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RECORD

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OMB No. 0651-0027 exp. 6/30/2005

102826602

Tab settings

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

1. Name of conveying party(ies):

Calient Networks, Inc.

2. Name and address of receiving party(ies)

Name: Calient Optical Components, Inc.

Internal Address:

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

3. Nature of conveyance:



Assignment



Merger



Security Agreement



Change of Name



Other

Street Address: 5853 Rue Ferrari

City: San Jose State: CA Zip: 95138

Execution Date: December 29, 2000

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)

See Appendix A

B. Patent No.(s)

See Appendix A

Additional numbers attached? ☒ Yes ☐ No

5. Name and address of party to whom correspondence concerning document should be mailed:

Name: George M. Cooper

Internal Address:

6. Total number of applications and patents involved: 20

7. Total fee (37 CFR 3.41).....\$ 600.00



Enclosed



Authorized to be charged to deposit account

8. Deposit account number:

Please charge any additional fees that may be required to Deposit Acct. No.

10-1213

(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.

George M. Cooper

Name of Person Signing

Signature

Date

Total number of pages including cover sheet, attachments, and documents: 9

Mail documents to be recorded with required cover sheet information to:

Filed together with a new patent application to:

Mail Stop Patent Application
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Alexandria, VA 22313-1450PATENT
REEL: 015732 FRAME: 0001

APPENDIX A

Appl. No.	Pat. No.	Inventor	<u>Prior Assignment</u> Reel/Frame
08568845	6199874	Galvin et al.	010042/0395
08665369	6066265	Galvin et al.	010042/0395
09156037	6245227	Moon et al.	009604/0396
09334408	6444138	Moon et al.	010060/0065
09660740	6626039	Adams et al.	014585/0188
09745629	NONE	Moon et al.	011460/0449
09745652	NONE	Moon et al.	011462/0592
09745779	6432311	Davis et al.	011460/0445
09745891	6454938	Moon et al.	011460/0741
09746419	6394942	Moon et al.	011462/0471
09746866	6461516	Moon et al.	011462/0682
09746867	NONE	Moon et al.	011460/0737
09747080	6464866	Moon et al.	011460/0463
09747085	6417510	Moon et al.	011460/0729
10083600	6756247	Davis et al.	

CONTRIBUTION AND ASSUMPTION AGREEMENT

THIS CONTRIBUTION AND ASSUMPTION AGREEMENT is made and entered into, effective on the date set forth below, by and between **CALIENT NETWORKS, INC.**, a Delaware corporation ("Assignor"), and **CALIENT OPTICAL COMPONENTS, INC.**, a Delaware corporation, which is a wholly owned subsidiary of Assignor ("Assignee"), with reference to the following facts:

RECITALS:

A. Pursuant to that certain "Agreement and Plan of Merger" dated as of October 4, 2000, as amended (as so amended, the "Merger Agreement"), by and among Assignor, Assignee, Kionix, Inc., a Delaware corporation ("Kionix"), and John Galvin as the "Stockholders' Representative" thereunder, Kionix shall merge with and into Assignor (the "Merger").

B. The parties have agreed to execute this Agreement in order to memorialize the terms and conditions on which Assignor shall assign and delegate to Assignee, effective immediately after the "Effective Time" (as such term is defined in the Merger Agreement) of the Merger, all of the assets and liabilities of Kionix acquired by Assignor from Kionix in and by reason of the Merger.

AGREEMENTS:

NOW, THEREFORE, in consideration of the premises, and of the respective representations, warranties, covenants and agreements set forth herein, the parties hereto hereby agree as follows:

1. **DEFINITIONS.** For purposes of this Agreement, the terms defined in the recitals hereto shall have the meanings assigned to them in such recitals, and the following terms shall have the meanings set forth below:

1.1 **"ACQUIRED ASSETS"** shall mean all of the assets of Kionix acquired by Assignor in and by reason of the Merger, including all rights under the Assigned Contracts, other than (a) the Excluded Asset, and (b) the Reserved Claims.

1.2 **"ASSIGNED CONTRACTS"** (a) shall mean all contracts and agreements to which Kionix is a party, the rights and duties under which are acquired by Assignor in and by reason of the Merger, and (b) also shall include those certain contracts and agreements listed on **EXHIBIT A** hereto.

1.3 **"ASSUMED LIABILITIES"** shall mean all liabilities of Kionix that are assumed by or transferred to Assignor in and by reason of the Merger, including all liabilities and obligations from and after the Effective Date under the contracts and agreements listed on **EXHIBIT A** hereto.

1.4 **"CLOSING"** shall mean the closing of the contribution of the Assigned Assets and the delegation and assumption of the Assumed Liabilities hereunder.

1.5 **"EFFECTIVE DATE"** shall mean the date on which the Effective Time of the Merger occurs.

