

01-26-2004

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DEPARTMENT OF COMMERCE and Trademark Office

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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): Newport Opticom, Inc., a Delaware corporation 1.16.04 Additional name(s) of conveying party(ies) attached? [ ] Yes [X] No

2. Name and address of receiving party(ies) Name: Sienna Limited Partnership III, L.P., a Delaware limited partnership, as Agent for the Secured Parties Internal Address: Street Address: 2330 Marinship Way, Suite 220 City: Sausalito State: CA Zip: 94965 Additional name(s) & address(es) attached? [ ] Yes [X] No

3. Name of conveyance: [ ] Assignment [ ] Merger [X] Security Agreement [ ] Change of Name [ ] Other Execution Date: January 12, 2004

4. Application number(s) or patent numbers(s): If this document is being filed together with a new application, the execution date of the application is: A. Patent Application No.(s) 20020039466; 20020141684; 20020146195; 10/046,416; 20020054748; 20030169422; 60/467,341; 60/485,065; 60/516,250 B. Patent No.(s) 6,647,170; 6,647,168 Additional numbers attached? [ ] Yes [X] No

5. Name and address of party to whom correspondence concerning document should be mailed: Name: George C. Tung Internal Address: Street Address: Gibson, Dunn & Crutcher LLP 4 Park Plaza, Jamboree Center City: Irvine State: CA Zip: 92614

6. Total number of applications and patents involved: 11 7. Total fee (37 CFR 3.41).....\$80.00 [ ] Enclosed [X] Authorized to be charged to deposit account 8. Deposit account number: 501408

DO NOT USE THIS SPACE

9. Signature. 01/23/2004 DBYRNE 00000182 501408 20020039466 01 FC:0021 440.00 BA George C. Tung Name of Person Signing [Signature] Signature January 15, 2004 Date Total number of pages including cover sheet, attachments, and documents: 12

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

PATENT REEL: 014901 FRAME: 0398

## SECURITY AGREEMENT

This Security Agreement, dated as of January 12, 2004 (the "Agreement"), is entered into by and among **NEWPORT OPTICOM, INC.**, a Delaware corporation (the "Borrower" or the "Company"), with its primary place of business at 4910 Birch Street, Suite 101, Newport Beach, California 92660, and the parties listed on Schedule A hereto (together with the Additional Secured Parties as defined below, collectively, the "Secured Parties"), which parties are also parties to that certain Note and Warrant Purchase Agreement (the "Purchase Agreement") dated January 12, 2004 by and among the Company and the Secured Parties.

The Borrower and the Secured Parties hereby agree as follows:

1. Certain Definitions.

(a) "Additional Secured Party" means any person or entity that becomes a Secured Party pursuant to Section 11(f) of this Agreement.

(b) "Collateral" means the property described on Exhibit A hereto.

(c) "Financing Statement" has the meaning assigned in Section 4(e).

(d) "Lien" means any lien (statutory or other), mortgage, pledge, hypothecation, assignment, deposit arrangement, security interest, charge, claim or other encumbrance of any kind (including any conditional sale or other title retention agreement, or any lease in the nature thereof).

(e) "Permitted Liens" means: (i) Liens imposed by law to secure obligations not yet delinquent, such as carriers', warehousemen's, materialmen's and mechanics' liens, or Liens arising out of judgments or awards against Borrower with respect to which Borrower at the time shall currently be prosecuting an appeal or proceedings for review; (ii) Liens for taxes not yet subject to penalties for nonpayment and Liens for taxes the payment of which is being contested in good faith and by appropriate proceedings and for which, to the extent required by generally accepted accounting principles then in effect, proper and adequate book reserves relating thereto are established by Borrower; (iii) Liens (A) upon or in any equipment acquired or held by the Borrower to secure the purchase price of such equipment or indebtedness incurred solely for the purpose of financing the acquisition of such equipment, or (B) existing on such equipment at the time of its acquisition, provided that the Lien is confined solely to the property so acquired and improvements thereon, and the proceeds of such equipment and other equipment financed by the holder of such Lien; (iv) Liens consisting of leases or subleases and licenses and sublicenses granted to others in the ordinary course of Borrower's business not interfering in any material respect with the business of Borrower and any interest or title of a lessor or licensor under any lease or license, as applicable; (v) Liens incurred or deposits made in the ordinary course of Debtor's business in connection with worker's compensation, unemployment insurance, social security and other like laws; (vi) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of

customs duties in connection with the importation of goods; (vii) Liens of landlords and of holders of deposit accounts (including rights of setoff), in each case incurred in the ordinary course of business; (viii) Liens in the nature of easements, rights-of-way, restrictions, encroachments and other irregularities or defects in title, in each case which do not interfere in any material respect with the ordinary conduct of the business of the Borrower or materially detract from the value of the Collateral; (ix) Liens existing against the Collateral prior to the date hereof that are set forth on Exhibit B hereto; (x) Liens to which the Special Majority Lenders (as defined below) have each expressly consented in writing; and (xi) Liens in favor of the Secured Parties.

