

11-06-2003

11/5/03

FORM PTO-1594
(Rev 5-93)



U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

102594351

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

<p>1. Name of conveying party(ies): SOUNDBITE COMMUNICATIONS, INC.</p> <p>Individual(s) citizenship: Association: General Partnership: Limited Partnership: Corporation - State: DELAWARE Other:</p> <p>Additional name(s) of conveying party(ies) attached? [] Yes [X] No</p> <p>3. Nature of Conveyance: [] Assignment [] Merger [X] Security Agreement [] Change of Name [] Other</p> <p>Execution Date: October 3, 2003</p>	<p>2. Name and address of receiving party(ies): Name: COMERICA BANK Address: 9920 S. LA CIENEGA BLVD., SUITE 1401 City: INGLEWOOD State: CA Zip: 90301</p> <p>Individual(s) citizenship: Association: General Partnership: Limited Partnership: Corporation - State: Other: a Michigan banking corporation</p> <p>If assignee is not domiciled in the United States, a domestic representative designation is attached: [] Yes [] No (Designations must be a separate document from assignment) Additional name(s) & address(es) attached? [] Yes [x] No</p>
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<p>4. Application number(s) or trademark number(s): A. Trademark Application No.(s) 76/058,914</p>	<p>B. Trademark Registration No.(s)</p>
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Additional numbers attached? [] Yes [X] No

<p>5. Name and address of party to whom correspondence concerning document should be mailed: Name: Erin O'Brien Internal Address: GRAY CARY WARE & FREIDENRICH 4365 Executive Drive, Suite 1100 San Diego, California 92121-2133</p>	<p>6 Total number of applications and registrations involved: 1</p> <p>7. Total fee (37 CFR 3.41) \$40.00 [X] Enclosed [] Authorized to be charged to deposit account</p> <p>8. Deposit account number: (Attach duplicate copy of this page if paying by deposit account)</p>
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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.

Erin O'Brien
Name of Person Signing

Erin O'Brien
Signature

November 4, 2003
Date

Total number of pages comprising cover sheet: [9]

Mail Documents to be recorded with required cover sheet information to:
U.S. Patent and Trademark Office, Office of Public Records
1213 Jefferson Davis Highway, 3rd Floor
Arlington, VA 22202

11/05/2003 LMUELLER 0000061 76058914

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TRADEMARK
REEL: 002857 FRAME: 0364

INTELLECTUAL PROPERTY SECURITY AGREEMENT

This Intellectual Property Security Agreement is entered into as of October 3, 2003 by and between COMERICA BANK ("Bank") and SOUNDBITE COMMUNICATIONS, INC. a Delaware corporation ("Grantor").

RECITALS

A. Bank has agreed to make certain advances of money and to extend certain financial accommodations to Grantor (the "Loans") in the amounts and manner set forth in that certain Loan and Security Agreement by and between Bank and Grantor dated as of January 4, 2001, as amended, modified or supplemented from time to time, including without limitation by that certain First Amendment to Loan and Security Agreement dated as of January 18, 2002, that certain Second Amendment to Loan and Security Agreement dated as of February 15, 2002, that certain Third Amendment to Loan and Security Agreement dated as of April 30, 2002, that certain Fourth Amendment to Loan and Security Agreement dated as of May 29, 2002, that certain Fifth Amendment to Loan and Security Agreement dated as of June 14, 2002, that certain Sixth Amendment to Loan and Security Agreement dated as of February 14, 2003, that certain Seventh Amendment to Loan and Security Agreement is entered into as of May 28, 2003, that certain Eighth Amendment to Loan and Security Agreement dated as of July 11, 2003, that certain Ninth Amendment to Loan and Security Agreement dated as of September 15, 2003, that certain Tenth Amendment to Loan and Security Agreement dated as of September 26, 2003 and that certain Eleventh Amendment to Loan and Security Agreement dated as of October 3, 2003 (the "Loan Agreement"; capitalized terms used herein are used as defined in the Loan Agreement). Bank is willing to make the Loans to Grantor, but only upon the condition, among others, that Grantor shall grant to Bank a security interest in certain Copyrights, Trademarks and Patents to secure the obligations of Grantor under the Loan Agreement.

