

4175

PATENT

04-13-2005



102979760

RECORDATION FORM COVER SHEET PATENTS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

☒ New

☐ Resubmission (Non-Recordation)

Document ID #

☐ Correction of PTO Error

Reel # Frame #

☐ Corrective Document

Reel # Frame #

Conveyance Type

☐ Assignment

☒ Security Agreement

☐ License

☐ Change of Name

☐ Merger

☐ Other

Attorney Docket No. VTLK.P0003

Conveying Party (ies)

☐ Mark if additional names of conveying parties attached

Execution Date

MMDDYYYY

03182002

Name (1st party) Vital Link Business Systems, Inc.

Name (2nd party)

Name (3rd party)

Name (4th party)

Receiving Party

☐ Mark if additional names of receiving parties attached

Name Crosspoint Venture Partners 2000, L.P. and Crosspoint Venture Partners
2000Q, L.P.

Name A Limited Partnership formed under the laws of the State of Delaware

Address 2925 Woodside Road

Address

Address Woodside, CA 94062

City

State/Country

Zip Code

☐ If document to be recorded is an assignment and the receiving party is not domiciled in the U.S., an appointment of a domestic representative is attached. (Designation must be a separate document from Assignment)

Domestic Representative

(Complete only if receiving party is not domiciled in the United States)

Name

Address

Address

Address

For Office Use Only

RECEIVED
OPR/FINANCE

APR - 7 PM 12:44

Mail documents to be recorded with required cover sheet(s) information to:

Mail Stop Assignment Recordation Services Director of the U.S. Patent and Trademark Office, P.O. Box 1450,
Alexandria, VA 22313-1450

04/12/2005 ECOOPER 00000352 10093859

01 FC:8021

(40.00 DP)

PATENT

REEL: 016444 FRAME: 0313

Correspondent Name and Address

Name: Mani Adeli
Address: Stattler Johansen & Adeli LLP
1875 Century Park East, Suite 1050
Los Angeles, CA 90067
Telephone Number: (310) 785-0140, ext. 301
Fax Number: (310) 785-9558

Pages Enter the total number of pages of the attached conveyance document including any attachments.

10

Application Number(s) or Patent Number(s)

☐ Mark if additional numbers attached

Enter either the Patent Application Number or the Patent Number (DO NOT ENTER BOTH numbers for the same property.)

Patent Application Number(s)

Patent Number(s)

10/093,859

If this document is being filed together with a new Patent Application, enter the date the patent Application was signed by the first named executing inventor. MMDDYYYY

*

Patent Cooperation Treaty (PCT)

Enter PCT application number(s) only if a U.S. Application Number has not been assigned.

Number of Properties

Enter the total number of properties involved

1

Fee Amount

Fee Amount for Properties Listed (37CFR3.41) \$

40.00

Method of Payment: Credit Card (See CC form) ☒ Enclosed ☐ Deposit Account ☐

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

50 1128

Authorization to charge additional fees: Yes ☒ No ☐

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. Charges to deposit account are authorized, as indicated herein.

Mani Adeli

Name of Person Signing

Signature

April 4, 2005

Date

SECURITY AGREEMENT

This SECURITY AGREEMENT, dated as of March 18, 2002, is hereby executed by Vital Link Business Systems, Inc. (the "Company"), in favor of the Lenders set forth on the Schedule of Lenders of the Note Purchase Agreement (the "Purchase Agreement") dated as of the date hereof (collectively, the "Secured Lenders").

RECITALS

A. The Company and the Secured Lenders have entered into multiple Secured Promissory Notes (collectively, the "Notes"), dated the date hereof, in favor of the Secured Lenders issued pursuant to the Purchase Agreement.

B. In order to induce the Secured Lenders to extend credit pursuant to the Notes, the Company has agreed to enter into this Security Agreement and to grant the security interest in the Collateral described below.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Company hereby agrees with the Secured Lenders as follows:

1. Definitions and Interpretation. When used in this Security Agreement, the following terms shall have the following respective meanings:

"Collateral" shall have the meaning given to that term in Section 2 hereof.

"Indebtedness" shall mean and include the aggregate amount of, without duplication (i) all obligations for borrowed money, (ii) all obligations evidenced by bonds, debentures, notes or other similar instruments, (iii) all obligations to pay the deferred purchase price of property or services (other than accounts payable incurred in the ordinary course of business), (iv) all obligations with respect to capital leases, (v) all reimbursement and other payment obligations, contingent or otherwise, in respect of letters of credit and similar surety instruments; and (vi) all guaranty obligations with respect to the types of Indebtedness listed in clauses (i) through (v) above.

