

06-09-2003

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6-4-03 R



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

102467867

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

1. Name of conveying party(ies): Cargo Technology, Inc. [ ] Individual(s) [ ] Association [ ] General Partnership [ ] Limited Partnership [x] Corporation-State [ ] Other California corporation Additional name(s) of conveying party(ies) attached? [ ] Yes [x] No

2. Name and address of receiving party(ies) Name: E\*Capital Corporation Internal Address: Street Address: 1000 Wilshire Blvd., 9th Floor City: Los Angeles State: CA Zip: 90017 [ ] Individual(s) citizenship [ ] Association [ ] General Partnership [ ] Limited Partnership [x] Corporation-State California [ ] 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? [x] Yes [ ] No

3. Nature of conveyance: [ ] Assignment [ ] Merger [x] Security Agreement [ ] Change of Name [ ] Other Execution Date: 04/03/2003

4. Application number(s) or registration number(s): A. Trademark Application No.(s) B. Trademark Registration No.(s) 2,464,152 and 2,628,368 Additional number(s) attached [ ] Yes [ ] No

5. Name and address of party to whom correspondence concerning document should be mailed: Name: Peter K. Hahn, Esq. Internal Address: Luce, Forward, etc. Street Address: 600 West Broadway, Suite 2600 City: San Diego State: CA Zip: 92101

6. Total number of applications and registrations involved: 2 7. Total fee (37 CFR 3.41).....\$ 65.00 [x] Enclosed [ ] Authorized to be charged to deposit account

8. Deposit account number:

06/06/2003 DB/RLM 00000104 2464152

01 FC:852 40.00 DP 02 FC:852 25.00 DP

DO NOT USE THIS SPACE

9. Signature. Peter K. Hahn, Esq. Name of Person Signing

Signature

June 4, 2003 Date

Total number of pages including cover sheet, attachments, and document: 15

FINANCE SECTION 06/04/03 AM 8:01

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

TRADEMARK REEL: 002748 FRAME: 0069

**ATTACHMENT TO RECORDATION FORM COVER SHEET**

**TRADEMARKS ONLY**

**Additional Names & Addresses of Receiving Parties:**

Hamilton Apex Technology Ventures, L.P.  
12526 High Bluff Drive, Suite 260  
San Diego, CA 92130  
Limited Partnership

United Parcel Service General Services Co.  
55 Glenlake Pkwy  
NE Bldg 1, Level 4  
Atlanta, GA 30328  
California corporation

Farmers and Merchants Trust Company  
FBO Michael Schoettle IRA  
302 Pine Avenue  
Long Beach, CA 90802

# INTELLECTUAL PROPERTY SECURITY AGREEMENT

This INTELLECTUAL PROPERTY SECURITY AGREEMENT (this "Agreement"), is made as of April 3, 2003 by Cargo Technology, Inc., a California corporation, (the "Company"), in favor of certain investors as set forth on Schedule 1 to this Agreement (the "Investors").

## RECITALS

A. The Company and Investors have entered into that certain Subordinated Secured Convertible Note Purchase Agreement made as of April 3, 2003 (the "Note Purchase Agreement"), pursuant to which (i) the Company shall sell and the Investors shall purchase Convertible Notes (defined below) and (ii) the Company has agreed to grant to Investors a security interest in the Collateral (defined below).

B. In connection with the issuance of the Convertible Notes, the Company has also executed that certain Security Agreement dated of even date herewith, in favor of the Investors, granting Investors a security interest in the Company's tangible and intangible personal property.

C. Pursuant to the Note Purchase Agreement and as one of the conditions to the obligations of Investors under the Note Purchase Agreement, the Company has agreed to execute and deliver this Agreement to Investors as further evidence of and to effectuate Investors' security interest in the Collateral.

## ASSIGNMENT

NOW, THEREFORE, in consideration of the promises set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company hereby agrees as follows:

### 1. Definitions.

a. Certain Defined Terms. In addition to all other terms defined elsewhere in this Agreement, the following terms shall have meanings set forth below:

(i) "Business" means all of the Company's right, title and interest in and to the business operations currently conducted by the Company, any successor names thereto, and any other business of the Company now existing or arising in the future.

