

Tab settings  $\Rightarrow \Rightarrow \Rightarrow \tau$

To the Honorable Commissioner of

ached original documents or copy thereof.

1. Name of conveying party(ies):

**AltoWeb, Inc.**

**1731 Embarcadero Road**

**Palo Alto, CA 94303**

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

3. Nature of conveyance:

☐ Assignment

☐ Merger

☐ Security Agreement

☐ Change of Name

☒ Other Intellectual Property Security Agreement

Execution Date: December 10, 2002

2. Name and address of receiving party(ies)

Name: **Borland Software Corporation**

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

Street Address: **100 Enterprise Way,**

**Module F-1**

City: **Scotts Valley**

State: **CA**

Zip: **95066-3249**

Additional name(s) & address(es) attached? ☐ Yes ☒ No

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

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

A. Patent Application No.(s)

09/583,816 09/875,416 09/875,465

09/475,711 09/875,548 10/082,427

09/504,232 60/270,837 10/082,519

10/082,485

B. Patent No.(s)

6,370,537

Additional numbers attached? ☐ Yes ☒ No

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

Name: **Diana Sanchez Bentz**

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

**Cooley Godward LLP**

**5 Palo Alto Square**

Street Address: **3000 El Camino Real**

City: **Palo Alto** State: **CA** Zip: **94306**

6. Total number of applications and patents involved: **11**

7. Total fee (37 CFR 3.41)..... \$ **440.00**

☒ Enclosed

☐ Authorized to be charged to deposit account

8. Deposit account number:

**03-3115**

(Attach duplicate copy of this page if paying by deposit account)

12/17/2002 T11A21 00000017 09583816

01 FC:8021

440.00 DP

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.

**Diana Sanchez Bentz**  
Name of Person Signing

Signature

**December 13, 2002**  
Date

Total number of pages including cover sheet, attachments, and documents: **13**

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

# INTELLECTUAL PROPERTY SECURITY AGREEMENT

THIS INTELLECTUAL PROPERTY SECURITY AGREEMENT (this "**Agreement**") is made and entered into as of December 10, 2002, by and between ALTOWEB, INC., a California corporation, ("**Grantor**") and BORLAND SOFTWARE CORPORATION, a Delaware corporation ("**Lender**").

## RECITALS

A. Concurrently herewith, Grantor and Lender are entering into a Note and Warrant Purchase Agreement (the "**Purchase Agreement**"), pursuant to which Grantor is executing in favor of Lender a convertible secured promissory note (the "**Note**") in the aggregate principal amount of Two Million Five Hundred Thousand Dollars (\$2,500,000) (the "**Loan**") on the terms and conditions set forth in the Purchase Agreement and the Note.

B. The Loan is secured by all of Grantor's presently-existing and hereafter-acquired or arising personal property (including, without limitation, its intellectual property), pursuant to the terms of a Security Agreement, also being entered into concurrently herewith between Grantor and Lender (the "**Security Agreement**").

C. Grantor is delivering this Agreement for purposes of further evidencing and perfecting Lender's security interest in, to and against Grantor's intellectual property.

## AGREEMENT

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Grantor and Lender hereby agree as follows:

1. **DEFINITIONS.** All capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Security Agreement.

2. **GRANT OF SECURITY INTEREST.** As collateral security for the prompt and complete payment and performance of all of Grantor's present and future indebtedness, obligations and liabilities to Lender, including its obligations under the Note and the Purchase Agreement (collectively, the "**Secured Obligations**"), Grantor hereby grants and pledges to Lender a continuing security interest in and to Grantor's entire right, title and interest in, to and under the following, whether now or hereafter existing, created, acquired or held by Grantor (collectively, the "**Intellectual Property Collateral**"):

(a) Any and all Copyrights, including, without limitation, those set forth on **Exhibit A** attached hereto and incorporated herein by this reference;

(b) Any and all trade secrets;

(c) Any and all intellectual property rights in computer software and computer software products;

(d) Any and all Patents, including, without limitation, those set forth on **Exhibit B** attached hereto and incorporated herein by this reference;

(e) Any and all Trademarks, and the entire goodwill of the business of Grantor connected with and symbolized by all such Trademarks, including, without limitation, those set forth on **Exhibit C** attached hereto and incorporated herein by this reference;

(f) All other Intellectual Property not referenced above;

(g) Any and all claims for damages and rights to sue on account of past, present and future infringement of any of the rights included above, with the right, but not the obligation, to sue for and collect such damages for said use or infringement of the intellectual property rights identified above;

(h) All rights or remedies of Grantor under contracts pursuant to which licenses or other rights to any Intellectual Property have been granted to any other Person;

(i) All amendments, renewals and extensions of any of the Intellectual Property; and

(j) All proceeds and products of the foregoing, including, without limitation, all payments under any insurance, indemnity or warranty payable in respect of any of the foregoing.

