

REC

01-13-2003



1-1303

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

1. Name of conveying party(ies):
NOK, Inc.
1-1303
18th fl., Parale Mitsui Bldg. 8 Higashida
Kanagawa-Ken, 210-0005, Japan

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

3. Nature of conveyance:
 Assignment Merger
 Security Agreement Change of Name
 Other

Execution Date: December 31, 2002

2. Name and address of receiving party(ies)
Name: **Photon Dynamics, Inc.**
Internal Address: _____
Street Address: **6325 San Ignacio Avenue**
City: **San Jose** State: **CA** Zip: **95119**

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

4. Application number(s) or patent number(s):
If this document is being filed together with a new application, the execution date of the application is: _____
A. Patent Application No.(s)
09/874,685
B. Patent No.(s)
6,272,247; 6,259,109; 5,063,608

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:
Name: **Diana Sanchez Bentz**
Internal Address: _____
Cooley Godward LLP
5 Palo Alto Square
Street Address: **3000 El Camino Real**
City: **Palo Alto** State: **CA** Zip: **94306**

6. Total number of applications and patents involved: **4**
7. Total fee (37 CFR 3.41)..... \$ **160.00**
 Enclosed
 Authorized to be charged to deposit account
8. Deposit account number:
03-3115
(Attach duplicate copy of this page if paying by deposit account)

01/13/2003 DBYRNE 00000198 09874685

DO NOT USE THIS SPACE

01 FEB 09 2003 Statement and signature fee \$160.00 DP

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Diana Sanchez Bentz
Name of Person Signing

Diana Sanchez Bentz
Signature

January 9, 2003
Date

Total number of pages including cover sheet, attachments, and documents: **3**

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

[EXECUTION COPY]

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT is entered into as of December 31, 2002, (this "Agreement"), by and among (a) Neopt Corporation (f/k/a NOK EG&G Optoelectronics Co. Ltd.), a Japanese corporation ("Neopt"), (b) NOK Inc., a Nevada corporation ("NOK"; and together with Neopt, collectively, the "Assignors") and (c) Photon Dynamics, Inc., a California corporation (alternatively, "Photon" or the "Assignee"). All capitalized terms used but not defined in this Agreement have the same respective meanings in this Agreement as in the NOK Loan Agreement (as defined below).

RECITALS

WHEREAS, Datacube, Inc., a Massachusetts corporation ("Datacube") and Neopt have entered into a Loan Agreement, dated as of December 28, 1995 (as amended by Amendment No. 1, dated as of August 7, 1998, the "Neopt Loan Agreement");

WHEREAS, Datacube and NOK have entered into a Loan Agreement, dated as of August 7, 1998 (the "NOK Loan Agreement"; and together with the Neopt Loan Agreement, collectively, the "Loan Agreements");

WHEREAS, Datacube has issued a promissory note, dated as of August 7, 1998, in favor of NOK (the "Note");

WHEREAS, Datacube and NOK are parties to a Security Agreement, dated as of August 7, 1998 (the "Security Agreement");

WHEREAS, NOK and each Stock Pledgor are parties to a Stock Pledge Agreement, dated as of August 7, 1998 (collectively, the "Stock Pledge Agreements", and together with the Loan Agreements, the Note, the Security Agreement and any other Loan Document (as defined in the NOK Loan Agreement), collectively, the "Credit Documents");

WHEREAS, the Assignee and Datacube are parties to that certain Technology License Agreement dated as of April 1, 2002 (the "License Agreement");

WHEREAS, contemporaneously with the execution and delivery of this Agreement, Datacube and the Assignee are entering into a Settlement Agreement, dated as of even date herewith (the "Settlement Agreement"), pursuant to which Datacube shall, in consideration for Assignee's entry into this Agreement, credit the Assignee an amount

equal to \$750,000 for amounts owed by the Assignee to Datacube under the License Agreement;