(f) "UCC" means the Uniform Commercial Code of the State of California, as amended from time to time.

## 2. Security Agreement.

(a) Grant. Borrower, for valuable consideration, the receipt of which is acknowledged, hereby grants to the Secured Parties a security interest in and Lien on all of the Collateral now owned or at any time hereafter acquired by the Borrower or in which the Borrower now has or at any time in the future may acquire any right, title or interest.

(b) Continuing Security Interest. The Borrower agrees that this Agreement shall create a continuing security interest in the Collateral which shall remain in effect until the payment and performance in full of all of the Obligations.

3. Obligations Secured. The security interest granted hereby secures payment of all outstanding principal and unpaid accrued interest under the secured senior convertible promissory notes (the "Notes") of the Borrower issued to the Secured Parties pursuant to the Purchase Agreement and all other obligations of the Borrower to the Secured Parties under the Notes (including any Notes issued to any Additional Secured Party) and the Purchase Agreement (collectively, the "Obligations").

4. Borrower's Representations, Warranties and Covenants. Borrower hereby represents, warrants and covenants to the Secured Parties that:

(a) Principal Place of Business; Jurisdiction of Organization. Borrower's principal place of business is the address set forth above and Borrower keeps its records concerning accounts, contract rights and other property at that location. Borrower will promptly notify the Secured Parties in writing of the establishment of any new place of business where any of the Collateral is kept. Borrower is a corporation organized under the laws of the State of Delaware. Borrower will notify the Secured Parties prior to changing either its form or jurisdiction of organization.

(b) Records; Insurance. Borrower will at all times keep in a manner reasonably satisfactory to the Secured Parties accurate and complete records of the Collateral and will keep such Collateral insured to the extent similarly situated companies insure their assets. The Secured Parties shall be entitled, at reasonable times and intervals after reasonable notice to Borrower, to enter Borrower's premises for purposes of inspecting the Collateral and Borrower's books and records relating thereto.

(c) Liens. The Liens granted to the Secured Parties hereunder are and at all times will remain perfected Liens in the Collateral; provided, however, that Borrower shall not be required to perfect any Liens that can not be perfected by filing (i) UCC-1 financing statements (including without limitation, the filing of notices with the Copyright Office and the Patent and Trademark Office, if any) or (ii) any statements of continuation or assignment of any financing statements which may at any time be required or which, in the opinion of the Secured Parties, may at any time be desirable. The Secured Parties shall cooperate with the Borrower to the extent the Borrower reasonably requires assistance from the Secured Parties to comply with the obligations set forth in the previous sentence. Other than with respect to Permitted Liens, the Collateral will be subject to no other Liens and the Liens granted to the Secured Parties will be of first priority. After the date hereof, Borrower will not create or permit to be created or suffer to exist, will defend the Collateral against, and will take such other action as is necessary to remove, any Lien (other than Permitted Liens) or other claim on or to the Collateral, and will use commercially reasonable efforts to defend the right, title and interest of the Secured Parties in and to any of the Collateral against the claims and demands of all other persons and entities.

(d) Compliance. Borrower shall not use the Collateral in any manner that is or would result in any material violation of any applicable statute, ordinance, law or regulation or in material violation of any insurance policy maintained by Borrower with respect to the Collateral.

(e) Other Financing Statements. Other than financing statements, security agreements, chattel mortgages, assignments, copyright security agreements or collateral assignments, patent or trademark security agreements or collateral assignments, fixture filings and other agreements or instruments executed, delivered, filed or recorded for the purpose of granting or perfecting any Lien (collectively, "Financing Statements") existing as of the date hereof and disclosed to the Secured Parties or arising after the date hereof in connection with any Permitted Lien and Financing Statements in favor of the Secured Parties, no effective Financing Statement naming the Borrower as debtor, assignor, grantor, mortgagor, pledgor or the like and covering all or any part of the Collateral is on file in any filing or recording office in any jurisdiction. All Financing Statements affecting any of the Collateral or naming Borrower as debtor existing on the date hereof are listed on Exhibit B hereto.

