

## CORPORATE WEBSITE LICENSE AGREEMENT

This Corporate Website License Agreement (“Agreement”) is entered into as of July 1, 2004 (the “Effective Date”) between Acacia Media Technologies Corporation, a Delaware corporation, with an address at 500 Newport Center Drive, 7th Floor, Newport Beach, CA 92660, Fax No. 949-480-8301 (hereinafter “AMTC”), and \_\_\_\_\_, a \_\_\_\_\_ corporation, with an address at \_\_\_\_\_, Fax No. \_\_\_\_\_ (hereinafter “Company”).

### BACKGROUND

**A.** AMTC is the owner of a portfolio of certain U.S. and foreign patents and patent applications relating to certain systems and/or methods for transmitting and/or receiving digital audio, video, and audio-visual content (hereinafter “Audio/Video Technology”);

**B.** Company (and its Affiliates, as defined in Section 1.1 below) provide Free Transmissions (as defined in Section 1.2 below) of digital audio, video and/or audio-visual content (“Covered Content”) via Covered Website(s) (as defined in Section 1.3 below);

**C.** AMTC alleges that the use by Company (and its Affiliates) of the Audio/Video Technology in connection with the Free Transmissions in the absence of a use license from AMTC, may constitute infringement of one or more claims of the Licensed Patents (as defined in Section 1.4 below) under one or more of the provisions of 35 U.S.C. § 271, including, but not limited to, §§ 271(a), (b), (c) and/or (g);

**D.** Company (and its Affiliates) desire to obtain a license under the Licensed Patents in connection with Company’s (and its Affiliates’) Free Transmissions via Covered Websites;

**NOW, THEREFORE**, in consideration of the above premises and the mutual covenants of the parties to be faithfully performed, AMTC and Company (on Company’s own behalf and on behalf of Company’s Affiliates listed on Exhibit A attached hereto), intending to be legally bound, agree as follows:

### 1. DEFINITIONS

In addition to the terms defined above and elsewhere in this Agreement, as used in this Agreement:

- 1.1** “**Affiliate**” shall mean any entity controlling or controlled by or under common control with Company where “control” is defined as the ownership of at least fifty percent (50%) of the equity or beneficial interests of such entity. A current list of

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Company's Affiliates is attached hereto as **Exhibit A**, which Exhibit may be updated by Company from time to time upon written notice to AMTC.

- 1.2** “**Free Transmission(s)**” shall mean each Stream (as defined in Section 1.7 below), Download (as defined in Section 1.8 below), and other transfer of a Covered Content file via the World Wide Web, Internet, or other IP protocol, that is accessed and/or viewed via a Covered Website without payment of any kind, including without limitation payment of a per exhibition fee, a per transmission fee, a subscription fee or other consideration to access and/or view the Covered Content via a Covered Website.
- 1.3** “**Covered Website(s)**” shall mean those websites legally owned by Licensed User (as defined below in Section 1.5) via which Covered Content is provided primarily for corporate information, promotion, investor relations, and advertising purposes. A true and correct copy of the Covered Websites is attached to this Agreement as **Exhibit B**, which Exhibit may be updated by Company from time to time upon written notice to AMTC.
- 1.4** “**Licensed Patents**” shall mean the patents listed on **Exhibit C** to this Agreement, as well as any additional patents obtained by AMTC via any divisionals, continuations and continuations-in-part thereof, and any other patents hereafter acquired by AMTC in which the novelty and primary focus is the Audio/Video Technology.
- 1.5** “**Licensed User**” shall mean Company and its Affiliates.
- 1.6** “**Third Party Host**” shall mean a person or entity that hosts the Covered Content and provides Free Transmissions of the Covered Content on behalf of Licensed User.
- 1.7** “**Stream**” shall mean the transfer of a Covered Content file by Licensed User, or on behalf of Licensed User, via the World Wide Web, Internet, or other IP protocol, whereby a portion of the Covered Content file is viewable by the end user prior to the completion of the transfer process.
- 1.8** “**Download**” shall mean the transfer of a Covered Content file by Licensed User, or on behalf of Licensed User, via the World Wide Web, Internet, or other IP protocol, whereby the entire Covered Content file must be received by the end user prior to viewing such Covered Content file.

