

TRADEMARK ASSIGNMENT

Electronic Version v1.1
 Stylesheet Version v1.1

SUBMISSION TYPE:		NEW ASSIGNMENT	
NATURE OF CONVEYANCE:		Collateral Assignment	
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Universal Photonics, Inc.		07/21/2009	CORPORATION: DELAWARE
RECEIVING PARTY DATA			
Name:	New York Commercial Bank		
Street Address:	615 Merrick Avenue		
City:	Westbury		
State/Country:	NEW YORK		
Postal Code:	11590		
Entity Type:	New York banking corporation: NEW YORK		
PROPERTY NUMBERS Total: 2			
Property Type	Number	Word Mark	
Registration Number:	1253443	U	
Registration Number:	0677538	EVERFLO	
CORRESPONDENCE DATA			
Fax Number:	(617)338-2880		
	<i>Correspondence will be sent via US Mail when the fax attempt is unsuccessful.</i>		
Phone:	6173382943		
Email:	dciuffetelli@sandw.com		
Correspondent Name:	Kimberly B. Herman, Esq.		
Address Line 1:	One Post Office Square		
Address Line 2:	Sullivan & Worcester LLP		
Address Line 4:	Boston, MASSACHUSETTS 02109		
ATTORNEY DOCKET NUMBER:	21106.16		
NAME OF SUBMITTER:	Kimberly B. Herman		
Signature:	/Kim Herman/		

CH \$65.00 1253443

Date:

08/07/2009

Total Attachments: 12

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COLLATERAL ASSIGNMENT OF PATENTS AND TRADEMARKS

THIS COLLATERAL ASSIGNMENT OF PATENTS AND TRADEMARKS (hereinafter referred to as the "Assignment") made as of the 21st day of July, 2009, by and between UNIVERSAL PHOTONICS, INC., a Delaware corporation (the "Borrower"), in favor of NEW YORK COMMERCIAL BANK (the "Lender").

WHEREAS, the Borrower and the Lender are parties to that certain Accounts Financing and Term Loan Agreement and Covenant Supplement thereto of even date herewith (as the same may be amended, modified, supplemented or restated from time to time, the "Credit Agreement").

WHEREAS, the Borrower has entered into the Credit Agreement, pursuant to and subject to the terms and conditions of which the Lender has agreed to make advances to the Borrower;

WHEREAS, the Borrower has entered into a Security Agreement of even date herewith, between the Borrower and the Lender (as the same may be amended, amended and restated, modified or supplemented from time to time, the "Security Agreement"), pursuant to which the Borrower has granted to the Lender a security interest in certain collateral of the Borrower and has agreed to execute and cause to be filed further documents required to be recorded or filed, in order to perfect and maintain the security interests granted under the Security Agreement; and

WHEREAS, the Borrower has also agreed to execute and deliver this Assignment and to collaterally assign the Collateral (as hereinafter defined) to secure the Borrower's obligations under the Credit Agreement and to place in the public record of the Patent and Trademark Office the collateral assignment granted hereunder;

NOW, THEREFORE, for good and valuable consideration, and to secure the payment and performance of all the Obligations (as defined in the Credit Agreement), the parties hereto agree as follows:

Section 1. Definitions. All capitalized terms used herein and not otherwise defined shall have the meanings prescribed therefor in the Credit Agreement. The following terms, as used herein, shall have the following respective meanings:

"Patent and Trademark Office" means the United States Patent and Trademark Office.

"Patent License" means all agreements, whether written or oral, providing for the grant by the Borrower of any right to manufacture, use or sell any invention covered by a Patent, including, without limitation, the agreements described in Schedule I hereto.

"Patents" means all patents and patent applications (including each patent and patent application described on Schedule I hereto), including without limitation, the

inventions and improvements described therein, together with the reissues, divisions, continuations, renewals, extensions, and continuations in part thereof.

“Trademark License” means any agreement, whether written or oral, providing for the grant by the Borrower of any right to use any Trademark, including, without limitation, the agreements described in Schedule I hereto.

“Trademarks” means all of the following to the extent owned by the Borrower: all trademarks, trade names, corporate names, company names, business names, fictitious business names, trade styles, service marks, logos, other source or business identifiers, now existing or hereafter acquired or adopted, all registrations and recordings thereof, and all applications in connection therewith, including, without limitation, registrations, recordings and applications in the Patent and Trademark Office or in any similar office or agency of the United States, any state thereof or any other country or any political subdivision thereof, including, without limitation, those described in Schedule I hereto, and all reissues, extensions or renewals thereof.