The security interest granted hereunder is granted in conjunction with the security interests granted to Lender under the Security Agreement. Each right, power and remedy of Lender provided for herein, or in the other Loan Documents, or now or hereafter existing at law or in equity, shall be cumulative and concurrent and shall be in addition to every right, power or remedy provided for herein and therein. The exercise by Lender of any one or more of such rights, powers or remedies shall not preclude the simultaneous or later exercise by any Person, including Lender, of any or all other rights, powers or remedies.

**3. AUTHORIZATION AND REQUEST.** Grantor authorizes and requests that the Register of Copyrights and the Commissioner of Patents and Trademarks record this Agreement and the security interest created hereby.

**4. COVENANTS AND WARRANTIES.** Except as set forth on the Schedule of Exceptions delivered in connection with the Purchase Agreement with respect to the representations and warranties set forth in this **Section 4**, Grantor represents and warrants, covenants and agrees as follows:

(a) Performance of this Agreement does not conflict with or result in a breach of any provision of any agreement to which Grantor is a party or by which Grantor is bound, or require the consent or approval of any third party except: (i) where such breach or the failure to obtain such consent would not have a material adverse effect on the Company's business, assets, liabilities, financial condition or operations, or the ability of the Company to enter into this Agreement, any other of the Loan Agreements or the Warrant (as defined in the Purchase Agreement), consummate the transactions contemplated hereby or thereby and perform its obligations hereunder and thereunder; and (ii) such provisions or requirements as are described in Section 9401 and 9406(d) of the UCC;

(b) Grantor shall promptly advise Lender of any material changes in the composition of the Intellectual Property Collateral, including, without limitation, any subsequent ownership right of Grantor in or to any Intellectual Property not specified in this Agreement;

(c) Grantor shall: (i) except as set forth on the Schedule of Exceptions, protect, defend and maintain the validity and enforceability of the Intellectual Property; (ii) use its commercially reasonable efforts to detect infringements of the Intellectual Property and promptly advise Lender in writing of material infringements detected; and (iii) except as set forth on the Schedule of Exceptions, not allow any of its

Intellectual Property to be abandoned, forfeited or dedicated to the public, provided that Intellectual Property other than Patents may be abandoned or forfeited provided such abandonment or forfeiture does not result, directly or indirectly, from any distribution or general availability of Grantor's Intellectual Property pursuant to "open source" or "copyleft" arrangements or the disclosure of trade secrets by the Company or its agents, and provided further that such abandonment or forfeiture is commercially reasonable;

(d) This Agreement creates, and in the case of after-acquired Intellectual Property Collateral, will create at the time Grantor first has rights in such after-acquired Intellectual Property Collateral, in favor of Lender a valid security interest in the Intellectual Property Collateral in the United States upon making the applicable filings referred to in **Section 4(e)** below;

(e) Except for, and upon, the timely and proper filings with, as applicable, (i) the United States Patent and Trademark Office, (ii) the Register of Copyrights and (iii) the UCC Division of the applicable office of the Secretary of State, and except as has been already made or obtained or where the failure to so make or obtain would not have a material adverse effect on (A) the value of the Collateral; (B) Grantor's ability to enter into this Agreement, consummate the transactions contemplated herein and perform its obligations hereunder; (C) Grantor's right to grant the security interest contemplated herein; or (D) Lender's right to perfect such security interest or exercise its rights and remedies hereunder, no authorization, approval or other action by, and no notice to or filing with, any United States governmental authority or regulatory body is required for (1) the grant by Grantor of the security interest granted hereby or for the perfection of such security interest; (2) the execution, delivery or performance of this Agreement by Grantor; or (3) the exercise by Lender of its rights and remedies hereunder;

(f) All information heretofore, herein or hereafter supplied to Lender by or on behalf of Grantor with respect to the Intellectual Property Collateral is true, correct and complete in all material respects;

