

05-31-2005



R SHEET  
LY

Docket No. 917.003

5/26/05

103011504

TO: The Commissioner of F...

the attached original document(s) or copy(ies).

<b>Submission Type</b> <input checked="" type="checkbox"/> New <input type="checkbox"/> Resubmission (Non-Recordation) Document ID# <input type="checkbox"/> Correction of PTO Error Reel #          Frame # <input type="checkbox"/> Corrective Document Reel #          Frame #	<b>Conveyance Type</b> <input type="checkbox"/> Assignment <input type="checkbox"/> License <input type="checkbox"/> Security Agreement <input type="checkbox"/> Nunc Pro Tunc Assignment Effective Date Month Day Year <input type="checkbox"/> Merger <input type="checkbox"/> Change of Name <input checked="" type="checkbox"/> Other – Asset Purchase Agreement
--	---

**Conveying Party** ( ) Mark if additional names of conveying parties attached

Name          NANODEVICES INCORPORATED Formerly	Execution Date Month Day Year April 1, 2003
--	---

Individual     General Partnership     Limited Partnership     Corporation     Association  
 Other  
 Citizenship/State of Incorporation/Organization

**Receiving Party** ( ) Mark if additional names of receiving parties attached

Name    FIRST NANO, INC.  
 DBA/AKA/TA  
 Composed of  
 Address (line 1)    1015 Mark Avenue  
 Address (line 2)

APR 26 AM 7:24  
 OPR/FINANCE

Address (line 3)	Carpinteria city	California USA State/Country	93013 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

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

05/27/2005 DBYRNE 00000088 76388149  
 01 FC:8521 40.00 OP

**Domestic Representative Name and Address**

Enter for the first Receiving Party only

Name Jay G. Durst

Address (line 1) Boyle Fredrickson Newholm Stein & Gratz S.C.

Address (line 2) 250 East Wisconsin Avenue, Suite 1030

Address (line 3) Milwaukee, WI 53202-

Address (line 4)

**Correspondent Name and Address**

Area Code and Telephone Number 414.225.9755

Name Jay G. Durst

Address (line 1) Boyle Fredrickson Newholm Stein & Gratz S.C.

Address (line 2) 250 East Wisconsin Avenue, Suite 1030

Address (line 3) Milwaukee, WI 53202-

Address (line 4)

**Pages**

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

12

**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)

76/388,149

**Number of Properties**

Enter the total number of properties involved.

# 1

**Fee Amount**

Fee Amount for Properties Listed (37 CFR 3.41):

\$ 40.00

Method of Payment:

Enclosed ( x )

Deposit Account ( )

Deposit Account

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

Deposit Account Number:

# 50-1170

Authorization to charge additional fees: Yes ( x ) 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.

Jay G. Durst

Name of Person Signing

Signature

May 24, 2005

Date

## ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is entered into as of April 1, 2003, by and between NANODEVICES INCORPORATED, a California corporation ("Seller") and FIRST NANO, INC., a California corporation ("Buyer").

### RECITALS

- A. Seller is engaged in, among other things, the production and sale of Nanotube Furnace products under the EasyTube® trademark (the "Business").
- B. Buyer wishes to purchase from Seller, and Seller wishes to transfer to Buyer, certain of Seller's assets relating to the Business, all on the terms and conditions set forth in this Agreement.

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises contained herein, and intending to be legally bound, the parties agree as follows:

#### 1. Purchase and Sale of Assets.

1.1 Assets. Subject to the terms and conditions of this Agreement, Seller hereby contributes, transfers, assigns and delivers to Buyer all of Seller's right, title and interest in and to the following assets (collectively, the "Assets"):

1.1.1 *Inventory.* The inventory, parts, raw materials, work in process and finished goods relating to the Business valued at \$41,823.47.

1.1.2 *Equipment.* The equipment and other tangible personal property relating to the Business set forth on Schedule 1.1.1 hereto.

1.1.3 *Intellectual Property.* The trademarks set forth on Schedule 1.1.2 hereto, and all copyrights, trade secrets, confidential information, know-how, customer lists, customer information and other intellectual Property relating to the Business.

1.1.4 *Good Will.* The goodwill attributable to the Business.

The Assets shall not include any cash, accounts receivable or other assets not specifically enumerated above. Buyer hereby acknowledges receipt of an executed Bill of Sale from Seller with respect to the Assets in the form attached as Exhibit A.

