

05-15-2002



Recor... 1.02090874
TRADEMARKS ONLY

Attorney Docket No. 17833-000300
U.S. DEPARTMENT OF COMMERCE
U.S. Patent and Trademark Office

Form PTO-1594
(Rev. 03-01)
OMB No. 0651-0027 (exp. 5/31/2002)

Tab settings >>> ▼

To the Honorable Commissioner of Patents and Trademarks. Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

VM Labs, Inc.
520 San Antonio Road
Mountain View, CA 94040

5.8102

Individual(s) Association

General Partnership Limited Partnership

Corporation-State California

Other _____

Additional name(s) of conveying parties attached? Yes No

2. Name and address of receiving party(ies)

Name: Genesis Microchip Inc.

Internal Address: _____

Street Address: 2150 Gold Street

City: Alviso State: CA ZIP: 95002

Individual(s) citizenship _____

Association _____

General Partnership _____

Limited Partnership _____

Corporation-State: Delaware

Other _____

If assignee is not domiciled in the United States, a domestic representative designation is attached: Yes No
(Designation must be a separate document from assignment)

Additional name(s) & address(es) attached? Yes No

3. Nature of conveyance:

Assignment Merger

Security Agreement Change of Name

Other _____

Execution Date: February 28, 2002

4. Application Number(s) or Registration Number(s).

A. Trademark Application No(s): 75/539,197; and 75/980,406

B. Trademark Registration No(s):

Additional numbers attached? Yes No

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

Name: Marc M. Gorelnik, Esq.
TOWNSEND AND TOWNSEND AND CREW LLP
Two Embarcadero Center, 8th Floor
San Francisco, California 94111-3834
(415) 576-0200

05/14/2002 TDIAZ1 00000049 201430 75539197

01 FC:481 40.00 CH
02 FC:482 25.00 CH

6. Total number of applications and registrations involved 2

7. Total fee (37 CFR 3.41): \$65.00

Enclosed

Authorized to be charged to deposit account

8. Deposit account number: 20-1430

(Attach duplicate copy of this page if paying by deposit account)

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing is true and correct and any attached copy is a true copy of the original document.

Marc M. Gorelnik *Marc Gorelnik* April 25, 2002

Name of Person Signing Signature Date

Total number of pages including cover sheet, attachments and document: 15

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

TRADEMARK
REEL: 002505 FRAME: 0758

ASSET PURCHASE AGREEMENT

between

VM LABS, INC.

and

GENESIS MICROCHIP INC.
(or its Affiliate designee)

Dated as of February 28, 2002

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "**Agreement**") is made and entered into as of February 28, 2002, by and between VM Labs, Inc., a California corporation and Chapter 11 debtor in possession ("**Seller**"), and Genesis Microchip Inc., a Delaware corporation ("**Genesis**"), or an Affiliate designee of Genesis ("**Purchaser**").

RECITALS

A. Seller is a leading provider of silicon and software solutions for the consumer digital entertainment market and develops technologies that enable the next generation of open, flexible and programmable entertainment platforms (collectively, the "**Business**").

B. On December 3, 2001, an involuntary bankruptcy case was filed against Seller, and on December 17, 2001 (the "**Petition Date**"), Seller converted this case to a voluntary bankruptcy case under Chapter 11 of the United States Bankruptcy Code, 11 U.S.C. § 101, et seq. (the "**Bankruptcy Code**"), assigned Case No. 01-55899-MSJ (the "**Chapter 11 Case**"). Seller's bankruptcy case is pending in the United States Bankruptcy Court for the Northern District of California (the "**Bankruptcy Court**").

C. Seller wishes to sell to Purchaser, and Purchaser wishes to purchase from Seller, the assets relating to the Business, upon the terms and subject to the conditions of this Agreement, and subject to the entry of an order of the Bankruptcy Court authorizing the transactions contemplated hereby.

