

## Koninklijke Philips Electronics N.V.

P.O. Box 218 - 5600 MD Eindhoven - The Netherlands

press F11 to skip between the fields that need to be filled in

Ref: BB/HP/2007

Date:

### Side-Letter to DVD[choose: +R/+RW/-R/-RW] Disc Patent License Agreement (Philips-only)

Dear [Sir/Madam],

Reference is made to the DVD[choose: +R/+RW/-R/-RW] Disc Patent License Agreement between [Licensee name] ("Licensee") and Koninklijke Philips Electronics N.V. ("Philips"), dated [...../ of even date] ("the Agreement").

It is hereby confirmed that, for as long as this Side Letter is in force and effect, in lieu of the standard royalty rate of US\$0.06 (six US Dollar cents) as stipulated in [choose: Clause 4.2/Article 5.02] of the Agreement, a so-called compliant royalty rate of US\$0.035 (three and one half US Dollar cents) may be applied by Licensee on each DVD Disc manufactured and sold by Licensee as from January 1, 2007, provided that, Licensee shall, up to and including the first calendar quarter of 2007 be in full compliance with all its obligations under the Agreement as well as this Side Letter by no later than April 30, 2007, and only in as far as the claimed compliance is not contested by Philips. In order for Licensee to benefit from the compliant royalty rate for each of the subsequent calendar quarters to which this Side Letter applies, Licensee must be in full compliance with all of its obligations under the Agreement and this Side Letter. For the avoidance of any doubt we confirm that full compliance includes but is not limited to your company **providing royalty reports and payments on time, complete and correct in every respect as required under the Agreement (with one time grace period until April 30, 2007 for the delivery of a complete and correct royalty report for the first calendar quarter of 2007).**

In the event that Licensee believes it is eligible for the compliant rate in accordance with the above, Licensee shall report and pay royalties in accordance with the compliant royalty rate as provided for above. At any time thereafter Philips may review Licensees' royalty report and payment as well as its compliance with the additional conditions of this Side Letter. For as long as Licensee does not receive an objection from Philips, Licensee will not have to revise its payment. In the event however that, at any later date, based on market information obtained from independent sources or otherwise, Philips has reason to believe that Licensee is not in full compliance with its obligations under the Agreement or this Side Letter, Philips will not accept the application of the compliance rate and so notify Licensee in writing. Within 30 days from receipt of such notice from Philips, Licensee shall pay up for the difference between the compliant rate and the standard rate as stipulated in [choose: Clause 4.2/Article 5.02] of the Agreement. Philips' refusal to accept the application of the compliant rate



may only be overturned by means of a final determination by Philips' external auditor or competent court.

In order for Licensee to be eligible to apply the compliant royalty rate, the following additional conditions shall apply:

1. As from the Effective Date of this Side Letter, Licensee shall, before each and every shipment of DVD Discs, submit to Philips an application for Philips to certify the licensed status of the DVD Discs included in such shipment. Such certification shall take the form of the document issued by Philips that is commonly known as the Licensed Status Confirmation Document ("LSCD") or such other document as Philips may make available in the future.
2. When applying for an LSCD, Licensee shall submit an authentic copy of the following documents:
  - a. the purchase order received by Licensee from its customer;
  - b. the bill of lading containing the shipping details, including but not limited to the port of lading and container numbers (the documents under this subsection b may be submitted after the issuance of the LSCD if such documents are not available before the issuance of the LSCD);
  - c. the "Form A Certificate of Origin" or such other documentary proof of country-of-origin as is satisfactory to Philips;
  - d. a copy of the invoice issued by Licensee to its customer.
3. The sale or shipment of any DVD Disc without a corresponding LSCD issued by Philips shall constitute a material breach of the Agreement and this Side Letter. The Parties confirm and agree that any DVD Disc shipped by Licensee not properly covered by an LSCD will be regarded as unlicensed.
4. If Licensee fails to comply with any of its obligations under the Agreement or this Side Letter, the standard royalty rate of US\$0.06 shall apply to all of Licensee's manufacture and sale of DVD Discs instead of the compliant royalty rate of US\$0.035, with immediate effect from the first day of the reporting period to which the occurrence of non-compliance relates until the first day of the reporting period following written confirmation by Philips to Licensee that Licensee's non-compliance has been remedied in full.
5. Notwithstanding the provisions of [choose: Clause 10/Article 11] of the Agreement, if Licensee fails to comply with any of its obligations under this Side Letter then Philips shall have the right to terminate the Agreement and this Side Letter immediately, by written notice to Licensee. Further, if Licensee is not in full compliance with its obligations under the Agreement or this Side Letter, Philips may refuse to issue further LSCDs to Licensee, and may assert the Licensed Patents against Licensee and any third party in respect of any and all DVD Discs not properly covered by an LSCD, or for which the royalties have not been timely paid by Licensee.
6. Notwithstanding the provisions of [choose: Clause 10/Article 11] of the Agreement, Philips shall have the right to terminate the Agreement, by written notice to Licensee, if any information provided by Licensee to Philips pursuant to point 2 of this Side Letter or the royalty reports prove to be inaccurate, false or misleading.