1.2 Assumed Liabilities. Buyer hereby assumes the following liabilities of Seller (the "Assumed Liabilities"):

1.2.1 *Warranty Liabilities.* All product warranty liabilities of Seller relating to the Business.

1.2.2 No Other Liabilities Assumed. The Assumed Liabilities shall not include any accrued accounts payable of Seller or other liabilities not specifically enumerated above.

1.3 Consideration. In addition to the assumption of the Assumed Liabilities, Buyer shall pay Seller \$56,457.47 (the "Cash Consideration") on the date hereof.

1.4 Allocation of Purchase Price. The parties agree that the purchase price for the Assets (consisting of the Cash Consideration and the value of the Assumed Liabilities) shall be allocated among the Assets as set forth on Schedule 1.5 hereto. Schedule 1.5 has been prepared in accordance with Section 1060 of the Internal Revenue Code of 1986, as amended, and the regulations thereunder. Such allocation shall be binding on the parties for all purposes, including financial accounting and tax purposes. Each party agrees to file Internal Revenue Service Form 8594, and all federal, state, local and foreign tax returns, in accordance with Schedule 1.5. Each party agrees to provide the other promptly with any other information required to complete Form 8594.

1.5 Taxes. Seller shall be liable for and shall pay any sales tax, use tax and documentary stamp tax directly attributable to the sale or transfer of the Assets or the Assumed Liabilities by Seller to Buyer pursuant to this Agreement. As soon as practicable after the date hereof, Buyer shall sign and deliver to Seller such certificates reasonably requested by Seller within a reasonable time in advance thereof in order to establish an exemption from (or otherwise reduce) such taxes, including, to the extent appropriate, but not limited to, a valid California resale exemption certificate.

1.6 Proration of Other Charges. The parties shall prorate other charges and expenses that would otherwise be paid by one party for the benefit of the other with respect to the Assets as of the date hereof within 30 days from the date hereof.

1.7 Further Assurances. Seller, at any time after the date hereof, will execute and deliver any further assignments and other instruments of transfer as are reasonably requested by Buyer, and will take any other action consistent with the terms of this Agreement that may reasonably be requested by Buyer for the purpose of confirming to Buyer, or reducing to Buyer's possession, any of the Assets. Upon the request of Seller at any time after the date hereof, without further consideration, Buyer will execute and deliver such further instruments of assumption and take such other actions as Seller reasonably may require for Buyer to more effectively assume or evidence the assumption of the Assumed Liabilities.

2. Representations and Warranties of Seller. Seller hereby represents and warrants to Buyer as follows:

2.1 Organization. Seller is a corporation duly organized, validly existing and in good standing under the laws of the State of California.

2.2 Authorization. The execution, delivery and performance of this Agreement by Seller have been duly and validly authorized by all necessary corporate action on the part of Seller. This Agreement constitutes the legally valid and binding obligation of Seller, enforceable against Seller in accordance with its terms.

2.3 **Assets.** THE ASSETS ARE BEING SOLD TO BUYER BY SELLER ON AN "AS IS" BASIS. SELLER EXPRESSLY DISCLAIMS, AND BUYER HEREBY EXPRESSLY WAIVES, ALL WARRANTIES RELATING TO THE ASSETS, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND INFRINGEMENT.

3. **Representations and Warranties of Buyer.** Buyer hereby represents and warrants to Seller as follows:

3.1 **Organization.** Buyer is a corporation duly organized, validly existing and in good standing under the laws of the State of California.

3.2 **Authorization.** The execution, delivery and performance of this Agreement by Buyer have been duly and validly authorized by all necessary corporate action on the part of Buyer. This Agreement constitutes the legally valid and binding obligation of Buyer, enforceable against Buyer in accordance with its terms.

4. **Covenants.**

4.1 **Employees.** Buyer shall have the right to make employment offers to Seller's employees listed on **Schedule 4.1** hereto. The terms of such employment offers will be within Buyer's discretion, provided that they are in compliance with all applicable laws and regulations.

4.2 **Sublease.** Buyer and Seller shall enter into a sublease in the form attached hereto as **Exhibit B.**

4.3 **Consents.** Seller agrees to obtain all necessary consents to the assignment of the Assets and the assumption of the Assumed Liabilities.

