

02-27-2004



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Form PTO-1594 (Rev. 10/02) OMB No. 0651-0027 (exp. 6/30/2005)

RE

U.S. DEPARTMENT OF COMMERCE U.S. Patent and Trademark Office

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): Optim Electronics Corporation
Individual(s) Association General Partnership Limited Partnership Corporation-State Other

2. Name and address of receiving party(ies) Name: Nicolet Instrument Technologies, Inc. Internal Address: 5225 Verona Road Street Address: City: Madison State: WI Zip: 53711

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

3. Nature of conveyance: Assignment Merger Security Agreement Change of Name Other Asset Purchase Agreement Execution Date: June 26, 2002

Individual(s) citizenship Association General Partnership Limited Partnership Corporation-State Wisconsin Other If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No

4. Application number(s) or registration number(s): A. Trademark Application No.(s) B. Trademark Registration No.(s) 1,514,445 Additional number(s) attached Yes No

5. Name and address of party to whom correspondence concerning document should be mailed: Name: Lydie Arthos Hudson Internal Address: Lathrop & Clark LLP P.O. Box 1507 Madison WI 53701-1507 Street Address: 740 Regent Street, Ste. 400 City: Madison State: WI Zip: 53715

6. Total number of applications and registrations involved: 7. Total fee (37 CFR 3.41): \$ 90.00 Enclosed Authorized to be charged to deposit account 8. Deposit account number: 15-0660 (Attach duplicate copy of this page if paying by deposit account)

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DO NOT USE THIS SPACE

Statement and signature. 40.00 OP 50.00 OP 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. Lydie Arthos Hudson Name of Person Signing Signature Date July 27, 2003

Total number of pages including cover sheet, attachments, and document: 11

Mail documents to be recorded with required cover sheet information to: Commissioner of Patent & Trademarks Box Assignments Washington, D.C. 20231

## Attachment for Recordation Form Cover Sheet Trademarks Only (Form PTO-1594)

Continuation of Item 4. Additional Application Number(s) or Registration Number(s)

A. Trademark Application No.(s):

B. Trademark Registration No.(s): 1,992,947 and 2,257,528

**ASSET PURCHASE AGREEMENT**

by and among

**NICOLET INSTRUMENT TECHNOLOGIES, INC.**

as **BUYER**, and

**MICHAEL G. WOLFF, CHAPTER 7 TRUSTEE of**

**OPTIM ELECTRONICS CORPORATION**

as **SELLER**

Dated June 26, 2002

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT, is made and entered into as of June \_\_\_\_\_, 2002, by and among The Bankruptcy Estate of Optim Electronics Corporation (the "Debtor"), a Maryland corporation by and through Michael G. Wolff, Chapter 7 Trustee, (the "Seller"), and Nicolet Instrument Technologies, Inc., a Wisconsin corporation (the "Buyer").

### ARTICLE I

**Purchase of Assets.** On the terms and subject to the conditions set forth in this Agreement, at closing, Seller shall sell, transfer, assign, convey and deliver to Buyer, and Buyer shall purchase, acquire and accept from Seller, all of the right, title and interest of Seller as of the Closing Date in and to all of the Debtor's tangible and intangible assets except those specifically excluded herein, free and clear of any liens hereinafter collectively referred as ( the "Assets"). The purchase of Assets by Buyer is "as is, where is" and without any express or implied warranty of any kind, except as expressly set forth in this Agreement.

Buyer will not assume any liabilities, obligations, or contractual commitments (whether known or unknown, contingent, fixed or otherwise) whether or not arising out of any of Sellers or any of their affiliates's ownership and operation of the assets on or prior to the effective date of the closing, to the extent not expressly agreed to be assumed by Buyer under the agreement. There is no agreement to hold harmless and indemnify the Seller (or any right to contribution) except as expressly stated in this agreement.

The assets being transferred include, but are not limited to, all intellectual property of the Debtor including all trademarks and patent rights, contracts and contract rights and the right to assignment or assumption of such contracts by Buyer at its discretion which are located at Optim's former place of business in Germantown, Maryland.