B. Pursuant to the terms of the Loan Agreement, Grantor has granted to Bank a security interest in all of Grantor's right, title and interest, whether presently existing or hereafter acquired, in, to and under all of the Collateral.

NOW, THEREFORE, for good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound, as collateral security for the prompt and complete payment when due of its obligations under the Loan Agreement and all other agreements now existing or hereafter arising between Grantor and Bank, Grantor hereby represents, warrants, covenants and agrees as follows:

AGREEMENT

- I. Grant of Security Interest. As collateral security for the prompt and complete payment and performance of all of Grantor's present or future indebtedness, obligations and liabilities to Bank, Grantor hereby grants a security interest and mortgage to Bank, as security, in and to Grantor's entire right, title and interest in, to and under all of its intellectual property, including without limitation the following (all of which shall collectively be called the "Collateral"):
 - a. Any and all copyright rights, copyright applications, copyright registrations and like protections in each work or authorship and derivative work thereof, whether published or unpublished and whether or not the same also constitutes a trade secret, now or hereafter existing, created, acquired or held, including without limitation those set forth on Exhibit A attached hereto (collectively, the "Copyrights");
 - b. Any and all trade secrets, and any and all intellectual property rights in computer software and computer software products now or hereafter existing, created, acquired or held;
 - c. Any and all design rights which may be available to Grantor now or hereafter existing, created, acquired or held;

- d. All patents, patent applications and like protections including without limitation improvements, divisions, continuations, renewals, reissues, extensions and continuations-in-part of the same, including without limitation the patents and patent applications set forth on Exhibit B attached hereto (collectively, the "Patents");
- e. Any trademark and servicemark rights, whether registered or not, applications to register and registrations of the same and like protections, and the entire goodwill of the business of Grantor connected with and symbolized by such trademarks, including without limitation those set forth on Exhibit C attached hereto (collectively, the "Trademarks");
- f. Any and all claims for damages by way 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;
- g. All licenses or other rights to use any of the Copyrights, Patents or Trademarks, and all license fees and royalties arising from such use to the extent permitted by such license or rights;
- h. All amendments, renewals and extensions of any of the Copyrights, Trademarks or Patents; and
- i. All proceeds and products of the foregoing, including without limitation all payments under insurance or any indemnity or warranty payable in respect of any of the foregoing.

2. Covenants and Warranties. Grantor represents, warrants, covenants and agrees as follows:

- a. Grantor is now the sole owner of the Collateral, except for licenses granted by Grantor to its customers in the ordinary course of business;
- b. Except as set forth in the Schedule, Grantor's rights as a licensee of intellectual property do not give rise to more than five percent (5%) of its gross revenue in any given month, including without limitation revenue derived from the sale, licensing, rendering or disposition of any product or service;
- c. Performance of this Agreement does not conflict with or result in a breach of any agreement to which Grantor is party or by which Grantor is bound;
- d. During the term of this Agreement, Grantor will not transfer or otherwise encumber any interest in the Collateral, except for licenses granted by Grantor in the ordinary course of business or as set forth in this Agreement;
- e. To its knowledge, each of the Patents is valid and enforceable, and no part of the Collateral has been judged invalid or unenforceable, in whole or in part, and no claim has been made that any part of the Collateral violates the rights of any third party;
- f. Grantor shall deliver to Bank within thirty (30) days of the last day of each fiscal quarter, a report signed by Grantor, in form reasonably acceptable to Bank, listing any applications or registrations that Grantor has made or filed in respect of any patents, copyrights or trademarks and the status of any outstanding applications or registrations. Grantor shall promptly advise Bank of any material change in the composition of the Collateral, including but not limited to any subsequent ownership right of the Grantor in or to any Trademark, Patent or Copyright not specified in this Agreement;
- g. Grantor shall (i) protect, defend and maintain the validity and enforceability of the Trademarks, Patents and Copyrights (ii) use its best efforts to detect infringements of the Trademarks, Patents and Copyrights and promptly advise Bank in writing of material infringements detected and (iii) not allow any Trademarks, Patents or Copyrights to be abandoned, forfeited or dedicated to the public without the written consent of Bank, which shall not be unreasonably withheld;

