

02-03-2003

FORM PTO-1594 (modified) RECOR (Rev. 03/01) OMB No. 0651-0027 (exp. 5/31/2002)



102354256

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

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

1. Name of conveying party(ies):  
**Butterfly.net, Inc.** *1-29-03*

Individual(s)       Association  
 Corporation - State: DELAWARE  
 General Partnership       Limited Partnership  
 Other: \_\_\_\_\_

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

2. Name and address of receiving party(ies):  
Name: Walker Investment Fund II, LLLP  
Street \_\_\_\_\_  
Address: 3060 Washington Road  
Suite 200 *9 2003*  
Glenwood, Maryland 21738

Individual(s) citizenship: \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership of: \_\_\_\_\_  
 Limited Partnership of: \_\_\_\_\_  
 Corporation-State: \_\_\_\_\_  
 Other: Limited Liability Limited Partnership of  
DELAWARE

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

3. Nature of conveyance:  
 Assignment       Merger  
 Security Agreement       Change of Name  
 Other: \_\_\_\_\_

Execution Date: January 15, 2003

4. Application number(s) or registration number(s):  
A. Trademark Application No.(s)  
76/215,780 76/215,781 76/219,240

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: Adam D. Resnick, Esq.  
Firm: PIPER RUDNICK LLP  
Address: 1200 Nineteenth Street, NW  
City: Washington State: DC ZIP: 20036

6. Total number of applications and registrations involved: ..... **3**

7. Total fee (37 C.F.R. § 3.41). . . . . \$ 90.00  
 Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number:  
501150

02/03/2003 6TON11 00000032 76215780  
01 FC:4521 40.00 DP  
02 FC:4522 50.00 DP

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.*

Adam D. Resnick, Esq. *[Signature]* 01/29/2003  
Name of Person Signing Signature Date

Total no. of pages incl. cover sheets, attachments, and document: **13**

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

TRADEMARK REEL: 002663 FRAME: 0254

RECORDATION FORM COVER SHEET
TRADEMARKS ONLY
(Continuation)

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

1. Name of conveying party(ies):
[ ] Individual(s) [ ] Association
[ ] General Partnership- State: \_\_\_\_\_
[ ] Corporation [ ] Limited Partnership
[ ] Other: \_\_\_\_\_
Additional name(s) of conveying party(ies) attached? [ ] Yes [ ] No

2. Name and address of receiving party(ies):
Name: Adena Ventures, LP
Street
Address: 143 Technology and Enterprise Building
Athens, Ohio 45701
[ ] Individual(s) citizenship: \_\_\_\_\_
[ ] Association \_\_\_\_\_
[ ] General Partnership of: \_\_\_\_\_
[X] Limited Partnership of: DELAWARE
[ ] 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 [X] No

3. Nature of conveyance:
[X] Assignment [ ] Merger
[ ] Security Agreement [ ] Change of Name
[ ] Other: \_\_\_\_\_
Execution Date: \_\_\_\_\_

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

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:
Firm:
Address:
City: State: ZIP:

6. Total number of applications and registrations involved: .....
7. Total fee (37 C.F.R. § 3.41). . . . . \$ \_\_\_\_\_
[ ] 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.

Name of Person Signing Signature Date

Total no. of pages incl. cover sheets, attachments, and document: 13

# INTELLECTUAL PROPERTY SECURITY AGREEMENT

THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT is entered into as of January 15, 2003 by and between WALKER INVESTMENT FUND II, LLLP ("*Walker*"), ADENA VENTURES, LP ("*Adena*" and, together with Walker, the "*Secured Party*") and BUTTERFLY.NET, INC., a Delaware corporation ("*Grantor*").

## RECITALS

A. The Secured Party has agreed to make certain advances of money and to extend certain financial accommodation to Grantor (the "*Loan*") in the amounts and manner set forth in that certain Secured Demand Note Purchase Agreement by and between the Secured Party and Grantor, dated of even date herewith (as the same may be amended, modified or supplemented from time to time, the "*Note Purchase Agreement*"). Capitalized terms used but not otherwise defined herein are used as defined in the Note Purchase Agreement.

B. The Secured Party is willing to extend and to continue to extend financial accommodations 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, whether presently existing or hereafter acquired, in, to and under all of the Intellectual Property Collateral (as defined below) to secure the obligations of Grantor under the Note Purchase Agreement and the other agreements, instruments and documents delivered in connection therewith (collectively, the "*Note Documents*").

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 its obligations under the Note Documents, Grantor hereby represents, warrants, covenants and agrees as follows:

## AGREEMENT

### 1. Definitions.

1.1 "*Copyrights*" means 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.

1.2 "*Intellectual Property Collateral*" means all of Grantor's right, title, and interest in and to the following:

(a) Copyrights, Trademarks and Patents;

(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) 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;

(e) 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;

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

(g) 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.

**1.3** “*Patents*” means all patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same.

**1.4** “*Trademarks*” means 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.

## **2. Grant of Security Interest.**

**2.1** To secure its obligations under the Note Documents, Grantor grants and pledges to Secured Party 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 *Exhibits 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.

## **3. Events of Default.**

**3.1** Each “*Event of Default*” under the Note Documents shall be an Event of Default hereunder, and is hereby incorporated herein by reference.

## **4. Rights and Remedies.**

**4.1** The rights and remedies of Secured Party with respect to the security interest granted hereby are in addition to those set forth in the Note Purchase Agreement and the other Note 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 Note Purchase Agreement or any of the Note 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 Intellectual Property Security Agreement, the Note Purchase Agreement or any of the other Note 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.