(f) Notices, Reports and Information. The Borrower will (i) notify the Secured Parties of any material claim made or asserted against the Collateral by any person or entity and of any change in the composition of the Collateral or other event which could materially adversely affect the value of the Collateral or the Secured Parties' Lien thereon; (ii) furnish to the Secured Parties such statements and schedules further identifying and describing the Collateral and such other reports and other information in connection with the Collateral as the Secured Parties may reasonably request in writing, all in reasonable detail; and (iii) upon the written request of any Secured Party make such reasonable demands and requests for information and reports as the Borrower is entitled to make in respect of the Collateral.

(g) Disposition of Collateral. The Borrower will not surrender or lose possession of (other than to the Secured Parties), sell, lease, rent, license or otherwise dispose of or transfer (each a "Transfer") any of the Collateral or any right or interest therein, except for Transfers made in the ordinary course of Borrower's business and on ordinary and customary

business terms (i) of inventory and (ii) under non-exclusive licenses and similar arrangements for the use of property of the Borrower in the ordinary course of business.

(h) Separate Obligations and Liens. The Borrower acknowledges and agrees that (i) the Obligations represent separate and distinct indebtedness, obligations and liabilities of the Borrower to each of the Secured Parties, which the Borrower is separately obligated to each Secured Party to pay and perform, in each case regardless of whether or not any indebtedness, obligation or liability to any other Secured Party or any other person or entity, or any agreement, instrument or guaranty that evidences any such other indebtedness, liability or obligation, or any provision thereof, shall for any reason be or become void, voidable, unenforceable or discharged, whether by payment, performance, avoidance or otherwise; and (ii) the Lien that secures each of the Secured Parties' respective Obligations (A) is separate and distinct from any and all other Liens on the Collateral, (B) is enforceable without regard to whether or not any other Lien shall be or become void, voidable or unenforceable or the indebtedness, obligations or liabilities secured by any such other Lien shall be discharged, whether by payment, performance, avoidance or otherwise, and (C) shall not merge with or be impaired by any other Lien.

(i) Payment of Obligations. Borrower will pay promptly when due all taxes, assessments and governmental charges or levies imposed upon the Collateral or with respect to any of its income or profits derived from the Collateral, as well as all claims of any kind (including, without limitation, claims for labor, materials and supplies) against or with respect to the Collateral, except that no such charge need be paid if (i) the validity of such charge is being contested in good faith by appropriate proceedings, (ii) such proceedings do not involve any material danger of the sale, forfeiture or loss of any of the Collateral or any interest in the Collateral, and (iii) such charge is adequately reserved against on Borrower's books in accordance with generally accepted accounting principles.

(j) True and Complete List. Set forth in Exhibit C is a true and complete list of all of the following owned by Borrower or held (whether pursuant to a license or otherwise) or used in conducting its business, in whole or in part: (i) all registered copyrights and applications for registrations, (ii) all existing patents and letters patent of the U.S. or any other country, all registrations and recordings thereof, and all applications for letters patent, (iii) all registered trademarks, service marks, trade names, corporate names, company names, business names, fictitious business names and domain names, and (iv) all deposit accounts.

(k) Trade Secrets. Borrower has taken and will continue to take all reasonable steps to protect the secrecy of and preserve its rights and interests in and to all of its trade secrets and other proprietary rights and interests.

(l) No Infringement. To Borrower's knowledge, no material infringement or unauthorized use presently is being made of any of the Collateral, including without limitation any of the intellectual property Collateral, by any person or entity, and Borrower's use of the Collateral does not and will not infringe upon the rights or interests of any other person or entity.

5. Financing Statements. Borrower shall, at its cost and within five (5) business days of the date of this Agreement, cause to be filed and recorded such UCC-1 financing statements (including without limitation, the filing of notices with the Copyright Office and the Patent and Trademark Office, if any) and any statements of continuation or assignment of any financing statements in respect of any security interest created pursuant to this Agreement which may at any time be required or which, in the opinion of the Secured Parties, may at any time be desirable. The Borrower will promptly provide to the Secured Parties and to their legal counsel copies of the UCC-1 financing statements filed and recorded in connection with this Agreement. To the fullest extent permitted by applicable law, the Borrower authorizes each Secured Party, and any agent acting on behalf of any Secured Party, to file any such financing statements without the signature of the Borrower and to take such other actions and give such other notices as any Secured Party may determine is reasonably necessary to perfect, protect and preserve the priority of the Liens granted to the Secured Parties under this Agreement.