"Lien" shall mean, with respect to the Collateral, any security interest, mortgage, pledge, lien, claim, charge or other encumbrance in, of, or on the Collateral or the income therefrom, including, without limitation, the filing of any financing statement or similar instrument under the UCC or comparable law of any jurisdiction.

"Obligations" shall mean and include all loans, advances, debts, liabilities and obligations, howsoever arising, owed by the Company to the Secured Lenders of every kind and

description (whether or not evidenced by any note or instrument and whether or not for the payment of money), now existing or hereafter arising under or pursuant to the terms of the Purchase Agreement, the Notes or this Security Agreement, including, all interest, fees, charges, expenses, reasonable attorneys' fees and costs chargeable to and payable by the Company hereunder and thereunder, in each case, whether direct or indirect, absolute or contingent, due or to become due, and whether or not arising after the commencement of a proceeding under Title 11 of the United States Code (11 U.S.C. Section 101 et seq.), as amended from time to time (including post-petition interest) and whether or not allowed or allowable as a claim in any such proceeding.

"Permitted Liens" shall mean (i) Liens for taxes or other governmental charges not at the time delinquent or thereafter payable without penalty or being contested in good faith, provided provision is made to the reasonable satisfaction of the Secured Lenders for the eventual payment thereof if subsequently found payable; (ii) Liens of carriers, warehousemen, mechanics, materialmen, vendors, and landlords incurred in the ordinary course of business for sums not overdue or being contested in good faith, provided provision is made to the reasonable satisfaction of the Secured Lenders for the eventual payment thereof if subsequently found payable; (iii) deposits under workers' compensation, unemployment insurance and social security laws or to secure the performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, or to secure statutory obligations of surety or appeal bonds or to secure indemnity, performance or other similar bonds in the ordinary course of business; (iv) Liens securing obligations under a capital lease and such Liens do not extend to property other than the property leased under such capital lease; (v) Liens upon any equipment acquired or held by the Company to secure the purchase price of such equipment or indebtedness incurred solely for the purpose of financing the acquisition of such equipment, so long as such Lien extends only to the equipment financed, and any accessions, replacements, substitutions and proceeds (including insurance proceeds) thereof or thereto; (vi) easements, reservations, rights of way, restrictions, minor defects or irregularities in title and other similar charges or encumbrances affecting real property in a manner not materially or adversely affecting the value or use of such property; and (vii) Liens pursuant to any Indebtedness existing on the date hereof.

"UCC" shall mean the Uniform Commercial Code as in effect in the State of California from time to time.

All capitalized terms not otherwise defined herein shall have the respective meanings given in the Notes and the Purchase Agreement. Unless otherwise defined herein, all terms defined in the UCC shall have the respective meanings given to those terms in the UCC.

2. Grant of Security Interest. As security for the Obligations, the Company hereby pledges and assigns to the Secured Lenders and grants to the Secured Lenders a first priority security interest in all rights, title and interest of the Company in and to the property described in Attachment 1 hereto (collectively and severally, the "Collateral"), which Attachment 1 is incorporated herein by this reference.

3. Representations and Warranties of the Company. The Company represents and warrants to the Secured Lenders that the Company is the owner of the Collateral

(or, in the case of after-acquired Collateral, at the time the Company acquires rights in the Collateral, will be the owner thereof) and that no other person has (or, in the case of after-acquired Collateral, at the time the Company acquires rights therein, will have) any right, title, claim or interest (by way of Lien or otherwise) in, against or to the Collateral, except for Permitted Liens.

4. Covenants Relating to Collateral. The Company hereby agrees (a) to perform all acts that may be necessary to maintain, preserve, protect and perfect the Collateral, the Lien granted to the Secured Lenders therein and the first priority of such Lien (except for Permitted Liens) including, but not limited to, the delivery of a certificated security in registered form to the Secured Lenders that is endorsed in blank or to the Secured Lenders by an effective endorsement upon the execution of the Notes and this Security Agreement; (b) the Company shall not to use or permit the Collateral to be used (i) in violation of any provision herein, or (ii) in any material violation of any applicable law, rule or regulation; (c) to pay when due all taxes and other governmental charges, all Liens and all other charges now or hereafter imposed upon or affecting any Collateral which, if unpaid, might become a Lien upon the Collateral or any part thereof; (d) not to change the Company's residence or the office in which the Company's records relating to Receivables are kept without 15 days prior written notice to the Secured Lenders; (e) to appear in and defend any action or proceeding which may affect its title to or the Secured Lenders' interest in the Collateral.

5. Sale of Collateral. The Company shall not sell, lease or otherwise dispose of any item of the Collateral except in the ordinary course of business.