1.6 **"EXCLUDED ASSET"** shall mean that certain Warrant No. W-1 dated December 29, 2000, issued by Cayuga Sensors, Inc., to Kionix, granting to Kionix the right to purchase 3,228,748 shares of the common capital stock of Cayuga.

1.7 **"GOVERNMENTAL ENTITY"** shall mean any federal, state or local government and any court, administrative agency or commission or other governmental authority or agency or self-regulatory agency, domestic or foreign.

1.8 **"PERSON"** shall mean any natural individual, corporation, partnership, business trust, joint venture, association, or governmental agency or any political subdivision thereof.

1.9 **"RESERVED CLAIMS"** shall mean all claims which Assignor may have against the former stockholders of Kionix under the Merger Agreement, including but not limited to claims that may be asserted against the "Escrow Fund" (as defined in the Merger Agreement) held by Chase Manhattan Bank and Trust Company, National Association, under the "Escrow Agreement" (as defined in the Merger Agreement), including claims for damages that Assignee may suffer by reason of the breach by Kionix of its representations, warranties, or covenants under the Merger Agreement.

2. CONTRIBUTION OF ASSETS AND ASSUMPTION OF LIABILITIES.

2.1 **CONTRIBUTION OF ASSETS.** Upon the terms and subject to the conditions of this Agreement, Assignor hereby assigns, transfers, conveys and contributes to Assignee, effective on the Effective Date and immediately after the Effective Time of the Merger, and Assignee hereby acquires, effective as of such date and time, all of Assignor's right, title and interest in, to and under, the Acquired Assets.

(a) **LIMITATION.** Notwithstanding anything herein to the contrary, this Agreement shall not effect an assignment of any license, permit, contract or other agreement if an attempted assignment of the same, without the consent of any government agency or any other party thereto, would constitute a breach thereof, or in any way affect adversely the right of Assignor thereunder.

(b) **FURTHER ASSURANCES.** If any such requisite consent is not obtained, or if any attempted assignment would be ineffective or would affect adversely the rights of Assignor thereunder so that Assignee does not in fact receive all or a portion of such rights, then Assignor shall cooperate fully with Assignee in any reasonable arrangement intended to provide for Assignee the benefits and rights under any such license, permit, contract or other assignment, including enforcement, at the cost of Assignor and for the benefit of Assignee, of any and all rights of Assignor against any other party thereto arising thereunder.

2.2 **ASSUMPTION OF LIABILITIES; INDEMNITY.** On and after the Effective Date, Assignee shall assume, pay, perform and discharge prior to delinquency, and indemnify, defend, and hold Assignor free and harmless from, all obligations and liabilities arising from or related in any way to the Assigned Assets and the Assumed Liabilities, whether imposed by contract, by operation of law, or otherwise, and whether arising before the Effective Date or thereafter.

3. **CLOSING.** The Closing shall occur concurrently with the closing of the Merger, at the offices of Wilson Sonsini Goodrich & Rosati, 950 Page Mill Road, Palo Alto, California 94304, or at such other place as the parties agree upon, on December 29, 2000, and shall be effective as of the Effective Date (and immediately after the Effective Time of the Merger).

3.1 DELIVERIES. At the Closing:

(a) **ASSIGNEE DELIVERIES.** Assignor shall deliver to Assignee (i) an executed Bill of Sale in the form attached hereto at **EXHIBIT B**, (ii) an executed Assignment of Lease, in mutually acceptable form, with respect to the Leases under which Kionix leases its business premises, (iii) an

executed Assignment of Sublease, in mutually acceptable form, with respect to the Sublease described on **EXHIBIT A** hereto, and (iv) such other documents and instruments as may be necessary or convenient for effectuating the assignment of the Assigned Assets to Assignee and the delegation and assumption of the Assumed Liabilities by Assignee.

(b) **ASSIGNEE DELIVERIES.** Assignee shall execute and deliver counterpart versions of such assignments and instruments of transfer, and such other documents and instruments as Assignor may reasonably request to implement the contribution and assumption transactions contemplated by this Agreement.

3.2 DEEMED ASSIGNMENT AND ASSUMPTION. Notwithstanding whether the parties shall execute an assignment or other instrument of transfer expressly referring to the assignment to Assignee of each of the Assigned Assets, all such Assigned Assets shall be deemed to be assigned to Assignee (and all Assumed Liabilities shall be deemed to be assumed by Assignee) as of the Effective Date (subject to Sections 2.1(a) and (b), above).

