

01-15-1999

FORM PTO-595
1-31-92



U.S. DEPARTMENT OF COMMERCE
Patent and Trademark Office

100942580

MEMO 1-7-99

To the Honorable Commissioner of Patents and Trademarks. Please record the attached original documents or copy hereof.

| | |
|--|--|
| 1. Name of conveying party(ies): David A. Sieverding Kay Sieverding Additional name(s) of conveying party(ies) attached? <input type="checkbox"/> Yes <input type="checkbox"/> No | 2. Name and address of receiving party(ies): Name: Vivid Details, Inc. Internal Address: Street Address: 8228 Sulphur Mountain Road City: Ojai State: CA Zip: 93023 Additional name(s) & address(es) attached: <input type="checkbox"/> Yes <input type="checkbox"/> No |
| 3. Nature of Conveyance: <input type="checkbox"/> Assignment <input type="checkbox"/> Merger <input type="checkbox"/> Security Agreement <input type="checkbox"/> Change of Name <input checked="" type="checkbox"/> Other - Exclusive License Agreement Execution Date: 12/9/98 | |

4. Application number(s) or patent number(s):
 If this document is being filed together with a new application, the execution date of the application is:

| | |
|------------------------------|--|
| A. Patent Application No.(s) | B. Patent No.(s) 5,495,539 Additional numbers attached? <input type="checkbox"/> Yes <input type="checkbox"/> No |
|------------------------------|--|

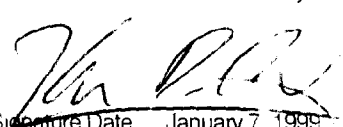
| | |
|--|---|
| 5. Name and address of party to whom correspondence concerning document should be mailed: Name: Michael A. Glenn Internal Address: Law Offices of Michael A. Glenn Street Address: 125 Lake Road City: Portola Valley State: CA Zip: 94028 | 6. Total number of applications and patents involved: <input type="checkbox"/> 1 <input type="checkbox"/> 2 7. Total fee (37 CFR 3.41) \$ 40.00 <input type="checkbox"/> Enclosed <input checked="" type="checkbox"/> Authorized to be charged to deposit account 8. Deposit account number: 07-1445 Please debit any underpayment or credit any overpayment to the above deposit account. (Attach duplicate of this page if paying by deposit account) |
|--|---|

DO NOT USE THIS SPACE

9. Statement and signature.

To the best of my knowledge and belief, the foregoing information is true and correct and any attached copy is a true copy of the original document.

Kirk D. Wong, Reg. No. 43,284
 Name of Person Signing


 Signature Date January 7 1999

Total number of pages comprising cover sheet: 1 2

OMB No. 0651-0011 (exp. 4/94)

Do not detach this portion

Mail documents to be recorded with required cover sheet information to:

Commissioner of Patents and Trademarks
 Box Assignments
 Washington, DC 20231

01/14/1999 SBURNS 00000121 071445 5495539
 01 FC:581 40.00 CH

PATENT
 REEL: 9693 FRAME: 0063

COPY OF FINAL CONTRACT

LICENSE AGREEMENT

This **LICENSE AGREEMENT** (this "Agreement") is made and entered into this 9th day of December, 1998 between **VIVID DETAILS, INC.**, a California corporation ("Licensee"), and **DAVID A. SIEVERDING** and **KAY SIEVERDING** (collectively, "Licensor").

BACKGROUND:

WHEREAS, Licensor developed a design for software that is the subject of certain patents or like protection in the United States; and

WHEREAS, Licensee wishes to acquire the exclusive rights to the above-described patent rights; and

WHEREAS, Licensor is willing to grant to Licensee the exclusive rights to the above-described patent rights subject to the terms and conditions herein.

NOW, THEREFORE, the parties agree as follows:

ARTICLE 1 DEFINITIONS

In this Agreement, the following terms shall have the following meaning:

1.1 "Licensed Patent Rights" shall mean all patent rights under the United States Patent No. 5,495,539 issued February 27, 1996, and entitled "Image Production Using Multidimensional Selection of Image Transformations," and any modifications thereof.

