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TO: SARAH WITHERS COMPANY: 3290 NORTHSIDE PARKWAY

TRADEMARK ASSIGNMENT

Electronic Version v1.1
Stylesheet Version v1.104/01/2009
900130726

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	SECURITY INTEREST		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Aquephotonics, Inc.		03/09/2009	CORPORATION: CALIFORNIA
RECEIVING PARTY DATA			
Name:	Gregory Probert		
Street Address:	2454 Ridgeway Road		
City:	San Marino		
State/Country:	CALIFORNIA		
Postal Code:	91108		
Entity Type:	INDIVIDUAL: CALIFORNIA		
PROPERTY NUMBERS Total: 1			
Property Type	Number	Word Mark	
Serial Number:	78533580	AQUA-RX	
CORRESPONDENCE DATA			
Fax Number:	(678)553-2693		
<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>			
Phone:	6785532692		
Email:	withersS@gtlaw.com		
Correspondent Name:	Sarah Withers		
Address Line 1:	3290 Northside Parkway		
Address Line 2:	Suite 400		
Address Line 4:	Atlanta, GEORGIA 30327		
ATTORNEY DOCKET NUMBER:	108788.010200		
NAME OF SUBMITTER:	Sarah Withers		
Signature:	/S. Withers/		
Date:	04/01/2009		

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Total Attachments: 11

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PATENT AND TRADEMARK SECURITY AGREEMENT

This Patent and Trademark Security Agreement (the "Agreement"), dated as of March 4, 2009, is made by and between Aquaphotonics, Inc., a California corporation having a business location at 2091 Rutherford Road, Carlsbad, California 92008 (the "Company"), and Gregory Probert ("Lender"), having an address of 2454 Ridgeway Road, San Marino, California 91108.

Recitals

A. Company and Lender are parties to a Loan and Security Agreement (as amended, supplemented or restated from time to time, the "Loan Agreement") dated the same date as this Agreement, setting forth the terms on which Lender may now or hereafter extend credit to or for the account of Company.

B. As a condition to extending credit to or for the account of Company, Lender has required the execution and delivery of this Agreement by Company.

ACCORDINGLY, in consideration of the mutual covenants contained in the Loan Documents and herein, the parties hereby agree as follows:

1. Definitions. All terms defined in the Recitals hereto or in the Loan Agreement that are not otherwise defined herein shall have the meanings given to them in the Loan Agreement. In addition, the following terms have the meanings set forth below:

"Patents" means all of Company's right, title and interest in and to patents or applications for patents, fees or royalties with respect to each, and including without limitation the right to sue for past infringement and damages therefor, and licenses thereunder, all as presently existing or hereafter arising or acquired, including without limitation the patents listed on Exhibit A.

"Security Interest" has the meaning given in Section 2.

"Trademarks" means all of Company's right, title and interest in and to: (i) trademarks, service marks, collective membership marks, registrations and applications for registration for each, and the respective goodwill associated with each, (ii) licenses, fees or royalties with respect to each, (iii) the right to sue for past, present and future infringement, dilution and damages therefor, and (iv) licenses thereunder, all as presently existing or hereafter arising or acquired, including, without limitation, the marks listed on Exhibit B.

2. Security Interest. Company hereby irrevocably pledges and assigns to, and grants Lender a security interest (the "Security Interest") with power of sale to the extent permitted by law, in the Patents and in the Trademarks to secure payment of the Indebtedness. As set forth in the Loan Agreement, the Security Interest is coupled with a security interest in substantially all of the personal property of Company. This Agreement grants only the Security

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Interest herein described, is not intended to and does not affect any present transfer of title of any trademark registration or application and makes no assignment and grants no right to assign or perform any other action with respect to any intent to use trademark application, unless such action is permitted under 15 U.S.C. § 1060.