AGREEMENT

NOW, THEREFORE, in consideration of the above recitals, which are incorporated in this Agreement by reference, and the mutual representations, warranties and agreements contained herein, the parties hereto, intending to be legally bound, agree as follows:

ARTICLE I PURCHASE AND SALE OF ACQUIRED ASSETS

SECTION 1.1. Purchase and Sale.

(a) Upon the terms and subject to the conditions of this Agreement, Seller hereby agrees to sell, assign, transfer, convey and deliver to Purchaser effective as of the Closing, and Purchaser hereby agrees to purchase, effective as of the Closing, all of Seller's right, title and interest in, to and under the Acquired Assets free and clear of all liens and claims, such transfers to be effected pursuant to the General Conveyance, Assignment and Bill of Sale, the Technology Transfer Agreement, the Patent and Trademark Assignments and the Other Intangible Property Assignment referred to in Section 2.2.

(b) For purposes of this Agreement, "**Intellectual Property**" shall mean patents, patent licenses, patent applications, copyrights, copyright applications, trademarks, trade names, service marks, domain names, trade secrets, confidential or proprietary information, discoveries, inventions, know-how, and Technology; and "**Technology**" means the property identified in Schedule 1.2(a)(vi), along with any supporting information, including protocols, formulae, processes, procedures, drawings, plans, designs (including chip designs, chip and mass tooling and proposed product designs), features, data, research, inventions, innovations, operating instructions, computer software, any computer software source code (both human readable and machine readable forms), object code compiled from the source code and any relevant comments, specifications and documentation, test information, market surveys, marketing know-how and the like (whether registered or unregistered).

SECTION 1.2. Acquired Assets and Excluded Assets.

(a) The term "**Acquired Assets**" means all of the business, properties, assets, goodwill and operations of Seller, including without limitation the following assets, but excluding, in each case, any asset which is an Excluded Asset under Section 1.2(c):

(i) Seller's rights under the contracts, leases, agreements, commitments, permits, licenses, franchises, authorizations and other arrangements that are listed or described on Schedule 1.2(a)(i) (the "**Assigned Contracts**"), subject to Section 4.10 hereof.

(ii) All personal property (including machinery, physical plant, furniture and equipment) owned by Seller and not otherwise encumbered by security interests, including all such items listed or described on Schedule 1.2(a)(ii).

(iii) All accounts receivable owed to Seller on the Closing Date, including without limitation all such items listed on Schedule 1.2(a)(iii).

(iv) All items of inventory held for sale by Seller, including all products, raw materials, finished goods, supplies, spare parts, samples and work in progress, including without limitation all such items listed on Schedule 1.2(a)(iv).

(v) All prepaid items, deposits, letters of credit, unused retainers and other similar assets of Seller, including without limitation all such items listed on Schedule 1.2(a)(v) (other than deposits under real estate and equipment leases).

(vi) All Technology and other Intellectual Property owned, held or licensed by Seller, including without limitation the Technology listed on Schedule 1.2(a)(vi) and all trademarks held by or related to NUON Asia KK.

(vii) All goodwill and all going concern value relating to the Business.

(viii) All rights of Seller, subject to any conditions to which such rights are subject, in, to or under all covenants, conditions, warranties, representations and guarantees made or given by suppliers, manufacturers and contractors in connection with the Business or the Acquired Assets.

(ix) All books of account; mailing lists; marketing materials; product orders; business plans; sales records; research data; business development materials; confidential information; general, financial, accounting and credit records; files; invoices; customers' and suppliers' lists; technical documents; manuals; management software tools; databases; computer tapes and other data; all other materials, records, files and data (subject to Seller's right to access such information after the Closing Date in accordance with Section 4.6).

(x) All claims, causes of action or rights of action of Seller relating to the assets itemized in this Section 1.2, along with the right to sue for and collect damages relating thereto.

(xi) Subject to Section 1.2(c)(i), Seller's cash, cash equivalents and securities, whether on hand or on deposit with banks and other institutions on the Closing Date and all rights to such accounts.