(g) Grantor shall not enter into any agreement that would materially impair or conflict with Grantor's obligations hereunder. Grantor shall not permit the inclusion in any material contract to which it becomes a party of any provisions that could or might in any way prevent the creation of a security interest in Grantor's rights and interests in any property included within the definition of the Intellectual Property Collateral acquired under any such contract, except such provisions as are described in Section 9401 and 9406(d) of the UCC; and

(h) Upon any officer of Grantor obtaining knowledge thereof, Grantor will promptly notify Lender in writing of any event that adversely affects the value of any Intellectual Property Collateral, the ability of Grantor to dispose of any Intellectual Property Collateral or the rights and remedies of Lender in relation thereto, including the levy of any legal process against any of the Intellectual Property Collateral.

**5. LENDER'S RIGHTS.** Lender shall have the right, but not the obligation, to take, at Grantor's sole expense, any actions that Grantor is required under this Agreement to take but which Grantor fails to take. Grantor shall reimburse and indemnify Lender for all costs and reasonable expenses (including attorneys' fees) incurred in the exercise of its rights under this **Section 5**.

**6. INDEMNITY.** Grantor shall defend, indemnify and hold harmless Lender and its officers, employees and agents against: (a) all obligations, demands, claims and liabilities claimed or asserted by any other party in connection with the transactions contemplated by this Agreement; and (b) all losses or Lender Expenses in any way suffered, incurred or paid by Lender as a result of or in any way arising out of, following, or consequential to transactions between Lender and Grantor whether under this Agreement, or otherwise (including reasonable attorneys' fees and expenses), except in the case of (a) and (b) above, for

losses, obligations, demands, claims and liabilities claimed or asserted which are caused by Lender's willful misconduct or gross negligence.

**7. REINSTATEMENT.** This Agreement shall remain in full force and effect and continue to be effective should any petition be filed by or against Grantor for liquidation or reorganization, should Grantor become insolvent or make an assignment for the benefit of creditors or should a receiver or trustee be appointed for all or any significant part of Grantor's property and assets, and shall continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Secured Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by Grantor, whether as a "voidable preference," "fraudulent conveyance," or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the Secured Obligations shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

**8. TERMINATION OF THIS AGREEMENT.** Subject to **Section 7** above, this Agreement shall terminate upon the satisfaction in full of the Secured Obligations.

**9. AMENDMENTS.** Except as otherwise provided herein, this Agreement may be amended only by a written instrument signed by both parties hereto.

**10. COUNTERPARTS.** 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.

**11. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.** This Agreement shall be governed by, and construed in accordance with, the internal laws of the State of California, without regard to principles of conflicts of law thereof or of any other jurisdiction. Each of Grantor and Lender hereby submits to the exclusive jurisdiction of the state and Federal courts located in the County of Santa Clara, State of California. GRANTOR AND LENDER EACH HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. EACH PARTY RECOGNIZES AND AGREES THAT THE FOREGOING WAIVER CONSTITUTES A MATERIAL INDUCEMENT FOR IT TO ENTER INTO THIS AGREEMENT. EACH PARTY REPRESENTS AND WARRANTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

**12. 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.

**13. CONFLICT.** In the event of a conflict between any term or provision contained in this Agreement with any term or provision contained in the Security Agreement, the term or provision of this Agreement shall govern.

IN WITNESS WHEREOF, the parties hereto have caused this Intellectual Property Security Agreement to be executed as of the date first above written.

GRANTOR:

ALTOWEB, INC.

By: Ali N. Kutay  
Name: ALI KUTAY  
Title: President & CEO

Address of Grantor

1731 Embarcadero Road  
Palo Alto, CA 94303  
Attn: Chief Executive Officer  
Facsimile: (650) 251-1569

with a copy (which shall not constitute notice) to:

Wilson, Sonsini Goodrich & Rosati  
Professional Corporation  
One Market Street, Spear Tower, Suite 3300  
San Francisco, CA 94105  
Attention: Michael M. Dorf, Esq.  
Facsimile: (415) 947-2099

LENDER:

BORLAND SOFTWARE CORPORATION

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

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

Address of Lender

100 Enterprise Way, Module F-1  
Scotts Valley, CA 95066-3249  
Attn: General Counsel  
Facsimile: (831) 431-4171

with a copy (which shall not constitute notice) to:

Cooley Godward LLP  
Five Palo Alto Square  
3000 El Camino Real  
Palo Alto, CA 94306-2155  
Attention: Eric C. Jensen, Esq.  
Facsimile: (650) 849-7400

FROM :

PHONE NO. : 6503278984

Dec. 07 2002 12:32AM P4

12/06/2002 FRI 13:36 FAX \*\*\* DATE NOW

004/007

IN WITNESS WHEREOF, the parties hereto have caused this Intellectual Property Security Agreement to be executed as of the date first above written.