3. Representations, Warranties and Agreements. Company represents, warrants and agrees as follows:

- (a) **Existence; Authority.** Company is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, and this Agreement has been duly and validly authorized by all necessary corporate action on the part of Company.
- (b) **Patents.** Exhibit A accurately lists all Patents owned or controlled by Company as of the date hereof, or to which Company has a right as of the date hereof to have assigned to it, and accurately reflects the existence and status of applications and letters patent pertaining to the Patents as of the date hereof. If after the date hereof, Company owns, controls or has a right to have assigned to it any Patents not listed on Exhibit A, or if Exhibit A ceases to accurately reflect the existence and status of applications and letters patent pertaining to the Patents, then Company shall promptly but in all events within 15 days provide written notice to Lender with a replacement Exhibit A, which upon acceptance by Lender shall become part of this Agreement.
- (c) **Trademarks.** Exhibit B accurately lists all Trademarks owned or controlled by Company as of the date hereof and accurately reflects the existence and status of Trademarks and all applications and registrations pertaining thereto as of the date hereof; provided, however, that Exhibit B need not list common law marks (i.e., Trademarks for which there are no applications or registrations) which are not material to Company's or any Affiliate's business(es). If after the date hereof, Company owns or controls any Trademarks not listed on Exhibit B (other than common law marks which are not material to Company's or any Affiliate's business(es)), or if Exhibit B ceases to accurately reflect the existence and status of applications and registrations pertaining to the Trademarks, then Company shall promptly but in all events within 15 days provide written notice to Lender with a replacement Exhibit B, which upon acceptance by Lender shall become part of this Agreement.
- (d) **Affiliates.** As of the date hereof, no Affiliate owns, controls, or has a right to have assigned to it any items that would, if such item were owned by Company, constitute Patents or Trademarks. If after the date hereof any Affiliate owns, controls, or has a right to have assigned to it any such items, then Company shall promptly either: (i) cause such Affiliate to assign all of its rights in such item(s) to Company; or (ii) notify Lender of such item(s) and cause such Affiliate to execute and deliver to Lender a patent and trademark security agreement substantially in the form of this Agreement.
- (e) **Title.** Company has absolute title to each Patent and each Trademark listed on Exhibits A and B, free and clear of all Liens except Permitted Liens. Company

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(i) will have, at the time Company acquires any rights in Patents or Trademarks hereafter arising, absolute title to each such Patent or Trademark free and clear of all Liens except Permitted Liens, and (ii) will keep all Patents and Trademarks free and clear of all Liens except Permitted Liens.

(f) **No Sale.** Except as permitted in the Loan Agreement, Company will not assign, transfer, encumber or otherwise dispose of the Patents or Trademarks, or any interest therein, without Lender's prior written consent.

(g) **Defense.** Company will at its own expense and using commercially reasonable efforts, protect and defend the Patents and Trademarks against all claims or demands of all Persons other than those holding Permitted Liens.

(h) **Maintenance.** Company will at its own expense maintain the Patents and the Trademarks to the extent reasonably advisable in its business including, but not limited to, filing all applications to obtain letters patent or trademark registrations and all affidavits, maintenance fees, annuities, and renewals possible with respect to letters patent, trademark registrations and applications therefor. Company covenants that it will not abandon nor fail to pay any maintenance fee or annuity due and payable on any Patent or Trademark, nor fail to file any required affidavit or renewal in support thereof, without first providing Lender: (i) sufficient written notice, of at least 30 days, to allow Lender to timely pay any such maintenance fees or annuities which may become due on any Patents or Trademarks, or to file any affidavit or renewal with respect thereto, and (ii) a separate written power of attorney or other authorization to pay such maintenance fees or annuities, or to file such affidavit or renewal, should such be necessary or desirable.

(i) **Lender's Right to Take Action.** If Company fails to perform or observe any of its covenants or agreements set forth in this Section 3, and if such failure continues for a period of ten (10) calendar days after Lender gives Company written notice thereof (or, in the case of the agreements contained in subsection (h), immediately upon the occurrence of such failure, without notice or lapse of time), or if Company notifies Lender that it intends to abandon a Patent or Trademark, Lender may (but need not) perform or observe such covenant or agreement or take steps to prevent such intended abandonment on behalf and in the name, place and stead of Company (or, at Lender's option, in Lender's own name) and may (but need not) take any and all other actions which Lender may reasonably deem necessary to cure or correct such failure or prevent such intended abandonment.