The following assets are specifically excluded from the Asset Purchase Agreement: Motor vehicles, all accounts receivable, interest in cash, bank accounts, financial books and records (other than customer lists and engineering drawings, specifications, manuals, contracts, and documents relating to the contracts which are being sold), any tax refunds, tax attributes, Debtor's rights in connection with employee benefit plans, any rights of the Seller in any and all avoidance actions under sections 544, 545, 546, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code. The Buyer shall be permitted upon notice to the Seller access to the financial books and records for its use associated with the assets purchased.

**Purchase Price.** Buyer agrees to pay to Seller the sum of \$251,000.00 payable at Closing. All funds payable under this Article shall be paid by means of a completed federal funds wire transfer to an account designated by the recipient, or in certified funds unless otherwise mutually

agreed to by Buyer and Seller.

**ARTICLE II**

Closing. The Closing shall take place as soon as possible after the Bankruptcy Court's granting of an Order approving the sale (but no later than three (3) business days after the entry of an Order approving this Agreement and the sale transaction contained herein (the "Closing Date"), at the offices of the Trustee, or such other time and place as the Parties may mutually agree. All funds transfers to be made and documents to be delivered on the Closing Date shall be consummated at that time and place. Time is of the essence as it relates to this Article.

Buyer agrees to close the Asset Purchase Agreement at the office of the Seller and to remove all of the purchased assets from the Debtor's former business premises at 12401 Middlebrook Road, Germantown, MD no later than the earlier of five (5) days after the Court's approval of the sale or by July 26, 2002 or will become subject to liability for any damages suffered by Seller to the Debtor's former landlord for damages for the failure to vacate the premises. The Buyer will only be responsible for damage to the business premises if said damage is a result of its own negligence. The Seller, with consultation with the Buyer, will take all steps necessary and appropriate to ensure that the assets can be removed without damage to the property. The Buyer agrees to indemnify and to hold the Seller harmless for any damages for the failure to timely vacate the premises. Said obligation to indemnify the Seller for damages for the failure to timely vacate would only stem from the date on which the assets were to be removed and not before. It is agreed that Time is of the Essence as it relates to this paragraph.

In the event that the Order approving the sale does not become a Final Order and the Buyer has removed the assets in reliance upon 11 U.S.C. Section 363(m) and must return them to the estate, the Seller shall reimburse the Buyer for its actual cost and expenses in an amount not to exceed \$10,000.00.

In the event, there is an appeal of the Order approving the sale and the Court should stay its Order until the appeal is resolved, the Buyer will not be required to perform its obligations under this Agreement until the appeal is resolved. Within five (5) days following the entry of an Order resolving the appeal favorable to Seller the Buyer shall appear for closing and take possession of the assets and assume the liabilities as delineated above.

Seller's Closing Documents. At the Closing, Seller shall deliver or cause to be delivered to Buyer a Bill of Sale for the Assets and a copy of the Court's Order approving the sale of the Seller's assets.

Buyer's Closing Documents. At the Closing, Buyer shall deliver or cause to be delivered to Seller in form satisfactory to Seller payment of the Purchase Price.

### ARTICLE III

#### REPRESENTATIONS AND WARRANTIES

Representations and Warranties of Trustee. Trustee represents and warrants to Buyer, its successors and assigns, as of the date hereof, the following:

- a. The Trustee is Michael G. Wolff
- b. Subject to and conditioned on the entry and effectiveness of the Order approving the sale, the Trustee has the power and authority necessary to enter into and perform its obligations under this Agreement, and to consummate the transaction contemplated hereby and thereby.
- c. Subject to obtaining the Order approving the sale and the receipt of higher and better offers prior to receiving the Order, this Agreement, when executed and delivered by the Trustee, will constitute a legal, valid and binding obligation of the Trustee in accordance with its terms, except to the extent that the enforcement hereof may be limited by bankruptcy, reorganization, insolvency or similar laws of general applicability governing the enforcement of the rights of creditors or by the general principles of equity (regardless of whether considered in a proceeding at law or in equity).

