

# EXHIBIT 25

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

SKY TECHNOLOGIES LLC,

Plaintiff,

v.

SAP AG, SAP AMERICA, INC. and  
ORACLE CORPORATION,

Defendants.

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CIVIL ACTION NO. 2:06-CV-440 (DF)

**ORDER**

Currently before the Court is Defendants' Rule 12(b)(1) Motion to Dismiss for Lack of Standing (Dkt. No. 132) and related briefing (Dkt. Nos. 147, 155, 171, 186, 189). The Court held a hearing regarding this matter on February 28, 2008. Dkt. No. 187. In a March 20, 2008 Order (the "March Order"), the Court requested additional briefing on this matter. Dkt. No. 193 at 19. Thus, currently before the Court is Sky's supplemental brief (Dkt. No. 198) and related briefing (Dkt. Nos. 200, 204, and 206). After considering the arguments and the briefing, the Court **DENIES** Defendants' Rule 12(b)(1) Motion to Dismiss for Lack of Standing (Dkt. No. 132).

**I. BACKGROUND**

**A. Factual Background<sup>1</sup>**

On October 17, 2006, Plaintiff Sky filed a claim for infringement of U.S. Patent Nos. 6,141,653 (the "653 Patent"), 6,336,105 (the "105 Patent"), and 6,338,050 (the "050 Patent").

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<sup>1</sup> This background was taken from this Court's previous March 20, 2008 Order. Dkt. No. 193 at 1-4.

Complaint, Dkt. No. 1. Jeffrey Conklin (“Conklin”), David Foucher, and Daniel Foucher are the named inventors of these patents. United States Patent Nos. 7,162,458 (the “458 Patent”) and 7,149,724 (the “724 Patent”) were later added. Second Amended Complaint, Dkt. No. 44. Conklin, David Foucher, Daniel Foucher, and William J. Flanagan are listed as the inventors of these two patents.

The inventors of all the above five patents-in-suit assigned their rights to TradeAccess, Inc. (“TradeAccess”). Dkt. No. 132 at 7<sup>2</sup> (citing Dkt. No. 132, Exhibits B-F); Dkt. No. 147 (citing Dkt. No. 132, Exhibits B-F). Each of these assignments was filed in the United States Patent & Trademark Office (“USPTO”). Dkt. No. 132 at 8. TradeAccess was formed by Conklin. Dkt. No. 132 at 8; Dkt. No. 147 at 2. On April 2, 2001, an Intellectual Property Security Agreement was made between TradeAccess and Silicon Valley Bank where a loan was secured interests to TradeAccess’s intellectual property. Dkt. No. 132 at 8 (citing Dkt. No. 132, Exh. G (the “SVB Agreement”)); Dkt. No. 147 (citing Dkt. No. 132, Exh. G). The agreement contained a clause stating that the IP Agreement would be “governed by and construed in accordance with the laws of the Commonwealth of Massachusetts.” SVB Agreement at 7. On April 3, 2001, an Intellectual Property Security Agreement was made between TradeAccess and Cross Atlantic Capital Partners, Inc. (“XACP”), as agent for Cross Atlantic Technology Fund, L.P. (“XATF”), The Co-Investment 2000 Fund, L.P. (“CI 2000”), and 3i Technology Partners L.P. (“3i”). Dkt No. 132 at 8; Dkt. No. 147 at 3; Dkt. No. 132, Exh. H (the “XACP Agreement”). XATF, CI 2000 and 3i received first priority in TradeAccess’s intellectual property, except as to liens and security interests granted to SVB. Dkt. No. 132, Exh. H at 2.

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<sup>2</sup>All page numbers refer to the document header page numbers.

This second agreement also had a Massachusetts choice of law clause. XACP Agreement at 8. These documents were filed with the USPTO. Dkt. No. 132 at 8.

TradeAccess changed its name to Ozro on May 3, 2001 by filing papers with the State of Delaware Office of the Secretary of State. Dkt. No. 132 at 8 (citing Dkt. No. 132, Exh. L). On December 5, 2002, XATF and CI 2000 “entered into a Purchase Agreement with 3i, wherein 3i assigned all rights in its agreements with Ozro, including the Intellectual Property Security Agreement. Dkt. No. 147 at 3. On December 18, 2002, Silicon Valley Bank entered into a Non-Recourse Assignment with XATF and CI 2000, as tenants in common with 2/3 undivided interest to XATF and 1/3 undivided interest to CI 2000, wherein Silicon Valley Bank transferred its rights to the secured loan agreement with Ozro. Dkt. No. 147 (citing Dkt. No. 132, Exh. I at 1). Thus, at this point, the interest was consolidated to XATF and CI 2000.

Under a Settlement Agreement, effective as of June 4, 2003, XACP, CI 2000, and XATF sought to sell to Conklin “certain intellectual property and assets of Ozro, Inc. (f/k/a/ Trade Access, Inc).” Dkt. No. 132 at 8; Dkt. No. 147 at 4; Dkt. No. 132, Exh. M. The Agreement specified that the Intellectual Property would be purchased by the new entity “Newco” created by Conklin. Dkt. No. 132, Exh. M at 7. The Agreement stated:

Public Auction. The XACP Entities [XACP, CI 2000, and XATF] shall use their best efforts to obtain title to the Intellectual Property for purposes of a transfer from the XACP Entities to Newco, by selling all of the XACP Entities’ rights in and to the Secured Intellectual Property by Public Auction within sixty (60) days after the Effective Date. The XACP Entities shall provide Conklin with the opportunity to review and approve the terms and notices relating to the Public Auction prior to their release. At the Public Auction, the XACP entities, or their designee, will credit bid up to \$4,031,844, as may be required to purchase the Intellectual Property, including but not limited to the right to sue for past infringement or misappropriation of the Patents, covered by security interests held by the XACP Entities. . . .

Dkt. No. 132, Exh. M at 7-8. The \$4,031,844 was the “amount owed by Ozro to XACP.” Dkt. No. 132 at 8.

On July 14, 2003, a public auction was held regarding the Ozro Intellectual Property.

According to the auctioneer:

The intellectual property assets were offered for sale in two offerings. The first sale was to foreclose on the security interest originally held by Silicon Valley Bank that was subsequently assigned to Cross Atlantic. Cross Atlantic foreclosed on this first priority security interest as assignee of this interest. The second sale was to foreclose on the security interest originally held by Cross Atlantic. Cross Atlantic was the only bidder and it, through its representative Craig Vaughn, purchased the assets for \$100,000.

Dkt. No. 132, Exh. N (letter from Atlantic Auctions to counsel for Ozro).

Therefore, XACP foreclosed on both of the security interests. Defendants state that despite this sale, there was no written instrument assigning the Ozro patents to XACP. Dkt. No. 132 at 9. On July 23, 2003 a written assignment was made by XACP to Whitelight Technology, LLC, a predecessor to Sky, for the rights to multiple patents, including the ‘653 Patent, the ‘050 Patent, the ‘105 Patent, as well as, U.S. Application No. 09/702,128, which would later become the ‘458 Patent, and U.S. Application No. 09/702,062, which would later become the ‘724 Patent. Dkt. No. 132, Exh. O at 1. This assignment had a choice of law clause for the assignment to be construed pursuant to the laws of the Commonwealth of Pennsylvania. *Id.* at 3. On November 1, 2007, Ozro, Inc. submitted a Certificate of Dissolution to the State of Delaware, which was authorized on April 24, 2007 by Conklin. Dkt. No. 132, Ex. P.

## **B. Procedural Background**

Now before the Court, Defendants contest the assignment made on July 22, 2003 from XACP to Whitelight Technology, LLP as improper because Defendants aver that Ozro never

assigned the patents-in-suit to XACP in any instrument in writing after the July 14, 2003 foreclosure. Sky argues that the security agreements and their subsequent recording in the USPTO served as assignments. Ozro has filed a motion to intervene (Dkt. No. 146) in order to resolve the standing issue.

The primary disagreement between Sky and the Defendants was whether the April 2001 Security Agreements, which were recorded and later foreclosed, were sufficient to satisfy Section 261. Defendants had argued that Ozro was obligated to transfer title, after the July 14, 2003 foreclosure, through a written assignment pursuant to Section 261. *See* Dkt. No. 132 at 9. The Court distinguished conflicting cases proffered by the parties. Sky relied on the Supreme Court decision in *Waterman v. Mackenzie* for the proposition that the recording of a security interest “operates as delivery of title to satisfy § 261.” Dkt. No. 147 at 5. Defendants relied on *In re Cybernetic* for the proposition that security interests do not qualify as assignments under Section 261.” Dkt. No. 132 at 12. In the previous March Order, this Court held that the Ninth Circuit in *In re Cybernetic* merely held that Section 261 only requires the recording of ownership interests in a patent and that *Waterman* does not broadly stand for the proposition that a security interest recorded with the USPTO effectively transfers title to the secured lender under Section 261. Dkt. No. 193 at 14-17.

The Court requested further briefing, asking the parties to address: (1) the effect of any evidence after the foreclosure; (2) whether the provisions of the Security Agreement granted substantial rights as to effect a transfer of title; and (3) the effect of a security agreement that contains provisions to transfer of title but is not effective unless defaulted upon. Dkt. No. 193 at 18.

## II. LEGAL PRINCIPLES

“The burden of demonstrating standing falls to [Plaintiff], as ‘[i]t is well established . . . that before a federal court can consider the merits of a legal claim, the person seeking to invoke the jurisdiction of the court must establish the requisite standing to sue.’” *Ortho Pharm. Corp. v. Genetics Inst., Inc.*, 52 F.3d 1026 (Fed. Cir. 1995) (quoting *Whitmore v. Arkansas*, 495 U.S. 149, 154 (1990); citing *Sicom Sys., Ltd. v. Agilent Tech., Inc.*, 427 F.3d 971, 975-76 (Fed. Cir. 2005)).

One seeking damages for infringement of a patent must hold legal title to that patent. *See, e.g., Rite-Hite Corp. v. Kelley Co., Inc.*, 56 F.3d 1538 (Fed. Cir. 1995); *Speedplay, Inc. v. Bebop*, 211 F.3d 1245, 1249-50 (Fed. Cir. 2000) (citing 35 U.S.C. §§ 100(d), 261, 281). Under Section 261:

Applications for patent, patents, or any interest therein, shall be assignable in law by an instrument in writing. The applicant, patentee, or his assigns or legal representatives may in like manner grant and convey an exclusive right under his application for patent, or patents, to the whole or any specified part of the United States. . . .

An assignment, grant or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the Patent and Trademark Office within three months from its date or prior to the date of such subsequent purchase or mortgage.

A party without title has no standing to bring suit. *Filmtec Corp. v. Allied-Signal Inc.*, 939 F.2d 1568 (Fed. Cir. 1991); *Abbott Labs. v. Diamedix Corp.*, 47 F.3d 1128, 1131 (Fed. Cir. 1995) (“The right to sue for infringement is ordinarily an incident of legal title to the patent.”).

“Further, all co-owners must, ordinarily, consent to join as plaintiffs in an infringement suit.” *DDB Techs., LLC v. MLB Advanced Media, LP*, 465 F. Supp. 2d 657, 661 (W.D. Tex. 2006).

Legal title, which confers standing, must be held at the inception of the lawsuit. *Paradise Creations*, 315 F.3d at 1308 (citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 570 n.5, 119 L.

Ed. 2d 351, 112 S. Ct. 2130 (1992) (plurality opinion)); *Gaia Technologies*, 93 F.3d at 777.

“The party asserting that it has all substantial rights in the patent ‘must produce . . . written instruments documenting the transfer of proprietary rights.’” *Mentor H/S, Inc.*, 240 F.3d at 1017 (quoting *Speedplay*, 211 F.3d at 1250). Section 100(d) provides that a “‘patentee’ includes not only the patentee to whom the patent was issued but also the successor in title to the patentee.” Therefore, the chain of title must be followed in order to determine the party holding legal title to the patent. *See Enzo*, 134 F.3d at 1093; *Gaia Technologies*, 93 F.3d at 777.