6. Borrower's Rights Until Default. So long as an Event of Default does not exist, Borrower shall have the right to use, possess, license and sublicense the Collateral, manage its property, sell its inventory and sell or dispose of any equipment that has become worn out or obsolete in Borrower's business, in each instance in the ordinary course of business.

7. Event of Default. The following events shall be considered an "Event of Default" under this Agreement:

(a) failure to observe, perform or comply with any of its representations, warranties, agreements or covenants in this Agreement, in any material respect, which failure is not cured within twenty (20) days after the earlier of (i) receipt of written notice thereof by a Secured Party to the Borrower or (ii) actual knowledge of such failure of Borrower's officers or directors; or

(b) the occurrence of any Event of Default as defined in the Purchase Agreement.

8. Rights and Remedies on Event of Default.

(a) During the continuance of an Event of Default, Secured Parties, upon the election of the Special Majority Lenders, shall have the right, themselves or through any of their agents, with or without notice to Borrower (as provided below), as to any or all of the Collateral, by any available judicial procedure, or without judicial process (provided, however, that it is in compliance with the UCC), to exercise any and all rights afforded to a secured party under the UCC or other applicable law. Without limiting the generality of the foregoing, Secured Parties, upon the election of the Special Majority Lenders, shall have the right to sell or otherwise dispose of all or any part of the Collateral, either at public or private sale, in lots or in bulk, with or without warranties or representations, and upon such terms and conditions, all as the Special Majority Lenders, in their sole discretion, may deem advisable, and the Secured Parties shall have the right to purchase at any such sale to the extent permitted by applicable law. Borrower agrees that a notice sent during the continuance of an Event of Default and at least ten (10) days before the time of any intended public sale or of the time after which any private sale or other disposition of the Collateral is to be made shall be reasonable notice of

such sale or other disposition. The proceeds of any such sale, or other Collateral disposition shall be applied, first to the reasonable expenses of retaking, holding, storing, processing and preparing for sale, selling, and the like, and to Secured Parties' reasonable attorneys' fees and legal expenses in connection therewith, and then to the Obligations and to the payment of any other amounts required by applicable law, after which Secured Parties shall account to Borrower for any surplus proceeds. If, upon the sale or other disposition of the Collateral made in compliance with the requirements of the UCC and other applicable law, the proceeds thereof are insufficient to pay all amounts to which Secured Parties are legally entitled, Borrower shall be liable for the deficiency.

(b) Borrower appoints each Secured Party, and any officer, employee or agent of such Secured Party, with full power of substitution, as Borrower's true and lawful attorney-in-fact, effective as of the date hereof, with power, upon the Special Majority Lenders' election, in its own name or in the name of Borrower, during the continuance of an Event of Default, (i) to endorse any notes, checks, drafts, money orders, or other instruments of payment in respect of the Collateral that may come into Secured Parties' possession; (ii) to sign and endorse any drafts against Borrower, assignments, verifications and notices in connection with accounts, and other documents relating to Collateral; (iii) to pay or discharge taxes or Liens at any time levied or placed on or threatened against the Collateral; (iv) to demand, collect and issue receipt for, monies due in respect of the Collateral; (v) to notify persons and entities obligated with respect to the Collateral to make payments directly to Secured Parties; and (vi) generally, to do, at Secured Parties' option and at Borrower's expense, at any time, or from time to time, all acts and things which Secured Parties deems necessary to protect, preserve and realize upon the Collateral and Secured Parties' security interest therein to effect the intent of this Agreement, all as fully and effectually as Borrower might or could do; and Borrower hereby ratifies all that said attorney shall lawfully do or cause to be done by virtue hereof. This power of attorney shall be irrevocable as long as any of the Obligations are outstanding.

(c) Borrower agrees that the Secured Parties shall have, to the fullest extent permitted by applicable law, a paid up and royalty free license, exercisable only upon the occurrence and during the continuance of an Event of Default, in all of Borrower's intellectual property, as may be reasonably necessary to permit the exercise of any of the Secured Parties' rights or remedies with respect to any of the Collateral.

(d) All of Secured Parties' rights and remedies with respect to the Collateral, whether established hereby or by any other agreements, instruments or documents or by law, shall be cumulative and may be exercised singly or concurrently.

