# 2507497

#### TRADEMARK ASSIGNMENT

Electronic Version v1.1 Stylesheet Version v1.1

SUBMISSION TYPE:	NEW ASSIGNMENT
NATURE OF CONVEYANCE:	MERGER
EFFECTIVE DATE:	04/07/2005

#### **CONVEYING PARTY DATA**

Name	Formerly	Execution Date	Entity Type
I-Robot Acquisition Corp.		04/07/2005	CORPORATION: MINNESOTA
Steven Bucher		04/07/2005	INDIVIDUAL: UNITED STATES

#### **RECEIVING PARTY DATA**

Name:	Finisar Corporation
Street Address:	1308 Moffett Park Drive
City:	Sunnyvale
State/Country:	CALIFORNIA
Postal Code:	94089-1133
Entity Type:	CORPORATION: DELAWARE

#### PROPERTY NUMBERS Total: 1

Property Type	Number	Word Mark
Registration Number:	2307497	I-TECH

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900046330

/Richard C. Gilmore/
04/10/2006

#### AGREEMENT AND PLAN OF MERGER

by and among

FINISAR CORPORATION, a Delaware corporation ("Finisar"),

I-ROBOT ACQUISITION CORP., a Minnesota corporation and wholly-owned subsidiary of Finisar ("Sub"),

> I-TECH CORP., a Minnesota corporation ("I-TECH")

> > and

Steven Bucher ("I-TECH Shareholder")

Dated: April 7, 2005

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#### AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (the "Agreement") is made and entered into as of April 7, 2005, by and among Finisar Corporation, a Delaware corporation ("Finisar"), I-Robot Acquisition Corp., a Minnesota corporation and wholly-owned subsidiary of Finisar ("Sub"), I-TECH CORP., a Minnesota corporation ("I-TECH") and Steven Bucher ("I-TECH Shareholder").

#### **RECITALS**

WHEREAS, the Boards of Directors of Finisar, Sub and I-TECH deem it advisable and in the best interests of each corporation and its respective stockholders that Finisar and I-TECH combine in order to advance the long-term business interests of Finisar and I-TECH;

WHEREAS, the combination of Finisar and I-TECH shall be effected by the terms of this Agreement through a transaction (the "Merger") in which Sub will merge with and into I-TECH, I-TECH will become a wholly-owned subsidiary of Finisar and the shareholders of I-TECH will become stockholders of Finisar; and

NOW, THEREFORE, in consideration of the foregoing and the respective representations, warranties, covenants and agreements set forth below, the parties agree as follows:

#### ARTICLE I

#### THE MERGER

- 1.1 <u>Effective Time of the Merger</u>. Subject to the provisions of this Agreement, the Articles of Merger (the "<u>Articles of Merger</u>") in substantially the form attached hereto as <u>Exhibit A</u> as required by the relevant provisions of the Minnesota Business Corporation Act (the "<u>MBCA</u>") shall be duly executed and acknowledged by Sub and by I-TECH as the Surviving Corporation (as defined in Section 1.3(a)) and delivered to the Minnesota Secretary of State for filing on the Closing Date (as defined in Section 1.2). The Merger shall become effective upon the filing of the Articles of Merger with the Minnesota Secretary of State (the "<u>Effective Time</u>").
- 1.2 <u>Closing</u>. The closing of the Merger (the "<u>Closing</u>") will take place at 10:00 a.m., Pacific Time, on a date to be specified by Finisar and I-TECH (the "<u>Closing Date</u>"), which shall be no later than the second business day after satisfaction of the latest to occur of the conditions set forth in Article VII (other than those conditions which by their nature will be satisfied on the Closing Date), at the offices of DLA Piper Rudnick Gray Cary US LLP, 2000 University Avenue, East Palo Alto, CA 94303-2248 unless another date or place is agreed to in writing by Finisar and I-TECH.

