

From: [Anette Hegner](#)
To: [Mohammed N. Islam](#)
Cc: ["Lasse Leick"](#)
Subject: OC-NKT License draft v1_LLE.docx
Date: Friday, May 10, 2013 8:13:52 AM
Attachments: [image001.gif](#)
[100513-OC-NKT License draft.docx](#)

Dear Mohammed

I attach a draft agreement. Observe that the 2002 family (US 7,259,906) is included as in your offer to NKT Photonics.

I suggest that we discuss it by phone some time in next week. Let me know when it will be suitably for you.

Kind regards

Anette

Anette Hegner

European Patent Attorney, Design & Trademark Attorney,
Managing Director, Partner

Hegner & Partners A/S - Banemarksvej 50 - DK-2605 Brøndby - phone. (+45) 4346 3000 - Fax. (+45) 4346 3001

www.hegner-partners.dk



PATENT LICENSE AGREEMENT

BETWEEN

- I. CHEETAH OMNI LLC which has its registered office at 647 Spring Valley Barton Hills Village Ann Arbor and (In the following "the Licensor")
- II. NKT Photonics which has is registered head office at Blokken 84, 3460 Birkerød, Denmark (In the following "the Licensee")

WHEREAS:

- (A) The Licensor owns the Patents listed in Annex 1.
- (B) The Licensor has the right to and wishes to license the Patents to Licensee on non-exclusive license to have made, make, use, export, import, offer for sale and sell products using the Patents.
- (C) The Licensee wishes to obtain a non-exclusive license to the patents and wishes to develop products that may utilize the patents.

The Parties has agreed the following:

1 Definitions

- 1.1 In this Agreement except where the context otherwise requires the following words and expressions shall have the following meanings:

"Associated company" means a subsidiary or holding company of the Licensor or the Licensee (as appropriate), or any subsidiary of any such holding company;

"Effective Date" The day of the signature of the last of the Parties

"Licensed Product(s)" means products sold by the Licensee which would have infringed at least one claim of a granted and valid patent of the Patents without this Agreement.

"Net Invoice Price" means the total sale price for a Licensed Product as invoiced by or on behalf of the Licensee excluding transport charges (including carriage insurance), delivery expenses, costs of packaging and discounts or allowances and excluding value added tax and duties and taxes assessed directly on sales.

"Non-exclusive" means in respect of a right granted under this Agreement that the Licensor may itself exercise that right and may authorize and assist others to exercise that right.

"Parties" means the Licensor and the Licensee together.
"Party" means the Licensor or the Licensee individually.

- "Patents" means the granted patents and patent applications listed in Annex 1 and any continuation, continuation in part, divisional, foreign counterparts and reissue patent and application which claim priority from at least one of the above patents and applications.
- 1.2 The singular includes the plural and vice versa.
- 1.3 Unless the context otherwise indicates, references to clauses, sub-clauses, recitals and to Schedules are to clauses and sub-clauses of, and recitals and Schedules to, this Agreement.
- 1.4 Headings to clauses in this Agreement are included for the purpose of ease of reference only and shall not have any effect on the construction or the interpretation of this Agreement.
- 2 Grant of License**
- 2.1 The Licensor grants to the Licensee a Non-exclusive license under the Patents to have made, make, use, export, import, offer for sale and sell Licensed Product(s).
- 2.2 The License is transferable with major part of Licensees activities, subject to Licensor acceptance. Licensor shall not unduly withhold such acceptance unless the transfer result in a transfer to a company that evidently is a competitor to Licensor
- 2.3 Nothing in this Agreement shall constitute any representation that the Patents (if patent applications) shall proceed to be granted or if granted shall be valid.
- 3 Marking**
- 3.1 Beginning on the EFFECTIVE DATE, Licensee shall mark all Licensed Products with the relevant patent number(s). Such marking shall be accomplished by fixing on the article or when, from the character of the article this cannot be done, by fixing to it, or to the package wherein one or more of them is contained, a label indicating the relevant patent number(s).
- 3.2 Licensor undertakes to keep Licensee updated with the status of the Patents. Such data will be provided upon request from Licensee or at least once a year.
- 4 Royalties and Disclosure Fee**
- 4.1 In consideration of the rights granted under Clause 2.1 Licensee shall pay to the Licensor a royalty with respect to each Licensed Product sold under this Agreement as follows:
- 8% (eight per cent) of the Net Invoice Price of each Licensed Product made and sold by Licensee. The Royalty shall be payable in respect of every Licensed Product sold as from the Effective Date of this Agreement.
- 4.2 Additionally, Licensee shall pay to the Licensor a one time upfront fee set to US\$ 35.000 (thirty five thousand). The upfront fee shall be transferred to Licensor within 1 (one) month from the Effective date.
- 5 Taxation**
- 5.1 Any withholding taxes which may be added shall be borne by Licensee.
- 5.2 Any income taxes which may be added shall be borne by Licensor.