**2. LICENSE**

- 2.1 Grant of Limited Use License.** Subject to the provisions of Sections 2.2 and Section 3, AMTC hereby grants to Licensed User a non-exclusive, non-transferable,

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Agreement (cont'd)**

non-assignable, limited use license (“Limited Use License”) in the geographic areas covered by the Licensed Patents solely for the following purpose and use:

Free Transmissions, via the World Wide Web, Internet, or other IP protocol, of Covered Content accessed via a Covered Website.

This Limited Use License shall expressly exclude any transmission for which a per exhibition fee, a per transmission fee, a subscription fee or other consideration is charged to access and/or view the Covered Content via a Covered Website. **A separate license is necessary between Licensed User and AMTC for any transmissions of Covered Content other than Free Transmissions.** In certain instances, Licensed User may elect to utilize the services of a Third Party Host. In such instances, the Third Party Host may, on behalf of Licensed User, provide Free Transmissions of the Covered Content pursuant to the Limited Use License granted to Licensed User in this Section 2.1, provided, however, that such Limited Use License shall only apply to Free Transmissions of Covered Content accessed via a Covered Website. A separate license is necessary between the Third Party Host and AMTC to provide Free Transmissions of the Covered Content to any website other than a Covered Website or on behalf of any entity other than Licensed User.

**2.2 Any Use Or Right Not Specifically Enumerated Is Excluded.** The Limited Use License defined by and granted in Section 2.1 is limited solely to the specified uses enumerated in Section 2.1. The Limited Use License excludes any and all uses not specifically enumerated in Section 2.1. For example, and by way of example only, Licensed User may, in certain instances, provide digital audio, video and/or audio-visual content owned by Licensed User to third parties for transmission via the Internet, cable, satellite and otherwise to customers of such third parties. In such instances, the third parties are not granted any rights under the Limited Use License, by implication or otherwise, to transmit the audio, video and/or audio-visual content via the Internet, cable, satellite and otherwise, and such third parties are required to obtain a separate license from AMTC. Licensed User acknowledges that a separate license from AMTC is necessary under the Licensed Patents for those fields and uses outside of the scope of the uses specifically licensed by Section 2.1 of this Agreement.

**2.3 Reserved Rights.** Any and all rights not explicitly granted to Licensed User in Section 2.1 above are expressly reserved by AMTC. No license or immunity as to the Licensed Patents is granted by AMTC to Licensed User, either by implication, estoppel, or otherwise, other than the Limited Use License specifically enumerated and expressly provided in Section 2.1 to Licensed User, and no license or immunity as to the Licensed Patents is granted by AMTC to end users either by implication, estoppel, or otherwise.

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- 2.4 No Sublicense Rights.** The Limited Use License granted to Licensed User in Section 2.1 above does not confer upon Licensed User the right to grant or otherwise transfer (via sublicense, assignment, or otherwise) any rights under the Licensed Patents to any other persons or entities for any purpose. Licensed User's rights under the Licensed Patents are limited to the specific uses set forth in Section 2.1.
- 2.5 Company Liable for Obligations of Affiliates.** Company is and shall remain primarily liable to AMTC for all of its Affiliates' obligations, covenants, representations and performance under each and every term and condition of this Agreement, including, but not limited to, the limitations and conditions of use (defined in Section 2.1 above), financial, audit and other obligations under this Agreement.
- 2.6 Conditional Release for Past Infringement.** Provided that Licensed User maintains compliance with all of the terms and conditions of this Agreement and as part of the consideration being given to Licensed User hereunder, Licensed User is conditionally relieved from any liability Licensed User may have incurred prior to the Effective Date for infringement of the Licensed Patents solely by virtue of Licensed User's acts and uses specified in Section 2.1 above.