7. Without prejudice to the provisions of point 6 above, this Side Letter will remain in full force and effect until the due date for the reporting and payment of the second calendar quarter of 2007 or until the end of the calendar quarter during which Philips will make generally available a VEEZA type of agreement providing for a license per shipment of DVD Discs, whichever comes first.
8. Licensee acknowledges and agrees that Philips reserves all rights, including its right to assert its patents in relation to any DVD Discs manufactured by Licensee: (i) sold to directly or indirectly, offered for sale by or imported by, to or through (a) Imation Corp., a Delaware Corporation, having a place of business at 1 Imation Place, Oakdale, MN 55128 or (b) any of Imation Corp.'s associated companies (including but not limited to, any divisions, subsidiaries, majority owned companies and minority owned companies, and any entities owning, owned by or controlled by any of the foregoing entities), or (c) any distributors or agents of Imation Corp. or any of its associated companies, located anywhere in the world (Imation Corp., any such associated company, and any such distributor or agent hereafter collectively referred to as "Imation") and (ii) any DVD Discs for which Imation has claimed or may hereafter claim the benefit of any patent license agreement with Philips. The aforementioned DVD Discs under (i) and (ii) are hereinafter referred to as "the Excluded Discs".

Excluded Discs shall not be licensed and Licensee shall so inform Imation in connection with the sale or transfer of any such Excluded Disc.

Nothing herein shall be interpreted as either prohibiting or permitting sales of Excluded Discs by Licensee. However, in view of a dispute between Philips and Imation, Licensee shall not be required to request a LSCD for any Excluded Discs in accordance with this Side Letter and the failure to obtain the LSCD for Excluded Discs shall not be considered a breach of this Side Letter and the Agreement provided, however, that any Excluded Discs transferred to a third party by Licensee without a LSCD shall not be licensed under any Philips patent by virtue of the Agreement, or otherwise.

Licensee shall provide Philips an Exceptions Report, within 30 days after the end of each calendar quarter, setting forth all sales of Excluded Discs for which LSCD were not obtained by Licensee, specifying the name of the buyer, quantity, shipping date and brand or other trademarks used on the Excluded Discs.

While Licensee is not required to obtain an LSCD for Excluded Discs, Licensee may at its discretion apply for and obtain an LSCD, and if granted by Philips in accordance with this Side Letter, Philips shall invoice Licensee in respect of such Excluded Discs and Licensee shall pay the royalties due under the Agreement.

Notwithstanding the foregoing, nothing herein shall prevent Philips from enforcing any Philips' patent against Imation, Licensee or any downstream customer of Licensee, arising out of the importation, use, offer for sale or sale of any Excluded Disc not covered by an LSCD.

Save as explicitly varied by means of this Side Letter, all provisions of the Agreement, including without limitation, the applicability of the standard royalty of US\$ 0.06 in accordance with the provisions of [choose: Clause 4.2/Article 5.02], shall remain in full force and effect.

Nothing contained in this Side Letter shall be construed as a waiver of any of Licensee's obligations under the Agreement.

Please confirm your agreement with the above by signing both copies of this Side Letter and returning these to us. This letter will then also serve as your application for the arrangements described herein. Thank you for your cooperation.

Yours sincerely,

Koninklijke Philips Electronics N.V.

Agreed for and on behalf of  
[Licensee]

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Name:  
Title:

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Name:  
Title:

Reference copy