

04-22-2005

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RECC



102986814

To the Director of the U.S. Patent and Trademark Office: Please record the attached documents or the new address(es) below.

1. Name of conveying party(ies)/Execution Date(s):

HolograFX, Inc.

Execution Date(s) March 16, 2005

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

3. Nature of conveyance:

- ☐ Assignment ☐ Merger
☐ Security Agreement ☐ Change of Name
☐ Government Interest Assignment
☐ Executive Order 9424, Confirmatory License
☒ Other License Agreement

2. Name and address of receiving party(ies)

Name: Kirk International

Internal Address: _____

Street Address: Grand'Rue 92

CP 1526

City: 1820 Montreux 1

State: _____

Country: Switzerland

Zip: _____

Additional name(s) & address(es) attached? ☐ Yes ☒ No

4. Application or patent number(s):

☐ This document is being filed together with a new application.

A. Patent Application No.(s)

B. Patent No.(s)
6,055,100

Additional numbers attached? ☐ Yes ☒ No

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

Name: Robert M. Kunstadt, Esq.

Internal Address: _____

Street Address: R. KUNSTADT, P.C.

729 Seventh Avenue, 14th Floor

City: New York

State: NY

Zip: 10019

Phone Number: (212) 398-8881

Fax Number: (212) 398-2922

Email Address: mail@rkunstadtpc.com

6. Total number of applications and patents involved:

1

7. Total fee (37 CFR 1.21(h) & 3.41) \$ 40

- ☐ Authorized to be charged by credit card
☐ Authorized to be charged to deposit account
☒ Enclosed
☐ None required (government interest not affecting title)

8. Payment Information

a. Credit Card Last 4 Numbers _____
Expiration Date _____

b. Deposit Account Number _____

Authorized User Name _____

9. Signature:

00000025 0055100

40.00 DP

Signature

Date

Eric Brown, C.E.O., HolograFX, Inc.

Name of Person Signing

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

14

Documents to be recorded (including cover sheet) should be faxed to (703) 306-5995, or mailed to:
Mail Stop Assignment Recordation Services, Director of the USPTO, P.O.Box 1450, Alexandria, V.A. 22313-1450

PATENT
REEL: 016470 FRAME: 0458

LICENSE AGREEMENT

This Agreement is made this 16th day of March, 2005, by and between HolograFX, Inc., a Delaware corporation having its principal offices at 27 Bland Street, Emerson, NJ 07630 ("Licensor"), and Kirk International, a Swiss Corporation. ("Licensee"), (hereinafter collectively the "Parties").

WHEREAS, Licensor owns U.S. patent 6,055,100 entitled "Doublet Based Large Aperture Free Space Imaging System" issued April 25, 2000 (the "Patent"), and wishes to grant a limited license to the Patent, and any subsequent improvements to the Patent, to Licensee, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the sum of \$10 (Ten Dollars), receipt of which by Licensor is hereby acknowledged, and the mutual covenants and agreements set forth herein, Licensor and Licensee agree:

I. LICENSE

1.1 Grant. Licensor grants to Licensee both an exclusive and non-exclusive license (as defined in Section 1.3 Territory) to use, sell, and offer for sale products that would otherwise infringe the Patent for use only in the field of Adult Entertainment as defined in paragraph 1.2 of this Agreement (the "Licensed Products"), for the remaining term of the Patent (the "License Term").

1.2 Adult Entertainment. For purposes of this Agreement:

- (a) "Adult Entertainment" shall mean any presentation of material which has as a substantial component of its theme, the depiction, illustration, or description of specified anatomical areas or specified sexual activities; and/or any presentation of a live performance which has as a substantial component of its presentation, the depiction, illustration, or description of specified anatomical areas or specified sexual activities; and/or any display or exposure of specified anatomical areas; and/or any display or exposure of specified sexual activities.
- (b) "Specified Anatomical Areas" shall mean less than completely or opaquely covered human genitalia, pubic region, anus, mature buttocks, or mature female breasts below a point immediately above the top of the areola; and/or human male genitalia in a discernible turgid state, even if completely and opaquely covered.
- (c) "Specified Sexual Activity" shall mean the fondling or other erotic touching of human genitals, pubic region, anus, or female breasts; and/or sex acts, either actual or simulated, including without limitation intercourse, oral copulation, sodomy, bestiality, necrophilia, or masturbation; and/or sexually oriented torture, flagellation, or infliction of pain; and/or human excretory functions.