“Uniform Commercial Code” means the Uniform Commercial Code as in effect in the State of New York.

Section 2. Collateral Assignment. In order to secure the prompt and complete payment and performance of all the Obligations, together with any and all expenses which may be incurred by the Lender in collecting any or all of such Obligations or enforcing any rights, obligations or liabilities under this Assignment, and in furtherance and as confirmation of the security interests granted by the Borrower under the Security Agreement, the Borrower does hereby assign and hypothecate as collateral security to the Lender, all of the Borrower’s right, title and interest in, to and under the following, whether presently existing or hereafter arising or acquired (collectively, the “Collateral”):

- (a) all Patents;
- (b) all Patent Licenses;
- (c) all proceeds and products of each Patent and Patent License, including without limitation, all income, royalties, damages and payments now or hereafter due and/or payable with respect to any Patent or Patent License, including damages and payments for past or future infringements thereof, the right to sue for past, present and future infringements thereof, and all rights corresponding thereto throughout the world (the property and rights described in clauses (a) through (c), being collectively referred to as the “Patent Collateral”);
- (d) all Trademarks;
- (e) all Trademark Licenses;
- (f) all of the goodwill of the business connected with the use of, and symbolized by, each Trademark and Trademark License;

(g) all products and proceeds of each Trademark and Trademark License, including, without limitation, any claim by the Borrower against third parties for past, present or future infringement or dilution of any Trademark, including, without limitation, the Trademarks referred to in Schedule I hereto, and any Trademark licensed under any Trademark License, or for injury to the goodwill associated with any Trademark or any Trademark licensed under any Trademark License (the property and rights described in clauses (d) through (g) being collectively referred to as the "Trademark Collateral");

(h) inventions, processes, production methods, proprietary information, know-how and trade secrets used or useful in the business of the Borrower ("Trade Secrets");

(i) to the extent assignable pursuant to their terms (with any required consent), licenses or user or other agreements granted to the Borrower with respect to any of the Patent Collateral, Trademark Collateral and the Trade Secrets (collectively, the "Licensed Rights");

(j) information, customer lists, identification of suppliers, data, plans, blueprints, specifications, designs, drawings, recorded knowledge, surveys, engineering reports, test reports, manuals, materials standards, catalogs, computer and automatic machinery software and programs and the like pertaining to the business of the Borrower;

(k) field repair data, sales data, and other information relating to sales or service of products now or hereafter manufactured;

(l) accounting information and all media in which or on which any of the information or knowledge or data or records may be recorded or stored and all computer programs used for the compilation or printout of such information, knowledge, records or data;

(m) causes of action, claims and warranties now or hereafter owned or acquired by the Borrower in respect of any of the items listed above; and

(n) all proceeds of any of the items described in clauses (a) through (m).

Section 3. Representations and Warranties. As an inducement to the Lender to enter into this Assignment, the Borrower makes the following representations and warranties:

(a) Schedule I sets forth a complete and correct list of all Patents, Trademarks, Patent Licenses, Trademark Licenses and Licensed Rights in which the Borrower has any right, title or interest; said Patents and Trademarks are valid, subsisting, unexpired and in full force and effect, have not been adjudged invalid or unenforceable, in whole or in part, and have not been abandoned; to the best of the Borrower's knowledge no holding, decision or judgment has been rendered by any governmental authorities which would be reasonably likely to limit, cancel or question the validity of any Patent or Trademark.

(b) The Borrower is the sole beneficial owner of the Collateral, and is duly licensed to use the Licensed Rights, and no encumbrance exists or will exist upon any Collateral at any time except for the collateral assignment thereof in favor of the Lender provided for herein, which collateral assignment and security interest constitutes a first priority perfected security interest in all of the Collateral.

(c) Except pursuant to Trademark Licenses and Patent Licenses entered into by the Borrower in the ordinary course of business, which are listed in Schedule I, the Borrower owns and possesses the exclusive right to use, and has done nothing to authorize or enable any other Person to use, the Patents and Trademarks listed on Schedule I.

(d) Except as otherwise disclosed in the Credit Agreement, there is no infringement by others of any right of the Borrower with respect to any Patent or Trademark listed on Schedule I, the Borrower is not infringing in any respect upon any patent or trademark of any other Person, and no proceedings have been instituted or are pending against the Borrower, or to the Borrower's knowledge, threatened, alleging any such violation or seeking to limit, cancel or question the validity of any such Patent or Trademark.

