

01-31-2002

HEET

U.S. DEPARTMENT OF COMMERCE

Patent and Trademark Office



101966523

Tab settings → → → ▼

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

1. Name of conveying party(ies):
CallWare Technologies, Inc.

1-9-02

2. Name and address of receiving party(ies):

Name: **Greenwood II, L.P.**

Internal Address: _____

Additional names(s) of conveying party(ies) ☐ Yes ☒ No

3. Nature of conveyance:

- ☐ Assignment ☐ Merger
☒ Security Agreement ☐ Change of Name
☐ Other _____

Street Address: **584 S. State Street**City: **Orem** State: **UT** ZIP: **84058**Execution Date: **December 24, 2001**Additional name(s) & address(es) attached? ☐ Yes ☒ No

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

If this document is being filed together with a new application, the execution date of the application is: _____

A. Patent Application No.(s)

None

B. Patent No.(s)

5,799,307

Additional numbers attached? ☐ Yes ☒ No

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

Name: **Carolyn Peters**Internal Address: **Dorsey & Whitney LLP**Street Address: **Wells Fargo Plaza****170 South Main Street, Suite 900**City: **Salt Lake City** State: **UT** ZIP: **84101**6. Total number of applications and patents involved: **1**7. Total fee (37 CFR 3.41):.....\$ **40.00**☒ Enclosed - Any excess or insufficiency should be credited or debited to deposit account☐ Authorized to be charged to deposit account

8. Deposit account number:

04-1415

01/30/2002 DBYRNE 00000157 5799307

DO NOT USE THIS SPACE

01 FC:581 Statement and signature. 40.00 OP

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.

Carolyn Peters

January 9, 2002

Name of Person Signing

Signature

Date

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

16

PATENT

REEL: 012513 FRAME: 0292

PATENT AND TRADEMARK SECURITY AGREEMENT

This Agreement, dated as of December 24, 2001, is made by and between CALLWARE TECHNOLOGIES, Inc., a Utah corporation whose address and principal place of business is 8911 S. Sandy Parkway, Sandy, Utah 84070 (the "*Borrower*"), and GREENWOOD II, L.P., a Utah partnership whose address is 584 S. State Street, Orem, Utah 84058, and its assigns (the "*Lender*").

RECITALS

The Borrower and the Lender have entered into a Credit and Security Agreement dated as of December 24, 2001 (as the same may hereafter be amended, supplemented or restated from time to time, the "*Credit and Security Agreement*") setting forth the terms on which the Lender may now or hereafter make certain loans or other financial accommodations to or for the account of the Borrower.

As a further condition to making any loan or other financial accommodation under the Credit and Security Agreement or otherwise, the Lender has required the execution and delivery of this Agreement by the Borrower.

ACCORDINGLY, in consideration of the mutual covenants contained in the Credit and Security Agreement and herein, the parties hereby agree as follows:

1. **Definitions.** All terms defined in the Recitals hereto or in the Credit and Security Agreement that are not otherwise defined herein shall have the meanings given to them therein. In addition, the following terms have the meanings set forth below:

"Obligations" means each and every debt, liability and obligation of every type and description arising under or in connection with any Loan Document (as defined in the Credit and Security Agreement) which the Borrower may now or at any time hereafter owe to the Lender, whether such debt, liability or obligation now exists or is hereafter created or incurred and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, independent, joint, several or joint and several, and including specifically, but not limited to, the Obligations (as defined in the Credit and Security Agreement).

"*Patents*" means all of the Borrower's right, title and interest in and to patents or applications for patents, fees or royalties with respect to each, and including without limitation the right to sue for past infringement and damages therefor, and licenses thereunder, all as presently existing or hereafter arising or acquired, including without limitation the patents listed on Exhibit A, and the proceeds of any and all of the foregoing.

"*Trademarks*" means all of the Borrower's right, title and interest in and to trademarks, service marks, collective membership marks, the respective goodwill associated with each, and licenses thereunder, all as presently existing or hereafter arising

or acquired, including, without limitation, the marks listed on Exhibit B, and the proceeds of any and all of the foregoing.