**3. ROYALTIES AND AUDIT**

- 3.1 Annual Minimum Royalty For Up To 2,000,000 Free Transmissions.** In consideration of the Limited Use License granted in Section 2.1 above, and the conditional release for past infringement set forth in Section 2.6 above, Licensed User shall pay AMTC a non-refundable, annual minimum royalty equal to Seventy-Five Hundred Dollars (\$7,500) for up to 2,000,000 Free Transmissions annually via the Covered Website(s) (the "Annual Minimum Royalty"). Contemporaneously with the execution of this Agreement, Licensed User shall pay to AMTC the initial Annual Minimum Royalty payment of \$7,500. The Annual Minimum Royalty payment shall be due on each anniversary of the Effective Date thereafter during the Term (as defined in Section 6.1 below).
- 3.2 Additional Royalty For Free Transmissions Exceeding 2,000,000.** If the number of Free Transmissions via the Covered Websites exceeds 2,000,000 during any year of the Term, Licensed User shall pay AMTC an additional royalty ("Additional Royalty") for such year in accordance with this Section 3.2. The Additional Royalty amount shall begin to accrue in the quarter that the number of Free Transmissions exceeds 2,000,000 in the then-current year. Licensed User shall track the number of Free Transmissions exceeding the 2,000,000 Annual Minimum Royalty limit on a monthly basis and shall pay the Additional Royalty to AMTC on a quarterly basis for the remainder of the then-current year, beginning with the quarter in which the number of Free Transmissions exceeds 2,000,000. The Additional Royalty payment

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shall be calculated in accordance with the schedule set forth below and paid in accordance with Section 3.3 below:

<b>TOTAL MONTHLY FREE TRANSMISSIONS AFTER 2,000,000 ANNUAL LIMIT</b>	<b>ROYALTY RATE PER FREE TRANSMISSION</b>
1 to 500,000	\$ 0.0031
500,001 to 1,000,000	\$ 0.0025
1,000,001 to 10,000,000	\$ 0.0013
10,000,001 to 25,000,000	\$ 0.00094
Over 25,000,000	\$ 0.00063

Example: For example, and by way of example only, if Licensed User reaches the 2,000,000 Transmission Annual Minimum Royalty limit in October of a given year (assuming the annual period commenced in January of that calendar year), Licensed User shall track the number of Free Transmissions on a monthly basis for the remainder of October, November and December. Assuming Licensed User provided 400,000 Free Transmissions in October (after meeting the 2,000,000 limit), 600,000 in November, and 900,000 in December, the Additional Royalty payment for the quarter ending December 31<sup>st</sup> of that year would be calculated as follows: For October--  $400,000 \times 0.0031 = \$1,240$ ; for November--  $600,000 \times 0.0025 = \$1,500$ ; for December--  $900,000 \times 0.0025 = \$2,250$ . In this example, the Additional Royalty due for the last calendar quarter of such year would be  $\$1,240 + \$1,500 + \$2,250 = \$4,990$ .

- 3.3 Payments.** Any payment made pursuant to the provisions of this Agreement shall be paid in United States Dollars. The Annual Minimum Royalty payment shall be due on each anniversary of the Effective Date during the Term. Within thirty (30) days after the end of each quarter in which an Additional Royalty amount has accrued as set forth above in Section 3.2, Licensed User shall make an Additional Royalty payment to AMTC for such quarter. The Additional Royalty payments shall include a statement indicating in reasonable detail the number of Free Transmissions via each Covered Website in each month that Additional Royalty amounts accrued. The statement shall also include an updated list of Covered Websites. Such statement shall be certified by an employee, officer, or principal of Licensed User authorized to make such certification. In addition to the Annual Minimum Royalty payments set forth in Section 3.1 and any Additional Royalty payments set forth in Section 3.2, Licensed User shall pay or reimburse AMTC for any and all taxes, such as sales, excise, value added, use taxes, and similar taxes of Licensed User (but not AMTC's U.S. or state income taxes), based upon payments

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made hereunder in a jurisdiction where such taxes are required. Any payment required hereunder that is more than ten (10) days late (including unpaid portions of amounts due) shall bear interest, compounded monthly, at the lesser of ten percent (10%) per annum, or the highest interest rate permitted to be charged by applicable law.