(e) All applications pertaining to the Patents and Trademarks have been duly and properly filed, and all registrations or letters pertaining to such Patents and Trademarks have been properly filed and issued.

Section 4. Defense of Collateral, Etc. The Borrower agrees that it will at its expense forever warrant and, at the Agent's request, defend the Collateral from any and all claims and demands of any other Person; provided, however, nothing herein shall prevent the Borrower in the exercise of its reasonable business judgment from determining that it is in the best interest of the Borrower to abandon any item of Collateral or to refrain from defending any item of Collateral against such claims or demands (the foregoing prerogative of the Borrower is sometimes referred to herein as the "Business Judgment Exception"). The Borrower hereby agrees to pay, indemnify, and hold the Lender harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever with respect to the Collateral, including, without limitation, claims of patent or trademark infringement, provided that the Borrower shall have no obligation hereunder to indemnify the Lender to the extent the matter to be indemnified against was caused by the Lender's gross negligence or willful misconduct.

Section 5. Continued Use of Patents and Trademarks, Etc. (a) During the term of this Assignment the Borrower shall (i) employ consistent standards of quality in its manufacture of products and delivery of services sold or provided under the Trademarks (and shall do any and all acts reasonably required by the Lender to ensure the Borrower's compliance with such standards), (ii) employ the appropriate notice of such Trademarks in connection with its use of such Trademarks, (iii) subject to the Business Judgment Exception, use each Trademark in such a manner as to maintain such Trademark in full force free from any claim of abandonment for non-use and (iv) not adopt or use any mark which is confusingly similar or a colorable imitation of such Trademark unless the Lender shall obtain a perfected security interest in such mark

pursuant to this Assignment. The Borrower hereby grants to the Lender and its employees and agents the right to visit the Borrower's plants and facilities which manufacture, inspect or store products or which provide services sold under any of the Trademarks, and to inspect the products or monitor the services and quality control records relating thereto at reasonable times during regular business hours. The Borrower confirms its commitment to take any and all actions reasonable required by the Lender to ensure the maintenance of quality standards for such products and services.

(b) Subject to the Business Judgment Exception, the Borrower agrees to maintain the registration of the Patents and Trademarks listed on Schedule I hereto in full force and effect by taking any action which it believes necessary, through attorneys of its choice, all at its expense. In the event that any Patent or Trademark is infringed by a third Person, so as to have a material adverse effect on the Borrower, or if such infringement gives rise to litigation or to the filing of a claim or notice of opposition with the Patent and Trademark Office, the Borrower shall promptly notify the Lender and shall take such actions as may be reasonably required to terminate such infringement. Any damages recovered from the infringing party shall be deemed to be part of the Collateral.

(c) The Borrower shall promptly notify the Lender of the institution of, and any adverse determination in, any proceeding in the Patent and Trademark Office or any other foreign or domestic governmental agency, court or body, regarding the Borrower's claim of ownership in any of the Patents or Trademarks.

(d) The Borrower shall promptly notify the Lender if it knows, or has reason to know, that any application or registration relating to any Patent or Trademark may become abandoned or of any adverse determination or development, other than non-final determinations of any such office or court, regarding the Borrower's ownership of any Patent or Trademark or its right to register the same or to keep and maintain the same.

Section 6. No Assignments, Etc. The Borrower shall not, except as otherwise permitted by the Credit Agreement, grant, create or permit to exist any encumbrance upon the Collateral in favor of any other Person, or assign this Assignment or any rights in the Collateral or the material protected thereby without, in either case, the prior written approval of the Lender and such attempted encumbrance or assignment shall be void ab initio.

Section 7. Continuing Liability. The Borrower hereby expressly agrees that, anything herein to the contrary notwithstanding, it shall remain liable under each license, interest and obligation collaterally assigned to the Lender hereunder to observe and perform all the conditions and obligations to be observed and performed by the Borrower thereunder, all in accordance with and pursuant to the terms and provisions thereof. The Lender shall not have any obligation or liability under any such license, interest or obligation by reason of or arising out of this Assignment or the collateral assignment thereof to the Lender or the receipt by the Lender of any payment relating to any such license, interest or obligation pursuant hereto, nor shall the Lender be required or obligated in any manner to perform or fulfill any of the obligations of the Borrower thereunder or pursuant thereto, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any such license, interest or obligation, or to present or file any claim, or to

take any action to collect or enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