“In examining a Rule 12(b)(1) motion, the Court is empowered to consider matters of fact which may be in dispute.” *Id.* A court may not grant dismissal “unless it appears certain that the plaintiffs cannot prove any set of facts in support of their claim which would entitle them to relief,” and a court “must take as true all of the allegations of the complaint and the facts as set out by the [plaintiffs].” *Saraw Partnership v. U.S.*, 67 F.3d 567, 569 (5th Cir. 1995).

### **III. MOTION TO DISMISS**

Sky has offered several theories in defense against the motion to dismiss. Sky initially argued that a security interest that is recorded in the PTO effects transfer of title. Dkt. No. 147 at 1. Sky stated that the Agreements transferred a title and the rights were slowly consolidated through various assignment agreements. *Id.* at 3. However, as explained above, the Court rejected this argument, stating that the *Waterman* case cited by Sky related to a dispute regarding a subsequent purchase or mortgagee. March Order at 17.

Sky now argues that transfer of title to the patents does not require a written assignment. Dkt. No. 204 at 1. Moreover, Sky states that if a written assignment was required, the Security Agreements are written assignments that are actually conditional assignments that become



effective upon default. Dkt. No. 198 at 3. Therefore, Sky argues that the transfer of title occurred at the foreclosure. *Id.* at 5.

The first issue the Court addresses is whether a transfer may be effected through an operation of law.

**A. Transfer by Operation of Law and Choice of Law**

**1. Parties' Positions**

Defendants cite to a recently issued Federal Circuit authority, *Akazawa v. New Link Technology International, Inc.*, 520 F.3d 1354 (Fed. Cir. 2008), arguing that the Federal Circuit affirmed the “requirement that transfer by assignment under § 261 ‘be in writing’.” Dkt. No. 200 at 14 n.46. Defendants state that the question of automatic assignment is a matter of federal and not state law. Dkt. No. 200 at 14 (citing *DDB Techs. L.L.C. v. MLB Advanced Media, L.P.*, 517 F.3d 1284, 1290 (Fed. Cir. 2008)). Defendants further argue that a debtor must “convey written title or written title must be ordered conveyed by a duly-authorized court.” *Id.* at 14 (citing *Ager v. Murray*, 105 U.S. 126, 131 (1881)).

Sky argues that new Federal Circuit authority, *Akazawa*, provides that title to patents can pass by operation of law and no written assignment under § 261 is necessary. Dkt. No. 204 at 1 (citing *Akazawa*, 520 F.3d at 1356-57). Sky contends that Defendants argue that federal law applies in order to advance *Ager*. Dkt. No. 204 at 4. Sky believes that *Ager* is inapplicable and distinguishable because *Ager* was decided before the creation and adoption of the Uniform Commercial Code (“UCC”). *Id.* at 4-5.

Defendants reply that Section 261 requires that assignments be in writing. Dkt. No. 206

at 8. Defendants contend that courts have long recognized that state probate law automatically vests legal title in a patentee's heirs and interprets the holding in *Akazawa* to be limited to extending those decisions to allow the probate law of another nation to similarly vest legal title in an heir without a written assignment. *Id.* at 8 (citing *Akazawa*, 520 F.3d at 1357-58; *H.M. Stickle v. Heublein, Inc.*, 716 F.2d 1550, 1558 (Fed. Cir. 1983); *Winkler v Studebaker Bros. Mfg. Co.*, 105 F. 190, 190-91 (C.C.S.D.N.Y. 1900)). Defendants clarify that they do “not contend, as Sky represents, ‘that the *only* means by which title to patents transfers is an assignment in writing or court Order compelling assignment’” rather that “where—as here following XACP’s purported foreclosure on Ozro’s patents—no state law operates to vest legal title to the patents, a plaintiff must obtain a written assignment pursuant to Section 261 in order to establish its legal title and therefore standing to pursue any claim for patent infringement.” *Id.* at 8-9.

## 2. Analysis

Defendants and Sky fundamentally agree on the general holding of *Akazawa* that “there is nothing that limits assignment as the only means for transferring patent ownership. Indeed, the case law illustrates that ownership of a patent may be changed by operation of law.” *Akazawa*, 520 F.3d at 1356. The primary difference between Defendants and Sky’s argument is that Defendants presume that there is no state law that operates to vest legal title to the patents and Defendants conclude that legal title must therefore be established through a written assignment pursuant to Section 261 or a Court order. *See* Dkt. No. 206 at 9.

In *Akazawa*, the defendant challenged the standing of the plaintiff. The inventor of the patent in interest, U.S. Patent No. 5,615,761 (“the ‘716 patent”), had died intestate, and the heirs, the inventors’ wife and two daughters, consolidated their rights to a single daughter through an

“Inheritance Agreement,” and the daughter in turn assigned the rights under the patent to the plaintiff. *Akazawa*, 520 F.3d at 1355. The defendant argued that Section 261 “mandates a writing where there is a transfer upon death in order for there to be a proper assignment between two entities.” *Id.* Like in this case, the defendant stated that the plaintiff did not own the patent because “there was never a writing transferring the ‘716 patent from the estate of [the inventor] to [the inventors’ heirs], the inheritance agreement between [the inventors’ heirs] and the assignment between [the daughter] and [the plaintiff] notwithstanding.” *Id.* The Federal Circuit held that “ownership of a patent may be changed by operation of law.” *Id.* at 1356.

Likewise, the Court determines that ownership of a patent may be changed by operation of law, and thus, the Court must determine whether the Security Agreement and subsequent foreclosure transferred the patent by operation of law.

Defendants argue that federal law, not state law, applies in automatic assignments, and argue that because there was no written assignment, federal law, as posited by *Ager*, requires a Court order. *See* Dkt. No. 200 at 14. Defendants rely on *DDB Technologies* for the proposition that federal law would apply in this case. *Id.* In *DDB Technologies*, the defendant had obtained a license to the patents-in-suit from the former employer of one of the inventors, who helped to form the plaintiff company. *DDB Technologies*, 517 F.3d at 1288. The district court had to evaluate whether, under the employment agreement between the former employer and the employee/inventor, there was an automatic assignment of the inventor’s rights. *Id.* The Federal Circuit first determined that “[a]lthough state law governs the interpretation of contracts generally, the question of whether a patent assignment clause creates an automatic assignment or merely an obligation to assign is intimately bound up with the question of standing in patent

cases” and concluded that this was a matter of federal law. *Id.* at 1289-90.

On the other hand, Judge Newman’s dissent stated that the panel majority was overreaching and contrary to law and precedent and Judge Newman narrowly stated the majority’s holding as relating to “interpretation of employment contracts, including clauses establishing employer-employee obligations with respect to inventions and patents.” *Id.* at 1296. Here, there is not an employment contract, but rather a security agreement. As explained above, the *Akazawa* case addressed the analogous question of whether there was a break in the chain of title due to the lack of written assignment pursuant to Section 261. In *Akazawa*, the Federal Circuit held that the “case law is clear that state law, not federal law, typically governs patent ownership.” *Akazawa*, 520 F.3d at 1357 (citing *Jim Arnold Corp. v. Hydrotech Sys., Inc.*, 109 F.3d 1567, 1572 (Fed. Cir. 1997)). The Federal Circuit determined that resolution of the issues required an interpretation of Japanese intestacy law. *Id.* at 1358.

The Court determines that state law, not federal law, should govern this case. Here, both Security Agreements stated that Massachusetts choice of law would apply. SVB Agreement at 7; XACP Agreement at 8. Therefore, the Court applies Massachusetts law, specifically the Massachusetts UCC (i.e. Mass. Ann. Laws ch. 106 Art. 9), to determine whether there was a transfer of title by operation of law.

## **B. Transfer of Title**

### **1. Parties’ Positions**

Sky argues that “numerous courts have observed the passing of title to intellectual property upon a debtor’s default.” Dkt. No. 198 at 4 (citing *Haymaker Sports, Inc. v. Turian*,

581 F.2d 257, 261 (C.C.P.A. 1978); *Health Discovery Corp. v. CIPHERGEN Biosystems, Inc.*, No. 2:06-cv-260, 2007 WL 128283, at \*1 (E.D. Tex. Jan. 11, 2007); *digiGan, Inc. v. iValidate, Inc.*, No. 02 Civ. 420, 2004 WL 203010, at \*3 (S.D.N.Y. Feb. 3, 2004)). Sky contends that “full title to the patents-in-suit passed to XACP when Ozro defaulted and XACP foreclosed.” *Id.* at 5. Sky states that both Security Agreements provide that the lenders had all “rights and remedies of a secured creditor under the Massachusetts Uniform Commercial Code.” *Id.* at 6 (citing SVB Agreement at 6; XACP Agreement at 6-7). Sky avers that under Massachusetts UCC a default transfers all of the debtor’s rights in the collateral, including the rights to sell, lease, license, or dispose of the property. *Id.* (citing MASS. GEN. LAWS ch. 106 at §§ 9-617 & 9-610). Sky emphasizes that under Massachusetts law, “a secured creditor is not required to bring an action to compel assignment to foreclose on intellectual property interests or execute any additional instrument upon foreclosure,” citing that Massachusetts UCC does not contain a provision requiring additional action after foreclosure on intellectual property. *Id.* at 9 (citing MASS. GEN. LAWS ch. 106 at Art. 9). Sky argues that the Security Agreements were conditional assignments that were duly recorded with the PTO, thus fulfilling Section 261. *Id.* at 7.

Defendants respond that the security interests are not “conditional assignments.” Dkt. No. 200 at 6. Defendants reiterate that an assignment must transfer all substantial rights while a security interest is an agreement for a future assignment and not a “present ownership right in the patent.” *Id.* at 8-9 (citing *Aspex Eyewear, Inc. v. Miracle Optics, Inc.*, 434 F.3d 1336, 1341 (Fed. Cir. 2006); *Trimarchi v. Together Dev. Corp.*, 255 B.R. 606, 611 (D. Mass. 2000); quoting *City Bank and Trust Co. v. Otto Fabric, Inc.*, 83 B.R. 780, 782 (D.Kan. 1988)). Defendants note that the language of the contract does not provide for an automatic assignment, but rather, the grant

clause and other provisions repeatedly provides for a security interest. *Id.* at 10-12 (citing SVB Agreement ¶¶ 1, 3(c), 3(I), 3(k), 6(a), 8; XACP Agreement ¶¶ 1, 3(c), 3(h), 3(I), 3(k), 6(a); *DDB Tech.*, 517 F.3d at 1290).

Defendants state that a security interest does not convey title and is not an assignment. Dkt. No. 200 at 11-12 (citing *Holt v. United States*, 13 U.C.C. Rep. Servs. 336, 1973 WL 614, at \*1 (D.D.C. 1973)). Defendants note that the article that Sky relies upon for its assignment theory recognizes a security interest to be a “lesser interest in the collateral.” *Id.* (citing Thomas L. Bahrick, *Security Interests in Intellectual Property*, 15 A.I.P.L.A. Q.J. 30, 40 (1987)).

Defendants further provide that the default did not transfer substantial rights. Dkt. No. 200 at 14. Defendants argue that federal law should apply and that “[e]ven where the language in the underlying loan documents provides the creditor ‘an entitlement to an immediate assignment of all right, title, and interests to the patents, with the right and power to execute and record an assignment of the patents as attorney-in-fact on behalf of the debtor after notice of default,’ courts have held that ‘no actual assignment of the patents occurred.’” *Id.* at 15 (quoting *In re Tower Tech, Inc.*, 67 Fed. Appx. 521, 524 (10th Cir. 2003)).

Defendants alternatively argue that even if Massachusetts law applied, the courts are “clear that ‘an event of default does not automatically transfer possession to the creditor.’” Dkt. No. 200 at 15 (quoting *McDonald v. Rockland Trust Co.*, 798 N.E.2d 323, 327 (Mass. App. 2003)). Defendants cite that Massachusetts states that after foreclosure, if the debtor refuses to sign a written transfer of title, the creditor may file a “transfer statement.” *Id.* at 15-16 (M.G.L.A. 106 § 9-619 Comment 2). Defendants assert that a creditor may alternatively seek a court order compelling a written assignment or appointing a receiver to issue a written

assignment, which Ozro failed to do in its transfer to XACP. *Id.* at 16 (citing *Barton v. White*, 144 Mass. 281, 284 (Mass. 1887); *Wilson v. Martin-Wilson Automatic Fire-Alarm Co.*, 151 Mass. 515 (Mass. 1890); *McCann v. Randall*, 147 Mass. 81 (Mass. 1888)).