(ii) "Collateral" has the meaning set forth in Section 2 of this Agreement.

(iii) "Convertible Notes" means those certain Subordinated Secured Convertible Promissory Notes dated March 21, 2003 and April 3, 2003 executed by the Company in favor of each of the Investors.

(iv) "Investor Representative" means E\*Capital Corporation, a California corporation, as set forth in Section 6 of the Note Purchase Agreement.

(v) "Lien" means any pledge, security interest, assignment, charge or encumbrance, lien (statutory or other), or other preferential arrangement (including any agreement to give any security interest).

(vi) "Person" means an individual, corporation, partnership, limited liability company, joint venture, trust, unincorporated organization or any other entity.

(vii) "Proceeds" means whatever is receivable or received from or upon the sale, lease, license, sublicense, franchise, subfranchise, collection, use, exchange or other disposition, whether voluntary or involuntary, of any Collateral, including "proceeds" as defined at UCC Section 9102.

(viii) "PTO" means the United States Patent and Trademark Office and any successor thereto.

(ix) "UCC" means the Uniform Commercial Code as in effect from time to time in the State of California.

(x) "United States" and "U.S." each mean the United States of America.

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.

2. Security Interest. To secure the Obligations (as defined in Section 3 below), the Company does hereby irrevocably pledge, assign and grant to Investors a security interest in all of the Company's worldwide right, title and interest in and to all of the following personal property, now adopted, used, registered, unregistered, owned or hereafter acquired or arising or in which the Company now or hereafter acquires or develops an interest (collectively, the "Collateral"):

a. Trademark Collateral. (i) All common law and state and federally registered trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names, product names, slogans, trade styles, trade dress, color marks and designs, logos, domain names, other source or business identifiers, designs and general intangibles of like nature, now existing or hereafter adopted or acquired in any way relating to the Business or otherwise, together with and including all licenses therefor held by the Company, and all registrations and recordings thereof, and all applications filed or to be filed in connection therewith, including applications and resulting registrations in the PTO, any State of the U.S., in any other country in the world, and all extensions and renewals thereof, including, without limitation any of the foregoing identified on Schedule 2 to this Agreement (as the same may be amended, modified or supplemented from time to time), together with the goodwill of the Business symbolized by or associated with all of the foregoing (collectively, the "Trademarks"); (ii) all modifications, variations, derivative marks and names based upon the Trademarks used in the Company's Business now or in the future, and the goodwill of the Business associated with such names and marks or other Trademarks; (iii) all income, royalties and payments now or hereafter due and/or payable under and with respect to the Trademarks, including license fees

and royalties under license and other agreements; (iv) all claims, causes of action, damages and recoveries for past, present and future infringements or unauthorized use of any of the Trademarks and all rights arising therefrom and pertaining thereto; (v) all rights corresponding to the Trademarks throughout the world; (vi) all general intangibles (as defined in the UCC) and all intangible intellectual property or other similar property of the Company of any kind or nature, whether now owned or hereafter acquired or used, associated with or arising out of any of the Trademarks not otherwise described herein and all of the goodwill of the Company's Business symbolized by the Trademarks or associated therewith; (vii) any jointly held rights in any of the foregoing, whether by contract or otherwise; and (viii) all Proceeds and products of any and all of the foregoing (all of the foregoing, collectively, the "Trademark Collateral").

