

REC



SHEET

Y

To the Commissioner, United States I

102339382

Attached original documents or copy thereof.

1. Name of conveying party(ies)  
Fast Forward, Inc.

1.14.03

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: Adams Capital Management III, L.P.

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

Street Address: 500 Blackburn Avenue

City: Sewickley State: PA ZIP: 15143

Association \_\_\_\_\_  
 Individual(s) citizenship \_\_\_\_\_  
 Association \_\_\_\_\_  
 General Partnership \_\_\_\_\_  
 Limited Partnership \_\_\_\_\_  
 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: September 13, 2002

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

A. Trademark Application No.(s)  
75/891,961

B. Trademark Registration No.(s)

2,584,838	2,477,527
2,255,492	2,477,528
2,312,907	2,490,172

Additional numbers attached?  Yes  No

OFFICE OF PUBLIC RECORDS  
703 JAN 14 AM 8:42  
FINANCE SECTION

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

Name: David J. Thibodeau, Jr., Esq.

Internal Address: \_\_\_\_\_  
Hamilton, Brook, Smith & Reynolds, P.C.

Street Address: 530 Virginia Road  
P.O. Box 9133

City: Concord State: MA ZIP: 01742-9133

6. Total number of applications and registrations involved:

7. Total Fee (37 C.F.R. 3.41)..... \$ 190.00

Enclosed  
 Authorized to charge any deficiencies or credit any overpayment to deposit account  
 Authorized to be charged to deposit account

8. Deposit account number:  
08-0380

(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.

Kevin T. Shaughnessy                      Kevin T. Shaughnessy                      1/9/03  
 Name of Person Signing                      Signature                      Date

01/15/2003 DBYRNE 00000229 75891961

01 FC:0521                      Total number of pages including cover sheet, attachments, and document: [ 13 ]  
02 FC:0522                      150.00 DP

# INTELLECTUAL PROPERTY SECURITY AGREEMENT FOR PATENTS AND TRADEMARKS

This Intellectual Property Security Agreement for Patents and Trademarks ("Agreement") dated September 13, 2002 is between Fast Forward, Inc. ("Grantor") and Adams Capital Management, II, L.P. ("Lenders' Agent").

## RECITALS

A. Lenders' Agent and other Lenders will make advances to Grantor ("Loans") as described in the Loan Agreement dated September 13, 2002 between Grantor, Lenders' Agent, and the other lenders (the "Lenders") named therein, (the "Loan Agreement"), but only if Grantor grants Lenders' Agent a security interest in its intellectual property, including patents and trademarks.

B. Grantor has granted Lenders' Agent, for the benefit of the Lenders, a security interest in all of its right, title and interest, presently existing or later acquired, in and to all the Collateral described in the Security Agreement dated September 13, 2002 (the "Security Agreement") executed by Grantor, the Lenders and Lenders' Agent contemporaneously with the Loan Agreement.

NOW THEREFORE, in consideration of the mutual promises, covenants, conditions, representations, and warranties hereinafter set forth and for other good and valuable consideration, and intending to be legally bound, the parties hereto mutually agree as follows:

### 1. DEFINITIONS

Capitalized terms used but not defined herein shall have the meanings given to them in the Loan Agreement and the Security Agreement. In addition, the following terms, as used in this Agreement, have the following meanings:

"Intellectual Property Collateral" means:

(i) Each of the patents and patent applications which are presently, or in the future may be, owned, issued or acquired by Grantor (including all of Grantor's right, title, and interest, in and to the patents and patent applications listed on Exhibit A, attached hereto, as the same may be updated hereafter from time to time), in whole or in part, and all patent rights with respect thereto throughout the world, including all proceeds thereof (including license

royalties and proceeds of infringement suits), foreign filing rights, and rights to extend such patents and patent rights;

(ii) All of Grantor's right, title, and interest in all patentable inventions, and to file applications for patent under federal patent law or regulation of any foreign country, and to request reexamination and/or reissue of the patents, the right (without obligation) to sue or bring interference proceedings in the name of Grantor or in the name of Lenders' Agent for past, present, and future infringements of the patents, and all rights (but not obligations) corresponding thereto in the United States and any foreign country;