- 1.3 Territory. Licensee's EXCLUSIVE territory is limited to the United States of America, Canada and their possessions. Licensee is hereby granted a NON-EXCLUSIVE right to all other countries of the world.
- 1.4 No Joint Venture. Nothing in this Agreement shall be construed as creating any agency, partnership or other form of joint venture between Licensor and Licensee.
- 1.5 Optic Modules. During the term of this Agreement, Licensee shall purchase all of its requirement of optics modules from Licensor. Failure to comply with this par. 1.5 will result in a material breach giving rise to grounds for immediate termination of this Agreement under par. 5.2 below, in addition to other remedies.
- 1.6 Inspection and Audit. Upon not less than ten (10) business days' request, Licensor may audit and inspect the records of Licensee that concern or relate to the Licensed Products, provided that there will be no more than two (2) audits in any twelve (12) calendar month period. An independent public accounting firm retained by Licensor shall perform the inspection. If the inspection discovers any unauthorized activity by Licensee, or any material defect in compliance with this Agreement, Licensee shall bear the entire cost of the audit.

II. REPRESENTATIONS AND WARRANTIES. LIMITATION OF LIABILITY

2.1 LICENSOR MAKES NO WARRANTIES, TERMS OR CONDITIONS, EXPRESS, IMPLIED OR STATUTORY, AS TO ANY MATTER WHATSOEVER. IN PARTICULAR, ANY AND ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, SATISFACTORY QUALITY, NON-INFRINGEMENT, COURSE OF DEALING OR COURSE OF PERFORMANCE ARE EXPRESSLY EXCLUDED. Licensor acknowledges that Licensee has the right to inspect Licensor's products for defects.

2.2 LIMITATION OF LIABILITY. UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, TORT, CONTRACT, OR OTHERWISE, SHALL LICENSOR OR ITS SUPPLIERS OR LICENSEES BE LIABLE TO LICENSEE OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, EQUIPMENT OR COMPUTER FAILURE OR MALFUNCTION, LATENT OR PATENT EQUIPMENT DEFECTS, LOSS OF USE OF ANY OF THE EQUIPMENT, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES. IN NO EVENT WILL LICENSOR BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE PRICE LICENSEE PAID FOR THE LICENSED PRODUCTS, EVEN IF LICENSOR SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES; OR FOR ANY CLAIM BY ANY OTHER PARTY. THIS LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY FOR

DEATH OR PERSONAL INJURY TO THE EXTENT APPLICABLE LAW PROHIBITS SUCH LIMITATION. FURTHERMORE, SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO LICENSEE.

- 2.3 Force Majeure. Licensors shall not be liable for any failure or delay in performance under this Agreement due to fire, explosion, earthquake, storm, flood or other weather, unavailability of necessary utilities or raw materials, war, insurrection, riot, terrorism, worms, viruses, Internet failure, hacking, act of God or the public enemy, law, act, order, proclamation, decree, regulation, ordinance, or instruction of Government or other public authorities, or judgment or decree of a court of competent jurisdiction or any other event beyond the reasonable control of Licensor.

III. INDEMNIFICATION

- 3.1 Indemnity. Licensee shall be solely responsible for (and indemnify Licensor against) any claims by any person or entity relating to or resulting from the Licensee's use, sale or offer for sale of the Licensed Products; and/or any claims relating to or resulting from unauthorized warranties or representations concerning the Licensed Products, made by Licensee or its representatives.

- 3.2 Compliance with Laws and Regulations. Licensee will be solely responsible for legal compliance with laws, rules and regulations applicable to the field of Adult Entertainment (including without limitation laws, rules and regulations

about obscenity, privacy, defamation, trademark, copyright, right of publicity). Licensee shall indemnify Licensor against claims resulting from unauthorized use of the Licensed Products in violation of applicable laws, rules and regulations.

