

10-22-1999



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MDR 10-18-99

RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies).

Submission Type

New

Resubmission (Non-Recordation)  
Document ID #

Correction of PTO Error  
Reel #  Frame #

Corrective Document  
Reel #  Frame #

Conveyance Type

Assignment  License

Security Agreement  Nunc Pro Tunc Assignment

Merger

Change of Name

Other

Effective Date  
Month Day Year

Conveying Party

Mark if additional names of conveying parties attached

Name  Execution Date  
Month Day Year

Formerly

Individual  General Partnership  Limited Partnership  Corporation  Association

Other

Citizenship/State of Incorporation/Organization

Receiving Party

Mark if additional names of receiving parties attached

Name

DBA/AKA/TA

Composed of

Address (line 1)

Address (line 2)

Address (line 3)     
City State/Country Zip Code

Individual  General Partnership  Limited Partnership  If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment.)

Corporation  Association

Other

Citizenship/State of Incorporation/Organization

FOR OFFICE USE ONLY

10/21/1999 MTHAI1 00000291 1800553

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Public burden reporting for this collection of information is estimated to average approximately 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. See OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT DOCUMENTS TO THIS ADDRESS.

Mail documents to be recorded with required cover sheet(s) information to:  
Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

TRADEMARK  
REEL: 001977 FRAME: 0788

**Domestic Representative Name and Address**

Enter for the first Receiving Party only.

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number

Name

Address (line 1)

Address (line 2)

Address (line 3)

Address (line 4)

**Pages**

Enter the total number of pages of the attached conveyance document including any attachments.

#

**Trademark Application Number(s) or Registration Number(s)**

Mark if additional numbers attached

Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

**Trademark Application Number(s)**

**Registration Number(s)**

<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

<input type="text" value="1800553"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>
<input type="text"/>	<input type="text"/>	<input type="text"/>

**Number of Properties**

Enter the total number of properties involved.

#

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$

Method of Payment:

Enclosed

Deposit Account

Deposit Account

(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number:

#

Authorization to charge additional fees:

Yes

No

**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. Charges to deposit account are authorized, as indicated herein.*

Brenda K. Wilcox

*Brenda K. Wilcox*

10/11/99

Name of Person Signing

Signature

Date Signed

**AFFIDAVIT**

STATE OF WISCONSIN    )  
                                          ) ss.  
COUNTY OF DANE        )

I, Brenda K. Wilcox, being first duly sworn, on oath depose and state that:

1. I have been employed at Nicolet Instrument Corporation since March, 1987 and have been Vice President and Controller since February, 1994.  
*since Mar 1992 pw*
2. I am knowledgeable about the Mattson business division now owned by Nicolet Instrument Corporation.
3. In the Asset Transfer Agreement dated December 31, 1996 among ATI Acquisition Corp., Thermo Optek Corporation, et al., the transferred assets related to the Mattson division referred to in Section 1 of the Agreement include the trademark WINFIRST, Registration No. 1,800,553.
4. In the Asset Transfer Agreement dated January 1, 1997 between Thermo Optek Corporation and Nicolet Instrument Corporation, the transferred assets related to the Mattson division referred to in Section 1 of the Agreement include the trademark WINFIRST, Registration No. 1,800,553.

Under penalties of perjury, I declare that I have examined this Affidavit and to the best of my knowledge and belief, it is true, correct and complete.

Dated: October 11, 1999.

NICOLET INSTRUMENT CORPORATION

By: *Brenda K. Wilcox*  
Brenda K. Wilcox  
Vice President and Controller

Subscribed and sworn to before me  
this 11<sup>th</sup> day of October, 1999.

*Marcy Shubar*  
Name: MARCY SHUBAR  
Notary Public, Dane County, Wisconsin  
My commission is/expires: 7/29/2001

## ASSET TRANSFER AGREEMENT

This AGREEMENT is dated as of December 31, 1996 by and between ATI Acquisition Corp. ("ATI"), a Wisconsin corporation, and Thermo Optek Corporation ("Optek"), a Delaware corporation.

WHEREAS, The Board of Directors of ATI has declared a dividend, payable to Optek in the form of all of the property and assets, real, personal and mixed, tangible and intangible related to ATI's Mattson Instruments division ("Mattson"), subject to all of the liabilities of such division; and

WHEREAS, the parties wish to effect such dividends and

NOW, THEREFORE, in consideration of the premises and mutual promises and agreements set forth herein, the parties hereto hereby agree as follows:

1. Transfer of Assets to Optek. ATI hereby assigns, transfers, conveys, and delivers to Optek, all of the property, assets and rights, real, personal and mixed, tangible and intangible (collectively, the "Assets") related to its Mattson division. The Assets include, but are not limited to, the following, to the extent they relate primarily to Mattson:

