

01-23-2004

SHEET
LY

1/21/04



To the Honorable Commissioner of Patents and Trademarks 102653197

attached original documents or copy thereof.

1. Name of conveying party(ies):

OPCON, INC.

- Individual(s)
- General Partnership
- Corporation-State Washington
- Other _____
- Association
- Limited Partnership

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

3. Nature of conveyance:

- Assignment
- Security Agreement
- Other _____
- Merger
- Change of Name

Execution Date: JUNE 6, 1990

2. Name and address of receiving party(ies):

Name: **EATON CORPORATION**
 Internal Address: **ATTN: D. S. KALKA**
 Street Address: **EATON CENTER**
1111 SUPERIOR AVENUE

City: **CLEVELAND** State: **OHIO** Zip: **44114**

- Individual(s) citizenship _____
- Association _____
- General Partnership _____
- Limited Partnership _____
- Corporation-State Ohio
- Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached Yes No
Additional name(s) & address(es) attached? Yes No

4. Application number(s) or registration(s):

A. Trademark Application No.(s)

B. Trademark Registration No.(s) 1009876

Additional numbers attached? Yes No

5. Name and address of party to whom correspondence concerning document should be mailed:

Attorney: **DANIEL S. KALKA**
 Name: **EATON CORPORATION**
 Internal Address: **PATENT LAW DEPARTMENT**
 Street Address: **EATON CENTER**
1111 SUPERIOR AVENUE
 City: **CLEVELAND** State: **OHIO** Zip: **44114-2584**

6. Total number of applications and registrations involved: 1

7. Total fee (37 CFR 3.41). \$40.00

- Enclosed
- Authorized to be charged to deposit account

8. Deposit Account Number: **05-0275**
(Attach duplicate copy of this page is paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

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.

DANIEL S. KALKA
NAME of SENDER

Daniel S. Kalika
SIGNATURE OF SENDER

JANUARY 16, 2004
DATE

Total number of pages comprising cover sheet, attachments, and document: **2**

OMB No. 0651-0011 (exp. 4/94)

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

01/23/2004 ECDOPER 00000029 050275 1009876
01 FC:8523 40.00 DA

Commissioner of Patents and Trademarks
Box Assignments
Washington, D.C. 20231

JAN 21 AM 7:58
OPR/FINANCE

Public burden reporting for this sample cover sheet is estimated to average about 30 minutes per document to be recorded, including time for reviewing the document and gathering the data needed, and completing and reviewing the sample cover sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Office of Information Systems, PK2-1000C, Washington, D.C. 20231, and to the Office of Management and Budget, Paperwork Reduction Project (0651-0011), Washington D.C. 20503.

AGREEMENT AND PLAN OF REORGANIZATION

THIS AGREEMENT AND PLAN OF REORGANIZATION (this "Agreement") is made and entered into as of the ___ day of June, 1990 by and among Eaton Corporation, a corporation organized under the laws of the State of Ohio ("Eaton"), Opcon, Inc., a corporation organized under the laws of the State of Washington, ("Opcon"), and Sarnia Acquisition Corporation, a wholly-owned subsidiary of Eaton Corporation organized under the laws of the State of Ohio ("Newco").

WHEREAS, Eaton desires to acquire all the issued and outstanding shares of Opcon by effecting a merger between Opcon and Newco;

NOW, THEREFORE, for and in consideration of the premises and the mutual agreements, covenants and provisions hereinafter set forth, the parties hereby mutually agree as follows:

1. The Merger.

(a) The Merger Agreement. Concurrently with the execution and delivery of this Agreement, Opcon and Newco shall enter into an Agreement and Plan of Merger in the form attached hereto as Exhibit 1(a) (the "Merger Agreement") which provides for the merger of Newco into Opcon (the "Merger") at the Closing Date.

(b) The Purchase Price. The Merger Agreement provides, among other things, for each share of common stock of Opcon, with a par value of \$.01, and for each share of Opcon common

stock purchasable pursuant to stock options and warrants surrendered before 12:00 noon Pacific Daylight Time on June 29, 1990 (respectively "Option Shares" and "Warrant Shares"), to be exchanged for \$4.25 cash, less, in the case of Option Shares and Warrant Shares, the applicable exercise price, plus the right to receive up to an additional \$0.75 cash subject to the terms and conditions of Eaton's right to set-off as described in Section 10(a) hereof and Section 5.2 of the Merger Agreement, and for each share of Newco to be converted into one common share of Opcon (thereby making Eaton the sole shareholder of Opcon) upon the effectiveness of the Merger.

(c) Opcon Shareholders Meeting. Opcon shall promptly take all action necessary in accordance with applicable law and its Articles of Incorporation and Bylaws to convene a meeting of its shareholders to be held on a date mutually agreeable to Eaton and Opcon, but in no event later than June 29, 1990, to consider and vote upon the adoption and approval of the Merger Agreement. At such meeting Opcon shall seek all votes and approvals of its shareholders that are required in connection with the adoption and approval of the Merger Agreement under the Washington Business Corporation Act and Opcon's Articles of Incorporation and Bylaws. In connection with its meeting of shareholders the management of Opcon shall take all steps necessary to prepare and disseminate to the shareholders, not fewer than twenty (20) days before the date of the meeting, a proxy statement, which shall comply with the applicable federal and state securities laws. In the proxy statement the Board of Directors of Opcon will recommend that Opcon's shareholders vote in favor of the Merger.

Notwithstanding anything to the contrary provided elsewhere herein, the obligation of the Board of Directors of Opcon to

recommend that Opcon's shareholders vote in favor of the Merger and the obligation of Opcon to include in its proxy statement the recommendation of its Board of Directors in favor of the Merger shall be subject to the fiduciary obligations of the Board of Directors of Opcon to Opcon's shareholders under applicable law.