Section 8. New Patents and Trademarks. If, before the Obligations shall have been satisfied in full, the Borrower, either by itself or through an agent, employee, licensee or designee, shall develop or obtain rights to (i) any new patentable inventions, or become entitled to the benefit of any patent application or patent for any reissue, division, continuation, renewal, extension, or continuation-in-part of any Patent listed on Schedule I or any improvement on any such Patent, or (ii) any new Trademarks, the Borrower shall give to the Lender prompt notice thereof in writing, and shall execute and deliver, and file with the Patent and Trademark Office, a modification of this Assignment amending Schedule I hereto to include such new Patent or Trademark thereon. Notwithstanding the foregoing, the Borrower hereby irrevocably appoints the Lender its true and lawful attorney (such appointment coupled with an interest), with full power of substitution, to execute an amendment of this Assignment on behalf of the Borrower amending Schedule I hereto to include such new Patent or Trademark.

Section 9. Retention of Rights. Unless and until an Event of Default shall have occurred and be continuing, but subject to the terms and conditions of this Assignment, the Borrower shall retain the legal and equitable title to the Collateral and shall have the right to use the Collateral in the ordinary course of its business and all goodwill associated with the Trademarks shall accrue to the Borrower as if it had not made the collateral assignment hereunder.

Section 10. Remedies. (a) If an Event of Default under the Credit Agreement has occurred and is continuing, the Lender may exercise, in addition to all other rights and remedies granted to it in this Agreement and any other Loan Document, all rights and remedies of a secured party under the Uniform Commercial Code. Without limiting the generality of the foregoing, the Borrower expressly agrees that in any such event the Lender, without demand of performance or other demand, advertisement or notice of any kind (except to such extent as notice may be required by applicable law with respect to the time or place of any public or private sale and except as otherwise provided in the Loan Documents) to or upon the Borrower or any other Person (all and each of which demands, advertisements and/or notices are hereby expressly waived), may forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, and/or may forthwith sell, lease, license, assign, give an option or options to purchase, or sell or otherwise dispose of and deliver said Collateral (or contract to do so), or any part thereof, in one or more parcels at public or private sale or sales, at any exchange, broker's board or at any of the Lender's offices or elsewhere at such prices as it may deem best, for cash or on credit or for future delivery without assumption of any credit risk. The Lender shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in the Borrower, which right or equity is hereby expressly waived and released. To the extent permitted by applicable law, the Borrower waives all claims, damages and demands against the Lender arising out of the repossession, retention or sale of the Collateral.

(b) Without limiting the generality of the foregoing, if any Event of Default has occurred and is continuing,

(ii) the Lender may license, or sublicense, on an exclusive or non-exclusive basis, any Patents or Trademarks included in the Collateral throughout the world for such term or terms, on such conditions and in such manner as the Lender shall in its reasonable discretion determine, the proceeds of such license or sublicense to be applied to the payment of the Obligations;

(iii) the Lender may (without assuming any obligations or liability thereunder), at any time and from time to time, enforce (and shall have the exclusive right to enforce) against any licensee or sublicensee all rights and remedies of the Borrower in, to and under any Patent Licenses or Trademark Licenses and take or refrain from taking any action under any thereof, and the Borrower hereby releases the Lender from, and agrees to hold the Lender free and harmless from and against, any claims arising out of any lawful action so taken or omitted to be taken with respect thereto other than any claims arising by reason of its own gross negligence or wilful misconduct; and

(iv) upon request by the Lender, the Borrower will execute and deliver to the Lender a power of attorney, in addition to and supplemental to that set forth in Sections 12 and 8 hereof, in form and substance satisfactory to the Lender, for the implementation of any lease, assignment, license, sublicense, a grant of option, sale or other disposition of a Patent or a Trademark, provided, however, that in the event of any disposition pursuant to this Section 10, the Borrower shall supply its know how and expertise relating to the manufacture and sale of the products bearing, or services sold utilizing, Trademarks, and its customer lists and other records relating to such Trademarks and to the distribution of said products and sale of such services, to the Lender.

Section 11. Grant of License to Use Intangibles. For the purpose of enabling the Lender to exercise rights and remedies under Section 10 hereof at such time as the Lender shall be lawfully entitled to exercise such rights and remedies and for no other purpose, the Borrower hereby grants to the Lender an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to the Borrower) to use, assign, license or sublicense any of the Collateral, whether now owned or hereafter acquired by the Borrower, and wherever the same may be located, including in such license reasonable access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout thereof. The Lender shall have no duty as to the protection of Collateral or any income thereon, nor as to the preservation or rights against prior parties, nor as to the preservation of any rights pertaining thereto. The Lender may exercise its rights with respect to any portion of the Collateral without resorting or regard to other Collateral or sources of reimbursement for liability.