Sky responds that the *McDonald* case cited by Defendants is correct in stating that “an event of default does not automatically transfer possession to the creditor, [but] *McDonald* does not stand for the broader principle that title cannot pass by operation of law.” Dkt. No. 204 at 5. Sky states that a creditor has several options, including forbearing the enforcement of its security agreement, and in this situation “XACP elected to foreclose and purchase the patents.” *Id.* Sky contends that, contrary to Defendants’ assertion, § 9-619 does not require that XACP execute a “transfer statement,” which is a non-mandatory statement that is used “to address procedural problems that can arise when a secured party effects a non-volitional transfer, and the ‘transfer statement’ assists the secured party in recording its interest.” *Id.* at 6 (citing MASS. GEN. LAWS ch. 106 § 9-619 Author’s Note).

Defendants counter that “unless state law specifically vests legal title to a patent, a written assignment is required to vest legal title.” Dkt. No. 206 at 9 (citing *Ager v. Murray*, 105 U.S. 126, 131 (1881)). Defendants contend that Massachusetts law does not operate to vest legal title to patents following a default. *Id.* at 10. Defendants argue that in *In re Roman Cleanser Co.*, 43 B.R. 940, 948 n.4 (Bank. Mich. 1984), *aff’d* 802 F.2d 207 (6th Cir. 1986), the court held that a security interest in a trademark was not an assignment upon default, and even after a creditor enforces the security interest, the creditor was still required to comply with the written assignment provision of the Lanham Act. *Id.* at 10 n.17. Otherwise, Defendants assert a court of equity could appoint a trustee to make the assignment, and in this situation Defendants argue that

XACP could have executed a written assignment to itself as it was Ozro's "attorney in fact." *Id.* at 10 (citing *Wilson v. Martin-Wilson Automatic Fire-Alarm Co.*, 151 Mass. 515, 516-17, 519-20 (Mass. 1890); XACP Agreement at 6).

Defendants distinguish the probate cases cited in *Akazawa* and argue that unlike those cases, Massachusetts UCC § 9-610 "does not provide that legal title to a patent 'shall vest immediately' or 'vests by operation of law' in a creditor upon default or foreclosure." Dkt. No. 206 at 11 (citing *H.M. Stickle*, 716 F.2d at 1558; *Winkler*, 105 F. at 190-91). Defendants reiterate that the Tenth Circuit in *In re Tower Tech* rejected an automatic transfer of title. *Id.* Regarding the "transfer statement," Defendants aver that it is not required but is one mechanism to obtain title after default without a court order; however, Defendants note that this mechanism would not be needed if title to the patent vested automatically as Sky claims. *Id.* at 11-12 (citing Thomas M. Ward, *Intellectual Property in Commerce* § 3:70 (2007)). Defendants state that the cases cited by Sky support Defendants' position that an affirmative act had to be made after foreclosure. *Id.* at 12 (citing *Health Discovery*, 2007 WL 128283, at \*1; *digiGan*, 2005 WL 2254464, at \*3).

## 2. Analysis

From the briefing, the Defendants and Sky appear to agree on two preliminary issues of law. Defendants have conceded that a patent may pass by operation of law and a written assignment is not the only method to transfer a patent. Defendants' Sur-Reply, Dkt. No. 206 at 8. Likewise, Sky has conceded that a default of a security interest does not automatically transfer possession to the creditor. Sky's Reply, Dkt. No. 204 at 5 (citing *McDonald*, 798 N.E.2d at 327 (stating "an event of default does not automatically transfer possession to the



creditor”)). Defendants assert that there is no state law that automatically vests legal title upon foreclosure, whereas Sky argues that it is the foreclosure and purchase of the patents that effected the transfer. *See* Dkt. No. 206 at 9; Dkt. No. 204 at 5. Therefore, the point of contention between the parties, and the issue that the Court must resolve, is whether there was a transfer of the patents from Ozro to XACP through an operation of law, specifically whether a foreclosure sale and purchase, under Massachusetts UCC, is sufficient to transfer title by operation of law.

The Security Agreements provide the following remedies upon a default:

8. Remedies. Upon the occurrence and continuance of an Event of Default, Lender shall have the right to exercise all the remedies of a secured party under the Massachusetts Uniform Commercial Code, including without limitation the right to require Grantor to assemble the Intellectual Property Collateral and any tangible property in which Lender has a security interest and to make it available to Lender at a place reasonably designated by Lender . . . .

SVB Agreement at 6.

8. Remedies. (a) Upon the occurrence and continuance of an Event of Default, Agent shall have the right to exercise all the remedies of a secured party upon such default under the Massachusetts Uniform Commercial Code (the “UCC”) (or other applicable Federal or other law), in addition to which, Agent shall have the following rights and remedies: (I) to take possession of all or any portion of the Intellectual Property Collateral, (ii) to sell, lease, or otherwise dispose of any or all of the Intellectual Property Collateral, in its then condition or following such preparation or processing as the Agent deems advisable and with or without the taking of possession of any of the Intellectual Property Collateral, and (iii) to exercise all or any of the rights, remedies, powers, privileges, and discretions under all or any of the documents relating to the Secured Obligations.

XACP Agreement at 6-7.

Sky argues that the mere foreclosure results in the transfer of title. Defendants rely

significantly on *In re Tower Tech*, an unpublished Tenth Circuit opinion that found that a notice of default did not provide for an actual assignment of secured patents, even though the promissory note contained the provision that, in the event of default, the lender “shall receive an immediate assignment of all right, title and interest to the patents specified as collateral.”<sup>3</sup> *In re Tower Tech*, 67 Fed. Appx. at 523-24. The Court notes that unlike the foreclosure sale that occurred here, in *Tower Tech*, the debtor only gave a notice of default and acted no further. *In re Tower Tech*, 67 Fed. Appx. at 524. Defendants cite to the treatise *Intellectual Property in Commerce* for the proposition that there is a need for a “post-default document that reflects transfer of ownership out of the debtor.” Dkt. No. 206 at 11 (citing Thomas J. Ward, *Intellectual Property in Commerce* § 3:70). Specifically the treatise stated:

Because the federal forms of intellectual property are subject to a system of “title” registration or recording, it is important for the secure party to be able to have a recordable post-default document that reflects transfer of ownership out of the debtor. The record transferee might be the foreclosure sale buyer, assignee or exclusive licensee. The record transferee might also be the secured party, either permanently, in the case of a strict foreclosure, or temporarily, in anticipation of disposition to a subsequent party. The security agreement can be supplemented by the attachment of such a recordable ownership document along with the debtor’s power of attorney authorizing the secured party’s nominee to complete and execute the form on default. If such a document is not provided for in advance, and the debtor is not willing to cooperate after default, the secure party can go to court to either force the debtor to execute the necessary papers or to obtain a recordable document prepared by the court itself.

Thomas J. Ward, *Intellectual Property in Commerce* § 3:70

In support of this proposition, the treatise cites to *Tower Tech*, stating:

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<sup>3</sup> This is consistent with the Federal Circuit case cited by Defendants, *IpVenture, Inc. v. Prostar Computer, Inc.*, 503 F.3d 1324, 1327 (Fed. Cir. 2007), holding that an agreement stating “agree to assign” was a future assignment, not a present assignment.

Although the court in *Tower Tech* does not expressly say that the lender could have taken good title to the patent collateral on default without following the provisions for either “acceptance of collateral” or “disposition” in Article Nine, it seems to suggest as much. While a secured party should be entitled to execute the necessary post-default transfer documents under a proper power-of-attorney, these documents must be executed in furtherance of an otherwise reasonable disposition of the collateral (U.C.C. [Revised] §§ 9-610 to 9-617) or a properly proposed “acceptance in satisfaction” (U.C.C. [Revised] §§ 9-620 to 9-621).

Thomas J. Ward, *Intellectual Property in Commerce* § 3:70 n.1.

Taking these two sections together, the Court first notes that the treatise presumes a need for a “post-default document that reflects transfer of ownership,” presumably out of the writing assignment requirements of the various intellectual property acts. *See* 35 U.S.C. § 261 (patent); 15 U.S.C. § 1060 (trademark); 17 U.S.C. § 204 (copyright). However, as already explained above, the Federal Circuit held in *Akazawa* that a writing is not required to transfer title, rather, title may pass by operation of law. *Akazawa*, 520 F.3d at 1356. This finding is also consistent with *Tower Tech* and other Michigan cases finding that a mere default or notice of default was insufficient to transfer title. The treatise suggests that a subsequent action was required, either through a disposition under UCC § 9-610 or an acceptance in satisfaction under UCC § 9-620, dealing with a strict foreclosure. Alternatively, a court order or a transfer statement pursuant to UCC § 9-619 would be acceptable.

Massachusetts Annotated Laws ch. 106 § 9-610(a) provides: “After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.” Massachusetts Annotated Laws ch. 106 § 9-610(c) provides: “A secured party may purchase collateral: (1) at a public disposition; or (2) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price

quotations.” Further, as explained in Massachusetts Annotated Laws ch. 106 § 9-617(a) a “secured party’s disposition of collateral after default: (1) transfers to a transferee for value all of the debtor’s rights in the collateral,” and comment 2 states “Title Taken by Good-Faith Transferee. Subsection(a) sets forth the rights acquired by persons who qualify under subsection (b) - transferees who act in good faith. Such a person is a ‘transferee,’ inasmuch as a buyer at a foreclosure sale does not meet the definition of ‘purchaser’ in Section 1-201 . . . .”

Here, the patents were placed at a “public” auction. XACP foreclosed on both of the security interests and Ozro was later notified of the sale. *See* Dkt. No. 132, Exh. N. Thus, unlike the debtor in *Tower Tech*, XACP acted beyond merely noticing the default and actively foreclosed on the property, pursuant to §§ 9-610 and 9-617. Therefore, the point at which title transferred was on the date of the foreclosure, July 14, 2003. The transfer to Whitelight Technologies, predecessor to Sky, occurred on July 22, 2003. Dkt. No. 132, Exh.O. Thus, the chain-of-title was not broken and Sky has proper title to the patents-in-suit. Moreover, Defendants had previously stated that Ozro had executed Terminal Disclaimers on June 4 and 5, 2001 and June 3, 2003 as well as a license on November 19, 2001. *See* Dkt. No. 198 at 8. However, the transfer of title on July 22, 2003 is consistent with Ozro’s actions prior to this time, as it held title while the other entities merely held a security interest.

### **III. CONCLUSION**

For the foregoing reasons, the Court **DENIES** Defendants’ Rule 12(b)(1) Motion to Dismiss for Lack of Standing (Dkt. No. 132).

Accordingly, the Court **DISMISSES** Ozro’s Motion to Intervene (Dkt. No. 146) as **MOOT**.

It is so **ORDERED**.

**SIGNED** this 4th day of June, 2008.

A handwritten signature in black ink, appearing to read "David Folsom". The signature is written in a cursive style with a horizontal line underneath it.

DAVID FOLSOM  
UNITED STATES DISTRICT JUDGE

# **EXHIBIT 26**

FORM 7  
(Rev. 12/94)

**FORM 7. STATEMENT OF FINANCIAL AFFAIRS**

**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA**

In Re: SITE TECHNOLOGIES, INC.  
(Name)

Case No. 99-50736-jrqcz  
(If known)

Debtor **FEB 18 2000**

**STATEMENT OF FINANCIAL AFFAIRS**

This statement is to be completed by every debtor. Spouses filing a joint petition may file a single statement on which the information for both spouses is combined. If the case is filed under chapter 12 or chapter 13, a married debtor must furnish information for both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed. An individual debtor engaged in business as a sole proprietor, partner, family farmer, or self-employed professional, should provide the information requested on this statement concerning all such activities as well as the individual's personal affairs.