#### 1.3 Effects of the Merger.

(a) At the Effective Time (i) Sub shall be merged with and into I-TECH (the "Surviving Corporation") and the separate existence of Sub shall cease, (ii) the Articles of

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Incorporation of I-TECH, as the Surviving Corporation, shall be amended and restated at and as of the Effective Time to read as set forth in that document entitled "Amended and Restated Articles of Incorporation of I-TECH, CORP." attached hereto as Exhibit A-1 and (iii) the Bylaws of I-TECH, as the Surviving Corporation, shall be amended and restated to read the same as the Bylaws of Sub as in effect immediately prior to the Effective Time, except that all references in such bylaws to Sub shall be changed to refer to I-TECH, Inc. Sub and I-TECH are sometimes referred to herein as the "Constituent Corporations."

- At and after the Effective Time, the Surviving Corporation shall possess (b) all the assets, property, rights, privileges, powers and franchises of a public as well as of a private nature, and be subject to all the liabilities, obligations, restrictions, disabilities and duties of each of the Constituent Corporations; and all and singular rights, privileges, powers and franchises of each of the Constituent Corporations, and all property, real, personal and mixed, and all liabilities, obligations and debts due to either of the Constituent Corporations on whatever account, as well as for stock subscriptions and all other things in action or belonging to each of the Constituent Corporations, shall be vested in the Surviving Corporation, and all assets, property, rights, privileges, powers and franchises, and all and every other interest shall be thereafter as effectually the property of the Surviving Corporation as they were of the Constituent Corporations, and the title to any real estate vested by deed or otherwise, in either of the Constituent Corporations, shall not revert or be in any way impaired, but all rights of creditors and all Liens (as hereinafter defined) upon any property of either of the Constituent Corporations shall be preserved unimpaired, and all obligations, debts, liabilities and duties of the Constituent Corporations shall thereafter attach to the Surviving Corporation and may be enforced against it to the same extent as if such obligations, debts, liabilities and duties had been incurred by it.
- 1.4 <u>Directors and Officers</u>. The directors and officers of Sub immediately prior to the Effective Time shall be the directors and officers of the Surviving Corporation at the Effective Time, each of whom will hold office in accordance with the Articles of Incorporation and Bylaws of the Surviving Corporation, in each case until their respective successors are duly elected or appointed.

#### ARTICLE II

#### **CONVERSION OF SECURITIES**

- 2.1 <u>Certain Definitions</u>. For purposes of this Agreement, the following terms shall have the meanings set forth below:
- (a) "Escrow Fund" shall have the meaning ascribed to said term in the Escrow Agreement.
- (b) "I-TECH Common Stock" shall mean the Common Shares, par value \$0.01, of I-TECH.
- (c) "<u>I-TECH Options</u>" shall mean any outstanding options to purchase shares of I-TECH Common Stock.

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- (m) I-TECH has not agreed to make, nor is it required to make, any adjustment under Section 481 of the Code by reason of any change in accounting method.
- (n) None of I-TECH's assets is treated as "tax-exempt use property," within the meaning of Section 168(h) of the Code.
- (o) I-TECH is not, nor has it been, a "reporting corporation" subject to the information reporting and record maintenance requirements of Section 6038A of the Code and the regulations thereunder.
- (p) I-TECH has never been a party to any joint venture, partnership or other agreement that could be treated as a partnership for Tax purposes.
- (q) There are (and immediately following the Effective Time there will be) no liens, pledges, charges, claims, restrictions on transfer, mortgages, security interests or other encumbrances of any sort (collectively, "Liens") on the assets of I-TECH relating to or attributable to Taxes, other than Liens for Taxes not yet due and payable.