(b) Purchaser hereby agrees to assume, effective as of the Closing, and to pay, perform and discharge when due, those obligations and liabilities, other than Excluded Liabilities, arising in connection with the Acquired Assets following the Closing (including moving expenses referred to in the last sentence of Section 4.4). With the exception of cure amounts referred to in Section 4.10(d) that are payable by Purchaser, in no event shall Purchaser assume (A) any obligations or liabilities arising prior to the Closing, or (B) any obligations or liabilities not expressly assumed hereunder (including all obligations and liabilities relating to the Excluded Assets or included in the definition of Excluded Liabilities).

(c) Notwithstanding anything to the contrary herein, the Acquired Assets shall not include the following "Excluded Assets":

(i) The first \$25,000 of proceeds generated after the Petition Date from Seller's accounts receivable (pursuant to the Bankruptcy Court order approving the Paradise post-petition loan documents, such proceeds have been set aside to fund certain bankruptcy-related expenses).

(ii) All rights of Seller under this Agreement and the agreements, instruments and certificates to be delivered by Purchaser to Seller in connection with this Agreement.

(iii) Other than the Assigned Contracts, all agreements or contracts to which Seller is a party, including without limitation any Material Contracts that are not Assigned Contracts.

(iv) Avoidance actions under the Bankruptcy Code and the proceeds thereof.

(v) Any interest of Seller in any affiliate or subsidiary (including NuonAsia KK).

(vi) Subject to Section 4.2(i), any equipment which is on lease from an equipment lessor to Seller.

SECTION 1.3. Excluded Liabilities.

(a) Except as expressly set forth in Section 1.2(b), Purchaser does not assume or agree to perform any liabilities of Seller, including any of the following liabilities of Seller (collectively the "Excluded Liabilities"):

(i) Any obligation or liability of Seller or any other Person not expressly stated to be assumed hereunder.

(ii) Any obligation or liability which is attributable to any of the Excluded Assets (including any contract that is not an Assigned Contract) or any expense arising from any Excluded Asset.

(iii) Any obligation of Seller under any "employee benefit plan," as such term is defined in Section 3(3) of ERISA, which (i) is maintained or sponsored by Seller and (ii) covers any employee of the business of Seller and any obligation of Seller relating to any COBRA matters.

(iv) Any obligation or liability of Seller or of any other Person for any income, sales or any other federal, state or local Taxes for any taxable period (whether beginning before, on or after the Closing Date). For purposes of this Agreement, "Taxes" shall mean all income, franchise, excise, real and personal property, sales, use, payroll and withholding and other taxes imposed by any governmental entity, whether in the form of assessments which are in the nature of taxes or otherwise, together with all interest, penalties and additions imposed with respect to such amounts.

(v) With the exception of (i) moving expenses referred to in the last sentence of Section 4.4 that are payable by Purchaser, and (ii) cure amounts referred to in Section 4.10(d) that are payable by Purchaser, any expense arising from or associated with the sale, assignment, transfer, conveyance or delivery from Seller to Purchaser of the Acquired Assets (including any obligation of Seller to Wit Soundview).

(vi) Any obligation or liability to any creditor or shareholder of Seller, whether or not such creditor or shareholder (I) is listed in Seller's bankruptcy schedules, or (II) filed a request for special notice, and any obligation on a claim (as defined in the Bankruptcy Code).

(vii) Any obligations or liabilities under contracts (including Material Contracts) that are not Assigned Contracts, including all real property leases to which Seller is a party and, subject to Section 4.2(i), all equipment leases to which Seller is a party.

(viii) Any obligation or liability of Seller to Persons employed by Seller including any obligation arising under or in connection with any contract, bonus, pension, profit sharing, deferred compensation, incentive compensation, stock ownership, stock purchase, stock option, phantom stock, retirement, vacation, severance pay, disability, workers' compensation, death benefits, hospitalization, insurance or other similar plan or arrangement or understanding (whether or

not legally binding) providing benefits to any present or former employee of Seller, including present or former employees of Seller employed in the Business.

(ix) Any obligation or liability of Seller which is inconsistent with any representation or warranty of Seller contained in this Agreement or which was incurred in violation of any covenant, agreement or condition contained in this Agreement.

