

02-06-2002

FORM PTO-
1-31-92

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101974240

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

HEET

Y

1-18-02

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

1. Name of conveying party(ies):
Phase Forward Incorporated

Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State
 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: **May 21, 2001**

2. Name and address of receiving party(ies):
 Name: Silicon Valley Bank
 Internal Address: Loan Documentation ~~HC150~~ **HA155**
 Street Address: 3003 Tasman Drive
 City: Santa Clara State: Ca ZIP: 95054

Individual(s) Citizenship
 Association
 General Partnership
 Limited Partnership
 Corporation-State
 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

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

| | | |
|---------------------------------|-------------------|-------------------|
| A. Trademark Application No.(s) | | |
| 1998608 | 1931443 | 00887/2001 |
| 00884/2001 | 00885/2001 | 1821578 |
| 2061547 | 1998640 | 00888/2001 |
| 00883/2001 | 00886-2001 | 75/402,993 |
| 1981521 | 761091,237 | 1854009 |
| 761061,240 | 1931526 | 701888,294 |
| 761177,394 | | |

Additional numbers attached? Yes No

B. Trademark Registration No.(s)

JAN 18 2000

5. Name and address of party to whom correspondence concerning document should be mailed:
 Name: Silicon Valley Bank
 Internal Address: Loan Documentation ~~HC150~~ **HA155**

Street Address: 3003 Tasman Dr.
 City: Santa Clara State: Ca ZIP: 95054

6. Total number of applications and registrations involved: **19**

7. Total fee (37 CFR 3.41):\$ **490**
 Enclosed
 Authorized to be charged to deposit account

8. Deposit account number:
 (Attach duplicate copy of this page if paying by deposit account)

02/06/2002 DBYRNE 00000029 1998608

01 FC:481 40.00 OP
02 FC:482 450.00 OP

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.

JANICE CUWA
 Name of Person Signing

Signature

11/30/01
 Date

Total number of pages comprising cover sheet: **10**

OMB No 0651-0011 (exp 4/94)

INTELLECTUAL PROPERTY SECURITY AGREEMENT

This Intellectual Property Security Agreement (this "IP Agreement") is made as of the 21st day of February, 2001 by and between PHASE FORWARD INCORPORATED, a Delaware corporation with its principal place of business at 1440 Main Street, Waltham, Massachusetts 02451 ("Grantor"), and **SILICON VALLEY BANK**, a California-chartered bank, with its principal place of business at 3003 Tasman Drive, Santa Clara, California 95054 and with a loan production office located at One Newton Executive Park, Suite 200, 2221 Washington Street, Newton, Massachusetts 02462, doing business under the name "Silicon Valley East" ("Lender").

RECITALS

A. Lender has agreed to make advances of money and to extend certain financial accommodations to Grantor (the "Loan"), pursuant to: (a) a certain Amended and Restated Loan and Security Agreement dated as of August 4, 2000 between Grantor and Lender, as amended by a certain Loan Modification Agreement dated as of November 21, 2001, (as amended, the "Loan Agreement"), and (b) a certain Promissory Note dated November 20, 1998 in the maximum principal amount of One Million Dollars (\$1,000,000.00) (the "Promissory Note"), governed by the terms of a certain Letter Agreement between Borrower and Bank dated October 14, 1997, as amended (together with the Promissory Note, the "Letter Agreement"). The Loan is secured pursuant to the terms of the Loan Agreement and the Letter Agreement. Lender is willing to enter into certain financial accommodations with Grantor, but only upon the condition, among others, that Grantor shall grant to Lender a security interest in certain Copyrights, Trademarks, and Patents, and other assets, to secure the obligations of Grantor under the Loan Agreement. Defined terms used but not defined herein shall have the same meanings as in the Loan Agreement.

B. Pursuant to the terms of the Loan Agreement and the Letter Agreement, Grantor has granted to Lender a security interest in all of Grantor's right title and interest, whether presently existing or hereafter acquired in, to and under all of the Collateral (as defined therein).

