

Patent License Agreement

This Patent License Agreement, effective as of _____ ("Effective Date"), is between Mercury Computer Systems, Inc. ("Mercury"), having a principal place of business at 199 Riverneck Road, Chelmsford, Massachusetts, and _____ ("Licensee") having a principal place of business at _____.

Whereas, Mercury owns U.S. Patent No. 6,759,588, entitled "Circuit Board Assembly with Combination Thermal, Shock, Vibration, and/or Electromagnetic Compatibility Cover" ("Patent") and Licensee seeks a non-exclusive license under the Patent in connection with products ("Licensed Products") that (i) implement a VSO or VITA Specification, an IEC Industry Trade Agreement, an American National Standard, or other technical standard developed and adopted in accord with the policies of the VITA Standard Organization (VSO) from Draft VSO Specification 48.1 ("Mechanical Specifications for Microcomputers Using REDI Air Cooling Applied to VITA 46") (the "Specification"), and (ii) are designed and used for air-cooling applications defined in §1 — Scope of that Specification (the "Scope").

Now, therefore, in consideration of the mutual covenants and promises below, Mercury and Licensee agree as follows.

1. Grant

Effective on payment of the monies specified in Section 3, Mercury grants to Licensee a non-exclusive, worldwide license under the Patent to make, use, have made, market, import, offer to sell, and sell, and to otherwise directly or indirectly distribute Licensed Products. This license (i) is perpetual, subject to the termination and suspension provisions of Section 5, below, (ii) may not be sublicensed (except to the extent necessary to "have made"), and (iii) extends only to essential claims of the Patent. As used herein, an "essential" claim of a patent is a claim that is necessarily infringed by an implementation compliant with the Specification and for which there is no technically and commercially feasible non-infringing alternative.

2. Affiliates

The grant in Section 1 shall extend to Licensee's Affiliates (as defined below), who shall be bound by the terms and conditions of this License Agreement as if named herein in the place of Licensee (except as otherwise indicated herein). The effective date of any license so extended to an Affiliate of Licensee shall be the later of (i) the Effective Date, or (ii) the date on which such Affiliate became an Affiliate of Licensee. Moreover, any such license so extended to an Affiliate shall terminate on the earlier of the termination date (as specified in Section 5, below) and the date on which such Affiliate ceases to be an Affiliate of Licensee. As used herein, an "Affiliate" of a party is any natural person, partnership (whether general or limited), limited liability company, trust, estate, association, organization or corporation (collectively, "Entity") which directly or indirectly is controlled by that party whether through the ownership of voting securities, by contract or otherwise. A party hereto shall be deemed to be in control of an Entity if the party directly or indirectly owns or controls more than fifty percent (50%) of the voting stock or other ownership interest of such Entity, or if

the party possesses, directly or indirectly, the power to direct or cause the direction of the management and policies of such Entity or the power to elect or appoint fifty percent (50%) or more of the members of the governing body of such Entity.

3. Payment

On the date that this License Agreement has been signed by both parties hereto, Licensee shall owe and shall promptly pay Mercury the amount of ten thousand dollars (\$10,000) by cashier's check or money order made payable to Mercury Computer Systems, Inc. Payment shall be deemed effective only upon receipt of the specified monies by Mercury.

4. Release

Effective on payment of the monies specified in Section 3, Mercury releases Licensee, its Affiliates and their respective customers from any and all claims of infringement of the Patent based on acts prior to the Effective Date, which acts would have been licensed under this License Agreement had they been performed after the Effective Date. This release shall not apply or otherwise have effect with respect to Affiliates who were not Affiliates of Licensee as of the Effective Date.

5. Termination & Suspension

5.1. This License Agreement shall terminate upon expiration of the Patent.

5.2. Mercury shall have the option, at its sole discretion, to terminate this License Agreement and any license granted hereunder in the event that Licensee and/or an Affiliate engages in acts not licensed hereunder constituting infringement of the Patent.

5.3. Mercury shall have the option, at its sole discretion, to suspend this License Agreement and any license granted hereunder in the event that (i) the Licensee and/or an Affiliate thereof brings an action against Mercury or an Affiliate thereof, or otherwise participates in, joins in, or otherwise aids such an action (except as required by law), for infringement of patent claims in the U.S. or abroad essential to practice a VSO or VITA Specification, an IEC Industry Trade Agreement, an American National Standard or other technical standard developed and adopted in accord with the policies of the VITA Standard Organization (VSO), or (ii) Licensee and/or an Affiliate thereof fails to grant a license in accordance with the provisions of Section 6 hereof.

