IN THE UNITED STATES PATENT & TRADEMARK OFFICE

In re application of Yamaha Guitar Group, Inc.	)	Law Office No. 107
	)	
Application 88/824112	)	Examining Attorney
	)	Kevin M. Dinallo
Filing date: March 6, 2020	)	
	)	
Mark: CATALYST	)	

DECLARATION OF ARNE WALLBRECHER

Commissioner for Trademarks
PO Box 1451
Alexandria, VA 22313-1451

I, ARNE WALLBRECHER, DECLARE:

1.   I reside in or near the area of Los Angeles, California, and I am over the age of 18 and thus competent to testify or make an evidentiary declaration under applicable state and federal law. This declaration has been made without payment of a wage, salary, fee, or other compensation.

2.   I make this declaration, for the above-referenced trademark application, to address issues of fact raised in the Office communication of April 14, 2020, and the applicant company's response of September 2020. I understand that Yamaha Guitar Group, Inc. is seeking a federal trademark registration for CATALYST for use in connection with amplifiers for musical instruments; Loudspeakers; Electronic effects pedals for use with musical instruments; Electronic audio signal processors, tone modules, effects processors for use with musical instruments. I understand that the Office has refused to register this mark based upon an alleged likelihood of confusion with the mark IGNITE KATALYST of Grass Valley as shown in registration 4246683.

3.   I have spent much of my career working in the professional audio products industry and I will briefly summarize my career highlights, from the present and moving backward in time. Since May 2019, or a period of 17 months, I have been Director of Products for Artiphon. Prior to this period at Artiphon, I was a Product Manager at the applicant company from June 2017 to May

2019, or two years. Prior to that, I worked at Artiphon again as a Product Manager starting in April 2016, a period of 15 months. From March 2012 to March 2016, a period of four years, I served as Product Owner and Product Manager for Line 6, Inc. Starting in 2003 and continuing to the present, including while serving in the other positions I have described, I have owned AIR of Los Angeles and Berlin, Germany, acting as sound designer, mixer, engineer, and consultant. This role also has included extensive system design for audio systems including monitor and broadcast mixing. From 1997-2003, a period of six years, I served in audio postproduction and sound design at Media Factory, AV Transfer GmbH of Berlin und Umgebung, Germany.

4.   My key skills and areas of knowledge include professional audio, live sound, audio post-production including mix engineering, sound design, and all the foregoing as applied to film production. I actively follow product and service developments at Avid Corporation, Harman Music Group, LOUD Audio, LLC, Waves Audio, Native Instruments, Line 6, Pandora, Euphonix, Meyer Sound, Steinberg Media Technologies, Apogee Electronics, Ableton, Martin Audio Ltd, Solid State Logic, M-Audio, Soundcraft, Gambini Pro, L-Acoustics, edelmat GmbH, and others.

5.   Artiphon is a consumer electronics company based in Nashville, Tennesee that develops adaptive instruments to empower musical creativity. Founded in 2011 and privately held, Artiphon makes ORBA brand electronic instruments and INSTRUMENT 1 brand electronic instruments. The ORBA device can be used to play music or operate as an expressive musical instrument digital interface (MIDI) controller of other devices. The INSTRUMENT 1 device is a versatile, expressive, and portable multi-instrument. With this single instrument, you can perform a variety of intuitive musical gestures and play any sound.

6.   During the course of my career, I have become familiar with a range of audio production products, including amplifiers for musical instruments. I have also had exposure to professional motion picture production, including sound mixing and sound engineering for movies. Through the experience I have described above, I have formed an awareness of the differences between amplifiers for musical instruments, and the other goods recited in this application, and professional movie and TV studio gear.

7.   I have been informed that registration 4246683 of Grass Valley shows the mark IGNITE KATALYST for use in connection with "Apparatus and instruments, namely, electronic controllers and data processers for the automated control of live and prerecorded audiovisual content, servers, and supervision cameras; software for the automated control of live and prerecorded audiovisual content." While I understand that the Office evaluates applications and registrations, in the first instance, based on the data in the Office's records rather than external sources, in my view, the quoted description of Grass Valley's goods cannot be fully understood without interpreting knowing what the controllers, "data processers" [sic] and software really are, and how relevant consumers would understand these products when encountering the mark.

