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RECORDATION FORM COVER SHEET U.S. DEPARTMENT OF COMMERCE  
PATENTS ONLY

FORM PTO-1595

1-31-92

Patent and Trademark Office

To the Assistant Commissioner for Patents and Trademarks: Please record the attached original documents or copy thereof.

1. Name of conveying party(ies):

Hide &amp; Seek Technologies, LLC

Additional name(s) of conveying party(ies) attached? ☐ Yes ☒ No

3. Nature of conveyance:

☐ Assignment ☐ Merger  
☐ Security Agreement ☐ Change of Name  
☒ Other (License Agreement)Execution Date: March 9, 1999

2. Name and address of receiving party(ies):

Digital Reproduction Technologies, Inc.

110 Bleacher St., Ste. 20C

New York, New York 10012

Additional name(s) &amp; address(es) attached?

☐ Yes ☒ No

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):

Additional numbers attached? ☐ Yes ☒ No

B. Patent No.(s): 5815484

5. Name and address of party to whom correspondence concerning document should be mailed:

Megan J. Carroll, Esq.  
Wilson Sonsini Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304-10506. Total number of applications and patents involved: [1]7. ....Total fee (37 CFR 3.41)  
☒ Enclosed  
☐ Authorized to be charged to deposit account8. Deposit account number: \_\_\_\_\_  
(Attorney Docket No. 22323.005)

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.*

06/02/1999 MTHA11 00000189 5815484

01 FC:581 Megan J. Carroll, Esq. 40.00 OP

Signature

May 25, 1999  
Date

Total number of pages including cover sheet, attachments and document:

**PATENT**  
**REEL: 009987 FRAME: 0295**

# License Agreement

p. 2

2.4 "Licensed Products" shall mean any product falling within the scope of the Technology.

2.5 "Developed IP" shall mean intellectual property derived from the Technology, which is developed jointly by HST and DRT after the Effective Date and which would be covered by HST's existing patents as of the Effective Date.

## III. LICENSE

Subject to the terms and conditions of this Agreement, HST hereby grants to DRT an exclusive, worldwide license to the Technology, including the right to grant and authorize the grant of sublicenses, to make, have made, use, and sell Licensed Products in the Field of Use and to practice any methods in the Field of Use.

## IV COMPENSATION

4.1 Initial Fee. In consideration of the grant of the license in Section 3, DRT shall pay to HST a one-time, upfront license fee of \$25,000, payable upon execution of this Agreement. Such fee shall not be creditable against future royalties, but \$15,000 of such fee may be refundable in accordance with Section 5.2

4.2 Development Fund. DRT shall allocate \$300,000 to the development of products in the Field of Use (the "Technology Development Account"). \$150,000 of such amount will be allocated upon the closing of the Due Diligence Period, and the remaining \$150,000 will be allocated four months from the closing of the Due Diligence Period. Any unspent funds in the Technology Development Account shall revert to DRT for general use on December 31, 1999. DRT may consult with HST regarding development activities subject to payment of HST consulting fees as described in Section 6.1. If the parties agree to undertake any joint development efforts, then before engaging in any joint development project, the parties must agree upon a detailed statement of work, setting forth the scope of the development effort, each party's responsibilities, a development schedule with milestones, and estimated development costs. Upon agreement to each such statement of work, DRT shall transfer from the Technology Development Account to a bank account jointly controlled by DRT and HST the development cost amounts agreed upon in the statement of work.

4.3 Advance Payment. In the event DRT elects to continue the license after the end of the Due Diligence Period, DRT will pay to HST an advance royalty payment of \$75,000 payable one year from the Effective Date, subject to deduction for any amounts owed by HST to DRT. Such payment shall be fully creditable against any royalties due hereunder.

4.4 Royalties and Payments. In consideration of the license rights granted herein, DRT shall pay to HST a royalty of \$.015 for each optical media disk in the Field of Use manufactured and sold by DRT, or a sublicensee of DRT, which would infringe a valid claim of the Patent in the country in which such disk is manufactured and sold. In the event that it is necessary for DRT to license intellectual property rights owned by a third party in order to develop, make or sell optical media disks in the Field of Use, DRT shall be entitled to reduce the above royalty rate proportionately in relation to other royalty payments due to such third parties so that its total royalty payments for such products does not exceed \$.02, provided that the royalty payable to HST is not reduced to less than \$.01 per disk and provided further that DRT must notify HST of such event and provide HST with appropriate documentation of the necessity for reducing the rate and the calculation of the adjusted rate. Royalties shall be payable on a quarterly basis within 30

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**License Agreement**

p. 3

days from the end of each calendar quarter and will be accompanied by a statement showing in reasonable detail an account of the royalties owed.

