

**PATENT ASSIGNMENT**

Electronic Version v1.1  
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SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
<b>CONVEYING PARTY DATA</b>	
Name	Execution Date
Xyratex Technology Limited	01/15/2010
<b>RECEIVING PARTY DATA</b>	
Name:	Napatech A/S
Street Address:	Tobaksvejen 23 A
City:	Soeborg
State/Country:	DENMARK
Postal Code:	1 DK-2860
<b>PROPERTY NUMBERS Total: 1</b>	
Property Type	Number
Patent Number:	7411946
<b>CORRESPONDENCE DATA</b>	
Fax Number:	(703)770-7901
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	7037707900
Email:	fabienne.legrand@pillsburylaw.com
Correspondent Name:	PILLSBURY WINTHROP SHAW PITTMAN
Address Line 1:	P.O. BOX 10500
Address Line 4:	Mclean, VIRGINIA 22102
ATTORNEY DOCKET NUMBER:	011765-0314681
NAME OF SUBMITTER:	Christophe F. Lair
<b>Total Attachments: 16</b> source=Agreement#page1.tif source=Agreement#page2.tif source=Agreement#page3.tif source=Agreement#page4.tif source=Agreement#page5.tif	

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Dated 15 January 2010

- (1) Xyratex Technology Limited
- (2) Napatech A/S

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Agreement

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For the sale and purchase  
of certain intellectual property of Xyratex Technology Limited

*gpc*

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**THIS AGREEMENT** is made on 15 January 2010

**BETWEEN:**

- (1) Xyratex Technology Limited (registered number 03134912) whose registered office is at Langstone Road, Havant, Hampshire, PO9 1SA ("**the Seller**"); and
- (2) Napatech A/S (registered number 10.10.91.24) whose registered office is at Tobaksvejen 23 A, 1 DK-2860 Soeborg, Denmark ("**the Buyer**").

**OPERATIVE CLAUSES**

1. **INTERPRETATION**

In this Agreement:

- 1.1 the following expressions have the following meanings unless inconsistent with the context:

**"Business Day"** any day (other than a Saturday or Sunday) on which banks are open in London for normal banking business

**"Consideration"** the aggregate consideration for the sale and assignment of the Patents as stated in **clause 3**

**"Contract"** any agreement or commitment whether conditional or unconditional and whether by deed, under hand, oral or otherwise

**"Disclosure Letter"** the letter provided under this Agreement from the Seller to the Buyer qualifying the Seller's Warranties

**"Group"** in relation to either party means that party and any company which is, in relation to that party, its parent undertaking, its subsidiary undertaking or a subsidiary undertaking of any parent undertaking of that party and "subsidiary undertaking" and "parent undertaking" will have the meanings given to them by the Companies Act 2006

**"Intellectual Property Rights"** all patents, utility models, trade marks, trade or business names, logos or straplines, copyright, moral rights, rights to prevent passing off or unfair competition, database rights, rights in designs and all other intellectual property rights and know how, in each case whether registered or unregistered and including applications or

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rights to apply for them and together with all extensions and renewals of them, and in each and every case, all rights or forms of protection having equivalent or similar effect anywhere in the world

**"License Agreement"**

The agreement dated 10 March 2006 between (1) the Seller and (2) the Buyer relating to certain of the Patents

**"Liabilities"**

all costs, expenses, losses, damages, claims, proceedings, awards, fines, orders and other liabilities (including reasonable legal and other professional fees and expenses) whenever arising or brought

**"Patents"**

(a) the patents and applications for patents short particulars of which are set out in **Schedule 1**;

(b) all patents granted pursuant to the patent applications mentioned in paragraph (a) of this definition; and

any continuations, divisions, reissues, re-examinations, extensions, substitutions and continuations in part in respect of any of the patent applications or patents mentioned in paragraph (a) or (b) of this definition

**"Relevant Claim"**

any claim for breach of any of the Seller's Warranties

**"Seller's Warranties"**

the representations and warranties set out or referred to in **clause 4.1** and **Schedule 3**

**"Transfer Date"**

the close of business on the date of this Agreement

**"US\$"**

US dollars, being the lawful currency for the time being of the United States of America (as may be modified, amended, or replaced from time to time)

**"VAT"**

Value Added Tax. Also known as MOMS or Omsaetningafgift in Denmark.