8.   I am familiar with the registrant, Grass Valley Group, the general nature, use, and the customers of Grass Valley products. The registrant is well-known in the motion picture and TV production industry as a high-end manufacturer of studio control equipment—but not amplifiers, effects processors, or other devices for use with musical instruments. Grass Valley's market is completely different than that of Yamaha Guitar Group. Before making this declaration, I had not purchased or used the IGNITE KATALYST controller from Grass Valley. However, in order to make this declaration, I have researched the IGNITE KATALYST product and educated myself about it. I regard myself as having a full understanding of what the IGNITE KATALYST product is, its intended field of use, and its likely customers and trade channels. This understanding arises from a combination of my education, industry experience, and research for this declaration. The opinions expressed in this declaration are based on all these factors in combination and the sum of my over 23 years of experience in professional audio.

8.   The registrant's goods are described in detail online at the web page https://www.grassvalley.com/products/ignite_katalyst/. True and correct copies of screen capture images from the foregoing website, downloaded and captured on September 17, 2020, are attached as **Attachment 1**. A true and correct copy of a datasheet published by Grass Valley and describing the goods is attached as **Attachment 2**. For Grass Valley, "Ignite" is a software platform for automating technical elements of live performances, such as sync audio, lights, and effects. The

"Katalyst" product is a controller for the software. As Grass Valley's website states, "When you add the Ignite Katalyst panel, you'll gain quick access to the specific functions your director needs at any given point, resulting in the fluid, orchestrated production of scripted and non-scripted programming." The reference to "director" means the director of a live performance or show. Grass Valley's website specifies the following key functions of the goods:

- Highly configurable to suit diverse production requirements
- Triggers automation timeline events, Ignite CG list and keyer functions
- Immediate execution of Ignite actions, TME (event) actions and late-breaking news (LBN) events
- 200 user-programmable buttons for inserting hot keys, CG keyer control, video program and preview sources and auxiliary video sources
- Manual motorized faders mirror those in Ignite audio application
- Audio cue, backup and hold functions
- Audio faders assignable to be dynamically populated by program audio
- Supports easy departure from full automation to manual mode and back again
- One-button control to import rundown changes
- Buttons programmable to manually trigger any device that can accept a GPO/GPI

The following image from Grass Valley's website shows the IGNITE KATALYST console:

The following image from the website shows the console adjacent to display screens showing images generated by the relevant software:

9.   In my view, it would be impossible for the buyers or consumers of Yamaha Guitar Group's CATALYST brand "amplifiers for musical instruments; Loudspeakers; Electronic effects pedals for use with musical instruments; Electronic audio signal processors, tone modules, effects processors for use with musical instruments" to mistake the source of those products for Grass Valley based on the foregoing description of IGNITE KATALYST products. The goods are starkly different. Yamaha Guitar Group's goods have no utility in controlling movie or TV content, servers, or supervision cameras. In contrast, Grass Valley's "automation control panel" is a form of hardware control for equipment used in live performances, or in professional TV studios. In simplified terms, the IGNITE KATALYST product helps directors of live performances or productions achieve automated control of lights, playback, fade, transition and other effects. The registrant's goods are not "for use with musical instruments."

10.   The parties' trade channels are different. Yamaha Guitar Group's products are sold at wholesale to musical instruments stores and other retailers of consumer and professional musical instruments, amplifiers, speakers, effects and accessories. Examples include GUITAR CENTER retail stores and SWEETWATER online stores. In contrast, Grass Valley's goods appear to be directed to the professional audiovisual, movie and TV studio or production facilities markets and

are likely to be sold by specialty retailers of those goods, or direct. The web page quoted above states, in an "Ordering Information" tab, that to order IGNITE KATALYST products, "Please contact your authorized Grass Valley representative." The registrant apparently operates a network of authorized sales representatives that its customers must use, but Yamaha Guitar Group's products are not sold through these representatives.