**4.5 Annual Minimum Payments.** In order to maintain its license rights, DRT shall pay to HST a minimum royalty payment of \$50,000 per year to be due beginning December 31, 2000 and continuing each December 31<sup>st</sup> thereafter. In the event the minimum payment made exceeds the royalties actually due for such year, the excess will be credited towards future royalties due.

**4.6 Payments to Third Parties.** HST agrees that any payments made by DRT to secured creditors of HST on behalf of HST shall be fully credited against any payments otherwise due to HST under this Agreement.

**V. "DUE DILIGENCE" TERMS**

**5.1 Due Diligence Period.** The parties acknowledge that DRT has not completed its investigation as to whether or to what extent it will be necessary to obtain a license to the Technology to execute its business plan. Therefore, a "Due Diligence Period" of 90 days shall begin on the day following the Effective Date of this Agreement. During the Due Diligence Period, HST agrees to provide DRT with all information in its possession that will assist DRT to conduct due diligence on the Technology. Furthermore, during the Due Diligence Period the parties will exchange additional information and may enter into additional agreements as deemed necessary.

**5.2 Contingencies.** If, in DRT's sole judgment, there is evidence of prior art or contingencies that could alone or in combination with other information, undermine the validity or business value of the Technology, no payments beyond the initial fee of \$25,000 shall be due from DRT, this Agreement will be terminated with respect to DRT's remaining obligations and \$15,000 of the initial license fees paid to HST under Section 4.1 shall automatically be converted to a 60-day promissory note with terms to be negotiated in good faith. Other than repayment of such note, HST shall be released from its remaining obligations under this Agreement.

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**VI TECHNOLOGY DEVELOPMENT ASSISTANCE**

**6.1 HST Assistance.** HST agrees to assist DRT in the manufacturing process and product development of the Technology for the licensed Field of Use at DRT's reasonable request through transfer of know-how from HST to DRT and related consulting services for a period of one year after the Agreement Date at HST's standard consulting rates for such services.

**6.2 Developed IP.** In the event that the parties jointly develop any intellectual property in the course of HST providing assistance as described in Section 6.1, DRT shall own such Developed IP and shall retain an exclusive right to the Developed IP in the Field of Use. DRT will grant to HST an exclusive, royalty-free license to the Developed IP in applications related to copy protection of software on optical media to the extent such applications are outside the Field of Use.

**6.3 Improvements.** HST shall disclose all improvements and new technologies applicable to the Field of Use to DRT, and in each such instance HST shall elect either to 1) prepare, file and prosecute patent applications on any such improvements and new technologies, or 2) assign any such improvements and new technologies to DRT so that DRT can get the appropriate patents, if HST cannot or will not.

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## License Agreement

p. 4

6.4 Patent Prosecution. HST agrees to fully cooperate in filing patents for the Developed IP as requested by DRT, if such patents are relevant for the Field of Use.

## VII. RECORDS, AUDITS, REPORTS AND PAYMENTS

7.1 Site Audits. For each replication site contracted by DRT in the first year from the close of the Due Diligence Period ("Year 1") to manufacture disks utilizing the Technology, DRT agrees to engage HST to provide training, consultation regarding the manufacturing process and related services to enable the contractor to properly manufacture such disks. HST and DRT will coordinate a schedule for such activities, agree upon sampling techniques and DRT shall have a right to attend any meetings between HST and the manufacturer. After Year 1, DRT may request that HST continue to provide such training, inspection and product quality audits at such sites and HST shall do so at its standard fees. HST shall receive from DRT as payment for these services \$3000 per replication site visited in the continental United States and \$5000 for each site outside the continental United States. These amounts shall be billable monthly by HST, and shall be due within thirty days. This provision 7.1 will not apply in the event of assignment of this Agreement by way of merger or acquisition of DRT.