#### 3.8 Tangible Assets and Real Property.

- I-TECH owns or leases all tangible assets and properties which are material to the conduct of its business as currently conducted or which are reflected on the I-TECH Balance Sheet or acquired since the Balance Sheet Date (the "Material Tangible Assets"). The Material Tangible Assets are in good operating condition and repair, ordinary wear, tear and calibration excluded. I-TECH has good and valid title to all Material Tangible Assets that it owns (except properties, interests in properties and assets sold or otherwise disposed of since the I-TECH Balance Sheet Date in the ordinary course of business), free and clear of all Liens other than Permitted Encumbrances. I-TECH is not in default under or in breach or violation of, nor is there any basis for any claim of default by I-TECH under, or breach or violation by I-TECH of, any lease of Material Tangible Assets to which I-TECH is a party. To I-TECH's knowledge, no other party is in default under or in breach or violation of, nor is there any valid basis for any claim of default by any such party under, or breach or violation by any such party of, any such lease. All leases of Material Tangible Assets to which I-TECH is a party are in full force and effect and valid, binding and enforceable in accordance with their respective terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, moratorium or other similar laws affecting or relating to creditors' rights generally, and (ii) general principles of equity.
- (b) I-TECH owns no real property. The I-TECH Disclosure Schedule sets forth a true and complete list of all real property leased or occupied by I-TECH during the previous five (5) years (collectively, the "Facilities"). To the knowledge of I-TECH, the Facilities are not subject to any encumbrances, encroachments, building or use restrictions, exceptions, reservations or limitations, except those which, individually or in the aggregate, would not prevent any continued use of any of the Facilities in the usual and normal conduct of I-TECH business. To the knowledge of I-TECH, there are no governmental or other restrictions which would prevent Finisar or I-TECH from conducting business operations in Facilities currently leased by I-TECH in the manner currently conducted by I-TECH. I-TECH has not received notice of any pending or threatened condemnation proceedings relating to any of the

Facilities. I-TECH is not in default under or in breach or violation of, nor is there any basis for any claim of default by I-TECH under, or breach or violation by I-TECH of, any such lease. To I-TECH's knowledge, no other party is in default under or in breach or violation of, nor is there any valid basis for any claim of default by any such party under, or breach or violation by any such party of, any such lease. All such real property leases for Facilities currently occupied by I-TECH are in full force and effect and valid, binding and enforceable in accordance with their respective terms, except as such enforceability may be limited by (i) bankruptcy, insolvency, moratorium or other similar laws affecting or relating to creditors' rights generally, and (ii) general principles of equity. The I-TECH Disclosure Schedule sets forth a list of all such leases.

#### 3.9 <u>Intellectual Property</u>.

- (a) I-TECH owns, or is licensed or otherwise possesses legally enforceable rights to use, without future payment to any person, all patents, trademarks, trade names, service marks, copyrights and mask works, and any applications for and registrations of such patents, trademarks, trade names, service marks, copyrights and mask works and all processes, formulas, methods, schematics, technology, know-how, computer software programs or applications and tangible or intangible proprietary information or material that are necessary to conduct the business of I-TECH as currently being conducted and the research and development activities of I-TECH currently being conducted (all of which are referred to as the "I-TECH Intellectual Property Rights"), free and clear of all Liens other than Permitted Encumbrances and nonexclusive licenses granted by I-TECH in connection with sales of its products in the ordinary course of business. The foregoing representation as it relates to Licensed Intellectual Property (as defined below), is limited to I-TECH's interest pursuant to licenses from third parties, each of which is in full force and effect, is valid, binding and enforceable and grants I-TECH such rights to such intellectual property as are necessary to the business of I-TECH as currently conducted and the research and development activities currently being conducted.
- The I-TECH Disclosure Schedule contains an accurate and complete list of (i) all patents, patent applications, registered trademarks, registered trade names, registered service marks, unregistered trademarks, trade names and service marks currently in use by I-TECH, and registered copyrights and applications therefor included in the I-TECH Intellectual Property Rights owned by I-TECH, including the jurisdictions in which each such I-TECH Intellectual Property Right owned by I-TECH has been issued or registered or in which any such application for such issuance or registration has been filed, (ii) all licenses, sublicenses, distribution agreements, options, rights (including marketing rights), and other agreements to which I-TECH is a party and pursuant to which any person is authorized to use any I-TECH Intellectual Property Rights owned by I-TECH or has the right to manufacture, reproduce, market or exploit any product of I-TECH (a "I-TECH Product") or any adaptation, translation or derivative work based on any I-TECH Product or any portion thereof, (iii) all licenses, sublicenses and other agreements to which I-TECH is a party and pursuant to which I-TECH is authorized to use any third party technology, trade secret, know-how, process, patent, trademark or copyright, including software ("Licensed Intellectual Property"), which is used in the manufacture of, incorporated in or forms a part of any I-TECH Product (other than licenses for standard off-the-shelf software used in the conduct of I-TECH's business), (iv) all joint development agreements to which I-TECH is a party, and (v) all agreements with Governmental

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Entities or other third parties pursuant to which I-TECH has obtained funding for research and development activities.

