

Patent Reexamination: Letting Open Source Companies Play Offense*

Van Lindberg**

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When companies use open source software, participating in the patent system can be difficult. Why? Because business pressures—and shareholder expectations—generally favor strong patent protection and substantial use of the patent system to create business value. The open source community, on the other hand, can be hostile to the patent system in general and software patents in

particular. Accordingly, aggressive use of the patent system can offend some open source developers.

Community Expectations and Shareholder Interests

The rift between community expectations and shareholder interests runs deep. For example, technology companies regularly patent their advances, including software-implemented inventions. Some within the open source community, however, argue against all software patents, saying that “patents covering software

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April 2009

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Dear Subscribers:

Patent licensing and the litigation surrounding patent licensing, or rather the lack of patent licensing, is a reality for many businesses. For example, in February 2009 Renhcol, Inc., owner of the patent “Web-Based Prediction Marketplace,” announced that it had settled its patent infringement suit against four companies, Pregame LLC, Ontario Limited, IGC Entertainment Corporation, and National Sports Services, Inc. All four companies agreed in the settlements to license the patent-in-suit from Renhcol, Inc.

In this issue of *Corporate Counsel’s Licensing Letter*, we are pleased to include an article by Van Lindberg of Haynes and Boone, LLP discussing patents in conjunction with open source software. We would like to thank Mr. Lindberg and Haynes and Boone, LLP for allowing us to share this article with our readers. We have also included three sample patent licensing agreements obtained from the SEC’s Electronic Data Gathering, Analysis, and Retrieval System.

Very truly yours,
Jeanne D. Wertz
Senior Attorney Editor

... [will] restrict every computer user and tie software developers up in knots.”¹ Patent cross-licensing is used as a business tool, but there were protests after Microsoft signed a patent cross-licensing agreement with a number of Linux distributors.²

Asserting patents in litigation presents its own set of problems. Not only can litigation damage community relationships, but a number of open source licenses also include patent defense clauses that take effect when patents are offensively asserted in court. For example, the Mozilla Public License (MPL) includes a patent license for any use of MPL-licensed code—unless you sue an MPL contributor for patent infringement. If you sue an MPL contributor claiming that the MPL-licensed code infringes a patent, all copyrights and patents licensed to you under the MPL are terminated. If you sue an MPL contributor for infringement of any patent—even patents unrelated to the MPL-licensed code—all patent licenses to you under the MPL for any software are terminated.³

Thus, companies using open source need to walk a fine line. Shareholders expect company leaders to support and use the patent system, while responding appropriately to patent threats from competitors. The open source community expects company leaders to maintain community norms, and comply with the patent provisions in open source licenses. Patent reexamination allows companies to act in favor of patents generally, while attacking particular patents as mistakenly granted. It also skirts patent retaliation clauses included in some open source licenses because patent reexamination isn't an assertion of patent rights.

Patent Litigation and Patent Reexamination

In the past, most reexamination requests were filed by patent owners so that they could “immunize” their patents against new prior art. As a result, these reexamination requests were relatively short, with analysis limited to the minimum required. The hoped-for result was an immediate allowance of all claims and a “twice-blessed” status for the patent, which is valuable if the patent is later involved in litigation.

Recently, however, companies have started seeing the value in filing defensive requests for reexamination when

they are sued for patent infringement. An aggressive reexamination opens up a second front in a patent battle—a second front that frequently has more-favorable terms than the courtroom. For example, there is no presumption of validity for a patent in reexamination, and different (broader) standards of interpretation apply to patent language.⁴ Reexamination also puts the patent claims in front of the most experienced examiners at the PTO, who all have backgrounds in technology and patent law. A successful request for reexamination can eviscerate a patent lawsuit.

Reexamination Reexamined: The Best Defense Is a Good Offense

Nevertheless, patent reexamination is still overlooked as a strategy for patent offense. Requests for reexamination can be filed in advance of a complaint by a patent owner, even without an accompanying declaratory judgment action. This is particularly useful in cases where there is a non-practicing entity—sometimes called a “patent troll”—suing a number of defendants in turn. If your company might be next in line for a lawsuit, a successful request for reexamination can delay or prevent the lawsuit from ever being filed. Because broader standards of claim interpretation apply in reexamination proceedings, requests for reexamination can include a prior art reference even if other defendants have argued—and lost in court—over that same reference.⁵

Reexamination has other benefits as part of a legal strategy. First, patent reexamination is cost-effective. According to the 2007 Report of Economic Survey published by the American Intellectual Property Lawyers Association, the average cost of patent litigation ranges from \$2.5 to \$5 million. Patent reexaminations—even aggressive, new-style patent reexaminations—typically cost only 2-5% of that amount. Depending on the type of reexamination being requested, no further effort or expense may be required of the company making the request.

Second, patent reexamination allows strategic anonymity. Requests for *ex parte* reexamination can be filed anonymously. If a product—open source or otherwise—is implicated by a patent that may be invalid over known prior art, a request for reexamination can be filed challenging

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the patent, without alerting the patent owner to *who* is interested in invalidating the patent.

Reexamination and Community Expectations

The good news is that the open source community seems to generally support patent reexamination. For example, NetApp recently sued Sun Microsystems over ZFS, Sun's open source file system. Sun responded to the litigation by filing a response in court *and* by filing a request for reexamination. Far from angering the open source community, Sun received prior art from experts across the community.⁶ Other reexamination proceedings from the Public Patent project (PubPat) and the Electronic Frontier Foundation (EFF) have also received support for requests for reexamination.

The Best Thing Since Sliced Bread?

As with any legal proceeding, patent reexamination presents risk. A patent that survives reexamination is often

considered more valuable, and it may be more difficult to challenge in another forum. Nevertheless, the legal and cost benefits to reexamination make it a valuable tool for open source companies competing in a patent-heavy industry.

ENDNOTES

1. Richard M. Stallman, "Patent Absurdity," <http://www.guardian.co.uk/technology/2005/jun/23/onlinesupplement.insideit>.
2. "Samba Team Asks Novell to Reconsider," http://news.samba.org/announcements/team_to_novell/.
3. Mozilla Public License Version 1.1, <http://www.mozilla.org/MPL/MPL-1.1.html>.
4. See *In re Swanson*, ___ F.3d ___, (Fed. Cir. 2008): "In PTO examinations and reexaminations, the standard of proof—a preponderance of evidence—is substantially lower than in a civil case; there is no presumption of validity; and ... unlike in district courts, in reexamination proceedings "[c]laims are given their broadest reasonable interpretation, consistent with the specification" *Id.* at 15.
5. See *In re Trans Texas Holdings*, 498 F.3d 1290, 1296-97 (Fed. Cir. 2007) (holding that the PTO during reexamination is not bound by a district court's claim construction).
6. See <http://www.sun.com/lawsuit/zfs/contribute.jsp>.

Network 1 Security Solutions, Inc. Patent License Agreement

Editor's Note: This form was obtained from the Electronic Data Gathering, Analysis, and Retrieval System (commonly referred to as EDGAR) maintained by the U.S. Securities and Exchange Commission, which is located on the Internet at <http://www.sec.gov>. This form is reproduced here basically as we retrieved it from EDGAR. It was filed as Exhibit 10.1 to Form 8-K filed by Network 1 Security Solutions, Inc. on August 13, 2008.

[***] indicates omitted text.

PATENT LICENSE AGREEMENT

THIS AGREEMENT made and entered into and effective as of August 13, 2008, is by and between Network-1 Security Solutions, Inc., a Delaware corporation (the "Licensor") and Microsemi Corporation, a California Corporation (the "Licensee").

