

05-30-2002



102106068

To the Honorable Commissioner of Patents and Trademarks

and all documents or copy thereof.

1. Name of conveying party(ies):

Red Herring Communications, Inc.
1550 Bryant Street, Suite 450
San Francisco, CA 94103

- Individual(s) Association
- General Partnership Limited Partnership
- Corporation-State California
- 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 Collateral Assignment, Patent Mortgage and Security Agreement

Execution Date: November 30, 2001

MER
3/5/2

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)

See attached.

B. Trademark Registration No.(s)

See attached.

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, 20th Floor

City: San Francisco State: CA ZIP 94111

6. Total number of applications and registration involved: 49

7. Total fee (37 CFR 3.41):..... \$1,240.00

- 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)

01 FC:481 40.00 OP
02 FC:482 1200.00 OP

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.

Ankey To

March 4, 2002
Date

Total number of pages including cover sheet, attachments, and document: 15

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



Continuation from Item 4

U.S. TRADEMARKS AND TRADEMARK APPLICATIONS

(List marks below or indicate "None")

REGISTRATION NO.	PENDING APPLICATION No.	MARK	REGISTRATION DATE	FILING DATE
1859694		THE RED HERRING	10/25/94	11/19/93
2287389		THE RED HERRING	10/19/99	4/14/98
2122851		HERRING.COM	12/23/97	4/9/96
2141842		HERRING COMMUNICATIONS	3/10/98	4/17/96
2353406		REDHERRING.COM	5/30/00	12/22/98
2371806		VENTURE	7/25/00	11/10/98
2277943		NDA ϵ	9/14/99	7/13/98
2254486		NDA	6/15/99	1/28/98
2292112		NON DISCLOSURE AGREEMENT	11/16/99	1/28/98
2349618		DESIGN ONLY	5/16/00	10/23/98
2200792		THE BUSINESS OF TECHNOLOGY	10/27/98	11/24/97
2069173		WEB MARKET	6/10/97	4/9/96
2054884		VENTURE MARKET	4/22/97	4/9/96
2243005		REALIZE	5/4/99	1/11/96
1953838		INDEX TRADER	1/30/96	11/25/94
	76092226	INTERCULTURE		7/19/00
	75917994	STREET POLL		2/14/00
	75918293	IPO STREET POLL		2/14/00
	75919091	ENTREPRENEUR WORKSHOP		2/14/00
	75938087	HERRING INVESTOR		3/8/00
	75938090	PERSONAL CAPITAL		3/8/00
	75938095	COD		3/8/00
	76020800	THINK TANK		4/6/00
2439701	76020801	BAIT & SWITCH	3/27/01	4/6/00
2439702	76020808	GRAPHITI	3/27/01	4/6/00

Continuation from Item 4

REGISTRATION NO.	PENDING APPLICATION NO.	MARK	REGISTRATION DATE	FILING DATE
2439703	76020882	THE ANGLER	3/27/01	4/6/00
2439704	76020886	VC WHISPERS	3/27/01	4/6/00
2439705	76020887	M & A INSIGHT	3/27/01	4/6/00
	76020888	STREET TALK		4/6/00
	76020897	TERM SHEET		4/6/00
	76020898	ONE TO WATCH		4/6/00
	76020899	RELOAD		4/6/00
	76040620	FACTSHEET		5/1/00
	76040621	TECH INSIDER		5/1/00
	76122396	HERRING TAKE		9/5/00
	76136623	.P		9/26/00
76148394		RED HERRING COM		
2441068	76040624	THE LORE OF THE RED HERRING	4/3/01	5/1/00
75938098		DEALFLOW.COM		
2442569	75938097	CATCH OF THE DAY	4/10/01	3/8/00
75815781		REDHERRINGMEDIA.COM		
75938099		DEAL FLOW		
75938096		CATCHOFTHEMAY.COM		
75938083		VC P.S.		
75815780		BUSINESS NOW		
2452619	75815746	HERRINGTOWN	5/22/01	10/4/99
75938094		COD.COM		
75814947		RADICALLY RELEVANT		
2084668		STOCKMASTER	7/29/97	

UNREGISTERED TRADEMARKS: List marks below or indicate "None."

The company considers anything bearing the Red Herring name or logo to be trademarked material.

