

04-25-2001



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U.S. Department of Commerce  
Patent & Trademark Office  
TRADEMARK

FORM PTO-1618A

Expires 6/30/99  
OMB 0651-0027

RECORDATION FORM COVER SHEET  
TRADEMARKS ONLY

TO: The Commissioner of Patents and Trademarks: Please record the attached original document(s) or copy(ies)

Submission Type

- New
- Resubmission (Non-Recordation)  
Document ID # [ ]
- Correction of PTO Error  
Reel # [ ] Frame # [ ]
- Corrective Document  
Reel # [ ] Frame # [ ]

Conveyance Type

- Assignment  License
- Security Agreement
- Nunc Pro Tunc Assignment
- Merger Effective Date  
Month Day Year  
[ ]
- Change of Name
- Other [ ]

Conveying Party

Mark if additional names of conveying parties attached

Name [ViOS, Inc.] Execution Date  
Month Day Year  
[12202000]

Formerly [ ]

Address (line 1) [Suite 240]

Address (line 2) [113 Edinburgh South]

Address (line 3) [Cary, NC 27511]

Individual  General Partnership  Limited Partnership  Corporation  Association

Other [ ]

State of Incorporation [Delaware]

Citizenship [United States]

Receiving Party

Mark if additional names of receiving parties attached

Name [Southeast Interactive Technology Fund III, L.P.]

DBA/AKA/TA [ ]

Composed of [ ]

Address (line 1) [Suite 220]

Address (line 2) [630 Davis Drive]

Address (line 3) [Morrisville, NC 27560]

Individual  General Partnership  Limited Partnership  Corporation  Association

Other [ ]

State of Incorporation [Delaware]

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (Designation must be a separate document from Assignment).

04/26/2001

STDM11 00000004 500456 75864179

FOR OFFICE USE ONLY

01 FC:481  
02 FC:482

40.00 CH  
50.00 CH

Public burden reporting for this collection of information is estimated to average 30 minutes per Cover Sheet to be recorded, including time for reviewing the document and gathering the data needed to complete the Cover Sheet. Send comments regarding this burden estimate to the U.S. Patent and Trademark Office, Chief Information Officer, Washington, D.C. 20231 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Paperwork Reduction Project (0651-0027), Washington, D.C. 20503. Se OMB Information Collection Budget Package 0651-0027, Patent and Trademark Assignment Practice. DO NOT SEND REQUESTS TO RECORD ASSIGNMENT TO THIS ADDRESS. Mail documents to be recorded with required cover sheet(s) information to: Commissioner of Patents and Trademarks, Box Assignments, Washington, D.C. 20231

Gray Cary\AU\4055025.1  
104787-158507

TRADEMARK  
REEL: 002283 FRAME: 0139

**Domestic Representative Name and Address**

Enter the first Receiving Party Only

Name [ James L. Montgomery ]  
Address (line 1) [ Gray Cary Ware & Freidenrich LLP ]  
Address (line 2) [ Suite 1440 ]  
Address (line 3) [ 100 Congress Avenue ]  
Address (line 4) [ Austin, TX 78701 ]

**Correspondence Name and Address**

Area Code and Telephone Number [ 512-457-7000 ]

Name [ James L. Montgomery ]  
Address (line 1) [ Gray Cary Ware & Freidenrich LLP ]  
Address (line 2) [ Suite 1440 ]  
Address (line 3) [ 100 Congress Avenue ]  
Address (line 4) [ Austin, TX 78701 ]

**Pages** Enter the total number of pages of the attached conveyance document including any attachments # 24

**Trademark Application Number(s) or Registration Number(s)**  Mark if additional numbers attached  
Enter either the Trademark Application Number or the Registration Number (DO NOT ENTER BOTH numbers for the same property).

Trademark Application Number(s)			Registration Number(s)		
[ 75864179 ]	[ 76153201 ]	[ 76152983 ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]	[ ]	[ ]

**Number of Properties**

Enter the total amount of properties involved. # 3

**Fee Amount** Fee Amount for Properties Listed (37 CFR 3.41): \$90.00

Method of Payment: Enclosed  Deposit Account

Deposit Account #50-0456

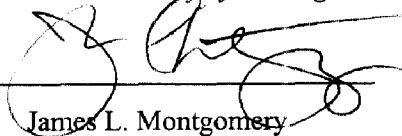
(Enter for payment by deposit account or if additional fees can be charged to the account.)

