

10-21-2002

10-21-02



FORM PTO-1
(Rev 5-93)

ION FORM COVER SHEET
TRADEMARKS ONLY

U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

102255698

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

<p>1. Name of conveying party(ies): MIDSTREAM TECHNOLOGIES, INC.</p> <p>Individual(s) citizenship: Association: General Partnership: Limited Partnership: Corporation - State: WASHINGTON Other:</p> <p>Additional name(s) of conveying party(ies) attached? [] Yes [X] No</p> <p>3. Nature of Conveyance: <input type="checkbox"/> Assignment <input type="checkbox"/> Merger <input checked="" type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input type="checkbox"/> Other</p> <p>Execution Date: January 16, 2001</p>	<p>2. Name and address of receiving party(ies): Name: COMERICA BANK-CALIFORNIA, Successor in interest to IMPERIAL BANK Address: 5330 CARILLON POINT City: KIRKLAND JOSE State: WA Zip: 98033</p> <p>Individual(s) citizenship: Association: General Partnership: Limited Partnership: Corporation - State: Other: a California banking corporation</p> <p>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 [x] No</p>
---	---

<p>4. Application number(s) or trademark number(s): A. Trademark Application No.(s) 78/134,791 76/313,265</p>	<p>B. Trademark Registration No.(s)</p>
<p>Additional numbers attached? [] Yes [X] No</p>	

<p>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 1100 San Diego, CA 92121-2133</p>	<p>6 Total number of applications and registrations involved: 2</p> <hr/> <p>7. Total fee (37 CFR 3.41) \$65.00 <input checked="" type="checkbox"/> Enclosed <input type="checkbox"/> Authorized to be charged to deposit account</p> <hr/> <p>8. Deposit account number: (Attach duplicate copy of this page if paying by deposit account)</p>
---	--

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Erin O'Brien		October 18, 2002
Name of Person Signing	Signature	Date

Total number of pages comprising cover sheet: [9]

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

10/21/2002 DBYRNE 00000112 78134791

01 FC:8521	40.00 OP
02 FC:8522	25.00 OP

PA10115997.2
1090371-943100

TRADEMARK
REEL: 002601 FRAME: 0541

INTELLECTUAL PROPERTY SECURITY AGREEMENT

This Intellectual Property Security Agreement (the "Agreement") is made as of January 16, 2001, by and between MIDSTREAM TECHNOLOGIES, INC., a Washington corporation ("Grantor"), and IMPERIAL BANK, a California chartered bank ("Secured Party").

RECITALS

A. Secured Party has 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, dated as of July 3, 2000, as amended, including without limitation by that certain First Amendment to Loan and Security Agreement dated as of September 20, 2000 and that certain Second Amendment to Loan and Security Agreement dated as of the date hereof (collectively, the "Credit Agreement;" all capitalized terms used herein without definition shall have the meanings ascribed to them in the Credit Agreement).

B. Secured Party is willing to make the Loans to Grantor, but only upon the condition, among others, that Grantor shall grant to Secured Party a security interest in all of Grantor's right title, and interest in, to and under all of the Collateral whether presently existing or hereafter acquired

NOW, THEREFORE, THE PARTIES HERETO AGREE AS FOLLOWS:

1. Grant of Security Interest. As collateral security for the prompt and complete payment and performance of all of Grantor's present or future indebtedness, obligations and liabilities to Secured Party, Grantor hereby grants a security interest and mortgage to Secured Party, as security, in and to Grantor's entire right, title and interest in, to and under all of its intellectual property, including without limitation the following (all of which shall collectively be called the "Collateral"):

(a) Any and all copyright rights, copyright applications, copyright registrations and like protections in each work 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 servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of 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 infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

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

(h) All amendments, renewals and extensions of any of the Copyrights, 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. Covenants and Warranties. Grantor represents, warrants, covenants and agrees as follows:

(a) Grantor is 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. Each of the Patents is valid and enforceable, and no part of the Collateral has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Collateral violates the rights of any third party. Except as set forth in the Schedule, Grantor's rights as a licensee of intellectual property do not give rise to more than five percent (5%) of its gross revenue in any given month, including without limitation revenue derived from the sale, licensing, rendering or disposition of any product or service. Grantor is not a party to, or bound by, any agreement that restricts the grant by Grantor of a security interest in Grantor's rights under such agreement;

(b) This security interest is granted in conjunction with the security interest granted to Secured Party under the Credit Agreement. The rights and remedies of Secured Party with respect to the security interest granted hereby are in addition to those set forth in the Credit Agreement and the other Loan Documents, and those which are now or hereafter available to Secured Party as a matter of law or equity. Each right, power and remedy of Secured Party provided for herein or in the Credit Agreement or 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 Secured Party of any one or more of the rights, powers or remedies provided for in this Agreement, the Credit 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 Secured Party, of any or all other rights, powers or remedies.