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged and intending to be legally bound, as collateral security for the prompt and complete payment when due of Grantor's Indebtedness (as defined below), Grantor hereby represents, warrants, covenants and agrees as follows:

1. Grant of Security Interest. Subject to section 4 of this IP Agreement, as collateral security for the prompt and complete payment and performance of all of Grantor's present or future indebtedness, obligations and liabilities to Lender (hereinafter, the "Indebtedness"), including, without limitation, under the Loan Agreement and the Letter Agreement, Grantor hereby grants a security interest, effective upon the occurrence of the Triggering Event (as defined in section 4), in all of Grantor's right, title and interest in, to and under its registered and unregistered intellectual property collateral (all of which shall collectively be called the "Intellectual Property Collateral"), including, without limitation, the following:

(a) Any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held, including without limitation those set forth on EXHIBIT A attached hereto (collectively, the "Copyrights");

(b) Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held;

(c) Any and all design rights which may be available to Grantor now or hereafter existing, created, acquired or held;

(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 the patents and patent applications set forth on EXHIBIT B attached hereto (collectively, the "Patents");

(e) Any trademark and service mark rights, slogans, trade dress, and tradenames, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Grantor connected with and symbolized by such trademarks, including without limitation those set forth on EXHIBIT C attached hereto (collectively, the "Trademarks");

(f) Any and all claims for damages by way of past, present and future infringements 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, including, without limitation those set forth on EXHIBIT D attached hereto; and

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

2. Authorization and Request. Subject to the occurrence of the Triggering Event, Grantor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this IP Agreement.

3. Covenants and Warranties. Grantor represents, warrants, covenants and agrees as follows:

(a) Grantor is now the sole owner of the Intellectual Property Collateral, except for non-exclusive licenses granted by Grantor to its customers in the ordinary course of business.

(b) Performance of this IP Agreement does not conflict with or result in a breach of any IP Agreement to which Grantor 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 IP Agreement constitutes a security interest.

(c) During the term of this IP Agreement, Grantor will not transfer or otherwise encumber any interest in the Intellectual Property Collateral, except for (i) non-exclusive licenses granted by Grantor in the ordinary course of business or as set forth in this IP Agreement, (ii) licenses or transfers under joint -or funded - development agreements, "work for hire" agreements or similar agreements pursuant to which Grantor collaborates with customers or third parties on product development and service offerings, (iii) licenses under joint marketing or similar agreements, (iv) Intellectual Property Collateral deposits made from time to time with DSI Technology Escrow Services, Inc. ("Escrow Agent") under that certain Escrow Agreement between Grantor and the Escrow Agent made as of September 22, 1999.

(d) To its knowledge, no part of the Intellectual Property Collateral has been judged invalid or unenforceable, in whole or in part, and except as set forth in Schedule I hereto, no claim has been made that any part of the Intellectual Property Collateral violates the rights of any third party.

(e) Grantor shall promptly advise Lender of any material adverse change in the composition of the Intellectual Property Collateral, including but not limited to any subsequent ownership right of the Grantor in or to any Trademark, Patent, or Copyright specified in this IP Agreement.

(f) Grantor shall use commercially reasonable efforts to: (i) protect, defend and maintain the validity and enforceability of the Trademarks, Patents, and Copyrights (ii) detect infringements of the Trademarks, Patents, and Copyrights and promptly advise Lender in writing of material infringements detected and (iii) not allow any Trademarks, Patents, or Copyrights to be abandoned, forfeited or dedicated to the public without the written consent of Lender, which shall not be unreasonably withheld, unless Grantor determines that reasonable business

practices suggest that abandonment is appropriate. Lender understands and acknowledges that, notwithstanding anything in this IP Agreement or any other agreement or instrument to which Grantor and Lenders are parties, although Grantor has filed applications with the United States Patent and Trademark Office with respect to certain trademarks and patents, and may continue to do so in the future, there can be no assurances as to the approval of such applications and Grantor makes no representations or warranties as to the likelihood of such approval or the outcome of any challenges to such applications.

