

04-17-2003

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



102423148

EET 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):
Top Layer Networks, Inc. **4-14-03**

Individual(s) Association
 General Partnership Limited Partnership
 Corporation-State Delaware
 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: April 10, 2003

2. Name and address of receiving party(ies)
Name: Egan-Managed Capital II, L.P.
Internal
Address: Mike Shanahan
Street Address: 30 Federal Street
City: Boston State: MA Zip: 02110-2508

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

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

A. Trademark Application No.(s)
See attached Continuation Sheet

B. Trademark Registration No.(s)
See attached Continuation Sheet

Additional number(s) attached Yes No

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

Name: Sean J. Hill, Esq.
Internal Address: Testa, Hurwitz & Thibault, LLP
Oliver Street Tower
Street Address: 125 High Street
City: Boston State: MA Zip: 02110

6. Total number of applications and registrations involved: 16


7. Total fee (37 CFR 3.41)\$ 415
 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.

Sean J. Hill  4/11/03
Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments, and document: 10

04/17/2003 LMUELLER 00000040 2527792
01 FC:8521 40.00 OP
02 FC:8522 375.00 OP

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

TRADEMARK
REEL: 002713 FRAME: 0345

Continuation Sheet

for

Trademark Recordation Form Cover Sheet

for

Top Layer Networks, Inc.

2. (continued)

3i Technology Partners L.P., a Jersey Limited Partnership
Attn: Mikko Suonenlahti
880 Winter Street, Suite 330
Waltham, MA 02451

4. (continued)

A.	2527792	B.	75689016
	2667529		76181871
	2594785		76214630
	2483210		76314419
	2388752		76314420
	2388753		76387690
	2444571		
	2664766		
	2575719		
	2701150		

Intellectual Property Security Agreement

This Intellectual Property Security Agreement is entered into as of April 10, 2003, between Top Layer Networks, Inc., a Delaware corporation ("Grantor) and Egan-Managed Capital II, L.P. and 3i Technology Partners L.P. (the "Agents"), on behalf of the Lenders (as defined in that certain Loan and Security Agreement of even date herewith by and among the Grantor, the Agents and the Lenders, as the same may be amended, modified or supplemented from time to time, the "Loan Agreement").

RECITALS

A. The Lenders have 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 the Loan Agreement. The Lenders are willing to make the Loans to Grantor, but only upon the condition, among others, that Grantor shall grant to Agents on behalf of the Lenders a security interest in, among other things, certain copyrights, trademarks and patents to secure the obligations of Grantor under the Loan Agreement. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Loan Agreement.

B. Pursuant to the terms of the Loan Agreement, Grantor has granted to Agents on behalf of the Lenders 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.

NOW, THEREFORE, for good and valuable consideration, receipt and sufficiency 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 Loan Agreement, Grantor hereby represents, warrants, covenants and agrees as follows:

AGREEMENT

To secure its obligations under the Loan Agreement, Grantor grants and pledges to Agents on behalf of the Lenders 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 Schedules A, B and C hereto), together with all goodwill of the business symbolized by the trademarks, 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, and all proceeds of each of the foregoing (including, without limitation, all license royalties and proceeds of infringement suits).

This security interest is granted in conjunction with the security interest granted to Agents on behalf of the Lenders under the Loan Agreement. The rights and remedies of Agents with respect to the security interest granted hereby are in addition to those set forth in the Loan Agreement and the other Loan Documents, and those which are now or hereafter available to the

Agents as a matter of law or equity. Each right, power and remedy of the Agents provided herein or in the Loan 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 the Agents of any one or more of the rights, powers or remedies provided for in this Intellectual Property 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 Lender, of any or all other rights, powers or remedies.

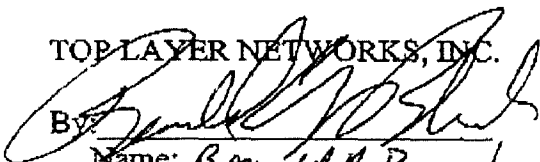
IN WITNESS WHEREOF, the parties have cause this Intellectual Property Security Agreement to be duly executed by its officers thereunto duly authorized as of the first date written above.

GRANTOR:

Address of Grantor:

2400 Computer Drive
Westborough, MA 01581

TOP LAYER NETWORKS, INC.

