

PATENT ASSIGNMENT

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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	COURT ORDERED SALE
CONVEYING PARTY DATA	
Name	Execution Date
BANDWIDTH9, INC.	11/02/2004
RECEIVING PARTY DATA	
Name:	NEOPHOTONICS CORPORATION
Street Address:	2911 Zanker Road
City:	San Jose
State/Country:	CALIFORNIA
Postal Code:	95134
PROPERTY NUMBERS Total: 1	
Property Type	Number
Patent Number:	6487231
CORRESPONDENCE DATA	
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NAME OF SUBMITTER:	Gregory Turocy
Total Attachments: 9 source=Order#page1.tif source=Order#page2.tif source=Order#page3.tif source=Order#page4.tif source=Order#page5.tif source=Order#page6.tif	

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8 Attorneys for Debtor and Debtor-in-Possession
9 BANDWIDTH9, INC.

10 UNITED STATES BANKRUPTCY COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 OAKLAND DIVISION

13 In re

14 BANDWIDTH9, INC., a Delaware
15 corporation,

16 Debtor.

Case No. 04-44345

Chapter 11

**ORDER GRANTING DEBTOR'S
MOTION FOR SALE OF
SUBSTANTIALLY ALL ASSETS OF
DEBTOR OUT OF THE ORDINARY
COURSE OF BUSINESS AND FREE
AND CLEAR OF CLAIMS, LIENS
AND INTERESTS PURSUANT TO 11
U.S.C. § 363 (F)**

Date: October 27, 2004
Time: 10:30 a.m.
Dept: Courtroom 220
Judge: Hon. Randall J. Newsome

17 This matter came on for hearing on notice on October 27, 2004 at 10:30 a.m.,
18 before the Honorable Randall J. Newsome, United States Bankruptcy Judge for the Northern
19 District of California, pursuant to Bandwidth9, Inc.'s (the "Debtor") Motion for Authority to Sell
20 Substantially All of Debtor's Assets Out of the Ordinary Course of Business and Free and Clear of
21 Liens Claims and Interests Pursuant to 11 USC § 363(f) ("Motion"). The Motion seeks authority
22 from the Court for the Debtor to sell all of the personal property, equipment, inventory,
23 intellectual property, patents and other general intangibles on an "as-is" "where-is" basis to the
24 highest bidder in two separate auctions; the auction of the Debtor's intellectual property, patents

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Case No. 04-44345

ORDER GRANTING MOTION TO SELL PURSUANT TO 11 USC § 363

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BANKRUPTCY COURT
OAKLAND, CALIFORNIA

1 and other general intangibles (as further defined in Paragraph 2 hereof the "Intellectual Property")
2 to take place at the October 27, 2004 hearing and the auction of the Debtor's personal property and
3 equipment ("Tangible Assets") to take place at the Debtor's facilities at 46410 Fremont
4 Boulevard, Fremont, California on November 4, 2004. Frank T. Popler of Stein & Lubin LLP
5 appeared on behalf of the Debtor. All other appearances, if any, were stated at the hearing.

6 The Court having considered the Motion, the arguments of counsel at the hearing
7 on this matter, and the pleadings and papers filed in support of the Motion, finds that:

8 FINDINGS

9 A. The Debtor filed its Voluntary Petition under Chapter 11 of the Bankruptcy
10 Code on August 6, 2004 and continues in possession as a debtor in possession.

11 B. The Court has jurisdiction over this matter pursuant to 28 USC § 157 and
12 28 USC § 1334. This is a core proceeding pursuant to 28 USC § 157(b)(2). The statutory
13 predicates for the relief sought herein are 11 USC § 363(f).

14 C. Adequate notice was given by facsimile to the United States Trustee, the 20
15 largest creditors, any creditor or lessor who may assert security interests and or lease interests in
16 assets of the Debtor, and all parties requesting special notice and such notice was proper on the
17 facts and circumstances of this case.

18 D. Good cause exists for granting the Motion. The Court concludes that the
19 sale of the Intellectual Property and Tangible Assets by way of public auctions (and outside the
20 Debtor's ordinary course of business) is in the best interest of the estate and creditors of the estate.

21 E. The Court finds that the auction of the Intellectual Property, which took
22 place at the October 27, 2004 hearing, was performed in good faith and that the auction procedures
23 were just and proper and further finds that: (i) the bid of NeoPhotonics Corporation
24 ("NeoPhotonics") for the Intellectual Property is a qualified bid and NeoPhotonics is a Qualified
25 Bidder as defined in the Motion; (ii) the bid of NeoPhotonics for the Intellectual Property of
26 \$75,000 was the highest and best bid for the Intellectual Property; (iii) NeoPhotonics' bid was
27 made in good faith and NeoPhotonics constitutes a good faith purchaser for purposes of 11 USC
28 §363(m).