WHEREAS, Licensor is the beneficial owner of United States Patent No. 6,218,930 (the "'930 Patent");

WHEREAS, on June 30, 2008, Licensor commenced an industry-wide Special Licensing Program for the '930 Patent to vendors of Power over Ethernet equipment. The Special Licensing Program is of limited duration (through December 31, 2008) and is being implemented on an industry-wide basis to offer discounted running royalty rates and exceptions to Network-1's standard licensing terms and conditions relating to the '930 Patent to PoE

vendors who are "early adopters" and enter into license agreements without delay and to avoid litigation and higher royalties.

WHEREAS, Licensee desires to obtain a royalty-bearing, non-exclusive, license under '930 Patent, and Licensor is willing to grant Licensee such license subject to the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the premises and covenants hereinafter set forth, the parties hereby agree as follows:

1. Definitions.
 - 1.1 "Effective Date" of this Agreement shall mean the date first written above.
 - 1.2 "Expiration Date" means the date on which the Licensed Patent shall expire. "Have Made" means the right to purchase a Licensed Product from a third party (E.G., subsidiaries, suppliers and vendors) and/or have a third party make a Licensed Product for the use by and/or sale or transfer by Licensee, said third party operating under the license grant to Licensee for the provision of Licensed Products to Licensee and for no other purpose.
 - 1.3 "Licensed Patent" shall mean the '930 Patent and any reissues and reexaminations thereof.

- 1.4 “Licensed Product” shall mean a MSCC Midspan Product which infringes any claim of an issued, unexpired Licensed Patent, which claim has not invalidated by a final, non-appealable order of a court of competent jurisdiction.
- 1.5 “Licensee Covenanted Party” shall mean Licensee, each of its Subsidiaries, and each of their respective officers, directors, employees and successors.
- 1.6 “Midspan PSE” means a particular type of PSE that is connected between a switch and device(s) to be powered over Ethernet network cabling.
- 1.7 “MSCC Midspan Product” means standalone finished Midspan PSE products, except Power over Ethernet Midspan PSE products that exclusively use spare pairs for the transmission of operating power to network devices, such as the products identified on Exhibit A hereto and future variations thereof, each of which is or will be a Midspan PSE originally designed by or for MSCC, and manufactured for or by, and used or sold by MSCC and/or its Subsidiaries.
- 1.8 “Power over Ethernet” or “PoE” means the technology used to deliver electrical power over Ethernet network cabling for the purpose of supplying operating power to devices connected to an Ethernet network.
- 1.9 “Person” or “person” means an individual, corporation, partnership, limited partnership, limited liability company, syndicate, person (including, without limitation, a “person” as defined in Section 13(d)(3) of the Exchange Act), trust, association or entity or government, political subdivision, agency or instrumentality of a government.
- 1.10 “PSE” means any apparatus, device, equipment or product that supplies power to other devices in a PoE implementation, including, but not limited to, products complying with IEEE Standards 802.3af and 802.3at.
- 1.11 “Sales Price” means with respect to any Licensed Product sold by Licensee or any of its Subsidiaries, on an arms-length basis to a party that is not a Subsidiary of Licensee, in the United States, or exported from the United States, the selling price actually invoiced for such product. The calculation of “selling price” shall include credits for the following items: (i) an exchange of replacement products returned because of a systemic failure, and (ii) the payment or credit for the difference in the invoice prices of exchanged products, within twelve months of original sale, out of a distributor’s inventory, that is returned for such exchange. For the avoidance of doubt, for royalty calculation purposes, any resale of a returned product for which a credit was taken under (i) or (ii) above shall be treated as a new sale.
- 1.12 “Spare Pair MSCC Midspan Product” means Power over Ethernet standalone finished midspan products that exclusively use spare pairs for the transmission of operating power, each of which is or will be a Midspan PSE originally designed by or for MSCC, and manufactured for or by MSCC and/or its Subsidiaries.
- 1.13 “Subsidiary” means as to Licensee (Licensor has no Subsidiaries) an entity of which shares of stock having voting power to elect a majority of the Board of Directors or other managers of such entity are at the time owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by the Licensee.
2. License Grant.
- 2.1 Licensor hereby grants to the Licensee and its Subsidiaries a personal, non-exclusive, non-transferable, royalty bearing license under the Licensed Patent (i) to make, use, lease, sell, offer for sale, import, design, Have Made and otherwise transfer Licensed Products, including the right to procure or produce components therefore, (ii) to practice a method or process involved in the manufacture thereof, and (iii) practice any method or process involved in the use thereof. To the extent that the Licensed Products are sold or otherwise transferred by Licensee or its Subsidiaries to distributors, private label resellers, channel partners, retailers, customers and other “arm’s length” customers and/or end users, the license granted under this Section shall encompass such parties for such Licensed Products. To the extent that a third party is operating under the Have Made rights granted herein, the license granted under this Section shall encompass said third party, but only as to such third party’s sales of Licensed Products to Licensee or any Subsidiary and other licensed conduct for Licensee and its Subsidiaries contemplated herein, and not for sales to other parties.
- 2.2 If the Licensee or its Subsidiaries or its or their successors initiates any action to challenge, directly or indirectly through their acting officers, directors, employees, representatives, or agents acting at Licensee’s direction, the infringement or validity of the Licensed Patent, or assist or

cooperate in any action, related to the non-infringement or invalidity of the Licensed Patent or any declaratory judgment action under the Patent Act of the United States, title 35, United States Code, the Declaratory Judgment Act, title 28, United States Code, or otherwise (unless the Licensee is required to do so pursuant to any applicable law, regulation, judicial or administrative order or decree, or request by other regulatory organization having authority pursuant to the law; PROVIDED, HOWEVER, that in such case the applicable Licensee Party gives Licensor reasonable advance notice of the same (so as to afford Licensor a reasonable opportunity to appear, object and obtain appropriate relief regarding such requirement)) the Licensee shall pay a royalty rate of three percent (3%) of the Sales Price of a Licensed Product in lieu of the royalties owed under Section 4.2 hereof on royalties payable after the date it initiates any of the foregoing. This Section 2.2 shall not apply where Licensee or its Subsidiary (a) is defending against an action brought against it alleging that it is infringing the Licensed Patent, or (b) is contractually or otherwise legally bound by statute to hold harmless or indemnify a third party in a judicial proceeding relating to the infringement of the Licensed Patent which obligation exists (a) as of, and in connection with, the sale or other disposition of a product or service by Licensee or its Subsidiary to such third party; or (b) prior to the initiation of such judicial proceeding against such third party. In such cases, for the avoidance of doubt, Licensee or its Subsidiaries shall be free to assert or assist any non-infringement and/or invalidity counterclaims and/or defenses related to such action or proceeding under the Licensed Patent without affecting the royalty rate hereunder.

- 2.3 Licensee is obligated to mark all Licensed Products with U.S. Patent No. 6,218,930 in a font size large enough to be easily read and in a manner reasonably required to satisfy 35 U.S. 287.
- 2.4 Licensor, on behalf of itself and any Subsidiary, and each of its respective officers, directors, employees, shareholders, representatives, agents and successors (collectively, the "Licensor Covenanting Parties") hereby covenants not to sue any Licensee Covenanting Party for any or all claims or liabilities for infringement of the Licensed Patent, with respect to any Spare Pair MSCC Midspan Product, PROVIDED, HOWEVER, for the avoidance of doubt, such

covenant shall not extend to any person other than a Licensee Covenanting Party.