- (c) The execution and delivery of this Agreement, compliance with its terms and the consummation of the transactions contemplated hereby do not and will not conflict with, or result in any violation or breach of, or default (with or without notice or lapse of time or both) or give rise to any right, license or Lien relating to any I-TECH Intellectual Property Rights, or right of termination, cancellation or acceleration of any I-TECH Intellectual Property Rights, or the loss or encumbrance of any I-TECH Intellectual Property Rights or benefit related thereto, or result in or require the creation, imposition or extension of any Lien upon any I-TECH Intellectual Property Rights or otherwise impair the right of I-TECH or its customers to use the I-TECH Intellectual Property Rights in the same manner as such I-TECH Intellectual Property Rights are currently being used by I-TECH or the customers of I-TECH, except to the extent as may be provided in commercially available software licenses.
- All registered copyrights and, to the knowledge of I-TECH, all patents, unregistered copyrights and registered trademarks and service marks issued to I-TECH which relate to any I-TECH Product are valid and subsisting. None of the I-TECH Intellectual Property Rights infringes, misappropriates or conflicts with any patent, trademark, trade name, service mark, copyright, mask work right, trade secret or other proprietary right of any third party and the manufacturing, marketing, licensing or sale of any I-TECH Product does not infringe any patent, trademark, trade name, service mark, copyright, mask work right, trade secret or other proprietary right of any third party. I-TECH (i) has not received notice that it has been sued in any suit, action or proceeding which involves a claim of infringement of any patent, trademark, trade name, service mark, copyright, mask work right, trade secret or other proprietary right of any third party and (ii) has no knowledge of any claim challenging or questioning the validity or effectiveness of any license or agreement relating to any I-TECH Intellectual Property Rights or Licensed Intellectual Property. There is no outstanding order, writ, injunction, decree, judgment or stipulation by or with any court, administrative agency or arbitration panel regarding patent, copyright, trade secret, trademark, trade name, mask work right or other claims relating to the I-TECH Intellectual Property Rights to which I-TECH is a party or by which it is bound.
- (e) All designs, drawings, specifications, source code, object code, documentation, flow charts and diagrams incorporated, embodied or reflected in any I-TECH Product at any stage of its development were written, developed and created solely and exclusively by (i) employees of I-TECH without the assistance of any third party or (ii) third parties who assigned ownership of their rights with respect thereto to I-TECH by means of valid and enforceable agreements, which are listed and described in the I-TECH Disclosure Schedule and copies of which have been provided to Finisar.
- (f) I-TECH is not, and, to the knowledge of I-TECH, no other party to any licensing, sublicensing, distributorship or other similar arrangements with I-TECH relating to the I-TECH Intellectual Property Rights is, in breach of or default under any material obligations under such arrangements.
- (g) To the knowledge of I-TECH, no person is infringing on or otherwise violating any right of I-TECH with respect to any I-TECH Intellectual Property Rights.

- (h) I-TECH has not assigned, sold or otherwise transferred ownership of, or granted an exclusive license or right to use, any patent, patent application, trademark, mask work right, service mark or copyright.
- (i) Neither I-TECH nor any of its current or former officers, employees or consultants has any patents issued or patent applications pending for any device, process, method, design or invention of any kind now used or needed by I-TECH in the furtherance of its business operations as currently being conducted or as currently proposed to be conducted by I-TECH, which patents or applications have not been assigned to I-TECH with such assignment duly recorded in the United States Patent Office or with the applicable foreign Governmental Entity.
- I-TECH has taken reasonable measures and precautions to protect and maintain the confidentiality, secrecy and value of all I-TECH Intellectual Property Rights (except I-TECH Intellectual Property Rights whose value would not be impaired by disclosure and except for Licensed Intellectual Property with respect to which I-TECH is not under any obligation to maintain the confidentiality, secrecy or value thereof). Without limiting the generality of the foregoing, (i) all current and former employees of I-TECH who are or were involved in, or who have contributed to, the creation or development of any material I-TECH Intellectual Property Rights have executed and delivered to I-TECH an agreement that is substantially identical to either of the two different forms of employment agreement which relate to, among other things, confidential information and invention assignment, previously delivered by I-TECH to Finisar (containing no modifications to the provisions of such forms relating to confidential information or invention assignment), and (ii) all current and former consultants and independent contractors to I-TECH who are or were involved in, or who have contributed to, the creation or development of any material I-TECH Intellectual Property Rights have executed and delivered to I-TECH an agreement, that is substantially identical to I-TECH's standard form of independent contractor agreement relating to, among other things, confidential information and invention assignment, previously delivered by I-TECH to Finisar (containing no modifications to the provisions of such forms relating to confidential information or invention assignment). No current or former employee, officer, director, stockholder, consultant or independent contractor has any right, claim or interest in or with respect to any I-TECH Intellectual Property Rights. Neither the execution or delivery of any such agreement by any such person, nor the carrying on by any such person, as an employee, consultant or independent contractor, of I-TECH's business as currently conducted and as currently proposed to be conducted, has or will conflict with or result in a breach of the terms, conditions or provisions of, or constitute a default under, any contract, covenant or instrument under which any of such persons is obligated.
- 3.10 <u>Bank Accounts</u>. The I-TECH Disclosure Schedule sets forth the names and locations of all banks and other financial institutions at which I-TECH maintains accounts of any nature, the type of accounts maintained at each such institution and the names of all persons authorized to draw thereon or make withdrawals therefrom.

