

06-04-2003

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



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

102463798

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

1. Name of conveying party(ies):

Air Wave Wireless, Inc.

5-30-03

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

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

2. Name and address of receiving party(ies)

Name: Ignition, LLC

Internal Address:

Street Address: 11400 SE 6th Street, Suite 100

City: Bellevue State: WA Zip: 98004

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

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: 05/23/2003

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

A. Trademark Application No.(s) 76/179056

B. Trademark Registration No.(s)

Additional number(s) attached Yes No

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

Name: Michael Glaser

Internal Address:

Street Address: Perkins Coie LLP

101 Jefferson Drive

City: Menlo Park State: CA Zip: 94025

6. Total number of applications and registrations involved:

1

7. Total fee (37 CFR 3.41) \$ 40.00

- Enclosed Authorized to be charged to deposit account

8. Deposit account number:

DO NOT USE THIS SPACE

9. Signature.

Michael Glaser

Name of Person Signing

Handwritten signature of Michael Glaser

Signature

05/30/2003

Date

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

16

06/03/2003 ECOOPER 00000101 76179056

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

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40.00 OP

TRADEMARK REEL: 002744 FRAME: 0614

# ATTACHMENT 1

## 2. ADDITIONAL RECEIVING PARTY

Idealab Holdings, L.L.C.  
130 W. Union Street  
Pasadena, CA 91103

**PATENT AND TRADEMARK  
SECURITY AGREEMENT MEMORANDUM**

THIS PATENT AND TRADEMARK SECURITY AGREEMENT MEMORANDUM (this "*Agreement*"), dated as of May 23, 2003, is made by and among Airwave Wireless, Inc., a Delaware corporation (the "*Company*"), Ignition, LLC ("*Ignition*") and Idealab Holdings, L.L.C. ("*Idealab*"). Ignition and Idealab are sometimes referred to collectively herein as the "*Secured Parties*" and each individually a "*Secured Party*").

**RECITALS**

WHEREAS, the Company and the Secured Parties are parties to a Security Agreement dated as of the date hereof (as amended, modified, renewed or extended from time to time, the "*Security Agreement*"), pursuant to which Company has granted to the Secured Parties a security interest in all of its assets and properties, including all of its Intellectual Property Collateral (as defined therein) as collateral security for (among other things) all Indebtedness and obligations of the Company to the Secured Parties arising under that certain Note and Warrant Purchase Agreement by and among the Company and the Secured Parties of even date herewith (the "*Purchase Agreement*").

WHEREAS, as an inducement to the Secured Parties to enter into the Purchase Agreement and to provide to the Company the financial accommodations thereunder and as further evidence of the security interests created in favor of the Secured Parties pursuant to the Security Agreement, the Company has agreed to enter into this Agreement, to grant to the Secured Parties the security interests hereinafter provided, and to file this Agreement with the PTO (as defined below).

NOW, THEREFORE, in consideration of the premises, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned parties hereby agree as follows:

SECTION 1. Definitions: Interpretation.

(a) Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings.

"*Bankruptcy Code*" means Title II of the United States Code (11 U.S.C. Section 101 et seq.), as amended from time to time, or any successor statute.

"*Event of Default*" means any defined Event of Default occurring under the Purchase Agreement or any of the other Loan Documents and any failure of the Company to perform any of its obligations under this Agreement.

"*General Intangibles*" means all general intangibles of the Company, now existing or hereafter acquired or arising, and in any event includes: (i) all tax and other refunds, rebates or credits of every kind and nature to which the Company is now or hereafter may become entitled; (ii) all goodwill, choses in action and causes of action, whether legal or equitable, whether in contract or tort and however arising; (iii) all intellectual property; (iv) all uncertificated securities

and interests in limited and general partnerships; (v) all rights of stoppage in transit, replevin and reclamation; (vi) all licenses, permits, consents, indulgences and rights of whatever kind issued in favor of or otherwise recognized as belonging to the Company by any Governmental Authority; and (vii) all indemnity agreements, guaranties, insurance policies and other contractual, equitable and legal rights of whatever kind or nature; in each case whether now existing or hereafter acquired or arising.

**"Governmental Authority"** means any nation, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any government authority, agency, department, board, commission or instrumentality of the United States, any state of the United States or any political subdivision thereof, and any tribunal or arbitrator of competent jurisdiction.