11.   The parties' conditions of sales are quite different. Grass Valley products are known to be expensive, professional products, and the need to contact an authorized sales representative means that the sales cycle is necessarily long—at least a few days or hours—and requires completely different conditions such as e-mail or phone contact with a rep, followed by a purchase order, invoice and so forth. This model makes sense because Grass Valley products serve a crucial function—control of television production. The buyers are likely to be TV station Master Control engineers or Directors of Engineering. This is a sophisticated, careful class, as necessary to purchase a product of this importance.

12.   In contrast, with Yamaha Guitar Group's products, the buyer could enter a GUITAR CENTER store and leave with a CATALYST amplifier within minutes via a credit card transaction. Online orders can be completed at the SWEETWATER website in minutes with no requirement for contact with an authorized representative. Players of musical instruments are likely to be less sophisticated than Grass Valley customers (yet still discerning and careful); while the purchase may be quicker, buyers still will exercise care to select the right amplifier or music effects processor because the quality of sound or tone is important to players.

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The undersigned, having been warned under 18 U.S.C. § 1001 that willful false statements and the like are punishable by fine or imprisonment or both and may jeopardize the validity of the application and any registration issuing thereon, hereby declares that all statements of fact are true and all statements made upon information and belief are believed to be true.

Signed at <u>Los Angeles, California</u> on (state date) _____Sep 18, 2020_____.

/ *Arne Wallbrecher* /
By_____/_____
Arne Wallbrecher (Sep 18, 2020 13:56 PDT)
     ARNE WALLBRECHER

