

# PROSKAUER ROSE LLP

1585 Broadway  
New York, NY 10036-8299  
Telephone 212.969.3000  
Fax 212.969.2900

LOS ANGELES  
WASHINGTON  
BOCA RATON  
NEWARK  
PARIS

**Kenneth Rubenstein**  
Member of the Firm

Direct Dial 212.969.3185  
krubenstein@proskauer.com

February 3, 2006

## **BY EMAIL & UPS NEXT DAY AIR**

Philips Intellectual Property & Standards  
P.O. Box 220  
5600 AE Eindhoven  
The Netherlands

Re: DVD-R/RW Patent Licensing Program  
DVD-R/RW Formats  
Our Ref.: 58363-012

Dear Colleagues:

This letter attaches our Cumulative February 2006 Report regarding U.S. Philips Corporation (“Philips”) patents that have been found essential at least for the DVD-R and DVD-RW Standards (as defined below) for the DVD-R/RW Patent Licensing Program.

In particular, we evaluated the essentiality of certain U.S. patents submitted by Philips with respect to implementing: DVD Specifications for Recordable Disc, Part 1, PHYSICAL SPECIFICATIONS Version 1.0, April 1999 (“DVD-R v. 1.0 Standard”); DVD Specifications for Recordable Disc for General, Part 1, PHYSICAL SPECIFICATIONS Version 2.1, June 2004 (“DVD-R for General Standard”); DVD Specifications for Recordable Disc for Authoring, Part 1, PHYSICAL SPECIFICATIONS Version 2.0, February 2000 (“DVD-R for Authoring Standard”), and DVD Specifications for Re-recordable Disc, Part 1, PHYSICAL SPECIFICATIONS Version 1.2, November 2003 (“DVD-RW Standard”), collectively referred to herein as the “DVD-R/RW Standards.”

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The following summarizes the criteria we use to determine whether or not a patent is essential and should be included in the DVD-R/RW Patent Licensing Program.

A patent may be included in the portfolio of patents licensed under the DVD-R/RW Patent Licensing Program if it is found to be either “technically essential” or “essential as a practical matter.”

A patent is “technically essential” and can be included in the portfolio of patents licensed under the DVD-R/RW Patent Licensing Program for a particular standard if at least one claim of the patent covers (i.e., is essential to implement) a portion of that standard.

If we are unable to conclude that a patent is “technically essential,” we may still be able to find the patent “essential as a practical matter” for the DVD-R/RW Patent Licensing Program. To be “essential as a practical matter,” a patent must be shown to have at least one claim having no commercially realistic alternative for implementing a portion of the relevant standard. However, for a patent to be found essential on this basis, evidence must be submitted that demonstrates such essentiality. Absent the submission of evidence, we cannot find a patent to be essential as a practical matter.

Such evidence may come in various forms. For example, in the past, evidence we have found persuasive in other licensing programs included:

- (a) an identification of substantially all of the relevant products in the marketplace that comply with the standard at issue (for example, products whose individual market shares add up to 90% or more of the total market); and
- (b) a showing that the invention claimed in the patent submitted for evaluation is being used by substantially all of the identified products.

We will also take into consideration any other evidence submitted indicating that a patent is essential as a practical matter.

We understand that it may not be possible to obtain market data on 100% of the relevant products currently available on the market. With this understanding, in the past, we have found patents to be essential as a practical matter for other patent licensing programs based on products in the marketplace whose cumulative market share is less than 100% (e.g., 90%), in the absence of any significant evidence that there is a commercially realistic alternative to the patent.

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In other words, if, as determined on a case-by-case basis, there is significant evidence of a commercially realistic alternative to the patent, the patent cannot be found to be essential as a practical matter.

We have concluded that the patents on the attached lists are technically essential for implementing the DVD-R/RW Standards, as indicated. No patent has been found essential as a practical matter and no evidence demonstrating that a patent has no commercially realistic alternative has been considered. The reasons for our findings are set out in the attached lists:

- (1) Philips Essential DVD-R Disc Patents;

The findings in this report are based upon:

- (1) our review of the specification, certain claims, and the prosecution history of each patent on the list;
- (2) our review of the relevant parts of the standards identified above; and
- (3) our review of the information you provided to us in regards to the patents to be evaluated.

Pursuant to U.S. law, we use a two-step process to review patent claims for essentiality: first, we interpret the patent claims; second, we compare the interpreted claims to the relevant standard. A patent claim is interpreted based on the claim language, the patent's specification, and the patent's file history.