Questions 1 - 15 are to be completed by all debtors. Debtors that are or have been in business, as defined below, also must complete Questions 16 - 21. If the answer to any question is "None," or the question is not applicable, mark the box labeled "None." If additional space is needed for the answer to any question, use and attach a separate sheet properly identified with the case name, case number (if known), and the number of the question.

**DEFINITIONS**

**"In business."** A debtor is "in business" for the purpose of this form if the debtor is a corporation or partnership. An individual debtor is "in business" for the purpose of this form if the debtor is or has been, within the two years immediately preceding the filing of this bankruptcy case, any of the following: an officer, director, managing executive, or person in control of a corporation; a partner, other than a limited partner, of a partnership; a sole proprietor or self-employed.

**"Insider."** The term "insider" includes but is not limited to: relatives of the debtor; general partners of the debtor and their relatives; corporations of which the debtor is an officer, director, or a person in control; officers, directors, and any person in control of a corporate debtor and their relatives; affiliates of the debtor and insiders of such affiliates; any managing agent of the debtor. 11 U.S.C. § 101(30).

**1. Income from employment or operation of business**

None

State the gross amount of income the debtor has received from employment, trade, or profession, or from operation of the debtor's business from the beginning of this calendar year to the date this case was commenced. State also the gross amounts received during the two years immediately preceding this calendar year. (A debtor that maintains, or has maintained, financial records on the basis of a fiscal rather than a calendar year may report fiscal year income. Identify the beginning and ending dates of the debtor's fiscal year.) If a joint petition is filed, state income for each spouse separately. (Married debtors filing under chapter 12 or chapter 13 must state income of both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

	AMOUNT	SOURCE (if more than one)
1999	-0-	
1998	\$305,747	
1997	\$1,827,000	

**ORIGINAL**

**EXHIBIT 26**

*Be 30*

10. Other transfers

None

a. List all other property, other than property transferred in the ordinary course of business or financial affairs of the debtor, transferred either absolutely or as security within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include transfers by either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF TRANSFEREE, RELATIONSHIP TO DEBTOR	DATE	AMOUNT	DESCRIBE PROPERTY TRANSFERRED AND VALUE RECEIVED
Savoir Technology Group, Inc. 254 Hacienda Avenue Campbell, CA 95008	12/28/98	\$150,000	Security interest in all assets
	1/29/99	\$ 50,000	
Daniel Egger 2027 W. Club Blvd. Durham, NC 27705	9/15/98	\$80,000	V-Search Technology

11. Closed financial accounts

None

List all financial accounts and instruments held in the name of the debtor or for the benefit of the debtor which were closed, sold, or otherwise transferred within one year immediately preceding the commencement of this case. Include checking, savings, or other financial accounts, certificates of deposit, or other instruments; shares and share accounts held in banks, credit unions, pension funds, cooperatives, associations, brokerage houses and other financial institutions. (Married debtors filing under chapter 12 or chapter 13 must include information concerning accounts or instruments held by or for either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF INSTITUTION	TYPE AND NUMBER OF ACCOUNT AND AMOUNT OF FINAL BALANCE	AMOUNT AND DATE OF SALE OR CLOSING
See Attached		

12. Safe deposit boxes

None

List each safe deposit or other box or depository in which the debtor has or had securities, cash, or other valuables within one year immediately preceding the commencement of this case. (Married debtors filing under chapter 12 or chapter 13 must include boxes or depositories of either or both spouses whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.)

NAME AND ADDRESS OF BANK OR OTHER DEPOSITORY	NAMES AND ADDRESSES OF THOSE WITH ACCESS TO THE BOX OR DEPOSITORY	DESCRIPTION OF CONTENTS	DATE OR TRANSFER OR SURRENDER, IF ANY

<sup>1</sup>(Insofar as Savoir's first financing statement was filed approximately 28 days after disbursing funds, Savoir's lien with respect to its initial advance is in bona fide dispute if the Debtor was insolvent in January 1999.)



# **EXHIBIT 27**

1 CRAIG M. PRIM (077820)  
2 JANICE M. MURRAY (099996)  
3 STEPHEN T. O'NEILL (115132)  
4 MURRAY & MURRAY  
5 A Professional Corporation  
6 3030 Hansen Way, Suite 200  
7 Palo Alto, CA 94304-1009  
8 (650) 852-9000

9 Attorneys for Debtor

**FILED**

APR 25 2000

KEENAN G. SASARY, CLERK  
United States Bankruptcy Court  
San Jose, California

10 UNITED STATES BANKRUPTCY COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION

13 In re:  
14 Site Technologies, Inc.,  
15 dba DeltaPoint, Inc.,

Case No. 99-50736-JRG-11  
Chapter 11

Debtor.

16 EIN No.: 77-0212760

17 **DEBTOR'S FIRST AMENDED PLAN OF REORGANIZATION**

18 Dated April 25, 2000

DEBTOR'S PLAN OF REORGANIZATION

MURRAY & MURRAY  
A Professional Corporation  
3030 Hansen Way, Suite 200  
Palo Alto, Ca. 94304-1009  
TELEPHONE (650) 852-9000 FACSIMILE (650) 852-9244  
E-MAIL mail@murraylaw.com

JMM:sb-08  
D:\DAILY\JMM\SITE\lan-reorg-pl-1.wpd

**COPY**

**EXHIBIT B**

EXHIBIT 27

1 Debtor subject to the terms and conditions of this Plan. All property of the Debtor, except as  
2 otherwise provided in this Plan, shall be free and clear of any liens, encumbrances, Claims of  
3 Creditors and Interests of Equity Security Holders.

4 **14.3 Discharge.** Due to the liquidating nature of this Plan and pursuant to  
5 **Bankruptcy Code 1141(d)(3), the entry of the Confirmation Order shall not act as a discharge of**  
6 **any debt of the Debtor that arose prior to Confirmation, except to the extent that such debt is paid**  
7 **under the Plan.**

8 **15. CHAPTER 11 POST-CONFIRMATION REPORTS AND FINAL DECREE**

9 15.1 **Post-Confirmation Reports.** Not later than 90 days after entry of the  
10 Confirmation Order, the Debtor shall file a post-Confirmation status report, the purpose of which  
11 is to explain the progress made toward substantial consummation of the confirmed Plan. The  
12 report shall include a statement of receipts and disbursements, with the ending cash balance, for  
13 the entire 90 day period. The report shall also include information sufficiently comprehensive to  
14 enable the Court to determine (1) whether the Confirmation Order has become final; (2) whether  
15 deposits, if any, required by the Plan have been distributed; (3) whether any property proposed by  
16 the Plan to be transferred has been transferred; (4) whether the Debtor under the Plan has  
17 assumed the business or the management of the property dealt with by the Plan; (5) whether the  
18 payments under the Plan have commenced; (6) whether accrued fees due to the U.S. Trustee  
19 under 28 U.S.C. §1930(a)(6) have been paid; and (7) whether all motions, contested matters and  
20 adversary proceedings have been finally resolved. Further reports must be filed every 90 days  
21 thereafter until entry of a final decree, unless otherwise ordered by the Court.

22 15.2 **Service of Reports.** A copy of each report shall be served, no later than the day  
23 upon which it is filed with the Court, upon the U.S. Trustee and such other persons or entities as  
24 may request such reports in writing by special notice filed with the Court.

25 15.3 **Final Decree.** After the Bankruptcy Estate is fully administered, the Debtor  
26 shall file an application for a final decree, and shall serve the application on the U.S. Trustee,  
27 together with a proposed final decree. The U.S. Trustee shall have twenty (20) days within  
28 which to object or otherwise comment upon the Court's entry of the final decree.

MURRAY & MURRAY  
A Professional Corporation  
3030 Hansen Way, Suite 200  
Palo Alto, Ca 94304-1009  
TELEPHONE (650) 852-9000 FACSIMILE (650) 852-9244  
E-MAIL mail@murraylaw.com

# **EXHIBIT 28**

**WRITTEN CONSENT OF  
THE SOLE STOCKHOLDER OF**

**Site/technologies/inc.**

July 11, 1997

Pursuant to Section 228 of the Delaware General Corporation Law and the Bylaws of Site/technologies/inc. ( the "Company"), the undersigned, being the sole stockholder of the Company, hereby consents to the adoption of the following resolutions by Written Consent without a meeting.

**Removal and Appointment of Directors**

**RESOLVED:** That all of the current directors of the Company are hereby removed from office, effective immediately, and the following individuals are elected to serve as directors of the Company: Jeffrey Ait, Joe Marengi, Patrick Grady, John Hummer, Don Witmer, Stephen Mendel.

The undersigned hereby directs that this Written Consent, which may be executed in counterparts, be filed with the minutes of the proceedings of the stockholders of the Company. This Written Consent is effective as of July 11, 1997.

DeltaPoint, Inc.

By: \_\_\_\_\_

  
Jeffrey F. Ait  
Chief Executive Officer

# EXHIBIT 29

ACTION BY WRITTEN CONSENT OF THE SOLE DIRECTOR AND STOCKHOLDER  
OF  
SITE TECHNOLOGIES, INC.

DECEMBER 21, 2000

In accordance with the California Corporations Code and the Bylaws of Site Technologies, Inc., a California corporation (the "Company"), the undersigned, being the sole stockholder and member of the Board of Directors of the Company, hereby takes the following actions and adopts the following resolutions by written consent without a meeting, effective for all purposes as of the date set forth above.

**Merger of site/technologies/inc. into the Company**

**RESOLVED**, that Site Technologies, Inc. (the "Company"), the sole stockholder, director and parent corporation of site/technologies/inc. merge, and hereby does merge into itself site/technologies/inc., and assumes all its obligations;

**RESOLVED FURTHER**, that the merger shall be effective upon the date of filing of the Certificate of Ownership and Merger attached hereto as Exhibit A with the Secretary of State of Delaware, and the Certificate of Ownership and Officer's Certificate, attached hereto as Exhibit B and Exhibit C respectively, with the Secretary of State of California; and

**RESOLVED FURTHER**, that the sole officer and director of the Company be and is hereby directed to make, execute and file in the name of an on behalf of the Company said Certificate of Ownership and Merger in the State of Delaware setting forth a copy of the resolutions to merge site technologies/inc. to assume its liabilities and obligations, and the date of adoption thereof, and to cause the same to be filed with the applicable Secretary of State and to do all acts and things whatsoever, whether within or without the State of Delaware, which may be in anyway necessary or proper to effect such merger.

**RESOLVED FURTHER**, that the sole officer and director of the Company be and is hereby directed to make, execute and file in the name of an on behalf of the Company said Certificate of Ownership and Officer's Certificate in the State of California setting forth a copy of the resolutions to merge site/technologies/inc. to assume its liabilities and obligations, and the date of adoption thereof, and to cause the same to be filed with the applicable Secretary of State and to do all acts and things

# **EXHIBIT 30**



A0557391

1632789 SURV

CERTIFICATE OF OWNERSHIP

MERGING

SITE/TECHNOLOGIES/INC.

INTO

SITE TECHNOLOGIES, INC.

**FILED** *ELB*  
In the Office of the Secretary of State  
of the State of California

DEC 29 2000

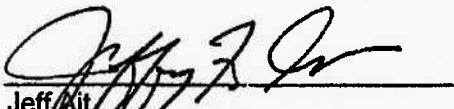
*Bill Jones*  
BILL JONES, Secretary of State

I, Jeff Ait, the Chief Executive Officer and Secretary of Site Technologies, Inc., do hereby certify:

1. That I am the Chief Executive Officer and Secretary of this corporation.
2. That this corporation is duly organized and existing under the laws of the State of California, the provisions of which permit a merger in the manner provided by Section 1110 of the California Corporations Code.
3. That this corporation owns 100 percent of the outstanding shares of site/technologies/inc. a corporation duly organized and existing under the laws of the State of Delaware, the provisions of which permit a merger in the manner provided by Section 1110 of the California Corporations Code.
4. That the following resolution was duly adopted and approved by the board of directors of this corporation:

**RESOLVED**, that Site Technologies, Inc. merge, and it hereby does merge into itself, site/technologies/inc., its subsidiary, and assumes all of its obligations pursuant to Section 1110 of the California Corporations Code.