6 Other Provisions Relating to Payment

- 6.1 Royalties arising under this Agreement shall be paid in US Dollars within 30 days of the end of each year to the credit of a bank account to be designated in writing by the Licensor.
- 6.2 In the event of any delay in effecting payments due under this Agreement by the due date specified the Licensee shall pay to the Licensor interest (calculated on a daily basis) on the overdue payment from the date such payment was due to the date of actual payment at a rate of the base lending rate of the Danish National Bank from time to time.
- 6.3 At the same time as payment of any royalties under this Agreement falls due the Licensee shall submit or cause to be submitted to the Licensor a statement in writing recording the calculation of royalty payable under this Agreement; in particular:
- (a) the number of Licensed Products which have been sold during the previous six months.
 - (b) the Net Invoice Price of each Licensed Product supplied during the previous six months; and
 - (c) the amount of royalties due and payable and the amount of any withholding taxes.
- 6.4 The Licensee shall keep proper records and books of account showing the quality, description and price of Licensed Products sold under this Agreement and such records and books shall be kept separate from any records and books not relating solely to the Licensed Products and be open at all times to inspection by the Licensor or its duly authorized agent or representative who shall be entitled to take copies of or extracts from the same. In the event that such inspection or audit should reveal a discrepancy in the royalties paid from those payable under this Agreement, the Licensee shall immediately make up any shortfall and reimburse the Licensor in respect of any professional charges incurred for such audit or inspection.

7. Warranty, Liability, Indemnity

- 7.2 Licensor warrants to Licensee that it has the authority to grant the license under Clause 2.1 to Licensee.
- 7.1 No warranties express or implied, whether by statute, custom or usage, are made by the Licensor to the Licensee in relation to any technical information or the performance of any product or process made hereunder where that information or that product or process has been provided by the Licensor to the Licensee or otherwise howsoever in connection with this Agreement. In particular, the Licensor does not warrant that what is licensed under this Agreement is useful or fit for any particular purpose, nor will not give rise to a claim or action by a third party against the Licensee for infringement of any intellectual property right. The Licensor also excludes all warranties as to the validity and enforceability of its intellectual property rights or the scope of its protection and assumes no responsibilities of any kind other than as set out herein. For the sake of good order it is emphasized that the Licensor under no circumstance assume any liability for consequential damages, including but not limited to loss of business, loss of profit etc.
- 7.2 In no event shall one Party be liable to the other Party for any incidental or consequential damages relating to or arising out of this Agreement.

8 Duration of Agreement

- 8.1 This Agreement shall come into force on the Effective Date and shall continue unless determined in accordance with Clause 9 (termination) until the expiration of the last of the Patents.

9 Termination

- 9.1 Licensor shall have the right to terminate this Agreement immediately by written notice if:

(a) Licensee fails to make any payment this Agreement within the term specified and provided that this breach is not remedied within 30 (thirty) days of receipt of a notice from Licensor; or

(b) Licensee fails to mark Licensed Product(s) and provided that this breach is not remedied within 30 (thirty) days of receipt of a notice from Licensor.

(c) Licensee breach any other of the clauses and provided that Licensee does not endeavors to remedy this breach within 30 (thirty) days of receipt of a notice from Licensor.

The Licensee shall have the right to terminate this Agreement immediately by written notice if:

(d) Licensor breach any other of the clauses and provided that Licensee does not endeavors to remedy this breach within 30 (thirty) days of receipt of a notice from Licensor.

(e) Licensee wishes to terminate the agreement in which case this termination shall be send to Licensor with a 1 (one) year written notice.