(d) The Closing. On a date which is mutually agreeable to the parties hereto, but in no event later than June 29, 1990, a meeting (the "Closing") shall be held at the offices of Opcon, for the purpose of determining the satisfaction of the various conditions of the parties' obligations under this Agreement. If any such condition is not determined to be satisfied (or is not duly waived) at the Closing, the party whose obligations are subject to such condition may either:

(i) terminate this Agreement and the Agreement of Merger, or

(ii) extend the period in which the Closing must be consummated for up to thirty days (during which period the other party shall use its best efforts to cause all such conditions to be satisfied).

If all conditions are determined to be satisfied (or are duly waived) at the Closing (whether or not delayed), the Closing shall be consummated by the execution by Opcon and Newco of the certificate of merger prepared in accordance with Section 1701.81(A) of the Ohio Corporation Law and the articles of merger prepared in accordance with Section 23A.20.040 of the Washington Business Corporation Act. In such event the parties hereto shall cause such certificate to be filed with the Secretary of State of Ohio and such articles to be filed with

the Secretary of State of Washington as promptly as possible after the consummation of the Closing.

(e) Effective Date of Merger. The Merger shall become effective on the date and at the time of filing the certificate of merger described in Section 1(d) hereof with the Secretary of State of Ohio and the articles of merger described in Section 1(d) hereof with the Secretary of State of Washington, whichever later occurs. The date of such filing is herein called "the Effective Date of the Merger."

2. Condition Applicable to Eaton, Opcon, The Principal Shareholders and Newco.

The obligations of Opcon, Newco and Eaton under this Agreement to cause the Merger to be consummated are subject to the condition that, at the meeting of the Opcon shareholders provided for in Section 1(c), the holders of at least two-thirds of the outstanding common shares of Opcon shall have duly authorized, in accordance with the Washington Business Corporation Act and the Articles of Incorporation and the Bylaws of Opcon, the transactions referred to in this Agreement, and the holders of no more than ten percent (10%) of the outstanding common shares of Opcon shall have exercised their right of dissent pursuant to Section 23A.24.040 of the Washington Business Corporation Act.

3. Conditions Precedent to Obligation of Eaton and Newco to Close.

Each and every obligation of Eaton and Newco under this Agreement to cause the Merger to be consummated is subject to

the satisfaction of each of the following conditions, any one or more of which may be waived by them:

(a) Resolution by Directors. Opcon shall deliver to Eaton copies of the resolutions of its Board of Directors, certified by Opcon's Secretary as of the Effective Date of the Merger, authorizing or ratifying the execution and performance of this Agreement and the Merger Agreement and authorizing or ratifying the acts of its officers and employees in carrying out the terms hereof.

(b) Authorization by Shareholders. Opcon shall deliver to Eaton evidence in form satisfactory to Eaton, that shareholder approval has been obtained and that the statutory requirements as provided by the Washington Business Corporation Act for the execution of the Merger Agreement and the consummation of the Merger have been satisfied.

(c) Good Standing. Opcon shall deliver to Eaton certificates dated not more than fifteen days prior to the Closing, from the Secretary of State and tax authorities of the State of Washington as to the good standing of Opcon. Opcon shall deliver to Eaton certified copies of the Articles of Incorporation of Opcon dated not more than fifteen days from the Closing, from the Secretary of State of Washington, and a certified copy of the Bylaws of Opcon dated as at the Effective Date of the Merger, from its Corporate Secretary.

(d) Representations and Warranties. The representations and warranties made by Opcon hereunder shall be deemed to have been made again at and as of the Effective Date of the Merger, subject to changes disclosed to and approved in writing by

Eaton, and such representations and warranties shall, as of the Effective Date of the Merger, be true and correct.

(e) Agreements, Covenants and Conditions. Opcon shall have performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement to be performed and complied with by it prior to or at the Effective Date of the Merger.

(f) No Adverse Change. There shall not have been any change in the financial condition, assets, business prospects or results of operation of Opcon due to any cause whatsoever which in the judgment of Eaton, exercised in good faith, have or will materially and adversely affect the value of Opcon's assets and business.

(g) Opinion of Counsel. Eaton shall have received an opinion of Perkins Coie, Opcon's Counsel, dated as of the Effective Date of the Merger, and addressed to Eaton, in form reasonably satisfactory to Eaton to the effect of Sections 5(a)(i), 5(a)(ii), 5(a)(iii), 5(a)(iv), 5(a)(v), 5(a)(vi), 5(a)(vii), 5(h) and 5(i).

(h) Certificate of Fulfillment of Condition. Eaton shall have received a Certificate, dated as of the Effective Date of the Merger, signed by an Officer of Opcon stating that to his best knowledge, after due inquiry, the conditions set forth in Sections 3(d), 3(e) and 3(f) hereof have been fulfilled.

(i) Resignations of Board and Officers. Opcon shall deliver to Eaton written resignations dated as of the Effective Date of the Merger of all directors and officers of Opcon.

(j) Agreements with Option and Warrant Holders. Opcon shall deliver to Eaton agreements in the form of Exhibit 3(j)-1, attached hereto, executed by the holders of at least eighty percent (80%) of the shares purchasable pursuant to stock options as listed on Exhibit 5(a)(vi) agreeing to relinquish such options in return for cash payments, and agreements in the form of Exhibit 3(j)-2, attached hereto, executed by each holder of a warrant listed on Exhibit 5(a)(vi) agreeing to relinquish such warrants in return for cash payments.

(k) Waiver by Bank. Opcon shall deliver to Eaton an agreement by Security Pacific Bank Washington dated as of or before the Effective Date of the Merger, agreeing to waive the Merger as a breach or potential breach of the terms and conditions of any loan agreement currently in effect with Opcon.