3. Third Party Patents and Limitations on Liability.
 - 3.1 Licensor hereby represents and warrants that: (a) it has the authority to enter into this Agreement and grant the licenses herein; (b) this Agreement is valid and binding and enforceable in accordance with its terms except as such enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors rights generally and general equitable principles; (c) it has all right, title and interest in and to the Licensed Patent; and (d) there are no patents or patent applications or foreign counterparts related to the Licensed Patent, nor does Licensor or its Subsidiaries own any patent or patent application claiming or disclosing any PoE technology except the Licensed Patent. Licensor makes no warranty or representation that the practice of the licenses herein granted to Licensee will not infringe any patent or patents of any country which is or are owned by any party or parties other than Licensor. The obligations of Licensee to Licensor shall be in no way affected and no obligation of any character of Licensor to Licensee shall be created by the fact that the practice of the licenses granted hereunder infringes the patent of rights of others.
 - 3.2 EXCEPT AS EXPRESSLY SET FORTH ABOVE IN SECTION 3.1, LICENSOR MAKES NO WARRANTY, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE. UNDER NO CIRCUMSTANCES SHALL LICENSOR BE LIABLE FOR INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES FROM ALLEGED NEGLIGENCE, BREACH OR WARRANTY, STRICT LIABILITY, TORT, CONTRACT, OR ANY OTHER LEGAL THEORY ARISING OUT OF THE USE OR HANDLING OF THE LICENSED PRODUCT.
4. Consideration, Royalty Payments and Royalty Reporting.
 - 4.1 In partial consideration for the license granted herein, Licensee shall provide the assistance set out in the letter agreement by an between the parties dated June 2008 and Licensor has agreed to offer Licensee an "early adopter" reduced royalty rate and to reduce its license initiation fees to \$25,000 which shall be paid upon execution of this Agreement.

- 4.2 In further consideration of the license granted herein, Licensee agrees to pay Licensor a royalty of two percent (2%) of the Sales Price of Licensed Product.
- 4.3 Only one royalty will be paid by Licensee for the sale of a Licensed Product subject to royalty hereunder; PROVIDED that the Sales Price for such sales shall be that of the final sale by Licensee or any Subsidiary.
- 4.4 Licensee shall make all payments to Licensor in performance of any obligation of Licensee defined in this Agreement in U.S. Dollars at such account as Licensor shall designate.
- 4.5 Licensee shall make running royalty payments within thirty (30) days after the end of each calendar quarter which any Licensed Product subject to royalty hereunder was sold. Royalties shall be calculated in the currency in which sales are made and, in the case of sales made in currency other than U.S. Dollars, for equivalent amount of the U.S. Dollars for any royalties payable hereunder will be determined on the basis of the rate of exchange quoted by The Wall Street Journal as of the due date of the royalty payment. Royalties shall be submitted with a Monthly Royalty Report, in the form of Exhibit B, showing all Licensed Products sold by Licensee in the immediately preceding month. The Royalty Report will also list any additional products that fall within the scope of Licensed Products and that are to be added to Exhibit A.
- 4.6 Licensee assumes responsibility for any payment due but not made by any Subsidiary.
- 4.7 Licensee shall submit to Licensor a semi-annual royalty report ("Royalty Report") in the form of Exhibit B hereto within thirty (30) days after the end of every six month anniversary of the Effective Date of the Agreement. The Royalty Report shall be certified by an appropriate responsible employee of Licensee setting forth the amount of the royalties and calculation thereof for the reported period regardless of whether or not any payment is due. The Royalty Report will also list any additional products that fall within the scope of Licensed Products and that are to be added to Exhibit A.
- 4.8 Irrespective of any ruling of a court, administrative body or arbitral tribunal, no royalties paid by Licensee shall be subject to refund except overpayments made in error and identified by Licensee within twelve (12) months of actual or constructive notice of erroneous payment, whichever is later. Any refund that Licensee may be entitled to pursuant to this Section shall be taken as a credit in a subsequent Monthly Royalty Report; provided, HOWEVER that if no further royalties are due under this Agreement Licensee shall receive a refund instead of a credit.
- 4.9 Payments when provided for in this Agreement shall, when overdue, bear interest compounded monthly (prorated for periods of time less than one month) at an annualized rate of five percent (5%) over the prime rate quoted by the Wall Street Journal, in New York, on the date that the payment is due, for each month during the delinquency. If the amount of such charge exceeds the maximum permitted by law, such charge shall be reduced to such maximum.
- 4.10 Licensee shall keep books and records adequate to accurately determine the payments under this Agreement, and retain such books and records for at least three (3) years after the delivery of the Royalty Report to which they relate. Licensor shall have the right, no more than twice per calendar year, to have an independent certified public accountant inspect all relevant books and records of Licensee on thirty (30) days' prior written notice and during regular business hours to verify the reports and payments required to be made hereunder. Such independent certified public accountant shall be selected by Licensor. The auditor shall enter into an appropriate nondisclosure agreement with Licensee, and shall disclose no more information than is reasonably necessary to determine the payments owed hereunder. Should an underpayment in excess of five percent (5%) be discovered, Licensee shall reimburse Licensor for the cost of the audit. In any event, Licensee shall promptly pay any underpayment together with interest at the compounded annual rate quoted by Citibank N.A. in New York City or its reference rate on the last day of each month during the period of the delinquency.
5. Confidentiality
- The terms of this Agreement (and the royalty reports and data contained therein) as well as any audit data provided per Section 4 are confidential information of Licensee except (i) if such information is generally available to the public through no action of Licensor, (ii) to the extent necessary to comply with any Court order, law, rule or regulation of any federal or state agency or administrative body (including the Securities and Exchange Commission and the U.S. securities laws based on the advice of counsel) or contractual obligation of any party's insurance carrier. If

necessary, Licensor may utilize this confidential information in litigation against Licensee relating to royalty payments under this agreement; however, the information must remain confidential (E.G., under the provisions of a suitable protective order and/or filing under seal).

6. SEC Filings and Press Releases.

Licensee understands that following the Effective Date, Licensor will be required to file a Form 8-K with the SEC that will include as an exhibit this Agreement (with exhibits) as well as issue a press release. Licensee further understands that Licensor will be required to disclose in certain of its SEC filings and press releases, among other things set forth in this Agreement, the amount of royalty revenue received from Licensee pursuant to this Agreement in an aggregated form that does not reveal royalty revenues specifically attributable to Licensee hereunder unless otherwise required by the U.S. securities laws based on the advice of counsel. In addition, Licensor will not disclose in its SEC filings or press releases any other data contained in the monthly or semi-annual reports or audit data referenced in Section 4 above unless otherwise required by the U.S. securities laws based on the advice of counsel.