7.2 Distribution Records. DRT shall keep appropriate and accurate books and records showing all sales of products on which royalties are due, together with such other information as may be reasonably necessary to enable earned royalties to be computed.

7.3 Audit Rights. DRT's records and books covering the most recent two business years shall be open during business hours for reasonable inspection, upon reasonable advance notice by a certified public accountant appointed by HST and reasonably acceptable to DRT to determine the accuracy of royalty statements and payments due under this Agreement, but for no other purpose. If any discrepancy in HST's favor is found with respect to royalty payments, DRT shall promptly pay the amount of the discrepancy plus 10% interest on the amount of the discrepancy. If such audit reveals a discrepancy between the royalty due HST and royalty declared by DRT which discrepancy is ten percent (10%) or greater, DRT shall pay for the full cost of the audit; otherwise HST shall pay for the audit. DRT shall use reasonable commercial efforts to obtain for HST site audit inspection rights from its contracted replication manufacturers.

## VIII. PATENT VALIDITY, ENFORCEMENT AND INFRINGEMENT

8.1 Representations. HST knows of no prior art or issued patents that would dominate its patents. HST has disclosed in Schedule 8.1 of this Agreement all liens or other claims against its patents that may or would affect its ability to grant a worldwide and exclusive license to DRT for the Field of Use.

8.2 Enforcement Actions. If during the term of this Agreement, a patent licensed hereunder is or appears to be infringed by a third party within the Field of Use, then the party having knowledge thereof shall notify the other and the Parties shall consult to consider what, if any, action should be taken. The decision regarding institution of proceedings to abate infringements within the Field of Use shall be at DRT's discretion in the first instance, and in the event DRT elects to initiate legal proceedings, HST shall give DRT all reasonable assistance in such proceedings, and HST shall agree to act as a plaintiff when so requested by DRT. In the event that DRT shall elect not to institute infringement proceedings, HST shall be free, at HST's expense, to sue such suspected infringers. In any action brought by one party, such party shall be entitled to all damages

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## License Agreement

p. 5

recovered after reimbursement to each party of its costs and in any suit brought jointly the amount of damages recovered shall be shared equally after reimbursement to each party of its costs.

**8.3 Challenge to Validity.** In the event of a challenge to the validity of the Patent or any other licensed patents included within the Technology, all payments due from DRT to HST with respect to sales in the country in which the challenge is filed shall be put in escrow pending resolution of the litigation.

## IX. CONFIDENTIALITY

Each party agrees during the term of this Agreement that it shall keep confidential all information and materials (i) which are supplied by the other party hereunder and identified as being "Confidential" or (ii) which such party may acquire about the other or its activities as a result of entering into this Agreement which are identified as "Confidential" or (iii) which a party should reasonably believe are treated as "Confidential" by the other party, and (iv) which are disclosed to HST in connection with royalty reports or audits of DRT's records in accordance with Section 7.3, except to the extent reasonably necessary to perform its obligations or exercise its rights under this Agreement and provided further that such obligations shall not apply to information which:

- a. shall be contained in any patent application made by either party which becomes published; or
- b. was in the receiving party's possession without restriction prior to receipt from the other party; or
- c. was in the public domain at the time of receipt; or
- d. becomes part of the public domain through no fault of the receiving party; or
- e. shall be lawfully received from an independent third party with a right of further development; or
- f. shall be required to be disclosed by law or in connection with registration, regulatory approval, manufacture and sale of Licensed Products.

## X. TERM AND TERMINATION

**10.1 Term.** This Agreement shall remain in full force and effect for the life of the last to expire patent included within the Technology, unless terminated earlier as provided herein.

**10.2 Termination by DRT.** DRT shall have the right to terminate this Agreement upon thirty (30) days written notice to HST anytime during a one year period following the Effective Date and on sixty (60) days written notice anytime after a one year period following the Effective Date.

**10.3 Termination for Breach.** HST shall have the right to terminate this Agreement upon notice in the event of a material breach of this Agreement by DRT which remains uncured for a period of 30 days from written notice to cure, provided that HST's sole remedy at law shall be the termination of this Agreement.

