

PATENT ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

Assignment ID: PATI653231

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	ASSIGNMENT
CONVEYING PARTY DATA	
Name	Execution Date
ASM GENITECH KOREA LTD.	12/30/2011
RECEIVING PARTY DATA	
Company Name:	ASM IP HOLDING B.V.
Street Address:	VERSTERKERSTRAAT 8
City:	ALMERE
State/Country:	NETHERLANDS
Postal Code:	1322 AP
PROPERTY NUMBERS Total: 5	
Property Type	Number
Application Number:	17583544
Application Number:	16822390
Application Number:	15157692
Application Number:	13085531
Application Number:	13346470
CORRESPONDENCE DATA	
Fax Number:	6024705707
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent using a fax number, if provided; if that is unsuccessful, it will be sent via US Mail.</i>	
Phone:	6204702434
Email:	MICHELLE.SYMPSON@ASM.COM
Correspondent Name:	PATRICK LEE
Address Line 1:	3440 EAST UNIVERSITY DRIVE
Address Line 4:	PHOENIX, ARIZONA 85034
ATTORNEY DOCKET NUMBER:	ASMK-ASMIP
NAME OF SUBMITTER:	Michelle Sympson
SIGNATURE:	Michelle Sympson
DATE SIGNED:	11/23/2024
Total Attachments: 12 source=ASMK-ASMIP#page1.tiff	

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IP LICENSE AGREEMENT

ASM GENITECH KOREA LTD.

AND

ASM IP HOLDING B.V.

**Baker & McKenzie
Claude Debussylaan 54
1082 MD Amsterdam
The Netherlands
Phone: +31-20-551-7555
Fax: +31-20-626-7949**

THIS AGREEMENT is dated 30 December 2011;

BETWEEN:

- (1) **ASM GENITECH KOREA LTD**, a company organized under the laws of Korea, having its office at SungKong-Kwan 1 dong, Cheonan Valley, 514, Sameun-ri, Jiksan-eup, Cheonan-si, Chungcheongnam-do, Korea 30-816, hereinafter referred to as "Licensor";
- and
- (2) **ASM IP HOLDING B.V.**, a company organized under the laws of The Netherlands, having its office at Versterkerstraat 8 (1322AP) Almere, The Netherlands, hereinafter referred to as "Licensee";

Licensor and Licensee are collectively referred to hereinafter as the "Parties" and sometimes individually referred to as the "Party".

WHEREAS:

- (A) Licensor is the legal and beneficial owner of the Intellectual Property Rights;
- (B) Licensee wishes to use, exploit and sub-license the Intellectual Property Rights worldwide; and
- (C) Licensor has agreed to license the Intellectual Property Rights to Licensee and Licensee accepts the license subject to the terms and conditions set out in this Agreement.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS CONTAINED HEREIN, LICENSOR AND LICENSEE AGREE AS FOLLOWS:

1. Definitions

1.1. In this agreement:

Agreement means this license agreement, including the schedules thereto;

Affiliate means, in relation to a party, any other entity which directly or indirectly Controls, is Controlled by, or is under direct or indirect common Control with, that party from time to time;

Confidential Information means any information disclosed by one Party to the other Party pursuant to this Agreement in any form that is marked "Confidential," "Company Secret," or disclosed under circumstances that reasonably indicate that the information is confidential. Confidential Information may also include information disclosed orally by one Party to the other Party pursuant to this Agreement under circumstances that reasonably indicate that the information is confidential;

Control means that a person possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of the other person, whether through the ownership of voting shares, by contract or otherwise, and Controls and Controlled shall be interpreted accordingly;

Effective Date means 1 January 2012.

Intellectual Property Rights means all intellectual property rights and equivalent or similar forms of protection existing anywhere in the world owned by Licensor including but not limited to the Patents, Know-How, copyright and related rights, database rights, Trade Marks, and designs, in each

case whether registered or unregistered, and including all applications (and rights to apply) for such rights;

Know-How means all commercial, technical and industrial information, either confidential or non-confidential, related to the Intellectual Property Rights and its working;

Net Revenues shall mean and include total gross revenues, as determined under generally accepted accounting principles as applied by Licensee, derived from the sale of Products to parties that are not considered Affiliates, including but not limited to the sale of Products to resellers and customers, in the Territory, less any credits, discounts, allowances, returns and refunds with respect to such Products and excluding any value-added tax (VAT), goods and services tax (GST), consumption tax or similar taxes applied to such Products.