The undersigned declares under penalty of perjury that the statements contained in the foregoing certificate are true of their own knowledge. Executed this twenty-first day of December, 2000.

  
Jeff Ait  
Chief Executive Officer and Secretary

# EXHIBIT 31

CERTIFICATE OF OWNERSHIP AND MERGER

MERGING

SITE/TECHNOLOGIES/INC.

INTO

SITE TECHNOLOGIES, INC.

\*\*\*\*\*

Site Technologies, Inc., a corporation organized and existing under the laws of California,

DOES HEREBY CERTIFY:

FIRST: That this corporation was incorporated on the first day of February, 1989, pursuant to the Corporations Code of the State of California, the provisions of which permit the merger of a subsidiary corporation of another state into a parent corporation organized and existing under the laws of said state.

SECOND: That this corporation owns all of the outstanding shares of the stock of site/technologies/inc. a corporation incorporated on the fifteenth day of June, 1992, pursuant to the General Corporations Law of the State of Delaware.

THIRD: That this corporation, by the following resolutions of its Sole Director, duly adopted by the written consent of its Sole Director, on the thirty-first day of July, 2000, determined to merge into itself said site/technologies/inc.:

**RESOLVED, that Site Technologies, Inc. merge, and it hereby does merge into itself site/technologies/inc. and assumes all of its obligations;**  
and

FURTHER RESOLVED, that the merger shall be effective upon filing with the Secretary of State of Delaware.

FURTHER RESOLVED, that the proper officer of this corporation be and he or she is hereby directed to make and execute a Certificate of Ownership and Merger setting forth a copy of the resolutions to merge said site/technologies/inc. and assume its liabilities and obligations, and the date of adoption thereof, and to cause the same to be filed with the Secretary of State and to do all acts and things whatsoever, whether within or without the State of Delaware, which may be in anywise necessary or proper to effect said merger.

# EXHIBIT 32

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

**SOFTWARE RIGHTS ARCHIVE, LLC**

**Plaintiff,**

v.

**GOOGLE INC., YAHOO! INC.,  
IAC SEARCH & MEDIA, INC., AOL LLC,  
and LYCOS, INC.**

**Defendants.**

§  
§  
§  
§  
§  
§  
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§  
§  
§

**Civil Action No. 2:07-cv-511-TJW**

**JURY TRIAL DEMANDED**

**DECLARATION OF J. CHRISTOPHER LYNCH**

I, J. Christopher Lynch, under penalty of perjury, hereby make the following declaration. All facts set forth herein are true and correct, and I make this declaration based upon my personal knowledge and upon review of available records.

1. I am a partner at Wyrick Robbins Yates & Ponton LLP and my practice is primarily outside general counsel representation of technology-based businesses. I assisted Daniel Egger in aspects of the 1998 acquisition of the V-Search Technology and patents from Site Technologies, Inc. (the "V-Search Acquisition") and in the subsequent filing of an assignment in 2005 (the "2005 Assignment"). A true and correct copy of the 2005 Assignment is attached hereto as Exhibit A.

2. I understand that certain defendants in the *Software Rights Archive LLC v. Google, et al.*, case pending in the Eastern District of Texas have accused Daniel Egger of fraudulently filing the 2005 Assignment for the express purpose of correcting a defect with respect to the name of the party conveying the patents he acquired in the V-Search Acquisition. This allegation is based upon a number of factual inaccuracies.

3. I was the attorney who supervised my staff in the preparation of, and who advised Daniel Egger to file, the 2005 Assignment. The purpose of filing the 2005 Assignment was not to correct any defect in the name of the party on the instrument. I did not understand there to be any distinction between the entity from which Daniel Egger purchased the patents in question ("Site Technologies, Inc.") and "Site/Technologies/Inc. at the time of the 2005 assignment. The first time I heard of this issue was after the filing of the Defendants' Motion to Dismiss. Nor did Daniel Egger raise this issue with me in 2005 or anytime prior to the defendants' allegation. Daniel Egger never raised any issue with respect to the validity of the 1998 Bill of Sale or assignments with me and never questioned the validity of his chain of title.

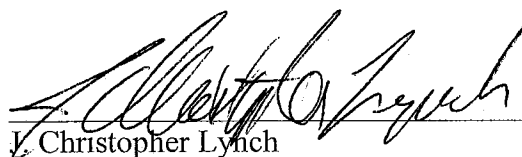
4. The 2005 Assignment was filed to replace the then-misplaced 1998 Bill of Sale and the 1998 Assignment used in the V-Search Acquisition. In or prior to October 2004, Daniel Egger had asked me to assign the patents to an entity named Software Rights Archive, Inc. When my staff reviewed the records at the Patent and Trademark Office (the "PTO"), we discovered that no previous assignment had yet been filed. I did not have a copy of the 1998 Bill of Sale or 1998 Assignment, so I asked Daniel Egger to locate them. He told me that he could not locate them. I advised him to file a replacement assignment reflecting the previous transaction. I then supervised my staff in the preparation of the 2005 Assignment and Daniel Egger executed it without further revision. I understand that Daniel Egger later found the missing 1998 Bill of Sale and the 1998 Assignment and filed them with the Patent and Trademark Office.

5. My understanding is that the Defendants allege that Daniel Egger intentionally represented that he was a president of Site/Technologies/Inc. and filed the 2005 Assignment to mislead others as to his ownership rights. I had advised Daniel Egger to sign as the president of

Site/Technologies/Inc. The basis for such advice was that, in 2005, the Site entities were no longer operating companies and a former officer or other agent needed to sign the 2005 Assignment. It was my belief that Daniel Egger retained a right to execute documents related to winding up past business transactions because he was a former president of Site/Technologies/Inc. Because we were merely attempting to replicate the lost 1998 Assignment that we understood had already been made, it was my understanding that these actions were fairly within the winding up authority of the companies, which were no longer operating.

6. I was not aware of any issue with respect to whether the 1998 Assignment properly conveyed legal title to Daniel Egger. I understood it was a valid transfer. My recommendation to make Site/Technologies/Inc. a party to the 2005 Assignment was driven by Daniel Egger's status as a former officer and not an attempt to correct any error with respect to the name of the party on the 1998 Assignment.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

  
Christopher Lynch

Executed on August 19, 2008

# EXHIBIT 33



## SITE DISCLOSURE SCHEDULE

This Site Disclosure Schedule, dated July 11, 1997, is made and given pursuant to Article II of the Stock Exchange Agreement between DeltaPoint, Inc. ("DeltaPoint") and SiteTechnologies, Inc. ("Site") dated July 11, 1997 and the Principal Site Stockholders and Other Site Stockholders (the "Agreement").

**Section 2.2(a).** A schedule is attached as Schedule 2.2(a).

**Section 2.2(b).** Gordon Link, a holder of options to purchase 10,000 shares of Site Common Stock outstanding just prior to the closing date of this transaction has not yet signed the release in the form attached hereto as Schedule 2.2(b) agreeing to terminate his option in exchange for \$50. Site agrees to use its best efforts to obtain the release as soon as possible after the close from Mr. Link. Site has received verbal agreement from Mr. Link that he will sign such a release.

**Section 2.5.** A list of Site's material assets and liabilities as of the date hereof is included as Schedule 2.5.

**Section 2.4.** Sallie Van Dyke DeGolia, a stockholder of 2,500 shares of Series A Preferred Stock of Site and 450 shares of Series B Preferred Stock of Site, has not approved the Stock Exchange and related transactions. Site agrees to use its best efforts to obtain such approval as soon as possible after the close from Ms. DeGolia.

The following agreements require the prior written consent of the other party to such agreement prior to the assignment of such agreement to DeltaPoint at the closing of the Stock Exchange: (1) Interpath - see Section 2.11(ix); and (2) BellSouth - See Section 2.11(ix). Site has obtained written consent to assignment for each of these agreements.

**Section 2.7(a)(i).** In February 1997, Site applied for automatic extensions of time to file its 1996 Federal income tax return, and its North Carolina State corporation franchise and income tax returns. Copies of these applications are included as Schedules 2.7(a)(ii)-A and 2.7(a)(ii)-B. These returns have not yet been filed.

**Section 2.7(a)(iii).** In May 1997, Site received a letter from the North Carolina Department of Revenue stating that its application for an extension of time to file its State tax return for 1996 has been denied, due to the fact that the required tax due was not paid with the extension request. A copy of this letter is included as Schedule 2.7(a)(ii). Site's 1996 State income tax liability does not exceed \$750, including penalties and interest. Site has not yet paid this amount.

**Section 2.7(a)(v).** Site has a North Carolina State income tax liability not exceeding \$750. See Section 2.7(a)(iii).

Site/Technologies/Inc.

Disclosure Schedule B: Patents

<u>Invention</u>	<u>Application No./ Registration No.</u>	<u>Country</u>
Method and Apparatus for Indexing, Searching and Displaying Data	5,544,352	United States
	US94/06705	Patent Cooperation Treaty
	2,164,954	Canada
	94 9,212,955	European Patent Office (Germany) (France) (Great Britain)
Method and Apparatus for Indexing, Searching and Displaying Data Continuation In Part	08/649,304	United States

# **EXHIBIT 34**

1 CRAIG M. PRIM (077820)  
JANICE M. MURRAY (099996)  
2 STEPHEN T. O'NEILL (115132)  
MURRAY & MURRAY  
3 A Professional Corporation  
3030 Hansen Way, Suite 200  
4 Palo Alto, CA 94304-1009  
(650) 852-9000

5 Attorneys for Debtor

**FILED**

APR 25 2000 gk

KEENAN G. CASADY, CLERK  
United States Bankruptcy Court  
San Jose, California

8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 In re: ) Case No. 99-50736-JRG-11  
12 Site Technologies, Inc., ) Chapter 11  
13 dba DeltaPoint, Inc. )  
14 Debtor. )  
15 EIN No.: 77-0212760 )

18 **DEBTOR'S FIRST AMENDED DISCLOSURE STATEMENT**

19 Dated April 25, 2000

MURRAY & MURRAY  
A Professional Corporation  
3030 Hansen Way, Suite 200  
Palo Alto, Ca 94304-1009  
TELEPHONE (650) 852-9000 FACSIMILE (650) 852-9244  
E-MAIL mail@murraylaw.com

154

ORIGINAL

1 1997, and in November 1997 the Company acquired technology to develop SiteMaster 4.0 which  
2 was released in March 1998. In March 1998 the Company also released QuickSite 3.0, and in  
3 May 1998 the Company released the enterprise edition of the SiteSweeper product.

4 5.5 In June 1997, as part of the Company's continuing strategy to focus its  
5 development, sales and marketing efforts on Internet software products, the Company sold assets  
6 related to its Delta Graph software product. With the DeltaGraph sale, the Company's future  
7 operating results depended on the successful development, introduction and commercial  
8 acceptance of the Company's Internet software products. In September 1998, the Company also  
9 sold its V-Search technology and related patents. In addition to further focusing the Company on  
10 Internet software products, these sales provided the Company with much needed liquidity.

11 5.6 The Company financed its operations primarily through private and public sales  
12 of equity securities, borrowings under a term loan, the private sale of debt securities and the sale  
13 of the DeltaGraph product line, and other limited asset sales. Since its inception, the Company  
14 has received approximately \$24 million in proceeds from private sales of stock, convertible debt  
15 and from the Company's two public offerings of public stock. The Company incurred net losses  
16 of \$8,159,000 for the year ended December 31, 1997 and \$2,497,000 for the nine months ended  
17 September 30, 1998, and had an accumulated deficit of \$24,334,000 as of September 30, 1998.

18 5.7 In light of its diminishing cash balances (due primarily to limited revenues from  
19 its newly introduced products), in May and June 1998, the Debtor significantly reduced its head  
20 count from 33 to 11 and significantly reduced its expenses and operations in the areas of sales  
21 and marketing. In order to conserve its limited remaining cash balances, the Debtor sharply  
22 curtailed operational activities since June 1998 by, among other things, further reducing its non-  
23 technology head count (eliminating sales and marketing personnel) and limiting related  
24 marketing expenditures. In December 1998, the Debtor shut down operations and laid off most  
25 of its remaining employees.