(l) Litigation. No suit, proceeding or investigation shall be pending or threatened in which it will be or it is sought by anyone, to restrain, prohibit or obtain damages or other relief in connection with this Agreement or the consummation of the transactions contemplated hereby.

4. Conditions Precedent to Obligation of Opcon to Close.

Each and every obligation of Opcon under this Agreement to cause the Merger to be consummated is subject to the satisfaction of each of the following conditions, any one or more of which may be waived by Opcon:

(a) Resolution by Directors. Eaton shall deliver to Opcon copies of the resolution of its Board of Directors certified by Eaton's Secretary or Assistant Secretary as of the Effective Date of the Merger, authorizing or ratifying the execution and

performance of this Agreement and the Merger Agreement and authorizing or ratifying the acts of its officers and employees in carrying out the terms and provisions hereof.

(b) Representations and Warranties. The representations and warranties made by Eaton and Newco hereunder shall be deemed to have been made again at and as of the Effective Date of the Merger, subject to changes disclosed to and approved in writing by Opcon, and such representations and warranties shall, as of the Effective Date of the Merger, be true and correct.

(c) Agreements, Covenants and Conditions. Eaton and Newco shall have performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement to be performed and complied with by them prior to or at the Effective Date of the Merger.

(d) Opinion of Counsel. Opcon shall have received an opinion of Gerald L. Gherlein, Esq., General Counsel to Eaton, dated as of the Effective Date of the Merger, and addressed to Opcon in form reasonably satisfactory to Opcon to the effect of Sections 6(a)(i), 6(a)(ii), 6(a)(iii), 6(a)(iv) and 6(b).

(e) Certificate of Fulfillment of Conditions. Opcon shall have received a Certificate, dated as of the Effective Date of the Merger, signed by a Vice President of Eaton stating that to his best knowledge, after due inquiry, the conditions set forth in Sections 4(b) and 4(c) hereof have been fulfilled.

(f) Litigation. No suit, proceeding or investigation shall be pending or threatened in which it will be or it is sought by anyone to restrain, prohibit or obtain damages or

other relief in connection with this Agreement or the consummation of the transactions contemplated hereby.

5. Representations and Warranties of Opcon.

Opcon makes the following representations and warranties to Eaton and Newco:

(a) Corporate.

(i) Opcon is a corporation duly organized, validly existing and in good standing under the laws of the State of Washington and is not in voluntary or compulsory liquidation. Opcon is duly qualified or licensed as a foreign corporation and in good standing in each United States jurisdiction in which failure to so qualify might, in the aggregate, have a material adverse effect on the results of operations, or business or financial condition of Opcon.

(ii) Opcon has full and unrestricted corporate power and authority to own its properties and to carry on its business as and where they are presently owned and carried on, and it has full and unrestricted corporate power to enter into this Agreement and to consummate the transactions contemplated by this Agreement, subject to the rights of other parties pursuant to the agreements or documents described on Exhibit 5(a)(ii) attached hereto.

(iii) This Agreement and the Merger Agreement constitute valid and binding obligations of Opcon enforceable in accordance with their terms, subject to the qualification, however, that enforcement of rights and remedies created hereby is subject to bankruptcy and other

similar laws of general application affecting the rights and remedies of creditors and that equitable remedies, including the remedies of specific performance or of injunctive relief, are subject to the discretion of the court before which any proceeding therefor may be brought. The execution, delivery and performance of this Agreement and the Merger Agreement shall, as of the Closing, have been duly authorized and approved by all necessary corporate action on the part of Opcon and as required under the laws of the State of Washington and the Articles of Incorporation of Opcon.

(iv) The authorized capital stock of Opcon consists solely of 2,000,000 shares of common stock, with a par value of \$.01, of which 847,669 shares are issued and outstanding. All of its outstanding shares are, as of the date hereof, and will be immediately prior to the Effective Date of the Merger, legally and validly issued, fully paid and non-assessable.

(v) Exhibit 5(a)(v), attached hereto, correctly sets forth the names of all record holders of Opcon common shares. To the best knowledge of Opcon and according to the records of Opcon, the persons listed on Exhibit 5(a)(v) own all of the presently outstanding shares of stock of Opcon, free and clear of any liens, claims, pledges, charges, security interests, options and other encumbrances.

(vi) Exhibit 5(a)(vi) attached hereto, describes all outstanding options or warrants relating to Opcon common shares, including the name of any holder and the number of shares subject to such option or warrant. Except for the options and warrants described in Exhibit 5(a)(vi), there

are no outstanding options, warrants, contracts, calls, commitments or demands of any character relating to the authorized and unissued or issued Opcon common shares.

(vii) Except for 130 shares of IDX Incorporated and its interest in ScanAlert Ventures, as evidenced by the Partnership Agreement dated January 19, 1990 by and among Opcon, Auto-Sense Ltd., and Auto-Sense Investors, Ltd. (the "ScanAlert Partnership Agreement"), Opcon does not own or control any subsidiary and does not own any equity, debt or other interest in any corporation, partnership or other entity or business.

(viii) The minute book of Opcon contains substantially complete records of all meetings and other corporate actions of the shareholders and the Board of Directors of Opcon (including any committees of its Board of Directors), and such records contain no omissions or misstatements which could, in the aggregate, materially adversely affect, either before or after the Effective Date of the Merger, the results of operations or business or financial condition of Opcon.

(b) Financial Matters.

