

08-05-2003

Form PTO-1595 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005) Tab settings → → → ▼

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office



To the Honorable Commissioner of Patents and Trademarks, Serial No. 102516222 Filed original documents or copy thereof.

1. Name of conveying party(ies): Digital Optics Corporation  
Additional name(s) of conveying party(ies) attached?  Yes  No

8-1-03

2. Name and address of receiving party(ies)  
Name: First Charter Bank  
Internal Address:  
Street Address: 10200 David Taylor Drive  
City: Charlotte State: North Carolina Zip: 28262  
Additional name(s) & address(es) attached?  Yes  No

3. Nature of conveyance:  
 Assignment  Merger  
 Security Agreement  Change of Name  
 Other Termination of Security Interest  
Execution Date: July 24, 2003

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)  
B. Patent No.(s) 5771218, 5850300, 5872762, 6374004, 6404958, 6406195, 6406583, 6530697  
Additional number(s) attached  Yes  No

5. Name and address of party to whom correspondence concerning document should be mailed:  
Name: Alexander M. Donaldson, Esq.  
Internal Address: Wyrick Robbins Yates & Ponton LLP  
Street Address: 4101 Lake Boone Trail, Suite 300  
City: Raleigh State: NC Zip: 27607

6. Total number of applications and patents involved: 8  
7. Total fee (37 CFR 3.41)..... \$320.00  
 Enclosed  
 Authorized to be charged to deposit account

8. Deposit account number:  
(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.  
*To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.*  
KEVIN M. DREHMER [Signature] 7/24/03  
Name of Person Signing Signature Date  
Total number of pages including cover sheet, attachments, and document: 10

OFFICE OF PUBLIC RECORDS  
FINANCE SECTION  
JUL 24 2003 11:22

08/04/2003 ECDDPER 00000287 5771218  
01 FC:8021 320.00 OP

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

## SECURITY AGREEMENT

THIS SECURITY AGREEMENT (this "Agreement") is dated as of July 24, 2003, and entered into between DIGITAL OPTICS CORPORATION, a Delaware corporation ("Grantor"), and FIRST CHARTER BANK, a North Carolina banking corporation (the "Secured Party").

### RECITALS

Grantor and Secured Party have entered into that certain Loan Agreement, dated as of the date hereof (the "Loan Agreement"), pursuant to which Grantor issued to Secured Party the Promissory Note, dated as of the date hereof, made by Grantor to the order of Secured Party pursuant to the Loan Agreement (the "Note"). Capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Agreement.

Grantor desires to grant to Secured Party a security interest in the Collateral (as defined below) to secure Grantor's obligations to the Secured Party under the Note and Loan Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants, conditions, representations, and warranties hereinafter set forth and for other good and valuable consideration, the parties hereto mutually agree as follows:

1. Grant of Security Interest. Grantor hereby grants to Secured Party a security interest in all of Grantor's right, title and interest in and to all of those items of personal property set forth on Exhibit A attached hereto and incorporated herein by reference (collectively, the "Collateral"), in each case whether now or hereafter existing, whether tangible or intangible, or in which Grantor now has or hereafter acquires an interest and wherever the same may be located.

2. Security for Obligations. This Agreement is given to secure the due and punctual payment of the indebtedness and obligations of Grantor to Secured Party under the Loan Agreement and the Note, including, but not limited to, (a) the prompt and complete payment when due of the unpaid principal of and accrued interest on the Note, (b) the prompt and complete payment and performance when due of all other indebtedness, obligations and liabilities of Grantor to Secured Party, now existing or hereafter incurred, arising out of or in connection with the Note, whether for principal, interest, fees, expenses or otherwise, whether direct or indirect, absolute or contingent, secured or unsecured, matured or unmatured, joint or several, liquidated or unliquidated, and (c) all renewals, extensions, modifications and refinancings of the foregoing indebtedness and obligations, together with all costs of collection, including reasonable attorneys' fees if collected by or through an attorney-at-law or in bankruptcy or other judicial proceedings (collectively the "Secured Obligations").

3. Grantor Remains Liable. Anything contained herein to the contrary notwithstanding, (a) Grantor shall remain liable under any contracts and agreements included in the Collateral, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Agreement had not been executed, (b) the exercise by the Secured Party of any of its rights hereunder shall not release Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral, and (c) the Secured

Party shall not have any obligation or liability under any contracts, licenses, and agreements included in the Collateral by reason of this Agreement, nor shall the Secured Party be obligated to perform any of the obligations or duties of Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

4. Representations and Warranties. Grantor represents and warrants as follows:

(a) Except for the security interest created by this Agreement and Permitted Liens, Grantor owns the Collateral free and clear of any liens. Except as may have been filed in connection with the Permitted Liens or in favor of the Secured Party relating to this Agreement, no effective financing statement or other instrument similar in effect covering all or any part of the Collateral is on file in any filing or recording office.