(j) **Costs and Expenses.** Except to the extent that the effect of such payment would be to render any loan or forbearance of money usurious or otherwise illegal under any applicable law, Company shall pay Lender on demand the amount of all moneys expended and all costs and expenses (including reasonable attorneys' fees and disbursements) incurred by Lender in connection with or as a result of Lender's taking action under subsection (i) or exercising its rights under Section 6, together with interest thereon from the date expended or incurred by Lender at the Default Rate.

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(k) **Power of Attorney.** To facilitate Lender's taking action under subsection (i) and exercising its rights under Section 6, Company hereby irrevocably appoints (which appointment is coupled with an interest) Lender, or its delegate, as the attorney-in-fact of Company with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of Company, any and all instruments, documents, applications, financing statements, and other agreements and writings required to be obtained, executed, delivered or endorsed by Company under this Section 3, or, necessary for Lender, after an Event of Default, to enforce or use the Patents or Trademarks or to grant or issue any exclusive or non-exclusive license under the Patents or Trademarks to any third party, or to sell, assign, transfer, pledge, encumber or otherwise transfer title in or dispose of the Patents or Trademarks to any third party. Company hereby ratifies all that such attorney shall lawfully do or cause to be done by virtue hereof. The power of attorney granted herein shall terminate upon the termination of the Loan Agreement as provided therein and the payment and performance of all indebtedness.

4. **Company's Use of the Patents and Trademarks.** Company shall be permitted to control and manage the Patents and Trademarks, including the right to exclude others from making, using or selling items covered by the Patents and Trademarks and any licenses thereunder, in the same manner and with the same effect as if this Agreement had not been entered into, so long as no Event of Default occurs and remains uncured.

5. **Events of Default.** Each of the following occurrences shall constitute an event of default under this Agreement (herein called "Event of Default"): (a) an Event of Default, as defined in the Loan Agreement, shall occur; or (b) Company shall fail promptly to observe or perform any covenant or agreement herein binding on it; or (c) any of the representations or warranties contained in Section 3 shall prove to have been incorrect in any material respect when made.

6. **Remedies.** Upon the occurrence of an Event of Default and at any time thereafter, Lender may, at its option, take any or all of the following actions:

(a) Lender may exercise any or all remedies available under the Loan Agreement.

(b) Lender may sell, assign, transfer, pledge, encumber or otherwise dispose of the Patents and Trademarks.

(c) Lender may enforce the Patents and Trademarks and any licenses thereunder, and if Lender shall commence any suit for such enforcement, Company shall, at the request of Lender, do any and all lawful acts and execute any and all proper documents required by Lender in aid of such enforcement.

7. **Miscellaneous.** This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by Lender. A waiver signed by Lender shall be effective only in the specific instance and

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for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of Lender's rights or remedies. All rights and remedies of Lender shall be cumulative and may be exercised singularly or concurrently, at Lender's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other. All notices to be given to Company under this Agreement shall be given in the manner and with the effect provided in the Loan Agreement. Lender shall not be obligated to preserve any rights Company may have against prior parties, to realize on the Patents and Trademarks at all or in any particular manner or order, or to apply any cash proceeds of Patents and Trademarks in any particular order of application. This Agreement shall be binding upon and inure to the benefit of Company and Lender and their respective participants, successors and assigns and shall take effect when signed by Company and delivered to Lender, and Company waives notice of Lender's acceptance hereof. Lender may execute this Agreement if appropriate for the purpose of filing, but the failure of Lender to execute this Agreement shall not affect or impair the validity or effectiveness of this Agreement. A carbon, photographic or other reproduction of this Agreement or of any financing statement signed by Company shall have the same force and effect as the original for all purposes of a financing statement. This Agreement shall be governed by the internal law of the State of California without regard to conflicts of law provisions. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Indebtedness.