(i) Opcon has heretofore delivered to Eaton audited balance sheets of Opcon dated as at the close of business on October 31, 1988, October 31, 1989 and the unaudited balance sheet for the most recent interim period (the "Interim Balance Sheet"), together with statements of income, shareholders' equity and changes in financial position for the related periods then ended. These financial statements, all of which are true and correct in

all material respects, have been prepared in accordance with generally accepted accounting principles consistently applied throughout the periods indicated and present fairly the financial position of Opcon at the dates stated in such financial statements and the results of its operations for the periods stated therein.

(ii) The provisions of the Interim Balance Sheet are sufficient for the payment of all accrued and unpaid federal, state, local and foreign taxes of Opcon, whether or not disputed, for property owned and business conducted through the date thereof and the date hereof. Other than taxes the sum total of which is not material, Opcon has paid or otherwise settled or discharged all taxes, including income, profits, franchise, sales, use, occupation, property, excise or other taxes, assessments, fines and charges claimed to be due by any federal, state, local or foreign authority with respect to Opcon. The Internal Revenue Service has raised no issue with Opcon which would give rise to a deficiency with respect to Opcon for any period ending at or before the Closing.

(iii) Since October 31, 1989, there has not been:

(1) any sale of assets or properties of Opcon other than in the ordinary course of business except for transactions described in the ScanAlert Partnership Agreement;

(2) any damage or destruction, whether covered by insurance or not, adversely, and in the aggregate materially, affecting the properties or business of Opcon;

(3) any declaration, setting aside or payment of any dividend payable on, or any other distribution in respect of, the capital stock of Opcon, or any redemption, purchase or other acquisition by Opcon, or any stock split reclassification of any such stock of Opcon.

(4) any labor dispute or disputes which has had, or might have, in the aggregate a material adverse effect on the financial condition of Opcon;

(5) any cancellation of a then-pending customer order;

(6) any purchase, sale or lease (as lessor or lessee) by Opcon of any capital asset, or cancellation of any debts except in each case in the ordinary and normal course of business or otherwise as disclosed to and approved by Eaton in writing, any mortgage, pledge or other encumbrance of any properties or assets of Opcon except for transactions described in the ScanAlert Partnership Agreement; or

(7) any sale, assignment, transfer or license of any patents, confidential information, trademarks, trade names, copyrights or other such assets except for transactions described in the ScanAlert Partnership Agreement, or except as disclosed to and approved by Eaton in writing;

(8) any liability or obligation incurred by Opcon other than in the ordinary and normal course of

business which has not been disclosed to and approved in writing by Eaton;

(9) any liability or obligation incurred by Opcon in the ordinary and normal course of business in excess of \$5,000 or extending for a period of more than six months and which cannot be cancelled by Opcon on 30 day's notice without penalty or premium, which has not been disclosed to and approved in writing by Eaton;

(10) any discharge or satisfaction (in whole or in part) of any lien or encumbrance or any liability or obligation other than liabilities and obligations disclosed in the Interim Balance Sheet or in this Agreement and liabilities and obligations incurred since the date thereof, which Opcon is permitted to incur pursuant to this Agreement and in case of such payment only in accordance with the terms of the liability or obligation;

(11) any transaction other than in the ordinary and normal course of business, except as permitted herein or as disclosed to and approved by Eaton in writing; or

(12) any other event or condition of any character adversely, and in the aggregate materially, affecting, or which might reasonably be expected to adversely, and in the aggregate materially, affect, either before or after the Effective Date of the Merger, the results of operations or business or financial condition of Opcon.

(iv) All accounts receivable of Opcon shown on the Interim Balance Sheet arose and are collectible in the ordinary course of business, except that an adequate reserve was provided in accordance with generally accepted accounting principles for the value of any account receivable the collection of which was doubtful. All of the accounts receivable that arose after the date of the Interim Balance Sheet arose and are collectible in the ordinary course of business.

(v) The books of account of Opcon reflect all of Opcon's items of income and expense and all of its assets, liabilities and accruals.

(vi) Attached hereto as Exhibit 5(b)(vi) is a list, accurate and complete as of the date hereof and as of the Effective Date of the Merger, of each bank in which Opcon has an account or safe deposit box, and the names of all persons authorized to draw thereon or to have access thereto.

(c) Undisclosed Liabilities. Opcon has no debts, liabilities or obligations which are in the aggregate material, whether accrued, absolute, contingent or otherwise, arising out of or relating to the operations of Opcon prior to the Effective Date of the Merger or relating to or arising out of any act, omission, transaction, circumstance, sale of goods or services, state of facts or other condition which occurred or existed on or before such date, whether or not then known, due or payable, except:

(i) Those set forth in the financial statements referred to in Section 5(b) and not heretofore paid or discharged;

(ii) Those incurred in or as a result of the ordinary course of business since October 31, 1989, all of which have been consistent with past practices; and

(iii) Those specifically set forth herein or in Exhibit 5(c)(iii) attached hereto.

(d) Tax Returns and Tax Audits.

(i) Within the times and in the manner provided by law, Opcon has filed with the appropriate federal, state, and local agencies all tax returns and tax reports required to be filed by it, except for Minnesota and New Jersey state income tax returns and/or tax reports, and all taxes indicated as due and payable thereon have been or will be paid when required by law.

(ii) No federal income tax return of Opcon has been audited by the Internal Revenue Service.

(e) Property.

(i) Opcon has good and marketable title to all of the properties and assets owned by it, both real and personal, free and clear of all mortgages, liens, claims, pledges, charges, security interests or encumbrances of any nature whatsoever, except (1) security interests related to the agreements described on Exhibit 5(a)(ii), (2) the lien of current taxes not yet due and payable, and (3) minor matters that in the aggregate do not materially impair Opcon's business operations. Opcon owns no real-estate.