**"VATA"**

Value Added Tax Act 1994

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- 1.2 references to any statute or statutory provision include, unless the context otherwise requires, a reference to the statute or statutory provision as modified, replaced, re-enacted or consolidated and in force from time to time prior to Completion and any subordinate legislation made under the relevant statute or statutory provision (as so modified, replaced, re-enacted or consolidated) in force prior to Completion;
- 1.3 references to a person includes a reference to any individual, firm, company, corporation or other body corporate, government, state or agency of a state or any unincorporated association, joint venture or partnership (whether or not having a separate legal personality);
- 1.4 references to a document being "in the agreed terms" are to that document in the form agreed and for the purposes of identification initialled by or on behalf of the Seller and the Buyer;
- 1.5 references to the masculine, feminine or neuter gender respectively includes the other genders and references to the singular includes the plural (and vice versa);
- 1.6 references to clauses and Schedules are to clauses of and Schedules to this Agreement, and references to paragraphs are to paragraphs in the Schedule in which such references appear;
- 1.7 the Schedules form part of this Agreement and will have the same force and effect as if expressly set out in the body of this Agreement;
- 1.8 the headings in this Agreement will not affect its interpretation;
- 1.9 any phrase introduced by the term "include", "including", "in particular" or any similar expression will be construed as illustrative and will not limit the sense of the words preceding that term; and
- 1.10 references to a "subsidiary undertaking" or "parent undertaking" are to be construed in accordance with section 1162 CA 2006 and references to a "subsidiary" or "holding company" are to be construed in accordance with section 736 CA 1985.

## 2. **SALE AND PURCHASE**

- 2.1 In consideration of the amounts set out in **clause 3**, the Seller irrevocably assigns to the Buyer with effect from the Transfer Date with full title guarantee and free from any Encumbrance:
  - 2.1.1 the Patents;
  - 2.1.2 the right to apply for, prosecute and obtain patent or similar protection throughout the world for the inventions claimed in the Patents and the right to claim priority from such inventions (including under the Paris Convention when making applications in countries or territories outside

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the UK), so that the grant of any patent or similar protection shall be in the name of and vest in the Buyer; and

2.1.3 all and any other rights and powers arising or accruing from, or in relation to, the Patents, including without limitation the right to sue for damages and to have the benefit of any other remedies for infringement of the Patents occurring before, on or after the Transfer Date.

### 3. **CONSIDERATION**

3.1 The Consideration for the sale and assignment of the Patents and the rights detailed in **clause 2.1** of [REDACTED] will be satisfied by the payment of [REDACTED] to the Seller in cash on each of 31 March 2010, 30 June 2010 and 30 September 2010; and

3.2 All amounts expressed in this Agreement as being payable by the Buyer are expressed exclusive of any VAT which may be chargeable.

### 4. **WARRANTIES**

4.1 The Seller warrants to the Buyer in the terms of the Seller's Warranties. The Seller acknowledges that the Buyer is entering into this Agreement in reliance on each Seller's Warranty, which has also been given as a representation and with the intention of inducing the Buyer to enter into this Agreement.

### 5. **LIMITATION ON CLAIMS**

5.1 The Seller will not be liable for any Relevant Claim unless:

5.1.1 the amount of the liability in respect of that Relevant Claim when aggregated with the amount of the liability in respect of all other Relevant Claims exceeds [REDACTED] (in which event the Seller will be liable for the whole amount of such Relevant Claim and not merely the excess);

5.1.2 the Seller receives from the Buyer written particulars of the Relevant Claim (stating in reasonable detail the nature of the Relevant Claim) within 6 months after Completion.

5.2 The aggregate amount of the liability of the Seller for all Relevant Claims will not exceed [REDACTED]

### 6. **FURTHER ASSURANCE**

6.1 The Seller agrees at the Buyer's request and cost to execute such further documents, and take such actions and do such things as may be reasonably requested by the Buyer, to give full effect to the terms of this Agreement, and to secure the full right, title and interest of the Buyer in the Patents. The Seller further agrees to procure that the inventors identified in any of the Patents

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execute (at the Buyer's request and cost) such further documents as may be required in order to give full effect to the terms of this Agreement.