b. Copyright Collateral. (i) All published and unpublished works of authorship that the Company owns or uses in its Business or will in the future adopt and so use (including all advertising and promotional materials), all original and derivative works of authorship and works protectable by copyright that are presently or in the future may be, owned, created, authored, acquired or used (pursuant to a license or otherwise) by the Company or by its employees, independent contractors, third parties or acquired by the Company, all of the Company's proprietary object code, source code, source data files and documentation in any way related to the Business and any modifications and derivative works related thereto, all copyright registrations and applications for copyright registration that previously have been or may hereafter be issued thereon or applied for in the U.S. or anywhere in the world, all registrations resulting from such copyright applications, and all renewals, modifications, extensions, derivative works and collective works thereof or related to any of the foregoing, throughout the world, together with all copyright licenses held by the Company, and all common law rights, copyrights, rights of authorship and moral rights related to any of the foregoing (collectively, the "Copyrights"); (ii) all income, royalties and payments now or hereafter due and/or payable under and with respect to the foregoing, including license fees and royalties under license and other agreements; (iii) all claims, causes of action, damages and recoveries for past, present and future infringements or unauthorized use of any of the Copyrights and all rights arising therefrom and pertaining thereto; (iv) all rights corresponding to the Copyrights throughout the world; (v) all general intangibles (as defined in the UCC) and all intangible intellectual property or 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 Copyrights not otherwise described herein and all of the goodwill of the Company's Business symbolized thereby or associated therewith; (vi) any jointly held rights in any of the foregoing, whether by contract or otherwise; and (vii) all Proceeds and products of any and all of the foregoing (all of the foregoing, collectively, the "Copyright Collateral").

c. Patent Collateral. (i) All patents and patent applications (including, without limitation, the inventions, devices, specifications and improvements described and claims therein) filed in the U.S. or in any other country, owned, held or used by the Company in whole or in part, and all patent and invention disclosures related thereto, together with all reissuances, divisions, continuations, continuations-in-part, renewals, extensions, re-examinations, supplementary protection certificates, modifications, derivatives and improvements thereof and the inventions disclosed therein, and all new or separate patents that may be issued in connection with the foregoing, and all other inventions (whether patentable or unpatentable, whether or not reduced to practice or developed alone or jointly with others), and

together with and including all patent licenses held by the Company, and all other rights, including the right to make, use, license, sell, exploit and otherwise transfer the inventions disclosed therein (collectively the "Patents"); (ii) all income, royalties and payments now or hereafter due and/or payable under and with respect to the Patents, including license fees and royalties under license and other agreements; (iii) all claims, causes of action, damages and recoveries for past, present and future infringements thereof or unauthorized use of any of the Patents and all rights arising therefrom and pertaining thereto; (iv) all rights of the Company corresponding to the Patents throughout the world; (v) all general intangibles (as defined in the UCC) and all intangible intellectual property or 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 not otherwise described herein and all of the goodwill of the Company's Business symbolized by the Patents or associated therewith; (vi) any jointly held rights in any of the foregoing, whether by contract or otherwise; and (vii) all products and Proceeds of any and all of the foregoing (all of the foregoing, collectively, the "Patent Collateral").

3. Obligations Secured. This Agreement and the security interest granted by this Agreement secure, in the order of priority described in the Convertible Notes, the payment, performance, observance and satisfaction by the Company of all of its obligations, covenants, agreements and conditions under the Convertible Notes and any amendments, renewals, replacements and extensions of each of them (collectively, the "Obligations").

4. Further Assurances; Appointment of Investors As Attorney-In-Fact. The Company, at its expense, shall execute and deliver, or cause to be executed and delivered, to the Investor Representative any and all documents and instruments, in form and substance reasonably satisfactory to Investors, and take any and all action, which Investors may reasonably request from time to time, in order to evidence, protect, maintain, perfect or continue the security interest of Investors in the Collateral, to effectuate or enforce the rights granted to Investors hereunder, or to otherwise carry out the purposes and intent of this Agreement.

5. Financing Statements. The Company hereby consents to and instructs the Investor Representative to file financing statements, without the Company's signature (to the extent permitted by law), in all locations deemed appropriate by the Investor Representative, including, but not limited to, the State of California and the PTO, from time to time. In connection with the filing of such financing statements, the Company acknowledges and agrees that the Investor Representative may utilize a general description of the Collateral such as, "all now owned and hereafter acquired intellectual property of the Company."

6. Rights of Company with Respect to Collateral. Until such time, if any, as there is an Event of Default (defined below), the Company shall have the right to use or collect on the Collateral and take all other actions it deems necessary or desirable to manage the Collateral.