**"Loan Documents"** means, collectively, the Purchase Agreement, the Notes, the Security Agreement, the Copyright Security Agreement Memorandum, and this Patent and Trademark Security Agreement Memorandum and any other instrument or other writing executed or delivered by the Company in connection herewith, and all amendments, appendices, exhibits and schedules to any of the foregoing.

**"Patents"** means all letters patent of the U.S. or any other country, all registrations and recordings thereof, and all applications for letters patent of the U.S. or any other country, owned, held or used by the Company in whole or in part, including all existing U.S. Patents and patent applications of the Company which are described in Schedule A hereto, as the same may be amended or supplemented pursuant hereto from time to time, and together with and including all patent licenses held by the Company (unless otherwise prohibited by any license or related licensing agreement under circumstances where the granting of the security interest would have the effect under applicable law of the termination or permitting termination of the license for breach and where the licensor, other than any affiliate of the Company, has elected such termination remedy), together with all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof and the inventions disclosed therein, and all rights corresponding thereto throughout the world, including the right to make, use, lease, sell and otherwise transfer the inventions disclosed therein.

**"Patent Collateral"** means

- (i) all Patents;
- (ii) all claims, causes of action and rights to sue for past, present and future infringement or unconsented use of any of the Patents and all rights arising therefrom and pertaining thereto;
- (iii) all general intangibles and other similar property of the Company of any kind or nature, whether now owned or hereafter acquired or developed, associated with or arising out of any of the Patents and not otherwise described above; and
- (iv) all Proceeds of any and all of the foregoing Patent Collateral (including license royalties, rights to payment, accounts receivable and proceeds of infringement suits).

**"Person"** means an individual, corporation, partnership, joint venture, trust, unincorporated organization or any other juridical entity.

**"Proceeds"** means whatever is receivable or received from or upon (i) the sale, lease, license, exchange, collection, other disposition or operation of any item of Collateral (as defined in Section 2(a) below), whether such proceeds constitute accounts, general intangibles, instruments, securities, documents, letters of credit, chattel paper, deposit accounts, money, goods or other personal property, (ii) any items that are now or hereafter acquired by the Company with any Proceeds of Collateral, (iii) any amounts now or hereafter payable under any insurance policy by reason of any loss of or damage to any Collateral or the business of the Company, (iv) all rights to payment for the sale of services or products in connection with the business of the Company, (v) all royalties, rights to payment, accounts receivable and proceeds of infringement suits in connection with the Intellectual Property Collateral, and (vi) the right to further transfer, including by pledge, mortgage, license, assignment or sale, any of the foregoing.

**"Proprietary Rights"** means all trade secrets, confidential information, customer lists, license rights, advertising materials, operating manuals, methods, processes, know-how, sales literature, drawings, specifications, blue prints, descriptions, inventions, designs, name plates and catalogs, all proprietary rights, corporate or other business records, computer programs, source codes, object codes, data bases, all intellectual property and all other similar intangible personal property at any time used in connection with the businesses of the Company.

**"PTO"** means the United States Patent and Trademark Office and any successor thereto.

**"Secured Obligations"** means all Indebtedness, liabilities and other obligations of the Company to the Secured Parties, whether created under, arising out of or in connection with the Purchase Agreement, the Notes or any of the other Loan Documents or otherwise, including all unpaid principal of the Loan Amounts, all interest accrued thereof, all fees due under the Purchase Agreement and all other amounts payable by the Company to the Secured Parties thereunder or in connection therewith, whether now existing or hereafter arising, and whether due or to become due, absolute or contingent, liquidated or unliquidated, determined or undetermined.

**"Trademarks"** mean all state (including common law), federal and foreign trademarks, service marks and trade names, corporate names, company names, business names, fictitious business names, trade styles, trade dress, logos, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired, together with and including all licenses therefor held by the Company (unless otherwise prohibited by any license or related licensing agreement under circumstances where the granting of the security interest would have the effect under applicable law of the termination or permitting termination of the license for breach and where the licensor, other than any affiliate of the Company, has elected such termination remedy), and all registrations and recordings thereof, and all applications filed or to be filed in connection therewith, including registrations and applications in the PTO, any state of the United States or any other country or any political subdivision thereof, and all extensions or renewals thereof, including without limitation any of the foregoing identified on Schedule B hereto (as the same may be amended, modified or supplemented from time to time), and the right (but not the obligation) to register claims under any state or federal trademark law or regulation or any trademark law or regulation of any foreign country and to apply for, renew and extend any of the same, to sue or

bring opposition or cancellation proceedings in the name of the Secured Parties or in the name of the Secured Parties for past, present or future infringement or unconsented use thereof, and all rights arising therefrom throughout the world.