7. Term and Termination.

- 7.1 This Agreement will commence on the Effective Date and will remain in force and effect until the Expiration Date unless earlier terminated or in the event the Licensed Patent is found to be invalid by a final non-appealable order of a court of competent jurisdiction. Other than as provided for in Section 7.2, the parties hereto may terminate this Agreement only by mutual written agreement.
- 7.2 In the event a party to this Agreement breaches any provision hereof and fails to cure such breach within forty-five (45) days of receipt of written notice thereof, the other party hereto may terminate the Agreement upon written notice to the other party hereto.
- 7.3 If Licensee fails to make royalty payments hereunder and fails to remedy such breach in accordance with Section 7.2, all royalty payments subsequent to said breach and all remedial payments for outstanding payments shall be calculated at a royalty rate of three percent (3%) instead of the two percent (2%) royalty rate set forth in Section 4.2.
- 7.4 Termination of this Agreement by mutual written agreement of the parties hereto shall not, unless otherwise agreed by the parties, have the effect of terminating, revoking or withdrawing rights and obligations set forth herein with respect to matters after the Effective Date and up through and including the effective date of

termination hereunder. Notwithstanding the foregoing, the termination of this Agreement for any reason other than by mutual agreement of the parties hereto, shall not terminate the license granted hereunder for any Licensed Product sold prior to the termination date but only if the applicable royalty due hereunder with respect to such product is paid by licensee

8. Release.

Licensor on behalf of itself and its respective Subsidiaries, successors and assigns hereby irrevocably releases Licensee and its Subsidiaries (but only as to sales of Licensed Products to, from, or on behalf of Licensee) officers, directors, employees, representatives, agents, successors and assigns, customers, and suppliers, including any suppliers and customers in the chain of possession of Licensed Products, from any and all causes of action, known or unknown, in any way related to the acts, omissions, transactions, and occurrences related to a claim of infringement of the Licensed Patent, with respect to any MSCC Midspan Product manufactured, used, leased, sold, offered for sale, imported, or otherwise transferred by Licensee before the Effective Date of this Agreement.

9. Miscellaneous.

- 9.1 If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future law, and if the rights or obligations of any party hereto under this Agreement will not be materially and adversely affected thereby, (i) such provision will be fully severable, (ii) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof and (iii) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom.
- 9.2 Any and all notices, consents, or demands permitted or required to be made or given under this Agreement shall be in writing, signed by the individual giving such notice, consent, or demand and shall be delivered personally or sent by registered or certified mail, return receipt requested, to the other party at its address set forth below:

To Licensor: Network-1 Security Solutions, Inc.

[***]

With a copy to: [***]

To Licensee: Microsemi Corporation,

[***]

With a copy to: [***]

- 9.3 This Agreement may not be assigned by either party without the express prior written consent of the other party, except in connection with a merger, acquisition, reorganization or sale of all or substantially all of such party's assets or equity. This Agreement is binding upon and inures to the benefit of the parties hereto, and their permitted assigns.
- 9.4 This Agreement constitutes the entire agreement between the parties to this Agreement with respect to the subject matter hereof and supersedes all previous and contemporaneous negotiations, commitments and agreements, both written and oral, between the parties with respect to such subject matter. For avoidance of doubt, the Settlement Agreement, as supplemented by the Amendment, shall remain in full effect in accordance with its terms. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or give to any Person, other than the parties to this Agreement and their respective successors and permitted assigns, any rights or remedies under or by reason of this Agreement.
- 9.5 This Agreement may be executed in separate counterparts, each of which shall be considered an original but all of which will constitute one agreement.
- 9.6 THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK. LICENSOR AND LICENSEE HEREBY IRREVOCABLY SUBMIT TO THE EXCLUSIVE JURISDICTION OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK OR ANY COURT OF THE STATE OF NEW YORK LOCATED IN THE COUNTY OF NEW YORK IN RESPECT OF ANY ACTION, SUIT OR PROCEEDING BROUGHT BY LICENSOR OR LICENSEE TO ENFORCE THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION, SUIT OR PROCEEDING BROUGHT BY A PARTY TO THIS AGREEMENT SHALL BE BROUGHT ONLY IN SUCH COURT (AND WAIVES ANY OBJECTION BASED ON FORUM NON CONVENIENS OR ANY OTHER OBJECTION TO VENUE THEREIN); PROVIDED, HOWEVER, THAT SUCH CONSENT TO JURISDICTION IS SOLELY FOR THE PURPOSE REFERRED TO IN THIS SECTION 8.6 AND SHALL NOT BE DEEMED TO BE A GENERAL SUBMISSION TO THE JURISDICTION OF SAID

COURTS OR IN THE STATE OF NEW YORK OTHER THAN FOR SUCH PURPOSE AND SHALL NOT APPLY WITH RESPECT TO, OR BE DEEMED TO INDICATE THE INTENT OF ANY PARTY HERETO WITH RESPECT TO, ANY ACTION BROUGHT BY OR AGAINST ANY PERSON(S) EACH OF WHOM IS NOT A PARTY TO THIS AGREEMENT. Any and all process may be served in any action, suit or proceeding arising in connection with this Agreement by complying with the provisions of Section 8.2. Such service of process shall have the same effect as if the party being served were a resident in the State of New York and had been lawfully served with such process in such jurisdiction. The parties hereby waive all claims of error by reason of such service. Nothing herein shall affect the right of any party to service process in any other manner permitted by law or to commence legal proceedings or otherwise proceed against the other in any other jurisdiction to enforce judgments or rulings of the aforementioned courts.

IN WITNESS WHEREOF, each of the parties has caused two original copies of this Agreement to be executed on its behalf by its duly authorized officer as of the Effective Date.

NETWORK-1 SECURITY SOLUTIONS, INC.

By: /s/ [signature]

[printed name]

Chairman and Chief Executive Officer

MICROSEMI CORPORATION

By: /s/ [signature]

[printed name]

Chief Operating Officer

EXHIBIT A

POWERDSINE MIDSPAN PRODUCTS

[omitted]

EXHIBIT B

ROYALTY REPORT

[omitted]

Fluidigm Corporation Patent License Agreement

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[***] Indicates omitted text.

PATENT LICENSE AGREEMENT

3950.LICI.001 Gyros AB

This Agreement, effective as of January 9, 2003, is made by and between **GYROS AB** having its principal office at Uppsala Science Park, SE-751 83 Uppsala, Sweden, a corporation organized and existing under the laws of Sweden (hereinafter referred to as “**Licensor**”), and **FLUIDIGM Corporation** having its principal office at 7100 Shoreline Court, South San Francisco, CA 94080, a corporation organized and existing under the laws of the state of California, U.S.A (hereinafter referred to as the “**Licensee**”).

RECITALS

WHEREAS, the Licensor is the holder of intellectual property pertaining to, and possesses a special expertise in the field of fluidic microsystems.

WHEREAS, the Licensor is active in the field of microfluidics and microfluidic applications, primarily within the Life Sciences and Diagnostics.

WHEREAS, the Licensor is the owner of certain patents and patent applications pertaining to microfluidics and microfluidic applications.

WHEREAS, Licensor is willing to grant Licensee a royalty-bearing non-exclusive license to such patents on the terms and conditions given below.

NOW, THEREFORE, in consideration of the promises and the faithful performance of the covenants herein contained IT IS AGREED;

ARTICLE 1 DEFINITIONS

1.1 “**Affiliate**” shall mean any corporation, partnership, or other business entity controlled by, or controlling, or under common control with any party or signatory to this Agreement, with “control” meaning direct or indirect beneficial ownership of more than fifty percent (50%) of the voting power, or of the interest in the income of such corporation, partnership or other entity, or having the power to appoint the ma-

jority of its directors or otherwise having the power to direct its business activities.

1.2 “**Competitor of Licensor**” shall mean a company in the business of making and selling compact disc-like structures in which fluids are moved by centrifugal force.

1.3 “**Net Sales**” shall mean the gross selling price charged by Licensee for Products manufactured or sold by the Licensee in a country in which the Product is covered by a Patent (i.e., a country in which, but for the license granted herein, the Product would infringe a valid, enforceable, unexpired claim of a Patent) less:

- (a) allowances for damaged and returned goods;
- (b) discounts actually credited to customers or commissions paid to third parties in amounts customary in the trade;
- (c) customs duties, forwarding insurance premiums, sales, excise, and other taxes actually paid by the Licensee or otherwise included in the gross selling price with respect to the sale of products.