WHEREAS, contemporaneously with the execution and delivery of this Agreement, the Assignors, Assignee and Greater Bay Trust Company, as escrow agent (the "Escrow Agent") are entering into an Escrow Agreement, dated as of even date herewith (the "Escrow Agreement"); and

WHEREAS, the Assignors and the Assignee desire that all of Assignors' right, title and interest and obligations arising under the Credit Documents be assigned to and assumed by the Assignee, on the terms and subject to the conditions set forth herein;

NOW THEREFORE for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. Assignment. Subject to the terms and conditions of this Agreement, each Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes without recourse to any Assignor, all of the Assignors' right, title and interest and obligations arising under the Credit Documents, including, without limitation, the patents and trademarks on Exhibit 1 attached hereto, but excluding the Assignors' right, title and interest in respect of the inventory described on Annex I attached hereto.

2. Assignors' Representations. Each Assignor (a) jointly and severally represents and warrants that (i) each Assignor is legally authorized to enter into this Agreement, (ii) each Assignor is solvent and able to pay its debts (including trade debts) as they mature; (iii) (x) the outstanding principal amount due and owing from Datacube to Neopt as of the date hereof under the Neopt Loan Agreement is \$3,500,000, and (y) the outstanding principal amount due and owing from Datacube to NOK as of the date hereof under the NOK Loan Agreement is \$600,000; (b) makes no representation or warranty, express or implied, and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with any Credit Document or the execution, legality, validity, enforceability, genuineness, sufficiency or value of any Credit Document or any other instrument or document furnished pursuant thereto, other than that it is the legal and beneficial owner of the interests being assigned by it hereunder free and clear of any claim or encumbrance and (c) makes no representation or warranty and assumes no responsibility with respect to the financial condition of Datacube or any of its Subsidiaries or any other Person primarily or secondarily liable in respect of any of its obligations under the Credit Documents, or the performance or observance by Datacube or any of its Subsidiaries or any other Person primarily or secondarily liable in respect of any of its obligations under the Credit Documents or any other instrument or document delivered or executed pursuant thereto.

3. Assignee's Representations. The Assignee (a) represents and warrants that (i) it is duly and legally authorized to enter into this Agreement, (ii) the execution, delivery and performance of this Agreement do not conflict with any provision of law or

of the charter or by-laws of the Assignee, or of any agreement binding on the Assignee, (iii) all acts, conditions and things required to be done and performed and to have occurred prior to the execution, delivery and performance of this Agreement, and to render the same the legal, valid and binding obligation of the Assignee, enforceable against it in accordance with its terms, have been done and performed and have occurred in due and strict compliance with all applicable laws, (b) confirms that it has received a copy of the Credit Documents, together with such documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Agreement, and (c) agrees that it will, independently and without reliance upon the Assignors and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Credit Documents.

4. **Effective Date.** This Agreement shall be deemed to be effective as of December 31, 2002 (the "Effective Date") upon satisfaction of the following conditions:

(a) payment by the Assignee to the Assignors of an aggregate amount equal to \$375,000 by wire transfer of immediately available funds to the following account:

Citibank, N.A.
Citicorp Center
153 East 53rd Street
New York, New York 10043
ABA# 021000089
For the credit of Bingham McCutchen LLP

Account Name: Client Trust Non-Interest Bearing Account
Account Number: 43351994.

(b) payment by the Assignee to the Escrow Agent of an aggregate amount equal to \$375,000 (together with any interest accrued thereon, the "Escrow Amount") by wire transfer of immediately available funds to an account established as of the Effective Date pursuant to the Escrow Agreement.

5. **Agreement as to Escrow Amount.**

(a) So long as no Insolvency Event (as defined in Attachment 1 hereto) shall have occurred with respect to Datacube within 91 days after the Effective Date, the Assignee and the Assignors agree that the Escrow Agent may release the Escrow Amount to the Assignors in accordance with the terms of the Escrow Agreement.