(b) Grantor is a corporation duly organized and validly existing under the laws of the State of Delaware. The principal office and the location where Grantor keeps its records including records of accounts and all originals of all chattel paper that evidence accounts are, as of the date hereof, and have been for the four month period preceding the date hereof, located at 9815 David Taylor Drive, Charlotte, North Carolina 28262.

(c) Grantor has not, within the 4-month period preceding the date hereof, had a different name from the name of Grantor listed on the signature pages hereof.

(d) All actions and consents, including all filings, notices, registrations and recordings necessary or desirable for the granting to Secured Party of a security interest in the Collateral, the exercise by Secured Party of the rights provided for in this Agreement or the exercise of remedies by Secured Party in respect of the Collateral have been made or obtained, except for those actions to be taken and consents to be obtained that are necessary or desirable at the time such rights or remedies are exercised.

(e) No authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body, or any Person is required for the grant by Grantor of the security interest in the Collateral granted hereby or for the execution, delivery or performance of this Agreement by Grantor.

5. Further Assurances.

(a) Grantor agrees that from time to time, Grantor will promptly execute and deliver all further instruments and documents, and take all further action, that may be necessary or desirable, or that the Secured Party may reasonably request, in order to perfect and protect any security interest granted or purported to be granted hereby or to enable the Secured Party to exercise and enforce its rights and remedies hereunder with respect to any Collateral; without limiting the foregoing, Grantor promptly take all actions necessary or desirable to put the Secured Party in control of all Collateral that requires "control" for attachment and perfection under Article 8 or 9 of the UCC.

(b) Grantor hereby authorizes the Secured Party to file one or more financing or continuation statements, and amendments thereto, relative to all or any part of the Collateral without the signature of Grantor. Grantor agrees that a carbon, photographic or other

reproduction of this Agreement or of a financing statement signed by Grantor shall be sufficient as a financing statement and may be filed as a financing statement in any and all jurisdictions.

6. Certain Covenants of Grantor.

(a) Grantor shall:

(i) not use or permit any Collateral to be used unlawfully or in violation of any provision of this Agreement or any applicable statute, regulation or ordinance or any policy of insurance covering the Collateral;

(ii) notify the Secured Party of any change in Grantor's name, identity or principal residence within thirty (30) days of such change; and

(iii) pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, services, materials and supplies) against, the Collateral, except to the extent the validity thereof is being contested in good faith.

(b) Grantor further covenants and agrees that except for the security interest created by this Agreement, it shall not create or suffer to exist any lien upon or with respect to any of the Collateral, except Permitted Liens, and shall defend the Collateral against all persons at any time claiming any interest therein, except with respect to Permitted Liens.

(c) Grantor shall deliver in connection with the execution of this Agreement financing statements covering the Collateral in proper form and content to file with the Office of the Secretary of State of Delaware, the Registrar of Deeds of Mecklenburg County, North Carolina, and such other offices and agencies as are necessary or desirable to perfect Secured Party's security in the Collateral created hereby.

7. Events of Default. Any one or more of the Events of Default set forth in the Loan Agreement shall constitute a default or event of default by Grantor hereunder (each, an "Event of Default").

8. Attorney-in-Fact. Grantor does hereby irrevocably make, constitute and appoint the Secured Party as its true and lawful attorney-in-fact (the "Power of Attorney"), with full power and authority to do any and all acts necessary or proper to carry out the intent of this Agreement including, without limitation, the right, power and authority (a) to enforce all rights of Grantor under and pursuant to any agreements with respect to the Collateral, all for the sole benefit of the Secured Party; (b) to enter into and perform such arrangements as may be necessary in order to carry out the terms, covenants and conditions of this Agreement that are required to be observed or performed by Grantor; (c) to execute such other and further mortgages, pledges and assignments of the Collateral as the Secured Party may reasonably require for the purpose of perfecting, protecting or maintaining the security interest granted to the Secured Party by this Agreement; and (d) to do any and all other things necessary or proper to carry out the intent of this Agreement, and Grantor hereby ratifies and confirms that the party reflected above as such attorney-in-fact or its substitutes does by virtue of this Power of

Attorney, which power is coupled with an interest and is irrevocable, until Grantor has paid in full the Secured Obligations and this Agreement is terminated.