4.4 **Cooperation.** Each party agrees to cooperate fully, as and to the extent reasonably requested by the other party, in connection with any audit, litigation or other proceeding by a third party after the date hereof. Such cooperation shall include the retention and (upon the other party's request) the provision of records and information which are reasonably relevant to any such audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder.

4.5 **Waiver of Bulk Sales Compliance.** The parties hereby waive compliance with the provisions of any applicable bulk sales law, or any similar law, of any state.

5. **General.**

5.1 **Amendments; Waivers.** This Agreement and any schedule or exhibit attached hereto may be amended only by agreement in writing of all parties. No waiver of any provision nor consent to any exception to the terms of this Agreement or any agreement contemplated hereby shall be effective unless in writing and signed by the party to be bound and then only to the specific purpose, extent and instance so provided.

5.2 Schedules; Exhibits; Integration. Each schedule and exhibit delivered pursuant to the terms of this Agreement shall be in writing and shall constitute a part of this Agreement, although schedules need not be attached to each copy of this Agreement. This Agreement, together with such schedules and exhibits, constitutes the entire agreement among the parties pertaining to the subject matter hereof and supersedes all prior agreements and understandings of the parties in connection therewith.

5.3 Governing Law. This Agreement and the legal relations between the parties shall be governed by and construed in accordance with the laws of the State of California applicable to contracts made and performed in such State and without regard to conflicts of law doctrines.

5.4 Counterparts. This Agreement and any amendment hereto or any other agreement (or document) delivered pursuant hereto may be executed in one or more counterparts and by different parties in separate counterparts. All of such counterparts shall constitute one and the same agreement (or other document) and shall become effective (unless otherwise provided therein) when one or more counterparts have been signed by each party and delivered to the other party. The facsimile transmission of any original signed counterpart of this Agreement (or any amendment hereto or any other document delivered pursuant hereto), and the retransmission of any signed facsimile transmission, shall be treated for all purposes as the delivery of an original signed counterpart.

5.5 Parties in Interest. This Agreement shall be binding upon and inure to the benefit of each party, and nothing in this Agreement, express or implied, is intended to confer upon any other person any rights or remedies of any nature whatsoever under or by reason of this Agreement. Nothing in this Agreement is intended to relieve or discharge the obligation of any third person to (or to confer any right of subrogation or action against) any party to this Agreement.

5.6 Notices. Except as otherwise provided herein, any notice or other communication to be given hereunder shall be in writing and shall be (as elected by the party giving such notice): (i) personally delivered; (ii) transmitted by postage prepaid registered or certified airmail, return receipt requested; (iii) transmitted by electronic mail via the Internet with receipt being acknowledged by the recipient by return electronic mail; (iv) transmitted by facsimile (with a copy of such transmission by postage paid prepaid registered or certified airmail, return receipt requested); or (v) deposited prepaid with a nationally recognized overnight courier service. Unless otherwise provided herein, all notices shall be deemed to have been duly given on: (a) the date of receipt (or if delivery is refused, the date of such refusal) if delivered personally, by electronic mail, facsimile or by courier; or (b) three (3) days after the date of posting if transmitted by mail. Notice hereunder shall be directed to a party at the address for such party which is set forth as follows:

If to Buyer, addressed to:

First Nano, Inc.  
5571 Ekwill Street, Suite A  
Santa Barbara, CA 93111  
Attention: Dennis M. Adderton  
Facsimile No.: (805) 681-7038  
E-mail: dennis.adderton@firstnano.com

If to Seller, addressed to:

NanoDevices Incorporated  
5571 Ekwill Street, Suite B  
Santa Barbara, CA 93111  
Attention: Stephen C. Minne, Ph.D.  
Facsimile No.: (805) 696-9003  
E-mail: steve@nanodevices.com

or to such other address or to such other person as any party shall have last designated by such notice to the other party.

5.7 Attorney's Fees. Should any action or proceeding be brought to construe or enforce the terms and conditions of this Agreement or the rights of the parties hereunder, the losing party shall pay to the prevailing party all court costs and reasonable attorneys' fees and costs (at the prevailing party's attorneys then-current rates) incurred in such action or proceeding.

5.8 Waiver. No failure on the part of any party to exercise or delay in exercising any right hereunder shall be deemed a waiver thereof, nor shall any single or partial exercise preclude any further or other exercise of such or any other right.

5.9 Severability. If any provision of this Agreement is determined to be invalid, illegal or unenforceable by any court, the remaining provisions of this Agreement shall remain in full force and effect provided that the essential terms and conditions of this Agreement for both parties remain valid, binding and enforceable.

