

PATENT ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
DANIEL P. DAY	08/23/2010
RECEIVING PARTY DATA	
Name:	Capella Photonics, Inc.
Street Address:	5390 HELLYER AVENUE
City:	SAN JOSE
State/Country:	CALIFORNIA
Postal Code:	95138
PROPERTY NUMBERS Total: 1	
Property Type	Number
Application Number:	13666902
CORRESPONDENCE DATA	
Fax Number:	5106680239
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>	
Phone:	510.668.0965
Email:	josh@jdipatent.com
Correspondent Name:	Joshua D. Isenberg
Address Line 1:	809 Corporate Way
Address Line 4:	Fremont, CALIFORNIA 94539
ATTORNEY DOCKET NUMBER:	CAP-014/US
NAME OF SUBMITTER:	Joshua D. Isenberg
Total Attachments: 7 source=PatDayPropInfoAgrmnt#page1.tif source=PatDayPropInfoAgrmnt#page2.tif source=PatDayPropInfoAgrmnt#page3.tif source=PatDayPropInfoAgrmnt#page4.tif source=PatDayPropInfoAgrmnt#page5.tif source=PatDayPropInfoAgrmnt#page6.tif source=PatDayPropInfoAgrmnt#page7.tif	

OP \$40.00 13666902

EMPLOYEE PROPRIETARY INFORMATION AND INVENTIONS AGREEMENT

In consideration of my employment with Capella Photonics, Inc. ("Company") and in consideration of the compensation paid to me therefore, the sufficiency of which I hereby acknowledge, I, Daniel P. Day (Rt) ("Employee"), enter into this Employee Proprietary Information and Inventions Agreement ("Agreement") made and entered into as of the 23 day of Aug, 2010 ("Effective Date") with and for the benefit of Company.

1. **DEFINITIONS.** In addition to the capitalized terms defined throughout this Agreement, the following terms shall have the meanings provided below:

1.1 "Confidential Information" shall mean information or material (a) proprietary to the Company and not generally known outside the Company, including, without limitation, information conceived, originated, discovered, developed, or reduced to practice, in whole or in part, or otherwise obtained by Employee, or (b) received in confidence by or for the Company from any other person or entity. "Confidential Information" includes, but is not limited to, (i) algorithms, trade secrets, computer programs (in source code and/or object code format), designs, technology, ideas, know-how, processes, formulas, compositions, data, specifications, techniques, improvements, inventions (whether patentable or not), test results, procedures and processes, quality control policies and procedures, engineering information, research information, research projects and works of authorship, including software and source code, (ii) any and all business information, including, without limitation, cost information, profits, sales information, accounting and unpublished financial information, business plans, markets and marketing methods, customer lists and customer information, purchasing techniques, supplier lists and supplier information, advertising strategies, operating strategies and product development plans, and (iii) the salaries and terms of compensation of other employees. Confidential Information does not include information that Employee can document: (x) has legally and properly entered the public domain through a source other than Employee and through no fault of Employee's; (y) has legally and properly been received from an unrelated third party through no breach of any agreement with the Company and without an obligation to keep it confidential; or (z) was rightfully known to Employee or was rightfully in Employee's possession, without an obligation to keep it confidential, prior to the commencement of employment with the Company.

1.2 "Company Materials" shall mean (a) all equipment, files, software programs and other personal property belonging to the Company and (b) all data, documents, records, software programs, engineer logs, media or other materials or tangible items that contain or embody Confidential Information or any other information concerning the business, operations or plans of the Company, whether such documents have been prepared by Employee or others. "Company Materials" include, but are not limited to, blueprints, drawings, photographs, charts, graphs, notebooks, customer lists, computer disks, tapes or printouts, sound recordings and other documents, as well as samples, prototypes, models and products.