(ii) All of Opcon's operating facilities, plant and buildings, machinery and equipment, and other currently

used tangible property and assets owned by Opcon, or in which it has an interest, or of which it has possession, are in good operating condition and repair, subject only to ordinary wear and tear, free from defects that substantially interfere with the continued use thereof in the normal operations of Opcon, and are suitable for producing Opcon's current line of products as of the date hereof.

(iii) Exhibit 5(e)(iii) hereto describes all material real or personal property leased by Opcon from others. Opcon has not leased any real or personal property to others.

(f) Contracts and Commitments.

(i) Exhibit 5(f)(i) lists all outstanding contracts or commitments by Opcon not otherwise disclosed herein involving a commitment in excess of \$5,000.00, or which involve performance over a period in excess of six months after the Effective Date of the Merger and which cannot be cancelled by Opcon on notice of 30 days or less without liability, penalty or premium.

(ii) There are no outstanding contracts or commitments by Opcon outside the ordinary course of business.

(iii) Exhibit 5(f)(iii) hereto lists all claims for breach of product warranty (express or implied), or any claims relating to the performance of Opcon's products, pending or threatened against Opcon and, to the best

knowledge of Opcon, all circumstances which may result in such claims in the future.

(iv) Exhibit 5(f)(iv) hereto lists all outstanding contracts of Opcon with sales agents, sales representatives, distributors or dealers.

(v) Other than those set forth on Exhibit 5(f)(v) hereto, Opcon has not given any power of attorney to any person, firm or corporation for any purpose whatsoever.

(vi) Opcon is not a party to any written collective bargaining agreements. Exhibit 5(f)(vi) hereto lists all written employment agreements of Opcon, or contracts with officers, directors, employees, agents, consultants or advisors, and there are no other written agreements that contain any severance or termination pay liabilities or obligations or any bonus, deferred compensation, profit sharing, or retirement arrangement, whether legally binding or not. Opcon is not presently paying any pension, deferred compensation or retirement allowance to anyone.

(vii) All of Opcon's contracts listed or required to be listed on an Exhibit or in this Agreement, and all other material contracts or commitments of Opcon are valid and binding, in full force and effect and shall not be terminated as a result of the transactions contemplated by this Agreement.

(viii) There is not existing any default under any contract, commitment or obligation to which Opcon is a party, or any event which, after notice or lapse of time or both, would constitute a default thereunder, which defaults in the aggregate could materially adversely affect the financial condition or operations of Opcon.

(g) Employee Benefits. Exhibit 5(g) contains a complete list of all wage and compensation programs, retirement, pension, group insurance, disability, health and medical plans, death benefit or other benefit plans or arrangements which apply to past or present employees of Opcon ("Benefit Plans"). A true and correct copy of each Benefit Plan has been provided to Eaton. All Benefit Plans have been operated in compliance with the applicable requirements of the Employee Retirement Income Security Act of 1979, as amended. Opcon has no obligation or commitment to increase the rate of compensation or improve the fringe benefits due to any salaried or hourly employee relative to the compensation and fringe benefits presently in effect.

(h) No Breach of Statute or Contract. Neither the execution and delivery of this Agreement nor compliance with the terms and provisions of this Agreement on the part of Opcon will breach any statute or regulation of any governmental authority, domestic or foreign, or will, on the Effective Date of the Merger, conflict with, or result in a breach of, any of the terms, conditions or provisions of any material agreement or instrument, or any court order or judgment or decree, to which Opcon is a party, or by which it or its properties is bound, or constitute a default (or an event which, with notice or lapse of time, or both, would constitute a default) thereunder, or result in the creation or imposition of any material lien, charge or encumbrance of any nature whatsoever upon, or give to others any rights of termination or cancellation, or similar rights in, or with respect to, any of the properties, assets or contracts, or the business of Opcon.

(i) No Litigation or Other Proceedings. Other than those set forth on Exhibit 5(i), Opcon is not engaged in or, to the

best of its knowledge threatened with, any litigation, arbitration or other legal or administrative proceeding or investigation of any kind, nor are any of its officers or directors so engaged, or to the best of its knowledge threatened, in connection with the affairs of Opcon. To the best knowledge of Opcon there exist no circumstances which may result in any such litigation, arbitration or other proceedings or investigations.

Opcon is not, nor are any of its officers or employees, subject to any court order, judgment or decree which adversely, and in the aggregate materially, affects its business or assets, or which would prevent or hamper the transactions contemplated by this Agreement, and Opcon is not charged, or to the best of its knowledge under investigation, with respect to any violation of any provision of any federal, state, local or foreign law or administrative rule or regulation relating to any material aspect of its business.

(j) Patents and Trademarks. Opcon is the sole owner, free and clear of all liens and encumbrances, of the patents, patent applications, registered and unregistered trademarks set forth in Exhibit 5(j), except as otherwise stated therein. There is not outstanding with respect to any technical information, know-how or trade secrets of Opcon, any license or other permission granted by or on behalf of Opcon to any party, other than those listed in Exhibit 5(j). Exhibit 5(j) hereto includes all United States and foreign patents, patent applications, registered trademarks, registered trade names and registered copyrights which Opcon owns or in any way is entitled to use, and all unregistered trademarks used by Opcon within two (2) years of the date hereof. The specific property right of Opcon in such United States and foreign patents, patent applications and registered trademarks, are

expressly stated in Exhibit 5(j). Except as set forth on Exhibit 5(j), to the best knowledge of Opcon there are no asserted, threatened or potential claims against Opcon or its customers for infringement of any patent, or based on the use of any technical information, know-how or trade secrets, of any person, firm or corporation. To the best knowledge of Opcon the (i) processes, apparatus and design (a) used by Opcon in its business or (b) contemplated by Opcon's Board of Directors for use in the development of its business and (ii) the products (a) manufactured by or for Opcon or sold by Opcon or (b) contemplated by Opcon's Board of Directors for manufacture or sale do not infringe any patents or use any technical information, know-how or trade secrets of any other firm, person or corporation except as the result of consents or licenses expressly granted and listed in Exhibit 5(j). To the best knowledge of Opcon no trademark, trade name or copyright used by Opcon infringes any trademark, trade name or copyright of any other person, firm or corporation, and to the best knowledge of Opcon there are no asserted, threatened or potential claims that such trademarks, trade names or copyrights so used infringe trademarks, trade names or copyrights of others. Opcon is not licensed under any technical information, know-how, trade secrets, inventions, patents, trademarks, trade names or copyrights of others except as set forth in Exhibit 5(j).