Representation of the Buyer. Buyer represents and warrants to Trustee, its successors and assigns, as of the date hereof, the following:

- a. Buyer has cash or other financing in place and the corporate power and authority necessary to enter into and perform its obligations under this Agreement and the other documents and instruments specified in this Agreement, and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement has been approved by all necessary action of the Board of Directors of Buyer.
- b. **THERE ARE NO CONTINGENCIES IN CONNECTION WITH BUYER'S OFFER.** Subject to obtaining the Approval order, this Agreement, when executed and delivered by Buyer, will constitute a legal, valid and binding obligation of the Buyer in accordance with its terms, except to the extent that the enforcement hereof may be limited by bankruptcy, reorganization, insolvency or similar laws of general applicability governing the enforcement of the rights of creditors or by the general principles of equity (regardless of whether considered in a proceeding at law or in equity).
- c. Except for all applicable approvals of the Bankruptcy Court, no consent, approval, authorization, declaration, filing or registration with any governmental authority, or any other person, is required to be made or obtained by the Buyer in connection with the execution, delivery and performance of this Agreement or the consummation of the transactions contemplated hereby and thereby.

d. Buyer has not incurred any liability to any party for any brokerage fees, agent's commissions or finder's fees in connection with the purchase of the Assets. Buyer shall, within ten (10) days after the execution of this Agreement, pay to the Trustee a deposit equal to ten (10%) percent of the Purchase Price. Buyer shall also provide to the Trustee, within fifteen (15) days of the date of execution of this Agreement, written evidence of Buyer's ability to pay the balance of the Purchase Price at Closing, by delivering such documents as the Trustee may reasonably require. If Buyer should not receive approval by the Bankruptcy Court then the deposit plus interest earned shall be returned to Buyer within three (3) business days. If for any reason Buyer does not close the transaction after receiving approval and said Order becomes a final Order then the deposit plus interest earned shall be forfeited to Seller.

e. Buyer acknowledges that, consistent with local bankruptcy procedure, Seller is obligated to and will consider higher and better offers from alternative purchasers up to the time that the Bankruptcy Court considers and approves the sale of the Debtor's assets.

**ARTICLE IV**

**CONDITIONS PRECEDENT**

Conditions Precedent to Obligations of Seller. Subject to this Agreement, Seller's obligations hereunder are contingent upon the fulfillment of the following conditions:

- a. Buyer shall have performed in all material respects its obligations hereunder to be performed on or before the Closing Date.
- b. The Order approving the sale to Buyer shall have been entered and no stay of the Order shall be in effect.

Conditions Precedent to Obligations of Buyer. Subject to this Agreement, Buyer's obligations hereunder are contingent upon the fulfillment of the following conditions:

- a. The Order approving the sale shall have been entered by the U. S. Bankruptcy Court for the District of Maryland and shall have become a Final Order; provided, however, that the condition that the Order become a Final Order shall be waived by the Buyer in the event the Bankruptcy Court orders that the provisions of Bankruptcy Rules 6004 and 6006 otherwise providing for a ten day stay of the entry of an order authorizing the use, sale or lease of property other than cash collateral is waived or dispensed with and no stay is imposed by any Court.

**ARTICLE V**

**RISK OF LOSS; INSURANCE**

The risk of loss to any of the Assets shall remain with Seller until Seller is in receipt of the Purchase Price to be paid at Closing in its account by wired funds, and shall then pass to

Buyer and from that time on Buyer shall be entitled to the proceeds of any insurance covering the Assets upon loss due to an insured event or occurrence. In the event of any material destruction of, or loss or damage to all or any material portion of the Assets by any casualty prior to the Closing, Buyer may, at its option, either (i) terminate this Agreement or (ii) waive the foregoing right of termination and notify Sellers of its election to hold the Closing as provided herein. If Buyer shall so notify Seller, any proceeds of insurance shall be paid to Seller, to the extent of insurance proceeds received by Seller, plus any coinsurance penalty stipulated in the insurance policy promptly, but in any event not later than thirty (30) days after the casualty, shall replace or repair that portion of the Assets so damaged such that the Assets are in as good condition and equivalent value and fit for Buyer's purposes as were the Assets immediately prior to the casualty, to Buyer's reasonable satisfaction, and the Purchase Price payable hereunder as to the affected Assets shall not be adjusted. In the event of any non-material destruction of, or damage or other casualty to, any of the Assets, or any part thereof, any proceeds of insurance shall be paid to the Seller, and the Purchase Price payable hereunder as to the affected Assets shall be appropriately adjusted at Closing.