**"Trademark Collateral"** means all Trademarks and all claims, causes of action and rights to sue for past, present or future infringement or unconsented use of any Trademarks and all rights arising therefrom and pertaining thereto; together with all general intangibles related to or arising out of any of the Trademarks and all the goodwill of the Company's business symbolized by the Trademarks or associated therewith; and all products and Proceeds of any and all the foregoing (including license royalties, rights to payment, accounts receivable and proceeds of infringement suits).

**"UCC"** means the Uniform Commercial Code as the same may, from time to time, be in effect in the State of California; provided, however, in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of the security interest in any Collateral is governed by the Uniform Commercial Code as in effect in a jurisdiction other than the State of California, the term "UCC" shall mean the Uniform Commercial Code as in effect in such other jurisdiction for purposes of the provisions hereof relating to such attachment, perfection or priority and for purposes of definitions related to such provisions.

(b) Terms Defined in UCC. Where applicable and except as otherwise defined herein, terms used in this Agreement shall have the meanings assigned to them in the UCC.

(c) Interpretation. In this Agreement, except to the extent the context otherwise requires:

(i) Any reference to a Section or a Schedule is a reference to a section hereof, or a schedule hereto, respectively, and to a subsection or a clause is, unless otherwise stated, a reference to a subsection or a clause of the Section or subsection in which the reference appears.

(ii) The words "hereof," "herein," "hereto," "hereunder" and the like mean and refer to this Agreement as a whole and not merely to the specific Section, subsection, paragraph or clause in which the respective word appears.

(iii) The meaning of defined terms shall be equally applicable to both the singular and plural forms of the terms defined.

(iv) The words "including," "includes" and "include" shall be deemed to be followed by the words "without limitation."

(v) References to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications thereto.

(vi) References to statutes or regulations are to be construed as including all statutory and regulatory provisions consolidating, amending or replacing the statute or regulation referred to.

(vii) Any captions and headings are for convenience of reference only and shall not affect the construction of this Agreement.

(viii) Capitalized terms not otherwise defined herein shall have the respective meanings assigned to them in the Purchase Agreement.

## SECTION 2. Security Interest.

(a) Grant of Security Interest. As security for the payment and performance of the Secured Obligations, the Company hereby pledges, assigns, transfers, hypothecates and sets over to the Secured Parties, and hereby grants to the Secured Parties a security interest in, all of the Company's right, title and interest in, to and under all of the Patent Collateral, Trademark Collateral, Proprietary Rights and General Intangibles, wherever located and whether now existing or owned or hereafter acquired or arising, and all products and Proceeds thereof (collectively, the "**Collateral**").

(b) Company Remains Liable. Anything herein to the contrary notwithstanding, (i) the Company shall remain liable under its Contractual Obligations (as defined in the Security Agreement), to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed; provided that the Company shall bear no responsibilities to perform Contractual Obligations to the extent that the Company's ability to perform such Contractual Obligations is rendered commercially impracticable by the Collateral Agent's taking of the Collateral on behalf of the Secured Parties, (ii) the exercise by the Secured Parties or the Collateral Agent (as defined in the Security Agreement) of any of the rights hereunder shall not release the Company from any of its duties or obligations under its Contractual Obligations and (iii) neither the Secured Parties nor the Collateral Agent shall have any obligation or liability under such Contractual Obligations by reason of this Agreement, nor shall the Secured Parties or the Collateral Agent be obligated to perform any of the obligations or duties of the Company thereunder or to take any action to collect or enforce any such Contractual Obligation included in the Collateral hereunder.

(c) Continuing Security Interest. The Company agrees that this Agreement shall create a continuing security interest in the Collateral which shall remain in effect until the Security Agreement has been terminated in accordance with Section 6.7 thereof.

(d) Cumulative Obligations: No Impairment. The terms and provisions of this Agreement are intended as a supplement to the terms and provisions of the Security Agreement, which is incorporated herein by this reference, and all other Loan Documents executed in connection therewith. All of the terms and provisions of the Loan Documents, including all of the covenants therein, are cumulative. Nothing included in or omitted from this Agreement or any of the other Loan Documents is intended to impair, and shall not impair or adversely affect, any of the rights, interests or remedies of the Secured Parties or the Collateral Agent granted or purported to be granted pursuant to any of such Loan Documents.