Attachment 1 – Screen Capture Images from Grass Valley Website
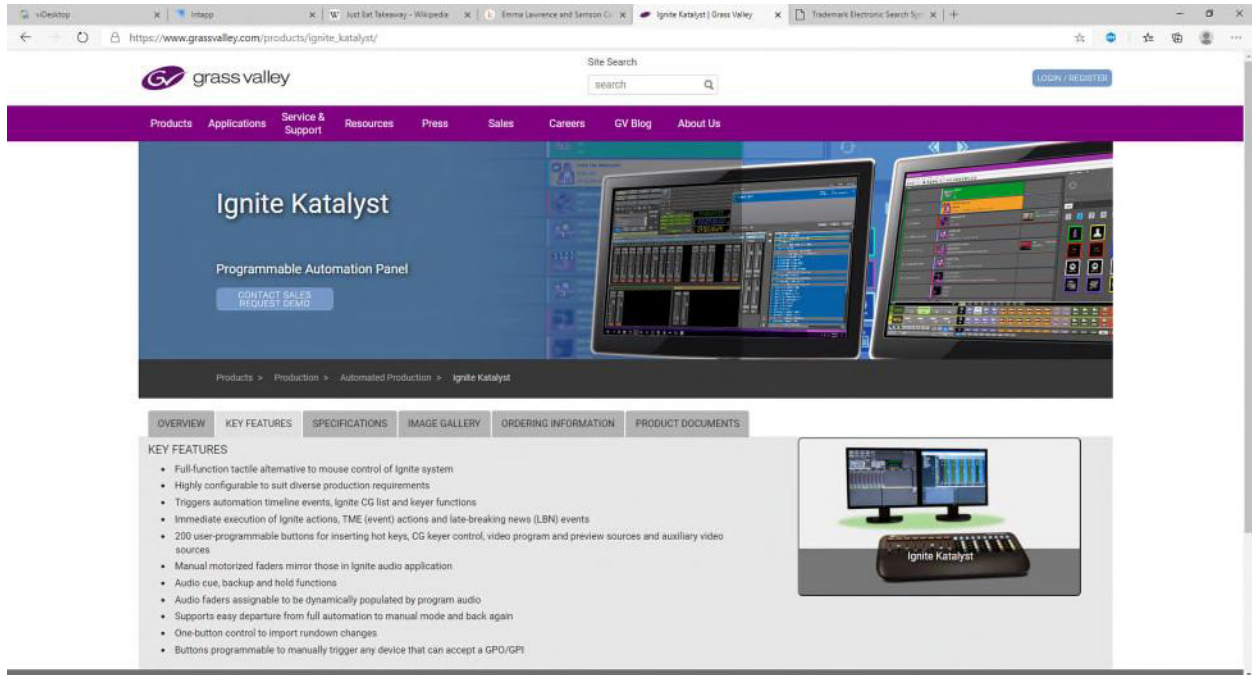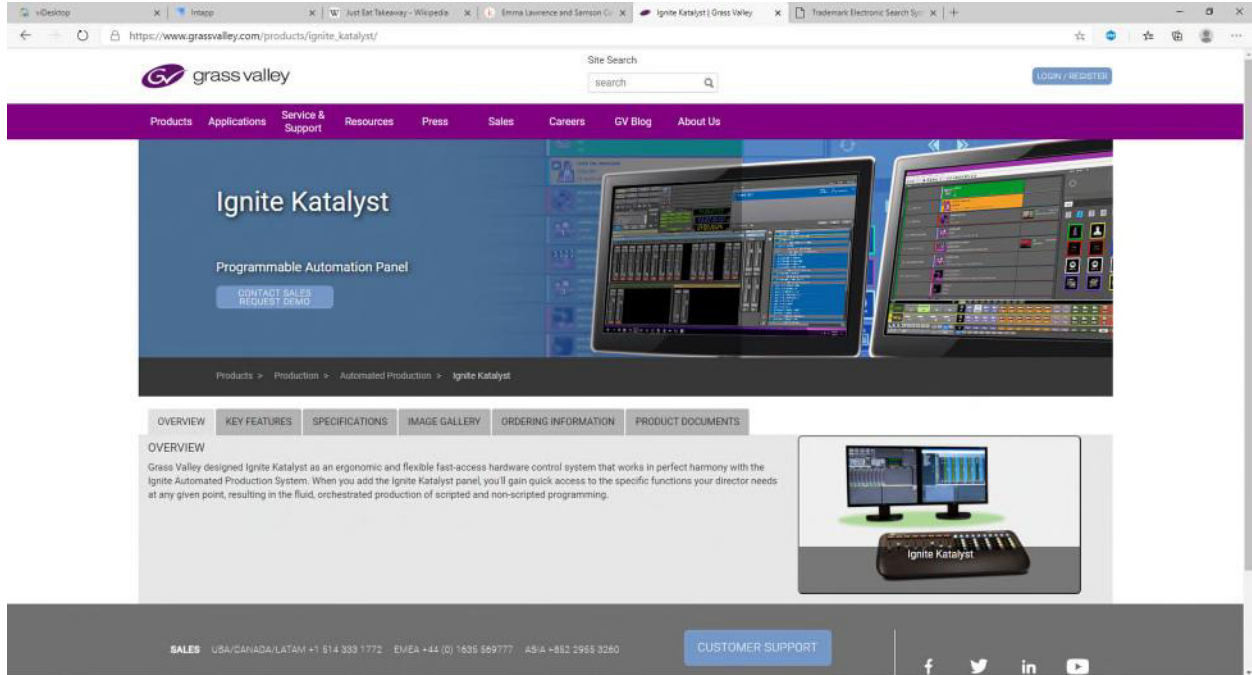
Attachment 2 – Grass Valley IGNITE KATALYST Data Sheet

(See the following pages)

Ignite

Automation Production Control (APC)

Ignite offers an exceptional level of control and flexibility, which translates into a powerful ROI and unprecedented improvements in production quality.

The revolutionary and Emmy® Award-winning Ignite APC platform from Grass Valley is a powerful and agile software platform that enables single operators to create tighter, cleaner, more compelling live content while lowering OPEX costs associated with personnel and training.

The Unscripted Live Production Leader

Ignite excels in live production environments where unexpected changes are a common occurrence. Not all live productions can be scripted. Why settle for an APC solution that doesn't excel at delivering compelling unscripted live content? Ignite has the ability to run in a standard playlist format and instantly transition to independent, manual control of all devices in a production control room — switching seamlessly between live productions without any additional preparation.

Ignite has produced over 1 million hours of live production, covering news, variety talk shows, sporting events, concerts and various other production formats. When disaster strikes, Ignite is there helping you produce coverage for stories like the Christchurch earthquake, countless hurricanes and wildfires. These productions can last days and weeks, not just hours and minutes — all unscripted and unplanned.

