

02-21-2003

Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings

2-14-03 RECOF TR



102369969

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):

Ximian, Inc.

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

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

2. Name and address of receiving party(ies)

Name: Battery Ventures VI, L.P., as agent Internal Address: Suite 200

Street Address: 20 William Street

City: Wellesley State: MA Zip: 02481

- Individual(s) citizenship Association General Partnership Limited Partnership 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 No

3. Nature of conveyance:

- Assignment Merger Security Agreement Change of Name Other

Execution Date: February 13, 2003

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

A. Trademark Application No.(s) 76/245,343; 76/141,800

B. Trademark Registration No.(s) 2,672,926

Additional number(s) attached Yes No

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

Name: Kristine Dimitrova Schreiber Internal Address: Posternak Blankstein & Lund, LLP; 9th Floor

Street Address: 100 Charles River Plaza

City: Boston State: MA Zip: 02114

6. Total number of applications and registrations involved:

3

7. Total fee (37 CFR 3.41):

\$ 90

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

n/a

(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.

Kristine Dimitrova Schreiber Signature Date February 14, 2003

Name of Person

Signature

Date

6

02/20/2003 DBYRNE

00000188 78245343g

40.00 DP 50.00 DP

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

01 FC:8321 02 FC:8322

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

TRADEMARK REEL: 002675 FRAME: 0474

## NOTICE OF SECURITY INTEREST IN TRADEMARKS

WHEREAS, XIMIAN, INC., a Delaware corporation with its principal executive offices at 401 Park Drive, 3<sup>rd</sup> Floor West, Boston, MA 02215 (the "Company"), and BATTERY VENTURES VI, L.P., a Delaware limited partnership, as agent, with a principal place of business at 20 William Street, Suite 200, Wellesley, MA 02481 (the "Agent"), have entered into a Security Agreement dated as February 12, 2003 (the "Security Agreement");

WHEREAS, the Company is the owner and user of the trademarks and trademark applications listed on Schedule I hereto (the "Trademarks");

WHEREAS, among the security interests granted by the Company to the Agent pursuant to the Security Agreement is a security interest in the general intangibles of the Company, including, without limitation, each of the Trademarks listed on Schedule I hereto, together with the goodwill of the business associated with and symbolized by such Trademarks; and

WHEREAS, the Company and Agent contemplate and intend that, if an Event of Default (as defined in the Security Agreement) shall occur, the Agent shall have all rights of the Company in and to the Trademarks and the goodwill of the business of the Company associated with and symbolized by the Trademarks as may be necessary or proper in order to enable the Agent, as foreclosing secured party, to continue such business of the Company or, following such foreclosure, to transfer to a purchaser all such rights as may be necessary or proper to enable such purchaser to continue such business of the Company;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties reconfirm the terms of the Security Agreement, as if set forth fully herein, and acknowledge that the Agent has a security interest in the Trademarks listed on Schedule I hereto, together with the goodwill of the business associated with and symbolized by such Trademarks; the Company hereby collaterally assigns to the Agent, as security for the Obligations (as defined in the Security Agreement), all of the Company's right, title and interest in and to said Trademarks and the goodwill of the business associated therewith; the Company agrees that it will not sell, assign or encumber any of the Trademarks without the prior written consent of the Agent; and the Company and the Agent request that the Commissioner of Patents and Trademarks record this document with respect to the Trademarks.

The Company hereby appoints the Agent as the Company's attorney-in-fact (with full power of substitution and resubstitution) with the power and authority, after the occurrence of any Event of Default (as defined in the Security Agreement), to execute and deliver, in the name of and on behalf of the Company, and to cause the recording of all such further assignments and other instruments as the Agent may deem necessary or desirable in order to carry out the intent of the Security Agreement and this Notice of

Security Interest in Trademarks. The Company agrees that all third parties may conclusively rely on any such further assignment or other instrument so executed, delivered and recorded by the Agent (or the Agent's designee in accordance with the terms hereof) and on the statements made therein.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have executed this Notice of Security Interest in Trademarks as of the date noted below.

**XIMIANT, INC.**

**BATTERY VENTURES VI, L.P.**

By:   
Name: David Patrick  
Title: Chief Executive Officer

By: \_\_\_\_\_  
Name:  
Title:

Date: February 13, 2003

Date: \_\_\_\_\_

ACKNOWLEDGMENT

STATE OF Massachusetts )  
 ) ss.  
COUNTY OF Suffolk )

Then personally appeared before me the above-named David Patick, Chief Executive Officer of Ximian, Inc., and stated that he executed the foregoing instrument under the authority of said corporation's Board of Directors and acknowledged the foregoing to be the free act and deed of said corporation.

WITNESS my hand and seal this 13<sup>th</sup> day of February, 2003.

Sandra f. Allen  
Notary Public  
My commission expires: 2/24/06

(Seal)

*Signature Page – Notice of Security Interest in Trademarks*

IN WITNESS WHEREOF, the parties hereto have executed this Notice of Security Interest in Trademarks as of the date noted below.

XIMIAN, INC.

BATTERY VENTURES VI, L.P.

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

Name: David Patrick  
Title: Chief Executive Officer

Date: \_\_\_\_\_

By: *Scott R. L.*

Name:  
Title:

Date: *Feb 12, 2003*

ACKNOWLEDGMENT

STATE OF \_\_\_\_\_ )  
  ) ss.  
COUNTY OF \_\_\_\_\_ )

Then personally appeared before me the above-named David Patick, Chief Executive Officer of Ximian, Inc., and stated that he executed the foregoing instrument under the authority of said corporation's Board of Directors and acknowledged the foregoing to be the free act and deed of said corporation.

WITNESS my hand and seal this \_\_\_\_\_ day of February, 2003.

\_\_\_\_\_  
Notary Public  
My commission expires: \_\_\_\_\_

(Seal)

SCHEDULE I  
to  
Notice of Security Interest in Trademarks  
Between  
Ximian, Inc. (“Company”) and Battery Ventures VI, L.P. (“Agent”)

TRADEMARK REGISTRATION OR APPLICATION

<u>Application or Registration No.</u>	<u>Country</u>	<u>Application or Registration Date</u>	<u>Trademark</u>
76/141,800	U.S.	October 5, 2000	Monkey Logo
76/245,343	U.S.	April 20, 2001	Ximian Evolution
2,672,926	U.S.	January 7, 2003	Ximian