9. Secured Parties' Rights; Borrower Waivers. Secured Parties' acceptance of partial or delinquent payment from Borrower under any Note or hereunder, or Secured Parties' failure to exercise any right hereunder, shall not constitute a waiver of any obligation of Borrower hereunder, or any right of Secured Parties hereunder, and shall not affect in any way the right to require full performance at any time thereafter. The Borrower waives, to the fullest extent permitted by law, any right to require any Secured Party to make or give any presentments, demands for performance, notices of nonperformance, protests, notices of protests or notices of dishonor in connection with any of the Collateral.

10. Collateral Agent. At any time or times, the Special Majority Lenders may, without the consent of or notice to the Borrower, appoint any Secured Party, or any bank or trust company or any other person or entity to act as collateral agent (the "Collateral Agent"), either jointly with any Secured Party or separately, on behalf of the Secured Parties with such power and authority as may be necessary for the effectual operation of the provisions hereof and specified in the instrument of appointment. The Borrower acknowledges that the rights and responsibilities of the Collateral Agent under this Agreement or arising out of this Agreement shall, as among the Collateral Agent and the Secured Parties, be governed by the matters as among the Secured Parties and the Collateral Agent to which the Borrower shall not be a third party or other beneficiary.

11. Miscellaneous.

(a) General Terms. Unless otherwise specified in this Agreement, the provisions of Section 8 of the Purchase Agreement shall apply to this Agreement. Each Secured Party hereby agrees that, pursuant to Section 8.8 of the Purchase Agreement, any term of this Agreement may be amended, and the observance of any term of this Note may be waived (either generally or in a particular instance and either retroactively or prospectively), with the written consent of the Borrower and the Special Majority Lenders.

(b) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of, the successors and assigns of the parties hereto, including, without limitation, all future holders of the Note.

(c) Governing Law. The laws of the State of California shall govern the construction of this Agreement, without giving effect to the principles of conflicts of laws thereof.

(d) Severability. If one or more provisions of this Agreement are held to be unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded and shall be enforceable in accordance with its terms.

(e) Definitions. Except as set forth in Section 1(a) or as otherwise defined herein, capitalized terms shall have the meaning set forth in the Purchase Agreement.

(f) Additional Secured Parties. In the event of a Follow-Up Closing with a Lender as provided for in Section 4.2 of the Purchase Agreement, such Lender shall become a party to this Agreement as a "Secured Party" without further action by or consent of any of the then existing Secured Parties or of Borrower upon receipt from such Lender of a fully executed counterpart signature page, and Schedule A to this Agreement shall be updated accordingly. All of the obligations and indebtedness of Borrower arising under the Purchase Agreement or the Note issued thereunder in favor of such Lender shall, without any further action, constitute Obligations and be secured by the Lien in favor of the Secured Parties arising hereunder.


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IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date first above written.

**BORROWER:**

**NEWPORT OPTICOM, INC.**

By:   
Paul Mukai  
Senior Vice President

**SECURED PARTIES:**

**SIENNA LIMITED PARTNERSHIP III, L.P.**

By: \_\_\_\_\_  
Name: Gil Amelio  
Title: Senior Partner

Address: 2330 Marinship Way, Suite 220  
Sausalito, CA 94965

**SIGNATURE PAGE TO NEWPORT OPTICOM, INC. SECURITY AGREEMENT**

IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto as of the date first above written.

**BORROWER:**

**NEWPORT OPTICOM, INC.**

By: \_\_\_\_\_  
Ying Hsu  
President

**SECURED PARTIES:**

**SIENNA LIMITED PARTNERSHIP III, L.P.**

By: \_\_\_\_\_  
Name: Gil Amelio  
Title: Senior Partner

Address: 2330 Marinship Way, Suite 220  
Sausalito, CA 94965

**SIGNATURE PAGE TO NEWPORT OPTICOM, INC. SECURITY AGREEMENT**

**SECURED PARTIES:**

Emerging Alliance Fund, LP  
by it's General Partner  
VentureTech Alliance, LLC

By: *R. C. Norris*  
Name: Ronald C. Norris  
It's Managing Partner

Address: 2821 Second Avenue, Suite 1801  
Seattle, WA 98121

SIGNATURE PAGE TO NEWPORT OPTICOM, INC. SECURITY AGREEMENT

P-3

208-441-7373

RON NORRIS

PATENT  
REEL: 014901 FRAME: 0408

SCHEDULE A

SCHEDULE OF SECURED PARTIES

Sienna Limited Partnership III, L.P.  
Emerging Alliance Fund, LP

GDSVF&H\533504.3

RECORDED: 01/16/2004

PATENT  
REEL: 014901 FRAME: 0409