Section 12. Power of Attorney. The Borrower hereby irrevocably appoints the Lender its true and lawful attorney (such appointment coupled with an interest), with full power of substitution, in the name of the Borrower, the Lender, or otherwise, for the sole use and benefit of the Lender, but at the Borrower's expense, to exercise (to the extent permitted by law), at any time and from time to time while an Event of Default has occurred and is continuing, all or any of the following powers with respect to all or any of the Collateral:

(a) to demand, sue for, collect, receive and give acquittance for any and all monies due or to become due thereon or by virtue thereof;

(b) to settle, compromise, compound, prosecute or defend any action or proceeding with respect thereto;

(c) to sell, transfer, assign or otherwise deal in or with the same or the proceeds or avails thereof, as fully and effectually as if the Lender were the absolute owner thereof; and

(d) to extend the time of payment of any or all thereof and to make any allowance and other adjustments with reference thereto;

provided, however, that the Lender shall have no duty as to the protection of the Collateral or any income thereon, nor as to the preservation or rights against prior parties, nor as to the preservation of any rights pertaining thereto.

Section 13. Further Assurances. The Borrower will, from time to time, at its expense, execute, deliver, file and record any statement, assignment, instrument, document, agreement, notice or other paper and take any other action that the Lender may from time to time reasonably determine to be necessary or desirable in order to create, preserve, upgrade in rank (to the extent required hereby), perfect, confirm or validate the Collateral or to enable the Lender to obtain the full benefits of this Assignment, or to enable the Lender to exercise and enforce any of its rights, powers and remedies hereunder with respect to any of the Collateral. At the request of the Lender, the Borrower will use reasonable efforts to obtain the consent of any Person that is necessary or desirable to effect the pledge hereunder of any right, title, claims and benefits now owned or hereafter acquired by any Borrower in and to any Collateral. To the extent permitted by law, the Borrower hereby authorizes the Lender to execute, file and record notices, financing statements or continuation statements without the Borrower's signature appearing thereon. The Borrower agrees that a carbon, photographic or other reproduction of this Assignment or of a financing statement is sufficient as a notice or financing statement. The Borrower shall pay the costs of, or incidental to, any recording or filing of any notice or financing or continuation statements concerning the Collateral.

Section 14. Notices. All notices, approvals, requests, demands and other communications hereunder shall be in writing, and shall be given and effective in accordance with the Credit Agreement.

Section 15. Severability. Any provision of this Assignment which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

Section 16. No Waiver; Cumulative Remedies. The Lender shall not, by any act, delay, omission or otherwise be deemed to have waived any of its rights or remedies hereunder, and no waiver shall be valid unless in writing, signed by the Lender, and then only to the extent therein set forth. A waiver by the Lender of any right or remedy hereunder on any one occasion shall not be construed as a bar to any right or remedy which the Lender would otherwise have had on

any other occasion. No failure to exercise nor any delay in exercising on the part of the Lender any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies hereunder provided are cumulative and may be exercised singly or concurrently, and are not exclusive of any rights and remedies provided by law.

Section 17. Waivers; Amendments. None of the terms and provisions of this Assignment may be waived, altered, modified or amended except by an instrument in writing executed by the parties hereto.

Section 18. Limitation by Law. All rights, remedies and powers provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law, and all the provisions hereof are intended to be subject to all applicable mandatory provisions of law which may be controlling and to be limited to the extent necessary so that they will not render this Assignment invalid, unenforceable in whole or in part or not entitled to be recorded, registered, or filed under the provisions of any applicable law.

Section 19. Successors and Assigns. This Assignment shall be binding upon and inure to the benefit of the Borrower, its successors and assigns, and shall be binding upon and inure to the benefit of and be enforceable by the Lender and its successors and assigns; provided that the Borrower may not assign or transfer its rights or obligations hereunder.

Section 20. Termination. Upon the payment in full of all Obligations, the collateral assignment made hereunder shall terminate and all rights to the Collateral shall revert to the Borrower and the Lender will execute all such documents as may be reasonably requested by the Borrower to release such security interests and to terminate such collateral assignment and to reassign the Patents and Trademarks to the Borrower (without representation or warranty). If, after the collateral assignment made hereunder is terminated, payment, or any part thereof, of any of the Obligations is rescinded or must otherwise be restored or returned by the Lender upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any substantial part of its property, or otherwise, the collateral assignment made hereunder and all rights of the Lender to the Collateral shall be reinstated, all as though such payments had not been made.