Deposit Account Number: #50-0456

Authorization to charge additional fees: Yes  No

**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. Charges to a deposit account are authorized, as indicated herein.

  
James L. Montgomery

\_\_\_\_\_  
Signature

3.6.2001  
\_\_\_\_\_  
Date Signed

RECORDATION FORM COVER SHEET  
CONTINUATION  
TRADEMARKS ONLY**Receiving Party** Mark if additional names of receiving parties attached

Name [Southeast Euro Interactive Technology Fund III, L.P.] ]  
 DBA/AKA/TA [ ] ]  
 Composed of [ ] ]  
 Address (line 1) [Suite 220] ]  
 Address (line 2) [630 Davis Drive] ]  
 Address (line 3) [Morrisville, NC 27560] ]

Individual  General Partnership  Limited Partnership  Corporation  Association  
 Other [ ] ]

 State of Incorporation [Delaware]

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (*Designation must be a separate document from Assignment*).

**Receiving Party** Mark if additional names of receiving parties attached

Name [Southeast Interactive Affiliates Fund III, L.P.] ]  
 DBA/AKA/TA [ ] ]  
 Composed of [ ] ]  
 Address (line 1) [Suite 220] ]  
 Address (line 2) [630 Davis Drive] ]  
 Address (line 3) [Morrisville, NC 27560] ]

Individual  General Partnership  Limited Partnership  Corporation  Association  
 Other [ ] ]

 State of Incorporation [Delaware]

If document to be recorded is an assignment and the receiving party is not domiciled in the United States, an appointment of a domestic representative should be attached. (*Designation must be a separate document from Assignment*).

**SECURITY AGREEMENT**

THIS SECURITY AGREEMENT (this "Security Agreement") is made and entered into as of December 20, 2000 (the "Effective Date") by and between ViOS, Inc., a Delaware corporation ("Debtor"), and the purchasers of the Debtor's Secured Convertible Promissory Notes (the "Secured Notes") and warrants for the purchase of the Debtor's capital stock (the "Warrants") under the terms of that certain Note and Warrant Purchase Agreement (the "Purchase Agreement") dated December 20, 2000, whose names are set forth on Exhibit A to this Security Agreement (each a "Secured Party" and together the "Secured Parties").

1. **Creation of Security Interest; Term.** Debtor hereby grants to the Secured Parties a first priority security interest in the Collateral described in Section 2 of this Security Agreement to secure performance and payment of all obligations and indebtedness of Debtor arising from the Secured Notes issued to the Secured Parties, including, but not limited to, the obligations and indebtedness of Debtor to the Secured Parties described in Section 3 of this Security Agreement (collectively, the "Indebtedness"). This Security Agreement shall terminate upon the full performance, payment and satisfaction of the Indebtedness, including the conversion or repayment of the Secured Notes. Until termination of this Agreement, the Secured Parties' security interest in the Collateral, and all proceeds and products thereof, shall continue in full force and effect.

2. **Collateral.** In order to secure the payment when due of any and all Indebtedness, Debtor hereby pledges to the Secured Parties and grants to the Secured Parties a security interest in and to all of Debtor's Intellectual Property Assets as defined below (collectively, the "Collateral"):

(a) "Intellectual Property Assets" means and any and all Intellectual Property of the Debtor currently in existence or developed in the future, including but not limited to all items described in Exhibit B as the source code of the Debtor (the "Source Code"). For purposes of this Security Agreement, "Intellectual Property" includes, without limitation, all patents, patent applications, copyrights, copyright applications, trademarks, trademark applications and trade secrets, and further includes any and all tangible and intangible products, discoveries, developments, designs, improvements, inventions, formulas, processes, techniques, know-how, data and software source code whether or not registrable or patentable under statute, whenever made, conceived, reduced to practice, learned or developed by or for the Debtor.