Operating Expense shall mean the direct and indirect incurred by Licensee, as determined in accordance with generally accepted accounting principles, as applied by Licensee, and which shall be calculated by a methodology agreed upon by the Parties. The term Operating Expense shall include any currency exchange results realized by Licensee if these currency exchange results pertain to the activities performed under this Agreement.

Operating Margin shall mean Operating Profit divided by Net Revenue.

Operating Profit shall mean Net Revenues minus Operating Expenses. For the avoidance of doubt, Operating Profit shall be measured before interest and tax.

Patents means any and all patents and patent applications made by the Licensor, including the patents and patent applications identified in Schedule 1;

Recipients means in relation to the confidential information of:

- (a) Licensee, Licensor;
- (b) Licensor, Licensee;

Trade Marks means the trade marks, both common-law and registered, and applications to register Trade Marks as set out in Schedule 2, Part 1 and the Trade Marks, devices and get ups owned by Licensor which are to be used under this Agreement as set out in Schedule 2, Part 2, and Trade Mark means any of them.

Target Margin shall mean an arm's length Operating Margin as determined by a transfer pricing policy.

Territory means the World

- 1.2 The headings in this Agreement do not affect its interpretation.
- 1.3. The schedules to this Agreement form an integral part of it.
- 1.4 If there is any conflict or inconsistency between a term in the main part of this Agreement and a term in any of the schedules or other documents referred to or otherwise incorporated into this Agreement, the term in the main part of this Agreement shall take precedence, unless the schedule or the appendix or other document which is incorporated into this Agreement is expressly stated to take precedence over this Agreement.

2. Grant of License and Right to Sublicense

- 2.1 Subject to the terms and conditions of this Agreement, Licensor grants to Licensee a worldwide license to:
- (i) use, exploit, manufacture, promote, distribute, market and sell, maintain and service the Intellectual Property Rights in the broadest sense possible (the “**Exploitation Rights**”); and
 - (ii) sublicense all or part of the Exploitation Rights to an Affiliate and grant such Affiliate the right to, in its turn, grant a sublicense on all or part of the Exploitation Rights to a third party/end-user.

3. Legal Title and Goodwill

- 3.1 Licensee acknowledges that Licensor is and remains the legal and beneficial owner of the Intellectual Property Rights.
- 3.2 Any goodwill derived from the use, exploitation and sublicensing of the Intellectual Property Rights by Licensee shall exclusively belong to Licensee.
- 3.3 Licensee may require Licensor to apply for additional trade mark, patent or software registrations related to the Intellectual Property Rights. Such applications and any subsequent registrations shall be Intellectual Property Rights for the purposes of this Agreement. Upon request of Licensee, Licensor shall enter into a new license agreement on substantially the same terms as this Agreement.

4. Fee and Payment

- 4.1 Licensee will pay the Licensor in accordance with the payment schedule attached to this Agreement as Schedule 3, which may be amended in writing by the Parties from time to time.

5. Licensor's Undertakings

- 5.1 Licensor represents and warrants to Licensee that Licensor has the right to grant the licence to the Intellectual Property Rights under this Agreement.
- 5.2 Save as expressly provided in this agreement, no representation, warranty or condition, express or implied, statutory or otherwise, is given by Licensor to Licensee in respect of the Invention and the Intellectual Property Rights and any and all representations, warranties and conditions are excluded save to the extent prohibited by law. Nothing in this Agreement shall constitute any representation, warranty or condition that the Intellectual Property Rights are valid or that an application for trade marks, patents or software registrations shall proceed to grant or after grant be valid.

6. Registering License

- 6.1 Upon a Party's reasonable request, the other Party shall co-operate with the requesting Party including, without limitation, by executing all necessary documents to enable this Agreement and/or any of the Parties to be registered as Licensor or Licensee at any applicable Intellectual Property Rights registry. All costs related to such registration shall on behalf of Licensee and at the cost of Licensee.

7. Third Party Infringement

- 7.1 Parties will act in accordance with the IP Infringement and Product Liability Guidelines d.d. 31 December 2011 in case of:
- (i) any (potential) intellectual property rights infringement; or

- (ii) any claim of intellectual property rights infringement and any suit or suits threatened or brought against Licensor or Licensee for infringement by reason of Licensees use of any of the Intellectual Property Rights, Know How and Confidential Information licensed to Licensee under this Agreement.