IN WITNESS WHEREOF, Finisar, Sub and I-TECH have caused this Agreement to be signed by their respective officers thereunto duly authorized, as of the date first written above.

I-TECH CORP.

Station Duchar

Chief Executive Officer

FINISAR CORFORATION

By:

Jerry S. Rawls /

President and Chief Executive Officer

I-TECH SHAREHOLDER

Steven Bucher

I-ROBOT ACQUISITION CORP.

Jerry S Ray

President and Chief Executive Officer

# I-TECH DISCLOSURE SCHEDULE INTRODUCTION

This I-TECH Disclosure Schedule has been prepared pursuant to Article III of the Agreement and Plan of Merger dated as of April 7, 2005 (the "Merger Agreement"), by and among Fusion Corporation ("Fusion"), I-Robot Acquisition Corp. ("Sub"), I-TECH CORP. ("I-TECH") and Steven Bucher ("I-TECH Shareholder"). Capitalized terms used herein and not otherwise defined shall have the respective meanings ascribed to such terms in the Merger Agreement.

This Disclosure Schedule is qualified in its entirety by reference to specific provisions of the Merger Agreement, and is not intended to constitute, and shall not be construed as constituting representations or warranties of I-TECH, except as and to the extent provided in the Merger Agreement. Inclusion of information herein shall not be construed as an admission that such information is material to the business, results of operations or financial condition of I-TECH.

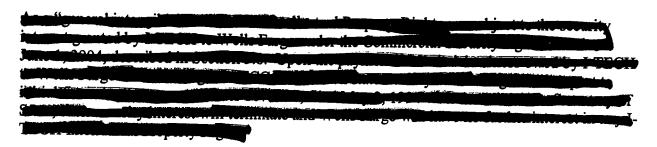
Matters reflected in this Disclosure Schedule are not necessarily limited to matters required by the Merger Agreement to be reflected in this Disclosure Schedule. Such additional matters are set forth for informational purposes and do not necessarily include other matters of a similar nature.

To the extent practicable, this Disclosure Schedule is arranged to correspond to the numbered Sections contained in Article III of the Merger Agreement. However, any matter disclosed pursuant to one section or subsection hereof is deemed disclosed for all purposes of the Merger Agreement and to the extent the Merger Agreement requires such disclosure. Section numbers and titles herein shall to no extent have the effect of amending or changing the express description of such sections hereof as set forth in the Merger Agreement.

The descriptions of the agreements, plans, policies and other documents referred to herein (the "Documents") are intended to be summaries, and are qualified by the actual terms of the Documents. This Disclosure Schedule and the Documents and all drafts thereof, are subject to and shall be treated in accordance with the terms of the Confidentiality Agreement between Fusion and I-TECH dated November 16, 2004.

## Section 3.9 Intellectual Property

#### (a) Security Interests, etc.



All right, title and interest of I-TECH in and to the I-TECH Intellectual Property and rights with respect to the use thereof are subject to the agreements and licenses otherwise set forth in this Schedule Section 3.9, including, without limitation, provisions relating to payment compensation therefor.

