

09-19-2001

FORM PTO-1504
(Rev 5-93)



COVER SHEET

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

To the Honorable

101848171

of the attached original documents or copy thereof.

10-6-1-6

1. Name of conveying party(ies):

E-BENEFITS, INC.

Individual(s) citizenship:

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: August 23, 2000

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

Name: IMPERIAL BANK
Address: 226 AIRPORT PARKWAY
City: SAN JOSE State: CA Zip: 95110

Individual(s) citizenship:

Association:

General Partnership:

Limited Partnership:

Corporation - State:

Other: a California chartered 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 trademark number(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s)

2,178,097

Additional numbers attached? Yes No

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

Name: Erin O'Brien
Internal Address: GRAY CARY WARE & FREIDENRICH
4365 Executive Drive, Suite 1600
San Diego, CA 92121-2189

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41) \$ 40.00

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

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.

Erin O'Brien
Name of Person Signing

Erin O'Brien
Signature

September 18, 2001
Date

Total number of pages comprising cover sheet: [11]

Mail Documents to be recorded with required cover sheet information to:
U.S. Patent and Trademark Office, Office of Public Records
1213 Jefferson Davis Highway, 3rd Floor
Arlington, VA 22202

09/19/2001 BTOM11 00000139 2178097
01 FC:481 40.00 DP

PA\10182288.1
1090371-962300

TRADEMARK
REEL: 002368 FRAME: 0784

PATENT MORTGAGE AND SECURITY AGREEMENT

THIS PATENT MORTGAGE AND SECURITY AGREEMENT is dated as of August 23, 2000 (this "*IP Security Agreement*"), and entered into by and between E-BENEFITS, INC., a Delaware corporation (the "*Debtor*"), and IMPERIAL BANK (the "*Bank*").

RECITALS

A. Bank has agreed to lend to Debtor certain funds (the "*Loans*"), and Debtor desires to borrow such funds from Bank pursuant to the terms of that certain Loan Agreement of even date herewith (as the same may be modified, amended, supplemented, restated or superceded from time to time, the "*Loan Agreement*"). Capitalized terms used herein without definition shall have the meanings given to them in that certain General Security Agreement of even date herewith executed by Debtor in favor of Bank (as the same may be modified, amended, supplemented, restated or superceded from time to time, the "*General Security Agreement*").

B. In order to induce Bank to make the Loans, Debtor has agreed to grant to Bank a security interest in certain intangible property for purposes of securing the obligations of Debtor to Bank.

NOW, THEREFORE, the parties hereto agree as follows:

1. **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 grants a security interest and mortgage to Bank, as collateral 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 "*Intellectual Property Collateral*"):

(a) Any and all copyright rights, copyright applications, copyright registrations, copyright recordings and like protections in each work of authorship and derivative work thereof, whether registered or unregistered or published or unpublished and whether or not the same also constitutes a trade secret, held pursuant to the laws of the United States, any State thereof or of any other country or political subdivision thereof, 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) Any and all letter patents, petty patents, divisionals, patents of addition of the United States or any other country or political subdivision thereof, all registrations and recordings thereof, and all patents to issues in such applications of the United States or any other country or political subdivision thereof, including, without limitation, registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State

thereof or any other country or political subdivision thereof, including, without limitation, improvements, divisions, renewals, reissues, extensions, continuations, and continuations-in-part or extensions thereof, including, without limitation, those set forth on **Exhibit B** attached hereto and incorporated herein by this reference (collectively, the "**Patents**");

(e) Any and all trademarks, trade names, corporate names, company names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature, all registrations and recordings thereof, and any applications in connection therewith, including, without limitation, registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof, and the entire goodwill of the business of Debtor connected with and symbolized by all 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 income, royalties, damages, claims, and payments now and hereafter due and payable, including, without limitation, all claims for damages and payments by way of past, present and future infringement, misappropriation, or dilution 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, (collectively, the "**Intellectual Property**") and all license fees and royalties arising from such use to the extent permitted by such license or rights;

(h) All amendments, continuations, renewals and extensions of any of the Intellectual Property; 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.