(g) Subject to the occurrence of the Triggering Event, Grantor shall, from time to time, execute and file such other instruments, and take such further actions as Lender may reasonably request from time to time necessary to perfect or continue the perfection of Lender's interest in the Intellectual Property Collateral which accounts for a material portion of Grantor's revenue.

(h) Subject to the occurrence of the Triggering Event, this IP Agreement will create, and in the case of after acquired Intellectual Property Collateral, this IP Agreement will create at the time Grantor first has rights in such after acquired Intellectual Property Collateral, in favor of Lender a valid and perfected first priority security interest and collateral assignment in the Intellectual Property Collateral in the United States securing the payment and performance of the obligations evidenced by the Loan Agreement and the Letter Agreement upon making the filings referred to in clause (i) below.

(i) To its knowledge, except for, and upon, the filing with the United States Patent and Trademark office with respect to the Patents and Trademarks and the Register of Copyrights with respect to the Copyrights 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 U.S. governmental authority or U.S. regulatory body is required either (i) for the grant by Grantor of the security interest granted hereby, or for the execution, delivery or performance of this IP Agreement by Grantor in the U.S. or (ii) for the perfection in the United States or the exercise by Lender of its rights and remedies thereunder.

(j) To its knowledge, all information heretofore or herein supplied to Lender by or on behalf of Grantor with respect to the Intellectual Property Collateral is accurate and complete in all material respects..

(k) Subject to section 3(c) above, Grantor shall not enter into any agreement that would materially impair or conflict with Grantor's obligations hereunder without Lender's prior written consent, which consent shall not be unreasonably withheld. Subject to section 3(c) above, Grantor 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 Grantor's rights and interest in any property included within the definition of the Intellectual Property Collateral acquired under such contracts.

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

4. **Lender's Rights.** Lender shall only be entitled to exercise its rights with respect to this Agreement in the event that, in any month after the date hereof, Borrower's Tangible Net Worth (as defined in the Loan Agreement) falls below Nine Million Dollars (\$9,000,000.00) (the "Triggering Event"). Thereafter, Lender may enforce its rights under this Agreement, and file any UCC Financing Statement necessary for assuring and confirming to Lender the grant or perfection of a security interest in all Intellectual Property Collateral, in accordance with this IP Agreement until such time as Borrower either: (a) raises an additional Fifteen Million Dollars (\$15,000,000.00) in equity, or (b) is profitable for at least two (2) consecutive quarters (each, a "Cure Event"). Lender shall have the right, but not the obligation, to take, at Grantor's sole expense, any actions that Grantor is required under this IP Agreement to take but which Grantor fails to take, after thirty (30) days' notice to Grantor. Grantor shall reimburse and indemnify Lender for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this section 4.

5. Inspection Rights. Grantor hereby grants to Lender and its employees, representatives and agents the right to visit, during reasonable hours upon prior reasonable written notice to Grantor, any of Grantor'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 Grantor and as often as may be reasonably requested, but not more than once in every six (6) months; provided, however, nothing herein shall entitle Lender access to Grantor's trade secrets and other proprietary information.

6. Further Assurances: Attorney in Fact.

(a) On a continuing basis, Grantor will, subject to any prior licenses, encumbrances and restrictions and prospective licenses or other agreements referred to in section 3(c), 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 Trademarks Office and the Register of Copyrights, and take all such action as may reasonably be deemed necessary or advisable, as requested by Lender, to carry out the intent and purposes of this IP Agreement, or for assuring and confirming to Lender the grant or perfection of a security interest in all Intellectual Property Collateral, in accordance with this IP Agreement.

(b) Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor, Lender or otherwise, from time to time in Lender's discretion, upon Grantor's failure or inability to do so, to take any action and to execute any instrument which Lender may reasonably deem necessary or advisable to accomplish the purposes of this IP Agreement, including:

(i) To modify, in its sole discretion, this IP Agreement without first obtaining Grantor's approval of or signature to such modification by amending Exhibit A, Exhibit B, Exhibit C, and Exhibit D hereof, as appropriate, to include reference to any right, title or interest in any Copyrights, Patents, or Trademarks acquired by Grantor after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents, or Trademarks in which Grantor no longer has or claims any right, title or interest; and

(ii) To file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Intellectual Property Collateral without the signature of Grantor where permitted by law.