### (b) (i) Patents and Patent Applications, Trade Marks etc. and Copyrights

#### **United States Patents**

Brief Matter Description	Patent No.	Application No.	Date Filed	Date Issued
For: DESIGN FOR SCSI BUS MONITOR	D345,961	29/001,376	Nov. 12, 1992	April 12, 1994
For: CONTROL OF MULTI-THREAD OPERATIONS IN AN INITIATOR DEVICE(a)	5,421,014	08/093,513	Jul. 19, 1993	May 30, 1995
For: UNIVERAL SCSI ELECTRICAL INTERFACE SYSTEM	5,715,409	08/067,473	May 24, 1993	Feb. 3, 1998
For: UNIVERSAL SCSI ELECTRICAL INTERFACE SYSTEM (Continuation)	5,671,376	08/646,080	May 7, 1996	Sep. 23, 1997
For: TRACE MEMORY DEPTH MODULAR EXPANSION APPARATUS AND METHOD (Provisional)	Converted	60/065,782	Nov. 17, 1997	
FOR A PROTOCOL ANALYZER <sup>(b)</sup>	6,266,789	09/193,779	Nov. 17, 1998	Jul. 24, 2001
DEEP TRACE MEMORY SYSTEM FOR A PROTOCOL ANALYZER (Continuation) (b)	6,393,587	09/848,128	May 3, 2001	May 21, 2002
For: INDEXER AND USER INTERFACE FOR FIBRE CHANNEL ANALYZERS (Provisional)	Converted	60/202,327	May 5, 2000	<del></del>

<sup>(</sup>a) expired as a result of intentional decision to not pay second patent maintenance fee

<sup>(</sup>b) re-examination certificate to be issued confirming patentability

For: INDEXING SYSTEM FOR PROTOCOL ANALYZERS	6,745,351	09/579,936	May 26, 2000	June 1, 2004
For: INDEXING SYSTEM FOR PROTOCOL ANALYZERS (Continuation)	Pending	10/806,928	Mar. 23, 2004	
För: INTEGRATED MULTI-CHANNEL FIBRE CHANNEL ANALYZER	6,507,923	09/294,935	Apr. 19, 1999	Jan. 14, 2003
For: METHOD AND SYSTEM FOR MULTI- USER CHANNEL ALLOCATION FOR A MULTI-CHANNEL ANALYZER (CIP)	Pending; issue fee paid	09/850,673	May 8, 2001	•
SIMPLIFIED INSTRUCTION SEQUENCER WITHOUT A PROGRAM COUNTER	Abandoned	08/066343	May 24, 1993	

#### United States Trademarks, Etc.

Mark	Application Date	<u>Serial</u> Number	Registration Date	Registration No.
PockeTrace	11/19/92	74/332610	Abandoned	
Pocketest	12/17/92	74/342090	7/27/93	1793966
Stacbox	7/12/95	74/702738	8/26/97	Abandoned 2091862 Abandoned
Satellite	4/3/00	76/015641	5/7/02	2566575
I-TECH	5/11/98	75/596744	1/11/00	2307497
In the Loop	11/13/98	75/588537	1/4/00	2306083
Migration Made Simple	11/13/98	75/588536	3/21/00	2331619
PowerPak™	N/A	'N/A	N/A	N/A
PowerFrame <sup>™</sup>	N/A	N/A	N/A	N/A
PowerLogic <sup>TM</sup>	N/A	N/A	N/A	N/A
PowerLink <sup>™</sup>	N/A	N/A	N/A	N/A
PassPort <sup>TM</sup>	N/A	N/A	N/A	N/A
SANmark <sup>™</sup>	N/A	N/A	N/A	N/A
SAN Commander <sup>TM</sup>	N/A	N/A	N/A	N/A
Advantage <sup>TM</sup>	N/A	N/A	N/A	N/A
Osprey™	N/A	N/A	N/A	N/A
Bagle™	N/A	N/A	N/A	N/A
Monarch™	N/A	N/A	N/A	N/A
ntelligent Analysis™	N/A	N/A	N/A	N/A

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**TRADEMARK** REEL: 003286 FRAME: 0881

**RECORDED: 04/11/2006**