(b) If an Insolvency Event shall have occurred within 91 days after the Effective Date, but no action to avoid any transfers in accordance with Section 547 or other provisions of the Bankruptcy Code (as defined in Attachment 1 hereto) ("Preference Action") has been commenced within the applicable date specified in Section 546 of the Bankruptcy Code ("Commencement Outside Date"), then the Assignee and the Assignors agree that they shall, promptly following the Commencement

Outside Date, issue joint written instructions to the Escrow Agent to release the Escrow Amount to the Assignors in accordance with the terms of the Escrow Agreement.

(c) If (i) an Insolvency Event shall have occurred within 91 days after the Effective Date, (ii) a Preference Action shall have been commenced within the Commencement Outside Date, and (iii) any payment made to the Assignee or value received by the Assignee with respect any obligation of Datacube to the Assignee under or in respect of the Settlement Agreement or the documents referred to therein (including the Datacube Credit (as defined in Exhibit C of the Settlement Agreement)) is rescinded or otherwise must be returned by the Assignee by order of a United States bankruptcy court (the amount of such rescission or return being the "Rescission Amount"), then the Assignee and the Assignors hereby agree that they shall, promptly following the date of issuance of such bankruptcy order (the "Rescission Date"), issue joint written instructions to the Escrow Agent to (x) release to the applicable plaintiff or United States bankruptcy court the portion of the Escrow Amount sufficient to pay the Rescission Amount and (y) release to the Assignors any remaining Escrow Amount, all in accordance with the terms of the Escrow Agreement. Except as set forth in Section 6 hereof, within six years following the Effective Date the Assignors hereby agree to indemnify and hold the Assignee harmless with respect to any claims, liabilities, losses, damages, costs and expenses (including, without limitation, fees and disbursements of counsel) related to or arising out of (x) any Preference Action (including the difference, if any, by which the Rescission Amount exceeds the Escrow Amount) or (y) any other action under state law seeking return or rescission of any payment made to the Assignee or value received by the Assignee with respect any obligation of Datacube to the Assignee under or in respect of the Settlement Agreement or the documents referred to therein (including the Datacube Credit) ("State Action") (all of the foregoing claims, liabilities, losses, damages, costs and expenses, collectively, the "Indemnified Liabilities").

(d) After the Assignee has been paid in full in respect of the Rescission Amount, each Assignor shall be immediately subrogated to the rights of the Assignee (to the extent of the portion of the Escrow Amount released by the Escrow Agent to the Assignee and the Indemnified Liabilities paid by the Assignors on behalf of the Assignee, in each case pursuant to clause (c) above) to receive payments, distributions of property and other value by Datacube applicable to the Assignee until all such Escrow Amount released by the Escrow Agent to the Assignee and all such Indemnified Liabilities paid by the Assignors on behalf of the Assignee shall be paid in full.

6. Right to Defend Preference Actions, Etc.

(a) The Assignors are hereby irrevocably authorized on behalf of the Assignee, to (i) assume the defense of any Preference Actions or State Actions either in their own name, or the name of the Assignee, and (ii) take generally any action in connection with any meeting or proceeding in connection with any Insolvency Event which the Assignee might otherwise take. In the event of such assumption, the Assignors shall have the authority to negotiate, compromise and settle such actions, provided, that the Assignors shall not agree to any settlement of such actions that imposes on the

Assignee the burden of (x) any monetary relief in excess of the Escrow Amount or (y) any injunctive or equitable relief, without in either case the prior written consent of the Assignee (such consent not to be unreasonably withheld or delayed). The Assignors hereby agree to be responsible for all fees, costs and expenses that they incur in connection with taking such actions. The Assignee hereby agrees that it shall co-operate with the Assignors in connection of the Assignors' defense of such actions.