(iii) Each of the trademarks and rights and interest which are capable of being protected as trademarks (including all of Grantor's right to the trademark registrations listed on Exhibit B, attached hereto, as the same may be updated hereafter from time to time and all other trademarks, service marks, designs, logos, indicia, tradenames, corporate names, company names, business names, fictitious business names, trade styles, and other source or business identifiers, and applications pertaining thereto), which are presently, or in the future may be, owned, created or acquired by Grantor, in whole or in part, and all trademark rights with respect thereto throughout the world, including all goodwill associated therewith and all proceeds thereof (including license royalties and proceeds of infringement suits), and rights to renew and extend such trademarks and trademark rights;

(iv) All of Grantor's right, title and interest to register trademark claims under any state or federal trademark law or regulation of any foreign country and to apply for, renew, and extend the trademark registrations and trademark rights, the right (without obligation) to sue or bring opposition or cancellation proceedings in the name of Grantor or in the name of Lenders' Agent for past, present, and future infringements of the trademarks, registrations, or trademark rights and all rights (but not obligations) corresponding thereto in the United States and any foreign country;

(ix) All general intangibles relating to the foregoing; and

(x) All proceeds of any and all of the foregoing (including, without limitations, license royalties and proceeds of infringement suits) and, to the extent not otherwise included, all payments under insurance, or any indemnity, warranty, or guaranty payable by reason of loss or damage to or otherwise with respect to the Collateral.

Notwithstanding the foregoing, "Intellectual Property Collateral" shall not include any license, property or contract right the granting of a security interest in which would be prohibited by law or contract.

"Obligations" means the obligations of the Grantor as defined in the Loan Agreement, the Security Agreement, and the Notes, and the obligations of Grantor hereunder.

## 2. GRANT OF SECURITY INTEREST.

Grantor hereby grants Lenders' Agent, for the benefit of the Lenders, a first-priority security interest in all of Grantor's right, title, and interest in and to the Intellectual Property Collateral to secure the Obligations subject only to the rights, if any, of any Senior Indebtedness (as defined in the Security Agreement) security interest in the Intellectual Property Collateral.

This security interest is granted in conjunction with the security interest granted under the Loan Agreement and Security Agreement, and under the Intellectual Property Security Agreement for Copyrights and Mask Works dated September 13, 2002. Lenders' Agent's rights and remedies in the security interest are in addition to those in the Loan Agreement, the Security Agreement, the Intellectual Property Security Agreement for Copyrights and Mask Works, and those available in law or equity. Lenders' Agents' rights, powers and interests are cumulative with every right, power or remedy provided hereunder. Lenders' Agent's exercise of its rights, powers or remedies in this Agreement, the Loan Agreement or any other Loan Document (as defined in the Loan Agreement), and does not preclude the simultaneous or later exercise of any or all other rights, powers or remedies.

## 3. REPRESENTATIONS, WARRANTIES AND COVENANTS.

Grantor hereby represents, warrants, and covenants that:

### 3.1 Patents; Trademarks; Service Marks

(i) A true and complete schedule setting forth all patent and patent applications owned or controlled by Grantor or licensed to Grantor, together with a summary description and full information in respect of the filing or issuance thereof and expiration dates is set forth on Exhibit A;

(ii) A true and complete schedule setting forth all federal and state trademark and service mark registrations owned or controlled by Grantor or licensed to Grantor, together with a summary description and full information in respect of the filing or issuance thereof and expiration dates is set forth on Exhibit B;

**3.2 Validity; Enforceability.** To the best of Grantor's knowledge and belief, each of the patents, service marks, and trademarks is valid and enforceable, and Grantor is not presently aware of any past, present, or prospective claim by any third party that any of the patents, service marks, or trademarks are invalid or unenforceable, or that the use of any patents, service marks, or trademarks violates the rights of any third person, or of any basis for any such claims;

**3.3 Title.** To the best of Grantor's knowledge and belief, each Grantor is the sole and exclusive owner of the entire and unencumbered right, title, and interest in and to each of the patents, patent applications, service marks, service mark registrations, trademarks, and trademark registrations free and clear of any liens, charges, and encumbrances, including pledges and assignments, or has the rights to use the same under a valid license; provided, however, that it is understood and agreed that Grantor has not done exhaustive prior art searches or other searches with respect to such property;