A Product shall be considered sold hereunder in accordance with extant GAAP accounting procedures and guidelines.

If the Products are sold in combination with, or as a component of, other products not licensed hereunder, Net Sales for purposes of determining royalty hereunder shall be calculated by multiplying the Net Sales from the combined product by the fraction A/B, where A is the invoice price of the Products sold separately and B is the invoice price of the combined product. If the Products are not sold separately, the Net Sales for purposes of calculating royalties hereunder shall be reasonably determined by agreement of Licensor and the Licensee promptly after such combination products are sold by Licensee. The parties agree to use good faith in negotiating the appropriate adjustment to Net Sales of any combined product within thirty (30) days after the Licensee notifies Licensor of sales of a combination product. The Net Sales of any Products sold by the Licensee to any Affiliate of the Licensee or any other person or organization enjoying a special course of dealing with the Licensee, shall be determined by reference to the Net Sales which would be applicable under this Article 1.2 in an arm's-length sale of such Products by the Licensee to a third party.

1.4 “**Patents**” shall mean the patents listed in Exhibit A, attached hereto, together with any other corresponding patents/ patent applications in any country owned or controlled by the Licensor.

- 1.5 “Covered Products” shall mean all products now or hereafter manufactured, assembled, used or sold by or on behalf of the Licensee or its Affiliates and which are covered by any of the Patents.

It is hereby acknowledged that any and all products consisting of compact discs (“CD’s”) and CD-like structures where a centrifugal force is utilized to move the liquids within the CD are explicitly excluded from this definition.

- 1.6 “Option Field of Use” means each of (i) [***] and (ii) [***].
- 1.7 “Licensed Fields of Use” means [***] and each Option Field of Use for which Licensee exercises the option as set forth in Section 5.2 below.
- 1.8 “Product” means each Covered Product useful, used, or for use in a Licensed Field of Use.

ARTICLE 2 GRANT

- 2.1 Upon the terms and subject to the conditions of this Agreement, Licensor hereby grants to the Licensee and its Affiliates, and the Licensee and its Affiliates accept from Licensor, a restricted, perpetual, irrevocable (except as set forth in Section 9.1), non-exclusive, non-transferable (except as set forth in Section 7.4), royalty-bearing license under the Patents for the term hereof solely to make, have made, import, use, offer for sale, and sell Products. No other license is granted to the Licensee expressly, impliedly or by estoppel, except as explicitly set forth in Section 5.2 below.
- 2.2 The Licensee expressly acknowledges and agrees that the Licensee shall have no right to sublicense, assign, or otherwise transfer any or all of the license granted to it under the Patents, except as set forth in Section 9.1, provided that Licensee can sublicense Patents to a third party other than a Competitor of Licensor (as defined in Section 7.4) in conjunction with a license from Licensee to make and sell any of Licensee’s Products. Licensor reserves the right to practice the Patents itself, and to sublicense, assign or otherwise transfer the Patents to others for any purposes whatsoever, provided that such transfer or assignment shall be subject to the licenses granted to Licensee in this Agreement.
- 2.3 Licensor hereby irrevocably releases Licensee and its Affiliates, and each of their subcontract manufacturers and direct and indirect customers, of and from all claims of infringement of Patents, known or unknown, which claims have been made or might have been made at any time, with respect to any apparatus made, used, imported, offered for sale, or sold, or any method or process practiced, before the effective date of this Agreement, which apparatus, method, or process would have been licensed had it been made, used, imported, offered for sale, or sold,

or practiced after effective date of this Agreement. A corresponding release will be deemed made in relation to each of the Option Fields of Use when and if exercised under Section 5.2 below.

ARTICLE 3 PATENT MARKING

Beginning two (2) years after the effective date of this Agreement, Licensee shall display or cause to be displayed proper patent notices on the documentation, inserts, packages or containers of all Products which shall indicate that the Product is sold or manufactured under a patent license from Licensor. The Licensee shall provide Licensor for its review prior to use, representative samples containing such patent notices and the parties agree to use good faith in determining the requirements for and adequacy of such notices under the controlling patent laws.

ARTICLE 4 RESTRICTIONS ON PUBLICATION

Upon the signing of this Agreement and upon exercise of any of the Option Fields of Use under 5.2, both parties shall be entitled to make public—through a press release or otherwise—that Licensee has taken a license to the Patents from the Licensor. Such press-release or similar shall be in a form reasonably acceptable to the other party and shall not disclose any of the financial terms agreed in this Agreement. Within thirty (30) days of the effective date of this Agreement, Licensee will publish on its corporate website that it has taken a license from Licensor under the Patents. Under all other circumstances, neither party shall use the other’s name nor any variation thereof, nor any emblem, logo, trademark or variation thereof, nor the name of any employee in any press releases, advertising, promotional or sales literature, or in any securities reports required by the Securities and Exchange Commission, without the prior written consent of the other party in each case; provided however, that both parties (a) may refer to publications by employees of the other party in the scientific literature, (b) may only state that a non-exclusive, royalty-bearing patent license from Licensor to Licensee has been granted (excluding financial terms) and (c) may make such disclosures as required by law.

ARTICLE 5 ROYALTIES AND PAYMENT

- 5.1 In consideration of the rights granted by Licensor to the Licensee under this Agreement, the Licensee agrees to pay to Licensor:
- (a) a non-refundable sum of [***] payable on March 31, 2003 (“Annual Payment Date”). The foregoing payment includes full payment for all sales by the Licensee of Products before the effective date of this Agreement;
 - (b) a sum of [***] payable on each anniversary of the Annual Payment Date during the term of this Agreement; and
 - (c) a royalty of [***] of the Net Sales of all Products sold by the Licensee during the term of this

Agreement. Sums paid under Subsections 5.1 (a) and (b) above, and Section 5.2 below, shall be fully creditable against such royalties, regardless of the year in which such royalties accrue.

- 5.2 At any time(s) during the first twelve (12) months of the term of this Agreement, Licensee shall be entitled, at its option, to add one or both Option Fields of Use to the Licensed Field of Use under this Agreement, and upon each such exercise, each such Option Field of Use shall become a Licensed Field of Use under this Agreement. If Licensee has not, during the first twelve (12) month period of the term of this Agreement, added both Option Fields of Use to the Licensed Field of Use, then during the second twelve (12) month period of the term of this Agreement, Licensee shall be entitled, at its option, to add one Option Field of Use to the Licensed Field of Use under this Agreement. Each such exercise of this option by Licensee shall be by written notice to Licensor, referencing this Agreement and specifying the Option Field(s) of Use to be added. Within thirty (30) days after such exercise, Licensee shall pay an additional [***] license fee for the first added Option Field of Use, and an additional [***] license fee for the second added Option Field of Use. For the avoidance of doubt, during the first twelve (12) month period of the term of this Agreement, Licensee may exercise this option for one or both Option Fields of Use and on one or two occasions.
- 5.3 Within thirty (30) days of the end of each calendar quarter the Licensee shall pay to Licensor the royalty having accrued on the Products sold during such calendar quarter to the extent the royalty exceeds the credited sums paid by Licensee. Such payments shall be made in US Dollars by wire transfer, at the Licensee's cost, to such bank as shall be notified by Licensor. Payments of royalties accrued on sales in other currencies than US Dollars shall be made in US Dollars at the rate of exchange quoted by a first class commercial bank in the Licensee's country on the last day of the relevant calendar quarter.
- 5.4 If the Licensee fails to make the payments as provided for herein, such amounts shall bear interest from and after the due date at the rate of [***] above the one month LIBOR for the currency of payment.
- 5.5 Withholding or other taxes assessed on Licensor in connection with the payment of royalties and other consideration due hereunder and which the Licensee is required by law to deduct and withhold when making payments, may be deducted from royalty payments hereunder (including without limitation payments under Sections 5.1(a), 5.1(b), and 5.2) and shall be paid by the Licensee to the competent authority on behalf of Licensor. The originals of the

official government receipt for such taxes paid by the Licensee on Licensor's behalf, shall so indicate such fact and shall be sent by the Licensee to Licensor not later than fifteen (15) working days after the date of payment, indicating net payment of royalties to which such taxes relate, and in accordance with the instructions given by Licensor. The sums so paid by the Licensee shall be credited by Licensor in partial discharge of the Licensee's obligation for gross royalties as provided for herein.