1.2 "Licensed Products" shall mean any product created, made, used, sold or otherwise distributed by or on behalf of Licensee that includes or uses the Licensed Patent Rights. Licensed Products shall include but not be limited to: the current version of Licensee's "Test Strip" software program, any future version of Licensee's "Test Strip" software program that includes or uses the Licensed Patent Rights, and all other

computer software, in either object or source code, that includes or uses the Licensed Patent Rights.

ARTICLE 2 GRANT AND ROYALTIES

2.1 Subject to the terms of this Agreement, Licensor grants to Licensee, and Licensee hereby accepts, the exclusive license in all fields of use throughout the world to: use, make products, and have others make products for it that include or use the Licensed Patent Rights; to distribute and sell products that include or use the Licensed Patent Rights; and to sublicense the Licensed Patent Rights.

2.2 Licensee agrees to pay to Licensor as earned royalty five percent (5.0%) of Licensee's Gross Sales Receipts after the effective date with respect to Licensed Products. Royalties shall be payable quarterly within thirty (30) days after the end of each calendar quarter. "Gross Sales Receipts" means the gross receipts by Licensee and/or its affiliates with respect to sales, licensing, or other transfer or distribution of Licensed Products less any refunds or payments for returns of Licensed Products.

2.3 Licensee may in its sole discretion grant sublicenses under the Licensed Patent (Patent No. 5,495,539), subject to the terms and conditions of this Agreement. Licensee agrees to pay to Licensor fifty percent (50%) of all consideration (including all license fees and royalties) that Licensee receives from any Sublicense Agreement; provided, however, that, at a minimum, Licensee shall pay to Licensor as earned royalty five percent (5.0%) of the Gross Sales Receipts of any sublicensee under any Sublicense Agreement. "Sublicense Agreement" shall mean the sublicensing by Licensee to a third party of some or all of the Licensed Patent Rights for inclusion or use in any product other than a Licensed Product. Licensee will promptly provide Licensor with a true copy of any such Sublicense Agreement.

2.4 Beginning in 1999 and continuing for the term of this exclusive licensing agreement, Licensee agrees to pay Licensor a minimum of \$7,500.00 per calendar year in royalties. To the extent that all sums paid to Licensor under paragraphs 2.2 and 2.3 combined do not equal or exceed \$7,500.00 in any calendar year, Licensee shall pay to Licensor any

deficiency within thirty (30) days following that calendar year. If any such deficiency is not paid within thirty (30) days following the end of the calendar year, then Licensor may send written notice to Licensee specifying the amount due. Licensee will have ten (10) business days from receipt of such notice to pay any remainder that is due; if Licensee does not pay any such deficiency, then, in addition to any other rights and remedies available to Licensor under this Agreement or under applicable law, Licensor will have the option of terminating this Agreement

2.5 As an advance to be credited against the 1999 minimum royalties payable to Licensor, Licensee shall pay Licensor \$5,000.00 on or before January 15, 1999.

2.6 Licensor agrees promptly to notify Licensee in writing of any patent maintenance fees that become due to the United States Patent Office during the term of this exclusive licensing agreement. Licensor agrees to pay all such patent maintenance fees no later than thirty (30) days prior to the ultimate due date with respect to such fees (provided that Licensor has provided written notice of such fees by such date). Licensee shall provide Licensor with written evidence of the payment of all such patent maintenance fees promptly upon the payment thereof by Licensee; and, in any event, such that Licensor receives written confirmation of the payment of such patent maintenance fees by Licensee no later than twenty-five (25) days prior to ultimate due date of such fees. If Licensor has not received written notice from Licensee, confirming Licensee's payment of the patent maintenance fees, at least twenty-five (25) days prior to the ultimate due date of such fees, then Licensor may pay such fees prior to the due date thereof. Thereafter, Licensor may make demand upon Licensee for immediate reimbursement by Licensee of the amounts so paid by Licensor. If Licensee does not reimburse Licensor for the payment of such fees within ten (10) business days after Licensee's receipt of such demand from Licensor, then, in addition to any other rights and remedies available to Licensor under this Agreement or under applicable law, Licensor will have the option of terminating this Agreement.