Claims that include "means-plus-function" limitations warrant special mention. An analysis of a claim containing means-plus-function limitations involves the same two-step process described above: claim interpretation and a comparison of the interpreted claims with the pertinent standard. Under U.S. law, a means-plus-function limitation is interpreted to cover the structure, material, or acts described in the patent's specification, and any equivalents thereof, that perform the claimed function. Thus, interpreting a means-plus-function limitation requires identifying the claimed function and determining the corresponding structure, material, or acts disclosed in the patent's specification that perform the claimed function. After interpreting a claim limitation

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written in means-plus-function format, the pertinent standard is evaluated to determine whether it requires performance of the claimed function using the same structure, material, or acts found in the patent's specification, or using an equivalent of such structure, material, or acts.

Please contact us if you require further assistance.

PROSKAUER ROSE LLP

By:   
Kenneth Rubenstein

Enclosures

**Essentiality report of US patents mentioned in Annex A to the DVD-R Disc Patent License Agreement  
Essential Philips (PH) patents relevant to DVD-R disc**

**FEBRUARY 2006 CUMULATIVE REPORT – ESSENTIAL DVD-R PATENTS**

<b>PHILIPS ESSENTIAL DVD-R DISC PATENTS</b>		
<b>U.S. Patent Number</b>	<b>Representative Claim</b>	<b>DVD-R (v. 1.0, v. 2.1 Gen., &amp; v. 2.0 Auth.) Specification</b>
4,807,209	1	<p><b>DVD-R, Part 1, v1.0:</b>  <i>Secs.:</i> 1.1, 1.5.47, 2.1.1, 2.2.1, 2.2.3.2, 2.2.3.8.1, 2.2.6.2, 2.2.7.1, 3.1.1  <i>Figs.:</i> 2.1.1-1, 2.2.1-1, 2.2.7.1-1, 2.2.7.1-2  <i>Pages:</i> PH-1, 9, 15, 42, 45, 46, 51, 52, 53, 61.</p> <p><b>DVD-R, Part 1 (v. 2.1 Gen.):</b>  <i>Secs.:</i> 1.1, 1.5, 2.1.1, 2.2.1, 2.2.3.2, 2.2.3.8.1, 2.2.6.4, 2.2.7.1, 3.1.1  <i>Figs.:</i> 2.1.1-1, 2.2.1-1, 2.2.7.1-1, 2.2.7.1-2  <i>Pages:</i> PH1-1, 12, PH2-1, 25, 28, 29, 34, 35, 36, PH3-1.</p> <p><b>DVD-R, Part 1 (v. 2.0 Auth.):</b>  <i>Secs.:</i> 1.1, 1.6, 2.1.1, 2.2.1, 2.2.3.2, 2.2.3.8.1, 2.2.6.2, 2.2.7.1, 3.1.1  <i>Figs.:</i> 2.1.1-1, 2.2.1-1, 2.2.7.1-1, 2.2.7.1-2  <i>Pages:</i> PH1-1, 12, PH2-1, 25, 28, 29, 34, 35, 36, PH3-1.</p>

**Evaluated by the law firm Proskauer & Rose LLP in New York USA (<http://www.proskauer.com>)**

**Essentiality report of US patents mentioned in Annex A to the DVD-R Disc Patent License Agreement  
Essential Philips (PH) patents relevant to DVD-R disc**

**FEBRUARY 2006 CUMULATIVE REPORT – ESSENTIAL DVD-R PATENTS**

<b>PHILIPS ESSENTIAL DVD-R DISC PATENTS</b>		
<b>U.S. Patent Number</b>	<b>Representative Claim</b>	<b>DVD-R (v. 1.0, v. 2.1 Gen., &amp; v. 2.0 Auth.) Specification</b>
4,962,493	11	<p><b>DVD-R, Part 1, v1.0:</b>  <i>Secs.:</i> 1.1, 1.5.47, 2.1.1, 2.2.1, 2.2.3.2, 2.2.3.8.1, 2.2.6.2, 2.2.7.1, 3.1.1  <i>Figs.:</i> 2.1.1-1, 2.2.1-1, 2.2.7.1-1, 2.2.7.1-2  <i>Pages:</i> PH-1, 9, 15, 42, 45, 46, 51, 52, 53, 61.</p> <p><b>DVD-R, Part 1 (v. 2.1 Gen.):</b>  <i>Secs.:</i> 1.1, 1.5, 2.1.1, 2.2.1, 2.2.3.2, 2.2.3.8.1, 2.2.6.4, 2.2.7.1, 3.1.1  <i>Figs.:</i> 2.1.1-1, 2.2.1-1, 2.2.7.1-1, 2.2.7.1-2  <i>Pages:</i> PH1-1, 12, PH2-1, 25, 28, 29, 34, 35, 36, PH3-1.</p> <p><b>DVD-R, Part 1 (v. 2.0 Auth.):</b>  <i>Secs.:</i> 1.1, 1.6, 2.1.1, 2.2.1, 2.2.3.2, 2.2.3.8.1, 2.2.6.2, 2.2.7.1, 3.1.1  <i>Figs.:</i> 2.1.1-1, 2.2.1-1, 2.2.7.1-1, 2.2.7.1-2  <i>Pages:</i> PH1-1, 12, PH2-1, 25, 28, 29, 34, 35, 36, PH3-1.</p>