By: 
Name: *Ronald H. Brumbach*
Title: *President & CEO*

AGENTS:

Address of Agents:

30 Federal Street
Boston, MA 02110-2508

EGAN-MANAGED CAPITAL II, L.P.

By: _____
Name:
Title:

Address of Agents:

880 Winter Street
Suite 330
Waltham, MA 02451

3I TECHNOLOGY PARTNERS L.P.

By: 3i Technology Associates LLC, its
General Partner

By: 3i Technology Corporation, its
Manager

By: _____
Name:
Title:

Agents as a matter of law or equity. Each right, power and remedy of the Agents provided herein or in the Loan 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 the Agents of any one or more of the rights, powers or remedies provided for in this Intellectual Property 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 Lender, of any or all other rights, powers or remedies.

IN WITNESS WHEREOF, the parties have cause 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:

TOP LAYER NETWORKS, INC.

2400 Computer Drive
Westborough, MA 01581

By: _____
Name:
Title:

AGENTS:

Address of Agents:

EGAN-MANAGED CAPITAL II, L.P.

30 Federal Street
Boston, MA 02110-2508

By: Michael H. Sharsh
Name:
Title: Managing Partner

Address of Agents:

3I TECHNOLOGY PARTNERS L.P.

880 Winter Street
Suite 330
Waltham, MA 02451

By: 3i Technology Associates LLC, its
General Partner

By: 3i Technology Corporation, its
Manager

By: _____
Name:
Title:

Agents as a matter of law or equity. Each right, power and remedy of the Agents provided herein or in the Loan 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 the Agents of any one or more of the rights, powers or remedies provided for in this Intellectual Property 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 Lender, of any or all other rights, powers or remedies.

IN WITNESS WHEREOF, the parties have cause 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:

2400 Computer Drive
Westborough, MA 01581

TOP LAYER NETWORKS, INC.

By: _____

Name:

Title:

AGENTS:

Address of Agents:

30 Federal Street
Boston, MA 02110-2508

EGAN-MANAGED CAPITAL II, L.P.

By: _____

Name:

Title:

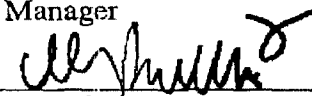
Address of Agents:

880 Winter Street
Suite 330
Waltham, MA 02451

3I TECHNOLOGY PARTNERS L.P.

By: 3i Technology Associates LLC, its
General Partner

By: 3i Technology Corporation, its
Manager

By:  _____

Name: Mikko Suonenlahti

Title: Director

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Middlesex

The foregoing instrument was acknowledged this 4th day of April 2003 by Ronaldo A. Brumback, the President of Top Layer Networks, Inc. (the "Grantor"), to be his free act and deed in said capacity and the free act and deed of the Grantor, on behalf of said Grantor, before me,

Demetrius Mandiles
Notary Public
My commission expires: Sept. 12, 2008

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____

The foregoing instrument was acknowledged this ___ day of _____, 2003 by _____, the _____ of Egan-Managed Capital II, L.P. (an "Agent"), to be his free act and deed in said capacity and the free act and deed of the Agent, on behalf of said Agent, before me,

Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____

The foregoing instrument was acknowledged this ___ day of _____, 2003 by _____, the _____ of 3i Technology Partners L.P. (an "Agent"), to be his free act and deed in said capacity and the free act and deed of the Agent, on behalf of said Agent, before me,

Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF _____

The foregoing instrument was acknowledged this ____ day of _____, 2003 by _____, the _____ of Top Layer Networks, Inc. (the "Grantor"), to be his free act and deed in said capacity and the free act and deed of the Grantor, on behalf of said Grantor, before me,

Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF Suffolk

The foregoing instrument was acknowledged this 9th day of April, 2003 by Michael A. Shanahan, the Managing Partner of Egan-Managed Capital II, L.P. (an "Agent"), to be his free act and deed in said capacity and the free act and deed of the Agent, on behalf of said Agent, before me,

Maureen Q White
Notary Public
My commission expires: May 1, 2009

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF _____

The foregoing instrument was acknowledged this ____ day of _____, 2003 by _____, the _____ of 3i Technology Partners L.P. (an "Agent"), to be his free act and deed in said capacity and the free act and deed of the Agent, on behalf of said Agent, before me,

Notary Public
My commission expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____