26 5.8 During the twelve (12) months preceding the Petition Date, the Debtor focused  
27 its efforts on evaluating its strategic options, including a sale of the Debtor to a third party or a  
28 sale of the Debtor's assets. When it became clear that the Debtor would be unable to raise

# EXHIBIT 35

Schedule F -- Creditors holding unsecured nonpriority claims

Creditors Name and Address	Codebtor	Husband Wife	Date claim was incurred and consideration	contingent	un- liquidated	disputed	Amount of claim
1 9 to 5 Office Coffee Service PO Box 66184 Scotts Valley, CA 95067 Acct No --None			Trade Payable for Coffee Supplies November and December 1998				\$230.07
2 Alliant Partners 435 Tasso Street Palo Alto, CA 94301				X			Unknown
3 Alom Technologies 48921 Warm Springs Blvd Fremont, CA 94539 Acct No --113			Trade Payable for Inventory Storage November 1998				\$1,191.00
4 Andover Advanced Technologies 532 Great Road Acton, MA 01720 Acct No --None			Trade Payable for Internet Advertising March 1998				\$4,000.00
5 AST StockPlan, Inc. 40 Wall Street New York, NY 10005 Acct No --Sitet			Trade Payable for Stock Plan Administration May 1997 - Oct 1998			X	\$7,814.79
6 Bowne of Los Angeles, Inc. Department 0197 Los Angeles, CA 90084 Acct No --BLA20000956			Trade Payable for Edgar Filing December 1998				\$859.00
7 Brass Key Locksmith 220-A Mt. Hermon Rd. Scotts Valley, CA 95066 Acct No --None			Trade Payable for Keying Building December 1997				\$321.25

8 BusinessWire 44 Montgomery St, Ste 2185 San Francisco, CA 94104 Acct No --100-4137	Trade Payable for Press Releases April 1998 - January 1999	\$3,829.55
9 Cellular One -- Santa Cruz 3949 Research Park Ct, Ste 100 Soquel, CA 95073 Acct No --004-00308087	Trade Payable for Cellular Phone Access December 1998 - January 1999	\$264.28
10 Cellular One -- Salinas/Mont PO Box 7598 San Francisco, CA 94120 Acct No --20184099	Trade Payable for Cellular Phone Access December 1998 - January 1999	\$237.86
11 Comerica Visa PO Box 55000 Detroit, MI 48255 Acct No --4028979303018043 Acct No --4028979303018035	Corporate Credit Card	\$2,730.19
12 Comerica Visa Bankcard Center Fargo, ND 58125 Acct No --4251240005649595 Acct No --4251240005414057	Corporate Credit Card	\$37,955.51
13 Courier Companies, Inc. 100 Alpine Center Stouhngton, MA 02072 Acct No --17480	Trade Payable for Manual Printing for Inventory March 1997 - May 1997	\$28,553.59
14 Davis & Schroeder PO Box 3080 Monterey, CA 93940 Acct No --2455	Trade Payable for Legal Work for Trademark Filings October 1998 - January 1999	\$1,087.22



15 Dean Witter Reynolds 5690 W Cypress St Tampa, FL 33607 Acct No --AMZ35	Trade Payable for Shareholder Mailing May 1998	\$90.28
16 DFS Acceptance PO Box 4125 Carol Stream, IL 60197 Acct No --001-4667702-001	Lease Payments for two Dell Computers November 1998 - January 1999	\$689.01
17 Dorsey & Whitney PO Box 1680 Minneapolis, MN 55480 Acct No --446987	Legal Work for Patents and Trademark Filings March 1998 - December 1998	\$14,111.43
18 FautLine Corp. 380 El Pueblo Rd Scotts Valley, CA 95066	Deposit for Sublease	\$3,174.95
19 Federal Express 2650 Thousand Oaks Blvd Memphis, TN 38118 Acct No --11047-0029-2	Trade Payable for Shipping Charges December 1998 - January 1999	\$569.60
20 First Alarm 111 Estates Drive Seacliff, CA 95003 Acct No --100234-0000	Lease Payment for Alarm System November 1998 - March 1999	\$1,659.25
21 First Union National Bank 7207 Chapman Highway Knoxville, TN 38118 Acct No --	Bank Charges September 1997	\$29.00
22 GE Capitol PO Box 31001 0271 Pasadena, CA 91110 Acct No --90131707279	Lease Payment for Copy & Fax Machines November 1998 - January 1999	\$2,531.50

23 Global Technologies 155 Snowberry Way Dillon, CO 80435 Acct No -- None	Royalty Payment for QuickSite December 1998 - January 1999	\$1,006.49
24 Greg Herman Public Relations 726 Elizabeth St. San Francisco, CA 94114 Acct No --ST	Trade Payable for Public Relations Work May 1998 - June 1998	\$9,321.00
25 GTE/BBN PO Box 11299 Boston, MA 02211 Acct No --7037	Trade Payable for Web Hosting Service November 1998 - January 1999	\$3,500.00
26 Hold Plus 57400 S Morse Rd Warren, OR 97053 Acct No --None	Trade Payable for on hold message system June 1998 - December 1998	\$339.05
27 Interpath PO Box 12800 Raleigh, NC 27605 Acct No --	Trade Payable for Internet Svc in North Carolina April 1998	\$400.00
28 ITT Hartford PO Box 150406 Hartford, CT 06115 Acct No --2205795198A	Workers Compensation Payment for North Carolina October 1998 - December 1998	\$229.39
29 Kemper Insurance Companies PO Box 419495 Kansas City, KS 64141 Acct No --SITE	Workers Compensation Mid Term Audit November 1998	\$199.00

X

<p>30 Level 3 Communications          Department Number 182          Denver, CO 80291          Acct No --None</p>	<p>Trade Payable for T1 Internet Access          November 1998 - January 1999</p>	<p>\$5,685.00</p>
<p>31 Luce Press Clippings, Inc.          PO Box 379          Topeka, KS 66601          Acct No --A312</p>	<p>Trade Payable for Press Clippings          September 1998 - November 1998</p>	<p>\$487.65</p>
<p>32 Masterlink          353 Bel Marin Keys Blvd          Novato, CA 94949          Acct No --16</p>	<p>Trade Payable for Internet Link Download Site          October 1998 - January 1999</p>	<p>\$1,200.00</p>
<p>33 Mecklermedia          20 Ketchum St.          Westport, CT 06880          Acct No --98565</p>	<p>Trade Payable for Advertising &amp; Tradeshow Booth Space          January 1998 - October 1998</p>	<p>\$55,232.50  X</p>
<p>34 Merrill Corporation          CM 9638          St Paul, MN 55170          Acct No --None</p>	<p>Trade Payable for Financial Printing          June 1996 - January 1999</p>	<p>\$277,000.00  X</p>
<p>35 Micro Warehouse Inc          PO Box 5840          Boston, MA 02206          Acct No --474</p>	<p>Trade Payable for Catalog Advertising          April 1997 - July 1997</p>	<p>\$43,867.00</p>
<p>36 Names in the News, Inc.          411 Theodore Framd Ave          Rye, NY 10580          Acct No --None</p>	<p>Trade Payable for Public Relations Activities          October 1997</p>	<p>\$1,310.00</p>
<p>37 O'Neil Relocation          PO Box 2600          Long Beach, CA 90801</p>	<p>Trade Payable for Company Move          October 1997 - November 1997</p>	<p>\$5,839.56  X</p>

Acct No --6982			
38 Office Dynamics	Trade Payable for Copy Machine Maintenance		\$158.75
94 Hangar Way	November 1998 - December 1998		
Watsonville, CA 95076			
Acct No --257794			
39 Office Solutions	Trade Payable for Toner		\$106.74
395 Del Monte Center #215	December 1998		
Monterey, CA 93940			
Acct No --11891852			
40 Absolute Transportation	Trade Payable for Moving Copy Machine		\$400.00
PO Box 13477	November 1998		
Research Triangle Park, NC 27709			
Acct No --95			
41 Western Management Group	Trade Payable for Compensation Survey		\$450.45
200 South Santa Cruz Ave	February 1998	X	
Los Gatos, CA 95030			
Acct No --9703			
42 Pacific Bell	Trade Payable for Phone Service		\$3,675.14
Payment Center	November 1998 - January 1999		
Sacramento, CA 95887			
Acct No --408-648-1346			
Acct No --831-435-8750			
Acct No --831-438-8750			
Acct No --831-430-0706			
Acct No --231-284-8613			
Acct No --408-461-3020			
43 Pacific West Water	Trade Payable for Water Cooler Service		\$514.14
PO Box GH	January 1998 - January 1999		
Pacific Grove, CA 93950			
Acct No --None			
44 Pagliaro Kuhlman	Trade Payable for Advertising Consulting		\$12,111.81

333 W. San Carlos San Jose, CA 95110 Acct No --22	April 1998 - May 1998	
45 Patricia Seybold Group 148 State St, Ste 700 Boston, MA 02109 Acct No --3935	Trade Payable for Research Report April 1998	\$2,000.00
46 Pitney Bowes Credit Corp PO Box 85460 Louisville, KY 40285 Acct No --7567639	Lease Payment for Mailing Equipment July 1998 - January 1999	\$8,894.32
47 Press Access 120 Boylston Street Boston, MA 02116 Acct No --None	Trade Payable for Public Relations Work April 1998	\$1,549.16
48 Price Waterhouse LLP PO Box 61000 San Francisco, CA 94161 Acct No --20602-588-4	Trade Payable for Tax Advise November 1998	\$1,050.00
49 PrintNet 445 Reservation Rd, #A Marina, CA 93933 Acct No --SITE	Trade Payable for Label and Invoice Printing May 1998	\$2,381.22
50 Qwest PO Box 85660 Louisville, KY 40285 Acct No --34672072	Trade Payable for Long Distance Phone Service November 1998 - January 1999	\$2,792.30
51 RIA Group PO Box 6159 Carol Stream, IL 60197 Acct No --47331042-001	Trade Payable for Accounting Information September 1998 - November 1998	\$348.00

X

X

52 Roadway Package System, Inc Dept LA 21095 Pasadena, CA 91185 Acct No --	Trade Payable for Shipping Services January 1999	\$8.00
53 Skytel PO Box 3887 Jackson, MS 39207 Acct No --2185219	Trade Payable for Pager Service January 1999	\$177.25
54 Sprint PO Box 740503 Atlanta, GA 30374 Acct No --None	Trade Payable for Phone Service October 1998 - November 1998	\$30.23
55 Sprint Telimagine, Inc. PO Box 6167 Carol Stream, IL 60197 Acct No --17204561	Lease Payment for Voicemail System December 1998 - January 1998	\$160.48
56 U.S. Stock Transfer Corp 1745 Gardena Ave, 2nd Fl Glendale, CA 91204 Acct No --898	Trade Payable for Stock Transfer Agent Fees December 1998	\$456.49
57 United Parcel Service PO Box 505820 The Lakes, NV 88905 Acct No --X46-62W	Trade Payable for Shipping Service December 1998 - January 1999	\$170.21
58 Universal Building Service 3120 Pierce Street Richmond, CA 94804 Acct No --70933	Trade Payable for Janitorial Service November 1998 - January 1999	\$2,534.29
59 William French 155 Snowberry Way	Expense Report January 1999	\$1,448.66

Dillon, CO 80435 Acct No - None	Legal Services May 1998 - January 1999 (balance is a forecast )	\$152,247.61
60 Wilson, Sonsini, Goodrich & Rosati 650 Page Mill Rd Palo Alto, CA 94304 Acct No --19232	Trade Payable for Advertising May 1998	\$6,383.15
61 Ziff Davis Publishing Dept LA 21975 Pasadena, CA 91185 Acct No --052990000	Lease Payment for Expired Property Lease July 1998 - September 1998	\$51,535.50
62 Owens Financial Group, Inc. 2221 Olympic Blvd. Walnut Creek, CA 94595 Acct No --None	Lease Payment for Property Lease December 1998 \$18,383 Deposit held by Carbonero	
63 Carbonero Creek Associates PO Box 670 Cupertino, CA 95015 Acct No --None	Royalty Payment for WebAnimator License Agrmt September 1997 - January 1999	\$1,622.60
64 Knowledge Vision 268 Patterson Dr. Myrtle Beach, SC 29572 Acct No -- None	Royalty Payment for SiteMaster October 1998 - January 1999	\$314.00
65 Inlet, Inc. 818 Dows Road SE Cedar Rapids, IA 52403 Acct No -- None	Royalty Payment for WebAnimator Sales May 1998 - December 1998	\$13.00
66 Altura Software 510 Lighthouse Ave Pacific Grove, CA 93950 Acct No -- None		

67 Site/Technologies/Inc.  
380 El Pueblo Rd.  
Scotts Valley, CA 95066  
Acct No - None

Royalty Payment for Site Sweeper Product

\$7,129.93  
\$778,209.40



In re SITE TECHNOLOGIES, INC.  
Debtor

Case No. 99-50736-jrgcz  
(if known)

### SCHEDULE G - EXECUTORY CONTRACTS AND UNEXPIRED LEASES

Describe all executory contracts of any nature and all unexpired leases of real or personal property. Include any timeshare interests. State nature of debtor's interest in contract, i.e., " Purchaser, " " Agent, " etc. State whether debtor is the lessor or lessee of a lease. Provide the names and complete mailing addresses of all other parties to each lease or contract described.