ARTICLE 6 RECORDS, AUDITS AND REPORTS

- 6.1 The Licensee agrees to maintain accurate, complete and up to date records, until five (5) years after a royalty payment has been made, in sufficient detail to enable the royalties payable by the Licensee to be determined. Licensor shall have the right, at its own expense and during regular business hours, at any time upon sixty (60) days prior written notice to Licensee, during the term of this Agreement and for one (1) year thereafter, to have such records examined, in its own discretion, by an independent auditor of its own choice, provided such auditor is bound by confidentiality in writing to Licensee and reasonably acceptable to the Licensee. The auditor shall not disclose the contents of the examination to any other entity and shall use the information only to verify proper reporting and payment of royalties under this Agreement.
- 6.2 Once Licensee's royalty obligations have exceeded the sums paid under Subsections 5.1(a) and (b) above or in the event of a completed initial public offering of Licensee's common stock, then Licensee agrees to deliver to Licensor within forty-five (45) days of the end of each subsequent calendar quarter a confidential written report, in a format to be agreed by the parties and made an exhibit to this Agreement, of all Products sold by it during such quarter in sufficient detail to permit a calculation of the royalties due thereon. Licensor shall not disclose the contents of the report to any other entity and shall use the information only to verify proper reporting and payment of royalties under this Agreement. Such report shall include, but not be limited to, information of the total quantities of Products sold and the Net Sales thereof on a country by country basis, and the amount of royalties due.

ARTICLE 7 TERM AND TERMINATION

- 7.1 Unless otherwise terminated as provided for in this Agreement, the license shall run to the end of the life of the last to expire of the Patents.
- 7.2 The Licensee shall have the right to terminate this Agreement and surrender the license granted here-

under at any time by giving thirty (30) days' written notice to Licensor.

7.3 If Licensor or the Licensee is in default in the performance of any of its respective obligations under this Agreement, including the failure by the Licensee to make any of the payments provided for at the times specified herein, and such default is not cured within ninety (90) days after the aggrieved party has given to the other a written notice specifying the nature of the default, the aggrieved party shall have the right to terminate this Agreement by giving written notice of termination to the other, subject to the remainder of this section. Upon the giving of such notice this Agreement shall terminate; provided, however, that if there is a dispute as to the alleged default (including as to whether there is a default, or whether it has been cured), the aggrieved party alleging the default shall not be entitled to terminate unless and until a further notice of termination after (i) an agreed dispute resolution entity has determined that there was a default, as specified in the aggrieved party's notice of default, that was not cured within the applicable cure period and (ii) the defaulting party does not cure the default within thirty (30) days after such determination.

7.4 If during the term of this Agreement, Licensee effects a Competitor Assignment (as defined in Section 9.1), or a change of control over Licensee takes place meaning that fifty percent (50%) or more of the shares in Licensee come under common control of a third party Competitor of Licensor or Affiliates of such Competitor of Licensor, or if Licensee and/or certain of its shareholders enter into an arrangement of a similar effect, Licensor shall be entitled to terminate this Agreement on sixty (60) days prior written notice to Licensee. Upon such termination by Licensor, Licensor shall promptly refund to Licensee (or its successor) a pro rata (on a day for day basis) the annual payment made by Licensee for that year under Section 5.1(a), 5.1(b), or 5.2, as applicable.

7.5 If during the term of this Agreement, the Licensee becomes bankrupt or insolvent, or if the business of Licensor or the Licensee is placed in the hands of a receiver or trustee, whether by voluntary act or otherwise, this Agreement shall immediately and automatically terminate.

7.6 The following rights and obligations shall survive any termination to the degree necessary to permit their complete fulfillment or discharge:

- (a) the Licensee's obligation to supply a final report on each impacted Product in accordance with Section 6.2 above with respect to the terminated license;
- (b) Licensor's right to receive or recover and the Licensee's obligation to pay royalties, including

minimum royalties, if any, accrued or accruable for payment at the time of any termination;

- (c) the Licensee's obligation to maintain records and to allow Licensor to audit such records as provided for herein.

ARTICLE 8 RESTRICTED WARRANTY AND INDEMNITY

8.1 The Licensor represents and warrants that it has full authority to enter into this Agreement, that it has not granted, and will not grant, any rights or licenses that would conflict with the rights and licenses granted in this Agreement, that it is not aware of any third party claims with respect to any Patent, and that it has no knowledge of any third party rights that would affect its ability to grant the license hereunder. Licensor further represents and warrants that the Patents are the only patent filings owned or controlled by Licensor or its Affiliates, or which Licensor or its Affiliates otherwise have the right to enforce, license or sublicense, which pertain to microfluidics based on multilayer soft lithography or its uses. However, the Licensor makes no representation or warranty, express or implied, as to the validity of the Patents nor to the merchantability or satisfactory quality of the Products that are or may be sold by the Licensee. Licensor does not assume any liability for any infringement or alleged infringement of any patent or other rights of third parties due to the Licensee's activities under the license set forth herein.

8.2 The Licensee shall assume full responsibility for its use of the Patents and shall defend Licensor and its officers, directors, agents, and employees ("Indemnified Parties") against any claims or actions arising out of this Agreement by reason of death, personal injury, illness or property damage, or any other injury or damage arising out of the use by the Licensee of the Patents or the preparation of, use or sale of Products, including but not limited to, use or reliance upon such Products by the Licensee's customers, and Licensee shall indemnify the Indemnified Parties against all liability, costs, damages, and expenses awarded against the Indemnified Parties with respect to such claims or actions.

ARTICLE 9 MISCELLANEOUS

9.1 Assignment. This Agreement is personal to the Licensee who shall not have any right to assign or transfer the Agreement, in whole or in part, or the license granted hereunder, without the prior written consent of Licensor, which shall not be unreasonably withheld; provided, however, that Licensee may transfer or assign its rights and obligations under this Agreement to a successor to all or substantially all of Licensee's Product business relating to one or more Licensed Fields of Use, whether by sale, merger or

otherwise, provided further that that Licensee shall not have the right to transfer or assign this Agreement to a Competitor of Licensor (“Competitor Assignment”) without the prior written consent of Licensor. Notwithstanding the foregoing, Licensor shall have the right to assign or transfer this Agreement, in whole or in part, to any Affiliate.