1.3 "Intellectual Property" shall mean any and all intellectual property and industrial property rights and all other proprietary rights, including, without limitation, patents, patent rights, copyrights, works of authorship, moral rights, trademarks, trade secrets and all registrations, applications, renewals, extensions and restorations of all of the foregoing.

2. CONFIDENTIAL INFORMATION

2.1 Ownership. Employee agrees that, as between the Company and Employee, all Confidential Information and Company Materials and any Intellectual Property related thereto shall be the sole property of the Company. Employee agrees not to remove or cause the removal of any Company Materials from the business premises of the Company or deliver any Company Materials to any person or entity outside the Company, except as required in connection with the performance of Employee's duties for the Company. Employee further agrees, immediately upon the termination of employment for any reason or during employment if so requested by the Company, to promptly return all Confidential Information and Company Materials.

2.2 Use. Employee agrees to use the Confidential Information only as reasonably necessary in connection with the performance of Employee's duties for the Company. During and after Employee's relationship with the Company, Employee shall take reasonable means to protect all Confidential Information and shall not disclose or provide access to the same to anyone other than employees or, at the direction of the Company, authorized agents of the Company in connection with the performance of Employee's duties for the Company.

2.3 Notification. Employee shall notify the Company promptly and in writing of any circumstances of which Employee has knowledge relating to any possession or use of the Confidential Information by any person or entity other than those authorized by the terms of this Agreement.

2.4 Third Party Rights. Employee represents and warrants that his/her employment with the Company does not and will not breach any agreement or duty which Employee has to anyone else to keep in confidence confidential information or trade secrets belonging to others. Employee further represents and warrants that Employee has not and will not directly or indirectly disclose in any manner to the Company any information or material which is confidential to, or a trade secret of, any third party. Employee further agrees to treat as Confidential Information any and all information that has been or will be provided to the Company under a confidentiality obligation or use restriction by any third party.

3. OWNERSHIP AND ASSIGNMENT OF INTELLECTUAL PROPERTY RIGHTS

3.1 Ownership of Intellectual Property. Employee hereby agrees that all Intellectual Property relating in any manner to work performed by or for Employee as part of the performance of Employee's duties to the Company shall be owned exclusively by the Company ("Company Intellectual Property"), and that the Company may, in its sole discretion take whatever steps necessary and appropriate to protect and enforce such Company Intellectual Property and rights therein. Furthermore, without limiting the foregoing, any such Company Intellectual Property created by Employee and related to the actual or proposed business of the Company shall be deemed "works made for hire" and the Company shall be deemed the author thereof under the U.S. Copyright Act.

3.2 Previous Employee Developments. On Exhibit A attached hereto, Employee has listed all existing Intellectual Property, by title, date, and description, that: (a) were made prior to the Effective Date of this Agreement; (b) Employee asserts belong to Employee, or in which Employee asserts and desires to retain an interest; and (c) relate to the Company's actual or proposed business and products ("Previous Employee Developments"). Employee

acknowledges and agrees that such list is complete. If no such list is attached to this Agreement, Employee represents that there is no such Intellectual Property as of the Effective Date.

3.3 Assignment. To the extent that Employee owns, acquires or controls any right, title or interest in or to any Confidential Information, Company Materials and/or Company Intellectual Property, including, without limitation, any copyrights, patent rights, or any other rights therein, Employee hereby irrevocably assigns, transfers and conveys all right, title and interest therein and thereto (and any future ownership and rights, title and interest therein and thereto) to the Company. Notwithstanding any contrary provision, this Agreement shall be construed in accordance with the provisions of Section 2870 of the California Labor Code relating to inventions made by an employee, which states:

"(a) Any provision in an employment agreement which provides that an employee shall assign, or offer to assign, any of his or her rights in an invention to his or her employer shall not apply to an invention that the employee developed entirely on his or her own time without using the employer's equipment, supplies, facilities, or trade secret information except for those inventions that either:

(1) Relate at the time of conception or reduction to practice of the invention to the employer's business, or actual or demonstrably anticipated research or development of the employer; or

(2) Result from any work performed by the employee for his employer.