**NOTE: A party listed on this schedule will not receive notice of the filing of this case unless the party is also scheduled in the appropriate schedule of creditors.**

Check this box if debtor has no executory contracts or unexpired leases.

NAME AND MAILING ADDRESS, INCLUDING ZIP CODE, OF OTHER PARTIES TO LEASE OR CONTRACT	DESCRIPTION OF CONTRACT OR LEASE AND NATURE OF DEBTOR'S INTEREST. STATE WHETHER LEASE IS FOR NONRESIDENTIAL REAL PROPERTY. STATE CONTRACT NUMBER OF ANY GOVERNMENT CONTRACT
See Attached	

Schedule G -- Executory Contracts and Unexpired Leases

Name & address	Description of Contract	Nature of Debtor Interest
1 Pitney Bowes Credit Corp PO Box 85460 Louisville, KY 40285	Mail Equipment Lease	Lessee
2 Ge Capital PO Box 3083 Cedar Rapids, IA 52406	Fax & Copy Machine Lease	Lessee
3 Sprint Telimaging PO Box 6167 Carol Stream, IL 60197	Voicemail System Lease	Lessee
4 DFS Acceptance PO Box 99200 Chicago, IL 60693	Dell Computer Leases (2 machines)	Lessee
5 First Alarm Security System 1111 Estates Drive Seacliff, CA 95003	Security System	Lessee
6 Jeffrey F. Ait 337 Kingsbury Dr. Aptos, CA 95003	Employment Agreement	Employer
7 Sharon L. Fugitt 1268 Adobe Lane Pacific Grove, CA 93950	Employment Agreement	Employer
8 Carbonero Creek Associates PO Box 670 Cupertino, CA 95015	Non Residential Real Property Lease	Lessee

<p>9 FaultLine Corp. 380 El Pueblo Rd Scotts Valley, CA 95066</p>	<p>Non Residential Real Property Sub Lease</p>	<p>Sub Lessor</p>
<p>10 Global Technologies William French 155 Snowberry Lane Dillon, CO 90435</p>	<p>Assignment Agreement for QuickSite Product Line</p>	<p>Purchaser</p>
<p>11 Global Technologies William French 155 Snowberry Lane Dillon, CO 90435</p>	<p>Assingment Agreement for WebTools</p>	<p>Purchaser</p>
<p>12 Unisys Corporation General Patent &amp; Technology Council PO Box 500 Blue Bell, PA 19424</p>	<p>GIF-LZW Software Patent License Agreement</p>	<p>Purchaser</p>
<p>13 Molly Penguin Todd C. Wilson 1569 Meadow Road Columbus, OH 43212</p>	<p>Map This License Agreement</p>	<p>Purchaser</p>
<p>14 Omnicon Software Publishing Corp. John Stolte 14 High Street Cartersville, VA 23027</p>	<p>Omnicon Spell Checker License Agreement</p>	<p>Purchaser</p>
<p>15 FairCom Corporation 4006 West Broadway Columbia, MO 65203</p>	<p>C-Tree Plus License Agreement Serial# 472432</p>	<p>Purchaser</p>
<p>16 McLeodUSA Telecommunications Svcs Mr. Randy Rings</p>	<p>Inlet Divestiture Coporation Acquisition 11/97</p>	<p>Purchaser</p>

Atlanta, GA 30305

24 International Business Machines Corp.

Peter Schwarz  
150 Kettleown Road MS 303  
Southbury, CT 06488

Software License Agreement #L96380

Seller

25 Internet Direct

Paul Kraajvanger  
544 Jersey Street #1  
San Francisco, CA 94114

Term Sheet - Distribution Agreement

Seller

26 MacMillan Digital Publishing USA

Richard Swadley  
201 W. 103rd Street  
Indianapolis, IN 46290

Distribution Agreement

Seller

27 McAfee Associates, Inc.

Vice President Electronic Commerce  
2710 Walsh Avenue  
Santa Clara, CA 95051

Distribution Agreement

Seller

28 NetNation Communication

Joseph Kibur  
322-425 Carrall St.  
Vancouver, BC V6B 6E3

Binding Letter of Intent --Electronic Distribution Agrmt

Joint Agreement

29 Netcom, Inc.

Scott Brothers  
1607 Luna Road  
Dallas, TX

Partnership Agreement

Joint Agreement

30 Programmers Paradise, Inc.

1163 Shrewsbury Ave  
Shrewsbury, NJ 07702

Dealer Agreement

Seller

6400 C. Street SW  
Cedar Rapids, IA 52406

17 Anaware Software, Inc.  
Mr. Paul Summers  
1300 Bristol North, Ste 220  
Newport Beach, CA 92660  
Electronic & Package Goods Distribution Agrmt  
Seller

18 CNET Direct, Inc.  
1001SW Fifth St, Ste 1100  
Portland, OR 97204  
Software Commerce Agreement  
Seller

19 CyberSource Corporation  
Blake Burke  
1050 Chestnut Street Ste 201  
Menlo Park, CA 94025  
Electronic Software Reseller Agreement  
Seller

20 Data Arts  
Carol Bowlin  
50 San Benito  
Novato, CA 94945  
Binding Letter of Intent --Electronic Distribution Agrmt  
Joint Agreement

21 Eclipse marketing, Inc.  
Pat Koberlein  
16104 SW 22nd Ave  
Portland, OR 97224  
Binding Letter of Intent --Electronic Distribution Agrmt  
Joint Agreement

22 Global Entrepreneurs Net  
Mr. Helmann  
100 North Tampa St  
Tampa, FL 33602  
Binding Letter of Intent --Electronic Distribution Agrmt  
Joint Agreement

23 HomeCom  
Mike Hall  
3535 Peldimont Rd.  
Letter of Intent -- Partnership Agreement  
Joint Agreement

<p>31 System Connect  Mr. St. Arnaud  601 East 66th St, Ste 201  Savannah, GA 31405</p>	<p>Binding Letter of Intent --Electronic Distribution Agrmt</p>	<p>Joint Agreement</p>
<p>32 TestDrive Corporation  1397 Charleston Road  Mountain View, CA 94043</p>	<p>Electronic Distribution Services Agreement</p>	<p>Seller</p>
<p>33 Tidal Wave Communications, Inc.  Mr. Brian Bird  678 Jenny Leigh Ct.  Centerville, VA 22020</p>	<p>Binding Letter of Intent --Electronic Distribution Agrmt</p>	<p>Joint Agreement</p>
<p>34 Total-Access Communications  Mr. Darwish  2950 Thousand Oaks Blvd.  San Antonio, TX 78247</p>	<p>Binding Letter of Intent --Electronic Distribution Agrmt</p>	<p>Joint Agreement</p>
<p>35 VisionTeq, Inc.  Mr. Rothken  77 Mark Dr. Ste 4  San Rafael, CA 94903</p>	<p>Binding Letter of Intent --Electronic Distribution Agrmt</p>	<p>Joint Agreement</p>
<p>36 Mr. William G. Pryor  22610 Gallant Fox Road  Monterey, CA 93940</p>	<p>Software License Agreement</p>	<p>Licensor</p>
<p>37 Knowledge Vision  268 Patterson Dr.  Myrtle Beach, SC 29572</p>	<p>Asset Purchase Agreement - WebAnimator Technology  November 1995</p>	<p>Purchaser</p>
<p>38 Site/Technologies/Inc.  380 El Pueblo Rd.</p>	<p>Stock Exchange Agreement to purchase  site/technologies/inc. corporation in July 1997</p>	<p>Purchaser</p>

Scotts Valley, CA 95066

39 SPSS, Inc.

Asset Purchase Agreement - Deltagraph Product Line  
Sale of Deltagraph product line in June 1997

Seller

40 Daniel Egger  
2027 West Club Blvd  
Durham, NC 27705

Asset Purchase Agreement - V Search Technology  
September 1998

Seller

41 Altura Software  
510 Lighthouse, Ave  
Pacific Grove, CA 93950

Porting and Royalty License Agreement  
Webanimator for Windows Product Line

Purchaser

In re SITE TECHNOLOGIES, INC.  
Debtor

Case No. 99-50736-jrgcz  
(if known)

### SCHEDULE H - CODEBTORS

Provide the information requested concerning any person or entity, other than a spouse in a joint case, that is also liable on any debts listed debtor in the schedules of creditors. Include all guarantors and co-signers. In community property states, a married debtor not filing a joint should report the name and address of the nondebtor spouse on this schedule. Include all names used by the nondebtor spouse during the six immediately preceding the commencement of this case.

Check this box if debtor has no codebtors.

NAME AND ADDRESS OF CODEBTOR	NAME AND ADDRESS OF CREDITOR



In re SITE TECHNOLOGIES, INC.  
Debtor

Case No. 99-50736-jrcz  
(if known)

### DECLARATION CONCERNING DEBTOR'S SCHEDULES

### DECLARATION UNDER PENALTY OF PERJURY BY INDIVIDUAL DEBTOR

I declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of \_\_\_\_\_  
(Total shown on summary page plus 1.)  
sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Date \_\_\_\_\_

Signature: \_\_\_\_\_  
Debtor

Date \_\_\_\_\_

Signature: \_\_\_\_\_  
(Joint Debtor, if any)

(If joint case, both spouses must sign.)

### CERTIFICATION AND SIGNATURE OF NON-ATTORNEY BANKRUPTCY PETITION PREPARER (See 11 U.S.C. § 110)

I certify that I am a bankruptcy petition preparer as defined in 11 U.S.C. § 110, that I prepared this document for compensation, and that I have provided the debtor with a copy of this document.

Printed or Typed Name of Bankruptcy Petition Preparer \_\_\_\_\_

Social Security No. \_\_\_\_\_

Address \_\_\_\_\_

Names and Social Security numbers of all other individuals who prepared or assisted in preparing this document:

If more than one person prepared this document, attach additional signed sheets conforming to the appropriate Official Form for each person.

X \_\_\_\_\_  
Signature of Bankruptcy Petition Preparer

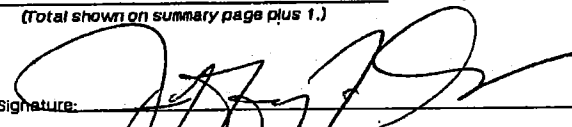
\_\_\_\_\_ Date

A bankruptcy petition preparer's failure to comply with the provisions of title 11 and the Federal Rules of Bankruptcy Procedure may result in fines or imprisonment or both.  
11 U.S.C. § 110; 18 U.S.C. § 156.

### DECLARATION UNDER PENALTY OF PERJURY ON BEHALF OF A CORPORATION OR PARTNERSHIP

I, the CEO (the president or other officer or an authorized agent of the corporation or a member or an authorized agent of the partnership) of the corporation (corporation or partnership) named as debtor in this case, declare under penalty of perjury that I have read the foregoing summary and schedules, consisting of 33 sheets, and that they are true and correct to the best of my knowledge, information, and belief.  
(Total shown on summary page plus 1.)