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<b>PHILIPS ESSENTIAL DVD-R DISC PATENTS</b>		
<b>U.S. Patent Number</b>	<b>Representative Claim</b>	<b>DVD-R (v. 1.0, v. 2.1 Gen., &amp; v. 2.0 Auth.) Specification</b>
4,972,401	1	<p><b>DVD-R, Part 1 (v. 1.0):</b>  <i>Secs.:</i> 1.1, 1.2, 1.5.14, 1.5.17, 1.5.27, 1.5.49, 2.1.1, 2.1.3.2, 2.1.6.14, 2.2.1, 2.2.3.2, 2.2.6.5, 2.2.7.3, 2.2.7.3(b), 3.2.9, 4.1.1  <i>Figs.:</i> 2.1.1-1, 2.2.1-1  <i>Pages:</i> PH-1, 2, 6, 7, 9, 15, 18, 32, 42, 45, 51, 57, 72, 95</p> <p><b>DVD-R, Part 1 (v. 2.1 Gen.):</b>  <i>Secs.:</i> 1.1, 1.2, 1.5, 2.1.1, 2.1.3.2, 2.1.6.13, 2.2.1, 2.2.3.2, 2.2.6.7, 2.2.7.3, 2.2.7.3(b), 3.2.9, 4.1.1  <i>Figs.:</i> 2.1.1-1, 2.2.1-1  <i>Pages:</i> PH1-1, 2, 6, 8, 11, PH2-1, 4, 17, 25, 28, 34, 39, PH3-11, PH4-1</p> <p><b>DVD-R, Part 1 (v. 2.0 Auth.):</b>  <i>Secs.:</i> 1.1, 1.2, 1.6, 2.1.1, 2.1.3.2, 2.1.6.14, 2.2.1, 2.2.3.2, 2.2.6.5, 2.2.7.3, 2.2.7.3(b), 3.2.9, 4.1.1  <i>Figs.:</i> 2.1.1-1, 2.2.1-1  <i>Pages:</i> PH1-1, 2, 7, 9, 12, PH2-1, 4, 17, 25, 28, 34, 40, PH3-10, PH4-1</p>

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<b>PHILIPS ESSENTIAL DVD-R DISC PATENTS</b>		
<b>U.S. Patent Number</b>	<b>Representative Claim</b>	<b>DVD-R (v. 1.0, v. 2.1 Gen., &amp; v. 2.0 Auth.) Specification</b>
5,068,846	1	<p><b>DVD-R, Part 1 (v. 1.0):</b>  <i>Secs.:</i> 1.1, 1.2, 2.1.1, 2.1.3.2, 2.1.4.7, 2.1.6.12, 2.1.7.3, 2.2.3.2, 2.2.7.3, 3.1.1, 4.2.1  <i>Figs.:</i> 2.1.1-1, 2.1.4-1, 2.2.7.3-1  <i>Pages:</i> PH-1, 2, 15, 18, 25, 27, 31, 36, 45, 55, 56, 61, 97</p> <p><b>DVD-R, Part 1 (v. 2.1 Gen.):</b>  <i>Secs.:</i> 1.1, 1.2, 2.1.1, 2.1.3.2, 2.1.4.7, 2.1.6.11, 2.1.7.4, 2.2.3.2, 2.2.7.3, 3.1.1, 4.2.1  <i>Figs.:</i> 2.1.1-1, 2.1.4-1, 2.2.7.3-1  <i>Pages:</i> PH1-1, 2, PH2-1, 4, 10, 12, 16, 21, 28, 37, 38, PH3-1, PH4-3</p> <p><b>DVD-R, Part 1 (v. 2.0 Auth.):</b>  <i>Secs.:</i> 1.1, 1.2, 2.1.1, 2.1.3.2, 2.1.4.7, 2.1.6.12, 2.1.7.4, 2.2.3.2, 2.2.7.3, 3.1.1, 4.2.1  <i>Figs.:</i> 2.1.1-1, 2.1.4-1, 2.2.7.3-1  <i>Pages:</i> PH1-1, 2, PH2-1, 4, 10, 12, 16, 21, 28, 38, 39, PH3-1, PH4-3</p>