9. Remedies. If the occurrence of any Event of Default shall have occurred and be continuing beyond any applicable grace period, the Secured Party may exercise in respect of the Collateral, in addition to all other rights and remedies provided for herein or in the Loan Agreement, the Note, the Collateral Documents and the Loan Documents or otherwise available to the Secured Party, all the rights and remedies of a secured party on default under the Uniform Commercial Code in the State of North Carolina (the "UCC"), and also may (a) require Grantor to, and Grantor hereby agrees that it will at its expense and upon the reasonable request of the Secured Party forthwith, assemble all or part of the Collateral as directed by the Secured Party and make it available to the Secured Party at a place to be designated by the Secured Party that is reasonably convenient to both parties; (b) peacefully enter onto the property where any Collateral is located and take possession thereof with or without judicial process; (c) prior to the disposition of the Collateral, store, process, repair or recondition the Collateral or otherwise prepare the Collateral for disposition in any manner to the extent the Secured Party deems appropriate; (d) peacefully take possession of any of Grantor's premises or place custodians in exclusive control thereof, remain on such premises and use the same and any of Grantor's equipment for the purpose of completing any work in process, taking any actions described in the preceding clause (c) and collecting any Secured Obligation; and (e) without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at the Secured Party's offices or elsewhere, for cash, on credit or for future delivery, at such time or times and at such price or prices and upon such other terms as the Secured Party may deem commercially reasonable. The Secured Party may be the purchaser of any or all of the Collateral at any such sale and the Secured Party shall be entitled, for the purpose of bidding and making settlement or payment of the purchase price for all or any portion of the Collateral sold at any such public sale, to use and apply any of the Secured Obligations as a credit on account of the purchase price for any Collateral payable by the Secured Party at such sale. Grantor agrees that, to the extent notice of sale shall be required by law, at least ten (10) days' notice to Grantor of the time and place of any public sale or the time after which any private sale is to be made shall constitute reasonable notification. The Secured Party shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Secured Party may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned.

10. Application of Proceeds. All proceeds received by the Secured Party in respect of any sale of, collection from, or other realization upon all or any part of the Collateral shall be applied in the following order of priority:

(a) first, to the payment of all reasonable costs and expenses of such sale, collection or other realization, including reasonable compensation to the agents and counsel for the Secured Party, and all other expenses, liabilities and advances made or incurred by the Secured Party in connection therewith;

(b) second, to the payment of all other Secured Obligations and, as to obligations arising under the Loan Agreement, as provided in such agreement; and

(c) third, any balance to Grantor.

11. Continuing Security Interest; Transfer of Obligations; Termination. This Agreement shall create a continuing security interest in the Collateral and shall (a) remain in full force and effect until terminated in accordance with the provisions of this Section, (b) be binding upon Grantor and its respective successors and assigns, and (c) inure, together with the rights and remedies of the Secured Party hereunder, to the benefit of the Secured Party and its permitted successors, transferees and assigns. Grantor acknowledges and agrees that the number and amount of the Secured Obligations may fluctuate from time to time hereafter. Grantor expressly agrees that this Agreement and the security interest in the Collateral conveyed to the Secured Party hereunder shall remain valid and in full force and effect, notwithstanding any such fluctuations and future payments. This Agreement shall terminate, and the Secured Party shall automatically release its security interest in the Collateral (and shall execute any and all documents reasonably requested in connection with such release, which obligation shall survive such termination), upon the payment in full by or on behalf of Grantor of the Secured Obligations due and payable to Secured Party pursuant to the Note and Loan Agreement.

12. Amendments, etc. No amendment, modification, termination or waiver of any provision of this Agreement, and no consent to any departure by Grantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Secured Party and, in the case of any such amendment or modification, by Grantor. Any such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

13. Notices. All communications or notices required or permitted by this Agreement shall be made and delivered as provided under the Loan Agreement.

14. Failure or Indulgence Not Waiver; Remedies Cumulative. No failure or delay on the part of the Secured Party in the exercise of any power, right or privilege hereunder shall impair such power, right or privilege or be construed to be a waiver of any default or acquiescence therein, nor shall any single or partial exercise of any such power, right or privilege preclude any other or further exercise thereof or of any other power, right or privilege. All rights and remedies existing under this Agreement are cumulative to, and not exclusive of, any rights or remedies otherwise available.

