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18 Attorneys for KONINKLIJKE PHILIPS N.V. and
19 U.S. PHILIPS CORPORATION

20 **UNITED STATES DISTRICT COURT**
21 **DISTRICT OF NEVADA**

22 KONINKLIJKE PHILIPS N.V. and U.S.
23 PHILIPS CORPORATION,

24 Plaintiffs,

25 vs.

26 DIGITAL WORKS, INC., DIGITAL
27 WORKS, SLC, DIGITAL DEPOT, INC.,
28 MEDIA FAST LLC, ULTRA
ENTERTAINMENT, HIGH SPEED VIDEO,
SAVVI MARKETING LLC, MY DISC

Case No.

**COMPLAINT FOR PATENT
INFRINGEMENT AND BREACH OF
CONTRACT**

DEMAND FOR JURY TRIAL

1 FACTORY, XOCIALIZE, DISC COMPANY,
2 PERSONAL-FX, PROACTION MEDIA,
3 ALLEGRO MEDIA GROUP, VISUAL
4 ENTERTAINMENT INC., CHRISTIAN
5 RATH, TROY NIELSON, WILLIAM DIAZ,
6 MARC CARAMADRE, THOMAS
7 INGOGLIA, DUSTIN NIELSON, JEFF
8 JOHNSON, and DOES 1 THROUGH 10,

Defendants.

9 Plaintiffs Koninklijke Philips N.V., f/k/a Koninklijke Philips Electronics N.V., and U.S.
10 Philips Corporation (collectively “Philips”) allege upon knowledge as to themselves and their
11 own actions, and upon information and belief as to all other matters, against Defendants Digital
12 Works SLC, Digital Works, Inc. (collectively with Digital Works SLC, “Digital Works”), Digital
13 Depot, Inc. (“Digital Depot”), Media Fast LLC (“Media Fast”), Ultra Entertainment (Ultra”),
14 High Speed Video, Inc. (High Speed Video), Savvi Marketing LLC (“Savvi Marketing”), My
15 Disc Factory, Disc Company, Personal-FX, ProAction Media (“ProAction”), and Xocialize
16 (Digital Works, Digital Depot, Media Fast, Ultra, High Speed Video, Savvi Marketing, My Disc
17 Factory, Disc Company, Personal-FX, ProAction, and Xocialize collectively “the Digital Works
18 Enterprises”), Allegro Media Group (“Allegro”), Visual Entertainment Inc. (“VEI,” and
19 collectively with Allegro, “the Digital Works Customers”); Christian Rath, Troy Nielson,
20 William Diaz, Marc Caramadre, Thomas Ingoglia, Dustin Nielson, and Jeff Johnson
21 (collectively, “the Individual Defendants”) as follows:

22
23 **JURISDICTION AND VENUE**

24 1. This is an action for patent infringement arising under the United States Patent
25 Act (Title 35 of the United States Code). This Court has subject matter jurisdiction of this action
26 under 28 U.S.C. §§ 1331 and 1338(a).
27

1 Customers. The Digital Works Customers, in turn, use, offer to sell, and sell these unlicensed
2 DVD discs.

3 7. The Digital Works Enterprises are comprised of a web of related entities and
4 individuals who have continued to make and sell infringing DVD discs following the termination
5 of Digital Works' license, while relocating assets from Digital Works to Ultra. Digital Works,
6 along with Digital Depot (purchased by Digital Works in or about 2007), High Speed Video
7 (merged with Digital Works in or about 2009), and Media Fast, previously operated out of a
8 DVD replication facility located at 3487 West 2100 South, Ste 50, Salt Lake City, Utah. As of
9 2012, Ultra and its related entities Savvi, ProAction, Personal-FX, Disc Company, and Xocialize,
10 had begun to use the same Salt Lake City address. While Digital Works has recently indicated it
11 is closing its doors at the Salt Lake City facility, in fact, Digital Works has begun to transfer and
12 conceal its assets, including moving truckloads of equipment from its own facility into a Las
13 Vegas facility run by Ultra and its related entities, which are owned and operated by Digital
14 Works principals and former employees.