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<b>PHILIPS ESSENTIAL DVD-R DISC PATENTS</b>		
<b>U.S. Patent Number</b>	<b>Representative Claim</b>	<b>DVD-R (v. 1.0, v. 2.1 Gen., &amp; v. 2.0 Auth.) Specification</b>
5,790,512	1	<p><b>DVD-R, Part 1 (v. 1.0):</b>  <i>Secs.:</i> 1.1, 1.2, 1.5.45, 2.1, 2.1.7.1(a), 3.4.1.3.2, Annex G  <i>Figs.:</i> 2.1.1-1, 2.1.4-1  <i>Pages:</i> PH-1, 2, 9, 15, 27, 34, 93, PHX-13</p> <p><b>DVD-R, Part 1 (v. 2.1 Gen.):</b>  <i>Secs.:</i> 1.1, 1.2, 1.6, 2.1, 2.1.7.1(a), 3.4.1.4, Annex G  <i>Figs.:</i> 2.1.1-1, 2.1.4-1  <i>Pages:</i> PH1-1, 2, 11, PH2-1, 12, 19, PH3-34, PHX-G2</p> <p><b>DVD-R, Part 1 (v. 2.0 Auth.):</b>  <i>Secs.:</i> 1.1, 1.2, 1.6, 2.1.1, 2.1.7.1(a), 3.4.1.3.2, Annex G  <i>Figs.:</i> 2.1.1-1, 2.1.4-1  <i>Pages:</i> PH1-1, 2, 12, PH2-1, 12, 19, PH3-31, PHX-G2</p>

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<b>U.S. Patent Number</b>	<b>Representative Claim</b>	<b>DVD-R (v. 1.0, v. 2.1 Gen., &amp; v. 2.0 Auth.) Specification</b>
5,838,696	4	<p><b>DVD-R, Part 1 (v. 1.0):</b>  <i>Secs.:</i> 1.1, 3.2, 3.2.1, 3.2.2, 3.2.7, 3.2.8, 3.4.1.3.2  <i>Figs.:</i> 3.2.1-1, 3.2.7-1, 3.2.8-1  <i>Pages:</i> PH-1, 62, 63, 69, 70, 71, 93</p> <p><b>DVD-R, Part 1 (v. 2.1 Gen.):</b>  <i>Secs.:</i> 1.1, 3.2, 3.2.1, 3.2.2, 3.2.7, 3.2.8, 3.4.1.4  <i>Figs.:</i> 3.2.1-1, 3.2.7-1, 3.2.8-1  <i>Pages:</i> PH1-1, PH3-2, 3, 8, 9, 10, 34</p> <p><b>DVD-R, Part 1 (v. 2.0 Auth.):</b>  <i>Secs.:</i> 1.1, 3.2, 3.2.1, 3.2.2, 3.2.7, 3.2.8, 3.4.1.3.2  <i>Figs.:</i> 3.2.1-1, 3.2.7-1, 3.2.8-1  <i>Pages:</i> PH1-1, PH3-2, 3, 7, 8, 9, 31</p>

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<b>PHILIPS ESSENTIAL DVD-R DISC PATENTS</b>		
<b>U.S. Patent Number</b>	<b>Representative Claim</b>	<b>DVD-R (v. 1.0, v. 2.1 Gen., &amp; v. 2.0 Auth.) Specification</b>
6,388,962	4	<p><b>DVD-R, Part 1 (v. 1.0):</b>  <i>Secs.:</i> 1.1, 4.2.3, 4.2.3.5  <i>Figs.:</i> 4.2.3-1, 4.2.3.5-1  <i>Tables:</i> 4.2.3-1, 4.2.3.5-1  <i>Pages:</i> PH-1, 102, 106, 107</p> <p><b>DVD-R, Part 1 (v. 2.1 Gen.):</b>  <i>Secs.:</i> 1.1, 3.4.1.1, 3.4.1.2.2, 3.4.1.4, 3.4.1.4.1, 4.2.3, 4.2.3.5, 4.2.3.5.2  <i>Figs.:</i> 3.4.1.1-1, 3.4.1.4-1, 4.2.3-1, 4.2.3.5-1  <i>Tables:</i> 3.4.1.4.1-1, 4.2.3-1, 4.2.3.5.2-1  <i>Pages:</i> PH1-1, PH3-27, 30, 34, 35, 36, PH4-8, 9, 12, 13</p> <p><b>DVD-R, Part 1 (v. 2.0 Auth.):</b>  <i>Secs.:</i> 1.1, 4.2.3, 4.2.3.5, 4.2.3.5.2  <i>Figs.:</i> 4.2.3-1, 4.2.3.5-1  <i>Tables:</i> 4.2.3-1, 4.2.3.5.2-1  <i>Pages:</i> PH1-1, PH4-8, 12, 13</p>

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