2. **Security Interest.** The Borrower hereby irrevocably pledges and assigns to, and grants the Lender a security interest, with power of sale to the extent permitted by law (the "*Security Interest*"), in the Patents and in the Trademarks to secure payment of the Obligations. This Agreement grants only the Security Interest herein described, is not intended to and does not affect any present transfer of title of any trademark registration or application and makes no assignment and grants no right to assign or perform any other action with respect to any intent to use trademark application, unless such action is permitted under 15 U.S.C. § 1060.

3. **Representations, Warranties and Agreements.** The Borrower hereby represents, warrants and agrees as follows:

3.1 Existence; Authority. The Borrower is a corporation, having full power to and authority to make and deliver this Agreement. The execution, delivery and performance of this Agreement by the Borrower have been duly authorized by all necessary action of the Borrower's board of directors, and if necessary its stockholders, and do not and will not violate the provisions of, or constitute a default under, any presently applicable law or its articles of incorporation or bylaws or any agreement presently binding on it. This Agreement has been duly executed and delivered by the Borrower and constitutes the Borrower's lawful, binding and legally enforceable obligation. The correct name of the Borrower is "CallWare Technologies, Inc." The authorization, execution, delivery and performance of this Agreement do not require notification to, registration with, or consent or approval by, any federal, state or local regulatory body or administrative agency.

3.2 Patents. Exhibit A accurately lists all Patents owned or controlled by the Borrower as of the date hereof and accurately reflects the existence and status of registrations pertaining to the Patents as of the date hereof.

3.3 Trademarks. Exhibit B accurately lists all Trademarks owned or controlled by the Borrower as of the date hereof and accurately reflects the existence and status of Trademarks and all registrations pertaining thereto as of the date hereof.

3.4 Title. The Borrower has absolute title to each Patent and each Trademark listed on Exhibits A and B, free and clear of all security interests, liens and encumbrances, except the Security Interest. The Borrower (i) will have, at the time the Borrower acquires any rights in Patents or Trademarks hereafter arising, absolute title to each such Patent or Trademark free and clear of all security interests, liens and encumbrances, except the Security Interest, and (ii) will keep all Patents and Trademarks free and clear of all security interests, liens and encumbrances except the Security Interest.

3.5 No Sale. The Borrower will not sell or otherwise dispose of any Patents or Trademarks, or any interest therein, without the Lender's prior written consent.

3.6 Defense. The Borrower will at its own expense, and using its best efforts, protect and defend the Patents and Trademarks against all claims or demands of all persons other than the Lender.

3.7 Maintenance. The Borrower will at its own expense maintain the Patents and the Trademarks to the extent reasonably advisable in its business including, but not limited to, filing all applications to register and all affidavits and renewals possible with respect to issued registrations. The Borrower covenants that it will not abandon nor fail to pay any maintenance fee or annuity due and payable on any Patent or Trademark, nor fail to file any required affidavit in support thereof, without first providing the Lender: (i) sufficient written notice, as provided in the Credit and Security Agreement, to allow the Lender to timely pay any such maintenance fees or annuity which may become due on any of said Patents or Trademarks, or to file any affidavit with respect thereto, and (ii) a separate written power of attorney or other authorization to pay such maintenance fees or annuities, or to file such affidavit, should such be necessary or desirable.

3.8 Lender's Right to Take Action. If the Borrower fails to perform or observe any of its covenants or agreements set forth in this Section 3, and if such failure continues for a period of twenty (20) calendar days after the Lender gives the Borrower written notice thereof (or, in the case of the agreements contained in subsection 3.7, immediately upon the occurrence of such failure, without notice or lapse of time), or if the Borrower notifies the Lender that it intends to abandon a Patent or Trademark, the Lender may (but need not) perform or observe such covenant or agreement on behalf and in the name, place and stead of the Borrower (or, at the Lender's option, in the Lender's own name) and may (but need not) take any and all other actions which the Lender may reasonably deem necessary to cure or correct such failure.