(k) Inventories. The inventory of Opcon reflected in the Interim Balance Sheet consists of items of a quality and quantity usable or salable in the normal course of business of Opcon. The values at which such inventory is carried in said balance sheet are in accordance with generally accepted accounting principles and reflect the normal inventory valuation policy of Opcon.

(l) Insurance. Exhibit 5(1) hereto lists all policies of insurance carried by Opcon, a true and correct copy of which have been provided to Eaton and all of which are in force, and all premiums thereon are paid to date. All such policies are described in Exhibit 5(1) as to insurer, type and amount of coverage, premium and expiration date. The protection afforded by such insurance with respect to events occurring prior to the Effective Date of the Merger shall survive the Merger. As of the date hereof and the Effective Date of the Merger, and during each year of Opcon's existence, Opcon is and has been insured as is customary in its industry against the normal risks of its business.

(m) Adverse Conditions. There are no known conditions existing with respect to the markets, products, facilities or supplies of Opcon that might reasonably be expected to have in the aggregate, a material adverse effect on the financial condition, results of operations or business of Opcon.

(n) Compliance with Law. Opcon has complied with all applicable laws, rules and regulations of all federal, state and local authorities or agencies, including, without limiting the generality of the foregoing, all laws, regulations and orders related to civil rights, occupational safety and health, securities, employee benefits, employment practices and zoning and building codes, the noncompliance with which, in the aggregate, would have a material adverse effect on the financial condition, results of operation or business of Opcon. Other than matters set forth on Exhibit 5(n) no notice of any violation of any laws, statutes, ordinances or regulations relating to the operations, property or assets of Opcon has been received by Opcon.

(o) Environmental Protection.

(i) Opcon has obtained all permits, licenses and other authorizations which it is required to obtain under federal, state, local and foreign laws relating to pollution or protection of the environment, including laws relating to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes into the environment (including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata) or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, chemicals, or industrial, toxic or hazardous substances or wastes (the "Environmental Laws").

(ii) Opcon complies in all material respects with all terms and conditions of the required permits, licenses and authorizations, and also complies in all material respects with all other limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in the Environmental Laws or contained in any regulation, code, plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved thereunder.

(iii) Other than matters set forth on Exhibit 5(o), there is no civil, criminal or administrative action, suit, demand, claim, hearing, notice of violation, investigation, proceeding, notice or demand letter pending or, to the best knowledge of Opcon, threatened against Opcon relating in any way to the Environmental Laws or any regulation, code,

plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved thereunder.

(iv) There are no past or present events, conditions, circumstances, activities, practices, incidents, actions or plans which may interfere with or prevent compliance or continued compliance in all material respects with the Environmental Laws or with any regulation, code, plan, order, decree, judgment, injunction, notice or demand letter issued, entered, promulgated or approved thereunder, or which may give rise to any common law or legal liability, including, without limitation, liability under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 or similar state or local laws, or otherwise form the basis of any claim, action, demand, suit, proceeding, hearing, notice of violation, study or investigation, based on or related to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling, or the emission, discharge, release or threatened release into the environment, of any pollutant, contaminant, chemical, or industrial, toxic or hazardous substance or waste.

(p) Broker, Finder or Agent. Opcon has not employed any broker, finder, agent, consultant or other intermediary in connection with the transactions contemplated by this Agreement.

(q) Disclosure. No representation or warranty by Opcon in this Agreement, nor any statement, certificate or Exhibit furnished or to be furnished by or on behalf of Opcon pursuant to this Agreement, nor any other document delivered to Eaton pursuant to this Agreement contains, or shall contain, any untrue statement of a material fact or omits, or shall omit, to

state a material fact necessary to make the statements contained herein or therein not misleading.

(r) Renewal and Survival of Representations. All of the representations and warranties of Opcon in this Agreement shall be deemed renewed by Opcon at the Effective Date of the Merger, as if made as of the Effective Date of the Merger.

6. Representations and Warranties of Eaton and Newco.

Eaton and Newco make the following representations and warranties to Opcon:

(a) Corporate.

(i) Eaton is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Ohio, and is not in voluntary or compulsory liquidation. Newco is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Ohio, and is not in voluntary or compulsory liquidation.

(ii) Eaton and Newco have full and unrestricted corporate power and authority to own their properties and carry on their business as and where they are presently owned and carried on, and they have full and unrestricted corporate power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement.

(iii) This Agreement, and as to Newco the Merger Agreement, constitute valid and binding obligations of

Eaton and Newco subject to the qualification, however, that enforcement of rights and remedies created hereby is subject to bankruptcy and other similar laws of general application affecting the rights and remedies of creditors and that equitable remedies, including the remedies of specific performance or of injunctive relief, are subject to the discretion of the court before which any proceeding therefor may be brought. The execution, delivery and performance of this Agreement, and as to Newco the Merger Agreement shall, as of the Closing, have been duly authorized and approved by all necessary corporate action on the part of Eaton and Newco.