Section 21. Governing Law; Jurisdiction; Venue. THIS ASSIGNMENT IS A CONTRACT UNDER THE LAWS OF THE STATE OF NEW YORK AND SHALL, FOR ALL PURPOSES, BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF SAID STATE (EXCLUDING THE LAWS APPLICABLE TO CONFLICTS OR CHOICE OF LAW) AND THE UNITED STATES OF AMERICA. THE BORROWER CONSENTS TO THE JURISDICTION OF ANY OF THE FEDERAL OR STATE COURTS LOCATED IN NEW YORK COUNTY IN CONNECTION WITH ANY ACTION TO ENFORCE THE RIGHTS OF THE LENDER UNDER THIS ASSIGNMENT AND CONSENTS TO SERVICE OF PROCESS IN ANY SUCH SUIT BEING MADE UPON THE BORROWER BY MAIL AT THE BORROWER'S ADDRESS SET FORTH IN THE CREDIT AGREEMENT. THE BORROWER IRREVOCABLY WAIVES ANY OBJECTION WHICH IT


MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH ACTION BROUGHT IN THE COURTS REFERRED TO IN THIS SECTION AND HEREBY IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH ACTION THAT SUCH ACTION HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

Section 22. Waiver of Jury Trial. THE BORROWER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ITS RIGHT TO A JURY TRIAL WITH RESPECT TO ANY ACTION OR CLAIM ARISING OUT OF ANY DISPUTE IN CONNECTION WITH THIS ASSIGNMENT, ANY RIGHTS OR OBLIGATIONS HEREUNDER, THE PERFORMANCE OF SUCH RIGHTS AND OBLIGATIONS OR ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY, INCLUDING, WITHOUT LIMITATION, ANY COURSE OF CONDUCT, COURSE OF DEALINGS, STATEMENTS OR ACTIONS OF THE LENDER RELATING TO THE ADMINISTRATION OR ENFORCEMENT OF THE LOANS AND THE LOAN DOCUMENTS, AND AGREES THAT IT WILL NOT SEEK TO CONSOLIDATE ANY SUCH ACTION WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CAN NOT BE OR HAS NOT BEEN WAIVED. EXCEPT AS PROHIBITED BY LAW, THE BORROWER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LITIGATION REFERRED TO IN THE PRECEDING SENTENCE ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. THE BORROWER (a) CERTIFIES THAT NO REPRESENTATIVE OR ATTORNEY OF THE LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT THE LENDER WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVERS AND (b) ACKNOWLEDGES THAT THE LENDER HAS BEEN INDUCED TO ENTER INTO THIS ASSIGNMENT AND THE OTHER LOAN DOCUMENTS TO WHICH IT IS A PARTY BECAUSE OF, AMONG OTHER THINGS, THE BORROWER'S WAIVERS AND CERTIFICATIONS CONTAINED HEREIN.

Section 23. Counterparts. This Assignment may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Assignment by signing any such counterpart.

IN WITNESS WHEREOF, the parties hereto have caused this Assignment to be duly executed as an instrument under seal as of the date first written above.

UNIVERSAL PHOTONICS, INC.

By: 
Name: ALAN C RITTER
Title: CHAIRMAN

ACCEPTED AS OF THE
DATE FIRST ABOVE WRITTEN:

NEW YORK COMMERCIAL BANK

By: _____
Name:
Title:

Schedule I

Type of Intellectual Property and Title	Jurisdiction	Registration/ Serial Number	Date of Registration/Current Renewal Date
<u>Patents</u>			
Method of producing abrasive tools	US	7,241,324	10-Jul-07
Method of producing polyurethane pads produced therewith	US	7,175,915	13-Feb-07
Polishing Pad and method of making the same	US	7,014,549	21-Mar-06
Polishing pad and method of producing the same	US	6,986,706	17-Jan-06
Abrasive pad, and method of making the same	US	6,773,339	10-Aug-04
Polishing pad and method of producing the same	US	6,604,990	12-Aug-03
Polishing wheel	US	6,471,733	29-Oct-02
Polishing tool	US	6,033,449	7-Mar-00
<u>Trademarks</u>			
Stylized Letter "U"	US	1253443/ 73216378	23-Dec-03
"Everflo" name	US	677538/ 72055885	6-Apr-99

{N0160386; 1}