15 8. The principals of Ultra and its related entities appear to have close informal ties
16 with Digital Works, which helps explain the apparently improper transfer of Digital Works assets
17 to Ultra and its related entities as part of a scheme by Digital Works to avoid payment of its
18 debts to Philips and, presumably, others. Two principals of Ultra and related entities—
19 Caramadre and Dustin Nielson—are former Digital Works employees. Dustin Nielson is also
20 the brother of Digital Works principal Troy Nielson. Ingoglia, another Ultra principal, is family
21 friends with Digital Works principal Diaz. Then, in or about late 2012, Ultra and its related
22 entities moved to 3655 E. Patrick Lane, Ste 400, Las Vegas, Nevada, and set up a manufacturing
23 facility there. While Digital Works has claimed to be shutting its doors, it has merely transferred
24 employees, customers, machinery and other assets to Ultra in Las Vegas and has communicated
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1 to customers that it will continue DVD manufacturing. Digital Works principals have been
2 present at the Ultra facility in Las Vegas. In the meantime, Digital Works also continued to
3 make and sell infringing DVDs through its largest customer, Media Fast, out of its Salt Lake City
4 facility (which Media Fast has represented as its own facility), assisted by Digital Works
5 principals.

6
7 9. Defendants Rath, Troy Nielson, and Diaz were previously named as defendants in
8 a lawsuit filed by Philips in 2005, *U.S. Philips Corp. v. Synergy Dynamic International, LLC*,
9 Case No. 2:05-cv-00577-PMP-GWF (D. Nev. May 6, 2005). That lawsuit also alleged that the
10 defendants engaged in the making and sale of unlicensed DVD products and thereby infringed
11 the same patent at issue here. Thus, Rath, Troy Nielson and Diaz were aware of Philips' patents
12 and licensing program at least as of 2005.

13
14 10. Philips seeks enhanced damages, attorneys' fees, costs and injunctive relief to
15 redress damages caused by the Digital Works Enterprises' and Digital Works Customers'
16 infringement of Philips' patents as well as damages and injunctive relief to redress Digital
17 Works' contractual breaches.

18 **THE PARTIES**

19
20 11. Plaintiff Koninklijke Philips N.V. is a Dutch corporation having an office and
21 principal place of business in Eindhoven, The Netherlands.

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23 12. Plaintiff U.S. Philips Corporation is a Delaware corporation with its principal
24 place of business at 3000 Minuteman Rd., Andover, Massachusetts.

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26 13. Defendant Digital Works, Inc. is a Nevada corporation with its principal places of
27 business at 3487 West 2100 South, Ste 50, Salt Lake City, Utah and 3655 E. Patrick Lane, Ste
28 400, Las Vegas, Nevada.

1 14. Defendant Digital Works SLC is a Utah corporation with its principal places of
2 business at 3487 West 2100 South, Ste 50, Salt Lake City, Utah and 3655 E. Patrick Lane, Ste
3 400, Las Vegas, Nevada.

4 15. Defendant Digital Depot is a Nevada corporation with its principal places of
5 business at 3487 West 2100 South, Ste 50, Salt Lake City, Utah and 3655 E. Patrick Lane, Ste
6 400, Las Vegas, Nevada.

7 16. Defendant Media Fast is a Utah limited-liability company with its principal places
8 of business at 3487 West 2100 South, Ste 50, Salt Lake City, Utah and 9663 N. Dorchester
9 Drive, Cedar Hills, Utah 84062.

10 17. Defendant Ultra is a Nevada business with its principal places of business at 3487
11 West 2100 South, Ste 50, Salt Lake City, Utah, and 3655 E Patrick Lane, Ste 400, Las Vegas,
12 Nevada.

13 18. Defendant High Speed Video is a Utah business with its principal places of
14 business at 3487 West 2100 South, Ste 50, Salt Lake City, Utah and 3655 E. Patrick Lane, Ste
15 400, Las Vegas, Nevada.

16 19. Defendant Savvi is a Nevada limited-liability company with its principal place of
17 business at 3655 E Patrick Lane, Ste 400, Las Vegas, Nevada.