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License Agreement

p. 6

**10.4 Effect of Termination.** In the event of termination of this Agreement all rights granted hereunder shall revert to HST, subject to end user licenses granted, all unspent funds in the Technology Development Account shall revert to DRT, DRT shall pay HST owed royalties on disks that have been sold as of the date of termination, each party shall return all of the other party's technical documents, materials and other copies of Confidential Information, and the parties shall be released of all further obligations under this Agreement other than those accrued prior to termination. Sublicenses granted shall survive provided that any payments due thereunder shall be due to HST after the date of termination. In addition, the provisions of Sections 4.6, 5.2, 7.3, 9, 10, 11 and 12 shall survive.

**XI. LIMITATION OF LIABILITY.**

IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY HEREUNDER FOR ANY CONSEQUENTIAL, INCIDENTAL, SPECIAL OR INDIRECT DAMAGES OF ANY KIND ON ANY THEORY OF LIABILITY EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**XII. MISCELLANEOUS PROVISIONS**

**12.1 Notices.** Any notices required to be given hereunder shall be sent by first class registered or certified mail, addressed to the party to whom it is to be given as follows:

To HST: George McCaskill  
President  
Hide and Seek Technologies, Inc.  
12422 Skyline Drive  
Jenks, OK 74037

With a copy to:  
David N. Schachter  
Hall & Evans  
1200 Seventeenth St., Ste. 1700  
Denver, CO 80202

To DRT: Yannis Bakos  
President  
Digital Reproduction Technologies, LLC  
110 Blecker Street, Suite 20C  
New York, NY 10012

With a copy to:  
Megan J. Carroll  
Wilson, Sonsini, Goodrich & Rosati  
650 Page Mill Road  
Palo Alto, CA 94304

Service of all notices shall be deemed duly given if sent by registered or certified mail, postage prepaid, to the addresses listed above. The date of postmark shall be the date of such notice.

**12.2 Assignment.** Either party may assign this Agreement without the consent of the other party provided that such assignment shall be conditioned upon the assignee's

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## License Agreement

p. 7

agreement, in writing or by operation of law, to be bound by the terms and conditions of this Agreement. DRT acknowledges that assignment of this Agreement or of ownership in the Patent to a secured creditor of HST shall require payments due hereunder to be made directly to such secured creditor upon effectiveness of such assignment.

12.3 Entire Agreement. This Agreement constitutes and contains the entire Agreement of the Parties and supersedes any and all prior negotiations, correspondence, understandings and agreements between the Parties respecting the subject matter hereof. This Agreement may be amended or modified or one or more of the provisions thereof waived only by written instrument signed by an officer of each Party.

12.4 Governing Law. This Agreement shall be construed according to the laws of the State of California without reference to its conflict of law principles. Any dispute arising under this Agreement shall be settled by binding arbitration to be conducted in Santa Clara County, California if brought by HST and in Denver, Colorado if brought by DRT, by the American Arbitration Association in accordance with its then current rules for resolution of commercial disputes by a single arbitrator appointed in accordance with such rules.

12.5 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party, either in original hard copy or via fax, it being understood that all parties need not sign the same counterpart.

12.6 Waiver and Amendment. No modification, amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party to be charged. No failure or delay by either party in exercising any right, power, or remedy under this Agreement, except as specifically provided herein, shall operate as a waiver of any such right, power or remedy.

12.7 Independent Contractors. The parties are independent contractors. Neither party shall be deemed to be an employee, agent, partner or legal representative of the other for any purpose and neither shall have any right, power or authority to create any obligation or responsibility on behalf of the other.

12.8 Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to causes, including, but not limited to, an act of God, act of civil or military authority, fire, epidemic, flood, earthquake, riot, war, sabotage, failure of suppliers and governmental action, which are beyond its reasonable control; provided that the delayed party: (a) gives the other party written notice of such cause promptly, and in any event within five (5) days of discovery thereof; and (b) uses its reasonable efforts to correct such failure or delay in its performance.

Handwritten signature and initials: *W. Mc* YB

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License Agreement

p. 8

12.9 **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be changed and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law and the remaining provisions of this Agreement shall remain in full force and effect.

Signed:

*Yannis Bakos*

Yannis Bakos  
President  
Digital Reproduction Technologies, LLC

*April 8, 1999*  
Date

*George McCaskill*

George McCaskill  
President  
Hide and Seek Technologies

*3-8-99*  
Date

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**License Agreement**

p. 9

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**Schedule 8.1**

HST discloses a lien on the Patent of approximately \$80,000 with one J. Kolber.