8. Maintenance of Intellectual Property Rights

- 8.1 Subject to clause 8.3, Licensor shall pay all fees and charges and do all acts and things necessary for the maintenance of all licensed Intellectual Property Rights that have been granted or that proceed to grant and do all acts and things necessary to prosecute the Intellectual Property Rights that are applications.
- 8.2 Licensor shall not abandon the Intellectual Property Rights, allow any of them to lapse save with the prior written consent of Licensee.
- 8.3 All costs related to such maintenance shall be borne by Licensee and Licensee shall compensate Licensor for the fees and charges paid under Section 8.1 of this Agreement.
- 8.4 Licensor shall have the right to inspect the nature and quality of goods and/or services that Licensee and/or Licensee's subsequent sub-licensees offer and/or provide under the Trade Marks and US Trademarks. Licensor shall give reasonable notice prior to such inspection and Licensee and its sublicensee's shall reasonably co-operate with Licensor in carrying out the inspection.

9. Term and Termination

- 9.1 This Agreement shall become effective on the Effective Date and shall continue for a period of one (1) year thereafter, unless earlier terminated as provided in this Section 9. After this initial term, the Agreement shall be automatically renewed for one (1) year periods, unless either Party gives written notice of non-renewal at least sixty (60) calendar days before the end of the initial term or any renewal date. Notwithstanding the above, parties may also terminate this Agreement, with or without cause, upon ninety (90) calendar days prior written notice of such termination.
- 9.2 In the event that either Party (the "Breaching Party") shall commit any material breach or default of any of its obligations under this Agreement, the other Party (the "Non-Breaching Party") may give the Breaching Party written notice thereof and demand that such breach or default be cured immediately. If the Breaching Party fails to cure such breach or default within thirty (30) calendar days after the date of the Non-Breaching Party's written notice hereunder, the Non-Breaching Party may terminate this Agreement immediately upon giving written notice of termination hereof to the Breaching Party. Termination of this Agreement in accordance with this Section 9.2 shall not adversely affect or impair the Non-Breaching Party's right to pursue any legal remedy, including the right to recover damages for all harm suffered or incurred as a result of the Breaching Party's breach or default hereof.
- 9.3 To the extent permitted under applicable law, Licensor may terminate this Agreement by written notice, to take effect immediately upon receipt thereof by Licensee, in the event that: (a) Licensee breaches any of its obligations as determined under this Agreement; (b) Licensee goes into bankruptcy, voluntary or involuntary dissolution, is declared insolvent, makes an assignment for the benefit of creditors, or suffers the appointment of a receiver or trustee over all or substantially all of its assets or properties; or (c) any unrelated third party appropriates and/or acquires by law, regulation, order or any other involuntary means the intellectual property rights embodied in or related to any of Intellectual Property Rights or the rights granted to Licensee hereunder, including, without limitation, through expropriation, or attempts or undertakes such action; *provided, however*, that Licensor may elect to terminate Licensee's right and license hereunder only with respect to the jurisdiction in which such involuntary appropriation or taking occurs.

- 9.4 This Agreement shall automatically terminate effective immediately before the enactment of any law, regulation or governmental order is enacted or issued, which, in the reasonable opinion of Licensor, jeopardizes or impairs the enforceability of any intellectual property rights in any of Licensor's Property in any country within the Territory, unless Licensee, upon written request from Licensor, agrees to refrain from utilizing Licensor's Property in such country.
- 9.5 Immediately upon termination of this Agreement for any reason whatsoever, Licensee shall cease all use of Intellectual Property Rights, *provided that* Licensor may, at its sole option, permit Licensee to use such of Intellectual Property Rights as Licensee reasonably requires to (a) sell or otherwise dispose of Licensee's existing inventory of the Products manufactured/produced by Licensee hereunder.
- 9.6 Subject to the provisions of Section 9.5 hereof, immediately after the date of termination hereof, Licensee shall return to Licensor all copies of all documents and other materials that contain or embody any of Intellectual Property Rights that are in the possession of Licensee as of the date of termination.
- 9.7 Upon termination of this Agreement, at any time and for any reason whatsoever, Licensor shall not be liable to Licensee, for any compensation, reimbursement or indemnification or damages on account of, including but not limited to, any loss of present or prospective profits, anticipated or estimates sales, expenditures, loss of goodwill created or ongoing benefits to Licensee, investments that cannot be recouped, or any similar loss or any commitments made by Licensee in connection with this Agreement or on account of any other cause whatsoever.