18 20. Defendant My Disc Factory is a Delaware limited-liability company with its
19 principal places of business at 9014 North 23rd Ave., Phoenix, AZ and 3655 E. Patrick Lane, Ste
20 400, Las Vegas, Nevada.

21 21. Defendant Xocialize is a Nevada business with its principal place of business at
22 3655 E. Patrick Lane, Ste 400, Las Vegas, Nevada.

23 22. Defendant Disc Company is a Nevada business with its principal place of
24 business at 3655 E Patrick Lane, Ste 400, Las Vegas, Nevada.

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1 23. Defendant Personal-FX is a Nevada business with its principal place of business
2 at 3655 E Patrick Lane, Ste 400, Las Vegas, Nevada.

3 24. Defendant ProAction Media is an Arizona business with its principal places of
4 business at 9014 North 23rd Avenue, Suite #1, Phoenix, AZ and 3655 E Patrick Lane, Ste 400,
5 Las Vegas, Nevada.

6 25. Defendant Christian Rath is a resident of Nevada and conducts business or has
7 conducted business at 3655 E. Patrick Lane, Ste 400, Las Vegas, Nevada.

8 26. Rath is a managing member and principal of Digital Works, Digital Depot, Media
9 Fast, and High Speed Video. In that capacity, he directs and controls the day-to-day operations
10 of each of Digital Works, Digital Depot, Media Fast, and High Speed Video that infringe Philips'
11 patents.

12 27. Defendant Troy Nielson is a resident of Nevada and conducts business or has
13 conducted business at 3655 E. Patrick Lane, Ste 400, Las Vegas, Nevada.

14 28. Troy Nielson is a managing member and principal of Digital Works, Digital
15 Depot, Media Fast, High Speed Video, Ultra, and Savvi Marketing. In that capacity, he directs
16 and controls the day-to-day operations of each of Digital Works, Digital Depot, Media Fast,
17 High Speed Video, Ultra, and Savvi Marketing that infringe Philips' patents.

18 29. Defendant William Diaz is a resident of Utah and conducts business or has
19 conducted business at 3655 E. Patrick Lane, Ste 400, Las Vegas, Nevada.

20 30. Diaz is a managing member and principal of Digital Works, Digital Depot, Media
21 Fast, and High Speed Video. In that capacity, he directs and controls the day-to-day operations
22 of each of Digital Works, Digital Depot, Media Fast, and High Speed Video that infringe Philips'
23 patents.

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1 31. Defendant Marc Caramadre is a resident of Nevada and conducts business or has
2 conducted business at 3655 E. Patrick Lane, Ste 400, Las Vegas, Nevada.

3 32. Caramadre is a managing member and principal of Savvi Marketing, Ultra,
4 Personal-FX, and Disc Company. In that capacity, he directs and controls the day-to-day
5 operations of each of Savvi Marketing, Ultra, Personal-FX, and Disc Company that infringe
6 Philips' patents.
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8 33. Defendant Thomas Ingoglia is a resident of Arizona and conducts business or has
9 conducted business at 3655 E. Patrick Lane, Ste 400, Las Vegas, Nevada.

10 34. Ingoglia is a managing member and principal of Ultra. In that capacity, he directs
11 and controls the day-to-day operations of Ultra that infringe Philips' patents.

12 35. Defendant Dustin Nielson is a resident of Nevada and conducts business or has
13 conducted business at 3655 E. Patrick Lane, Ste 400, Las Vegas, Nevada.
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15 36. Dustin Nielson is a managing member and principal of Digital Works, Digital
16 Depot, Media Fast, High Speed Video, Savvi, Ultra, Xocialize, Personal-FX, My Disc Factory,
17 Disc Company, and ProAction. In that capacity, he directs and controls the day-to-day
18 operations of Digital Works, Digital Depot, Media Fast, High Speed Video, Savvi, Ultra,
19 Xocialize, Personal-FX, My Disc Factory, Disc Company, and ProAction that infringe Philips'
20 patents.
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22 37. Defendant Jeff Johnson is a resident of Utah and conducts business or has
23 conducted business at 3655 E. Patrick Lane, Ste 400, Las Vegas, Nevada.