6. Option

Licensee grants Mercury the right to obtain on behalf of itself and/or its Affiliates a license under Licensee Patents (as hereinafter defined) with respect to any products that (i) implement the Specification and (ii) are designed and used for the Scope. The foregoing license shall (a) have the broadest scope which Licensee and/or its Affiliates has the right to grant, but of no greater scope than the scope of the license granted by Mercury in this License Agreement (as the same may be amended from time to time by the parties), and (b) have terms, including royalty payment, that are no less favorable to Mercury (and/or its Affiliates) than those granted to Licensee and its Affiliates in this License Agreement (as the

same may be amended from time to time by the parties). The term "Licensee Patent" means all patents (domestic and foreign), and/or applications therefor, to which Licensee or any of its Affiliates has the right to grant licenses to third parties (other than its own Affiliates), and which contain one or more essential claims (as such term is used in Section 1 above).

Mercury's right to exercise the foregoing option shall be exercisable at any time, and from time to time, with respect to any Licensee Patent whether or not issued and whether or not the applications therefor exist at the time such right is exercised. The date of said license agreement shall be the date on which Mercury requests such license. Except in the event of termination of this License Agreement under Section 5.2 hereof, the option grant of this Section 6 shall survive termination or suspension of this Agreement.

7. Warranty

Mercury represents and warrants that it has the full right and power to grant the license and release set forth in Sections 1 and 4, respectively, and that there are no outstanding agreements, assignments, or encumbrances inconsistent therewith. Mercury makes no other representations or warranties, express or implied, nor shall Mercury have any liability in respect of any infringement of patents or other rights of third parties due to Licensee's operation under the license herein granted. Mercury neither warrants nor represents that Licensee will not require a license under other patents (owned by Mercury or by third parties) to make, use, import, or lease, sell or otherwise transfer Licensed Products.

Licensee represents and warrants that it has the full right and power to grant to Mercury the right so specified in Section 6.

8. Notices

Notices and other communications shall be sent by facsimile or by registered or certified mail to the following address and shall be effective upon receipt:

For Mercury:

Mercury Computer Systems
Director of Contract Administration
199 Riverneck Road
Chelmsford, Massachusetts 01824

For Licensee:

10. Miscellaneous

- a. Licensee shall not assign any of its rights or privileges, nor delegate any of its obligations, hereunder. Any attempt to do so shall be void.

- b. Nothing herein shall be construed as conferring any rights by implication, estoppel or otherwise, to or under any patents other than the Patent or to any other intellectual property rights, except as expressly set forth herein.
- c. Except as specifically provided herein, neither party is required hereunder to furnish or disclose to the other any technical or other information.
- d. Mercury has no obligation hereunder to institute any action or suit against third parties for infringement of the Patent or to defend any action or suit brought by a third party which challenges or concerns the validity of the Patent. Conversely, Licensee has no right to institute any action or suit against third parties for infringement of the Patent.
- e. Mercury has no obligation hereunder to maintain the Patent in force.
- f. This License Agreement shall not be binding upon the parties and shall not obligate either of the parties, until it has been signed herein below by both parties and the monies specified in Section 3 have been paid, in which event it shall be effective as of the Effective Date. No amendment or modification hereof shall be valid or binding upon the parties unless made in writing and signed by both parties.
- g. If any section of this License Agreement is found by competent authority to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such section in every other respect and the remainder of this Agreement shall continue in effect so long as the Agreement still expresses the intent of the parties. If the intent of the parties cannot be preserved, this Agreement shall be either renegotiated or terminated.
- h. This Agreement shall be construed and the legal relations between the parties hereto shall be determined, in accordance with the law of the Commonwealth of Massachusetts.
- i. The headings of the several sections are inserted for convenience of reference only and are not intended to be a part of or to affect the meaning or interpretation of this License Agreement.
- j. This License Agreement embodies the entire understanding of the parties with respect to the Patents and replaces any prior oral or written communication between them.

Mercury Computer Systems Inc.