GRANTOR:

ALTOWEB, INC.

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

Address of Grantor

1731 Embarcadero Road  
 Palo Alto, CA 94303  
 Attn: Chief Executive Officer  
 Facsimile: (650) 231-1569

with a copy (which shall not constitute  
 notice) to:

Wilson, Sonsini Goodrich & Rosen  
 Professional Corporation  
 One Market Street, Spear Tower, Suite 3300  
 San Francisco, CA 94105  
 Attention: Michael M. Dorf, Esq.  
 Facsimile: (415) 647-2099

LENDER:

BORLAND SOFTWARE CORPORATION

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

Address of Lender

100 Enterprise Way, Module F-1  
 Scotts Valley, CA 95066-3249  
 Attn: General Counsel  
 Facsimile: (831) 431-4171

with a copy (which shall not constitute  
 notice) to:

Coxley Godward LLP  
 3000 El Camino Real  
 Palo Alto, CA 94306-2153  
 Attention: Eric C. Jensen, Esq.  
 Facsimile: (650) 849-7400

**EXHIBIT A**  
**COPYRIGHTS**

**1. REGISTERED:** List titles below or indicate "None"

<b>COPYRIGHT</b>	<b>REGISTRATION NUMBER</b>	<b>REGISTRATION DATE</b>
None.		

**2. UNREGISTERED:** List titles below or indicate "None"

None.

**3. APPLICATIONS IN PROCESS:** List titles, applicable dates, application numbers, etc. below or indicate "None"

None.



**EXHIBIT B****PATENTS****1. REGISTERED**

<b>PATENT</b>	<b>PATENT NUMBER</b>	<b>ISSUE DATE</b>
A System and Method for the Manipulation and Display of Structured Data	6,370,537	4/9/02
A Three-Dimensional Display Environment for Hierarchical Data Structure	995,017	
A Three-Dimensional Display Environment for Hierarchical Data Structure	30,475	

**2. UNREGISTERED:** List titles below or indicate "None"

None.

**3. APPLICATIONS IN PROCESS:** List titles, applicable dates, application numbers, etc. below or indicate "None"

<b>REFERENCE NUMBER</b>	<b>COUNTRY</b>	<b>TITLE</b>	<b>DATE FILED</b>
P001	United States	Method and Apparatus for Displaying and Navigating a Hierarchical Structure within a Three-Dimensional Environment on a Display Unit	5/30/00
P001CA	Canada	Method and Apparatus for Displaying and Navigating a Data Structure on a Display Unit	1/14/00
P001EP	Europe	Method and Apparatus for Displaying and Navigating a Data Structure on a Display Unit	1/14/00
P001IN	India	Method and Apparatus for Displaying and Navigating a Data Structure on a Display Unit	7/11/01
P001JP	Japan	Method and Apparatus for Displaying and Navigating a Data Structure on a Display Unit	1/14/00
P002AU	Australia	A Three-Dimensional Display Environment for Hierarchical Data Structure	8/6/99
P002DE	Germany	A Three-Dimensional Display Environment for Hierarchical Data Structure	8/6/99
P002GB	United Kingdom	A Three-Dimensional Display Environment for Hierarchical Data Structure	8/9/99