**3.4 Notice.** To the best of Grantor's knowledge and belief, Grantor has used and will continue to exercise reasonable efforts to use proper statutory notice in connection with its use of each of the patents, service marks, and trademarks;

**3.5 Quality.** Grantor has used and will continue to exercise reasonable efforts to use consistent standards of quality (consistent with Grantor's past practices) in the manufacture, sale, and delivery of products and services sold or delivered under or in connection with the service marks and trademarks, including, to the extent applicable, in the operation and maintenance of its merchandising operations, and will continue to exercise reasonable efforts to maintain the validity of the service marks and trademarks to the extent that the failure to so maintain the validity of such service marks and trademarks could reasonably be expected to result in a material adverse change to a Lender's economic interest; and

**3.6 Perfection of Security Interest.** Except for the filing of a financing statement with the Secretary of State of Pennsylvania and filings with the United States Patent and Trademark Office necessary to perfect the security interests created hereunder, to the best of Grantor's knowledge and belief no authorization, approval, or other action by, and no notice to or filing with, any governmental authority or regulatory body in the United States is required either for the grant by Grantor of the security interest hereunder or for the execution, delivery, or performance of this Agreement by Grantor or for the perfection of or the exercise by Lenders' Agent of its rights hereunder with respect to the Intellectual Property Collateral.

#### **4. AFTER-ACQUIRED PATENT, SERVICE MARK, OR TRADEMARK RIGHTS.**

If Grantor shall obtain ownership rights to any new service marks, trademarks, any new patentable inventions or become entitled to the benefit of any patent application or patent for any reissue, division, or continuation, of any patent, the provisions of this Agreement shall automatically apply thereto. Grantor shall provide a report from time to time in writing to Lenders' Agent with respect to any such new service marks, trademarks, or patents, or renewal or extension of any service mark or trademark registration. Grantor shall bear any expenses incurred in connection with future patent applications and future service mark or trademark registrations.

## **5. LITIGATION AND PROCEEDINGS.**

Grantor shall commence and diligently prosecute in its own name, as the real party in interest, for its own benefit, and at its own expense, such suits, administrative proceedings, or other actions for infringement or other damages as are in its reasonable business judgment necessary and appropriate to protect the Intellectual Property Collateral. Grantor shall provide to Lenders' Agent any information with respect thereto requested by Lenders' Agent. Lenders' Agent shall provide at Grantor's expense all necessary cooperation in connection with any such suits, proceedings, or action, including, without limitation, joining as a necessary party. Following Grantor's becoming aware thereof, Grantor shall notify Lenders' Agent of the institution of, or any adverse determination in, any proceeding in the United States Patent and Trademark Office, or any United States, state, or foreign court regarding Grantor's claim of ownership in any of the patents, service marks, or trademarks, its right to apply for the same, or its right to keep and maintain such patent, service mark, or trademark right.

## **6. POWER OF ATTORNEY.**

To the extent it does not adversely affect the validity of the Intellectual Property Collateral, Grantor grants Lenders' Agent power of attorney, coupled with an interest, having the full authority, and in the place of Grantor and in the name of Grantor, from time to time during the occurrence and continuance of an Event of Default in Lenders' Agent's discretion, to take any action and to execute any instrument which Lenders' Agent may deem necessary or advisable to accomplish the purposes of this Agreement, including, without limitation, as may be subject to the provisions of this Agreement: to endorse Grantor's name on all applications, documents, papers, and instruments necessary for Lenders' Agent to use or maintain the Intellectual Property Collateral; to ask, demand, collect, sue for, recover, impound, receive, and give acquittance and receipts for money due or to become due under or in respect of any of the Intellectual Property Collateral; to file any claims or take any action or institute any proceedings that Lenders' Agent may deem necessary for the collection of any of the Intellectual Property Collateral or otherwise to enforce Grantor's or the Lenders' rights with respect to any of the Intellectual Property Collateral and to assign, pledge, convey, or otherwise transfer title in or dispose of the Intellectual Property Collateral to any person.