ORDER

1
2 1. The Debtor's Motion is GRANTED, subject to the terms and conditions set
3 forth in this Order.

4 2. All of Debtor's rights, title and interest in and to the Intellectual Property is
5 hereby sold, assigned and transferred to NeoPhotonics for \$75,000, which sum was delivered to
6 the Debtor at the October 27, 2004 hearing in cashier's checks. For all purposes relating to this
7 order and the sale of the Intellectual Property, the Intellectual Property shall include:

8 (a) all of those issued patents shown on the schedule attached hereto as Exhibit A,

9 (b) all other intangible property of the Debtor relating to the research and
10 development of products and technologies of Bandwidth9, Inc. since its founding including but
11 not limited to transceivers, transponders, active optical devices and tunable laser products,
12 including all:

13 (i) patent applications, patent disclosures and inventions, plus patent
14 attorney contacts, notes, files, correspondence and related documents;

15 (ii) trademarks, service marks, trade dress, trade names, logos and
16 corporate names and registrations and applications for registration thereof together with all of the
17 goodwill associated therewith;

18 (iii) copyrights (registered and unregistered) and copyrightable works and
19 registrations and applications for registration thereof;

20 (iv) mask works and registrations and applications for registration thereof;

21 (v) computer software, data, data bases and documentation thereof;
22 computer files for all product and process activities, projects and developments;

23 (vi) trade secrets and other confidential information (including, without
24 limitation, ideas, formulas, compositions, inventions (whether patentable or unpatentable and
25 whether or not reduced to practice), know-how, manufacturing and production processes and
26 techniques, research and development information, drawings, specifications, designs, plans,
27 proposals, technical data, and similar information;

28 (vii) all product and product concept designs, background information,

1 notebooks and working papers, and technology roadmaps; and

2 (vii) all other intellectual property rights relating thereto;

3 (c) all physical and electronic records and embodiments of the foregoing of any
4 nature and all copies thereof (in whatever form or medium).

5 (d) all customer lists, customer names and contacts, customer product
6 specifications and working documents and papers relating thereto of any nature and all copies
7 thereof (in whatever form or medium), excepting however, any customer lists, names contacts or
8 other similar information with respect to which Debtor has entered into confidentiality agreements
9 with third parties that would preclude such turnover.

10 For purposes of this Paragraph 2, the meaning of "Intellectual Property" shall be
11 construed in its broadest possible form.

12 3. The Debtor is authorized and directed to execute and deliver any and all
13 instruments, pleadings, papers, certificates, assignments, and other documents, and do all things
14 and actions, as may reasonably be requested by NeoPhotonics and/or the any governmental agency
15 as necessary or appropriate to consummate the sale and the transactions contemplated by this
16 Order. The Debtor is further authorized to provide such reasonable cooperation and assistance to
17 NeoPhotonics to segregate, assemble and transfer to NeoPhotonics the Intellectual Property, as
18 may be appropriate pursuant to NeoPhotonics' reasonable request given the scope of the Debtors'
19 limited staffing and resources as of the date of the entry of this Order. The Debtor shall not be
20 obligated or authorized to incur any extraordinary expense or increase any administrative expense
21 in discharging its obligations to NeoPhotonics hereunder.

22 4. The Debtor is hereby AUTHORIZED to negotiate cashier's checks for the
23 \$75,000 for the purchase of the Intellectual Property upon entry of this order.

24 5. The auction of the Tangible Assets shall take place on November 4, 2004 at
25 10:30 a.m. at the Debtor's facility at 46410 Fremont Boulevard, Fremont, California.

26 6. The provisions of this Order shall be binding upon and inure to the benefit
27 of the Debtor and Lender, and their respective successors and assigns, including any successor
28 trustee appointed in this Chapter 11 case or in any succeeding case under Chapter 7 of the