(x) Any obligation or liability of Seller in favor of any of its Affiliates (including NuonAsia KK) or any stockholder of Seller; and any obligation or liability of NuonAsia KK.

(xi) Any obligation or liability of Seller incurred, or imposed under applicable law, to guaranty, support, or hold liable for, directly or indirectly, any liability or obligation of any other Person.

(xii) Any obligation or liability of Seller arising out of or in connection with any pending or threatened suit, action, proceeding, judgment, decree, injunction or ruling or order of a governmental entity or arbitrator, whether or not related to the Business (including without limitation those matters described on Schedule 3.1(e)).

(xiii) Any obligation or liability to any legal counsel or professional advisers advising Seller or any committee appointed in Seller's bankruptcy case.

(xiv) Any obligation or liability of Seller under any environmental law.

(xv) Any obligation or liability of Seller incurred or arising after the Closing Date.

(b) Pursuant to Section 363(f) of the Bankruptcy Code, Purchaser shall acquire the Acquired Assets free and clear of all liens, claims, Excluded Liabilities, obligations and interests of any kind or nature which arise prior to the Closing Date or arise in connection with, or relate to, the Business prior to the Closing Date (whether or not giving rise to a claim as defined in the Bankruptcy Code), including, without limitation, any lien or claim of Paradise IV, Inc. or any of its predecessors in interest.

(c) Subject to the approval of the Bankruptcy Court and Section 4.10, Seller shall assign, and Purchaser shall assume liability under the Assigned Contracts.

SECTION 1.4. Purchase Price; Deposit.

The purchase price for the Acquired Assets (the "**Purchase Price**") shall be US \$13.6 million. Seller acknowledges receipt from Purchaser of \$100,000 as Purchaser's deposit (the "**Deposit**") in accordance with the Bidding Procedures Order. The Deposit shall be applied toward the Purchase Price upon Closing or, if the Closing does not occur due to the failure of one or more of the conditions contained in Section 6.2, Seller shall refund the Deposit to Purchaser.

**ARTICLE II
THE CLOSING**

SECTION 2.1. Closing Date.

The closing of the sale and transfer of the Acquired Assets (hereinafter called the "Closing") shall take place at the offices of Murphy Sheneman Julian & Rogers, 101 California Street, Suite 3900, San Francisco, CA 94111, on a date to be specified by Purchaser that shall be March 29, 2002, or such earlier date after entry of the Approval Order as Purchaser may determine in its sole discretion, in either case provided that no stay of the Approval Order is then in effect, or at such other time, date and place as shall be fixed by agreement among the parties hereto (such date of the Closing hereinafter referred to as the "Closing Date").

SECTION 2.2. Transactions To Be Effected at the Closing.

At the Closing:

(a) Seller shall deliver to Purchaser (i) the General Conveyance, Assignment and Bill of Sale in the form attached hereto as Exhibit A, (ii) the Technology Transfer Agreement attached hereto as Exhibit B, (iii) the Patent and Trademark Assignments attached hereto as Exhibit C, (iv) the Other Intangible Property Assignment attached hereto as Exhibit D, (v) true and complete Schedules updated to the Closing Date, and (vi) such other instruments of sale, transfer, conveyance, assignment and delivery covering the Acquired Assets or any part thereof as Purchaser may reasonably require to assure the full and effective sale, transfer, conveyance, assignment and delivery to Purchaser of the Acquired Assets; and

(b) Purchaser shall pay the net Purchase Price to Seller (after credit for the Deposit), in immediately available funds, by wire transfer to an account designated by Seller.

SECTION 2.3. Risk of Loss.

Until the Closing, any loss of or damage to the Acquired Assets from fire, casualty or any other occurrence not covered by insurance payable to Purchaser shall be the total responsibility of Seller.

**ARTICLE III
REPRESENTATIONS AND WARRANTIES**

SECTION 3.1. Representations and Warranties of Seller.