- 9.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties as to the subject matter hereof, and all prior negotiations, representations, agreements and understandings are merged into, extinguished by and completely expressed by it. This Agreement may be modified or amended only by a writing executed by authorized officers of each of the parties.
- 9.3 Waiver. The waiver by either Licensor or the Licensee of any right or failure to perform or of any breach by the other shall not be deemed as a waiver of any other right hereunder or of any other breach or failure by the other, whether of a similar nature or otherwise.
- 9.4 Notices. Any notice or other communication relating to this Agreement shall be sent registered mail or overnight express prepaid or telefax/telecopier to the address of the party to be served therewith which is shown below and shall be deemed to have been given upon the date the notice or communication was sent:

If to Licensor:

Gyros AB

[***]

If to the Licensee:

Fluidigm Corporation

[***]

Such addresses may be changed by notice so given.

- 9.5 Severability. If any provision of this Agreement is held to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, in order to achieve the intent of the parties to the extent possible. In any event, all other provisions of this Agreement shall be deemed valid and enforceable to the full extent possible consistent with the intent of the parties.
- 9.6 Governing Law. This Agreement and its effects shall be subject to and shall be construed and enforced in accordance with the laws of the state of New York, U.S.A.
- 9.7 Disputes. Any dispute in connection with this Agreement shall be first elevated to each party’s respective President for a period of thirty (30) days prior to giving a notice of default under section 9.3 above, who shall convene a face-to-face meeting prior to pursuing any legal courses of action.

IN WITNESS WHEREOF, the parties hereto have caused their respective duly authorized representatives to execute this Agreement the day and year first above written.

Gyros AB

By: /s/ Maris Hartmanis

Maris Hartmanis

By: /s/ (ILLEGIBLE)

Fluidigm Corporation

By: /s/ Gajus Worthington

Gajus Worthington

By: _____

Exhibit A

Patent Family

[***]

Kunekt Corporation Patent License and Royalty Agreement

Editor’s Note: This form was obtained from the Electronic Data Gathering, Analysis, and Retrieval System (commonly referred to as EDGAR) maintained by the U.S. Securities and Exchange Commission, which is located on the Internet at <http://www.sec.gov>. This form is reproduced here basically as we retrieved it from EDGAR. It was filed as Exhibit 10.4 to Form 10-QSB filed by Kunekt Corp. on September 8, 2008.

PATENT LICENSE AND ROYALTY AGREEMENT

Effective as of June 16, 2008, (“Effective Date”), MARK BRUK, an individual having a place of residence at #302-738 Broughton Street, Vancouver, British Columbia, Canada V6G3A7 (“BRUK”), and KUNEKT CORPORATION, a Nevada corporation having a principal place of business at 112 North Curry Street, Carson City, Nevada, U.S.A. 89703-4934 (“LICENSEE”), agree as follows:

WHEREAS, BRUK is the inventor and owns all right, title and interest in and to the Invention and the Licensed Patent application, which Invention is in the field of financial account cards.

WHEREAS, BRUK desires to have the Invention perfected and marketed at the earliest possible time in order that products resulting therefrom may be available for public use and benefit.

WHEREAS, LICENSEE desires a license under said Invention and/or Licensed Patent(s) to develop, manufacture, use, and sell the Licensed Products and Related Services in the Licensed Field of Use.

WHEREAS, BRUK is willing to grant a license under the License Patent in accordance with the terms and conditions set forth in this Agreement.

WHEREAS, LICENSEE is willing to pay to BRUK a Patent Royalty in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, terms and conditions hereinafter set forth, the parties hereby agree as follows:

1. DEFINITIONS

“Agreement” means this Patent License and Royalty Agreement.

“Invention” means the system and methods defined in the Licensed Patent.

“Licensed Field of Use” means all fields of use.

“Licensed Patent” means any Letters Patent issued upon BRUK’s United States Patent Application, “METHOD AND SYSTEM FOR PROCESSING FINANCIAL TRANSACTIONS USING MULTIPLE FINANCIAL ACCOUNTS,” Serial Number #11/809,031, filed with the United States Patent and Trademark Office on May 31, 2007; or any foreign patents corresponding thereto, and/or any divisions, continuations, or reissue thereof.

“Licensed Products and Related Services” means any product and/or service, or part thereof, in the Licensed Field of Use, the manufacture, use, offer for sale, sale, or import of which: (a) is covered by a valid claim of an issued, unexpired Licensed Patent directed to the Invention. A claim of an issued, unexpired Licensed Patent shall be presumed to be valid unless and until it has been held to be invalid by a final judgment of a court of competent jurisdiction from which no appeal can be or is taken; or (b) is covered by any claim being prosecuted in a pending application directed to the Invention.

“LICENSEE” means LICENSEE and its Affiliates. “Affiliate” means any person, corporation, or other business entity which controls, is controlled by, or is under common control with LICENSEE; and for this purpose, “control”

of a corporation means the direct or indirect ownership of more than fifty percent (50%) of its voting stock, and “control” of any other business entity means the direct or indirect ownership of greater than a fifty percent (50%) interest in the income of such entity.

2. LICENSE GRANT

BRUK hereby grants to LICENSEE exclusive worldwide rights to the Licensed Patent, in the Licensed Field of Use, to make, have made, use, offer for sale, sell, lease, rent and export Licensed Products and Related Services for a term commencing as of Effective Date and ending on the expiration of the last to expire of the Licensed Patents.

Transfer or sublicensing of the Licensed Patent by LICENSEE is prohibited under the terms of this Agreement, except where BRUK has approved, in his sole discretion, such transfer or sublicensing by separate written agreement.

Future Expenses—All future expenses in respect of the Licensed Patent shall be paid by LICENSEE during the term of this Agreement.

Patent Maintenance Fees—All maintenance costs for issued Licensed Patents shall be paid by LICENSEE during the term of this Agreement. LICENSEE shall have the right to notify BRUK that it has no further interest in any particular patent requiring prosecution or maintenance payments, and BRUK may then elect to make the maintenance payments himself or abandon the patent.

3. COMMERCIAL APPLICATION (DILIGENCE)

LICENSEE agrees to use all reasonable efforts and diligence to proceed with the development, manufacture, and sublicensing of the Licensed Products and Related Services, and to diligently develop markets for the Licensed Products and Related Services.

4. PATENT ROYALTIES AND QUARTERLY REPORTS

Patent Royalty Amounts—As consideration for the grant of exclusive rights to the Licensed Patent, LICENSEE will pay to BRUK twenty-five (25) percent of the gross revenues derived from the use, offer for sale, sell, lease, rent and export of Licensed Products and Related Services (the “Patent Royalty”).

Annual Minimum Patent Royalty Amounts—The grant of exclusive rights to the Licensed Patent is subject to an “Annual Minimum Patent Royalty Payment” of \$50,000 for the initial one (1) year period commencing upon the issuance of a United States patent in respect of BRUK’s United States Patent Application, “METHOD AND SYSTEM FOR PROCESSING FINANCIAL TRANSACTIONS USING MULTIPLE FINANCIAL ACCOUNTS,” Serial Number #11/809,031 (the “Initial Term”). The Annual Minimum Patent Royalty Payment in subsequent years shall increase by one hundred (100) percent from the previous one (1)

year period. For greater certainty, the Annual Minimum Patent Royalty Payment in the 2nd year will be \$100,000. LICENSEE shall, at the commencement of the Initial Term and each subsequent one (1) year renewal term (if applicable), make the Annual Minimum Patent Royalty Payment to BRUK. BRUK shall draw against the Annual Minimum Patent Royalty Payment for any and all Patent Royalties due to BRUK for the period for which the Annual Minimum Patent Royalty Payment was made.