24 38. Jeff Johnson is a managing member and principal of Digital Works, Digital
25 Depot, High Speed Video, Personal-FX and Disc Company. In that capacity, he directs and
26 controls the day-to-day operations of Digital Works, Digital Depot, High Speed Video, Personal-
27 FX and Disc Company that infringe Philips' patents.
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1 39. Digital Works purchased Digital Depot in or about 2007. Digital Works further
2 merged with High Speed Video in or about 2009.

3 40. Digital Works, Digital Depot, Media Fast, Ultra, High Speed Video, Savvi
4 Marketing, My Disc Factory, Xocialize, Personal-FX, Disc Company, and ProAction are the
5 agents, subsidiaries, and alter egos of each other because, among other things:

6 (a) The Individual Defendants have commingled the assets of the Digital
7 Works Enterprises by transferring assets freely between the Enterprises'
8 various members through transactions conducted at other than arm's
9 length;

10 (b) Rath, Dustin Nielson, Troy Nielson, Diaz, and Caramadre have
11 commingled the assets of the Digital Works Enterprises by transferring
12 DVD Discs, upon which royalties due Philips have not been paid, between
13 the Enterprises' various members through transactions conducted at other
14 than arm's length;

15 (c) The Individual Defendants have used and continue to use the same offices
16 and business locations, specifically 3487 West 2100 South, Ste 50, Salt
17 Lake City, Utah and 3655 E. Patrick Lane, Ste 400, Las Vegas, Nevada.

18 (d) The Digital Works Enterprises have at least two significant employees in
19 common: Dustin and Troy Nielson, brothers, who are managing members
20 and principals of each of the Digital Works Enterprises. Further, other
21 principals and employees of Digital Works, including Diaz, Caramadre,
22 and Johnson, are currently principals and/or employees of other entities in
23 the Digital Work Enterprises, including Ultra, Media Fast, Savvi and Disc
24 Company;
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- (e) The Individual Defendants have failed adequately to capitalize the Digital Works Enterprises;
- (f) The Individual Defendants have disregarded legal formalities and failed to maintain arm's length relationships among the Digital Works Enterprises by, among other things (1) leasing DVD disc manufacturing equipment using the credit of Digital Works and transferring that equipment, without notice to Digital Works' creditors, to Ultra for Ultra's use and benefit, and (2) transferring employees and customers from Digital Works to Ultra, for Ultra's use and benefit;
- (g) The Individual Defendants have diverted assets from Digital Works to the detriment of creditors, including Philips, and have manipulated assets and liabilities among the Digital Works Enterprises to concentrate their liabilities in Digital Works and their assets in Ultra by, among other things: (1) leasing DVD disc manufacturing equipment using the credit of Digital Works and transferring that equipment, without notice to Digital Works' creditors, to Ultra for Ultra's use and benefit; (2) causing Digital Works to incur substantial debts and other obligations by, among other things, refusing to pay royalties owed to Philips while transferring the income from that scheme to Ultra; and (3) transferring employees and customers from Digital Works to Ultra, for Ultra's use and benefit;
- (h) The Individual Defendants have used Digital Works as part of a scheme to contract with others with the intent to avoid performance by using Digital Works as a shield against personal liability by transferring the income derived from nonpayment of royalties owed to Philips to Ultra and

1 investing the income derived from said investment in the Digital Works
2 Enterprises.

3 41. Defendant Allegro, a Digital Works customer, is an Oregon corporation with its
4 principal place of business at 20048 NE San Rafael St., Portland, OR 97230.