**ARTICLE VI**

**MISCELLANEOUS**

**Benefit of Agreement: Assignment.** The terms of this Agreement shall be binding upon and inure to the benefit of the heirs, successors and assigns of the Parties hereto. No Party shall assign its interest under this Agreement, by operation of law or otherwise, without the prior written consent of the other Party.

**Seller's Cooperation.** Seller agrees to cooperate with Buyer in providing any documents necessary to record the transfer or assignment of any intellectual property.

**Survival.** All of the warranties, covenants and agreements contained in this Agreement and in any Schedule, Exhibit, certificate, document, or other writing delivered pursuant hereto have been relied upon and shall survive until the closing of Seller's bankruptcy case. All of the representations of the Trustee as set forth in Article III shall survive until the closing of Seller's bankruptcy case.

**Notices.** All notices, demands or other communications given under this Agreement shall be in writing, and shall be sent by certified or registered mail, postage prepaid, return receipt requested or by personal delivery or by overnight courier and addressed as follows: if to Buyer at:

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and if to Seller to Michael G. Wolff, Chapter 7 Trustee, at 11300 Rockville Pike, Suite 408, Rockville, Maryland 20852 or to such other address as may be designed in writing, which notice of change of address shall be given in the same manner. A notice shall be deemed delivered (a) three (3) business days after sending, if sent by certified or registered mail, (b) upon delivery, if personally delivered, or (c) one (1) business day after sending if sent by overnight courier.



**Severability.** All agreements and covenants herein are severable. In the event that any provision of this Agreement should be held to be unenforceable, the validity and enforceability of the remaining provisions hereof shall not be affected thereby.

**Governing Law: Jurisdiction.** This Agreement shall be enforced, construed and performed in accordance with the laws of Maryland as applied to contracts made and fully performed in such state, without any effect to the choice of law principles thereof. Seller and Buyer hereby agree that any suit, action or proceeding arising out of or based upon any claim for contribution or indemnification under this Agreement shall be instituted against him or it in the Bankruptcy Court, and the Seller and Buyer waive any objection which it may have to the laying of venue of such suit, action or proceeding therein. The Bankruptcy Court shall retain jurisdiction with respect to any matter, issue, claim or controversy arising out of or resulting from this Agreement or any of the transaction contemplated hereby or associated herewith, including but not limited to any matter, issue, claim or controversy relating to Buyer's right to have received the assets free and clear of claims, interests or other encumbrances.

**Counterparts.** This Agreement may be executed in any number of counterparts and each shall be considered an original and together they shall constitute one Agreement.

**Entire Agreement.** This Agreement, together with all Exhibits and Schedules hereto and agreements executed hereunder, constitutes the entire agreement among the Parties in respect of the transactions contemplated hereby and supersedes all prior agreements, arrangements and undertakings relating to the subject matter hereof. No covenants or conditions not expressed in this Agreement shall affect or be effected to interpret, change or restrict this Agreement. This Agreement may be amended only by a writing specifically amending the Agreement and signed by both of the Parties hereto.

**Modification: Waiver.** This Agreement may not be modified, terminated, rescinded, discharged or canceled, nor may any provision be waived without the prior written consent of the Party against whom such modification, termination, rescission, discharge, cancellation or waiver is or may be asserted. No delay or omission by any Party to exercise any right or power shall impair any such right or power or be construed to be a waiver thereof. A waiver of any provision of this Agreement on any occasion shall not constitute a waiver of such provision on any succeeding occasion.

**Cumulative Remedies.** Unless stated otherwise, all remedies available under this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available at law, or in equity or otherwise. The use of any one right or remedy by any Party shall not preclude or waive its right to use any or all other remedies.

**Headings.** The section headings and subheadings contained in this Agreement, Exhibits, and Schedules are for convenient reference only, and shall not in any way affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the Parties have executed, or caused to be executed, this

Agreement in a manner sufficient to bind them as of the day and year first above written.


**SELLER:**

OPTIM ELECTRONICS CORPORATION

  
\_\_\_\_\_  
By: Michael G. Wolff, Chapter 7 Trustee

**BUYER:**

NICOLET TECHNOLOGIES, INC.

  
\_\_\_\_\_  
By: Jon T. Milbrandt, President