- 3.4 Audit Rights.** Licensed User shall keep accurate records of its Free Transmissions via each Covered Website for a period not to exceed five (5) years, unless in dispute, in which event they shall be kept until the later of when said dispute is settled and such five (5) year period. Such records shall be open during reasonable business hours and upon ten (10) days prior written notice, at the place where such records are customarily kept, for examination by AMTC or an agent of AMTC, for the sole purpose of verifying the accuracy of Licensed User's representations to AMTC regarding Licensed User's Free Transmissions. The records available for inspection shall include, without limitation, any records indicating the number of Free Transmissions for each Covered Website. AMTC may exercise its rights of inspection hereunder no more than once per calendar year. In the event that any audit performed by AMTC or its agent reveals a royalty underpayment in excess of five percent (5%) for any calendar quarter, Licensed User shall bear the reasonable costs of such audit. Licensed User shall remit any underpaid royalty amounts due to AMTC, plus (i) simple annual interest thereon from the date payment was originally due at the lesser of ten percent (10%) per annum or the maximum interest rate permitted by law, and (ii) the costs of the audit, if applicable, immediately upon receiving notice thereof.

**4. REPRESENTATIONS, WARRANTIES AND COVENANTS**

- 4.1 Representations, Warranties, and Covenants of Licensed User.** Licensed User represents, warrants, and covenants to AMTC that: (i) in the event that Licensed User contests or voluntarily assists others in contesting the validity of the Licensed Patents or AMTC's ownership thereof during the Term of this Agreement, AMTC, upon written notice to Licensed User, may immediately terminate this Agreement and the license granted hereunder, and in the event that a final determination is made adjudicating any of the contested claims in AMTC's favor, Licensed User shall reimburse AMTC for the actual costs and expenses incurred by AMTC in contesting Licensed User's position; (ii) Licensed User is licensing each patent constituting the Licensed Patents for its own convenience, and this Agreement may not provide Licensed User all of the rights that Licensed User needs from parties other than AMTC to utilize the Audio/Video Technology; and (iii) Licensed User has the full legal authority necessary to enter into this Agreement and perform the duties and obligations outlined in this Agreement.

- 4.2 Representations, Warranties, and Covenants of AMTC.** AMTC represents and warrants that it (i) owns all right, title and interest in the Licensed Patents, and (ii)

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Agreement (cont'd)**

has the necessary rights, powers, and authority to enter into this Agreement. THE LICENSE GRANTED TO LICENSED USER BY AMTC IS GRANTED IN "AS IS/WHERE IS" CONDITION. OTHER THAN WITH RESPECT TO ITS OWNERSHIP OF THE LICENSED PATENTS, AMTC MAKES NO REPRESENTATIONS OR WARRANTIES TO LICENSED USER OF ANY KIND, INCLUDING WITHOUT LIMITATION, EXPRESS, IMPLIED, STATUTORY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, PATENT ENFORCEABILITY, OR PATENT VALIDITY. IN ADDITION, AMTC MAKES NO REPRESENTATION THAT THE USE OF THE AUDIO/VIDEO TECHNOLOGY WILL NOT INFRINGE, DIRECTLY, CONTRIBUTARILY, OR BY INDUCEMENT, ANY PATENT, COPYRIGHT, TRADEMARK OR OTHER PROPRIETARY RIGHT OF ANY THIRD PARTY. AMTC SHALL NOT BE LIABLE TO LICENSED USER FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, EVEN IF INFORMED OF THE POSSIBILITY THEREOF IN ADVANCE. THESE LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, FRAUD, MISREPRESENTATION AND OTHER TORTS, LOSS OF PROFIT, LOSS OF BUSINESS, LOSS OF SAVINGS OR OTHER LOSS.