10. Most favored Clause

- 10.1 If Licensor grants a non-exclusive license to a third party covering any of the Patents on more favorable terms than specified in this Agreement, Licensee has right to obtain the same more favorable terms as granted to the third party as from the effective date of such granted license to the third party.

11. Contact points for Notices and Payments

- 11.1 Any notice, request, demand, waiver, consent, approval, or other communication under this Agreement from one party to the other party shall be given in writing and addressed to the appropriate Party at its address set forth below, or transmitted by e-mail or facsimile:

If to Licensor, to:

xxxx

If to Licensee, to:

NKT Photonics A/S
Blokken 84
DK-3460 Birkerød
Denmark
Att: CTO
Fax: + 45 43 38 39 01

- 11.2 All payments owed to Licensor shall be made by wire transfer to XXXXXXXXXX

12. General

- 12.1 This Agreement represents the entire understanding between the Parties about the subject matter contained herein and supersedes all prior oral and/or written agreements, communications, and documents between the Parties with respect thereto.
- 12.2 The provisions of this agreement shall be deemed separable. If any provision of this Agreement shall be adjudged wholly or partially invalid, illegal, unenforceable or void by a court or tribunal of competent jurisdiction, such provision shall be deemed modified to the extent necessary to make it valid, legal, enforceable, or not void, if such modification does not materially alter the intention of the Parties nor substantially impair the value of this Agreement as to any Party. If such provision cannot be so modified, such provision shall be

stricken from this Agreement and the validity, legality, and enforceability of the remaining provisions or parts thereof shall not in any way be affected or impaired unless to do so would alter the intention of the PARTIES or substantially impair the value of this AGREEMENT as to any PARTY.

- 12.3 The existence and a general description of this agreement will not be confidential. The terms of this agreement will be kept confidential.
- 12.4 This agreement and the marking of products in accordance with Clause 3 shall not be deemed or perceived as admittance by either party that products of that party without the rights granted herein infringe the patent rights of the other party without further investigation.
- 12.5 No variation of this Agreement shall be effective unless it is in writing signed by a duly authorized officer of each party.
- 12.7 Any notice or other document to be given under this Agreement shall be given by sending the same in a prepaid airmail letter or by courier to the address of the relevant party set out in this Agreement or to such other address as that party may have notified to the other for the purposes of this Agreement including facsimile or e-mail. Any notice sent by post shall be deemed (in the absence of evidence of earlier receipt) to have been delivered 14 days after dispatch and in proving the fact of dispatch it shall be sufficient to show that the envelope containing the notice was properly addressed stamped and posted. Any notice sent by facsimile or e-mail shall be deemed to have been delivered upon confirmed receipt from the receiving Party.
- 12.8 Other than as expressly permitted under this Agreement neither Party shall assign, transfer, charge, encumber or otherwise deal with the whole or any part of this Agreement or its rights or obligations under this Agreement PROVIDED THAT a Party shall have the right at any time upon notice to the other Party to assign all of its rights and obligations (arising as from the date of assignment) under this Agreement to any associated company.
- 12.9 This Agreement shall be governed by and construed and interpreted in accordance with the laws of United Kingdom and the parties hereby submit to the exclusive jurisdiction of the UK courts.
- 12.10 The Licensee shall not be held in breach of its obligations under this Agreement (save with respect to any obligation to make payment) to the extent only that due performance or observance of such obligation is prevented by reason of act of God war and other hostilities civil commotion acts or restraints of government imposition or restrictions of imports or exports or any other cause not within the control of the Licensee.

IN WITNESS of which the parties have caused this Agreement to be duly executed:

Date:

SIGNED for and on behalf of the Licensors by:

In the presence of:

Date:

SIGNED for and on behalf of the Licensee by:

Jakob D. Skov, CEO, NKT Photonics A/S

License draft of May 10, 2013

In the presence of: Lasse Leick

Annex I

PATENTS mean the below patents and patent applications:

- US 7,259,906; US 7,433,116; US 7,633,673; US 8,098,423; US 13/078,547; US 13/349,244; US13/531,853
- US 7,519,253; US 8,055,108; US 8,391,660; US 13/750,556; EP 1949151; CA 2623380

and all foreign counterpart patents and utility models claiming priority to and issuing from at least one of the foregoing patents or applications, in any and all countries of the world, and all continuations, continuations in part, divisional, reissues and extensions of any of them.