3. **Payment Obligations of Debtor.**

(a) Debtor shall pay to the Secured Parties any sum or sums due or which may become due pursuant to the Secured Notes of Debtor dated as of even date herewith payable to the order of each of the Secured Parties listed on Exhibit A in the original principal amount set opposite each such Secured Party's name in accordance with the terms of such Secured Notes and the terms of this Security Agreement and any and all renewals, rearrangements or extensions of such Secured Notes and under the terms of any additional Secured Notes issued and sold by the Debtor and purchased by the Secured Parties at any additional Closing as such term is

defined in the Purchase Agreement. Debtor and Secured Parties acknowledge the original principal amounts set forth on Exhibit A reflect only those Secured Notes issued to each Secured Party on the date hereof. Pursuant to the terms of the Purchase Agreement, the Purchasers have an option to purchase additional Secured Notes from the Debtor at additional Closings and it is the intent of all parties to this Security Agreement that the secured interest created hereby shall secure performance and payment of all such Secured Notes and any and all obligations and indebtedness of the Debtor arising from the sale of such Secured Notes at any Closings.

(b) Debtor shall account fully and faithfully to the Secured Parties for proceeds from disposition of the Collateral in any manner and, following an Event of Default (as defined below) hereunder, shall pay or turn over promptly in cash, negotiable instruments, drafts, assigned accounts or chattel paper all the proceeds from each sale to be applied to Debtor's Indebtedness to the Secured Parties, subject, if other than cash, to final payment or collection. Application of such proceeds to Indebtedness of Debtor shall be in the sole discretion of the Secured Parties, provided such application of proceeds is made by the Secured Parties in a reasonable manner.

(c) Following an Event of Default hereunder or under the Secured Notes, Debtor shall pay to the Secured Parties on demand all reasonable expenses and expenditures (including, but not limited to, reasonable fees and expenses of legal counsel) incurred or paid by the Secured Parties in exercising or protecting their interests, rights and remedies under this Security Agreement, plus interest thereon at the lesser of (i) 18% per annum or (ii) the highest rate of interest then allowed by law.

(d) Debtor shall pay immediately, without notice, the entire unpaid Indebtedness of Debtor to the Secured Parties whether created or incurred pursuant to this Security Agreement or otherwise, upon Debtor's default under Section 5 of this Security Agreement.

#### 4. Representations, Warranties and Agreements of Debtor.

(a) All information supplied and statements made by Debtor in any financial, credit or accounting statement or provided to the Secured Parties prior to, contemporaneously with or subsequent to the execution of this Security Agreement are and shall be true, correct, complete, valid and genuine in all material respects.

(b) Except for the security interest granted in this Security Agreement, no financing statement covering the Collateral or its proceeds is on file in any public office and there is no lien, security interest or encumbrance in or on the Collateral (except such encumbrances and liens which arise in the ordinary course of business and both (i) do not materially impair the Debtor's ownership or use of the Collateral and (ii) are junior to and do not adversely affect the security interest granted hereunder to the Secured Parties).

(c) The location where Debtor maintains its chief executive office is 113 Edinburgh South, Suite 240, Cary, Wake County, North Carolina 27511.

(d) The Collateral shall remain in Debtor's possession or control at all times at Debtor's risk of loss until (i) sold, licensed or otherwise disposed of in the ordinary course of

business, provided that the Secured Parties shall be granted a first priority security interest in the proceeds and other consideration received for such Collateral or (ii) as authorized in writing by the Secured Parties representing at least two-thirds (2/3) of the aggregate principal amounts of all outstanding Secured Notes sold under the Purchase Agreement.

(e) Until an Event of Default, Debtor may use the Collateral in any lawful manner not inconsistent with this Security Agreement or with the terms or conditions of any policy of insurance thereon and may also sell, license or otherwise dispose of the Collateral in the ordinary course of business. The Secured Parties' security interest shall attach to all proceeds of sales, licenses and other dispositions of the Collateral.

(f) Debtor will promptly notify the Secured Parties in writing of any change in the location of its chief executive office as set forth in paragraph 4(c) of this Security Agreement.

(g) Debtor shall pay prior to delinquency all material taxes, charges, liens and assessments against the Collateral except those Debtor is contesting in good faith and for which adequate accruals have been made, and upon Debtor's failure to do so after ten days' prior written notice, the Secured Parties at their option may pay any of them and shall be the sole judge of the legality or validity thereof and the amount necessary to discharge the same. Such payment shall become part of the Indebtedness secured by this Security Agreement and shall be paid to the Secured Parties by Debtor immediately and without demand, with interest thereon at the rate set forth in paragraph 3(c) hereof.