Notwithstanding the foregoing, the security interest granted herein shall not extend to and the term "Collateral" shall not include any property, rights or licenses to the extent the granting of a security interest therein would be contrary to applicable law or is prohibited by or would constitute a default under any agreement or document governing such property, rights or licenses (but only to the extent such prohibition is enforceable under applicable law).

The security interest granted hereunder is granted in conjunction with the security interests granted to Bank under the General Security Agreement. The rights and remedies of Bank with respect to the security interest granted hereby are in addition to those set forth in the General Security Agreement, the Loan Agreement and the other Loan Documents, and those which are now or hereafter available to Bank as a matter of law or equity. Each right, power and remedy of Bank provided for herein or in the General Security Agreement, the Loan Agreement or any of the other Loan Documents, or now or hereafter existing at law or in equity shall be cumulative and concurrent and shall be in addition to every right, power or remedy provided for herein and the exercise by Bank of any one or more of the rights, powers or remedies provided for in this IP Security Agreement, the General Security Agreement, the Loan Agreement or any of the other Loan Documents, or now or hereafter existing at law or in equity, shall not preclude the simultaneous or later exercise by any person, including Bank, or any or all other rights, powers or remedies.

2. **AUTHORIZATION AND REQUEST.** Debtor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this security interest.

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

(a) Debtor is now the sole owner of the Intellectual Property 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 IP 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 may prohibit the assignment of the rights thereunder to a third party without the licensor's or other party's consent and this IP Security Agreement would constitute such an assignment;

(c) During the term of this IP Security Agreement, Debtor will not sell, transfer, assign or otherwise encumber any interest in the Intellectual Property 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 IP Security Agreement and (ii) subject to Debtor's execution of appropriate documents, in form and substance acceptable to Bank, to perfect or continue the perfection of Bank's interest in the Intellectual Property Collateral, transfers to affiliates of Debtor;

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

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

(f) Debtor shall (i) protect, defend and maintain the validity and enforceability of the Intellectual Property, (ii) use its best efforts to detect infringements of the Intellectual Property and promptly advise Bank in writing of material infringements detected and (iii) not allow any of its Intellectual Property to be abandoned, forfeited or dedicated to the public without the written consent of Bank, which shall not be unreasonably withheld;

(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 Intellectual Property Collateral;

(h) This IP Security Agreement creates, and in the case of after-acquired Intellectual Property Collateral, will create at the time Debtor first has rights in such after-acquired Intellectual Property Collateral, in favor of Bank a valid and perfected first priority security interest in the Intellectual Property 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, (2) the Register of Copyrights and (3) the UCC Division of the applicable office of the Secretary of State, necessary to perfect the security interests 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 IP 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 Intellectual Property 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 Intellectual Property 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 Intellectual Property Collateral, the ability of Debtor to dispose of any Intellectual Property Collateral or the rights and remedies of Bank in relation thereto, including the levy of any legal process against any of the Intellectual Property 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 IP 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 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 Intellectual Property 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 Intellectual Property that is 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*"), including, without limitation, all titles, names or marks together with all relevant registration and/or application numbers and registration and/or filing dates. Based upon review of the Quarterly Report, Bank shall, in its reasonable discretion, identify which

Intellectual Property it deems material to the operation of Debtor's business on an on-going basis or the value of the Intellectual Property 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 Intellectual Property Collateral, 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 Intellectual Property Collateral, and otherwise to carry out the intent and purposes of this IP Security Agreement, or for assuring and confirming to Bank the grant or perfection of a security interest in all Intellectual Property 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 IP Security Agreement, including (i) to modify, in its reasonable discretion, this IP 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 Intellectual Property acquired by Debtor after the execution hereof or to delete any reference to any right, title or interest in any Intellectual Property 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 Intellectual Property Collateral without the signature of Debtor where permitted by law and (iii) to transfer the Intellectual Property Collateral into the name of Bank or a third party to the extent permitted under the UCC; *provided, however*, that Bank shall not exercise its powers as attorney-in-fact under this Section 6 except upon the occurrence and during the continuance of an Event of Default.

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

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

(b) Debtor breaches any warranty or agreement in any material respect made by Debtor in this IP 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.