The foregoing instrument was acknowledged this ___ day of _____, 2003 by _____, the _____ of Top Layer Networks, Inc. (the "Grantor"), to be his free act and deed in said capacity and the free act and deed of the Grantor, on behalf of said Grantor, before me,

Notary Public

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF _____

The foregoing instrument was acknowledged this ___ day of _____, 2003 by _____, the _____ of Egan-Managed Capital II, L.P. (an "Agent"), to be his free act and deed in said capacity and the free act and deed of the Agent, on behalf of said Agent, before me,

Notary Public

My commission expires:

COMMONWEALTH OF MASSACHUSETTS

COUNTY OF Middlesex

The foregoing instrument was acknowledged this 2 day of April, 2003 by Mikko J. Suonenlatti, the Director of 3i Technology Partners L.P. (an "Agent"), to be his free act and deed in said capacity and the free act and deed of the Agent, on behalf of said Agent, before me,

Karen M. Clark

Notary Public

My commission expires:

October 30, 2003

	Registered and Pending Marks	Filing Date	Ser/Reg No	Basis	Class	Status
1	APPSWITCH	05/23/00	2527792	-	9	Registered 1/8/02
2	TOP LAYER NETWORKS	04/22/99	75689016	Intent to Use	9	Application will be published for opposition on 4/15/03
3	TOP LAYER	05/05/99	2667529	-	9	Registered 12/31/02
4	SECUREWATCH	05/13/99	2594785	-	9	Registered 7/16/02
5	TOPVIEW	05/04/99	2483210	-	9	Registered 8/28/2001
6	TOPPATH	05/04/99	2388752	-	9	Registered 9/19/2000
7	TOPFIRE	01/04/00	2388753	-	9	Registered 9/19/2000
8	TOPFLOW	05/22/00	2444571	-	9	Registered 4/17/2001
9	GIGAWALL	12/15/00	76181871	Intent to Use	9	Suspended 9/24/01
10	FLOW MIRROR	01/05/01	2664766	-	9	Registered 12/17/02 (Supplemental Register)
11	PERFECTING THE ART OF NETWORK SECURITY	01/05/01	2575719	-	9	Registered 6/4/02
12	APPSAFE	03/28/01	2701150	-	9	Registered 3/25/03
13	GIGASHIELD	02/22/01	76214630	Intent to Use	9	Suspended 10/24/01
14	TOP LAYER ATTACK MITIGATOR	09/19/01	76314419	Intent to Use	9	Approved for publication 3/24; no pub date yet available
15	TOP LAYER IDS BALANCER	09/19/01	76314420	Intent to Use	9	Approved for publication 3/25; no pub date yet available
16	DCFD	03/27/02	76387690	Intent to Use	9	Response to Office action filed 8/16/02
17	TOP LAYER (CTM IN EU)	03/04/03	N/A	N/A	9	Awaiting initial response from OHIM
18	TOP LAYER IDS BALANCER (CTM IN EU)	03/04/03	N/A	N/A	9	Awaiting initial response from OHIM
19	TOP LAYER ATTACK MITIGATOR (CTM IN EU)	03/04/03	N/A	N/A	9	Awaiting initial response from OHIM

	Abandoned Marks	Filing Date	Ser/Reg No	Basis	Class	Status
1	LAYERS ABOVE THE REST	06/01/99	75718359	Intent to Use	9	Abandoned
2	APPWIZARD	01/06/01	76191336	Intent to Use	9	Abandoned
3	QUEUE MANAGER	01/05/01	76191339	In Use	9	Abandoned
4	RELAY ENGINE	01/05/01	76191340	In Use	9	Abandoned
5	E-APPLICATION CONTROL	01/05/01	76191338	In Use	9	Abandoned
6	ADAPTIVE SECURITY	01/05/01	76191342	In Use	9	Abandoned
7	SECURE QOS	12/15/00	76181868	Intent to Use	9	Abandoned
8	BUSINESS DRIVEN NETWORKS	01/06/01	76191335	Intent to Use	9	Abandoned
9	THINKING INSIDE THE BOX	12/15/00	76181870	Intent to Use	9	Abandoned
10	TERAWALL	12/15/00	76181872	Intent to Use	9	Abandoned
11	SECURE BALANCE	01/05/01	76191341	In Use	9	Abandoned
12	APPBALANCING	12/15/00	76181869	Intent to Use	9	Abandoned
13	TOPSAFE	07/23/01	76288937	Intent to Use	9	Abandoned