6. Authorized Action by Agent. The Company hereby irrevocably appoints the Secured Lenders as its attorney-in-fact and agrees that the Secured Lenders may perform (but the Secured Lenders shall not be obligated to and shall incur no liability to the Company or any third party for failure so to do) any act which the Company is obligated by this Security Agreement to perform, and to exercise such rights and powers as the Company might exercise with respect to the Collateral, including the right to (a) collect by legal proceedings or otherwise and endorse, receive and receipt for all dividends, interest, payments, proceeds and other sums and property now or hereafter payable on or on account of the Collateral; (b) enter into any extension, reorganization, deposit, merger, consolidation or other agreement pertaining to, or deposit, surrender, accept, hold or apply other property in exchange for the Collateral; (c) insure, process and preserve the Collateral; (d) make any compromise or settlement, and take any action it deems advisable, with respect to the Collateral; and (f) execute UCC financing statements and other documents, instruments and agreements required hereunder; provided, however, that the Secured Lenders shall not exercise any such powers prior to the occurrence of an Event of Default (as defined below) and shall only exercise such powers during the continuance of an Event of Default. The Company agrees to reimburse the Secured Lenders upon demand for any reasonable costs and expenses, including attorneys' fees, the Secured Lenders may incur while acting as the Company's attorney-in-fact hereunder, all of which costs and expenses are included in the Obligations.

7. Default and Remedies. The Company shall be deemed in default under this Security Agreement upon the occurrence of any of the following, each of which shall be deemed an "Event of Default":

(a) If any Event of Default, under and as defined in the Notes, shall occur (giving effect to any grace or cure period provided for therein);

(b) If the Company shall fail to perform any covenant to be performed by it under this Security Agreement and such failure shall continue unremedied or unwaived by the Secured Lenders for a period of thirty (30) days;

(c) If this Security Agreement shall in any respect cease to be, or the Company shall assert that this Security Agreement or the Notes are not, a legal, valid and binding obligation of the Company enforceable in accordance with its terms.

Upon the occurrence and during the continuance of any such Event of Default, the Secured Lenders shall have the rights of a secured creditor under the UCC and applicable federal law, all rights granted by this Security Agreement and by law. The Company hereby agrees that ten (10) days' notice of any intended sale or disposition of any Collateral is reasonable.

8. Miscellaneous.

(a) Notices. Unless otherwise provided, any notice required or permitted under this Security Agreement shall be given in writing and shall be deemed effectively given upon personal delivery to the party to be notified or upon deposit with the United States Post Office, by registered or certified mail, postage prepaid and addressed to such party at the address set forth below, or at such other address as such party may designate by ten (10) days' advance written notice to the other parties.

If to the Company:

Vital Link Business Systems, Inc.
270 14th Street
San Francisco, CA 94103
Attention: President

With a copy to:

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, California 94304-1050
Attention: Paul Okada

If to the Secured Lenders, to the address listed on the Schedule of Lenders of the Purchase Agreement;

With a copy, in the case of Crosspoint Venture Partners, to:

Gunderson Dettmer
155 Constitution Drive
Menlo Park, CA 94025
Attention: Susan Giordano

With a copy, in the case of RHII cEverything, LLC or Lafayette Equity Fund,
L.P., to:

Bennett and Samios LLP
845 Third Avenue, 21st Floor
New York, New York 10022
Attention: Gus Samios

(b) Nonwaiver. No failure or delay on the Secured Lenders' part in exercising any right hereunder shall operate as a waiver thereof or of any other right nor shall any single or partial exercise of any such right preclude any other further exercise thereof or of any other right.

(c) Entire Agreement; Amendments and Waivers. This Agreement, the Notes and the Purchase Agreement constitute the full and entire understanding and agreement between the parties with regard to the subject matters hereof and thereof. This Security Agreement may not be amended or modified, nor may any of its terms be waived, except as set forth in the Purchase Agreement. Each waiver or consent under any provision hereof shall be effective only in the specific instances for the purpose for which given.

(d) Assignments. This Security Agreement shall be binding upon and inure to the benefit of the Secured Lenders and the Company and their respective successors and assigns; provided, however, that the Company may not sell, assign or delegate rights and obligations hereunder without the prior written consent of the Secured Lenders, and provided, further, that the Secured Lenders may only sell, assign or delegate its rights and obligations hereunder without the prior written consent of the Company to the extent permitted by the Notes.