15. Severability. In case any provision in or obligation under this Agreement shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

16. Headings. Section and subsection headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

17. Governing Law; Terms; Rules of Construction. This Agreement, the rights and obligations of the parties hereunder, and all matters arising out of or relating to this Agreement shall be governed by, and shall be construed and enforced in accordance with, the internal laws of the State of North Carolina, without regard to conflicts of laws principles, except to the extent

that the UCC provides that the perfection of the security interest hereunder, or remedies hereunder, in respect of any particular Collateral are governed by the laws of a jurisdiction other than the State of North Carolina. Unless otherwise defined herein or in the Loan Agreement, terms used in Articles 8 and 9 of the UCC in the State of North Carolina are used herein as therein defined.

18. Waiver of Jury Trial. To the greatest extent permitted by applicable law, each of the parties to this Agreement hereby agrees to waive its respective rights to a jury trial of any claim or cause of action based upon or arising out of this Agreement or any of the related agreements or any dealings between them relating to the subject matter of this transaction or the relationships that are being established pursuant to the related agreements. The scope of this waiver is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this transaction, including contract claims, tort claims, breach of duty claims and all other common law and statutory claims. Each party hereto acknowledges that this waiver is a material inducement to enter into a business relationship, that each has already relied on this waiver in entering into this Agreement, and that each will continue to rely on this waiver in their related future dealings. Each party hereto further warrants and represents that it has reviewed this waiver with its legal counsel and that it knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. This waiver is irrevocable, meaning that it may not be modified either orally or in writing (other than by a mutual written waiver specifically referring to this Section 18 and executed by each of the parties hereto), and this waiver shall apply to any subsequent amendments, renewals, supplements or modifications to this Agreement or any of the other related agreements. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

19. Counterparts; Delivery by Facsimile. This Agreement may be executed in any number of counterparts with the same effect as if all parties hereto had signed the same document. All counterparts shall be construed together and shall constitute one Agreement. This Agreement and any signed agreement or instrument entered into in connection with this Agreement or contemplated hereby, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine, shall be treated in all manner and respects as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person. At the request of any party hereto or to any such agreement or instrument, each other party hereto or thereto shall re-execute original forms thereof and deliver them to all other parties. No party to any such agreement or instrument shall raise the use of a facsimile machine to deliver a signature or the fact that any signature or agreement or instrument was transmitted or communicated through the use of a facsimile machine as a defense to the formation of a contract and each such party forever waives any such defense.

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK;  
THE NEXT PAGE IS THE SIGNATURE PAGE]

In witness whereof, Grantor and the Secured Party have caused this Security Agreement to be duly executed and delivered as of the date first written above.


GRANTOR:

DIGITAL OPTICS CORPORATION

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SECURED PARTY:

FIRST CHARTER BANK

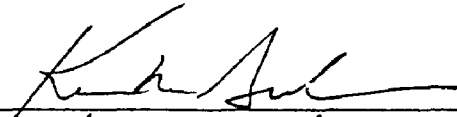
By:   
Name: ROBERT E JAMES  
Title: E. V. P



In witness whereof, Grantor and the Secured Party have caused this Security Agreement to be duly executed and delivered as of the date first written above.

GRANTOR:

DIGITAL OPTICS CORPORATION

By:   
Name: KEVIN M. DRENTH  
Title: PRESIDENT

SECURED PARTY:

FIRST CHARTER BANK

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A

### DESCRIPTION OF COLLATERAL

The Collateral consists of all of Grantor's right, title and interest in and to the following:

(a) Accounts. All present and future accounts receivable and contract rights, including, but not limited to, Grantor's rights (including, without limitation, any and all rights to receive any payments) under any and all property leases, equipment leases and/or employment agreements to which Grantor is a party, chattel paper, instruments, documents, general intangibles and other rights to payment of any kind now or hereafter existing arising out of or in connection with the sale or lease of goods, merchandise or inventory or the rendering of services, including, without limitation, those which are not evidenced by instruments or chattel paper and whether or not they have been earned by performance; all proceeds of any letters of credit or insurance policies on which Grantor is now (or may hereafter be) named as beneficiary; all claims against any third parties for advances or other financial accommodations or any other financial obligations whatsoever owing to Grantor; all rights now or hereafter existing in and to all security agreements, leases, documents of title and other contracts securing, evidencing or otherwise relating to any such accounts, contract rights, chattel paper, instruments, documents, general intangibles, other rights of payment or proceeds or to any such claims against third parties, together with all rights in any returned or repossessed goods, merchandise and inventory and all right, title, security and guaranties with respect to each of the foregoing, including, without limitation, any right of stoppage in transit (any and all such accounts, contract rights, chattel paper, instruments, documents, rights of payment, proceeds, claims and rights being hereinafter referred to as the "Accounts," and any and all such property leases, equipment leases, other leases, security agreements, guaranties and other contracts being hereinafter referred to collectively as the "Account Contracts");