IV. INTELLECTUAL PROPERTY RIGHTS

4.1 Intellectual Property. Licensee acknowledges the validity of, and agrees to respect, the Patent; and Licensor's copyrights, trademarks, other patents, know-how, trade secrets and other rights in its products and processes, including without limitation those developed by Licensee for Licensor; and Licensee undertakes not to challenge them or do or suffer to be done anything to impair their value; and to cooperate reasonably in the protection of same, including without limitation by executing assignments of Intellectual Property rights. All ideas, writings, drawings, inventions, designs, parts, machines, programs or processes developed as a result of, or in the course of, Licensee's use, sale or offer for sale of the Licensed Products that can be considered improvements to the patented technology, shall be the property of Licensor. Licensee agrees to assign all worldwide rights (including without limitation patent, copyright, trademark and moral rights) in such intellectual property to Licensor, and will supply all assistance reasonably requested in securing for Licensor's benefit any patent, copyright, trademark, service mark, license, right or other evidence of ownership of any such intellectual property, to make available to Licensor his assistance with know-how and access to his

research and notes, to provide full information regarding any such item, and to execute all appropriate documentation prepared by Licensor to apply for or otherwise register, in Licensor's name, all rights to any such item.

4.2 Use of Trademarks and Trade Names. During the License Term of this Agreement and thereafter, Licensee shall not use the name(s), trademark(s), or trade name(s) (whether registered or not) of Licensor in publicity releases or advertising or in any other manner, without securing the prior written approval of Licensor. All other uses by Licensee or its end users of Licensor's trademarks, brands and logos shall require Licensor's prior written approval.

4.3 Disclosure. Licensee shall promptly disclose to Licensor any business opportunity for Licensor's products other than in the field of Adult Entertainment. Licensee shall further promptly disclose to Licensor any outside activities or interests, including ownership of or participation in the development of inventions, that conflict or may conflict with the best interests or activities of Licensor.

4.4 Notices. Licensee shall not remove any proprietary notices or labels from the Licensed Products, or in any way alter, mutilate, or make additions of any kind to Licensor's proprietary notices or labels, name, logos and trademarks as they appear on the Licensed Products as provided by Licensor to Licensee. All Licensed Products used, sold or offered for sale

by Licensee shall be distinctly and permanently marked "Patent 6,055,100
- Licensed for Adult Entertainment Use Only".

- 4.5 Know-how. Solely for the purpose of carrying out its activities as a Licensee of the Licensed Products, Licensee may utilize Licensor's confidential know-how and technology communicated to it by Licensor in accordance with the terms and conditions hereof.
- 4.6 No-reverse engineering. Licensee shall not reproduce, copy, decompile or reverse engineer the Licensed Products or any of their components, or otherwise attempt to discover, reproduce, copy, decompile or reverse engineer the source code of any software used with the Licensed Products.
- 4.7 Reversion. All rights of Licensee hereunder shall immediately terminate on the termination or expiration of this Agreement and shall automatically revert to Licensor; including Licensee's right to utilize the Patent. Licensee agrees that all such use shall inure to the benefit of Licensor; and that any use continuing after the termination or expiration of this Agreement is likely to cause irreparable harm to Licensor, so as to warrant the issuance of preliminary and permanent injunctive relief.

V. TERMINATION

- 5.1 Termination for Cause. Licensor may terminate this Agreement on thirty (30) days' written notice in case of a breach of any material provision of

this Agreement by Licensee, if, during the thirty (30) day period, Licensee fails to cure such breach.

5.2 Immediate License Termination. Licensee's authority hereunder may be terminated immediately and this Agreement will terminate, if Licensee fails to conduct its business in a professional, ethical and customer service-oriented manner in keeping with the high quality of Licensor products; becomes delinquent in its payments to Licensor, insolvent or enters bankruptcy; or otherwise violates the provisions of par. 1.5 (Non-compete) above, Section IV (Intellectual Property Rights) above, Section VI (Confidential Information) and/or par. 7.2 (Assignment) below.

VI. CONFIDENTIAL INFORMATION

6.1 Confidential Information. Non-public information concerning Licensor's business, products and/or processes (including without limitation customer lists, even if developed or enhanced by Licensee's efforts) is confidential and proprietary trade secret information of Licensor. During the License Term and thereafter, Licensee shall not permit the duplication, use or disclosure of such information by or to any person, unless such duplication, use or disclosure is specifically authorized by Licensor. Upon termination or expiration of this Agreement and/or request of Licensor, Licensee agrees to return to Licensor all such information which is in written, graphic or in other tangible form. Where it is not possible to return such information, Licensee shall promptly obtain authorization from

Licensors to destroy such information and Licensee shall provide Licensors with evidence satisfactory to Licensors that such information was totally destroyed.