Licensee: _____

 Name:
 Title:

 Name: _____
 Title: _____

Appendix 6: Declaration of VITA Member Company

Section 10 of the *VSO Policies and Procedures* requires the undersigned WG Member¹ to complete and execute this Declaration on behalf of the VITA Member Company he or she represents. The Declaration is irrevocable. Any subsequent Declaration covering information disclosed in this Declaration may only supersede this Declaration if the subsequent Declaration is less restrictive upon prospective licensees than the information set forth in this Declaration. This Declaration will apply to the Draft VSO Specification² identified below in Section C and to all reaffirmations or revisions to such Draft VSO Specification.

A. VITA Member Company

Legal Name of Organization Mercury Computer Systems, Inc.

B. WG Member Representing the VITA Member Company

Name & Department: Craig Lund, Chief Technology Officer

Address: Mercury Computer Systems, Inc., 199 Riverneck Rd., Chelmsford,

Telephone: 978-967-1264 Fax: 978-256-4778

E-Mail: clund@mc.com URL: http://mc.com

C. Draft VSO Specification

Number: 48.1

Title: Mechanical Specifications for Microcomputers
Using REDI

D. Disclosure of Patents Containing Essential Claims^{4,6}

1. In accordance with Section 10 of the *VSO Policies and Procedures*, the undersigned WG Member shall disclose, on behalf of the VITA Member Company he or she represents, all patents or patent applications that the VITA Member Company (or its Affiliates³) may own or control and that it believes may contain claims essential to create an implementation compliant with the Draft VSO Specification identified above in Section C of this Declaration.

Patent / Application No.: 6,759,588

Title: Circuit Board Assembly with Combination
Thermal,
Shock, Vibration, and/or Electromagnetic

¹ For purposes of this Declaration, "WG Member" includes all three levels of membership described in Section 7.1.4 of the *VSO Policies and Procedures*: sponsors, participants, and observers.

² For purposes of this Declaration, "Draft VSO Specification" includes any eventual standard developed and adopted under Track 1 or Track 2 in Section 7.2 of the *VSO Policies and Procedures* as an IEC Industry Technical Agreement, a VSO or VITA Specification, or an American National Standard.

³ For purpose of this Declaration, an "Affiliate" is any entity that directly or indirectly controls, is controlled by, or is under common control with, another entity, so long as such control exists. For purposes of this definition, with respect to a business entity, control means direct or indirect beneficial ownership of or the right to exercise (i) greater than fifty percent (50%) of the voting stock or equity in an entity; or (ii) greater than fifty percent (50%) of the ownership interest representing the right to make the decisions for the subject entity in the event that there is no voting stock or equity.

Patent / Application No.: _____
Title: _____

Patent / Application No.: _____
Title: _____

Attach additional pages if necessary.

2. Does the VITA Member Company the undersigned represents hold a license from another party to a patent that may include a claim essential to create an implementation compliant with the Draft VSO Specification identified above in Section C of this Declaration?

Yes No

If yes, the undersigned shall disclose on behalf of the VITA Member Company all patents to which the VITA Member Company holds a license from another party that may include a claim essential to create an implementation compliant with the Draft VSO Specification identified above in Section C.

Patent No.: _____
Title: _____
Licensor: _____

Attach additional pages if necessary.

E. VITA Member Company's Declaration regarding the Licensing of Essential Patents

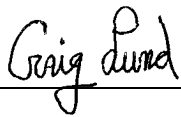
In accordance with Section 10 of the *VSO Policies and Procedures*, the VITA Member Company, by and through the undersigned, hereby declares for itself, its Affiliates, successors, assigns, and transferees of its patent rights its licensing position with respect to all patents that it may hold or control and that contain claims that may be essential to create an implementation compliant with the Draft VSO Specification identified above in Section C of this Declaration, as follows:

1. The VITA Member Company will grant to all interested parties a non-exclusive, worldwide, nonsublicensable (except to the extent necessary "to have made"), perpetual patent license (or equivalent non-assertion covenant) for its patent claims essential to create an implementation compliant with the above-referenced Draft VSO Specification on fair, reasonable and non-discriminatory terms to use, make, have made, market, import, offer to sell, and sell, and to otherwise directly or indirectly distribute products that implement the Draft VSO Specification. (This license need only extend to the portions of the Draft VSO Specification for which the license is essential to its implementation. Any other intended condition or limitation on this commitment is stated in a letter accompanying this Declaration.)
2. The VITA Member Company will grant a license to all such claims to all interested parties with a royalty rate that will not exceed: USD \$10,000.00 ---, or ----- % of product price, per unit.
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3. The VITA Member Company attaches to this Declaration a draft licensing agreement for any claims essential to create an implementation compliant with the Draft VSO Specification identified above in Section C (the final licensing agreement will not be more restrictive upon licensees than this draft); **or**