AMENDED AND RESTATED COLLATERAL ASSIGNMENT, PATENT MORTGAGE AND SECURITY AGREEMENT

THIS AMENDED AND RESTATED COLLATERAL ASSIGNMENT, PATENT MORTGAGE AND SECURITY AGREEMENT ("*Intellectual Property Security Agreement*") is entered into as of November 30, 2001 by and between RED HERRING COMMUNICATIONS, INC., a California corporation ("*Debtor*") and COMERICA BANK-CALIFORNIA, successor by merger to Imperial Bank ("*Bank*"). This Intellectual Property Security Agreement amends and restates in its entirety the Original Intellectual Property Security Agreement (defined below).

RECITALS

A. WHEREAS, Imperial Bank agreed to make certain advances of money and to extend certain financial accommodations to Debtor (the "*Loans*") in the amounts and manner set forth in that certain Amended and Restated Loan Agreement dated as of February 24, 2000, as amended by that certain First Amendment to Amended and Restated Loan Agreement dated as of November 30, 2000 and by that certain Forbearance Agreement and Second Amendment to Amended and Restated Loan Agreement dated as of March 15, 2001, and as further amended by that Forbearance Agreement and Third Amendment to Amended and Restated Loan Agreement dated as of April 27, 2001 ("*Original Loan Agreement*"). In order to induce Imperial Bank to make the Loans, Debtor granted to Imperial Bank a security interest in, among other assets, certain items of its intangible property, pursuant to that certain Collateral Assignment, Patent Mortgage and Security Agreement, dated as of February 24, 2001 ("*Original Intellectual Property Security Agreement*").

B. WHEREAS, Imperial Bank and Bank have entered into an agreement of 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 Intellectual Property 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, Debtor 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 Third Amended and Restated Loan and Security Agreement, dated as of the date hereof (as the same may be amended, extended, or restated from time to time, "*Loan Agreement*"), but only on the condition, among others, that Debtor enter into this Intellectual Property Security Agreement. Capitalized terms used herein without definition shall have the same meanings given to them in the Loan Agreement.

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, transfers, conveys and 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*"):

1.

(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 letters patent, 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.

The security interest granted hereunder is granted in conjunction with the security interests granted to Bank under the 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 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 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 Intellectual Property Security Agreement, the 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.

Debtor hereby re-affirms for the benefit of Bank that the security interest granted to Imperial Bank pursuant to the Original Intellectual Property Security 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 Debtor 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.

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 conditional assignment.

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 Intellectual Property 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 Intellectual Property Security Agreement would constitute such an assignment;

(c) During the term of this Intellectual Property 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 Intellectual Property Security Agreement and (ii) subject to Debtor's

3.

execution of appropriate documents, in form 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 Intellectual Property 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, 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 Intellectual Property Collateral;

(h) This Intellectual Property 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 and assignment 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 Intellectual Property 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 Intellectual Property 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 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, 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 Intellectual Property 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 Intellectual Property Security Agreement, including (i) to modify, in its reasonable discretion, this Intellectual Property 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* that Bank agrees that it shall not exercise its powers as attorney-in-fact under this **Section 6** except upon the occurrence and during the continuation of an Event of Default.

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

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

(b) Debtor breaches any warranty or agreement in any material respect made by Debtor in this Intellectual Property 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 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 Intellectual Property 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 Intellectual Property 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. SUCCESSORS AND ASSIGNS. This Intellectual Property 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, any future holder of any Note and their respective 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 Intellectual Property 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.

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

15. COUNTERPARTS. This Intellectual Property 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 Intellectual Property 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.

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 Intellectual Property 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 INTELLECTUAL PROPERTY 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 Intellectual Property Security Agreement with any term and/or provision contained in the Security Agreement, the term and/or provision of this Intellectual Property Security Agreement shall govern.

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

BANK

COMERICA BANK-CALIFORNIA,
successor by merger to Imperial Bank

By: 
Kenneth W. LeDeit
First Vice President

Address of Bank

333 W. Santa Clara St.
San Jose, California 95113

with a copy to:

3000 El Camino Real
5 Palo Alto Square, Suite 800
Palo Alto, CA 94306
Attention: Kenneth W. LeDeit

DEBTOR

RED HERRING COMMUNICATIONS, INC.,
a California corporation

By: 
Hilary Schneider
Chief Executive Officer

Address of Debtor

1550 Bryant Street, Suite 450
San Francisco, California 94103
Attention: Douglas Jeffries