7. Representations, Warranties and Covenants of the Company. To protect and maintain the security of this Agreement, the Company represents, warrants and covenants that:

a. Except for preexisting UCC financing statements, as set forth on Schedule 3 attached hereto and incorporated by reference herein, and any UCC financing statements filed in connection with the security interests granted to Investors under this Agreement and the

agreements referenced herein, to the Company's knowledge, there are no other UCC financing statements affecting the Collateral.

b. The Company will not sell, assign, encumber or dispose of any of the Collateral unless (i) such Collateral is inventory sold in the ordinary course of business and is promptly replenished with like Collateral of equivalent value in which Investors have a perfected security interest; or (ii) the holders of at least a majority of the outstanding principal represented by the Convertible Notes (the "Majority Note Holders") have consented in writing.

c. The Company shall not incur any indebtedness for borrowed money without the written consent of the Majority Note Holders, other than (i) indebtedness to banks or commercial finance or other lending or similar institutions regularly engaged in the business of lending money; (ii) other indebtedness for borrowed money which is subordinated to the Convertible Notes; (iii) indebtedness of the Company in favor of the Investors arising under this Agreement, the Convertible Notes, the Note Purchase Agreement, or any agreement contemplated therein; or (iv) indebtedness to trade creditors incurred in the ordinary course of business.

8. Event of Default. It shall be an "Event of Default" under this Agreement if the Company shall fail to perform or comply with

- a. any provisions of this Agreement;
- b. any provisions of the Convertible Notes; or
- c. any provisions of the Note Purchase Agreement.

9. Rights of Investors on Default. From and after the occurrence and during the continuation of an Event of Default, Investors shall have all rights and remedies available to them under this Agreement and applicable law (which rights and remedies are cumulative). The Company agrees that such rights and remedies include the right of the Investor Representative, as a secured party, to sell or otherwise dispose of the Collateral after default, pursuant to the UCC.

10. Termination. The security interest in the Collateral granted hereunder shall remain in full force and effect until the Obligations are satisfied in full. At such time, the Investor Representative shall, if requested by the Company, at the Company's expense, execute and deliver to the Company, or to a third party upon the Company's instructions, for filing with the appropriate government entity in the U.S. or elsewhere and in each office in which any financing statement pertaining to the security interest granted hereby may have been filed: (i) documentation in accordance with the rules and regulations of such office, (ii) termination statements under the UCC, and (iii) any other documentation reasonably requested by the Company, all as may be necessary to release Investors' interest in the Collateral.

11. Governing Law; Venue; Jury Waiver. If there is a lawsuit or other proceeding, the parties to this Agreement agree to submit to the jurisdiction of the courts of San Diego County, California. Investors and the Company hereby waive the right to any jury trial in any action, proceeding or counterclaim brought by any of the Investors or the Company against the other,

and each waive any right to object to or contest the venue or jurisdiction selected by Investors. This Agreement will be governed by, construed and enforced in accordance with federal law and the laws of the State of California.

12. Notices. All notices (including other communications required or permitted) under this Agreement must be in writing and must be delivered (a) in person, (b) by registered or certified mail, postage prepaid, return receipt requested, (c) by a generally recognized courier or messenger service that provides written acknowledgement of receipt by the addressee, or (d) by facsimile or other generally accepted means of electronic transmission with a verification of delivery. Notices are deemed delivered when actually delivered to the address for notices. Any party may furnish, from time to time, other addresses for notices to it.

13. Entire Agreement. This Agreement (together with the Note Purchase Agreement and the schedules and exhibits thereto) are the complete and exclusive statement of agreement and understanding of the parties with respect to matters in this Agreement and is a complete and exclusive statement of the terms and conditions thereof. This Agreement replaces and supersedes all prior written or oral agreements, statements, correspondence, negotiations and understandings by and among the parties with respect to the matters covered by it. No representation, statement, condition or warranty not contained in this Agreement or its exhibits is binding on the parties.

14. Headings; Exhibits; References. The headings in this Agreement are only for convenience and ease of reference and are not to be considered in construction or interpretation of this Agreement, nor as evidence of the intention of the parties hereto. All exhibits attached to this Agreement are incorporated herein. Except where otherwise indicated, all references in this Agreement to Sections refer to Sections of this Agreement.