- The VITA Member Company will not include in its final licensing agreement for all claims essential to create an implementation compliant with the Draft VSO Specification identified above in Section C a grantback, reciprocal license, non-assert provision, covenant not to sue, or defensive suspension provision that is broader and more restrictive upon prospective licensees than those specified in Section 10 of the current *VSO Policies and Procedures*.

F. Signature

By signing this Declaration, the undersigned represents that he or she is authorized to bind the VITA Member Company as stated herein. The undersigned acknowledges and agrees that this Declaration is a binding agreement between the VITA Member Company and VITA, and its terms are enforceable against the VITA Member Company, its Affiliates, successors, assigns, and transferees. The undersigned further acknowledges and agrees on behalf of the VITA Member Company that each licensee and prospective licensee of patent claims essential to implement the Draft VSO Specification identified above in Section C is an intended beneficiary of this agreement, and each such beneficiary is entitled to rely upon and enforce against the VITA Member Company the provisions set forth in this Declaration.

Signature: 

Print Name: Craig Lund

Title: Chief Technology Officer

Organization: Mercury Computer Systems, Inc.

Date: Feb 26, 2008

Addendum to Appendix 6: Declaration of VITA Member Company

1. The first paragraph of Section D.1 is amended to read as follows:

“In accordance with Section 10 of the *VSO Policies and Procedures*, the undersigned WG Member shall disclose, on behalf of the VITA Member Company he or she represents, all patents or patent applications that, to the actual knowledge of the VITA Member Company’s chief technology officer (or person(s) serving in similar capacity), the VITA Member Company (or its Affiliates³) may own or control and that such chief technology officer (or such other person(s) serving in similar capacity) believes contain claims essential to create an implementation compliant with the Draft VSO Specification identified above in Section C of this Declaration.”
2. The first paragraph of Section D.2 is amended to read as follows:

“Does the VITA Member Company the undersigned represents hold a license from another party to a patent that, to the actual knowledge of the VITA Member Company’s chief technology officer (or person(s) serving in similar capacity), includes a claim essential to create an implementation compliant with the Draft VSO Specification identified above in Section C of this Declaration?”
3. The second paragraph of Section D.2 is amended to read as follows:

“If yes, subject to any confidentiality obligations to which the VITA Member Company may be bound, the undersigned shall disclose on behalf of the VITA Member Company all patents to which the VITA Member Company holds a license from another party that, to the actual knowledge of the VITA Member Company’s chief technology officer (or person(s) serving in similar capacity), includes a claim essential to create an implementation compliant with the Draft VSO Specification identified above in Section C.”
4. The first paragraph of Section E is amended to read as follows:

“In accordance with Section 10 of the *VSO Policies and Procedures*, the VITA Member Company, by and through the undersigned, hereby declares for itself, its Affiliates, successors, assigns, and transferees of its patent rights its licensing position with respect to all patents that it may hold or control and that contain claims essential to create an implementation compliant with the Draft VSO Specification identified above in Section C of this Declaration, as follows:”
5. The last sentence of Section E.1 is amended, and a new paragraph is added thereafter, to read as follows:

“Any other intended condition or limitation on this commitment is stated in a letter or draft licensing agreement accompanying this Declaration).

“Anything contained in this Declaration or in the *VSO Policies and Procedures* to the contrary notwithstanding, the VITA Member Company shall not be obligated hereunder to grant any rights with respect to the patents or patent applications identified in *Exhibit E-1* hereto (the “Excluded Patents”). The VITA Member Company may, but shall not be required to, grant licenses with respect to the Excluded Patents on such terms and conditions as it shall determine in its sole discretion.”
6. Section E.2 is amended to read as follows:

“The VITA Member Company will grant a license to all such claims to all interested parties with a royalty rate that will not exceed: USD \$_____ or _____ % of product price, per unit, subject to the terms and conditions specified in the aforementioned letter or draft licensing agreement accompanying this Declaration.