- (i) all trade and other accounts receivable and notes receivable;
- (ii) all inventories of raw materials, work in process, finished goods, supplies, packaging materials, spare parts and similar items;
- (iii) all machinery, equipment, tools and tooling, furniture, fixtures, leasehold improvements and motor vehicles;
- (iv) all real property, leaseholds and subleaseholds in real property, and easements, rights-of-way and other appurtenants thereto;
- (v)
  - (a) all patents, patent applications, patent disclosures and all related continuation, continuation-in-part, divisional, reissue, re-examination, utility, model, certificate of invention and design patents, patent application, registrations and applications for registrations,
  - (b) all trademarks, service marks, trade dress, logos, trade names and corporate names and registrations and applications for registration thereof,
  - (c) all copyrights and registrations and applications for registration thereof, mask works and registrations and applications for registration thereof, computer software, data and documentation, trade secrets and confidential business information, whether patentable or nonpatentable and whether or not reduced to practice, know-how, manufacturing and product processes and techniques, research and development information, copyrightable works, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information, other proprietary rights relating to any of the foregoing

- (including without limitation remedies against infringements thereof and rights of protection of interest therein under the laws of all jurisdictions) and copies and tangible embodiments thereof;
- (vi) all rights under contracts, agreements or instruments;
  - (vii) all claims, prepayments, refunds, causes of action, choices in actions, rights of recovery, rights of setoff and rights of recoupment, including all rights under warranties;
  - (viii) all permits, licenses, registrations, certificates, franchises, variances and other similar rights;
  - (ix) all books, records, accounts, ledgers, files, documents, correspondence, lists (customer or otherwise), product and sales literature, drawings or specifications, employment records, manufacturing and technical manuals, advertising and promotional materials, studies, reports and other printed or written materials;
  - (x) securities, partnership, joint venture or other equity interests in any other business entity, and
  - (xi) all claims and defenses relating to any of the foregoing or to the liabilities assumed by Optek pursuant to Section 2 below.

2. Assumption of Liabilities. Optek hereby assumes any and all liabilities, commitments and obligations of ATI related to Mattson, of any nature, kind and description, incurred prior to and outstanding as of the date hereof (the "Liabilities"). Optek agrees to indemnify and hold harmless ATI from any and all damages, losses, liabilities, costs and expenses (including, without limitation, settlement costs and any reasonable legal, accounting or other expenses for investigating or defending any actions or threatened actions) incurred by ATI as a result of Optek's failure to discharge the Liabilities.

3. Further Assurances. At the request of Optek at any time on or after the date hereof, ATI will execute and deliver such further instruments of transfer and conveyance and take such other action as Optek reasonably may request effectively to assign and transfer to Optek any of the Assets. At the request of ATI at any time on or after the date hereof, Optek will execute and deliver such further instruments of assumption and take such other action as ATI may reasonably request effectively to assume the Liabilities.

4. Regarding Certain Consents. Nothing in this Agreement shall be construed as an attempt to assign any contract, agreement, permit, franchise, or claim included in the Assets that is, by its term or in law, nonassignable without the consent of the other party or parties thereto, unless such consent shall have been given, or as to which all the remedies for the enforcement thereof enjoyed by ATI would not, as a matter of law, pass to Optek as an incident of the assignments provided for by this Agreement. In order, however, to provide Optek the full realization and value of every contract, agreement, permit, franchise and claim of the character described in the preceding sentence, ATI, on and after the date hereof by itself or by its agents, shall, at the request and expense and under the direction of Optek, in the name of ATI or otherwise as Optek shall specify and as shall be permitted by law, take all such reasonable action (including without limitation the appointment of Optek as an attorney-in-fact for ATI) and do or cause to be done all such things as shall in the opinion of Optek be necessary or proper (a) to

assure that the rights and obligations of Optek under such contracts, agreements, permits, franchises, and claims shall be preserved for the benefit of Optek and (b) to facilitate receipt of the consideration to be received by Optek in and under every such contract, agreement, permit, franchise, and claim, which consideration ATI shall hold for the benefit of, and upon request of Optek shall deliver to, Optek.

5. ATI's Representations and Warranties. ATI represents and warrants that:

(a) Organization and Standing. ATI is a corporation duly organized, validly existing and in good standing under the laws of the State of Wisconsin.

(b) Approval of Transactions. ATI has obtained all necessary corporate authorizations and approvals, and has taken all actions required for the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

(c) Title to the Assets. ATI is the true and lawful owner of the Assets, free and clear of all liens, mortgages, leases, conditional sales agreements, title retention agreements, or any other encumbrance. Upon consummation of the transfer of the Assets by ATI to Optek, Optek will be the lawful owner of the Assets, free and clear of all liens, mortgages, or other encumbrances.