ARTICLE 3 WARRANTIES

3.1 Licensors warrants that it is the sole owner of the Licensed Patent Rights, that no rights in these applications have ever been assigned, licensed or conveyed in whole or in part to any third party (or, if any such rights have been so assigned, licensed or conveyed to any third party, that Licensor has reacquired exclusive ownership of such rights), and that the Licensed Patent Rights are free and clear of all encumbrances.

3.2 Licensors warrants that it has the sole power and authority to grant the exclusive license hereby.

3.3 Licensors warrants that it has not entered into any agreement with any third party that conflicts in any way with its obligations to Licensee under this Agreement.

3.4 Licensors warrants that it has not taken any actions that would jeopardize its or Licensee's rights to assert all property rights generally afforded to patent holders under United States law that arise from the Licensed Patent Rights.

3.5 Except as expressly set forth above in this Article 3, Licensor makes no warranties to Licensee or to any other party by virtue of this Agreement or the transactions contemplated hereunder, and Licensor expressly disclaims all warranties, whether express, implied or arising by usage of trade, including all implied warranties and merchantability and fitness for a particular purpose, and Licensee unconditionally accepts such disclaimer. Specifically, Licensor will not have any liability to Licensee or to any third party for any claim of any party arising out of the use of the Licensed Patent Rights by Licensee or any other party; and Licensor does not make any warranties of any kind that use of the Licensed Patent Rights by Licensee does not or will not infringe any patent or other intellectual property right of any third party in any country. Licensee shall not make or pass on to its customers (wholesale or retail) any warranty or representation on behalf of Licensor.

ARTICLE 4 INFRINGEMENT

4.1 Licensee shall have the sole right to take appropriate measures — including but not limited to bringing or defending suits relating to any of the Licensed Patent Rights — in order to prevent or stop others from infringing in any way on Licensee's exclusive license of the Licensed Patent Rights. Licensor may, at its own expense, participate in any such suit through counsel of its own choosing, in its own name or the names of itself and Licensee, as Licensor may choose. All other costs of any infringement, declaratory judgment or other suit brought or defended by Licensee, including the participation of Licensor at Licensee's request, shall be the sole obligation of Licensee. Licensor agrees to cooperate with Licensee, upon the request and at the expense of Licensee, to prevent or stop such infringement. The proceeds from any infringement claims brought or defended by Licensee (net of prosecution and/or defense costs) shall be allocated in the same manner as licensing royalty income. Licensor shall receive 5% of such net proceeds.

4.2 Upon receiving written notice from Licensee that it will not defend or prosecute a particular action, or if Licensee has not taken measures to commence the defense or prosecution of a particular action within thirty (30) days after Licensor's written inquiry regarding Licensee's intentions with respect to the defense or prosecution of such action, Licensor may, at its own expense, defend or prosecute such action for its own benefit.

ARTICLE 5 RECORDS AND REPORTS

5.1 Within thirty (30) days after the end of each calendar quarter for which royalties may be due under this Agreement, Licensee shall furnish Licensor with a written report describing the computation of the royalties and other amounts payable during the preceding calendar quarter and the quantity, description and sales prices of Licensed Products sold, licensed or otherwise distributed by or on behalf of Licensee and each sublicensee under a Sublicense Agreement during such quarter. Licensee shall also keep, and cause each sublicensee to keep, records in sufficient detail with respect to any Sublicense Agreement to enable the amount of

royalties payable to Licensor under such sublicenses to be determined. Licensor shall keep all such records confidential.

5.2 Licensee shall have the right to destroy or discard such records to which no objection has been taken by Licensor after three (3) years from the end of the calendar year to which the records relate; they shall thereafter be conclusively presumed to have been correct and accurate.

5.3 Upon written request, Licensee shall permit its records to be inspected and audited by Licensor. Licensor shall keep all such records confidential. Licensor shall pay the cost of any such audit conducted pursuant to this Section 5.3; provided, however, that if any such audit determines that, with respect to any twelve (12) month period, Licensee underpaid royalties properly due to Licensor in an amount equal to the greater of (i) \$2,500 or (ii) ten percent (10%) of the amount of royalties properly due to Licensor hereunder, then Licensee shall promptly pay to Licensor (a) the cost incurred by Licensor in conducting such audit, and (b) the additional royalties that are determined to be due as a result of such audit.