Reduce Complexity

Since its inception three generations ago, the goal for Ignite was simple: Reduce the *complexity* associated with live productions. The Ignite platform was the first to make single operator productions possible. Ignite is the only APC to offer Dynamic Live Events via our patented IQT template manager. This feature, when combined with K-Frame Show Macros, works with a library of under 100 events. These events are flexible for infinite and instantaneous adjustments to the style, look and feel of production events.

Ignite Event Builder (EB) — Game Changer

The perception is that *all APC solutions* available in the industry today are complicated to set up and maintain, which directly impacts your OPEX budget, and limits productions. APC operators are encumbered by "how do I do this?" as opposed to simply focusing on making the most creative live productions. Facilities using an APC often look for special operators called "super users" who are responsible for maintaining the creativity of the event library. What happens when these super users aren't working, are sick or leave your organization? To ensure smooth, efficient and consistent productions, Ignite EB is the solution.

Ignite EB is the next generation platform that levels the playing field for all operators, making every user a *super user*. Ignite EB was designed from the ground up for a non-technical person to create or modify live production events with little or no formal training. Other APC solutions take weeks or even months to build out a show library of live events. Ignite EB makes this possible in days with unprecedented savings. Ignite deployment training can now immediately focus your team on creativity of live productions, instead of wasting time building out event libraries.

Ignite EB also enables operators to embrace change. Minutes before a live production, a Producer can request a new event, which can be quickly, easily and confidently created in Ignite EB. This scenario would have previously been seen as impossible and fraught with risk. With Ignite, it's no problem. Ignite EB works to break down the walls that exist between Producers and Directors, giving you a real game changer in live production!

KEY FEATURES

- Ignite Persistent Templates: New Ignite vertical playlist supports dynamic change in the rundown directly from Ignite — there's no need to go to the NRCS to make changes
- New Event Builder:
  - Quick & easy creation of event library — reducing training & commissioning by up to 50%
  - Enables Ignite to be deployed as an easy to set up and use plug-and-play device suitable for any production environment, small or large
  - Event options are accessible in a single interface — building takes a few clicks, no wading through dozens of menus
- MOP (Media Object Portal) processes and filters changes that occur during live productions, giving visibility to what and where a change has occurred
- Fully and partially redundant options

- Templated Events: Reduces the size and complexity of your event library
- Third-party device control is direct and native, no other applications required
- Audio control mimics the way an audio operator would control an audio console
- Ignite companion application enables simultaneous Ignite control by up to three operators
- Make last-minute adjustments to audio levels on Katalyst or directly in the Ignite UI — there's no need to go to the NRCS to make changes
- Flexible architecture support allows for hybrid modes of operation
  - Switch between traditional production panels and full automation
  - Combine semi-automation with manual control of specific devices

- Supports MOS and has an Active X plugin
- NRCS support: AP (ENPS), iNews, Octopus and Dalet, while also supporting no NRCS if desired
- Comprehensive switcher support:
  - K-Frame: S-Series, V-Series
  - Kahuna
  - Kula
  - Sony
- DMP: Easily and seamlessly produce content for web and mobile platforms via Ignite that enables:
  - Tight integration with GV STRATUS to automatically segment and produce content for mobile and web platforms

It's All About CONTROL — No Compromises

Since its inception, Ignite was engineered around the principle of providing automated production without limiting the creativity or flexibility of the production team. Ignite is the only automated production control system which lets you drive your production switcher the way a technical director would in a traditional environment. Ignite is also the only APC solution that doesn't require an audio operator. This has a significant impact on ROI, production quality and the ability to handle breaking news at a moment's notice.

One important differentiator is our superior switcher control architecture. As with traditional live broadcasts, Ignite automation can cascade a production across multiple M/Es, driving primary and auxiliary outputs to destinations across your studio and facility. It is this superior platform architecture that allows Ignite to utilize all of your production switcher's resources — not simply flip-flopping between two M/E banks on program like some competitors' systems.