VII. MISCELLANEOUS

7.1 Publicity. Press Release. Except as otherwise specifically provided in this Agreement, neither party shall disclose the terms of this Agreement to any third party, other than its financial or legal advisors, or make any announcements regarding the nature of the relationship between the parties without the prior approval of the other party, except that a party may disclose the terms of this Agreement where required by law, provided that such party uses reasonable effort to obtain confidential treatment or similar protection to the fullest extent available to avoid public disclosure of the terms of this Agreement. A party required by law to make disclosure of the terms of this Agreement will promptly notify the other party and permit the other party to review and participate in the application process seeking confidential treatment. If Licensee wishes to issue a press release concerning this Agreement or its terms, it shall first provide Licensors with a copy of the proposed release for approval. No release shall be issued that concerns or describes this Agreement or its terms without Licensors's prior written approval.

7.2 Assignment. This Agreement is personal to Licensee, and the rights, duties and obligations hereunder may not be assigned or otherwise

transferred by Licensee. Licensor may, in its sole discretion, assign this Agreement and the rights, duties and obligations hereunder without Licensee's consent.

7.3 Waiver. The failure of either party at any time or from time to time to require performance of the other party's obligations under this Agreement shall in no manner affect the right to enforce any provision of this Agreement at a subsequent time, and the waiver of any rights arising out of any breach shall not be construed as a waiver of any rights arising out of any subsequent or prior breach.

7.4 Construction. For purposes of this Agreement, words used in the singular shall be constructed to mean and include the plural and vice versa, and pronouns of any gender shall be deemed to include and designate the masculine, feminine, or neuter gender. The parties agree that in the event of any dispute concerning the interpretation or construction of this Agreement, no presumption shall exist with respect to the party initially drafting the Agreement. The parties each agree they have had ample opportunity to influence the choice of language and terms in this Agreement.

7.5 Amendments. No amendment, modification, alteration or waiver (in whole or in part) of any provision of this Agreement shall be effective unless in writing and signed by the parties hereto.

- 7.6 Counterparts. This Agreement may be executed in several counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.
- 7.7 Headings. The various headings used in this Agreement are for reference purposes only and are not to be used in interpreting the text of the paragraph in which they appear or to which they relate.
- 7.8 Applicable Law. This Agreement shall be construed in accordance with, and governed in all respects by, the internal laws of the State of New York (without giving effect to principles of conflicts of laws).
- 7.9 Disputes. Any controversy or claim arising out of this Agreement shall be settled solely by arbitration by a single arbitrator in New York, New York, administered by the American Arbitration Association ("AAA") under its Commercial Arbitration Rules or such other rules as the parties may in future select by mutual agreement, rather than by court action (with or without a jury); except that Licensor may (at its option) redress infringement of intellectual property rights by court action in any forum where such infringement has occurred. The arbitrator shall be agreed upon between the parties or, if the parties cannot agree, appointed by the AAA. The decision of the arbitrator shall be final and binding on both parties. Judgment on the award rendered by the arbitrator may be enforced in any court of competent jurisdiction.

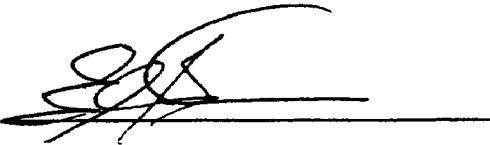
7.10 Integration. This Agreement constitutes the entire agreement of the parties hereto on the subject hereof and supersedes all prior negotiation, understandings and agreements whether written or oral. No part of this Agreement may be varied by either party except by a writing signed by each of the parties hereto.

7.11 Severability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall remain valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited and shall continue to be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed or caused to be executed this instrument on the date first above written.

Agreed By:

HolograFX, Inc.



Name: *Eric A Brown*

Title: *CEO*

Agreed By:

Kirk International



Name: Ronald L. Kirk

Title: U.S. Representative