3.9 Costs and Expenses. Except to the extent that the effect of such payment would be to render any loan or forbearance of money usurious or otherwise illegal under any applicable law, the Borrower shall pay the Lender on demand the amount of all moneys expended and all costs and expenses (including reasonable attorneys' fees) incurred by the Lender in connection with or as a result of the Lender's taking action under subsection 3.8 or exercising its rights under Section 6, together with interest thereon from the date expended or incurred by the Lender at the highest rate then applicable to any of the Obligations.

3.10 Power of Attorney. To facilitate the Lender's taking action under subsection 3.8 and exercising its rights under Section 6, the Borrower hereby irrevocably appoints (which appointment is coupled with an interest) the Lender, or its delegate, as the attorney-in-fact of the Borrower with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of the Borrower, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by the Borrower under this Section 3, or, necessary for the Lender, after an Event of Default (as defined in any Loan Document), to enforce or use the Patents or Trademarks or to grant or issue any exclusive or non-exclusive license under the Patents or Trademarks to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Patents or Trademarks to any third party. The Borrower hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein shall terminate upon the termination of the Credit and Security Agreement as provided therein and the payment and performance of all Obligations.

4. **Borrower's Use of the Patents and Trademarks.** The Borrower shall be permitted to control and manage the Patents and Trademarks, including the right to exclude others from making, using or selling items covered by the Patents and Trademarks and any licenses thereunder, in the same manner and with the same effect as if this Agreement had not been entered into, so long as no Event of Default occurs and remains uncured.

5. **Events of Default.** Each of the following occurrences shall constitute an event of default under this Agreement (herein called "*Event of Default*"): (a) an Event of Default, as defined in any Loan Document, shall occur; or (b) the Borrower shall fail promptly to observe or perform any covenant or agreement herein binding on it; or (c) any of the representations or warranties contained in Section 3 shall prove to have been incorrect in any material respect when made.

6. **Remedies.** Upon the occurrence of an Event of Default and at any time thereafter, the Lender may, at its option, take any or all of the following actions:

6.1 The Lender may exercise any or all remedies available under the Credit and Security Agreement or any other Loan Document.

6.2 The Lender may sell, assign, transfer, pledge, encumber or otherwise dispose of the Patents and Trademarks in a manner and using a process reasonably calculated to maximize the price paid in any assignment, transfer or disposition.

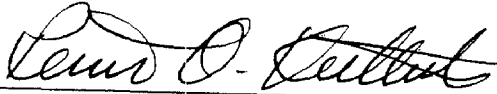
6.3 The Lender may enforce the Patents and Trademarks and any licenses thereunder, and if Lender shall commence any suit for such enforcement, the Borrower shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents required by Lender in aid of such enforcement.

7. **Miscellaneous.** This Agreement has been duly and validly authorized by all necessary action, corporate or otherwise. This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by the Lender. A waiver signed by the Lender shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of the Lender's rights or remedies. Each party hereto shall cooperate and shall take such further action and shall execute and deliver such further documents as may be reasonably requested by any other party in order to carry out the provisions and purposes of this Agreement. All rights and remedies of the Lender shall be cumulative and may be exercised singularly or concurrently, at the Lender's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other. The Lender shall not be obligated to preserve any rights the Borrower may have against prior parties, to realize on the Patents and Trademarks at all or in any particular manner or order, or to apply any cash proceeds of Patents and Trademarks in any particular order of application. This Agreement shall be binding upon and inure to the benefit of the Borrower and the Lender and their respective participants, successors and assigns and shall take effect when signed by the Borrower and delivered to the Lender, and the Borrower waives notice of the Lender's acceptance hereof. The Lender may execute this Agreement if appropriate for the purpose of filing, but the failure of the Lender to execute this Agreement shall not affect or impair the validity or effectiveness of this Agreement. A carbon, photographic or other reproduction of this

Agreement or of any financing statement signed by the Borrower shall have the same force and effect as the original for all purposes of a financing statement. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Obligations. Utah law shall govern this Agreement without regard to principles of conflicts of law. Lender and Borrower each submit to the exclusive jurisdiction of the State and Federal courts in Salt Lake County, Utah. **LENDER AND BORROWER EACH WAIVES ITS RIGHT TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING CONTRACT, TORT, BREACH OF DUTY AND ALL OTHER CLAIMS. THIS WAIVER IS A MATERIAL INDUCEMENT FOR BOTH PARTIES TO ENTER INTO THIS AGREEMENT. EACH PARTY HAS REVIEWED THIS WAIVER WITH ITS COUNSEL.**

[Signature Pages Follow]

CALLWARE TECHNOLOGIES, INC.