(b) Assignee will have the right to participate at its expense in the defense of any such actions. In addition, if the Assignors fail to promptly assume or maintain the defense of such actions, the Assignee shall have the right to participate in the defense of such actions. If the Assignee shall participate in the defense of such actions because such Assignors fail to promptly assume or maintain the defense of such actions, then the Assignees and the Assignor shall issue joint written instructions to the Escrow Agent at least once per calendar quarter to release to the Assignee a portion of the Escrow Amount equal the amount necessary to reimburse the Assignee for the reasonable fees and costs of its attorneys in defending such actions.

7. Rights Under Credit Documents. From and after the Effective Date, (i) the Assignee shall be a party to the Credit Documents and, to the extent provided in this Agreement, have the rights and obligations of the Assignors thereunder, and (ii) each Assignor shall, to the extent provided in this Agreement, relinquish its rights and be released from its obligations under the Credit Documents; provided, however, that NOK shall retain its rights to be indemnified by Datacube pursuant to Section 8.1(i) of the NOK Loan Agreement in respect of any third party claims or actions against NOK arising prior to the Effective Date.

8. Payments. From and after the Effective Date, unless otherwise set forth herein, Datacube shall make all payments in respect of the rights and interests assigned hereby (including payments of principal, interest, fees and other amounts) to the Assignee.

9. Further Assurances.

(a) Each of the Assignors hereby agrees that it shall, promptly following the Effective Date, deliver to the Assignee all certificates or instruments representing or evidencing any Pledged Shares (as defined in each Stock Pledge Agreement), together with all instruments of transfer or assignment, in each case in the Assignors' possession.

(b) Each of the Assignors hereby authorize the Assignee to file any UCC-3 or other lien amendment statements, including intellectual property assignments to be filed with the United States Patent and Trademark Office, required to assign to the Assignee all liens granted by Datacube in favor of the Assignors in connection with the Credit Documents.

(c) Each of the Assignors hereby agrees (i) not to interfere with any rights that the Assignee or its successors and assigns have under the License Agreement, and (ii) that the security interest granted by Datacube to the Assignors pursuant to the applicable

Credit Document shall be subordinated to the Assignee's rights under the License Agreement.

10. Miscellaneous. The headings used in this Agreement are for convenience of reference only and shall not in any way be deemed to limit, define or describe the scope and intent of this Agreement or any provision hereof. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED AND INTERPRETED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO ITS PRINCIPLES OF CONFLICTS OF LAWS. EACH PARTY HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT EACH MAY HAVE TO A TRIAL BY JURY OF ANY DISPUTE ARISING UNDER OR RELATING TO THIS AGREEMENT AND AGREES THAT ANY SUCH DISPUTE SHALL BE TRIED BEFORE A JUDGE SITTING WITHOUT A JURY. In any action, suit or proceeding to enforce or construe the provisions of this Agreement, the prevailing party will be entitled to recover its reasonable attorney's fees, court costs and other expenses incurred in connection with such proceeding in addition to any other relief that it may receive. This Agreement shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors in title and assigns and is enforceable by each of the parties hereto. All covenants, agreements and representations of any party contained herein shall be for the benefit of all other parties hereto and shall be enforceable by each of such other parties. This Agreement may not be modified or amended except by a written instrument executed by all of the parties hereto.

11. Counterparts. This Agreement may be executed in one or more counterparts, each of which, when executed and delivered, shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same agreement with the same force and effect as if the signatures of all the parties were on a single counterpart.

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01/06/2003 16:17 FAX

COOLEY GODWARD HN #7

@004

US-VERMONT 03:14PM FROM COOLEY GODWARD LLP

4100010000

T-645 P.02/03 F-418

Jan-09-03 16:48 From

I-051 P.002/002 I-366

IN WITNESS WHEREOF, intending to be legally bound, each of the undersigned has caused this Agreement to be executed on its behalf by its officer thereunto duly authorized, as of the date first above written.

ASSIGNEE:

PHOTON DYNAMICS, INC.

