|-----------|-----------|--|
| SYSTEM AND METHOD FOR VENDING RETAIL SOFTWARE AND OTHER SETS OF INFORMATION TO END USERS | | 6,092,105 | | 7/18/2000 | |
| METHOD AND APPARATUS FOR OPTIMIZING ORDERS FOR GOODS OR SERVICES TO INCREASE A DISCOUNT | | 6,078,897 | | 6/20/2000 | |
| METHOD AND SYSTEM FOR RANKING MULTIPLE PRODUCTS ACCORDING TO USERS' PREFERENCES | 938918 | | 9/26/1997 | | |

Exhibit C

TRADEMARKS Owner: INTRAWARE, INC.

| | | | | |
|-------------------------------|------------|-----------|------------|--|
| CONTROL YOUR TECHNOLOGY | 75/894,368 | | 1/11/2000 | |
| FOR THE LIFE OF YOUR SOFTWARE | 75/623,548 | | 1/19/1999 | |
| INTRAWARE | | 2,413,746 | 12/19/2000 | |
| INTRAWARE.SHOP | 75/569,660 | | 10/13/1998 | |
| NETINSIGHTS | | 2,343,141 | 4/18/2000 | |
| RADARSCOPE | | 2,351,351 | 5/23/2000 | |
| UPDATEWATCH | | 2,403,718 | 11/14/2000 | |