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U.S. Department of Commerce
Patent and Trademark Office
TRADEMARK

FORM PTO-1618A
Expires 06/30/99
OMB 0651-0027



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RECORDATION FORM COVER SHEET
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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
Effective Date
Month Day Year
- Merger
- Change of Name
- Other

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
- Corporation
- Association
- Other
- Citizenship/State of Incorporation/Organization

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.)

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Mail documents to be recorded with required cover sheet(s) information to:
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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)

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

11/11/99

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.
- 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 11th day of October, 1999.

Mary Schubert
Name: MARY HUBERT
Notary Public, Dane County, Wisconsin
My commission is/expires: 1/29/2001

ASSET TRANSFER AGREEMENT

This AGREEMENT is dated as of January 1, 1997 by and between Thermo Optek Corporation ("Optek"), a Delaware corporation, and Nicolet Instrument Corporation ("Nicolet"), a Wisconsin corporation.

WHEREAS, Optek owns all of the issued and outstanding capital stock of Nicolet; and

WHEREAS, Optek desires and intends to make a contribution to the capital of Nicolet pursuant to Section 351 of the Internal Revenue Code of 1986, as amended, in the form of all of the property and assets, real, personal and mixed, tangible and intangible related to its Mattson Instruments division ("Mattson"), subject to all of the liabilities of such division; 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 Nicolet. Optek hereby assigns, transfers, conveys, and delivers to Nicolet, all of the property, assets and rights, real, personal and mixed, tangible and intangible (collectively, the "Assets") related to Optek's 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 Nicolet pursuant to Section 2 below.

2. Assumption of Liabilities. Nicolet hereby assumes any and all liabilities, commitments and obligations of Optek related to Mattson, of any nature, kind and description, incurred prior to and outstanding as of the date hereof (the "Liabilities"). Nicolet agrees to indemnify and hold harmless Optek 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 Optek as a result of Nicolet's failure to discharge the Liabilities.

3. Further Assurances. At the request of Nicolet at any time on or after the date hereof, Optek will execute and deliver such further instruments of transfer and conveyance and take such other action as Nicolet reasonably may request effectively to assign and transfer to Nicolet any of the Assets. At the request of Optek at any time on or after the date hereof, Nicolet will execute and deliver such further instruments of assumption and take such other action as Optek 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 Optek would not, as a matter of law, pass to Nicolet as an incident of the assignments provided for by this Agreement. In order, however, to provide Nicolet the full realization and value of every contract, agreement, permit, franchise and claim of the character described in the preceding sentence, Optek, 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 Optek or otherwise as Nicolet shall specify and as shall be permitted by law, take all such reasonable action (including without limitation the appointment of Nicolet as an attorney-in-fact for Optek) and do

or cause to be done all such things as shall in the opinion of Nicolet be necessary or proper (a) to assure that the rights and obligations of Nicolet under such contracts, agreements, permits, franchises, and claims shall be preserved for the benefit of Nicolet and (b) to facilitate receipt of the consideration to be received by Nicolet in and under every such contract, agreement, permit, franchise, and claim, which consideration Optek shall hold for the benefit of, and upon request of Nicolet shall deliver to, Nicolet.

5. Opteks' Representations and Warranties. Optek represents and warrants that:

(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.

(c) Title to the Assets. Optek 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 Optek to Nicolet, Nicolet 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 Optek's knowledge, (1) violate any current provisions of law, administrative regulation, or court decree applicable to Optek, 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 Optek is a party or by which it is bound.

6. Nicolet's Representations and Warranties.

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

(b) Approval of Transactions. Nicolet 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 Nicolet:

Nicolet Instrument Corporation
5225 Verona Road
Madison, WI 53711-4495
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 Optek or Nicolet 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 Delaware, 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 Nicolet 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.

NICOLET INSTRUMENT CORPORATION

By 
Robert J. Rosenthal
President

THERMO OPTEK CORPORATION

By 
Earl R. Lewis
President

AA963480018

NICOLET INSTRUMENT CORPORATION**Action by Consent of the Board of Directors
In Lieu of a Meeting****January 1, 1997**

The undersigned, being all of the directors of Nicolet Instrument Corporation, a Wisconsin corporation (the "Corporation"), hereby consent to the actions set forth in the resolutions immediately following, which shall be treated as resolutions for all purposes as fully as if said resolutions had been adopted at a duly called and held meeting of the Board of Directors of the Corporation, effective as of the date set forth above:

RESOLVED, that, pursuant to Section 351 of the Internal Revenue Code of 1986, as amended, the Corporation be, and it hereby is, authorized to accept the contribution by Thermo Optek Corporation, which owns 100% of the outstanding capital stock of the Corporation, to the capital of the Corporation, all of the assets relating to Thermo Optek's Mattson Instruments division, subject to the assumption by the Corporation of all of the liabilities related thereto.

RESOLVED, that the Chairman of the Board, the President, any Vice President, the Treasurer, the Secretary and any Assistant Secretary of the Corporation be, and each of them acting singly hereby is, authorized, empowered and directed, in the name and on behalf of the Corporation, to execute, deliver and perform such agreements, bills of sale, instruments, deeds, certificates and other documents, and to take such actions as the officer so acting shall approve for the purpose of carrying out the intentions of the Board of Directors as expressed in the foregoing resolution, the execution, delivery or performance of any such agreement, bill of sale, instrument, deed, certificate or other document and the taking of any such action by such officer to be conclusive evidence of the approval of such officer and the authorization thereof by the Board of Directors; and that, to the extent that any of the actions contemplated by the foregoing has been taken, such action is hereby approved, ratified and confirmed in all respects as if said action was or said actions were taken subsequent to and in full accordance with this resolution.



Denis A. Helm

Earl R. Lewis

Robert J. Rosenthal

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