Broadcast Video Workflow

The Grass Valley line of Ignite integrated production solutions is the industry's first and most complete link between the control room and newsroom.
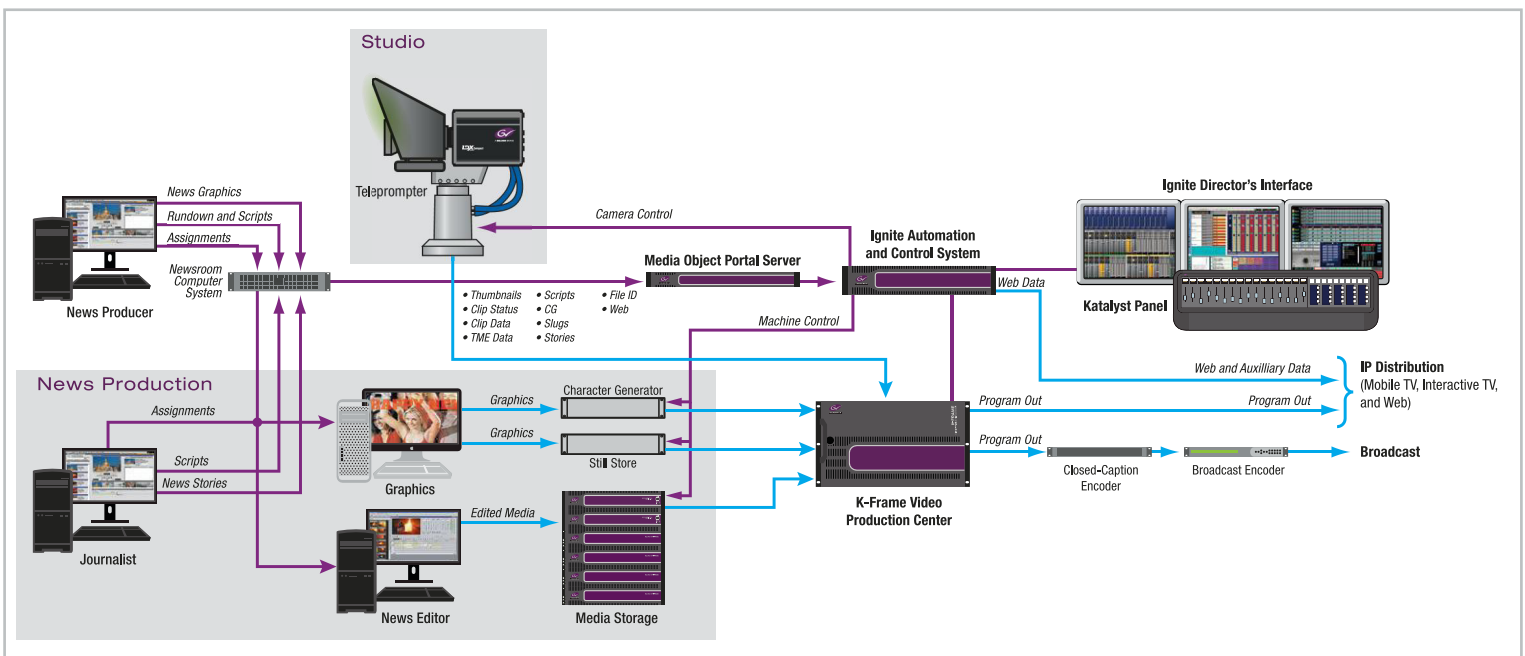
Ignite has the ability to scale from 1 M/E to 5 M/Es of production. The power of Ignite, when combined with Grass Valley's K-Frame switcher engine, is unprecedented. The ability to load show profiles on a K-Frame means that a single Ignite event library can have unlimited variations of style, reduce the size of your library and enable a director to make quick changes to the look and feel of a production — all common during breaking news or rating periods.

When it comes to the K-Frame switcher engine, there are numerous advantages over other systems, including:
• Edit EMEMs and macros via a timeline that sup- ports key frames
• Double Take — turns a 3 M/E K-Frame into a 6 M/E system
• Suites mode to enable simulcasting — two concurrent and separate live productions from a single K-Frame
• Source rules that help make simulcasting and 4K UHD productions a breeze

Ignite Katalyst Tactile Control Interface

The Ignite Katalyst solution for the Ignite platform provides the feel of a tactile interface without the bulk of large control panels. Whether producing an entire show live, it can trigger simple or complex functions for instant recall. And the touch-capacitive motorized audio faders provide for dynamic audio control and instantaneous automation override.