P002IL	Israel	A Three-Dimensional Display Environment for Hierarchical Data Structure	8/8/99
P003	United States	A System and Method for the Construction of Data	12/30/99
P003CA	Canada	A System and Method for the Construction of Data	6/20/02
P003EP	Europe	A System and Method for the Construction of Data	6/20/02
P003IN	India	A System and Method for the Construction of Data	6/20/02
P003JP	Japan	A System and Method for the Construction of Data	6/20/02
P003X	United States	A System and Method for Displaying Structured Data in an Advertisement Window	2/15/00
P003XCA	Canada	A System and Method for the Construction of Data	6/20/02
P003XEP	Europe	A System and Method for the Construction of Data	6/20/02
P003XIN	India	A System and Method for the Construction of Data	6/20/02
P003XJP	Japan	A System and Method for the Construction of Data	6/20/02
P004CA	Canada	A System and Method for the Manipulation and Display of Structured Data	6/20/02
P004EP	Europe	A System and Method for the Manipulation and Display of Structured Data	6/20/02
P004IN	India	A System and Method for the Manipulation and Display of Structured Data	6/20/02
P004JP	Japan	A System and Method for the Manipulation and Display of Structured Data	6/20/02
P005	United States	System and Method for Accessing, Organizing and Presenting Data	6/5/01
P006	United States	System and Method for Creating a Source Document and Presenting the Source Document to a User in a Target Format	6/5/01
P006Z	United States	System and Method for Accessing, Organizing, Presenting and Viewing Data	2/23/01
P007	United States	System and Method for Integrating Multiple Apps	6/5/01
P008	United States	System and Method to Facilitate Analysis and Removal of Errors From an Application	2/22/02
P008PCT	PCT	System and Method to Facilitate Analysis and Removal of Errors From an Application	2/22/02
P009	United States	System and Method to Create an Application and to Manipulate Application Components within the Application	2/22/02
P009PCT	PCT	System and Method to Create an Application and to Manipulate Application Components within the Application	2/22/02

P010	United States	System and Method to Transfer an Application to a Destination Server Module in a Predetermined Storage Format	2/22/02
P010PCT	PCT	System and Method to Transfer an Application to a Destination Server Module in a Predetermined Storage Format	2/22/02

**EXHIBIT C**  
**TRADEMARKS**

**1. REGISTERED:**

<b>MARK</b>	<b>REGISTRATION NUMBER</b>	<b>REGISTRATION DATE</b>
ALTOWEB	2,210,215	7/19/02
A & W Design	646,896	4/11/02
A & W Design	646,897	4/11/02
A & W Design	891,732	2/21/02
ALTOSTUDIO	2,521,077	12/18/01
ALTOCLIENT	2,518,559	12/11/01
ALTOWEB	4,516,985	10/26/01
A & W Design	2,283,703	10/17/01
ALTOCUBE	4,485,579	6/29/01
ALTOSPHERE	4,485,578	6/29/01
ALTOSTUDIO	4,481,832	6/15/01
ALTOCLIENT	4,474,931	5/18/01
ALTOSERVER	4,474,930	5/18/01
ALTOWEB	2,449,864	5/8/01
ALTOWEB	2,422,134	1/16/01
ALTOWEB	808,752	11/20/00
ALTOWEB	317,123	3/30/00
ALTOWEB	317,124	3/30/00
ALTOCLIENT	1,571,348	3/22/00
ALTOCUBE	1,571,256	3/22/00
ALTOSERVER	1,571,314	3/22/00
ALTOSPHERE	1,571,272	3/22/00
ALTOSTUDIO	1,571,298	3/22/00

ALTOCLIENT	825,015	2/24/00
ALTOCUBE	825,014	2/24/00
ALTOSERVER	825,017	2/24/00
ALTOSPHERE	825,013	2/24/00
ALTOSTUDIO	825,016	2/24/00

**2. UNREGISTERED:** List titles below or indicate "None"

None.

**3. APPLICATIONS IN PROCESS:** List titles, applicable dates, application numbers, etc. below or indicate "None"

REFERENCE NUMBER	COUNTRY	TITLE	DATE FILED
2,414,258	European Community	A & W Design	10/17/01
1,052,266	India	A & W Design	10/16/01
1,118,535	Canada	A & W Design	10/15/01
11-089155	Japan	A & W Design	10/15/01
76/244,059	United States	A & W Design	4/19/01
76/244,058	United States	A & W Design	4/19/01
1,331,552	European Community	ALTOWEB	10/1/99
75/918,252	United States	ALTOSERVER	2/14/00
75/913,460	United States	ALTOCAST	2/7/00
75/913,164	United States	ALTOCAST	2/7/00
879,147	India	ALTOWEB	9/30/99
1,030,646	Canada	ALTOWEB	9/29/99
75/617,483	United States	ALTOTREK	1/8/99
	China	ALTOWEB	Application not filed