- h. Grantor shall register or cause to be registered (to the extent not already registered) with the United States Patent and Trademark Office or the United States Copyright Office, as the case may be, those registerable intellectual property rights now owned or hereafter developed or acquired by Grantor to the extent that Grantor, in its reasonable business judgment, deems it appropriate to so protect such intellectual property rights;
 - i. Grantor shall promptly give Bank written notice of any applications or registrations of intellectual property rights filed with the United States Patent and Trademark Office, including the date of such filing and the registration or application numbers, if any. Grantor shall (i) give Bank not less than 30 days prior written notice of the filing of any applications or registrations with the United States Copyright Office, including the title of such intellectual property rights to be registered, as such title will appear on such applications or registrations, and the date such applications or registrations will be filed, and (ii) prior to the filing of any such applications or registrations, shall execute such documents as Bank may reasonably request for Bank to maintain its perfection in such intellectual property rights to be registered by Grantor, and upon the request of Bank, shall file such documents simultaneously with the filing of any such applications or registrations. Upon filing any such applications or registrations with the United States Copyright Office, Grantor shall promptly provide Bank with (i) a copy of such applications or registrations, without the exhibits, if any, thereto, (ii) evidence of the filing of any documents requested by Bank to be filed for Bank to maintain the perfection and priority of its security interest in such intellectual property rights, and (iii) the date of such filing;
 - j. Bank may audit the Collateral to confirm compliance with this Section, provided such audit may not occur more often than twice per year, unless an Event of Default has occurred and is continuing;
 - k. This Agreement creates, and in the case of after acquired Collateral, this Agreement will create at the time Grantor first has rights in such after acquired Collateral, in favor of Bank a valid and perfected first priority security interest in the Collateral in the United States securing the payment and performance of the obligations evidenced by the Loan Documents;
 - l. All information heretofore, herein or hereafter supplied to Bank by or on behalf of Grantor with respect to the Collateral is accurate and complete in all material respects;
 - m. Grantor shall not enter into any agreement that would materially impair or conflict with Grantor's obligations hereunder without Bank's prior written consent, which consent shall not be unreasonably withheld. 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 Collateral acquired under such contracts; and
 - n. Upon any executive officer of Grantor obtaining actual knowledge thereof, Grantor will promptly notify Bank in writing of any event that materially adversely affects the value of any Collateral, the ability of Grantor to dispose of any Collateral or the rights and remedies of Bank in relation thereto, including the levy of any legal process against any of the Collateral.
3. **Bank Rights.** Bank 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, after fifteen (15) days' notice to Grantor. Grantor shall reimburse and indemnify Bank for all reasonable costs and reasonable expenses incurred in the reasonable exercise of its rights under this Section 3.
4. **Inspection Rights.** Grantor hereby grants to Bank and its employees, representatives and agents the right to visit, during reasonable hours upon prior reasonable written notice to Grantor, any of Grantor's plants and facilities that manufacture, install or store products (or that have done so during the prior six-month period) that are sold utilizing any of the Collateral, and to inspect the products and quality control records relating thereto upon reasonable written notice to Grantor and as often as may be reasonably requested.

5. Further Assurances; Attorney in Fact.

- a. On a continuing basis, Grantor will make, execute, acknowledge and deliver, and file and record in the proper filing and recording places in the United States, all such instruments, including appropriate financing and continuation statements and collateral agreements and filings with the United States Patent and Trademark Office and the Register of Copyrights, and take all such action as may reasonably be deemed necessary or advisable, or as requested by Bank, to perfect Bank's security interest in all Copyrights, Patents and Trademarks and otherwise to carry out the intent and purposes of this Agreement, or for assuring and confirming to Bank the grant or perfection of a security interest in all Collateral;
- b. Grantor hereby irrevocably appoints Bank as Grantor's attorney-in-fact, with full authority in the place and stead of Grantor and in the name of Grantor, from time to time in Bank's discretion, to take any action and to execute any instrument which Bank may deem necessary or advisable to accomplish the purposes of this Agreement, including (i) to modify, in its sole discretion, this Agreement without first obtaining Grantor's approval of or signature to such modification by amending Exhibit A, Exhibit B and Exhibit C, hereof, as appropriate, to include reference to any right, title or interest in any Copyrights, Patents or Trademarks acquired by Grantor after the execution hereof or to delete any reference to any right, title or interest in any Copyrights, Patents or Trademarks in which Grantor no longer has or claims any right, title or interest, (ii) to file, in its sole discretion, one or more financing or continuation statements and amendments thereto, relative to any of the Collateral without the signature of Grantor where permitted by law and (iii) after the occurrence of an Event of Default, to transfer the Collateral into the name of Bank or a third party to the extent permitted under the California Uniform Commercial Code.