5.10 Time. Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Agreement.

*(Signature page follows)*

**IN WITNESS WHEREOF**, each of the parties hereto has caused this Agreement to be executed by its duly authorized officers, as of the day and year first above written.

**"Seller"**

**"Buyer"**

**NANODEVICES INCORPORATED**, a  
California corporation

**FIRST NANO, INC.**, a California  
corporation

By 

Name: Stephen C. Minne, Ph.D.

Title: President

By 

Name: Dennis M. Adderton

Title: President



**List of Schedules and Exhibits**

Schedule 1.1.1	Equipment
Schedule 1.1.2	Intellectual Property
Schedule 1.5	Allocation of Purchase Price
Schedule 4.1	Employees
Exhibit A	Form of Bill of Sale

**SCHEDULE 1.1.1****EQUIPMENT**

<b>#</b>	<b>Equipment</b>	<b>Fair Market Value</b>
1	Halon Alt. Fire Extinguisher	500.00
2	Sartorius H110	500.00
3	ColeParmer - 220V 50/60hz Oven 5 cu. ft.	750.00
4	Two Computer Monitors	200.00
5	CPQ 5003 US Desktop Computer	472.00
6	Compaq 7001CL	679.00
7	File Cabinet/Desk	330.00
8	Furniture	946.00
9	Large Display Monitor	1,000.00
10	Digital Camera	1,000.00
11	Sony GRX550 P4 1.6 Ghz Laptop	1,500.00
12	Furniture	250.00
13	Edge 10' curve pop up exhibit stand	500.00
14	Two PC Club Computers Desktops	400.00
15	Furniture	250.00
16	Dennis' PC Club Computers	2,000.00
17	Circuit City Video Camera	1,000.00
18	PC Club Computer Desktop - Silvana	857.00
19	PC Club Computer Desktop - Shawn	1,500.00
	<b>Total Fixed Assets to be Sold to First Nano, Inc.</b>	<b>\$ 14,634.00</b>

**SCHEDULE 1.1.3**

**TRADEMARKS**

U.S. Trademark  
"EASYTUBE"

U.S. Trademark  
"EASYTUBE NANOFURNACE"

**SOFTWARE**

EasyTube control software Labview sourcecode.

**PATENTS**

U.S. Patent application  
Method and Apparatus of Carbon Nanotube Fabrication (10/402,454)

U.S. Patent Application  
Method and Apparatus of Carbon Nanotube Fabrication (10/402,455)

**SCHEDULE 1.1.3 (continue)**

**EMPLOYMENT AGREEMENTS**

Employment Agreement dated August 18, 2002, between NanoDevices and Erin Leigh Ford.

Employment Agreement dated March 13, 2002, between NanoDevices and Nathan Robert Franklin.

Employment Agreement dated April 9, 2003, between NanoDevices and Silvana Kelly.

Employment Agreement dated April 6, 2000, between NanoDevices and Jonathan W. Lai.

Employment Agreement dated April 28, 2002, between NanoDevices and Brian Y. Lim.

Employment Agreement dated October 28, 2002, between NanoDevices and Evan H. Nakamo.

Employment Agreement dated August 7, 2002, between NanoDevices and Thomas Wray Tombler, Jr.

Employment Agreement dated July 25, 2002, between NanoDevices and Lam Sic Vuong.

Employment Agreement dated November 1, 2002 between NanoDevices and Hong Zhong.

Proprietary Information and Inventions Agreement dated October 9, 2002 between NanoDevices and Thomas Wray Tombler, Jr.

**SCHEDULE 1.5**

**ALLOCATION OF PURCHASE PRICE**

**Nano Devices, Inc.  
Proposed Purchase Price allocation  
March 31, 2003**

**Tentative and Preliminary**

Total Sale Consideration from First Nano		56,457.47
Less: Liabilities		
Schedule 1.2.1	Warranty Liabilities	<hr/> -
		<hr/> <b>56,457.47</b>
	<b>Assets Taken Over:</b>	
Schedule 1.1.1	Inventory	41,823.47
Schedule 1.1.2	Equipment	14,634.00
Schedule 1.1.3	Intellectual Property	-
		<hr/>
Net Consideration		<hr/> <b>56,457.47</b>

**SCHEDULE 4.1**

**EMPLOYEES**

1. Silvana Kelly
2. Lam Sic Vuong