**5. CONFIDENTIALITY**

**5.1 Confidentiality.** All information provided pursuant to this Agreement, including without limitation, the terms of this Agreement, and any Free Transmission or customer information provided by Licensed User to AMTC, shall be regarded as confidential information ("Confidential Information"). The parties agree that, other than as required by law, they shall not disclose any Confidential Information and shall use the Confidential Information only for the purposes set forth herein. Licensed User acknowledges that AMTC's parent company, Acacia Research Corporation ("Acacia"), is a publicly traded company, and that Acacia may be required to publicly disclose the signing of this Agreement, as well as certain terms of the Agreement. Confidential Information shall not include information that: (i) was already known, otherwise than under an agreement of secrecy or non-use, at the time of its disclosure; (ii) has passed into the public domain prior to or after its disclosure, otherwise than through any act or omission attributable to principals, officers, employees, consultants or agents of the receiving party; or (iii) was subsequently disclosed, otherwise than under an agreement of secrecy or non-use, by a third party that had not acquired the information under an obligation of confidentiality.

## 6. TERM AND TERMINATION

**6.1 Term.** This Agreement shall commence as of the Effective Date, after AMTC's and Licensed User's signature of this Agreement, and shall terminate upon the expiration of the last to expire of the Licensed Patents ("Term"). Notwithstanding the foregoing, in the event that all of the Licensed Patents are held to be invalid by a non-appealable final order by a Court of competent jurisdiction, such that no surviving claims of the Licensed Patents cover Free Transmissions of the Covered Content via the Covered Websites, this Agreement shall automatically terminate and Licensed User shall have no obligation to make any additional royalty payments to AMTC, provided, however, that AMTC shall have no obligation to refund any royalty payments received from Licensed User for any reason whatsoever.

**6.2 Termination.** Notwithstanding Section 6.1 above, AMTC may terminate this Agreement upon thirty (30) days written notice to Licensed User upon the breach by Licensed User of any of the terms and conditions of this Agreement. Upon the termination of this Agreement for any reason, Licensed User shall immediately stop any and all acts or uses of the Audio/Video Technology that would constitute infringement of any claim of the Licensed Patents under one or more of the provisions of 35 U.S.C. § 271, including, but not limited to, §§ 271(a), (b), (c) and/or (g).

## 7. MISCELLANEOUS

**7.1 Indemnification.** Licensed User shall indemnify AMTC and its affiliates, principals, employees, officers, directors, consultants, stockholders, representatives and agents, successors and assigns (an "AMTC Indemnified Party") from and against all claims, disputes, debts, controversies, obligations, judgments, demands, liens, causes of action, liability, loss, damages, costs and expenses (including reasonable attorneys' fees and expenses of litigation) (collectively, "Claims") which an AMTC Indemnified Party may incur, suffer or be required to pay resulting from or arising in connection with the breach by Licensed User of any covenant or other provision contained in this Agreement, or any Claims arising out of or relating to any action or inaction by Licensed User in connection with this Agreement or the Covered Website. An AMTC Indemnified Party may retain counsel, as necessary, to defend against any such Claims. AMTC shall indemnify Licensed User and its affiliates, principals, employees, officers, directors, consultants, stockholders, representatives and agents, successors and assigns (an "Licensed User Indemnified Party") from and against all Claims, which an Licensed User Indemnified Party may incur, suffer or be required to pay resulting from or arising in connection with the breach by AMTC of any covenant or other provision contained in this Agreement. A Licensed User Indemnified Party may retain counsel, as necessary, to defend against any such Claims.