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## AMENDMENT TO LICENSE AGREEMENT

This is an amendment ("Amendment") to the License Agreement dated March 9, 1999 ("License Agreement") between Hide and Seek Technologies, Inc. ("HST") and Digital Reproduction Technologies, LLC ("DRT").

### BACKGROUND

As of the date of the License Agreement, the assets of HST, including the patent and related technology which are the subject of the License Agreement (the "Patent") were covered a security interest held by Jonathan Kolber, individually and as Corporate Growth Consultants, Inc. (together, "Kolber"). DRT sought Kolber's consent to the License Agreement terms. Kolber's consent was conditioned upon certain amendments to the License Agreement.

### AGREEMENT

1. Future Effectiveness. The parties agree that the following amendments to the License Agreement in Sections 1.1 and 1.2 shall become effective automatically upon transfer of title in the Patent to Kolber in the event Kolber forecloses on his security interest.

1.1 General References. All references to HST shall be replaced with references to Kolber.

1.2 Section 4.5 is amended by adding the following at the end of the paragraph: "In the event that DRT pays only the minimum royalty payment amount each year for a consecutive period of four years beginning in any period after five years from the date the minimum payments first became due, then Kolber shall have the right, at any time in which only the minimum was paid for the preceding 4-year period, upon 90 days advance written notice, to terminate the exclusivity granted in Section 3. Upon such termination this License Agreement shall become non-exclusive for all purposes and the obligation to make minimum payments as required in this Section 4.5 shall terminate."

2. Present Amendment. The parties agree that the following amendment to the License Agreement shall become effective as of this date:

Section 12.2 is amended by adding the following sentence to the end of the paragraph: "Notwithstanding the foregoing, for the first five years from the date of the License Agreement, a merger with or sale of substantially all the assets of DRT to DTVX shall require the consent of the patent owner, that is, HST or Kolber as applicable." *for a new Lico*

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Except as amended herein, all terms and conditions of the License Agreement remain in effect.  
Executed as of this 12<sup>th</sup> day of March, 1999

DRT

Kelber

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

[Signature]  
Individually

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

Corporate Growth Consultants, Inc.

By: [Signature]

Title: PARTNER

✓ HST  
By: [Signature]  
Title: President

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## AMENDMENT TO LICENSE AGREEMENT

This is an amendment ("Amendment") to the License Agreement dated March 9, 1999 ("License Agreement") between Hide and Seek Technologies, Inc. ("HST") and Digital Reproduction Technologies, LLC ("DRT").

### BACKGROUND

As of the date of the License Agreement, the assets of HST, including the patent and related technology which are the subject of the License Agreement (the "Patent") were covered a security interest held by Jonathan Kolber, individually and as Corporate Growth Consultants, Inc. (together, "Kolber"). DRT sought Kolber's consent to the License Agreement terms. Kolber's consent was conditioned upon certain amendments to the License Agreement.

### AGREEMENT

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1.1 General References. All references to HST shall be replaced with references to Kolber.

1.2 Section 4.5 is amended by adding the following at the end of the paragraph: "In the event that DRT pays only the minimum royalty payment amount each year for a consecutive period of four years beginning in any period after five years from the date the minimum payments first became due, then Kolber shall have the right, at any time in which only the minimum was paid for the preceding 4-year period, upon 90 days advance written notice, to terminate the exclusivity granted in Section 3. Upon such termination this License Agreement shall become non-exclusive for all purposes and the obligation to make minimum payments as required in this Section 4.5 shall terminate."

2. Present Amendment. The parties agree that the following amendment to the License Agreement shall become effective as of this date:

Section 12.2 is amended by adding the following sentence to the end of the paragraph: "Notwithstanding the foregoing, for the first five years from the date of the License Agreement, a merger with or sale of substantially all the assets of DRT to DIVX shall require the consent of the patent owner, that is, HST or Kolber as applicable."

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Except as amended herein, all terms and conditions of the License Agreement remain in effect.  
Executed as of this 12<sup>th</sup> day of March, 1999

DRT

Kolber

By: Yannis BakosIndividuallyTitle: President

Corporate Growth Consultants, Inc.

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

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

✓ HST

By: J.T. McCaskillTitle: President

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