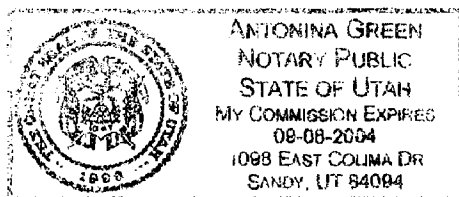
By: 
Reino O. Kerttula
President

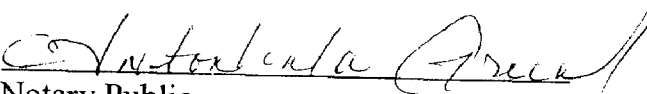
Address:

8911 S. Sandy Parkway
Sandy, UT 84070

STATE OF UTAH)
)
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 24th day of December, 2001, by Reino O. Kerttula, the President of CallWare Technologies, Inc., a Utah corporation, on behalf of the corporation.

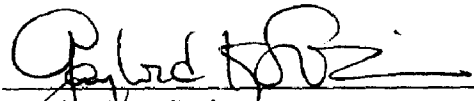



Notary Public

IN WITNESS WHEREOF, the parties have executed this Patent and Trademark Security Agreement as of the date written above.

GREENWOOD II, L.P.

By: Greenwood Management Corporation,
a Utah corporation
Its General Partner

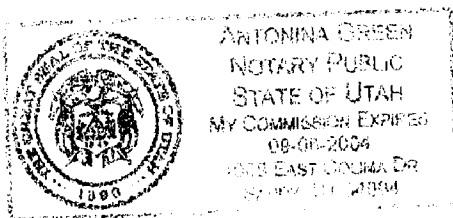
By: 
Gaylord K. Swim
President

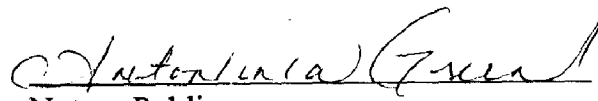
Address:

584 S. State Street
Orem, UT 84058

STATE OF UTAH)
)
COUNTY OF UTAH)

The foregoing instrument was acknowledged before me this 24th day of December, 2001, by Gaylord K. Swim, as President of Greenwood Management Corporation, General Partner of Greenwood II, L.P., a Utah limited partnership, on behalf of the partnership.




Notary Public

[Signature Page to Patent and Trademark Security Agreement]

**PATENT
REEL: 012513 FRAME: 0299**

EXHIBIT A

PATENTS

UNITED STATES ISSUED PATENTS

U.S. Patent No. 5,799,307 issued August 25, 1998

PENDING U.S. APPLICATIONS

FOREIGN ISSUED PATENTS

Country Issuing Patent: Singapore

Title: SYSTEM FOR STORING AND RETRIEVING DIGITIZED DATA

Application No.: 9802708-9

Date of Filing: September 13, 1996

Priority Data: October 6, 1995 – PATENT APPLICATION NO. 08/540,294
(UNITED STATES OF AMERICA)

Name of Inventor(s): BUITRON, ROBERT

Name(s) and Address(es)
of Proprietor(s) of Patent: CALLWARE TECHNOLOGIES, INC.
8911 SO. SANDY PARKWAY, SANDY, UT 84070,
UNITED STATES OF AMERICA