ARTICLE 6 TERM AND TERMINATION

6.1 If this Agreement is not terminated sooner as herein provided, it shall terminate with the last to expire of the Licensed Patent Rights.

6.2 If Licensee ceases the use, distribution and sale of products including, and sublicensing, of the Licensed Patent Rights without intent to resume, Licensee shall notify Licensor. In such event, Licensee shall have the right, in its sole discretion, to terminate this Agreement effective at least thirty (30) days after Licensee mails such notification to Licensor. After termination of this Agreement under this paragraph, Licensee may sell all Licensed Products that it has on hand upon the date of such termination as long as such sales are completed within six (6) months from the date of such termination, and during that six (6) month period, Licensee shall pay any royalties due on sales of Licensed Products. To the extent that all sums already paid or due to Licensor under this Agreement from the date of its inception through the end of such six (6) month termination period does not equal or exceed \$15,000.00, then Licensee shall pay to

Licensorsuch deficiency within thirty (30) days. If Licensee elects to terminate this Agreement under this paragraph, then, effective upon the termination of this Agreement, any and all Sublicense Agreements entered into by Licensee prior to the effective date of such termination shall likewise be terminated.

6.3 If a material claim or claims of the Licensed Patent Rights is or are declared invalid by a court of competent jurisdiction in a final, nonappealable judgment, then Licensee shall be released from all royalty payment obligations hereunder with respect to such invalid claim or claims; provided, that royalties paid prior to such judgment of invalidity shall not be refundable and that any claims not declared invalid shall remain in effect.

ARTICLE 7 GENERAL RELEASE

7.1 Except as to the going forward rights and obligations arising under this Agreement, Licensor irrevocably and unconditionally releases and discharges Licensee and each of its representatives, agents, insurers, affiliates, partners, officers, directors, shareholders, employees, predecessors in interest, successors and assigns of and from any and all claims, demands, controversies, actions, causes of action, obligations, liability, costs, expenses and damages of any character, nature or kind that arise from or relate to the Licensed Patent Rights.

7.2 Licensor hereby expressly waives the provisions of Section 1542 of the Civil Code of the State of California, which provides:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.

Licensorsuch acknowledges that claims or facts in addition to or different from those that are now known or believed to exist may later be discovered with respect to any claim, demand, damage, action or cause of action that it may possess against Licensee, but Licensor nevertheless intends this

release to be effective as a full, unconditional and irrevocable release of the claims described in article 7.1.

ARTICLE 8 NOTICE AND ADDRESS CLAUSE

8.1 All communications and notices permitted or required by this Agreement shall be in writing and shall be delivered or sent to the address or place of business of the other party as shown below by certified mail, or by recognized overnight courier, postage prepaid:

For Licensor: David A Sieverding and Kay Sieverding
P.O. Box 774607 (if by mail)
750 Princeton Avenue (if by courier)
Steamboat Springs, Colorado 80477
Facsimile: (970) 879-5206

For Licensee: Vivid Details, Inc.
8228 Sulphur Mountain Road
Ojai, California 93023
Attention: President
Facsimile: (805) 646-0021

Any change of information shall be communicated in writing to the other party.

ARTICLE 9 MISCELLANEOUS

9.1 This Agreement, contains the complete and entire licensing agreement between the parties hereto, and supersedes any previous licensing communications, representations, or agreements whether verbal or written.

9.2 No change, waiver, or modification of any of the terms or conditions of this Agreement shall be valid or binding on either party unless in writing and signed by authorized representatives of both parties. A waiver, express or implied, by any party or any failure to perform, default or

breach shall not constitute a waiver of any other or subsequent right hereunder.

9.3 This Agreement shall be interpreted as if it was mutually prepared and drafted (regardless of which party actually drafted the Agreement), such that any rule of construction that would otherwise require that ambiguities be resolved against the drafting party shall not apply.

9.4 The provisions of this Agreement shall be deemed separable. Therefore, if any part of this Agreement is rendered invalid or unenforceable, such shall not affect the validity or enforceability of the remainder of this Agreement; provided that if the part or parts that are invalid or unenforceable substantially impair the value of the whole Agreement to a party, that party may cancel and terminate the Agreement upon written notice.