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- 7.2 Non-Agency.** Nothing in this Agreement is intended or shall be deemed to constitute a partnership, agency, employer-employee, or joint venture relationship between the AMTC and Licensed User. Neither AMTC nor Licensed User shall incur any debts or make any commitments for the other.
- 7.3 Entire Agreement, Amendments, and Waivers.** This Agreement constitutes and contains the entire agreement between AMTC and Licensed User, and supersedes any and all prior negotiations, conversations, correspondence, understandings, and letters respecting the subject matter hereof. This Agreement may be amended or modified or one or more provisions hereof waived only by a written instrument signed by the parties. No delay or omission by any party in exercising any right or power arising from any default by the other party shall be construed as a waiver of such default, nor shall any single or partial exercise thereof preclude any further exercise thereof or the exercise of any other right or power arising from any default by a party. No waiver of any breach of any covenant or other condition shall be construed to be a waiver of or consent to any previous or subsequent breach of the same or of any other covenant or condition.
- 7.4 Severability and Captions.** If one or more provisions of this Agreement are held to be invalid or unenforceable under applicable law, such provision shall be excluded from this Agreement and the balance of the Agreement shall be interpreted as if such provision were so excluded. In the event a part or provision of this Agreement is held to be invalid or unenforceable or in conflict with law for any reason, the parties shall replace any invalid part or provision with a valid provision which most closely approximates the intent and economic effect of the invalid provision. The captions to this Agreement are for convenience only and are to be of no force or effect in construing and interpreting the provisions of this Agreement.
- 7.5 Governing Law and Consent to Jurisdiction.** This Agreement shall be governed by and construed under applicable federal law and the laws of the State of California, excluding any conflict of law provisions. Licensed User and AMTC each irrevocably consent to the exclusive jurisdiction of any California state or federal court sitting in the Central District of California, over any suit, action or proceeding arising out of or relating to this Agreement. AMTC and Licensed User hereby waive personal service of any summons, complaint, or other process in any action in any California state or federal court sitting in the Central District of California, and agree that all service thereof may be made by (i) certified or registered mail, return receipt requested, to the other party's address identified in the opening paragraph of this Agreement; (ii) by facsimile to other party's facsimile number identified in the opening paragraph of this Agreement (or other facsimile number identified in writing by the parties for such purpose); or (iii) by such other method authorized by the California Long Arm Statute.

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Agreement (cont'd)**

- 7.6 Notices.** Any notice required or permitted under this Agreement shall be given in writing and shall be sent via overnight carrier, or via facsimile and regular mail, to the addresses and fax numbers indicated in the opening paragraph of this Agreement above. Payment information shall be sent to the attention of Accounts Receivable Department of AMTC and all other notices to AMTC shall be sent to the attention of General Counsel, AMTC.
- 7.7 Third Party Beneficiaries and Assignment.** Nothing in this Agreement shall be construed to give rise to any obligation on either party hereto for the benefit of a third party or to confer any rights on any party other than AMTC or Licensed User. Licensed User may not assign, delegate, sell, transfer, sublicense or otherwise dispose of, voluntarily or involuntarily, by operation of law or otherwise, any or all of its rights or obligations under this Agreement to any other person, business or entity.
- 7.8 Survival.** Sections 3.3, 3.4, 4.1, 4.2, 5.1, 7.1, 7.3, 7.5, 7.7 and 7.8 of this Agreement shall survive the expiration or termination of this Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates set forth below.

\_\_\_\_\_  
[Company]

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Acacia Media Technologies Corporation**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

# Exhibit A

## Affiliates

Legal Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Contact: \_\_\_\_\_

Legal Name: \_\_\_\_\_

Address: \_\_\_\_\_

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Phone: \_\_\_\_\_

Contact: \_\_\_\_\_

Legal Name: \_\_\_\_\_

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We have no Affiliates \_\_\_\_\_ (initials)

# Exhibit B

## Covered Websites

WWW. \_\_\_\_\_

WWW. \_\_\_\_\_

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# Exhibit C

## Licensed Patents

United States·····U.S. Patent No. 5,132,992

United States·····U.S. Patent No. 5,253,275

United States·····U.S. Patent No. 5,550,863

United States·····U.S. Patent No. 6,002,720

United States·····U.S. Patent No. 6,144,702

Taiwan····· Taiwan Patent No. 72821

Mexico····· Mexican Patent No. 180038

Japan····· Japanese Patent No. 4-504433

Belgium····· EP 0 566 662

Switzerland·····EP 0 566 662

France·····EP 0 566 662

Italy····· EP 0 566 662

Luxembourg····· EP 0 566 662

Monaco····· EP 0 566 662

Netherlands····· EP 0 566 662

Sweden····· EP 0 566 662

Great Britain·····EP 0 566 662

Greece····· GR3032463T3

Spain·····ES2138968T3

Denmark·····DK566662T3

Germany·····DE69230250T2

Austria····· AT186437E

European Patent Office·····European Patent No. EP 0 566 662 B1

European Patent Office·····European Patent No. EP 0 933 892 B1