Date of Grant: July 18, 2000

PENDING FOREIGN APPLICATIONS

EXHIBIT B

TRADEMARKS, SERVICE MARKS AND COLLECTIVE MEMBERSHIP MARKS

A. U.S. TRADEMARKS (Principal Register) filed by Borrower, in order of Date of Registration.

1. Title: CallegraDESK
Reg. No.: 2,316,621
Date of Registration: February 8, 2000
Date of Filing: February 12, 1999
Serial No.: 75-640,351
For: Voice and facsimile messaging computer software, in Class 9 (U.S. Cls. 21, 23, 26, 36 and 38).
First Use / In Commerce: September 7, 1998
Examining Attorney: Mary Crawford
2. Title: Callware Technologies
Reg. No.: 2,318,351
Date of Registration: February 15, 2000
Date of Filing: September 8, 1998
Serial No.: 75-549,332
For: Computer software for use in facilitating communication, namely, electronic mail, voicemail and facsimiles through use of local area networks and the global communication network, in Class 9 (U.S. Cls. 21, 23, 26, 36 and 38).
First Use / In Commerce: September 1, 1998
Logo: No claim is made to the exclusive right to use "Technologies", apart from the mark as shown.
The mark consists of the wording "Callware Technologies" combined with the stylized design of a satellite communications disk.
Examining Attorney: Elizabeth Seltzer

3. Title: CALLWARE
Reg. No.: 2,320,381
Date of Registration: February 22, 2000
Date of Filing: May 8, 1998
Serial No.: 75-482,276
For: Computer software for use in facilitating communication, namely, electronic mail, voicemail and facsimiles through use of local area networks and the global communication network, in Class 9 (U.S. Cls. 21, 23, 26, 36 and 38).
First Use / In Commerce: August 5, 1994
Examining Attorney: Elizabeth Seltzer
4. Title: CALLEGRA
Reg. No.: 2,336,746
Date of Registration: March 28, 2000
Date of Filing: June 29, 1998
Serial No.: 75-509,930
For: Software for handling call messaging on a communication network in Class 9 (U.S. Cls. 21, 23, 26, 36 and 38).
First Use / In Commerce: September 1, 1998
Examining Attorney: Jennifer Krisp
5. Title: CALLEGRA (with design through "E")
Reg. No.: 2,358,565
Date of Registration: June 13, 2000
Date of Filing: August 17, 1998
Serial No.: 75-538,386
For: Software for handling call messaging on a communication network in Class 9 (U.S. Cls. 21, 23, 26, 36 and 38).
First Use / In Commerce: September 1, 1998
Examining Attorney: Jennifer Krisp

6. Title: **[Satellite Communications Disk design]**
Reg. No.: 2,372,316
Date of Registration: August 1, 2000
Date of Filing: February 12, 1999
Serial No.: 75-639,455
For: Computer software for use in facilitating communication, namely, the processing and integration of voicemail messages, facsimile messages, and e-mail messages into computer-based communications systems which utilize local area networks and global communication networks, in Class 9 (U.S. Cls. 21, 23, 26, 36 and 38).
Logo: The mark consists of stylized design of a satellite communications disk.
First Use / In Commerce: September 7, 1998
Examining Attorney: Elizabeth Seltzer
7. Title: CallegraFAX
Reg. No.: 2,374,630
Date of Registration: August 8, 2000
Date of Filing: February 12, 1999
Serial No.: 75-640,047
For: Client/server facsimile computer software, in Class 9 (U.S. Cls. 21, 23, 26, 36 and 38)
First Use / In Commerce: September 7, 1998
Examining Attorney: Scott Woldow

8. Title: CallegraCOMMUNITY
Reg. No.: 2,376,964
Date of Registration: August 15, 2000
Date of Filing: February 12, 1999
Serial No.: 75-640,202
For: Computer software for use in facilitating communication, namely, the processing and integration of voicemail messages and facsimile messages for multiple originating and receiving locations on local area networks and global communication networks such as the internet, in Class 9 (U.S. Cls. 21, 23, 26, 36 and 38)
First Use / In Commerce: September 7, 1998
Examining Attorney: Mary Crawford
9. Title: CALLEGRADESK
Reg. No.: 2,379,276
Date of Registration: August 22, 2000
Date of Filing: July 20, 1999
Serial No.: 75-755,889
For: Voice and facsimile messaging computer software, in Class 9 (U.S. Cls. 21, 23, 26, 36 and 38)
First Use / In Commerce: September 7, 1998
Examining Attorney: Mary Crawford
10. Title: CALLEGRAFAX
Reg. No.: 2,379,277
Date of Registration: August 22, 2000
Date of Filing: July 20, 1999
Serial No.: 75-755,890
For: Client/server facsimile computer software, in Class 9 (U.S. Cls. 21, 23, 26, 36 and 38)
First Use / In Commerce: September 7, 1998
Examining Attorney: Mary Crawford