9.5 This Agreement shall be construed and enforced in accordance with the laws of the State of California. In the event that it is necessary to undertake any proceeding to enforce the terms of this Agreement, the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

9.6 This Agreement shall become effective on the date appearing in the first paragraph of this Agreement.

9.7 This Agreement and the rights and obligations granted and undertaken hereunder shall be binding upon and inure to the benefit of the parties hereto, and their successor(s), trustee(s) or receiver(s) in bankruptcy and permitted assigns.

9.8 The rights of Licensor hereunder shall be fully assignable. The rights of Licensee hereunder, except as specifically set forth in Section 2.3 above and in this Section 9.8, shall not be assignable or transferable, in whole or in part, without the prior written consent of Licensor, such consent to be in Licensor's sole discretion. Notwithstanding the foregoing, Licensee shall be entitled in its sole discretion to assign its rights under this Agreement, in whole but not in part, to any successor-in-interest to substantially all of the assets or business of Licensee and upon written notice of such assignment to Licensor. Subject to the restrictions set forth in this Section 9.8, this Agreement and every one of the terms and

FedEx® Letter

Federal Express



Limitation on Contents

Declared Value/
Liability Information

FedEx 1551 11611 Tracking Number 809607406514

Maximum package weight or approximately 30 lbs
8 1/2 x 11" pk
Letter env
higher rate
Contents
and allow i
cash equi
FedEx Let

Use the I
US, Alaska
Use the I
to/from Pu
Use stre
or P.O. Zip
addresses

1 From  **To** 

Date 12/11/99

Sender's Name DAVID AND KAY STEVERDING Phone (170) 879-4334

Company ELEGANT GRAPHICS

Address 750 PRINCETON AVENUE Dept./Floor/Suite/Room

City STEAM BOAT SPRINGS State CO Zip 80477

2 Your internet billing preference information:

Recipient's Name LARRY WILETT Phone (805) 646-0217

Company VIVID DETAILS, INC.

Address 8228 SULPHUR MOUNTAIN RD. Dept./Floor/Suite/Room

City OSAJI State CA Zip 93023

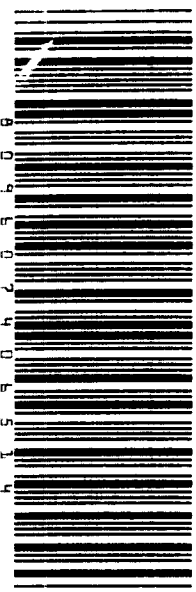
3 To For HOLD at FedEx location check here

Hold Saturday Hold Sunday Hold overnight

Saturday Delivery Sunday Delivery

Signature Required Restricted Access

Signature Required Restricted Access



©1994
Federal Expr
1397555W/M
1397566B/UK
REV 7/95 W

FedEx. STANDARD OVERNIGHT 1UE

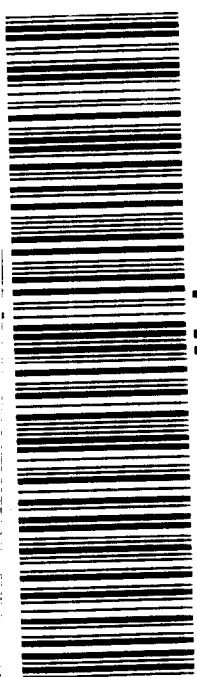
Emp # 105967 14DEC98

TRK # 8096 0740 6514 FORM 15 DEC 98

93023 -CA-US

LAX
XP OXRA

Deliver By: 15 DEC 98 AM



From 0200 Recipient's Copy

4a Express Package Service Packages under 150 lbs. FedEx Priority Overnight FedEx Standard Overnight FedEx First Overnight FedEx ZDay FedEx Express Saver

4b Express Freight Service Packages over 150 lbs. FedEx Overnight Freight FedEx ZDay Freight FedEx Express Saver Freight

5 Packaging FedEx Flat FedEx Tube FedEx Box FedEx Mailer

6 Special Handling Dry Ice Fragile Hazardous High Value Signature Required Restricted Access

7 Payment Sender Recipient Third Party Credit Card Cash Check

8 Release Signature Signature Required Restricted Access

Total Packages  Total Weight \$ Total Declared Value \$0 Total Charges \$

Questions? Call 1 800 Go FedEx

322