(iv) The authorized capital stock of Newco consists solely of 750 shares of common stock, no par value, of which 100 shares are issued and outstanding and are owned by Eaton. Newco has no outstanding options, commitments or rights for the purchase or acquisition of any of its capital stock. All of its outstanding shares are, as of the date hereof and will be immediately prior to the Effective Date of the Merger, legally and validly issued, fully paid and non-assessable.

(b) No Breach of Statute or Contract. Neither the execution and delivery of this Agreement, nor compliance with the terms and provisions of this Agreement, on the part of Eaton or Newco, will breach any statute or regulation of any governmental authority, domestic or foreign, or will, on the Effective Date of the Merger, conflict with or result in a breach of, any of the terms, conditions or provisions of any material agreement or instrument, or any court order or judgment or decree to which Eaton or Newco is a party, or by which they, or their properties, are bound, or constitute a

default (or an event which with notice or lapse of time or both, would constitute a default) thereunder.

(c) Broker, Finder or Agent. Neither Eaton nor Newco have employed any broker, finder, agent, consultant or other intermediary in connection with the transactions contemplated by this Agreement.

(d) Disclosure. No representation or warranty by Eaton or Newco in this Agreement, nor any statement, certificate or Exhibit furnished or to be furnished by or on behalf of Eaton or Newco pursuant to this Agreement or any document or certificate delivered to Opcon pursuant to this Agreement nor any other document delivered to Opcon pursuant to this Agreement contains or shall contain any untrue statement of material fact or omits or shall omit to state a material fact necessary to make the statements contained herein or therein not misleading.

7. Certain Covenants of Opcon.

(a) Permitted Transactions. From the date of this Agreement to the Effective Date, except as otherwise expressly permitted by this Agreement or as Eaton may otherwise consent to in writing from time to time, Opcon shall not engage in any activity or enter into any transaction which would be inconsistent with any of the representations and warranties set forth in Section 5 of this Agreement.

(b) Preservation of Business Organization. Opcon shall use its best efforts to preserve intact its business organization, to keep available to Eaton the employees and to

preserve the goodwill of Opcon as to suppliers, customers and others having business relations with it.

(c) Full Access. Eaton and its authorized representatives shall have full access during normal business hours to all personnel, properties, books, records, contracts and documents of Opcon, and Opcon shall furnish, or cause to be furnished to Eaton and its authorized representatives, all information with respect to the financial condition, assets, business prospects, results of operations, and other affairs and business of Opcon as Eaton may reasonably request.

(d) Carry on in Regular Course. Opcon shall carry on its business in the ordinary and usual course, diligently and in a manner consistent with their past practices, and shall not make or institute any unusual methods of manufacture, purchase, sale, lease, management, accounting or operation.

8. Certain Covenants of Eaton.

(a) Provision of Cash. Eaton shall provide and deliver to Newco (or its designee or designees) all amounts payable upon the exchange of shares of common stock of Opcon, and of options and warrants to purchase Option Shares and Warrant Shares, for cash as provided for in the Merger Agreement.

(b) Preservation of Business Organization. Eaton shall use its best efforts not to take any action or conduct itself in any manner which could adversely affect the business organization of Opcon or the goodwill of Opcon as to suppliers, customers and others having business relations with it.

9. Certain Covenants of Eaton, Newco and Opcon.

(a) Confidentiality. The parties have entered into an Agreement of Confidentiality dated January 25, 1990. All information or documents furnished hereunder by either party to the other party shall be subject to the obligations of confidentiality and the terms and conditions thereof.

(b) Cooperation. Eaton, Newco and Opcon shall use all reasonable efforts to cause the Effective Date of the Merger to occur with all reasonable dispatch, and none of them shall undertake any course of action inconsistent with such intended result.

(c) Press Releases. Neither Eaton nor Opcon will make any press release or other public announcement concerning the transactions contemplated by this Agreement without the consent of the other as to the form and contents of such release or announcement, except to the extent that such may be required by law.

10. Indemnification.

(a) Indemnification by Opcon. Opcon will indemnify, defend and hold harmless Eaton and any of its subsidiaries, employees, officers and directors from and against any and all losses, liabilities, damages or expenses, including, but not limited to, court costs and reasonable attorneys' fees (collectively "Losses") for which a claim is made or asserted by Eaton or a third party on or before April 15, 1993, based on, arising from, or as a result of (1) any failure of Opcon to file tax returns, reports or pay any taxes due in the states of Minnesota or New Jersey, (2) any failure of Opcon to carry out, perform, satisfy and discharge any of its covenants, agreements, undertakings or obligations under this Agreement,

or (3) the breach of any of the representations and warranties made by Opcon to Eaton and Newco hereunder.

(b) Indemnification by Eaton. Eaton will indemnify, defend and hold harmless Opcon from and against any and all Losses for which a claim is made or asserted by Opcon or a third party based on, arising from or as a result of (1) any failure of Eaton to carry out, perform, satisfy and discharge any of its covenants, agreements, undertakings or obligations under this Agreement, or (2) breach of any of the representations and warranties of Eaton or Newco made to Opcon hereunder.

(c) Set-Off. In the event that Eaton is entitled to indemnification for Losses pursuant to Section 10(a) hereof, Eaton shall have the right to set-off the amount of such Losses against any amount then remaining to be paid to the shareholders pursuant to Section 5.2(b)(ii) of the Merger Agreement; provided, however that such right to set-off shall not arise until the amount of all such Losses shall aggregate \$150,000. If the aggregate of all such Losses exceeds \$150,000 then the right to set-off shall include all such Losses, including those constituting part of the \$150,000. Such right of set-off shall be Eaton's sole remedy against Opcon or its shareholders, option holders, warrant holders, directors, officers or employees for such Losses.