(c) 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 an application with either the United States Patent and Trademark Office or the United States Copyright Office, as applicable.

(d) Grantor shall (i) protect, defend and maintain the validity and enforceability of the Trademarks, Patents and Copyrights (ii) use its best efforts to detect infringements of the Trademarks, Patents and Copyrights and promptly advise Secured Party 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 Secured Party, which shall not be unreasonably withheld; and

(e) Grantor shall apply for registration on an expedited basis (to the extent not already registered) with the United States Patent and Trademark Office or the United States Copyright Office, as applicable: (i) those intellectual property rights listed on Exhibits A, B and C hereto within forty-five (45) days of the date of this Agreement; (ii) all copyrightable intellectual property rights which constitute or give rise to more than five percent (5%) of Grantor's gross income in any given month which Grantor has developed as of the date of this Agreement but heretofore failed to register, within forty-five (45) days of the date of this Agreement; and (iii) those additional copyrightable intellectual property rights which constitute or give rise to more than five percent (5%) of Grantor's gross income in any given month which are developed or acquired by Grantor from time to time in connection with any product or service, prior to the sale or licensing of such product or the rendering of such service to any third party and prior to Grantor's use of such product (including without limitation revisions or additions to the intellectual property rights listed on such Exhibit A hereto). Grantor will promptly notify Secured Party upon Grantor's filing of any application or registration of any Intellectual Property rights with the United States Copyright Office or the United States Patent and Trademark Office (including without limitation revisions or additions to the intellectual property rights listed on Exhibits A, B & C hereto) and Grantor will execute and deliver any and all

instruments and documents as Secured Party may reasonably request from time to time to perfect or continue the perfection of Secured Party's security interest in such application or registration. Grantor will file for patent and trademark protection to the extent that failure to do so would have a material adverse effect on Grantor or its business;

3. Attorney in Fact. Grantor hereby irrevocably appoints Secured Party as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor, from time to time in Secured Party's discretion, to take any action and to execute any instrument which Secured Party may deem necessary or advisable to accomplish the purposes of this Agreement, including (i) to modify, in its sole discretion, this Agreement without first obtaining Grantor's approval of or signature to such modification by amending Exhibit A, Exhibit B and Exhibit C, 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, (ii) to file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of Grantor where permitted by law and (iii) after the occurrence of an Event of Default, to transfer the Collateral into the name of Secured Party or a third party to the extent permitted under the California Uniform Commercial Code.

4. Events of Default. The occurrence of any of the following shall constitute an Event of Default under the Agreement: (a) An Event of Default occurs under the Loan Documents; or (B) Grantor breaches any warranty or agreement made by Grantor in this Agreement and, as to any breach that is capable of cure, Grantor fails to cure such breach within five (5) days of the occurrence of such breach.

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

6. 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. This Agreement may be amended only by a written instrument signed by both parties hereto.

7. Counterparts. This 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.

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

GRANTOR:

Address of Grantor:

777 108th Avenue NE Suite 1700
Bellevue, WA 98004

Attn: Craig Murphy

MIDSTREAM TECHNOLOGIES, INC.

By: [Signature]

Its: PRESIDENT AND CEO

SECURED PARTY

Address of Secured Party:

5330 Carillon Point
Kirkland, WA 98033

Attn: Julia Doke

IMPERIAL BANK

By: [Signature]

Its: VP

EXHIBIT A

Copyrights

Description

Registration Number

Registration Date

EXHIBIT B

Patents

<u>Description</u>	<u>Registration/Serial Number</u>	<u>Registration/Application Date</u>
Hybrid streaming platform	60/374,090	04/19/02
Flexible streaming hardware	60/374,086	04/19/02
Optimized digital media delivery engine	60/374,037	04/19/02
Optimized digital media delivery engine	60/373,991	04/19/02

EXHIBIT C

Trademarks

<u>Description</u>	<u>Registration/Application Number</u>	<u>Registration/Application Date</u>
Midstream Technologies (and design)	76/070,583	06/15/00
(design only)	76/070,582	06/15/00
Midstream Technologies	75/922,633	02/18/00
RO Design (and design)	2,156,827	05/12/98
Hyperdrive	78/134,791	06/11/02
Midstream	76/313,265	09/14/01

Schedule of Exceptions

Inbound Licenses (Section 2(a))

License of intellectual property from Microsoft for Windows Media support.