6. Events of Default. The occurrence of any of the following shall constitute an Event of Default under the Agreement:

- a. An Event of Default occurs under the Loan Documents; or
- b. Grantor breaches any warranty or agreement made by Grantor in this Agreement and, as to any breach that is capable of cure, Grantor fails to cure such breach within five (5) days of the occurrence of such breach.

7. Remedies. Upon the occurrence and continuance of an Event of Default, Bank shall have the right to exercise all the remedies of a secured party under the California Uniform Commercial Code, including without limitation the right to require Grantor to assemble the Collateral and any tangible property in which Bank has a security interest and to make it available to Bank at a place designated by Bank. Bank shall have a nonexclusive, royalty free license to use the Copyrights, Patents and Trademarks to the extent reasonably necessary to permit Bank to exercise its rights and remedies upon the occurrence of an Event of Default. Grantor will pay any expenses (including reasonable attorneys' fees) incurred by Bank in connection with the exercise of any of Bank's rights hereunder, including without limitation any expense incurred in disposing of the Collateral. All of Bank's rights and remedies with respect to the Collateral shall be cumulative.

8. Indemnity. Grantor agrees to defend, indemnify and hold harmless Bank 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 expenses in any way suffered, incurred, or paid by Bank as a result of or in any way arising out of, following or consequential to transactions between Bank and Grantor, whether under this Agreement or otherwise (including without limitation reasonable attorneys' fees and reasonable expenses), except for losses arising from or out of Bank's gross negligence or willful misconduct.

9. Course of Dealing. No course of dealing, nor any failure to exercise, nor any delay in exercising any right, power or privilege hereunder shall operate as a waiver thereof.

10. Attorneys' Fees. If any action relating to this Agreement is brought by either party hereto against the other party, the prevailing party shall be entitled to recover reasonable attorneys' fees, costs and disbursements.
11. Amendments. This Agreement may be amended only by a written instrument signed by both parties hereto.
12. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute the same instrument.
13. California Law and Jurisdiction; Jury Waiver. This Agreement shall be governed by the laws of the State of California, without regard for choice of law provisions. Grantor and Bank consent to the exclusive jurisdiction of any state or federal court located in Santa Clara County, California. GRANTOR AND BANK EACH WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE LOAN DOCUMENTS, THIS AGREEMENT, OR ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS.

IN WITNESS WHEREOF, the parties have caused this Intellectual Property Security Agreement to be duly executed by its officers thereunto duly authorized as of the first date written above.

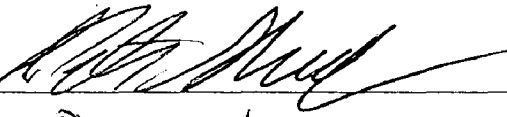
GRANTOR:

SOUNDBITE COMMUNICATIONS, INC.

Address of Grantor:

3 Burlington Woods Drive
Burlington, MA 01803

Attn: Chief Executive Officer

By: 

Title: President

BANK:

COMERICA BANK

Address of Bank:

9920 S. La Cienega Blvd., Suite 1401
Inglewood, CA 90301

Attn: Manager

By: 

Title: VICE PRESIDENT

EXHIBIT A

Copyrights

Description

Registration
Number

Registration
Date

Gray Cary\PA\10325016.2
1090371-952800

TRADEMARK
REEL: 002857 FRAME: 0370

EXHIBIT B

Patents

Description

Registration/
Application
Number

Registration/
Application
Date

EXHIBIT C

Trademarks

<u>Description</u>	Registration/ Application <u>Number</u>	Registration/ Application <u>Date</u>
Soundbite	76/058,914	05/30/00

Gray Cary\PA\10325016.2
1090371-952800

RECORDED: 11/05/2003

TRADEMARK
REEL: 002857 FRAME: 0372