5 42. Defendant VEI, a Digital Works customer, is an Ontario, Canada corporation with
6 its principal place of business at 39 International Blvd., Toronto, Ontario, Canada.
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8 **THE PATENT-IN-SUIT**

9 43. United States Patent No. 5,790,512 (“the ’512 Patent”), entitled “Optical
10 Information Carrier,” was duly and legally issued on August 4, 1998. U.S. Philips Corporation is
11 the owner by assignment of all right, title, and interest in the ’512 Patent. A true and correct
12 copy of the ’512 Patent is attached as Exhibit A.
13

14 **FACTUAL BACKGROUND**

15 **The License Agreements**

16 44. Philips offers makers of CD and DVD discs licenses to patents used in
17 manufacturing CD and DVD discs that comply with the technical specifications that ensure that
18 CD and DVD discs function properly in CD and DVD players.
19

20 45. Philips and Digital Works entered into a patent license agreement effective April
21 1, 2009: The DVD Video Disc and DVD ROM Disc Patent License Agreement (“DVD
22 Agreement.” A true and correct copy of the DVD Agreement is attached as Exhibit B.
23

24 46. The ’512 Patent is among the patents Philips licensed to Digital Works under the
25 DVD Agreement.

26 47. Philips and Digital Works entered into a separate patent license agreement
27 effective April 1, 2009; the Patent License Agreement for the Use of AC-3 Technology in the
28

1 Manufacture of DVD Video Discs (“AC-3 Agreement,” and, collectively with the DVD
2 Agreement, the “License Agreements”). A true and correct copy of the AC-3 Agreement is
3 attached as Exhibit C.

4 48. Under the License Agreements, Digital Works agreed to: (1) submit accurate
5 quarterly royalty statements enumerating DVD discs manufactured; (2) make quarterly royalty
6 payments; (3) maintain adequate records to allow verification of all statements made in quarterly
7 royalty statements; and (4) submit to and willingly cooperate with an annual audit.

8 49. Digital Works repeatedly breached the License Agreements by, among other
9 things, failing to submit royalty reports timely and failing to make quarterly royalty payments
10 due under the License Agreements.

11 50. On January 23, 2012—after receiving no royalty payments for 2009, 2010 and the
12 first, second and third quarters of 2011—Philips terminated the License Agreements between
13 itself and Digital Works pursuant to § 10.2 of the DVD Agreement and § 6.2 of the AC-3
14 Agreement. A true and correct copy of Philips’ written notice terminating the License
15 Agreements is attached as Exhibit D.

16 51. As a direct and proximate result of Digital Works’ breaches of the License
17 Agreements, including their obligation to pay royalties, Philips has suffered damages in an
18 amount known only to the Defendants.

19 52. After Philips terminated Digital Works’ License Agreements, the Digital Works
20 Enterprises, aided and abetted by and acting at the direction of the Individual Defendants, have
21 made and continue to make DVD discs without a license from, and without paying royalties, to,
22 Philips.

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Defendants' Infringing Conduct

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2 53. Digital Works makes or has made DVD discs at its principal place of business at
3 3655 E. Patrick Lane, Ste 400, Las Vegas, Nevada.

4 54. Ultra and Savvi make or have made DVD discs at their principal place of business
5 at 3655 E. Patrick Lane, Ste 400, Las Vegas, Nevada.

6
7 55. The Digital Works Enterprises have sold DVD discs made after termination of the
8 license agreement to the Digital Works Customers.

9 56. The Digital Works Customers, and each of them, have used, offered for sale, and
10 sold DVD discs made by the Digital Works Enterprises after termination of the License
11 Agreements.

FIRST CLAIM FOR RELIEF

(Infringement of the '512 Patent (35 U.S.C. § 271) against All Defendants)

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15 57. Philips realleges and incorporates by reference paragraphs 1 through 56 hereof as
16 if set forth herein in full.

17 58. Defendants, in violation of 35 U.S.C. § 271, have been and currently are
18 infringing, contributorily infringing or inducing others to infringe at least claim 1 of the '512
19 Patent, either literally or under the doctrine of equivalents, by without license or authority
20 making, using, offering to sell, selling, or importing into the United States—within this district
21 and elsewhere—DVD discs that infringe upon the '512 Patent.

22
23 59. Defendants' infringement includes, among other things:

24 (a) Defendants have been and currently are without license or authority
25 making, using, offering to sell, selling, or importing into the United
26 States—within this District and elsewhere—DVD discs that infringe the
27 '512 Patent.