7. Events of Default. The occurrence of any of the following shall constitute an Event of Default under this IP Agreement:

(a) An Event of Default occurs under the Loan Agreement; or

(b) Grantor breaches any material warranty or agreement made by Grantor in this IP Agreement.

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

9. Indemnity. Grantor agrees to defend, indemnify and hold harmless Lender 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 Agreement, and (b) all losses or expenses in any way suffered, incurred, or paid by Lender as a result of or in any way arising out of, following or consequential to transactions between Lender and Grantor, whether under this IP Agreement or otherwise (including without limitation, reasonable attorneys fees and reasonable expenses), except for losses arising from or out of Lender's gross negligence or willful misconduct.

10. Termination.

(a) Upon the occurrence of a Cure Event as described in either clause (a) or (b) of section 4 of this IP Agreement, the security interest granted to Lender by Grantor pursuant to section 1 of this IP Agreement shall terminate automatically and shall thereafter be of no further force or effect. Lender shall execute all documents and take all actions reasonably requested by Grantor to evidence such termination.

(b) At such time as Grantor shall completely satisfy all of the obligations secured hereunder, Lender shall promptly execute and deliver to Grantor all terminations, releases, and other instruments as may be necessary or proper to terminate this IP Agreement and the security interest granted to Lender by Grantor pursuant to section 1 of this IP Agreement.

11. Course of Dealing. No course of dealing, nor any failure to exercise, nor any delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

12. Amendments. This IP Agreement may be amended only by a written instrument signed by both parties hereto.

13. Counterparts. This IP Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.

14. Law and Jurisdiction. This IP Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts. GRANTOR ACCEPTS FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, UNCONDITIONALLY, THE NON-EXCLUSIVE JURISDICTION OF ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE COMMONWEALTH OF MASSACHUSETTS IN ANY ACTION, SUIT, OR PROCEEDING OF ANY KIND, AGAINST IT WHICH ARISES OUT OF OR BY REASON OF THIS AGREEMENT; PROVIDED, HOWEVER, THAT IF FOR ANY REASON LENDER CANNOT AVAIL ITSELF OF THE COURTS OF THE COMMONWEALTH OF MASSACHUSETTS, GRANTOR ACCEPTS JURISDICTION OF THE COURTS AND VENUE IN SANTA CLARA COUNTY, CALIFORNIA.

GRANTOR AND LENDER EACH HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH PARTY RECOGNIZES AND AGREES THAT THE FOREGOING WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR IT TO ENTER INTO THIS AGREEMENT. EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

15. Confidentiality. In handling any confidential information, Lender shall exercise the same degree of care that it exercises for its own proprietary information, but disclosure of information may be made: (i) to Lender's subsidiaries or affiliates in connection with their present or prospective business relations with Grantor, subject to the terms of this section; (ii) to prospective transferees or purchasers of any interest in the Loans, provided that the Lender will use commercially reasonable efforts in obtaining such prospective transferee or purchaser's agreement to the terms of this provision; (iii) as required by law, regulation, subpoena, or other order; (iv) as required in connection with Lender's examination or audit; and (v) as Lender considers appropriate in exercising remedies under this Agreement. Confidential information does not include information that either: (a) is in the public domain or in Lender's possession when disclosed to Lender, or becomes part of the public domain after disclosure to Lender; or (b) is disclosed to Lender by a third party, if Lender reasonably does not know that the third party is prohibited from disclosing the information.

EXECUTED as a sealed instrument under the laws of the Commonwealth of Massachusetts on the day and year first written above.