Seller hereby represents and warrants to Purchaser each of the following, which shall be subject to the fact that Seller has filed the Chapter 11 Case and that various actions require authorization from the Bankruptcy Court: `

(a) Organization, Standing and Power. Seller is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction in which it is incorporated and has the requisite power and authority to own the Acquired Assets and to carry on the Business.

(b) Binding Agreement. This Agreement is made pursuant to California Corporation Code § 1400.

(c) No Violation. To the best of Seller's knowledge, the execution and delivery of this Agreement do not, and the consummation of the transactions contemplated hereby and the compliance with the terms hereof will not, (i) violate any law, judgment, order, decree, statute, ordinance, rule or regulation applicable to Seller; or (ii) conflict with any provision of the certificate of incorporation or by-laws of Seller.

(d) Compliance with Applicable Laws. To the best of Seller's knowledge, Seller has complied in all respects with all laws, statutes, ordinances, regulations, rules and orders of all governmental entities applicable to Seller, the Business or to the Acquired Assets; and has not received any oral or written notification of any asserted violation of the foregoing or commencement of any governmental investigation or review with respect thereto. Seller has complied in all material respects with its obligations under the Bankruptcy Code. To the knowledge of Seller, Seller has all permits, licenses, approvals and authorizations required for the operation of the Business and such permits, licenses, approvals and authorizations are listed under a separate heading on Schedule 1.2(a)(i).

(e) Litigation; Decrees. Schedule 3.1(e) describes all pending and, to the knowledge of Seller, all threatened suits, actions, investigations or proceedings in which Seller is or may be a party (whether as a claimant or a potential defendant). Except as set forth on Schedule 3.1(e), there is no suit, action, investigation or proceeding which is pending or, to the knowledge of Seller, threatened against or affecting Seller relating to or which could affect the Acquired Assets, the Business or the transactions contemplated by this Agreement. There is no judgment, decree, injunction, rule or order of any governmental entity or body relating to the Acquired Assets, the Business or the transactions contemplated hereby.

(f) Undisclosed Liabilities; Liens. Neither the Business nor Seller has any liabilities or obligations of any kind or nature (absolute, accrued, contingent or otherwise), except (i) as disclosed in the Schedules hereto, and (ii) for Excluded Liabilities. As of the date of this Agreement, there are no liens, claims or encumbrances of any kind or nature in or against any of the Acquired Assets except for the liens of Paradise IV, Inc. and, (as the predecessors-in-interest of Paradise IV, Inc. under the loan documents between Seller and Paradise IV, Inc.) Motorola, Inc. and Emerging Alliance Fund, LP.

(g) Intellectual Property and Technology.

(i) Schedule 1.2(a)(vi) sets forth a complete list of all inventions which are the subject of any United States or foreign patents or applications therefor, any trade names, trademarks or service marks which have been registered, applications therefor or for which protection is

claimed, and any copyrights which have been recorded, applications therefor or for which protection is claimed, and any domain names, in each case which are used or held for use by Seller. Except as indicated on Schedule 1.2(a)(vi), all such patents, trade names, trademarks, service marks and domain names are in full force and effect and all payments required to maintain such patents, trade names, trademarks, service marks and domain names have been made.

(ii) Seller is the sole and exclusive owner of all of the Technology and Intellectual Property, including all Intellectual Property embodied in the Technology, and none of the Technology or Intellectual Property, or the exploitation thereof, infringes any patents, copyrights, trademarks, or other intellectual property rights of any other individual, corporation, partnership, joint venture, trust, business association, governmental entity or other entity (hereinafter, a "Person").

(iii) Except as set forth on Schedule 3.1(e) Seller has not received any oral or written notice from any other Person pertaining to or challenging the right of Seller to use any of the Technology or Intellectual Property or any rights therein.

(iv) There are no interferences or other contested proceedings, either pending or, to the knowledge of Seller, threatened, in the United States Copyright Office, the United States Patent and Trademark Office or any Federal, state or local court or before any other governmental agency or tribunal, relating to any of Seller's patents, patent applications, trademarks, trademark applications or domain names.