## **7. EVENTS OF DEFAULT.**

An Event of Default (as defined in the Security Agreement) shall be an Event of Default under this Agreement.

## **8. SPECIFIC REMEDIES.**

Upon the occurrence and continuation of any Event of Default, Lenders' Agent shall have, in addition to, other rights given by law or in this Agreement, the Loan Agreement, the Security Agreement, or in the Notes, all of the rights and remedies with respect to the Intellectual Property Collateral of a secured party under the Code, including the following:

**8.1 Notification.** Lenders' Agent may notify licensees to make royalty payments on license agreements directly to Lenders' Agent for the benefit of the Lenders; and

**8.2 Sale.** Lenders' Agent may sell or assign the Intellectual Property Collateral and associated goodwill at public or private sale for such amounts, and at such time or times as Lenders' Agent deems advisable. Any requirement of reasonable notice of any disposition of the Intellectual Property Collateral shall be satisfied if such notice is sent to Grantor ten days prior to such disposition. Grantor shall be credited with the net proceeds of such sale only when they are actually received by Lenders' Agent, and Grantor shall continue to be liable for any deficiency remaining after the Intellectual Property Collateral is sold or collected. If the sale is to be a public sale, Lenders' Agent shall also give notice of the time and place by publishing a notice one time at least ten days before the date of the sale in a newspaper of general circulation in the county in which the sale is to be held. To the maximum extent permitted by applicable law, Lenders' Agent may be the purchaser of any or all of the Intellectual Property Collateral and associated goodwill at any public sale and shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Intellectual Property Collateral sold at any public sale, to use and apply all or any part of the Obligations as a credit on account of the purchase price of any collateral payable by Lenders' Agent at such sale.

## **9. CHOICE OF LAW**

The Code shall govern the perfection and the effect of attachment and perfection of the Lenders' security interest in the Collateral, and the rights, duties and obligations of the Lenders, the Lenders' Agent and Grantor with respect to the Intellectual Property Collateral. This Agreement shall be deemed to be a contract under the laws of the Commonwealth of Pennsylvania and, to the extent not inconsistent with the preceding sentence, the terms and provisions of this Agreement shall be governed by and construed in accordance with the laws of that State.

## **10. GENERAL PROVISIONS.**

**10.1 Effectiveness.** This Agreement shall be binding and deemed effective when executed by Grantor and Lenders' Agent.

**10.2 Successors and Assigns.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that Grantor may not assign the Agreement or any rights or duties hereunder without Lenders' Agent's prior written consent and any prohibited assignment shall be absolutely void. Lenders' Agent may assign this Agreement and its rights and duties hereunder, subject only to Section 6 of the Loan Agreement, and no consent or approval by Grantor is required in connection with any such assignment.

**10.3 Section Headings.** Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each section applied equally to this entire Agreement.

**10.4 Interpretation.** Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved against Lenders' Agent or Grantor, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties hereto.

**10.5 Severability of Provisions.** Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

**10.6 Amendments in Writing.** This Agreement can only be amended by a writing signed by both Lenders' Agent and Grantor.

**10.7 Counterparts; Telefacsimile Execution.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile shall be equally as effective as delivery of a manually executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile also shall deliver a manually executed counterpart of this Agreement but the failure to deliver a manually executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement.

**10.8 Fees and Expenses.** Grantor shall pay to Lenders' Agent on demand all costs and expenses that Lenders' Agent or the Lenders pay or incur in connection with the administration, enforcement, and termination of this Agreement, including: (a) reasonable attorneys' and paralegals' fees and disbursements of counsel to Lenders' Agent; (b) reasonable costs and expenses (including reasonable attorneys' and paralegals' fees and disbursements) for any amendment, supplement, waiver, consent, or subsequent closing in connection with this Agreement and the transactions contemplated hereby; (c) costs and expenses of lien and title searches; (d) taxes, fees, and other charges for filing this Agreement at the United States Patent and Trademark Office and United States Copyright Office, or for filing financing statements, and continuations, and other actions to perfect, protect, and continue the security interest created hereunder; (e) sums paid or incurred to pay any amount or take any action required of Grantor under this Agreement that Grantor fails to pay or take; (f) costs and expenses of preserving and protecting the Intellectual Property Collateral; and (g) reasonable costs and expenses (including reasonable attorneys' and paralegals' fees and disbursements) paid or incurred to enforce the security interest created hereunder, sell or otherwise realize upon the Intellectual Property Collateral, and otherwise enforce the provisions of this Agreement, or to defend any claims made



or threatened against the Lenders arising out of the transactions contemplated hereby (including preparations for the consultations concerning any such matters). The foregoing shall not be construed to limit any other provisions of this Agreement or the Loan Documents regarding costs and expenses to be paid by Grantor.