By: Richard L. Dinsley
Name: Richard L. Dinsley
Title: Chief Financial Officer

ASSIGNORS:

NEOPT CORPORATION

By: _____
Name:
Title:

NOK, INC.

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED TO BY:

DATAcube, INC.

By: _____
Name:
Title:

ASSIGNMENT AGREEMENT

NYDOCS 102848
SIGNATURE PAGE TO ASSIGNMENT AND ASSUMPTION AGREEMENT

Received Jan-09-2003 03:00pm From

To COOLEY GODWARD LLP Page 382

01/09/2003 03:15 PM/PT NO. 00001 0000

IN WITNESS WHEREOF, intending to be legally bound, each of the undersigned has caused this Agreement to be executed on its behalf by its officer thereunto duly authorized, as of the date first above written.

ASSIGNEE: PHOTON DYNAMICS, INC.

By: _____
Name:
Title:

ASSIGNORS: NEOPT CORPORATION

By: *Richard A. ...*
Name:
Title:

NOK, INC.

By: *...*
Name:
Title:

ACKNOWLEDGED AND AGREED TO BY:

DATAcube, INC.

By: _____
Name:
Title:

IN WITNESS WHEREOF, intending to be legally bound, each of the undersigned has caused this Agreement to be executed on its behalf by its officer thereunto duly authorized, as of the date first above written.

ASSIGNEE:

PHOTON DYNAMICS, INC.

By: _____
Name: Richard L. Dissly
Title: Chief Financial Officer

ASSIGNORS:

NEOPT CORPORATION

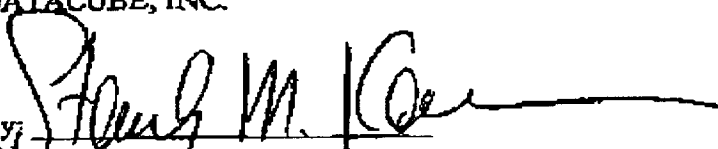
By: _____
Name:
Title:

NOK, INC.

By: _____
Name:
Title:

ACKNOWLEDGED AND AGREED TO BY:

DATAcube, INC.

By: 
Name:
Title:

NYDOCS: 1076408
SIGNATURE PAGE TO ASSIGNMENT AND ASSUMPTION AGREEMENT

EXHIBIT 1

Patents:

App. Ser. No. 09/874,685
6,272,247
6,259,109
5,063,608

Trademarks:

2,107,784
2,103,942
1,500,322
1,404,727
1,551,626
1,722,916

ANNEX IDescription of Inventory

Item	Product	Order Number	Quantity
1	MV200 (w/AS)	PM3-6453	5
2	MV250 (w/AD)	PM4-6456	5
3	APA512+	010-9266-26	10
4	16MB AM module	PM0-1600	8
5	mmNMAC-2	100-0640-02	5
6	RVF	100-0644-01	3
7	WX	100-0612-01	3
8	MaxPCI w/Snap In 16MB 5 th memory module *Rev.3 board required.	PCI-46XXX	25
9	QW	100-0981-01	6
10	QA	100-0911-01	8
11	QI	100-0977-01	8
12	CONVOLVER 50	100-0939-01	8
13	CONVOLVER 200	100-0938-02	4
14	STORAGE 96	100-0922-01	10
15	GP PSMOD	100-0919-01	10
16	Display PSMOD	100-0934-01	10
17	MdPCI 4cc w/o HardDisk	100-0907-01	4
18	MVME1604-003	900-9396	3
19	MVME760-001	900-9374	3

Attachment 1**CERTAIN DEFINITIONS**

“Insolvency Event” means means the filing of a petition under the United States Bankruptcy Code is filed by or against Datacube or any successor of Datacube.

“Bankruptcy Code” means the Bankruptcy Code of 1978, as amended, as codified under Title 11 of the United States Code, and the Bankruptcy Rules promulgated thereunder, as the same may be in effect from time to time.