B. MEXICO TRADEMARKS filed by Borrower, in order of Date of Registration.

1. Denomination: Solo Fax
Reg. No.: 603421
Date of Registration: March 25, 1999
Date of Filing: January 6, 1999
Articles (or Services) Covered: Stand-alone PC-Fax server software.
Class: 09
Renewal Date: January 6, 2009
Priority Date: July 6, 1998
Number: 75/514,009

2. Denomination: Solo V-Mail
Reg. No.: 603422
Date of Registration: March 25, 1999
Date of Filing: January 6, 1999
Articles (or Services) Covered: Stand-alone PC-based voice mail server software.
Class: 09
Renewal Date: January 6, 2009

3. Denomination: Callegra
Reg. No.: 609068
Date of Registration: April 20, 1999
Date of Filing: January 4, 1999
Articles (or Services) Covered: Call messaging on a communication network.
Class: 09
Renewal Date: January 4, 2009
Priority Date: June 29, 1998
Number: 75/509,930

4. Denomination: Solo V-Mail (and design)
Reg. No.: 618152
Date of Registration: August 20, 1999
Date of Filing: February 17, 1999
Articles (or Services) Covered: Stand-alone PC-based voice mail server software.
Class: 09
Renewal Date: February 17, 2009
Priority Date: August 17, 1998
Number: 75/537,637
5. Denomination: Callware
Reg. No.: 642422
Date of Registration: February 23, 2000
Date of Filing: June 5, 1998
Articles (or Services) Covered: Software programs for messaging services.
Class: 09
Renewal Date: June 5, 2008

<u>TRADEMARK NAME</u>	<u>USA</u>	<u>CANADA</u>	<u>MEXICO</u>	<u>ISREAL</u>
CALLWARE	Yes (final)	Yes (pending)	Yes	
CALL OPERATING SYSTEM	Refused: Application was abandoned by Trademark office on 04/24/97	No	No	
VISUAL MESSAGING	Refused by Trademark office and voluntarily abandoned on 05/05/97			
MULTIMEDIA TELECOMMUNICATIONS INSTITUTE	Filed but abandoned			
TAPISERVE	Yes (pending)	Not yet	Not yet	
TAPIWARE	Yes (pending)	Not yet	Not yet	
*INTR@FAX (No longer being used; ;Instead CALLWARE FAX)	Yes (pending)	Not for now	Not for now	
SoftTalk	No (Refused at time of application because of prior registration)	No	No	Yes (final)
Phonetastic	Yes (final)	No	No	Yes (final)

Others considered:

Interactive Call Manager – did not apply because 9 prior filings of similar names

Call Link – prior registration

CTOS – prior registration

CNTE – prior registration

CNTI – did not apply; put on hold by management

CNTA – one similar filing; did not apply; put on hold

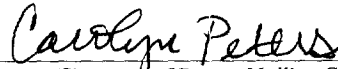
COS – prior registrations (not all in computer industry)

CERTIFICATE OF MAILING BY "EXPRESS MAIL" (37 CFR 1.10)Applicant(s): **CallWare Technologies, Inc.**

Docket No.

461275-1Serial No.
See AttachmentFiling Date
See AttachmentExaminer
N/AGroup Art Unit
N/AInvention: **See Exhibit A To Security Agreement**I hereby certify that this **Patent Recordation Coversheet, Security Agreement, Return post card, \$40 check**
(Identify type of correspondence)is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under
37 CFR 1.10 in an envelope addressed to: The Commissioner of Patents and Trademarks, Washington, D.C.20231-0001 on **January 9, 2002**
(Date)**Carolyn Peters**

(Typed or Printed Name of Person Mailing Correspondence)



(Signature of Person Mailing Correspondence)

ET526089644US

("Express Mail" Mailing Label Number)

Note: Each paper must have its own certificate of mailing.