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(b) The Individual Defendants, and each of them, have knowingly and willfully aided and abetted or actively induced the Digital Works Enterprises and/or the Digital Works Customers to infringe or induce others to infringe at least Claim 1 of the '512 Patent, either literally or under the doctrine of equivalents, by without license or authority making, using, offering to sell, selling, or importing into the United States—within this District and elsewhere—DVD discs that infringe upon the '512 Patent.

(c) The Individual Defendants, and each of them, have specifically and willfully directed other officers, agents, distributors, customers, or employees of themselves and/or of the Digital Works Enterprises and/or of the Digital Works Customers to infringe one ore more claims of the '512 Patent, either literally or under the doctrine of equivalents, by without license or authority making, using, offering to sell, selling, or importing into the United States—within this District and elsewhere—DVD discs that infringe upon the '512 Patent.

60. Defendants have had actual knowledge of the '512 Patent. Defendants have had no reasonable basis for a good faith conclusion: (a) that their conduct described above avoided infringement of the '512 Patent; or (b) that the '512 Patent was invalid. Their conduct, therefore, constitutes willful infringement.

61. Philips has suffered damage and irreparable harm as a result of Defendants' infringement of the '512 Patent and will continue to suffer damage and irreparable harm from Defendants' continuing infringement until Defendants are enjoined therefrom by the Court.

///

SECOND CLAIM FOR RELIEF

(Breach of Contract Against Digital Works)

62. Philips realleges and incorporates by reference paragraphs 1 through 61 hereof as if set forth herein in full.

63. As stated above, Digital Works has failed to submit royalty reports, and has failed to make each royalty payment in full, as required by the License Agreements. Specifically, Digital Works failed to submit accurate royalty reports and the full royalty payments due for each quarter in 2009, 2010 and the first, second and third quarters of 2011. DVD Agreement, §§ 4.2, 4.3; AC-3 Agreement, §§ 3.1, 3.2.

64. These defaulted royalty payments accrue interest at the rate of 2% per month. DVD Agreement § 4.4; AC-3 Agreement, § 3.5.

65. Digital Works' failure to submit these royalty statements breaches its obligations under § 4.3 of the DVD Agreement and § 3.2 of the AC-3 Agreement.

66. Digital Works' failure to make full royalty payments breaches its obligations under §4.2 of the DVD Agreement and § 3.1 of the AC-3 Agreement.

67. Philips duly has performed all its obligations under the License Agreements.

68. Because Digital Depot, Media Fast, Ultra, High Speed Video, Savvi, My Disc Factory, ProAction, Personal-FX, Disc Company, and Xocialize are the alter egos of Digital Works and of each other, they are jointly and severally liable for Digital Works' breaches of the License Agreements.

69. As a result of Digital Works' breaches of the License Agreements, Philips has suffered and will continue to suffer damages in an amount to be determined by the court.

PRAYER FOR RELIEF

WHEREFORE, Philips prays for:

- 1 1. A judgment that the '512 Patent is infringed by Defendants;
- 2 2. A preliminary and permanent injunction enjoining Defendants, their officers,
3 agents, servants, employees, and those persons in active concert or participation with them, or
4 any of them, from infringing, inducing the infringement or contributorily infringing the '512
5 Patent;
- 6 3. A judgment awarding Philips its damages resulting from Defendant's
7 infringement of the '512 Patent, together with interest;
- 8 4. A judgment that Defendant's infringement was willful and that the damages
9 awarded Philips be trebled, pursuant to 35 U.S.C. §§ 283 and 284;
- 10 5. A judgment that this case is exceptional pursuant to 35 U.S.C. § 285;
- 11 6. A judgment awarding Philips its costs and attorneys' fees;
- 12 7. A judgment awarding Philips damages to compensate for Digital Works' failure
13 to make timely and complete royalty payments as required by the License Agreements;
- 14 8. A preliminary and permanent injunction ordering Digital Works to specifically
15 perform its obligations under the License Agreements by accurately accounting to Philips for all
16 DVD discs it made and all of the DVD discs it sold or otherwise disposed of prior to and over the
17 course of the License Agreements; and
- 18 9. Such other and further relief as this Court deems just and proper.

19
20
21 Dated: July _26_, 2013

LIONEL SAWYER & COLLINS

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