

12-27-2001

FORM PTO-1594  
(Rev. 6-93)

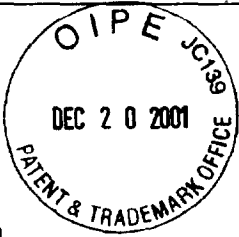


COVER SHEET U.S. DEPARTMENT OF COMMERCE  
BY 12.20.01 Patent and Trademark Office

101926056

To the Honorable Commissioner of Patents and Trademarks

attached original documents or copy thereof.



1. Name of conveying party(ies):

Evolve Software, Inc.  
1400 65<sup>th</sup> Street, Suite 100  
San Emeryville, CA 94608

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

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

3. Nature of conveyance:

- Assignment
- Merger
- Security Agreement
- Change of Name
- Other Amended and Restated Intellectual Property Security Agreement

Execution Date: November 28, 2001

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

Name: Comerica Bank-California, as Successor by Merger to Imperial Bank

Internal Address: \_\_\_\_\_

Street Address: 333 West Santa Clara Street

City: San Jose State: CA ZIP 95113

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

If assignee is not domiciled in the United States, a domestic representative designation is attached:  Yes  No  
(Designation must be a separate document from Assignment).  
Additional name(s) & address(es) attached?  Yes  No

4. Application number(s) or registration number(s):  
A. Trademark Application No.(s)

76/188,886

B. Trademark Registration No.(s)

Additional numbers attached?  Yes  No

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

Name: Cooley Godward LLP

Internal Address: Attn: Ankey To

Street Address: One Maritime Plaza, 20<sup>th</sup> Floor

City: San Francisco State: CA ZIP 94111

6. Total number of applications and registration involved: 1

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

- Enclosed
- Authorized to be charged to deposit account

8. Deposit account number: 03-3115

(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]  
Ankey To

December 19, 2001  
Date

Total number of pages including cover sheet, attachments, and document: 10

40.00 \$P  
12/26/2001 LMEILLER 0000185 7618886  
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Mail documents to be recorded with required cover sheet information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231



## AMENDED AND RESTATED INTELLECTUAL PROPERTY SECURITY AGREEMENT

THIS AMENDED AND RESTATED INTELLECTUAL PROPERTY SECURITY AGREEMENT ("*IP Security Agreement*") is entered into as of November 28, 2001 by and between EVOLVE SOFTWARE, INC., a Delaware corporation ("*Grantor*") and COMERICA BANK-CALIFORNIA, successor by merger to Imperial Bank ("*Bank*"). This IP Security Agreement amends and restates in its entirety the Original IP Security Agreement (defined below).

### RECITALS

A. WHEREAS, Imperial Bank agreed to make certain advances of money and to extend certain financial accommodations to Grantor (the "*Loans*") in the amounts and manner set forth in that certain Loan and Security Agreement by and between Imperial Bank and Grantor dated as of January 31, 2001 (the "*Original Loan Agreement*"). In order to induce Imperial Bank to make the Loans, Grantor granted to Imperial Bank a security interest in, among other assets, certain items of its intangible property, pursuant to that certain IP Security Agreement, dated as of January 31, 2001 ("*Original IP Security Agreement*").

B. WHEREAS, Imperial Bank and Bank have entered into a merger whereby Bank has acquired substantially all of the assets of Imperial Bank, Imperial Bank has assigned substantially all its rights, including all of its rights under the Original Loan Agreement and the Original IP Security Agreement, to Bank, and Bank has assumed substantially all of the obligations of Imperial Bank, including all of Imperial Bank's obligations under the Original Loan Agreement.

C. WHEREAS, Grantor has requested and Bank has agreed to amend and restate the Original Loan Agreement, all in accordance with the terms set forth in that certain Amended and Restated Loan and Security Agreement, dated as of the date hereof ("*Loan Agreement*"), but only on the condition, among others, that Grantor enter into this IP Security Agreement. Capitalized terms used herein without definition shall have the same meanings given to them in the Loan Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and intending to be legally bound, as collateral security for the prompt and complete payment when due of its obligations under the Loan Agreement and all other agreements now existing or hereafter arising between Grantor and Bank, Grantor hereby represents, warrants, covenants and agrees as follows:

### AGREEMENT

To secure its obligations under the Loan Agreement and under any other agreement now existing or hereafter arising between Bank and Grantor, Grantor grants and pledges to Bank a security interest in all of Grantor's right, title and interest in, to and under its Intellectual Property Collateral (including, without limitation, those Copyrights, Patents and Trademarks listed on Schedules A, B and C hereto), and including, without limitation, all proceeds thereof

(such as, by way of example but not by way of limitation, license royalties and proceeds of infringement suits), the right to sue for past, present and future infringements, all rights corresponding thereto throughout the world and all re-issues, divisions continuations, renewals, extensions and continuations-in-part thereof.

This security interest is granted in conjunction with the security interest granted to Bank under the Loan Agreement. The rights and remedies of Bank with respect to the security interest granted hereby are in addition to those set forth in 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 Loan Agreement or in any of the 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 Intellectual Property 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, of any or all other rights, powers or remedies.