7. **ANNOUNCEMENTS**

7.1 Subject to **clause 7.2** no party will make or send any press or other public announcement, communication or circular (whether to shareholders, employees, customers, suppliers or otherwise) concerning the transactions contemplated by this Agreement or any matter ancillary to it unless it has first obtained the prior written approval of the Buyer (in the case of the Seller) or the prior written approval of the Seller (in the case of the Buyer), such approval in each case not to be unreasonably withheld or delayed.

7.2 **Clause 7.1** does not apply to any announcement, communication or circular required by the law of any relevant jurisdiction or any governmental or regulatory organisation, provided, if reasonably practicable, that the party required to make it has first consulted and taken into account the reasonable requirements of the other party as to its timing, content and manner of making or despatch.

8. **COSTS**

Except where expressly stated otherwise, each party to this Agreement will bear such party's own costs and expenses relating to the negotiation, preparation and implementation of this Agreement.

9. **NOTICES**

9.1 Any notice or other communication given in connection with this Agreement will be in writing and will be delivered personally, sent by courier to the recipient's address set out at **clause 9.3** or to any other UK address which the recipient has notified in writing to the sender received not less than 7 Business Days before the notice was despatched, or sent by fax.

9.2 A notice or other communication is deemed given:

9.2.1 if delivered personally, upon delivery at the address provided for in this clause; or

9.2.2 if sent by courier, on the second Business Day after the courier has confirmed delivery,

provided that, if it is delivered personally on a day which is not a Business Day or after 4 p.m. on a Business Day, it will instead be deemed to have been given or made on the next Business Day.

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9.3 The addresses referred to in **clause 9.1** are:

**The Seller**

To: Xyratex Technology Limited  
Address: Langstone Road, Havant, Hampshire, PO9  
1SA. (Fax # +44 (0)23 92453654)  
For the attention of: Malcolm Rule

**The Buyer**

To: Napatech A/S  
Address: Tobaksvejen 23 A, 1 DK-2860 Soeborg,  
Denmark. (Fax # +45 4596 1500 )  
For the attention of: Henrik Brill Jensen

9.4 The provisions of this clause will not apply, in the case of service of court documents, to the extent that such provisions are inconsistent with the Civil Procedure Rules.

**10. ASSIGNMENT**

10.1 The Buyer may at any time assign, sub-license, sell, charge or otherwise transfer the benefit of, or any of its rights under, this Agreement to any member of its Group, or any third party.

10.2 The Seller may at any time assign the benefit of, or any of its rights under, this Agreement to any member of its Group provided that the Seller will procure that any such company to whom it assigns any of its rights under this Agreement shall assign such rights back to the Seller immediately prior to it ceasing to be a member of its Group.

10.3 This Agreement will be binding and enure for the benefit of successors in title and permitted assigns of each of the parties and references to the parties will be construed accordingly.

**11. TERMINATION OF THE LICENCE AGREEMENT**

11.1 The parties agree that the provisions of the Licence Agreement shall terminate with effect from the Transfer Date. The termination of the Licence Agreement is without prejudice to the rights, duties and liabilities of either party accrued prior to termination.

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12. **RIGHTS OF THIRD PARTIES**

The parties to this Agreement do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it except by an assignee.

13. **ENTIRE AGREEMENT**

This Agreement and the documents referred to in it constitute the entire agreement between the parties and supersede and replace any previous agreement, understanding, undertaking or arrangement of any nature whatsoever between the parties relating to the subject matter of this Agreement.

14. **GENERAL**

- 14.1 All amounts expressed in this Agreement as being payable by the Buyer are expressed exclusive of any VAT which may be chargeable. It is assumed that the Buyer can provide a MOMS registration number (including the DK prefix), in which case VAT will not be chargeable.
- 14.2 Unless otherwise provided, any outstanding obligation contained in this Agreement will remain in force notwithstanding Completion.
- 14.3 Failure or delay by any party in exercising any right or remedy under this Agreement will not in any circumstances operate as a waiver of it, nor will any single or partial exercise of any right or remedy in any circumstances preclude any other or further exercise of it or the exercise of any other right or remedy.
- 14.4 Any waiver of any breach of, or any default under, any of the terms of this Agreement will not be deemed a waiver of any subsequent breach or default and will in no way affect the other terms of this Agreement.
- 14.5 Except as required by law, all payments by the Seller pursuant to this Agreement will be made free and clear of all deductions and withholdings whether in respect of taxation or otherwise. If any deduction or withholding is required by law to be made from any payment by the Seller pursuant to this Agreement or if (ignoring any available relief or allowance) the Buyer is subject to taxation in respect of any such payment then the Seller will pay to the Buyer such additional amount as is necessary to ensure that the net amount received and retained by it (after taking account of such deduction or withholding or taxation) is equal to the amount which it would have received and retained had the payment in question not been subject to the deduction or withholding or taxation.
- 14.6 The rights and remedies expressly provided for by this Agreement will not exclude any rights or remedies provided by law.
- 14.7 No variation of this Agreement will be valid unless it is in writing and signed by or on behalf of each party to this Agreement.