(b) To the extent a provision in an employment agreement purports to require an employee to assign an invention otherwise excluded from being required to be assigned under subdivision (a), the provision is against the public policy of this state and is unenforceable."

3.4 Disclosure. Employee agrees to promptly disclose to the Company any invention, computer program and related architecture and developments, modification, discovery, design, development, improvement, process, system, formula, data, technique, writing, know-how, secret or any intellectual property or proprietary right or any interest therein ("Inventions") made, conceived, discovered, developed, reduced to practice or possessed by Employee (either alone or with others) at any time during employment with the Company. Employee will also disclose to Company Inventions made, conceived, discovered, developed or reduced to practice by Employee within six (6) months of the termination of employment with the Company for the purpose of determining whether they constitute Company Intellectual Property under this Agreement; such disclosures shall be received by the Company in confidence (to the extent they are not assigned in Section 3.3 above) and do not extend the assignment made in Section 3.3 above.

3.5 Performance of Other Acts. From the date hereof and at any time thereafter, but at the expense of the Company, Employee agrees to sign or execute any and all documents, and perform any and all such acts as the Company and its duly authorized agents may reasonably require: (a) to apply for, obtain, and vest in the name of the Company alone (unless the Company otherwise directs) patents, copyrights, trademarks or other proprietary protection for any Company Intellectual Property in any country throughout the world and when so obtained or vested to maintain, renew and restore the same; (b) to assist, as required by the Company, in the defense of any opposition proceedings in respect to such applications and any opposition proceedings, petitions, applications, litigation or other legal proceedings for revocation or invalidation of such patents, copyrights or trademarks or other proprietary protection; and (c) to effectuate the vesting in the name of the Company alone (unless the

Company otherwise directs) of the ownership, title and interest of any item of Company Intellectual Property. Employee hereby irrevocably designates and appoints the Company and its duly authorized officers and agents, as agents and attorneys-in-fact to act for and on behalf and instead of Employee, to execute and file any such documents and to do all other lawfully permitted acts to further the above purposes with the same legal force and effect as if executed by Employee.

3.6 Moral Rights. Any assignment of copyright hereunder (and any ownership of a copyright as a work made for hire) includes all rights of paternity, integrity, disclosure and withdrawal and any other rights that may be known as or referred to as "moral rights" (collectively, "Moral Rights"). To the extent such Moral Rights cannot be assigned under applicable law and to the extent the following is allowed by the laws in the various countries where Moral Rights exist, Employee hereby ratifies and consents to any action of the Company that would violate such Moral Rights in the absence of such ratification/consent. Employee agrees to confirm any such ratifications and consents from time to time as requested by the Company.

4. GENERAL PROVISIONS

4.1 Term. The obligations set forth in this Agreement shall terminate upon the termination of Employee's employment with the Company, with the exception that Sections 1,2, 3, 4.1, 4.3, 4.5, 4.6, 4.7, 4.8 and 4.9 hereof shall survive such termination and remain effective, enforceable, and binding upon Employee and Employee's heirs and successors in interest subsequent to such termination. In the event of the termination of employment, Employee agrees to sign and deliver a termination certificate certifying that Employee has returned all Confidential Information pursuant to the obligations in Section 2.1 and that Employee will continue to comply with the surviving sections of this Agreement listed in this Section 4.1. Employee acknowledges and agrees that Company may communicate Employee's obligations under this Agreement to any future employer or potential employer of Employee.

4.2 Employment at Will. Unless otherwise agreed to in writing between Employee and the Company, the employment relationship or contract between Employee and the Company, as applicable, is on an "at will" basis, and nothing herein shall be construed to confer upon Employee any rights to continued employment by the Company that Employee would not otherwise have.