(d) No Conflict. Neither the execution nor delivery of this Agreement, nor the consummation of the transactions herein contemplated, nor the fulfillment of or compliance with the terms and provisions hereof will, to the best of ATI's knowledge, (1) violate any current provisions of law, administrative regulation, or court decree applicable to ATI, or (2) conflict with or result in a breach of any of the terms, conditions or provisions of or constitute default under any agreement or instrument to which ATI is a party or by which it is bound.

6. Optek's Representations and Warranties.

(a) Organization and Standing. Optek is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) Approval of Transactions. Optek has obtained all necessary corporate authorizations and approvals, and has taken all actions required for the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

7. Transfer and Sales Tax. Notwithstanding any provisions of law to the contrary, Optek shall be responsible for and shall pay (a) all sales and transfer taxes, and (b) all governmental charges, if any, upon the sale or transfer of any of the Assets.

8. **Effective Date.** The transfer of the Assets, and the assumption of the Liabilities, shall be deemed to be effective as of the close of business on the date first above written, for all purposes, including federal income taxes and accounting.

9. **Captions.** The captions and headings to the various sections, paragraphs and exhibits of this Agreement are for convenience of reference only and shall not affect or control the meaning or interpretation of any of the provisions of this Agreement.

10. **Integration.** This Agreement contains the entire understanding of the parties hereto with respect to the subject matter contained herein.

11. **Notice of Communication.** Any notice or other communication shall be in writing and shall be personally delivered, or sent by overnight or second day courier or by first class mail, return receipt requested, to the party to whom such notice or other communication is to be given or made at such party's address set forth below, or to such other address as such party shall designate by written notice to the other party as follows:

If to ATI:

ATI Acquisition Corp.  
5225 Verona Road  
Madison, WI 53711  
Attn: President

If to Optek:

Thermo Optek Corporation  
c/o Thermo Electron Corporation  
81 Wyman Street  
Waltham, MA 02445-9046  
Attn: General Counsel

provided that any notice of change of address, and any notice or other communication given otherwise than as specified above shall be effective only upon receipt; and further that any presumption of receipt by the addressee shall be inoperable during the period of any interruption in Postal Service.


12. **Survival of Representations and Warranties.** All representations and warranties made by ATI or Optek in this Agreement shall survive the execution and delivery of this Agreement.

13. **Miscellaneous.** This Agreement is to be construed, interpreted, applied and governed in all respects in accordance with the laws of the state of Wisconsin, without regard to its conflict of laws provisions, is to take effect as a sealed instrument, is binding upon and insures to the benefit of the parties hereto and their respect successors and assigns and may be canceled,

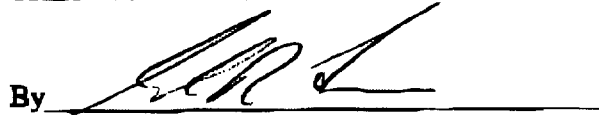
modified or amended only by a written instrument executed by ATI and Optek. No party hereto may assign its rights hereunder without prior written consent of the other party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

**ATI ACQUISITION CORP.**

By   
Robert J. Rosenthal  
Vice President

**THERMO OPTEK CORPORATION**

By   
Earl R. Lewis  
President

AA963050062



LAW OFFICES

ONE EAST MAIN STREET  
POST OFFICE BOX 2719  
MADISON, WI 53701-2719  
FACSIMILE 608-257-0609  
TELEPHONE 608-257-3911

October 18, 1999

**VIA EXPRESS MAIL NO. EJ187996213US**

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

Assignment of WINFIRST Trademark

Dear Sir or Madam:

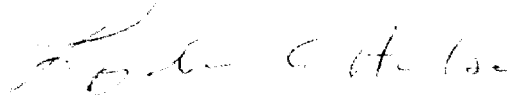
Enclosed for filing are the following documents relating to three consecutive assignments of WINFIRST trademark, Registration Number 1,800,553:

1. Three Recordation Form Cover Sheets;
2. Copies of three transfer/acquisition documents;
3. Duplicate original affidavits regarding the latter two assignments;
4. A copy of the documents related to the release of a security interest in the mark which were mailed to the Assignment Division on September 28, 1999;
5. A check payable to the Patent and Trademark Office in the amount of \$120.00 for the filing fees;
6. Authorization of Representation;
7. A certificate of mailing by Express Mail; and
8. A return postcard.

Please record the assignments and stamp and return the enclosed postcard. Thank you.

Yours truly,

LA FOLLETTE SINYKIN, LLP



Lydie Arthos Hudson

Enclosures

LS:65842

cc: Brenda Wilcox  
Hollie Hollister

RECORDED: 10/18/1999

TRADEMARK  
REEL: 001977 FRAME: 0796