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15. **GOVERNING LAW AND JURISDICTION**

15.1 This Agreement and any non-contractual obligations arising out of or in connection with it will be governed by English law.

15.2 The courts of England and Wales will have exclusive jurisdiction to settle any dispute which arises out of or in connection with this Agreement. The parties irrevocably agree to submit to that jurisdiction.

15.3 The jurisdiction provisions contained in this clause are made for the benefit of the Buyer only, which accordingly retains the right to bring proceedings in any other court of competent jurisdiction. The Seller irrevocably waives any objection to, and agrees to submit to, the jurisdiction of such other courts.

16. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts and by the parties to it on separate counterparts each of which when executed and delivered will be an original.

17. **EXECUTION**

The parties hereto have executed this Agreement as a deed at the end of the Schedules and this Agreement is delivered on the date stated at the beginning of this Agreement.

# SCHEDULE 1

## Patents

### LICENSED APPLICATIONS:

NICKNAME	OFFICIAL TITLE	INVENTORS	OUR REF/ INVENTIO N DISC. NO	PRIORIT Y DATE	COUNTRIES	PATENT/APP NO	FILING/ GRANT DATE	STATUS (p = published) (e = examined)	RENEWAL DUE (Y = YEARLY FEE)	COST LAST TIME
Data Merge Unit	Data merge unit, a method of producing an interleaved data stream, a network analyser and a method of analysing a network	William Dries Kathryn Rickard	SNSNI01 0 XY03082 3	15/08/0 3	USA Europe (France, Germany, UK designated )	10/564,731  04768061.6	13/08/0 4 13/08/0 4	Pending (p/e) Pending (p)	31/08/10 (Y)	£989
Streamed Packet Feed	Method of transferring data implying a network analyser card	Chris Bloxham William Dries Kathryn Rickard	SNSNI01 1 XY03082 4	12/12/0 3	USA Europe (France, Germany, UK designated )	10/582,626 04805984.4	09/12/0 4 09/12/0 4	Pending (p) Pending (p/e)	31/12/10 (Y)	£1038

### FURTHER PATENT:

NICKNAME	OFFICIAL TITLE	INVENTORS	OUR REF/ INVENTIO N DISC. NO	PRIORIT Y DATE	COUNTRIES	PATENT/APP NO	FILING/ GRANT DATE	STATUS (p = published) (e = examined)	RENEWAL DUE (Y = YEARLY FEE)	COST LAST TIME
In Active Tap or an Ethernet Network Monitoring System	Network monitor and method	Alex Worrall Brian Carter Garry Widley	SNSNI00 6 XY0203	13/08/0 2	USA	7,411,946	12/08/0 8	Granted	12/02/12	1 <sup>st</sup>

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## SCHEDULE 2

### Completion Arrangements

At Completion the following will take place:

#### 1. **Items for delivery by the Seller**

The following items will be produced and delivered to the Buyer by the Seller:

- 1.1.1 registration certificates in relation to the Patents together with a duly executed confirmatory assignment of the Patents in the agreed terms and such other documents as may be required to record the change of ownership;
- 1.1.2 the documentation listed in the list of documentation attached at Appendix 1 relating to the Patents in the agreed terms, being such documentation that is in the possession of the Seller relating to the Patents including any examination reports, original source code documents, laboratory notebooks and other information and reports;
- 1.1.3 the Disclosure Letter;
- 1.1.4 any waiver, consent or other document necessary to give the Buyer (or its nominee(s)) full legal and beneficial ownership of the Patents and
- 1.1.5 an invoice in due form in relation to the supplies made pursuant to this Agreement.