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4.3 Non-solicitation. During the Employee's relationship with the Company and for one (1) year after the termination thereof for any reason whatsoever, Employee agrees not to, or attempt to, directly or indirectly, solicit, interfere with the Company's relationships with, or entice away from the Company, any customer, licensee, licensor, distributor, representative, employee, contractor or source of supply of the Company.

4.4 Non-Compete. Employee agrees that during employment with the Company, Employee will not engage in any activity that is in any way competitive with the business or contemplated business of the Company or that would otherwise conflict with the Company, and will not assist any other person or organization in competing with the Company or in preparing

to engage in competition with the business or contemplated business of the Company. The provisions of this paragraph shall apply both during normal working hours and at all other times.

4.5 Injunctive Relief. Employee acknowledges that because of the unique nature of the Confidential Information and the Company Intellectual Property, the Company will suffer irreparable harm and significant injury in the event that Employee fails to comply with and breaches any material obligations under this Agreement, and that monetary damages will be difficult to ascertain and inadequate to compensate the Company for such breach. Accordingly, Employee agrees that the Company will, in addition to any other remedies available to it at law or in equity, be entitled to injunctive relief to enforce the terms of this Agreement.

4.6 Assignment. This Agreement may be assigned, in whole or in part, by the Company to any third party and shall inure to the benefit of any and all of the Company's successors and assigns. However, because of the unique and personal nature of the services and duties of Employee which form at least a part of Employee's duties for the Company, Employee may not assign any obligations, or portions thereof, agreed to by Employee under this Agreement.

4.7 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of California without regard to the conflict of laws provisions thereof.

4.8 Severability; Waiver. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, it shall be construed by limiting and reducing such provision so as to be enforceable to the extent compatible with the applicable law and this Agreement shall otherwise remain in full force and effect. No delay or omission by either party hereto to exercise any right or power hereunder shall impair such right or power or be construed to be a waiver thereof. A waiver by either party of any obligation of the other or any breach thereof must be in a signed writing and shall not be construed to be a waiver of any succeeding breach thereof or of any other obligation.

4.9 Entire Agreement. This Agreement constitutes the full and complete understanding of the parties with respect to Confidential Information and Intellectual Property, and supersedes all oral or written communications, understandings, agreements concerning Confidential Information and Intellectual Property, except for prior confidentiality or similar agreements Employee has signed relating to information not covered by this Agreement, which agreements remain in full force and effect with respect to such information. This Agreement may not be amended, modified or supplemented except by written agreement signed by both parties hereto.

EMPLOYEE HAS READ THIS AGREEMENT CAREFULLY AND UNDERSTANDS AND ACCEPTS THE TERMS AND OBLIGATIONS WHICH IT IMPOSES UPON EMPLOYEE WITHOUT RESERVATION.

IN WITNESS WHEREOF, Employee and Company have executed this Agreement as of the Effective Date.

EMPLOYEE:

Signature: Daniel P. Day

Name (printed) Daniel P. Day

Social Security No.: 440 62 0630

Mailing Address: 100 Grace Way, Scotts Valley, CA 95066

CAPELLA PHOTONICS, INC.:

Signature: [Signature]

Name (printed): LARRY SCHWERTIN

Title: CEO

EXHIBIT A
TO
CONFIDENTIALITY AND INTELLECTUAL PROPERTY
ASSIGNMENT AGREEMENT

Title of Intellectual Property	Date of Invention Discovery, publication, etc.	Brief Description of Intellectual Property and Rights of Employee Thereto (e.g., ownership, nonexclusive license, etc.)

I represent that I have indicated on this Exhibit all Intellectual Property (as defined in this Agreement) in which I owned any right or interest prior to my employment with Company. I agree that any present or future Intellectual Property not listed on this Exhibit are subject to assignment under the attached CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS ASSIGNMENT AGREEMENT.

Executed by:

Signature of Employee:

Name (printed):

Date:

Daniel P. Day

Daniel P. Day

Aug 23, 2010