(e) Cumulative Rights, etc. The rights, powers and remedies of the Secured Lenders under this Security Agreement shall be in addition to all rights, powers and remedies given to the Secured Lenders by virtue of any applicable law, rule or regulation of any governmental authority, all of which rights, powers, and remedies shall be cumulative and may be exercised successively or concurrently without impairing the Secured Lenders' rights hereunder. The Company waives any right to require the Secured Lenders to proceed against any person or to exhaust any Collateral or to pursue any remedy in the Secured Lenders' power.

(f) Partial Invalidity. If at any time any provision of this Security Agreement is or becomes illegal, invalid or unenforceable in any respect under the law or any jurisdiction, neither the legality, validity or enforceability of the remaining provisions of this Security Agreement nor the legality, validity or enforceability of such provision under the law of any other jurisdiction shall in any way be affected or impaired thereby.

(g) Expenses. The Company shall pay on demand all reasonable fees and expenses, including reasonable attorneys' fees and expenses, incurred by the Secured Lenders in

connection with custody, preservation or sale of, or other realization on, any of the Collateral or the enforcement or attempt to enforce any of the Obligations which is not performed as and when required by this Security Agreement.

(h) Governing Law. This Security Agreement shall be governed by and construed in accordance with the laws of the State of California without reference to conflicts of law rules (except to the extent governed by the UCC).

(i) Termination. This Security Agreement shall terminate upon the repayment or performance in full of the Notes.

(j) Actions by Secured Lenders. The Lenders that constitute the collective Secured Lenders as defined in this Agreement hereby agree that all decisions to exercise the rights of the Secured Lenders under this agreement shall be made by those Lenders holding at least a majority of the principal amount of the Notes outstanding at that time.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties hereto have caused this Security Agreement to be executed as of the day and year first above written.

THE COMPANY:

VITAL LINK BUSINESS SYSTEMS, INC.

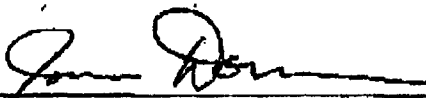
By: _____

Name: []

Title: []

SECURED LENDERS:

**CROSSPOINT VENTURE PARTNERS 2000, L.P.
CROSSPOINT VENTURE PARTNERS 2000 Q, L.P.**

By:  _____

Its General Partner

RHU CEVERYTHING, LLC

By: _____

Its General Partner

LAFAYETTE EQUITY FUND, L.P.

By: _____

Its General Partner

IN WITNESS WHEREOF, the parties hereto have caused this Security Agreement to be executed as of the day and year first above written.

THE COMPANY:

VITAL LINK BUSINESS SYSTEMS, INC.

By: _____

Name: Richard Rodriguez
Title: Chief Executive Officer

SECURED LENDERS:

**CROSSPOINT VENTURE PARTNERS 2000, L.P.
CROSSPOINT VENTURE PARTNERS 2000 Q, L.P.**

By: _____

Its General Partner

RHII CEVERYTHING, LLC

By: _____

Its General Partner

IN WITNESS WHEREOF, the parties hereto have caused this Security Agreement to be executed as of the day and year first above written.

THE COMPANY:

VITAL LINK BUSINESS SYSTEMS, INC.

By: 

Name: Richard Rodriguez
Title: Chief Executive Officer

SECURED LENDERS:

**CROSSPOINT VENTURE PARTNERS 2000, L.P.
CROSSPOINT VENTURE PARTNERS 2000 Q, L.P.**

By: _____

Its General Partner

RHII CEVERYTHING, LLC

By: _____

Its General Partner

ATTACHMENT 1
TO SECURITY AGREEMENT

All right, title and interest of the Company now owned or hereafter acquired in and to the following:

(a) All equipment and fixtures (including, without limitation, furniture and other machinery and office equipment), together with all additions and accessions thereto and replacements therefor;

(b) All inventory, together with all additions and accessions thereto, replacements therefor, products thereof and documents therefor;

(c) All accounts, chattel paper, contract rights and rights to the payment of money;

(d) All general intangibles, including, without limitation, (i) customer and supplier lists and contracts, books and records, insurance policies, tax refunds, contracts for the purchase of real or personal property; (ii) all patents, copyrights, trademarks, trade names, service marks and other intellectual property rights, (iii) all licenses to use, applications for, and other rights to, such patents, copyrights, trademarks, trade names and service marks, and (iv) all goodwill of the Company;

(e) All deposit accounts, money, certificated securities, uncertificated securities, instruments and documents; and

(f) All proceeds of the foregoing (including, without limitation, whatever is receivable or received when Collateral or proceeds is sold, collected, exchanged, returned, substituted or otherwise disposed of, whether such disposition is voluntary or involuntary, including rights to payment and return premiums and insurance proceeds under insurance with respect to any Collateral, and all rights to payment with respect to any cause of action affecting or relating to the Collateral).

2135530