10. Confidentiality

- 10.1 Confidentiality. Each Party agrees to maintain secret and confidential all Confidential Information that it may acquire from the other Party in the course of this Agreement.
- 10.2 Right to Disclose. The Parties may disclose such Confidential Information only to those of their employees, agents and distributors who need to know such information, and who are obligated to treat this information as confidential, in order to enable the respective Parties to perform their obligations under this Agreement.
- 10.3 Exceptions. The obligations of clause 10.1 above shall not apply to information which is:
- (a) already known to one Party, other than under an obligation of confidentiality, at the time of disclosure by the other;
 - (b) subsequently disclosed to the recipient Party without any obligation of confidence by a third party who has not obtained it directly or indirectly from the other Party;
 - (c) generally available to the public or becomes so available or otherwise is or becomes part of the public domain after its disclosure other than through any act or omission of either Party or its employees, agents or service providers in breach of this Agreement; or
 - (d) independently developed by employees of either Party without prior knowledge of the Confidential Information.
- 10.4 Disclosure to Customers. Notwithstanding the foregoing provisions, either Party shall be entitled to disclose Confidential Information of the other Party to Customers in-so-far as such disclosure is reasonably necessary to promote the sale or use of the Products and provided that such Party takes adequate measures to ensure the observance by such third party of the secrecy and confidentiality of such Confidential Information.
- 10.5 Term of Confidentiality. The provisions of this clause 10 shall survive five (5) years after the termination of this Agreement.

11. Assignment

- 11.1 Subject to clause 2.1 and 11.2, neither party may assign, mortgage or otherwise encumber any of its rights under this Agreement without the prior written consent of the other party which shall not be unreasonably withheld or delayed.
- 11.2 Nothing in this Agreement shall prevent or restrict Licensee from assigning or sublicensing any of its rights to an Affiliate or to any person acquiring the whole or substantially the whole of Licensee's business or assets to which this Agreement relates.

12. General Compliance

- 12.1 Each Party shall at all times:
- (a) strictly comply with all applicable laws, rules, regulations and governmental orders, now or hereafter in effect, relating to its performance of this Agreement;
 - (b) pay all fees and other charges required by such laws, rules, regulations and orders;
 - (c) maintain in full force and effect all licenses, permits, authorizations, registrations and qualifications from all applicable governmental departments and agencies to the extent necessary to perform its obligations hereunder.

13. Force Majeure

- 13.1 Neither Party shall be liable to the other for its failure to perform any of its obligations hereunder during any period in which such performance is delayed by circumstances beyond its reasonable control including, but not limited to, fire, flood, war, embargo, strike, riot, inability to secure materials and transportation facilities, or the intervention of any governmental authority, in each case not otherwise invoking a breach of this Agreement.

14. Notices

- 14.1 All notices and other communications required or permitted hereunder shall be in writing and shall be mailed by registered or certified mail, postage prepaid, or otherwise delivered by hand, messenger or by telecommunication to the address of the applicable Party specified in the introductory paragraph above, or to such other address or addresses as either Party may, from time to time, designate as to itself in a written notice.

15. Applicable law – Dispute settlement

- 15.1 Applicable Law. This Agreement shall be governed by and construed in accordance with and subject to the laws of the Netherlands, except to the extent the mandatory provisions of law of another jurisdiction shall necessarily apply to the subject matter covered by this Agreement. If otherwise applicable, the United Nations Convention for the International Sale of Goods shall be excluded.
- 15.2 Dispute Resolution. Any dispute, controversy or claim arising under, out of, or relating to this Agreement and any subsequent amendments of this Agreement, including, without limitation, its formation, validity, binding effect, interpretation, performance, breach or termination, as well as non-contractual claims, shall, if possible, be settled amicably by negotiation between Parties. If such dispute, controversy or claim cannot be amicably settled, then the dispute, controversy or claim shall be referred to the boards of directors of the Parties. If such dispute, controversy or claim can neither be settled by the boards of directors of the Parties, it will be finally settled in accordance with the rules of the Netherlands Arbitration Institute (Nederlands Arbitrage Instituut, or NAI). Arbitration will take place in Amsterdam, the Netherlands. The case will be submitted to one arbitrator and the arbitration proceedings will be conducted in English. For completeness' sake, the arbitrator will apply Dutch law to any such dispute, controversy or claim.