15. Severability. The provisions of this Agreement are severable. The invalidity, in whole or in part, of any provision of this Agreement shall not affect the validity or enforceability of any other of its provisions. If one or more provisions hereof shall be declared invalid or unenforceable, the remaining provisions shall remain in full force and effect and shall be construed in the broadest possible manner to effectuate the purposes hereof. The parties further agree to replace such void or unenforceable provisions of this Agreement with valid and enforceable provisions which will achieve, to the extent possible, the economic, business and other purposes of the void or unenforceable provisions.

16. Successors and Assigns. All covenants and agreements contained by or on behalf of the Company shall bind the Company's successors and assigns and shall inure to the benefit of Investors and their successors and assigns.

*[The remainder of this page has been intentionally left blank]*



IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

COMPANY:

CARGO TECHNOLOGY, INC., a California corporation.

By:   
Thomas G. Malone, President

ACCEPTED AND AGREED:

INVESTOR REPRESENTATIVE:

E\*CAPITAL CORPORATION, a California corporation.

By: \_\_\_\_\_  
Eric Wedbush, Managing Director

IN WITNESS WHEREOF, the undersigned has executed this Agreement as of the date first written above.

COMPANY:

CARGO TECHNOLOGY, INC., a California corporation.

By: \_\_\_\_\_  
Thomas G. Malone, President

ACCEPTED AND AGREED:

INVESTOR REPRESENTATIVE:

E\*CAPITAL CORPORATION, a California corporation.

By:  \_\_\_\_\_  
Eric Wedbush, Managing Director

# SCHEDULE 1

## Investors

<b>INVESTOR</b>	<b>Note Amount</b>	<b>Series B Preferred Stock Warrants</b>
E*Capital Corporation	200,000	250,000
Hamilton Apex Technology Ventures, L.P.	200,000	250,000
United Parcel Service General Services Co.	59,500	74,375
Farmers and Merchants Trust Company FBO Michael Schoettle R/O IRA	3,200	4,000
<b>Total</b>	<b>462,700</b>	<b>578,375</b>

**SCHEDULE 2****Registered Trademarks and Trademark Applications**

<b>Owner</b>	<b>Country of Registration</b>	<b>Registration No.</b>	<b>Registration Date</b>	<b>Mark</b>	<b>Class/Products</b>
Cargo Technology, Inc.	United States	2,464,152	06-26-2001	AIRLINER	Int'l Class 017. Insulating liners for cargo shipping containers.
Cargo Technology, Inc.	United States	2,628,368	10-02-2002	CARGOTECH	Int'l Class 040. Custom manufacture of insulated packaging and shipping liners.

**See Also Attached Trademark Charts For Additional Trademark Registrations and Applications**

**Issued Patents and Patent Applications**

<b>Owner/Inventors</b>	<b>Country of Registration</b>	<b>Registration No.</b>	<b>Issuance Date</b>	<b>Patent Title</b>
Malone, Thomas G. and McGraw, John J.	United States	6,513,974	02-04-2003	Inflatable Insulating Liners For Shipping Containers.
Malone, Thomas G. and McGraw, John J.	United States	Serial No. 10/248,641	02-03-2003	Inflatable Insulating Liners For Shipping Containers Continuation-In-Part.
Malone, Thomas G. and McKinney, David B.	United States	09/683392	12-20-2001	Inflatable Insulating Liners For Shipping Containers And Method of Manufacture.

**Schedule 3**  
**UCC Statements**

Source: [Public Records](#) > [Public Records](#) > [Uniform Commercial Code Filings](#) > [CA Uniform Commercial Code Lien Filings](#) ①

Terms: [cargo technology](#) ([Edit Search](#))

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**CALIFORNIA SECRETARY OF STATE, UCC RECORD**

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**CALIFORNIA SECRETARY OF STATE, UCC RECORD**