4. COVENANTS OF PARTIES.

4.1 FURTHER ASSURANCES. From and after the Effective Date:

(a) **ASSIGNOR COVENANT.** Assignor shall, at its expense, (i) give such further assurances to Assignee and shall execute, acknowledge and deliver all such acknowledgements, assignments and other instruments and take such further actions as may be reasonably necessary or appropriate effectively to vest in Assignee the full legal and equitable title to the Acquired Assets, and (ii) subject to the limitations imposed upon certain Assignor personnel by employment agreements and proprietary information agreements they have or may execute, use its commercially reasonable efforts to assist Assignee in the orderly transition of the operations acquired by Assignee.

(b) **ASSIGNEE COVENANT.** Assignee shall, at its expense, (i) give such further assurances to Assignor and shall execute, acknowledge and deliver all such acknowledgements and other instruments and take such further actions as may be reasonably necessary or appropriate to relieve and discharge Assignor effectively from the Assumed Liabilities, (ii) use its commercially reasonable efforts to assist Assignor in the transfer to Assignee of the Acquired Assets and Assumed Liabilities, and (iii) as promptly as practicable, take such actions as are reasonably necessary to secure for Assignor any sublicense rights which Assignee may so grant to Assignor, including but not limited to rights under that certain license agreement with the Cornell Research Foundation dated June 1, 1994.

4.2 CERTAIN UNDERSTANDINGS Assignee acknowledges that neither Assignor nor any other person has made any representation or warranty, express or implied, as to the accuracy or completeness of any information regarding the Acquired Assets or Assumed Liabilities not included in this Agreement or the schedules hereto. **ASSIGNEE ACKNOWLEDGES THAT IT WILL ACQUIRE THE ACQUIRED ASSETS WITHOUT ANY REPRESENTATION OR WARRANTY AS TO MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE, WITHOUT WARRANTY AS TO INFRINGEMENT OF ANY THIRD PARTY RIGHTS THEREIN, AND IN AN "AS IS" CONDITION AND ON A "WHERE IS" BASIS.**

4.3 MUTUAL INDEMNIFICATION. Assignor and Assignee hereby agree to defend, indemnify and hold each other harmless from and against any and all actions, claims, damages, settlements, liabilities and expenses (including reasonable attorneys' fees and costs) (collectively, "Losses"), arising out of a breach of the other party's representations, warranties or covenants in this Agreement.

5. CONDITIONS PRECEDENT.

5.1 MUTUAL CONDITIONS. The obligation of Assignee to accept the Acquired Assets and assume the Assumed Liabilities, and the obligation of Assignor to assign, convey, and deliver the Acquired Assets and delegate the Assumed Liabilities to Assignee, shall be subject to the satisfaction (or waiver by such party) prior to the Closing of the following conditions:

(a) **MERGER CLOSING.** The Merger shall have closed in accordance with the terms of the Merger Agreement; and

(b) **NO ACTIONS.** There shall be (i) no suit, action, or other proceeding pending which has been initiated by any Governmental Entity seeking to restrain, prohibit, invalidate or set aside in whole or in part the consummation of the transactions contemplated by this Agreement, and (ii) no temporary restraining order, preliminary or permanent injunction or other legal restraint or prohibition preventing the consummation of the transactions contemplated by this Agreement.

5.2 CONDITIONS TO OBLIGATIONS OF ASSIGNEE The obligation of Assignee to accept the Acquired Assets and assume the Assumed Liabilities shall be subject to the satisfaction prior to the Closing of each of the following conditions, unless waived by Assignee:

(a) **PERFORMANCE OF OBLIGATIONS OF ASSIGNOR.** Assignor shall have performed or complied in all material respects with all material obligations, conditions and covenants required to be performed or complied with by it under this Agreement at or prior to the Closing, and upon request Assignee shall have received a certificate signed by an authorized officer of Assignor, dated the date of the Closing, to such effect.

(b) **BILL OF SALE.** Assignor shall have delivered to Assignee a bill of sale, substantially in the form attached hereto as **EXHIBIT C**, conveying the personal property included in the Acquired Assets, and such other assignments, instruments or documents as may be necessary or appropriate to confirm the transfer and assignment of the Acquired Assets, in each case in form and substance reasonably satisfactory to Assignee.

5.3 CONDITIONS TO THE OBLIGATIONS OF ASSIGNOR The obligation of Assignor to assign, convey, and deliver the Acquired Assets and transfer the Assumed Liabilities is subject to the satisfaction on and as of the Closing of the following condition, unless waived by Assignor: Assignee shall have performed or complied in all material respects with all obligation, conditions and covenants required to be performed or complied with by it under this Agreement at or prior to the Closing, and upon request Assignor shall have received a certificate signed by an authorized officer of Assignee, dated the date of the Closing, to such effect.