## SCHEDULE 3

### Seller's Warranties

2. **Schedule 1**

The information contained in **Schedule 1** is true, complete and accurate in all material respects.

3. Disclosure Letter

The Warranties are qualified by all facts, matters and information disclosed within the Disclosure Letter and of which the Buyer has knowledge.

4. **Capacity**

The Seller has full power to enter into and perform this Agreement and this Agreement constitutes obligations binding on the Seller in accordance with its terms.

5. **Intellectual Property Rights**

5.1 The Patents are legally and beneficially owned by the Seller free from any Encumbrance or any claim to, or Contract to grant, any Encumbrance. The Seller is registered as the sole proprietor of the Patents.

5.2 There are no other licence agreements regarding the patents/applications listed in Schedule 1 than the agreement with Buyer

5.3 There are, and have been, no civil, criminal, tribunal, arbitration, administrative or other proceedings, actions or claims and none are pending or threatened or will arise, impugning the title, validity or enforceability of any of the Patents or claiming any right or interest in any of the Patents. There are no facts or circumstances likely to result in any such proceedings, actions or claims.

5.4 The Seller has not done or omitted to do any act, matter or thing whereby the Patents may be invalidated in whole or in part, and is not aware of any reason that might result in such invalidation.

5.5 Any renewal fee payable in respect of the Patents as at the Transfer Date has been duly paid, all steps required for their maintenance and protection have been taken and there are no grounds on which any person is or will be able to seek cancellation, rectification, revocation or any other modification of any registration.

5.6 The Seller has not received any notice from any third party alleging infringement or misuse of any Intellectual Property Rights belonging to a third party by use of the Patents within the period 3 years prior to the date of this Agreement.

  
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5.7 The Seller is unaware of any infringement or misuse relating to the Patents that is subsisting or that has occurred within the period 3 years prior to the date of this Agreement.




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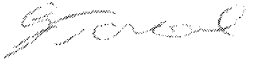
**REEL: 024023 FRAME: 0262**



**EXECUTED** as a **DEED** )  
by **XYRATEX TECHNOLOGY LIMITED** acting by )

 CFO 14/1/2010 **Director**

in the presence of: 

Witness signature: 

Witness name: GAYLE JORMAL

Witness address: 29 RADLEY Chase  
MEORLE GUD SOUTHAMPTON SO20 2UX

**EXECUTED** as a **DEED** )  
by **NAPATECH A/S** acting by )

 CEO 14/1/2010 **Director**

in the presence of:  
Witness signature: 

Witness name: Niels Holst - CEO

Witness address: Troløsevej 40  
4110 Sønder  
Denmark

## Appendix 1

### NAPATECH - SCHEDULE OF DOCUMENTS - as at 2 December 2009

#### LICENSED APPLICATIONS:

NICKNAME	OFFICIAL TITLE	COUNTRY	PATENT/A PP NO	DOCUMENTS
Data Merge Unit	Data merge unit, a method of producing an interleaved data stream, a network analyser and a method of analysing a network	USA	10/564,731	EPO search report (relating to provisional application) - pdf version only Published US specification - pdf version only First office action issued 4 February 2009 - pdf version only Filed response (4 May 2009) - pdf version only Final office action issued 31 August 09 - pdf version only Filed response (30 November 09) - pdf version only
		Europe	04768061.6	Application papers - pdf version only
Streamed Packet Feed	Method of transferring data implying a network analyser card	USA	10/582,626	EPO search report (relating to provisional application) - pdf version only Published US specification - pdf version only
		Europe	04805984.4	Application papers - pdf version only First examination report issued 25 January 2007 - pdf version only Response filed 25 May 2007 - pdf version only Second examination report issued 19 November 2007 - pdf version only Response filed 30 January 2008 - pdf version only Third examination report issued 20 March 2008 - pdf version only Response filed 3 September 2008 - pdf version only

#### FURTHER PATENT:

NICKNAME	OFFICIAL TITLE	COUNTRY	PATENT/A PP NO	DOCUMENTS
An Active Tap for an Ethernet Network Monitoring System	Network monitor and method	USA	7,411,946	Original grant document Original assignment of application (both final and provisional) signed by inventors

*[Signature]*  
**PATENT**