**DEBTOR(S): CARGO TECHNOLOGY, INC. [BUSINESS]**

POB 6727

SAN DIEGO, CA 92166-6727

**SECURED PARTIES: IMPERIAL BANK**

9920 S LA CIENEGA BLVD STE 903

INGLEWOOD, CA 90301

**FILING-DATE: 06/22/2000**

**FILING-TIME: 08:00 AM**

**EXPIRATION DATE: 06/22/2005**

**FILING-NUMBER: 0017960147**

**STATUS: ACTIVE**

**TYPE: FINANCING STATEMENT**

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CALIFORNIA SECRETARY OF STATE, UCC RECORD

**DEBTOR(S): CARGO TECHNOLOGY, INC. [BUSINESS]**

9020 ACTIVITY RD STE A  
SAN DIEGO, CA 92126  
FID/SS#: 330903600

**SECURED PARTIES: IMPERIAL BANK**

9920 S LA CIENEGA BLVD STE 628  
INGLEWOOD, CA 90301-4423

**FILING-DATE:** 05/04/2001

**FILING-TIME:** 08:00 AM

**EXPIRATION DATE:** 05/04/2006

**FILING-NUMBER:** 0112960805

**STATUS:** ACTIVE

**TYPE:** FINANCING STATEMENT

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# LUCE FORWARD

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LUCE, FORWARD, HAMILTON & SCRIPPS LLP

PETER K. HAHN, PARTNER  
DIRECT DIAL NUMBER (619) 699-2585

600 West Broadway  
Suite 2600  
San Diego, CA 92101

619.236.1414  
619.232.8311 fax  
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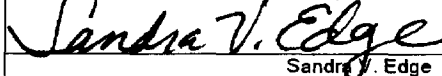
DIRECT FAX NUMBER (619) 645-5357  
Email Address: phahn@luce.com

June 4, 2003

28025-5

Mail Stop Assignment  
Recordation Services  
Director of the United States Patent and  
Trademark Office  
PO Box 1450  
Alexandria, VA 22313-1450

I hereby certify that the original of this document and the enclosures referred to therein are being deposited with the United States Postal Service, "Express Mail Post Office to Addressee" service, under 37 C.F.R. § 1.10 on June 4, 2003, and addressed to Mail Stop Assignment Recordation Services, Director of the United States Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450.

  
Sandra V. Edge

"Express Mail" Mailing Label No. EV083073785US

Re: Marks: **AIRLINER, Reg. No. 2,464,152**  
**CARGOTECH, Reg. No. 2,628,368**  
Subject: Recordation of Security Agreement

Dear Sir or Madam:

Enclosed for recording is a true and correct copy of the Intellectual Property Security Agreement, evidencing a security interest in the above-referenced trademark registrations from Cargo Technology, Inc. to the following entities:

E\*Capital Corporation  
1000 Wilshire Blvd., 9th Floor  
Los Angeles, CA 90017

Hamilton Apex Technology Ventures, L.P.  
12526 High Bluff Drive, Suite 260  
San Diego, CA 92130  
Limited Partnership

United Parcel Service General Services Co.  
55 Glenlake Pkwy  
NE Bldg 1, Level 4  
Atlanta, GA 30328  
California corporation

Farmers and Merchants Trust Company  
FBO Michael Schoettle IRA  
302 Pine Avenue  
Long Beach, CA 90802



Director of the USPTO

Page 2

June 4, 2003

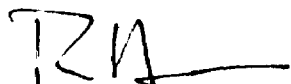
Enclosed you will also find the following:

- A Recordation Form Cover Sheet - Trademarks Only; and
- A check in the amount of \$65.00 for the recording fee.

In the event the check is inadvertently omitted, is insufficient or is unsigned, this is your authorization to charge our Deposit Account No. 50-0683. So that we may have a timely record of this filing, please date-stamp the enclosed stamped, self-addressed postcard and deposit it into the United States mail.

Please record the Intellectual Property Security Agreement and return it to me at your earliest convenience. Should you have any questions, please do not hesitate to contact me at the above number.

Sincerely,



Peter K. Hahn

of  
LUCE, FORWARD, HAMILTON & SCRIPPS LLP

PKH/sve

Enclosures

cc: Erik E. Malinowski, Esq. with enclosures)

1864490.1