6. MISCELLANEOUS.NOTICES. All notices, elections, requests, demands, and other communications required or permitted under this Agreement shall be in writing, and shall be deemed to have been delivered and received (a) when personally delivered, or (b) on the third (3rd) business day after which sent by registered or certified mail, postage prepaid, return receipt requested, (c) on the date on which transmitted by facsimile or other electronic means generating a receipt evidencing a successful transmission (provided that, on that same date, a copy of such notice is sent by registered or certified mail, postage prepaid, return receipt requested), or (d) on the next business day after the business day on which deposited with a regulated public carrier (e.g., Federal Express) for overnight delivery, freight prepaid, addressed to the party for whom intended at the address or facsimile number set forth on the signature page to this Agreement, or such other address or facsimile number, notice of which is given in a manner permitted by this Section 7.1.

6.2 BINDING ON SUCCESSORS; ASSIGNMENT. This Agreement shall be binding upon, and shall inure to the benefit of, the heirs, successors, assigns, and personal representatives of each of the parties. Assignee may not assign any of its rights and duties hereunder without the prior express written consent of Assignor, and Assignee acknowledges that certain rights and duties acquired hereunder may not be further assigned without prior third party approval for which Assignor has no responsibility or control.

6.3 COUNTERPARTS. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, taken together, shall be one and the same instrument, binding on each of the signatories thereto.

6.4 TITLES AND SUBTITLES. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

6.5 ARBITRATION. Except for any action involving the exercise of injunctive or other equitable powers, all disputes arising under or in connection with this Agreement shall be resolved by binding arbitration before a single arbitrator in San Jose, California, under the rules then obtaining of the American Arbitration Association. The decision of the arbitrator shall be final and binding on the parties, and judgment thereon may be entered in a court of competent jurisdiction.

6.6 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.

6.7 ENTIRE AGREEMENT; AMENDMENTS. This Agreement and the documents referred to herein (a) constitute the entire agreement among the parties with respect to the rights and obligations set forth herein, and no party shall be liable or bound to any other party in any manner by any warranties, representations or covenants except as specifically set forth herein or therein, and (b) may not be modified or amended, except by a written instrument executed by the parties after the Effective Date hereof.

6.8 SURVIVAL OF REPRESENTATIONS AND WARRANTIES. The representations and warranties of the parties contained in this Agreement shall survive the execution and delivery of this Agreement and the Closing.

6.9 ATTORNEYS' FEES. If any action or proceeding is commenced to construe or enforce the terms and conditions of this Agreement or the rights and duties created hereunder, then the party prevailing in such action shall be entitled to recover its attorneys' fees and the costs of enforcing any judgment entered therein.

6.10 GOVERNING LAW. This Agreement shall be governed by and construed in accordance with California law, without regard to the application of the conflict of law principals thereunder.

6.11 EFFECTIVE DATE. The effective date of this Agreement shall be as of the day and year first above written.

[Signatures appear on the following page.]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, effective on the date set forth above.

"ASSIGNOR:"

CALIENT NETWORKS, INC., a Delaware corporation

By Charles M. Corbalis
Charles M. Corbalis, President

12/29/00

Date

Address and Facsimile No. for Notices

Calient Networks, Inc.
ATTN: General Counsel
5853 Rue Ferrari
San Jose, California 95138

Facsimile No.: (408) 972-3811

"ASSIGNEE:"

CALIENT OPTICAL COMPONENTS, INC.,
a Delaware corporation

By Charles M. Corbalis
Charles M. Corbalis, President

12/29/00

Date

Address and Facsimile No. for Notices

Calient Optical Components, Inc.
ATTN: President
22 Thornwood Drive
Ithaca, New York 14830

Facsimile No.: (607) 257-1612

with a copy to:

Calient Networks, Inc.
ATTN: General Counsel
5853 Rue Ferrari
San Jose, California 95138

Facsimile No.: (408) 972-3811

BILL OF SALE

FOR GOOD AND VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, in connection with the Contribution and Assumption Agreement dated as of December 29th, 2000 (the "Agreement"), by and between CALIENT NETWORKS, INC., a Delaware corporation ("Assignor"), and CALIENT OPTICAL COMPONENTS, INC., a Delaware corporation ("Assignee"), and intending to be legally bound hereby, Assignor does hereby sell, convey, grant, assign and transfer to Assignee all of its right, title and interest in and to the Acquired Assets. Capitalized terms used herein and not defined shall have the meanings assigned in the Agreement.

IN WITNESS WHEREOF, the undersigned parties have caused this Bill of Sale to be executed as of the 29th day of December, 2000.

"ASSIGNOR:"

CALIENT NETWORKS, INC., a Delaware corporation

By Charles M. Corbalis
Charles M. Corbalis, President & CEO

"ASSIGNEE:"

CALIENT OPTICAL COMPONENTS, INC., a Delaware corporation

By Charles M. Corbalis
Charles M. Corbalis, President & CEO

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RECORDED: 08/26/2004

PATENT
REEL: 015732 FRAME: 0009