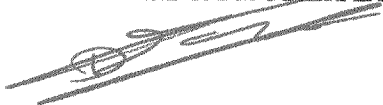
16. Miscellaneous

- 16.1 Hardship. In entering into this Agreement, the Parties recognize that it is practically impossible to make provision for every contingency which may arise during the validity of this Agreement. Accordingly, the Parties hereby state and acknowledge their mutual intent that this Agreement shall be enforced and implemented between them with fairness and without detriment to either Party's interest, and that if, in the course of performing the obligations and duties as set forth in this Agreement, substantial hardship or unfairness is anticipated by or has occurred to either Party, the Parties, subject to applicable law, shall use their best commercial endeavors to agree upon such action as may be necessary to rectify or remove the causes thereof, and, if deemed necessary, compensate for disadvantages suffered.
- 16.2 Waiver. The failure of either Party to enforce at any time any Section or part thereof of this Agreement, or the failure to require at any time performance by the other Party of a Section or a portion thereof of this Agreement, shall in no way constitute present or future waiver of such Section or portion thereof, nor in any way affect the ability of either Party to enforce each and every Section of this Agreement.
- 16.3 Entire Agreement. This Agreement constitutes the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof. The appendices attached to this Agreement form an integral part thereof. The Parties agree that this Agreement supersedes and terminates any previous license arrangements between the Parties.
- 16.4 Language. In the event that this Agreement is executed in more than one language, the English language version shall prevail in the case of any discrepancy.
- 16.5 Severability. If any Section, term or provision, in this Agreement is found or held to be invalid or unenforceable in any jurisdiction in which this Agreement is being performed, the remainder of this Agreement shall be valid and enforceable and the Parties shall negotiate in good faith, a substitute, valid and enforceable provision which most nearly effects the Parties' intent in entering into this Agreement.
- 16.6 Amendment. No alteration, amendment, waiver, cancellation or other change in any term or condition of this Agreement shall be valid or binding on either Party unless the same has been agreed to in writing by both Parties.
- 16.7 Counterparts. This Agreement may be executed in two (2) or more counterparts, all of which, taken together, shall be regarded as one and the same instrument.

[Signature page follows]

IN WITNESS WHEREOF, THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT TO BE EFFECTIVE AS OF THE EFFECTIVE DATE.

ASM GENITECH KOREA LTD.



Name: D.A. Horvath
Title: proxy holder
Date: 30 December 2011

ASM IP Holding B.V.



Name: D.A. Horvath
Title: proxy holder
Date: 30 December 2011

SCHEDULE 1

PATENTS AND PATENT APPLICATIONS

PATENT

REEL: 069387 FRAME: 0464

SCHEDULE 2

TRADE MARKS

SCHEDULE 3

Fees & Payment Schedule

In this Schedule 3:

Net Revenues shall mean and include total gross revenues, as determined under generally accepted accounting principles as applied by Licensee, derived from the sale of Products to parties that are not considered Affiliates, including but not limited to the sale of Products to resellers and customers, in the Territory, less any credits, discounts, allowances, returns and refunds with respect to such Products and excluding any value-added tax (VAT), goods and services tax (GST), consumption tax or similar taxes applied to such Products.

Operating Expense shall mean the direct and indirect incurred by Licensee, as determined in accordance with generally accepted accounting principles, as applied by Licensee, and which shall be calculated by a methodology agreed upon by the Parties. The term Operating Expense shall include any currency exchange results realized by Licensee if these currency exchange results pertain to the activities performed under this Agreement.

Operating Margin shall mean Operating Profit divided by Net Revenue.

Operating Profit shall mean Net Revenues minus Operating Expenses. For the avoidance of doubt, Operating Profit shall be measured before interest and tax.

Target Margin shall mean an arm's length Operating Margin as determined by a transfer pricing study

Pursuant to Section 4.1 of this Agreement, Licensee and Licensor agreed the following:

- Licensee will pay Licensor a royalty in exchange for the rights licensed from Licensor once the Operating Profit of Licensee before royalty payment exceeds the Target Margin (the "Residual Royalty").
- The Residual Royalty will be determined on the annual basis at the end of the financial year of Licensee and will consist of the difference between the realized pre-royalty Operating Profit of Licensee and Target Margin.
- To the extent Licensee's profitability is negative due to insufficient sales and/or costs, Licensee will not pay Licensor a royalty. Instead, Licensor will make an intercompany payment to Licensee to allow Licensee to achieve the Target Margin.