1 Bankruptcy Code.


RANDALL J NEWSOME
CHIEF JUDGE

2
3 Dated: _____

4 By: UNITED STATES BANKRUPTCY JUDGE

5
6 APPROVED AS TO FORM WITH NO OBJECTION

7 BROOKS & RAUB

8
9 By: 
10 DAVID S. CAPLAN
11 Attorneys for
NeoPhotonics Corporation

US Patents Issued to Bandwidth 9, Inc. as of September 1, 2004

1. US Patent No. 6,535,541 B1; 39218-732
"Vertical Cavity Apparatus with Tunnel Junction"
Filing Date: June 23, 2000
Issued: March 18, 2003
2. US Patent No. 6,532,096 B2; 39218-755
"System and Method for Canceling Ringing in a MEMS Device"
Filing Date: May 7, 2001
Issued: March 11, 2002
3. US Patent No. 6,493,371 B1; 39218-0731
"Vertical Cavity Apparatus with Tunnel Junction"
Filed: June 23, 2000
Issued: December 10, 2002
4. US Patent No. 6,493,372 B1; 39218-0733
"Vertical Cavity Apparatus with Tunnel Junction"
Filed: June 23, 2000
Issued: December 10, 2002
5. US Patent No. 6,493,373 B1; 39218-0737
"Vertical Cavity Apparatus with Tunnel Junction"
Filed: June 23, 2000
Issued: December 10, 2002
6. US Patent No. 6,490,311 B1; 39218-0734
"Vertical Cavity Apparatus with Tunnel Junction"
Filed: June 23, 2000
Issued: December 3, 2002
7. US Patent No. 6,490,231 B1; 39218-0735
"Vertical Cavity Apparatus with Tunnel Junction"
Filed: June 23, 2000
Issued: November 26, 2002
8. US Patent No. 6,490,230 B1; 39218-0738
"Vertical Cavity Apparatus with Tunnel Junction"
Filed: June 23, 2000
Issued: November 26, 2002
9. US Patent No. 6,366,597
"Lattice Relaxed Vertical Optical Cavities"
Filed: August 16, 1999
Issued: April 2, 2002

EXHIBIT A

Revised 3/31/03

US Patents Issued to Bandwidth 9, Inc. as of September 1, 2004

10. US Patent No. 6,351,476; 21123-747
"Tunable Semiconductor Laser System"
Filed: January 16, 2001
Issued: February 22, 2002
11. US Patent No. 6,321,003 B1; 21123-746
"Tunable Semiconductor Laser System"
Filed: October 20, 2000
Issued: November 20, 2001
12. US Patent No. 6,327,287 B1; 21123-745
"Tunable Semiconductor Laser System"
Filed: October 6, 2000
Issued: December 4, 2001
13. US Patent No. 6,275,513 B1; 21123-703
"Hermetically Sealed Semiconductor Laser Device"
Filed: June 4, 1999
Issued: August 14, 2001
14. US Patent No. 6,233,263; 21123-701
"Monitoring and Control Assembly for Wavelength Stabilized Optical System"
Filed: June 4, 1999
Issued: May 15, 2001
15. US Patent No. 6,226,425; 21123-705
"Flexible Optical Multiplexer"
Filed: June 4, 1999
Issued: May 1, 2001
16. US Patent No. 6,222,871; 21123-713
"Vertical Optical Cavities Produced with Selective Area Epitaxy"
Filed: June 22, 1999
Issued: April 24, 2001
17. US Patent No. 6,181,717; 21123-702
"Tunable Semiconductor Laser System"
Filed: June 4, 1999
Issued: January 30, 2001
18. US Patent No. 5,991,326; 21123-710
"Lattice-relaxed Vertical Optical Cavities"
Filed: April 14, 1998
Issued: November 23, 1999

Revised 3/31/03

US Patents Issued to Bandwidth 9, Inc. as of September 1, 2004

19. US Patent No. 5,960,024; 21123-708
"Vertical Optical Cavities Produced with Selective Area Epitaxy"
Filed: March 30, 1998
Issued: September 28, 1999
20. US Patent No. 6,760,357; 39218-0736
"Vertical Cavity Apparatus with Tunnel Junction"
Filed: June 23, 2000
Issued: July 6, 2004

Revised 3/31/03

OFFICIAL CHECK
Purchaser's Receipt



Comerica Bank

987019600
10/27/04

16-3717122

BANDWIDTH9 INC DEBTOR-IN-POSSESSION

*****50,000.00**

PAY
TO THE
ORDER OF

*****50,000*DOLLARS AND 00CENTS***

Dollars

00003/ 86006

Drawer: Comerica Bank

NEOPHOTONICS CORPORATION

REMITTER
Issued by Integrated Payment Systems Inc., Englewood, Colorado
Wells Fargo Bank Ltd., Los Angeles, California

NON NEGOTIABLE

OFFICIAL CHECK
Purchaser's Receipt



Comerica Bank

987011599
10/27/04

16-3717122

BANDWIDTH9 INC DEBTOR-IN-POSSESSION

*****25,000.00**

PAY
TO THE
ORDER OF

*****25,000*DOLLARS AND 00CENTS***

Dollars

00002/ 86006

Drawer: Comerica Bank

NEOPHOTONICS CORPORATION

REMITTER
Issued by Integrated Payment Systems Inc., Englewood, Colorado
Wells Fargo Bank Ltd., Los Angeles, California

NON NEGOTIABLE