SECTION 3. Power of Attorney. The Company hereby irrevocably constitutes and appoints the Collateral Agent and its agents or representatives as the Company's true and lawful attorney-in-fact with full power and authority. Without limitation, but only in the event that the foregoing power of attorney has been appropriately invoked by the Collateral Agent, the Collateral Agent and its agents and representatives shall be entitled to do all of the following, as fully as the

Company might: (i) to sign the name of the Company on all or any of such documents or instruments and perform all other acts that the Collateral Agent deems necessary or advisable in order to perfect or continue perfected, maintain the priority or enforceability of or provide notice of the Secured Parties' security interest in, the Collateral, and (ii) to execute any and all other documents and instruments, and to perform any and all acts and things for and on behalf of the Company, which the Collateral Agent may deem necessary or advisable to maintain, preserve and protect the Collateral and the Secured Parties' interest therein and to accomplish the purposes of this Agreement, including (A) to assert or retain any rights under any license agreement for any of the Collateral, including without limitation any rights of the Company arising under Section 365(n) of the Bankruptcy Code, (B) after the occurrence of any Event of Default, to defend, settle, adjust or institute any action, suit or proceeding with respect to any of the Collateral, and, (C) after the occurrence of any Event of Default, to execute any and all applications, documents, papers and instruments for the Secured Parties to use any of the Collateral, to grant or issue any exclusive or nonexclusive license with respect to any of the Collateral, and to assign, convey or otherwise transfer title in or dispose of any of the Collateral; provided, however, that the Collateral Agent shall not exercise any of its rights under the foregoing power of attorney unless an Event of Default shall have occurred and be continuing and in no event shall the Collateral Agent have the power, prior to the occurrence of an Event of Default, to assign any of the Collateral to any person, including itself, without the Company's written consent. The foregoing shall in no way limit the Collateral Agent's exercise of rights and remedies on behalf of the Secured Parties upon or after the occurrence of an Event of Default. The power of attorney set forth in this Section 3, being coupled with an interest, is irrevocable until the Security Agreement shall have terminated in accordance with Section 6.7 thereof.

#### SECTION 4. Remedies.

(a) Remedies. Upon the occurrence of any Event of Default, the Secured Parties and the Collateral Agent shall have, in addition to all other rights and remedies granted to it in this Agreement, the Purchase Agreement or any other Loan Document, all rights and remedies of a secured party under the UCC and other applicable laws.

(b) License. For the purpose of enabling the Secured Parties to exercise its rights and remedies under this Section 4 or otherwise in connection with this Agreement, the Company hereby grants to the Secured Parties an irrevocable, nonexclusive and assignable license (exercisable without payment or royalty or other compensation to the Company) to use, license or sublicense any Patent Collateral and Trademark Collateral. The Secured Parties agrees not to exercise such license except following the occurrence of an Event of Default.

SECTION 5. Notices. All notices and other communications under this Agreement shall be in writing and shall be personally delivered or sent by prepaid courier, by overnight, registered or certified mail (postage prepaid) or by prepaid telecopy, and shall be deemed given when received by the intended recipient thereof. Unless otherwise specified in a notice given in accordance with the foregoing provisions of this Section 5, notices and other communications shall be given to the parties hereto at their respective addresses (or to their respective telecopier numbers) indicated in Section 8.5 of the Purchase Agreement.

SECTION 6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of California except to the extent that the validity or perfection



of the assignment and security interests hereunder in respect of any property are governed by U.S. federal law.

SECTION 7. Severability. If one or more provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect in any jurisdiction or with respect to any party, such invalidity, illegality or unenforceability in such jurisdiction or with respect to such party shall, to the fullest extent permitted by applicable law, not invalidate or render illegal or unenforceable any such provision in any other jurisdiction or with respect to any other party, or any other provisions of this Agreement.

SECTION 8. Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

By: AIRWAVE WIRELESS;

6502866101;

22 May 03 5:04PM; Job 507; Page 6/8

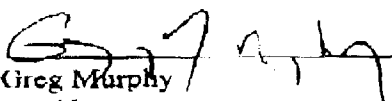
IN WITNESS WHEREOF, Company has duly executed this Patent and Trademark Security Agreement Memorandum in favor of the Secured Parties as of the date first above written.