(h) Material Contracts. Schedule 3.1(h) lists all Material Contracts to which Seller is a party or by which Seller is bound, which are presently in effect (identifying, in each case, the date of such contract and the counterparty to such contract). "Material Contracts" means any contract or agreement to which Seller is a party which falls into any of the following categories: (A) licenses and sublicenses of Intellectual Property (whether Seller is a licensor or licensee); (B) assignments of Intellectual Property (whether Seller is an assignor or an assignee); (C) other contracts or agreements to which Seller is a party involving the payment by or to Seller of more than \$20,000 per annum; (D) agreements containing noncompete, exclusivity or "most favored treatment" provisions whether made by or in favor of Seller; and (E) settlement agreements; together with all contracts meeting any of the foregoing tests entered into between the date of this Agreement and the Closing Date. Seller has made available to Purchaser or its representatives complete and correct copies of all Material Contracts in effect as of the date of this Agreement.

(i) Scope of Acquired Assets. The Acquired Assets comprise all the business, properties, assets (including Intellectual Property and Technology) and goodwill that is owned by Seller, other than the Excluded Assets.

(i) Absence of Certain Changes or Events. Except as set forth on Schedule 3.1(i), since September 1, 2001 (other than the commencement of the Chapter 11 Case), there has not been any:

2002 3:52 PM FR

TO 14154217879

P.1

VM LABS, INC.
SCHEDULE OF INTELLECTUAL PROPERTY Continued
Schedule 1.2(a)(vi)
Jan. 15, 2002

Trademark	Serial No.
NUON	Ser. No. 75 / 539,197
NUON	Ser. No. 75 / 980,406

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

VM LABS, INC.

By: _____

Name:

Title:

GENESIS MICROCHIP INC.,
a Delaware corporation

By: Ken Murray

Name: KEN MURRAY

Title: VP HUMAN RESOURCES

IN WITNESS WHEREOF, Seller and Purchaser have caused this Agreement to be signed by their respective officers thereunto duly authorized, all as of the date first written above.

VM LABS, INC.

By: 
Name: RICHARD MILLER
Title: CEO

GENESIS MICROCHIP INC.,
a Delaware corporation

By: _____
Name:
Title:

**REGISTERED TRADEMARK
AND TRADEMARK APPLICATION ASSIGNMENT**

This Registered Trademark and Trademark Application Assignment (this "Assignment") is made as of _____, 2002 by VM Labs, Inc., a California corporation ("Assignor"), to Genesis Microchip Inc., a Delaware corporation ("Assignee").

RECITALS

A. Assignor and Assignee are parties to an Asset Purchase Agreement dated February 28, 2002 (the Purchase Agreement").

B Pursuant to the Purchase Agreement, Assignor desires to assign to Assignee all of Assignor's right, title and interest in and to the trademarks registered and the trademark applications filed with the United States Patent and Trademark Office and set forth on Exhibit A hereto collectively,(herein the "Trademarks) together with the goodwill of the business pertaining thereto.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants and agreements contained in the Purchase Agreement and the covenants and agreements in this Assignment and to induce Assignee to consummate the transactions contemplated by the Purchase Agreement, Assignor agrees as follows:

1. Assignor does hereby sell, transfer, convey, assign and deliver to Assignee all of Assignor's right, title and interest in and to the Trademarks together with the goodwill of the business pertaining thereto, the same to be held by Assignee for Assignee's own use and enjoyment, and for the use and enjoyment of Assignee's successors, assigns and other legal representatives, as fully and entirely as the same would have been held and enjoyed by Assignor if this Assignment and sale had not been made; together with all claims for damages by reason of past infringements of the Trademarks, along with the right to sue for and collect such damages for the use and benefit of Assignee and its successors, assigns and other legal representatives.

IN WITNESS WHEREOF, Assignor has executed this Assignment on the date first above written.

VM Labs, Inc.

By: _____



Name: Richard Miller

Title: Chief Executive Officer