## **5. Representations and Warranties.**

**5.1** 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.

**5.2** Except for licenses granted by Grantor to its customers in the ordinary course of business as set forth in the *Schedule I* attached hereto, Grantor is the sole owner of the Intellectual Property Collateral. Each of the Copyrights, Trademarks and Patents is valid and enforceable, and no part of the Intellectual Property Collateral 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 except to the extent such claim could not reasonably be expected to cause (i) a material adverse change to Grantor's business, (ii) a material impairment of the prospect of repayment of any portion of the obligations owing under the Note Documents, or (iii) a material impairment of the value or priority of Secured Party's security interest in the Collateral (as defined in the Note Documents).

## **6. Covenants.**

**6.1** Grantor shall execute and deliver such additional instruments and documents from time to time as Secured Party shall reasonably request to perfect Secured Party's security interest in the Intellectual Property Collateral.

**6.2** 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 material 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.

**6.3** Secured Party may audit Grantor's Intellectual Property Collateral to confirm compliance with this Section 6. Secured Party shall have the right, but not the obligation, to take, at Grantor's sole expense, any actions that Grantor is required under this Section 6 to take but which Grantor fails to take, after 15 days' notice to Grantor. Grantor shall reimburse and indemnify Secured Party for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this Section 6.

**6.4** Grantor shall not permit the inclusion in any contract to which it becomes a party of any provisions that could restrict or invalidate the creation of a security interest in Grantor's rights and interests in any Intellectual Property Collateral.

[Signature Page to Follow]


IN WITNESS WHEREOF, the parties have caused this Intellectual Property Security Agreement to be duly executed by its officers thereunto duly authorized as of the first date written above.

**GRANTOR:**

Address of Grantor:

**BUTTERFLY.NET, INC.**

224 West King Street

By:  \_\_\_\_\_

Martinsburg, WV 25401

Title: Chief Executive Officer

**SECURED PARTY:**

Address of Secured Party:

**Walker Investment Fund II, LLLP**

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

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

**SECURED PARTY:**

Address of Secured Party:

**Adena Ventures, LP**

\_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_

Title: \_\_\_\_\_

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

IN WITNESS WHEREOF, the parties have caused this Intellectual Property Security Agreement to be duly executed by its officers thereunto duly authorized as of the first date written above.

**GRANTOR:**

Address of Grantor:

**BUTTERFLY.NET, INC.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**SECURED PARTY:**

Address of Secured Party:

**Walker Investment Fund II, LLP**

*3060 Washington Rd*  
*Suite 200*  
*Glenwood, MD*  
*21737*

By: \_\_\_\_\_

Name: *Greg [Signature]*

Title: *Managing Dir*

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

**SECURED PARTY:**

Address of Secured Party:

**Adena Ventures, LP**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

IN WITNESS WHEREOF, the parties have caused this Intellectual Property Security Agreement to be duly executed by its officers thereunto duly authorized as of the first date written above.

**GRANTOR:**

Address of Grantor:

**BUTTERFLY.NET, INC.**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

**SECURED PARTY:**

Address of Secured Party:

**Walker Investment Fund II, LLP**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

By:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**SECURED PARTY:**

Address of Secured Party:

**Adena Ventures, LP**

143 Technology + Enterprise Bldg.  
Athens, OH 45701

By: 

Name: LYNN GELLERMANN

Title: Pres. + COO

Address: 143 Technology + Enterprise Bldg.  
Athens, OH 45701



**SCHEDULE I**

**LIST OF ORDINARY COURSE LICENSES**

Altimate Digital Technology, Ltd  
VoidWorks  
Gizmo  
Alan Pavlish  
Wordware Publishing, Inc.  
Sherman3D  
Nemitasia

**EXHIBIT A**  
**COPYRIGHTS**

<b>Description</b>	<b>Registration Number</b>	<b>Registration Date</b>
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Not applicable

**EXHIBIT B****PATENTS**

<b>Description</b>	<b>Registration/ Application Number</b>	<b>Registration/ Application Date</b>
1. Patent Application No. 09/721,979, filed 11/27/00 for "System and Method For Synthesizing Environments to Facilitate Distributed, Context-Sensitive, Multi-User Interactive Applications."	09/721,979	11/27/00
2. International Patent Application No. PCT/US01/44091; filed 11/27/01 for "System and Method For Synthesizing Environments to Facilitate Distributed, Context-Sensitive, Multi-User Interactive Applications."	PCT/US01/44 091	11/27/01
3. Provisional Patent Application No. 60/364,640; filed 3/18/02 for "System and Method for Synthesizing Environments in Interactive Applications."	60/364,640	3/18/02
4. Provisional Patent Application No. 60/364,639; filed 3/18/02 for "System and Method for Synthesizing Environments in Massive Multiplayer Games"	60/ 364,639	3/18/02

EXHIBIT C

TRADEMARKS

<u>Description</u>	<u>Registration/ Application Number</u>	<u>Registration/ Application Date</u>
1. Trademark Application for BUTTERFLY.NET; Appl. No. 76/215,781; filed 2/26/01.	76/215,781	2/26/01
2. Trademark Application for MOTHMEN; Appl. No. 76/215,780; filed 2/26/01.	76/215,780	2/26/01
3. Trademark Application for Butterfly.net Logo Design, Appl. No. 76/219,240; filed 3/2/01.	76/219,240	3/2/01