In the event that Eaton is entitled to indemnification for a Loss pursuant to Section 10(a)(2) arising from a breach of representation or warranty by Opcon, it is agreed that the terms "material" or "materially" when used in Sections 5(a)(i), 5(a)(viii), 5(b)(ii), 5(b)(iii)(2), 5(b)(iii)(4), 5(b)(iii)(12), 5(c), 5(e)(i), 5(f)(viii), 5(i) and 5(n) shall

mean breaches which result in losses which in the aggregate exceed ten thousand dollars (\$10,000). Therefore for purposes of breaches of the representations or warranties listed above in this Section 10(c), and when materiality is also a qualification as to the effect of such breach, when resulting Losses are less than ten thousand dollars (\$10,000) they may not be applied toward the aforementioned \$150,000 aggregate and when they exceed ten thousand dollars (\$10,000), then all such Losses, including these constituting part of the ten-thousand (\$10,000), may be applied toward the \$150,000 aggregate.

11. Dispute Resolution.

(a) Institution of Procedure. If a dispute arises between the parties relating to this Agreement, the parties agree to use the following procedure prior to either party pursuing other available remedies.

(b) Initial Meeting. A meeting shall be held promptly between the parties, attended by individuals with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute.

(c) Appointment of Neutral. If, within thirty (30) days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will jointly appoint a mutually acceptable neutral person not affiliated with either of the parties (the "Neutral"), if they have been unable to agree upon such appointment within forty (40) days from the initial meeting they shall seek assistance in such regard from the American Arbitration Association, Center for Public Resources, or other mutually agreed-upon provider of neutral services. The fees of the Neutral shall be shared equally by the parties.

(d) ADR Procedure. In consultation with the Neutral, the parties will select or devise an alternative dispute resolution procedure ("ADR") by which they will attempt to resolve the dispute, and a time and place for the ADR to be held, with the Neutral making the decision as to the procedure, and/or place and time (but unless circumstances require otherwise, not later than sixty (60) days after selection of the Neutral) if the parties have been unable to agree on any of such matters within twenty (20) days after initial consultation with the Neutral.

(e) Good Faith Participation. The parties agree to participate in good faith in the ADR to its conclusion as designated by the Neutral. If the parties are not successful in resolving the dispute through the ADR, then either party may pursue other available remedies upon seven (7) days written notice to the other party specifying its intended course of action.

12. Miscellaneous.

(a) Expenses. Eaton and the shareholders of the common stock of Opcon shall pay their own expenses incident to the negotiation, preparation and performance of this Agreement and the transactions contemplated hereby; provided, however, that such expenses incurred by the shareholders of Opcon prior to the Effective Date of the Merger may be charged to and paid by Opcon up to the amount of \$30,000. Opcon shall not pay or be charged with any expenses so incurred in excess of \$30,000.

(b) Notices. Any notice, request, demand or other communication required or permitted hereunder shall be deemed sufficiently given if set forth in writing and sent by

registered mail or certified mail, return receipt requested,
postage prepaid, addressed as follows:

To Opcon:

Opcon, Inc.
720 80th Street, S.W.
Everett, Washington 98203

Attention: Marvin L. Crumb, President

To Eaton:

Eaton Corporation
Eaton Center
Cleveland, Ohio 44114

Attention: Office of the Secretary

To Newco:

Sarnia Acquisition Corporation
c/o Eaton Corporation
Eaton Center
Cleveland, Ohio 44114

Attention: Office of the Secretary

or such other address as the addressee party may have
previously designated in writing by notice to the other party,
and any such notice or communication shall be deemed to have
been given as of the date so delivered or mailed;

(c) Captions. The captions set forth in this Agreement
are for convenience only and shall not be considered as part of
this Agreement, nor affect in any way the meaning of the terms
and provisions hereof;

(d) Successors and Assigns; Other Parties. This Agreement
shall be binding upon and inure to the benefit of the parties

hereto and their respective successors and assigns. This Agreement may not be assigned by any party without the written consent of the other parties;

(e) Entire Agreement. This Agreement and other agreements referred to herein constitute the entire agreement between the parties hereto and supersede all prior agreements, representations, warranties, statements, promises, information, arrangements and understandings, whether oral or written, express or implied with respect to the subject matter hereof;

(f) Severability. Any term or provision of this Agreement which is held to be invalid or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity or unenforceability without rendering invalid or unenforceable the remaining terms and provisions of this Agreement or affecting the validity or enforceability of any of the terms or provisions of this Agreement in any other jurisdiction;

(g) Third Parties. Except as expressly otherwise provided herein, nothing expressed or implied in this Agreement is intended or shall be construed to confer upon or give to any person, firm or corporation, other than the parties hereto, and their respective permitted successors and assigns, any rights or remedies under or by reason of this Agreement;

(h) Time of Essence. Time shall be of the essence with respect to each party's performance of its obligations pursuant to this Agreement;

(i) Waiver. Neither the failure nor any delay on the part of any party to exercise any right, power or privilege

hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof, or the exercise of any other right, power or privilege available to any party hereunder, at law or in equity. No modification or waiver of this Agreement shall be binding upon any party unless in writing and signed by or on behalf of the party against which the modification or waiver is asserted;

(j) Counterparts. This Agreement may be executed in one or more counterparts, any or all of which shall constitute one and the same instrument; and

(k) Governing Law. This Agreement shall in all respects be interpreted, construed and governed by and in accordance with the laws of the State of Ohio, except to the extent that the laws of another jurisdiction mandatorily apply.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

OPCON, INC.

By 

EATON CORPORATION

By 

A. M. Cutler
Group Vice President

By 

R. T. Sadler
Vice President and Secretary

SARNIA ACQUISITION CORPORATION

By 

R. T. Sadler
Vice President and Secretary