Quarterly Patent Royalty Reports—LICENSEE agrees to provide BRUK, within thirty (30) days after the end of each calendar quarter and within ten (10) days after the expiration or termination of this Agreement, a report of the gross revenues derived from the use, offer for sale, sell, lease, rent and export of Licensed Products and Related Services, by country (if applicable) (“Quarterly Patent Royalty Reports”). LICENSEE shall commence providing BRUK such Quarterly Patent Royalty Reports within thirty (30) days following the end of the first calendar quarter in the Initial Term. The Quarterly Patent Royalty Reports will quantify the gross revenues derived from the use, offer for sale, sell, lease, rent and export of Licensed Products and Related Services, by country (if applicable), accrued during the previous quarter explaining the basis for such calculations. In the calendar quarter in which LICENSEE has exhausted the Annual Minimum Patent Royalty Payment, LICENSEE shall include with the Quarterly Patent Royalty Report payment for all Patent Royalties accrued for the immediately preceding quarter that are in excess of the Annual Minimum Patent Royalty Payment. Unless otherwise instructed by BRUK, these payments will be made by check directly to BRUK at the address set out in Section 8.

Auditable Records—LICENSEE shall keep true, accurate and consistent records containing regular entries relating to the gross revenues derived from the use, offer for sale, sell, lease, rent and export of Licensed Products and Related Services, by country (if applicable). These records shall be available for examination during normal business hours by accountants representing BRUK, who shall be entitled to perform an audit and to make copies and extracts and to receive any explanations that may reasonably be requested. BRUK is responsible for payment of the accountant’s fee, except that LICENSEE shall be responsible for such fees in the event an examination discloses a discrepancy in BRUK’s favor of more than five (5) percent of the payment of total fees due under this Agreement.

5. NEGATION OF WARRANTIES

Nothing in this Agreement is or shall be construed as:

- A warranty or representation by BRUK as to the validity or scope of any Licensed Patent;
- A warranty or representation that anything made, used, sold, or otherwise disposed of

under any license granted in this Agreement, is or will be free from infringement of patents, copyrights, and other rights of third parties;

- An obligation to bring or prosecute actions or suits against third parties for infringement;
- Granting by implication, estoppel, or otherwise any licenses or rights under patents or other rights of BRUK or other persons other than Licensed Patents, regardless of whether such patents or other rights are dominant or subordinate to any Licensed Patent; or
- An obligation to furnish any technology or technological information other than the Licensed Patent.

Except as expressly set forth in this Agreement, BRUK MAKES NO REPRESENTATIONS AND EXTENDS NO WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED. THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR THAT THE USE OF THE LICENSED PRODUCTS AND/OR RELATED SERVICES WILL NOT INFRINGE ANY PATENT, COPYRIGHT, TRADEMARK, OR OTHER RIGHTS OR ANY OTHER EXPRESS OR IMPLIED WARRANTIES.

6. INDEMNITY

LICENSEE agrees to indemnify, hold harmless, and defend BRUK against any and all claims for death, illness, personal injury, property damage, and improper business practices arising out of the manufacture, use, sale, or other disposition of the Invention, the Licensed Patent, or the Licensed Product and Related Services by LICENSEE.

NEITHER PARTY SHALL BE LIABLE TO THE OTHER, ITS CUSTOMERS, THE USERS OF ANY LICENSED PRODUCTS AND RELATED SERVICES, OR ANY THIRD PARTIES FOR ANY DIRECT, CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY DAMAGE OR INJURY TO BUSINESS EARNINGS, PROFITS OR GOODWILL SUFFERED BY ANY PERSON ARISING FROM ANY USE OF THE LICENSED PATENTS, LICENSED PRODUCTS AND RELATED SERVICES, REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES, INFRINGEMENT OF INTELLECTUAL PROPERTY, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. TERMINATION

LICENSEE may terminate this Agreement by giving BRUK notice in writing at least thirty (30) days in advance of the Effective Date of termination selected by LICENSEE.

BRUK may terminate this Agreement immediately in the event LICENSEE is in breach of Sections 2 or 4, specifically in respect of the payment of the Annual Minimum Patent Royalty Payment, any Patent Royalties or other expenses in respect of the Licensed Patent.

BRUK may terminate this Agreement effective upon written notice to LICENSEE in the event LICENSEE materially breaches this Agreement and such breach remains uncured for thirty (30) days following written notice of such breach, unless such breach is incurable in which event termination shall be immediate upon receipt of written notice.

BRUK may terminate this Agreement by written notice if LICENSEE: (a) becomes insolvent; (b) files a petition, or has a petition filed against it, under any laws relating to insolvency, and the related insolvency proceedings are not dismissed within sixty (60) days after the filing of such petition; (c) enters into any voluntary arrangement for the benefit of its creditors; (d) appoints, or has appointed on its behalf, a receiver, liquidator or trustee of any of such party's property or assets; or (e) ceases to carry on business in the ordinary course.

The effect of termination or expiration of this Agreement is that the license granted under Section 2 shall revert back to BRUK.

Surviving any termination or expiration are any cause of action or claim of LICENSEE or BRUK, accrued or to accrue, because of any breach or default by the other party; and the provisions of Sections 4, 5 and 6; and any other provisions that by their nature are intended to survive.

8. MISCELLANEOUS

Marking—Prior to the issuance of patents on the Invention, LICENSEE agrees, when practical and consistent with LICENSEE's practices, to mark the Licensed Products and Related Services (or their containers or labels) made, sold, or otherwise disposed of by it under the license granted in this Agreement with the words "Patent Pending," and following the issuance of one or more patents, with the numbers of the Licensed Patent.

Names and Marks—Each party agrees not to identify the other party in any promotional advertising or other promotional materials to be disseminated to the public or any portion thereof, without the other party's prior written consent. Either party may disclose the existence of this Agreement.

Infringement by Others: Protection of Patents—LICENSEE shall promptly inform BRUK of any suspected infringement of any Licensed Patent by a third party.

Sublicense—LICENSEE may not grant sublicenses.

Assignment—LICENSEE may not assign this Agreement.

Dispute Resolution—The parties hereto agree to resolve any dispute or disagreements, excluding any dispute relating to patent validity or infringement, which may arise during the course of this Agreement as follows:

- First, BRUK and LICENSEE's senior management will meet to attempt in good faith to resolve such dispute or disagreement;
- If no resolution is reached, either party may request a one-day meeting with a mediator;
- If no resolution is reached by mediation, such dispute or disagreement will be submitted for binding arbitration pursuant to the rules of the Arbitration and Mediation Institute of Canada Inc.

Notices—Notices will be given by (a) certified mail (b) fax, (c) courier service, or (d) electronic mail (e-mail). Certified mail or courier service notice is effective on the earlier of 5 days from being deposited for delivery or the date on the mail or courier receipt. Fax and e-mail notice are effective when the sender receives confirmation that the fax was sent or the e-mail received. A party will send notice to the following mail or e-mail address or another address about which the party gives thirty (30) days prior written notice:

TO BRUK: [***]

TO LICENSEE: [***]

Scope of Agreement—This Agreement constitutes the entire Agreement between the parties pertaining to the subject matter hereof. No representative of BRUK or LICENSEE has been authorized to make any representation, warranty, or promise not contained herein.

Applicable Law—This Agreement shall be governed by the laws of the Province of British Columbia applicable to agreements negotiated, executed and performed wholly within British Columbia.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement in duplicate originals by their duly authorized officers or representatives.

[Signatures]