Address of Grantor:

1440 Main Street, Waltham, Massachusetts 02451

GRANTOR:

PHASE FORWARD INCORPORATED

By: *Shiv Tasker*

Name: SHIV TASKER

Title: president & CEO

SILICON VALLEY BANK

By: *Michael Trainack*

Name: Michael Trainack

Title: Vice President

56120/171

634554.5

EXHIBIT "A"

COPYRIGHTS

SCHEDULE A - ISSUED COPYRIGHTS

| <u>COPYRIGHT DESCRIPTION</u> | <u>REGISTRATION NUMBER</u> | <u>DATE OF ISSUANCE</u> |
|------------------------------|----------------------------|-------------------------|
|------------------------------|----------------------------|-------------------------|

None.

SCHEDULE B - PENDING COPYRIGHT APPLICATIONS

| <u>COPYRIGHT DESCRIPTION</u> | <u>APPLICATION NUMBER</u> | <u>DATE OF FILING</u> | <u>DATE OF CREATION</u> | <u>FIRST DATE OF PUBLIC DISTRIBUTION</u> |
|------------------------------|---------------------------|-----------------------|-------------------------|--|
|------------------------------|---------------------------|-----------------------|-------------------------|--|

None.

SCHEDULE C - UNREGISTERED COPYRIGHTS (Where No Copyright Application is Pending)

| <u>COPYRIGHT DESCRIPTION</u> | <u>DATE OF CREATION</u> | <u>FIRST DATE OF DISTRIBUTION</u> | <u>DATE AND RECORDATION NUMBER OF IP AGREEMENT WITH OWNER OR ORIGINAL GRANTOR IF AUTHOR OR OWNER OF COPYRIGHT IS DIFFERENT FROM GRANTOR</u> | <u>ORIGINAL AUTHOR OR OWNER OF COPYRIGHT IS DIFFERENT FROM GRANTOR</u> |
|------------------------------|-------------------------|-----------------------------------|---|--|
|------------------------------|-------------------------|-----------------------------------|---|--|

Copyright rights in Grantor's InForm™ software product and related products, as well as all product and technical documentation, user documentation, advertising and marketing materials, product collateral and notes and work papers.

EXHIBIT "C"
TRADEMARKS

| <u>TRADEMARK DESCRIPTION (class)</u> | <u>COUNTRY</u> | <u>SERIAL NO.</u> | <u>REG. NO</u> | <u>STATUS</u> |
|--|--------------------------|-------------------|----------------|---------------|
| INDEPTH (9)(38)(42) | European Community | 1998608 | | Pending |
| INDEPTH (9) | Switzerland | 00884/2001 | | Pending |
| INFORM (9)(38)(42) | European Community | 2061547 | | Pending |
| INFORM (9) | Switzerland | 00883/2001 | | Pending |
| INFORM ARCHITECT (9)(38)(42) | European Community | 1981521 | | Pending |
| INFORM ARCHITECT (9) | United States of America | 76/061,240 | | Pending |
| INFUSION (9)(38)(42) | European Community | 1931443 | | Pending |
| INFUSION (9) | Switzerland | 00885/2001 | | Pending |
| INPHASE (9)(38)(42) | European Community | 1998640 | | Pending |
| INPHASE (42) | Switzerland | 00886-2001 | | Pending |
| INPHASE (42) | United States of America | 76/091,239 | | Pending |
| INTRUST(9)(16)(42) | European Community | 1931526 | | Pending |
| INTRUST (9) | Switzerland | 00887/2001 | | Pending |
| PHASE FORWARD (9)(16)(42) | European Community | 1821578 | | Pending |
| PHASE FORWARD (9) | Switzerland | 00888/2001 | | Pending |
| PHASE FORWARD (9) | United States of America | 75/402,993 | 2366760 | Registered |
| THE FUTURE OF CLINICAL TRIALS (9)(16)(42) | European Community | 1854009 | | Pending |
| THE FUTURE OF CLINICAL TRIALS (9) | United States of America | 75/688,294 | | Allowed |
| THE FUTURE OF CLINICAL TRIALS (16) | United States of America | 76/177,394 | | Pending |

Schedule I

CB Technologies, Inc. trademark infringement claim relating to the mark INFORM UNPLUGGED.