**THE COMPANY:**

**THE SECURED PARTIES:**

**AIRWAVE WIRELESS, INC.**  
a Delaware corporation

**IGNITION, LLC**  
a Delaware limited liability company

By:   
Greg Murphy  
President

By: \_\_\_\_\_  
Jon Roberts  
Managing Director

[NOTARIZE SIGNATURE]

**IDEALAB HOLDINGS, L.L.C.**  
a Delaware limited liability company

By: \_\_\_\_\_  
Brian Steel

[NOTARIZE SIGNATURES]

Sent By: AIRWAVE WIRELESS;

6502868101;

22 May 03 5:05PM; Job 507; Page 7/8

### CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

State of California

County of SAN MATEO

} ss.

On 05/22/03, before me, Mokhtar Barhoumi, Notary Public

personally appeared Gregory Joseph Murphy

- personally known to me
- proved to me on the basis of satisfactory evidence



to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Place Notary Seal Above

Signature of Notary Public

#### OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

#### Description of Attached Document

Title or Type of Document: Patent and Trademark Security Agreement/Memorandum

Document Date: 5/22/03 Number of Pages: 7

Signer(s) Other Than Named Above: two

#### Capacity(ies) Claimed by Signer

Signer's Name: Gregory Joseph Murphy

- Individual
- Corporate Officer — Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney In Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

Signer Is Representing: himself



IN WITNESS WHEREOF, Company has duly executed this Patent and Trademark Security Agreement Memorandum in favor of the Secured Parties as of the date first above written.

**THE COMPANY:**

**THE SECURED PARTIES:**

**AIRWAVE WIRELESS, INC.**  
a Delaware corporation

**IGNITION, LLC**  
a Delaware limited liability company

By: \_\_\_\_\_  
Greg Murphy  
President

By: \_\_\_\_\_  
Jon Roberts  
Managing Director

[NOTARIZE SIGNATURE]

**IDEALAB HOLDINGS, L.L.C.**  
a Delaware limited liability company

By: Marcia Goodstein  
Marcia Goodstein, Secretary

[NOTARIZE SIGNATURES]

MAY 22 2003 16:31 FR IDEALAB

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P.04/11

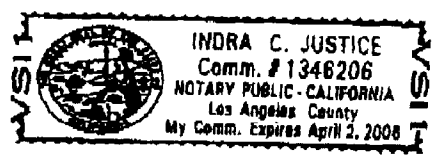
State of California )  
 ) ss.  
County of Los Angeles )

On May 22, 2003 before me, Indra C. Justice (here  
insert name and title of the officer), personally appeared  
Marcia Goodstein, personally

known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose  
name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they  
executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s)  
on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed  
the instrument.

WITNESS my hand and official seal.

Notary Signature: Indra C. Justice



Indra C. Justice  
Print Name of Notary:

(Seal)

IN WITNESS WHEREOF, Company has duly executed this Patent and Trademark Security Agreement Memorandum in favor of the Secured Parties as of the date first above written.

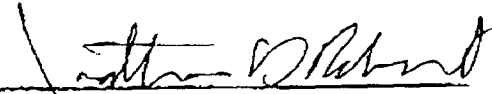
**THE COMPANY:**

**THE SECURED PARTIES:**

**AIRWAVE WIRELESS, INC.**  
a Delaware corporation

**IGNITION, LLC**  
a Delaware limited liability company

By: \_\_\_\_\_  
Greg Murphy  
President

By:   
Jon Roberts  
Managing Director

[NOTARIZE SIGNATURE]

**IDEALAB HOLDINGS, L.L.C.**  
a Delaware limited liability company

By: \_\_\_\_\_  
Brian Steel

[NOTARIZE SIGNATURES]

**SCHEDULE A**  
to Patent and Trademark  
Security Agreement Memorandum

**PATENTS**

The Company has the following pending patent applications:

1. Application Number 10/271,106 (Title: Secure Wireless Network Access Points).
2. Application Number 10/368,152 (Title: Methods, apparatuses and systems facilitating management of airspace in wireless computer network environments).

**SCHEDULE B**  
to Patent and Trademark  
Security Agreement Memorandum

**TRADEMARKS AND SERVICEMARKS**

The Company has the following pending trademark application:

Serial Number 76/179056 (for AirWave & Design in Class 38).