Automation Soft Panel

Introducing the ASP — Automation Soft Panel. ASP provides all the functionality of the Katalyst without the cost of additional hardware. ASP provide users with more hotkeys and faders with software, which can run on customer-furnished equipment.

Ignite Event Builder

The latest innovation to the Ignite platform, Event Builder, solves the most important problem that impacts everyone who uses an APC solution, regardless of vendor — **Complexity:**

Event options are accessible in a single interface — Building takes a few clicks, no wading through dozens of menus.

Quick & easy creation of event library — Reducing training & commissioning by up to 50%.

Modifications to events are quick and seamless — Reducing the long-term hidden costs of implementing all APC solutions that drastically decrease Op-Ex training costs.

Enables Ignite to be deployed as an easy to set-up and use plug-and-play device suitable for any production environment, small or large — Reduces complexity to a level that anyone can use and maintain an Ignite APC solution.

ORDERING

IGNITE-KON-KFM-1ME

IGNITE KONNECT 1 M/E K-Frame Package – 6 RU K-Frame (32 x 16) inputs/outputs, 8/32 GPI

- 1 RU frame with redundant power supplies
- One M/E plus controller M/E, four 3D iDPMs, 12 2D DPMs, 12 full function keyers with chromakey, FlexiKey, DoubleTake, M/E viewer, ImageStore board/license
- 1 M/E soft panel GUI on user supplied PC with KSP keyboard
- Ignite license, tally & serial control, Cisco switch & firewall, three monitors, keyboard and mouse

IGNITE-KON-KFM-2ME

IGNITE KONNECT 2 M/E K-Frame Package – 6 RU K-Frame (64 x 32) inputs/outputs, 8/32 GPI

- 1 RU frame with redundant power supplies
- Two M/E plus controller M/E, four 3D iDPMs, 18 2D DPMs, 18 full function keyers with chromakey, FlexiKey, DoubleTake, M/E viewer, ImageStore board/license
- 1 M/E soft panel GUI on user supplied PC with KSP keyboard
- Ignite license, tally & serial control, Cisco switch & firewall, three monitors, keyboard and mouse

IGNITE-KON-KFM-3ME

IGNITE KONNECT 3 M/E K-Frame Package – 6 RU K-Frame (80 x 48) inputs/outputs, 8/32 GPI

- 1 RU frame with redundant power supplies
- Three M/E plus controller M/E, eight 3D iDPMs, 24 2D DPMs, 24 full function keyers with chro- makey, FlexiKey, DoubleTake, M/E viewer, ImageStore board/license
- 1 M/E soft panel GUI on user supplied PC with KSP keyboard
- Ignite license, tally & serial control, Cisco switch & firewall, three monitors, keyboard and mouse

IGNITE-KON-KFM-4ME

IGNITE KONNECT 4 M/E K-Frame Package – 6 RU K-Frame (80 x 48) inputs/outputs, 8/32 GPI

- 1 RU frame with redundant power supplies
- Four M/E plus controller M/E, eight 3D iDPMs, 30 2D DPMs, 30 full function keyers with chromakey, FlexiKey, DoubleTake, M/E viewer, ImageStore board/license
- 1 M/E soft panel GUI on user supplied PC with KSP keyboard
- Ignite license, tally & serial control, Cisco switch & firewall, three monitors, keyboard and mouse

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Yamaha Guitar Declaration for TM Application

Final Audit Report   2020-09-18

Created:	2020-09-18
By:	CHRISTOPHER PALERMO (christopher.palermo@bakerbotts.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAjNb2n-8o9QRu8EdDcNpjyo5qlC1D7u_5

"Yamaha Guitar Declaration for TM Application" History

📄 Document created by CHRISTOPHER PALERMO (christopher.palermo@bakerbotts.com)
2020-09-18 - 8:47:53 PM GMT- IP address: 38.142.72.122

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