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 UCC, including, without limitation, the right to require Debtor to assemble the Intellectual Property 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 or other right, solely pursuant to the provisions of this Section 8, to use, without charge, the Intellectual Property and any property of a similar nature as it pertains to the Intellectual Property Collateral, to the extent reasonably necessary to permit Bank to exercise its rights and remedies pursuant to this Section 8, including, without limitation, the completion of production, advertising for sale and the sale of any Intellectual Property Collateral and, in connection with Bank's exercise of its rights hereunder, Debtor's rights under all licenses and all franchise agreements shall inure to the benefit of Bank. 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 Intellectual Property Collateral. All of Bank's rights and remedies with respect to the Intellectual Property 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 IP 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 IP Security Agreement or otherwise (including, without limitation, reasonable attorneys' fees and reasonable expenses), except for losses arising from Bank's gross negligence or willful misconduct.

10. **SUCCESSORS AND ASSIGNS.** This IP Security Agreement and all obligations of Debtor hereunder shall be binding upon the successors and assigns of Debtor, and shall, together with the rights and remedies of Bank hereunder, inure to the benefit of Bank, and its successors and assigns. No sales of participations, other sales, assignments, transfers or other dispositions of any agreement governing or instrument evidencing the indebtedness secured hereby or any portion thereof or interest therein shall in any manner affect the security interest created herein and granted to Bank hereunder.

11. **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 and other instruments as may be necessary or proper to revest in Debtor full title to the property assigned hereunder, subject to any disposition thereof which may have been made by Bank pursuant hereto.

12. **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.

13. **ATTORNEYS' FEES.** If any action relating to this IP 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 from the other party.

14. **AMENDMENTS.** Except as otherwise provided herein, this IP Security Agreement may be amended only by a written instrument signed by both parties hereto.

15. **COUNTERPARTS.** This IP 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 IP 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 have been received by Debtor and Bank.

16. **JUDICIAL REFERENCE.** The terms and provisions of Section 16 of the Loan Agreement are incorporated herein by this reference and made a part hereof.

17. **GOVERNING LAW; JURISDICTION; JURY WAIVER.** This IP 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 IP SECURITY AGREEMENT AND ANY OTHER LOAN DOCUMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN.**

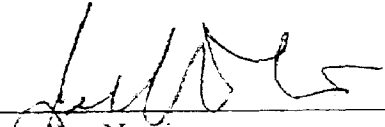
INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

18. **CONFLICT.** In the event of a conflict between any term and/or provision contained in this IP Security Agreement with any term and/or provision contained in the General Security Agreement, the term and/or provision of this IP Security Agreement shall govern.

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

BANK

IMPERIAL BANK

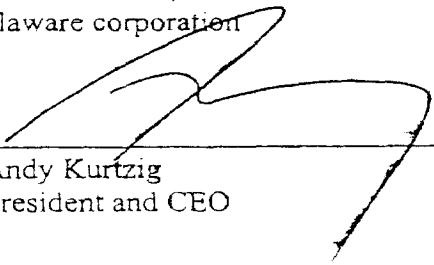
By: 
Jonathan Norris
Assistant Vice President

Address of Bank

Embarcadero Center West
275 Battery Street #1100
San Francisco, CA 94111-3305

DEBTOR

E-BENEFITS INC.,
a Delaware corporation

By: 
Andy Kurtzig
President and CEO

Address of Debtor

135 Stillman Street
San Francisco, CA 94107
Attention: John Fortune

EXHIBIT A
COPYRIGHTS

1. REGISTERED:

None.

2. UNREGISTERED:

Text contained on Debtor's Internet site.

3. APPLICATIONS IN PROCESS:

None.

Exhibit A

548837 v3/SF
brhh031.DOC
082100

TRADEMARK
REEL: 002368 FRAME: 0792

EXHIBIT B
U.S. PATENTS AND PATENT APPLICATIONS

None.

Exhibit B

548837 v3/SF
brhh031.DOC
082100

TRADEMARK
REEL: 002368 FRAME: 0793

EXHIBIT C

U.S. TRADEMARKS AND TRADEMARK APPLICATIONS

REGISTRATION NO.	PENDING APPLICATION NO.	MARK	REGISTRATION DATE	FILING DATE
2,178,097	N/A	E-Benefits	8/4/98	3/14/97

UNREGISTERED TRADEMARKS:

None.

Exhibit C

548837 1998
b711034-001
08210