Grantor hereby re-affirms for the benefit of Bank that the security interest granted to Imperial Bank pursuant to the Original Loan Agreement continues to be valid and enforceable by Bank, as successor by merger to Imperial Bank, and that Bank has and will continue to have a security interest in all presently existing and hereafter acquired or arising Intellectual Property Collateral to secure prompt repayment of any and all Obligations and to secure prompt performance by Grantor of each of its covenants and duties under the Loan Documents. Except for Permitted Liens, such security interest constitutes a valid, first priority security interest in the presently-existing Intellectual Property Collateral, and will constitute a valid, first priority security interest in later-acquired Intellectual Property Collateral.

Grantor represents and warrants that Exhibits A, B, and C attached hereto set forth any and all intellectual property rights in connection to which Grantor has registered or filed, or plans to register or file, an application with either the United States Patent and Trademark Office or the United States Copyright Office, as applicable.

Notwithstanding anything contained herein to the contrary, the grant of the security interest provided for herein shall not extend to, and the term "Intellectual Property Collateral" shall not include, any property rights or licenses to the extent that the grant of a security interest therein, or an assignment thereof, would be contrary to applicable law or is prohibited by or would constitute a default under any agreement or document governing such property (but only to the extent that such prohibition is enforceable under applicable law).

So long as no Event of Default has occurred, this Intellectual Property Security Agreement shall terminate and Bank shall release all of its interest in and to the Intellectual Property Collateral upon payment and performance in full by Grantor of its Obligations under the Loan Agreement.

IN WITNESS WHEREOF, the parties have caused this Intellectual Property Security Agreement to be duly executed as of the date written above.

**GRANTOR:**

Address of Grantor:

1400 65<sup>th</sup> Street, Suite 100  
Emeryville, CA 94608  
Attn: Chris Boas



**EVOLVE SOFTWARE, INC.**

By: 153433  
Name: KENNETH BOZZINI  
Title: CEO

**BANK:**





**COMERICA BANK-CALIFORNIA,**  
as Successor by Merger to Imperial Bank

Address of Bank:

555 California Street, Suite 3160  
San Francisco, CA 94104  
Attn: Philip Koblis

By: Philip Koblis  
Name: Philip Koblis  
Title: Assistant Vice President

226 Airport Parkway  
San Jose, CA 95110  
Attn: Corporate Banking Center

Mark/ Serial/Registration No.	Jurisdiction	Int'l (Class(es))	Status	Registration/Application Date
EVOLVE and Design  Serial No. 275889 Reg. No. 536,864	Mexico	9	Registered	REGISTERED October 3, 1996
EVOLVE and Design  Serial No. 08-088847	Japan	9	Pending	FILED August 7, 1996
EVOLVE and Design  Registration No. 327312	EC	9	Registered	REGISTERED August 9, 1996
EVOLVE and Design  Registration No. 819484660	Brazil	Local Class 9.40	Registered	REGISTERED April 27, 1999
SERVICESPHERE Serial No. 75/471,640 Registration No. 2,371,553	U.S.	9	Registered	REGISTERED July 25, 2000

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Mark/ Serial/Registration No.	Jurisdiction	Int'l (Class(es))	Status	Registration/Application Date
<b>SERVICESPHERE</b> Serial No. 894100	Canada	N/A	Pending	FILED October 21, 1998 Published August 17, 2000 Response filed August 2, 2000
<b>SERVICESPHERE</b> Registration No. 971556	EC	9	Registered	REGISTERED April 7, 2000
<b>SERVICESPHERE</b> Serial No. 10-90640 Registration No. 4341089	Japan	9	Registered	REGISTERED December 3, 1999
<b>SERVICESPHERE and Design</b> Serial No. 75/526,346 Registration No. 2,365,202	U.S.	9	Registered	REGISTERED July 4, 2000
<b>SERVICESPHERE and Design</b> Serial No. 1003261	Canada	N/A	Pending	FILED January 26, 1999 Published August 18, 2000 Response filed August 2, 2000
<b>SERVICESPHERE and Design</b> Registration No. 001060821	EC	9	Registered	REGISTERED May 25, 2000
<b>SERVICESPHERE and Design</b> Serial No. 11-6549 Registration No. 4372728	Japan	9	Registered	REGISTERED March 31, 2000
<b>SERVICES.COM</b> Serial No. 75/702,573	U.S.	9	Pending	FILED May 11, 1999 Published August 22, 2000 Response filed April 28, 2000
<b>SERVICES.COM &amp; DESIGN</b> Serial No. 75/896,930	U.S.	35, 36 and 42	Pending	FILED January 14, 2000
<b>RAPIDCONNECT</b>	U.S.			
<b>SERVICESITE</b> Serial No. 76/188,886	U.S.	9	Pending	Filed: December 28, 2000*

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Mark/ Serial/Registration No.	Jurisdiction	Int'l (Class(es))	Status	Registration/Application Date
SERVICESXML Serial No. 76/124,521	U.S.	9	Pending	Filed September 8, 2000
SXML Serial No. 76/127,535	U.S.	9	Pending	Filed September 13, 2000

\* assignment to be filed.

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