**10.9 Notices.** Except as otherwise provided herein, all notices, demands, and requests that either party is required or elects to give to the other shall be in writing and shall be governed by the provisions of Section 12(c) of the Security Agreement.

**10.10 Termination by Agent.** Lenders' Agent shall release its security interest in the Intellectual Property Collateral at such time as the non-contingent Obligations have been fully and finally discharged, the outstanding Notes have been paid in full, and the Lenders' obligation to provide additional credit under the Loan Agreement has been terminated, and in such event at the reasonable request of Grantor Lenders and Lenders' Agent each shall, at Grantor's expense, make such filings with the Commonwealth of Pennsylvania and the United States Patent and Trademark Office as may be deemed by Grantor to be necessary or appropriate to evidence such release and terminate any financing statement nor notice relating to the liens and security interests created hereby. In the event that, for any reason, any portion of such payments to the Lenders is set aside or restored, whether voluntarily or involuntarily, after the making thereof, then the obligation intended to be satisfied thereby shall be revived and continued in full force and effect as if said payment or payments had not been made.

**10.11 Integration.** This Agreement, together with the other Loan Documents, reflect the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, entered into before the date hereof.


**10.12 Resolution of Conflicts.** In the event that any express provision or term of this Agreement conflicts with the express provisions and terms of the Loan Agreement, the provision or term in the Loan Agreement shall control.

**10.13 Confidentiality.** Lenders and Lenders' Agent acknowledge and agree that the information set forth in Exhibit A and Exhibit B attached hereto (the "IP Information") contains proprietary information of Grantor, including trade secrets and that disclosure of the IP Information to third parties could adversely affect the value of the Intellectual Property Collateral. Accordingly, Lenders and Lenders' Agent agree to keep the IP Information strictly confidential and to ensure that the IP Information is not disclosed to any third parties. Grantor agrees to assist Lenders' Agent in creating a summary version of the IP Information as may be necessary for filing with the United States Patent and Trademark Office and any other applicable filing offices to perfect the security interest created hereunder while avoiding unnecessary disclosure.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

**GRANTOR:**

FAST FORWARD, INC.

By:   
Title: CEO AND PRESIDENT

**LENDERS' AGENT:**

ADAMS CAPITAL MANAGEMENT II,  
L.P.

By: ACM Capital Partners III, L.P.  
General Partner

By: ACM Capital, LLC  
General Partner

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

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first written above.

**GRANTOR:**

FAST FORWARD, INC.

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

**LENDERS' AGENT:**

ADAMS CAPITAL MANAGEMENT II,  
L.P.

By: ACM Capital Partners III, L.P.  
General Partner

By: ACM Capital, LLC  
General Partner


By:  \_\_\_\_\_  
Title: Manager

EXHIBIT A

Patents

<u>Registration/Application Number</u>	<u>Registration/Application Date</u>

None

EXHIBIT B

Trademarks

<u>Item No.</u>	<u>Mark</u>	<u>Status</u>	<u>Application/Registration No.</u>	<u>Date Filed/Registered</u>
1	etoll (and design)	Registered	2,584,838	6/25/02
2	ETELLIGENCE	Registered	2,255,492	6/22/99
3	E (and design)	Registered	2,312,907	2/1/00
4	ETOLL (word mark)	Registered	2,477,527	8/14/01
5	DELIVERING DIGITAL DREAMS	Registered	2,477,528	8/14/01
6	@STORE	Allowed	75/891,961	1/7/00 (filed)
7	SHOP PROGRAM	Registered	2,490,172	9/18/01