THE PARTIES WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING BASED ON OR PERTAINING TO THIS AGREEMENT.

[SIGNATURES ON FOLLOWING PAGE]

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IN WITNESS WHEREOF, the parties have executed this Patent and Trademark Security Agreement as of the date written above.

AQUAPHOTONICS, INC.

By: [Signature]
Name: ALFONSO TUMI
Title: SECRETARY

[Signature]
GREGORY PROBERT

STATE OF CALIFORNIA)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of March, 2009, by _____, the _____ of Aquaphotonics, Inc., a California corporation, on behalf of the corporation.

Notary Public

STATE OF CALIFORNIA)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ___ day of March, 2009, by Gregory Probert.

Notary Public

see attached

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TO: SARAH WITHERS COMPANY: 3290 NORTHSIDE PARKWAY

State of California)

County of San Diego)

CALIFORNIA ALL-PURPOSE
CERTIFICATE OF ACKNOWLEDGMENT

On March 9, 2009 before me, Sheila Rockwell
(here insert name and title of the officer)

personally appeared Alfonso Tumini

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature Sheila Rockwell

(Seal)

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of Patent & Trademark Security Agreement containing 14 pages, and dated March 9/09 Exhibits

The signer(s) capacity or authority is/are as:

- Individual(s)
- Attorney-in-Fact
- Corporate Officer(s) Secretary

- Guardian/Conservator
- Partner - Limited/General
- Trustee(s)
- Other:

representing: Agua Photonics, Inc.
(Name of Person(s) or Entity(ies) Signer is Representing)

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:
 form(s) of identification credible witness(es)

Notarial event is detailed in notary journal on:
 Page # 10 Entry # 4

Notary contact: (760) 717-9481

Other

Additional Signer(s) Signer(s) Thumbprint(s)

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TO: SARAH WITHERS COMPANY: 3290 NORTHSIDE PARKWAY

State of California)

County of San Diego)

**CALIFORNIA ALL-PURPOSE
CERTIFICATE OF ACKNOWLEDGMENT**

On March 9, 2009 before me, Sheila Rockwell
(here insert name and title of the officer)

personally appeared Gregory Roberts

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Sheila Rockwell



(Seal)

OPTIONAL INFORMATION

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of Patent & Trademark Security Agreement containing 6+ pages, and dated March 9, 2009 exhibits

The signer(s) capacity or authority is/are as:

- Individual(s)
- Attorney-in-Fact
- Corporate Officer(s) Leader Title(s)

- Guardian/Conservator
- Partner - Limited/General
- Trustee(s)
- Other: _____

representing: Aqua Photonics, Inc.
(Name(s) of Person(s) or Entity(ies) Signer is Representing)

Additional Information	
Method of Signer Identification	
Proved to me on the basis of satisfactory evidence: <input checked="" type="checkbox"/> form(s) of identification <input type="checkbox"/> credible witness(es)	
Notarial event is detailed in notary journal on: Page # <u>10</u> Entry # <u>2</u>	
Notary contact: <u>(760) 717-9481</u>	
Other	
<input checked="" type="checkbox"/> Additional Signer(s)	<input checked="" type="checkbox"/> Signer(s) Thumbprint(s)
<input type="checkbox"/>	

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EXHIBIT A

UNITED STATES ISSUED PATENTS

United States Patent # 6,521,248

United States Patent # 7,198,254

UNITED STATES PATENT APPLICATIONS

None

FOREIGN ISSUED PATENTS

None

FOREIGN PATENT APPLICATIONS

None

Exhibit A

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EXHIBIT B

UNITED STATES ISSUED TRADEMARKS, SERVICE MARKS

AND COLLECTIVE MEMBERSHIP MARKS

None

REGISTRATIONS

None

APPLICATIONS

"AQUA-RX" filed 07/18/2003 under US Application # 76/533,580

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COLLECTIVE MEMBERSHIP MARKS

None

UNREGISTERED MARKS

None

Exhibit B

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