(b) Inventory. All goods, merchandise and other personal property furnished or to be furnished under any contract of service or intended for sale or lease, including, without limitation, whole goods, spare parts, components, supplies, materials and consigned goods; all raw materials, work-in-process, finished goods or materials or supplies of any kind, nature or description used or consumed in Grantor's businesses or which might be used in connection with the manufacture, assembling, packing, shipping, advertising, selling or finishing of such goods, merchandise and personal property; all returned or repossessed goods; and all documents of title or documents evidencing the same; in each instance whether now owned or hereafter acquired by Grantor and wherever located, whether in the possession of Grantor or of a bailee or other person for sale, storage, transit, processing, use or otherwise (all of the foregoing, collectively, being the "Inventory");

(c) Equipment. All machinery, equipment and fixtures, including, without limitation, all manufacturing, assembling, packaging, distribution, selling, data processing and office equipment, all furniture, furnishings, appliances, trade fixtures, tools, tooling, molds, dies, vehicles, vessels and all other goods of every type and description (other than Inventory), and all parts thereof and all accessions thereto, and all substitutions therefor and replacements thereof, in each instance whether now owned or hereafter acquired by Grantor and wherever located (all of the foregoing, collectively, being the "Equipment");

(d) General Intangibles. All rights, interests, choses in action, causes of actions, claims and all other intangible property of Grantor of every kind and nature (other than Accounts) in each instance whether now owned or hereafter acquired by Grantor, including, without limitation, all corporate and other business records; all loans, royalties, and other obligations receivable; all patents, trademarks, noncompete agreements, service marks, trade names, fictitious names, inventions, designs, trade secrets, computer programs, software, printouts and other computer materials, goodwill, registrations, copyrights, copyright applications, permits, licenses, franchises, customer lists, credit files, correspondence, and advertising materials, provided, however, that "Collateral" shall not include any intellectual property as to which Grantor is, pursuant to joint development agreements with customers or vendors in effect on July 24, 2003, prohibited from granting a security interest; all customer and supplier contracts, firm sale orders, rights under license and franchise agreements (other than Licenses, as hereinafter defined), and other contracts and contract rights (including, but not limited to, the property leases, the equipment leases, and each of Grantor's rights under any and all employment agreements to which it is a party); securities accounts; securities entitlements; interests in partnerships, limited liability companies and joint ventures; investment property; all tax refunds and tax refund claims; all right, title and interest under leases, subleases, licenses and concessions and other agreements relating to real or personal property; all payments due or made to Grantor in connection with any requisition, confiscation, condemnation, seizure or forfeiture of any property by any person or governmental authority; all deposit accounts (general or special) with any bank or other financial institution; all credits with and other claims against third parties (including carriers and shippers); all rights to indemnification; all reversionary interests in pension and profit sharing plans and reversionary, beneficial and residual interests in trusts; all proceeds of insurance of which Grantor is a beneficiary; and all letters of credit (and letter of credit rights), guaranties, liens, security interests and other security held by or granted to Grantor; and all other intangible property and general intangibles, whether or not similar to the foregoing; in each instance, whether now or hereafter existing and however and wherever arising and all renewals thereof (all of the foregoing, collectively, being the "General Intangibles");

(e) Chattel Paper, Instruments And Documents. All chattel paper, all instruments, all bills of lading, warehouse receipts and other documents of title and documents, in each instance whether now owned or hereafter acquired by Grantor;

(f) Other Property. All property or interests in property now owned or hereafter acquired by Grantor which now may be owned or hereafter may come into the possession, custody or control of Grantor, or any agent or affiliate of Grantor, in any way or for any purpose (whether for safekeeping, deposit, custody, pledge, transmission, collection or otherwise); and all rights and interests of Grantor, now existing or hereafter arising and however and wherever arising, in respect of any and all (i) notes, drafts, letters of credit, stocks, bonds, and debt and equity securities, whether or not certificated, and warrants, options, puts and calls and other rights to acquire or otherwise relating to the same; (ii) money; (iii) proceeds of loans, advances and other financial accommodations, including, without limitation, loans, advances and other financial accommodations, made or extended under the Notes; and (iv) insurance proceeds and books and records relating to any of the Collateral covered by this Agreement; together, in each instance, with all accessions and additions thereto, substitutions therefor, and replacements, proceeds and products thereof.