Date February 18, 1999

Signature:   
Jeffrey F. Ait, CEO  
(Print or type name of individual signing on behalf of debtor.)

(An individual signing on behalf of a partnership or corporation must indicate position or relationship to debtor.)

# EXHIBIT 36

1 CRAIG M. PRIM (077820)  
2 JANICE M. MURRAY (099996)  
3 STEPHEN T. O'NEILL (115132)  
4 MURRAY & MURRAY  
5 A Professional Corporation  
6 3030 Hansen Way, Suite 200  
7 Palo Alto, CA 94304-1009  
8 (650) 852-9000

9 Attorneys for Debtor

FILED

FEB 11 1999

RECEIVED CLERK  
United States Bankruptcy Court  
San Jose, California

10 UNITED STATES BANKRUPTCY COURT  
11 NORTHERN DISTRICT OF CALIFORNIA  
12 SAN JOSE DIVISION

13 In re: ) Case No. 99-50736-JRG-11  
14 Site Technologies, Inc., ) Chapter 11  
15 dba DeltaPoint, Inc., )  
16 Debtor. )  
17 Date: March 9, 1999  
18 Time: 2:00 p.m.  
19 Place: Room 3020  
20 Judge: Hon. James R. Grube  
21 EIN No.: 77-0212760

22 **NOTICE OF MOTION AND MOTION TO SELL ASSETS  
23 OUT OF THE ORDINARY COURSE OF BUSINESS (11 U.S.C. § 363(b))  
24 AND FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES  
25 AND INTERESTS (11 U.S.C. § 363(f))**

26 Purchaser: StarBase Corporation

27 Affected Lien Claimants: Savoir Technology Group, Inc. and State Board of Equalization

28 TO: THE HONORABLE JAMES R. GRUBE, UNITED STATES BANKRUPTCY  
JUDGE

COMES NOW Site Technologies, Inc., the Debtor and Debtor-In-Possession (the  
"Debtor") who hereby moves for an Order authorizing the Debtor to sell its core technology and  
related assets, as described herein, other than in the ordinary course of business and free and  
clear of liens.

MURRAY & MURRAY  
A Professional Corporation  
3030 Hansen Way, Suite 200  
Palo Alto, Ca 94304-1009  
TELEPHONE (650) 852-9000 FACSIMILE (650) 852-9244  
E-MAIL mail@murraylaw.com

MURRAY & MURRAY  
A Professional Corporation  
3030 Hansen Way, Suite 200  
Palo Alto, Ca 94304-1009  
TELEPHONE (650) 852-9000 FACSIMILE (650) 852-9244  
E-MAIL mail@murraylaw.com

1 **I. NOTICE**

2 PLEASE TAKE NOTICE that a hearing will be held on March 9, 1999 at 2:00 p.m.  
3 before the Honorable James R. Grube, United States Bankruptcy Judge, in Courtroom 3020,  
4 United States Courthouse and Federal Building, 280 South First Street, San Jose, California, to  
5 consider the MOTION TO SELL ASSETS OUT OF THE ORDINARY COURSE OF  
6 BUSINESS (11 U.S.C. § 363(b)) AND FREE AND CLEAR OF LIENS, CLAIMS,  
7 ENCUMBRANCES AND INTERESTS (11 U.S.C. § 363(f)) (StarBase Corporation) (the "Sale  
8 Motion") filed by the Debtor.

9 Any opposition to the Sale Motion must be filed with the United States Bankruptcy  
10 Court, United States Courthouse and Federal Building, 280 South First Street, Room 3035, San  
11 Jose, California 95113 and served on the Debtor's counsel, Janice M. Murray, Esq., Murray &  
12 Murray, A Professional Corporation, 3030 Hansen Way, Suite 200, Palo Alto, California 94304-  
13 1009, telephone (650) 852-9000, facsimile (650) 852-9244 no later than February 23, 1999.

14 **II. SUMMARY OF RELIEF SOUGHT**

15 1. The Debtor is requesting the Court for authority to consummate that certain Asset  
16 Purchase and Sale Agreement dated December 18, 1998 as amended by that certain First  
17 Amendment to Asset Purchase and Sale Agreement dated February 9, 1999 (collectively, the  
18 "Agreement") with StarBase Corporation, a Delaware corporation ("StarBase") for the sale of  
19 the Debtor's core technology assets, including SiteMaster, SiteSweeper, QuickSite, Webtools  
20 and SiteMarks software products and related assets ("Assets"). StarBase shall also assume  
21 certain obligations of the Debtor as provided in the Agreement. A copy of the Agreement is  
22 attached as Exhibit "A" to the DECLARATION OF JEFFREY F. AIT IN SUPPORT OF  
23 MOTION TO SELL ASSETS OUT OF THE ORDINARY COURSE OF BUSINESS (11  
24 U.S.C. § 363(b)) AND FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND  
25 INTERESTS (11 U.S.C. § 363(f)) (StarBase Corporation) (the "Ait Declaration") and is  
26 incorporated herein by reference.

27 2. Concurrently herewith, the Debtor has also filed its MOTION TO ASSUME AND  
28 ASSIGN EXECUTORY CONTRACTS which provides for the assumption by the Debtor and

ASSET PURCHASE AND SALE AGREEMENT

This Asset Purchase and Sale Agreement, dated December 18, 1998 between Site Technologies, Inc., a California corporation having an address at 380 El Pueblo Road, Scotts Valley, California 95066 (the "Seller"), and StarBase Corporation, a Delaware corporation having an address at 4 Hutton Centre Drive, Suite 800, Santa Ana, California 92707(the "Purchaser").

Recitals

The Seller is in the business of designing, developing, licensing and selling software products and related materials for various Web site applications. The Seller has decided to sell certain of its assets and properties. The Seller has agreed to sell such assets and properties to the Purchaser, and the Purchaser has agreed to buy such assets and properties, all upon the terms and provisions and subject to the conditions hereinafter set forth.

Agreement

In consideration of the foregoing and the mutual covenants and agreements hereinafter set forth, the parties hereto hereby agree as follows:

ARTICLE I

Definitions

1.01 Certain Defined Terms. As used in this Agreement, the following capitalized terms and non-capitalized words and phrases shall have the meanings respectively assigned to them below, which meanings shall be applicable equally to the singular and plural forms of the terms so defined:

"Agreement" shall mean this Asset Purchase and Sale Agreement, together with all schedules and exhibits hereto, as the same may be supplemented, modified, amended or restated from time to time in the manner provided herein.

"Affiliate" of a referenced person shall mean (a) another person controlling, controlled by or under common control with such referenced person, (b) any other person beneficially owning or controlling ten percent (10%) or more of the outstanding voting securities or rights or of the interest in the capital, distributions or profits of the referenced person or (c) any officer or director of or partner in the referenced person, or any person controlled by any such individual. The terms "control", "controlling", "controlled" and the like shall mean the direct or indirect possession of the power to direct or cause the direction of the management or policies of a person or the disposition

"Tax" shall mean any federal, state, local or foreign tax (including, without limitation, any income tax, franchise tax, capital gains tax, gross receipts tax, value-added tax, surtax, excise tax, ad valorem tax, transfer tax, stamp tax, sales tax, use tax, property tax, inventory tax, occupancy tax, withholding tax, payroll tax, gift tax, estate tax, inheritance tax, employment tax, unemployment tax, social security tax, services tax, value added tax, privilege tax, license tax, profits tax, capital stock tax, severance tax, minimum tax, environmental tax, occupancy tax or occupation tax), levy, assessment, tariff, impost, imposition, toll, duty (including without limitation, any customs duty), deficiency or fee, and any related charge or amount (including any fine, penalty or interest), imposed, assessed or collected by or for any governmental authority, including, without limitation, any liability therefor as a transferee (including, without limitation, under Section 6901 of the Code or any comparable applicable law), as a result of Treasury Regulation § 1.1502-6 or any comparable applicable law, or pursuant to any tax-sharing agreement or any other agreement, arrangement or understanding relating to the sharing or payment of any such tax, levy, assessment, tariff, impost, imposition, toll, duty, deficiency or fee.

"Tax Return" shall mean any return, declaration, report, estimate, claim for refund or credit, or information return or statement, and any amendment, supplement or modification thereto, together with any supporting information and schedules, which is filed or required to be filed under applicable law in connection with the determination, assessment, collection or administration of any Tax or ERISA, whether on a consolidated, combined, unitary or separate basis or otherwise.

## ARTICLE II

### Purchase of Assets; Payment

2.01 Assets to be Transferred. Upon the terms and subject to the conditions set forth in this Agreement, and subject to the satisfaction of the conditions precedent set forth in Section 2.08 (or the waiver thereof by the Seller or the Purchaser, as applicable), at the Closing, the Seller shall sell, assign, transfer, convey and deliver to the Purchaser, and the Purchaser shall purchase and accept from the Seller, all right, title and interest of the Seller or any subsidiary of the Seller, as the case may be, in and to all of the following assets of Seller, together with all books and records of the Seller pertaining primarily thereto (individually, an "Asset", and collectively, the "Assets"):

- (a) the Software and the Software Products, files specifications, design documents, user documentation, change requests and defects lists, each as listed on Schedule 2.01(a) hereto;
- (b) all marketing collateral materials, including, but not limited to, brochures, data sheets, ad and editorial reprints, web site content, and materials for the Software and the Software Products, each as listed on Schedule 2.01(b) hereto;

Schedule 2.01(a)

Section 2.01(a) shall be limited to the following assets and properties:

SiteMarks source code

SiteSweeper 1.0 source code

SiteSweeper 1.0 specifications

SiteSweeper 1.0 written documentation

SiteSweeper 2.0 workstation edition source code

SiteSweeper 2.0 workstation edition specifications

SiteSweeper 2.0 workstation edition on-line documentation

SiteSweeper 2.0 workstation edition written user documentation

TrialWare and licensing classes used by SiteSweeper 2.0

SiteSweeper 2.0 open & closed issues Filemaker database

SiteSweeper 2.0 enterprise edition source code

SiteSweeper 2.0 enterprise edition specifications

SiteSweeper 2.0 enterprise edition serial number licensing utility

SiteSweeper 2.0 enterprise edition written user documentation

Current Issue 3.0 source code

Current Issue 3.0 open & closed issues Filemaker database

SiteMaster 4.0 source code

SiteMaster 4.0 written user documentation

SiteMaster 4.0 HTML help files

SiteMaster Components (MeetingTracker, StaffTracker, RapidApp)

SiteMaster open & closed issues Filemaker database

SiteMaster 4.5 source code

QuickSite 1.0 - 1.03 source code

QuickSite 1.02 Kanji source code

QuickSite 1.02 Macintosh (Foxpro) source code

QuickSite 1.02 Macintosh documentation

QuickSite 1.02 Macintosh open & closed issues Filemaker database

QuickSite 2.0 Developers Edition 2.0 - 2.02 source code

QuickSite 2.0 Developers Edition 2.0/2.01 manual and help

QuickSite 2.0 Developers Edition open & closed issues Filemaker database

Schedule 2.01 (a) Continued

QuickSite 2.53 source code  
QuickSite 2.5 manual  
QuickSite AVI tutorial  
QuickSite 2.5 help  
QuickSite 2.5 NT help  
QuickSite 2.0 open & closed issues Filemaker database

QuickSite 3.0 source code  
QuickSite 3.0 getting started guide  
QuickSite 3.0 content and examples  
QuickSite 3.01 (beta) source code

QuickSite OEM Version source code  
    PSA-Germany 3.01  
    Earthlink 3.00e  
    Interprise Now! (Borland) 2.53  
    Earthlink 1.02/1.03  
    Gen 1.02/1.03  
    Sony 1.03  
    Internet Direct 1.03

QuickSite white paper & research documents

Visual Site Architect 1.0 source code

HomeSite source code

WebTools 1.0 source code

Defect Automation Prototype 1.0

Filemaker bug database

Technology Integration master plan written document