(h) Debtor shall, at its own expense, do, make, procure, execute and deliver all acts, things, writings and assurances as the Secured Parties may at any time reasonably request to protect, assure or enforce their interests, rights and remedies created by, provided in or emanating from this Security Agreement. Debtor will execute financing statements and take whatever other actions are requested by the Secured Parties to perfect and continue the Secured Parties' security interests in the Collateral; provided that (i) the Debtor shall have no obligation to perfect the Secured Parties' security interests in any asset for which a lien may not be perfected by the filing of a Form UCC-1 in the appropriate jurisdiction(s) and (ii) the Secured Parties agree that no such Secured Party shall request or undertake such filing of a Form UCC-1 in any jurisdiction or any filing related to patent and trademark filings with the Patent and Trademark Office of the United States or in any local jurisdiction, or request that the Debtor take any further action to perfect the first priority security interest created herein until such time as the Debtor's Current Ratio (as defined below) falls below 1.0. Upon request of the Secured Parties, the Debtor will deliver to a representative designated by the Secured Parties any and all of the documents evidencing or constituting the Collateral (if applicable), and the Debtor will note Secured Parties' interests upon any and all of such documents if not delivered to such designated Secured Parties' representative for possession by it. The Company hereby agrees that a carbon, photographic, photostatic or other reproduction of this Security Agreement or of a financing statement is sufficient as a financing statement where permitted by law.

(i) For the purposes of this Security Agreement, Debtor's Current Ratio shall be defined as the quotient of (i) Debtor's current assets as measured in accordance with generally accepted accounting principles consistently applied ("GAAP"), divided by, (ii) the sum of

Debtor's current liabilities measured in accordance with GAAP less (A) the balance owed by the Debtor to any Secured Party or any Affiliate (as such term is defined in the Purchase Agreement) of a Secured Party under the terms of the Secured Notes or any other obligation or indebtedness, (B) any current liabilities arising from a related party transaction, and (C) any current liabilities created as a result of entering into an equipment lease or financing arrangement where the security interest created by such lease or financing arrangement is limited to the equipment leased or financed under the terms of such agreement. The Current Ratio shall be calculated monthly based on those reports prepared by the Company and delivered to the holders of the Company's Series A Preferred Stock under the terms of the Series A Stock Purchase Agreement dated December 20, 1999, as amended.

(j) Except in the ordinary course of business, Debtor shall not sell, lend, license, rent, lease or otherwise dispose of the Collateral or any interest therein except as authorized in this Security Agreement or in writing by the Secured Parties, and Debtor shall keep the Collateral, including the proceeds thereof, free from unpaid charges, including taxes, and from liens, encumbrances and security interests other than that of the Secured Parties (except such encumbrances and liens which arise in the ordinary course of business and both (i) do not materially impair the Debtor's ownership or use of the Collateral and (ii) are junior to and do not adversely affect the security interest granted hereunder to the Secured Parties).

(k) Debtor shall at all times keep accurate and complete records of the Collateral and its proceeds.

(l) Debtor is the owner of the Collateral free of all liens, claims and encumbrances, except as created by this Security Agreement and the security interest granted in favor of the Secured Parties (except such encumbrances and liens which arise in the ordinary course of business and both (i) do not materially impair the Debtor's ownership or use of the Collateral and (ii) are junior to and do not adversely affect the security interest granted hereunder to the Secured Parties).

(m) With respect to any and all Collateral, the Debtor has not obtained and is not in the process of applying for any patents, trademarks or copyrights in any jurisdiction that are not disclosed on Exhibit B. The Debtor will notify the Secured Parties at least thirty (30) days prior to the filing of any patent, trademark or copyright applications with respect to the Collateral and will provide the Secured Parties with all information necessary to assist the Secured Parties in securing the Collateral prior to the filing of any patent, copyright or trademark applications.

5. **Events of Default.** Debtor shall be in default under this Security Agreement upon the happening of any condition or event set forth below (each, an "Event of Default"):

(a) Debtor's failure to pay any Indebtedness secured by this Security Agreement within ten days after such Indebtedness becomes due in accordance with the terms of this Security Agreement or the Secured Notes including any Secured Notes purchased at any additional Closing as set forth in Section 4 above.

(b) Default by Debtor in punctual performance of any of the obligations, covenants, terms or provisions contained or referred to in this Security Agreement, or the Secured Notes secured hereby, the Warrants or the Purchase Agreement, each as amended, replaced or modified if such default shall continue unremedied for a period of ten days following written notice of default by the Secured Parties to Debtor.

(c) Any warranty, representation or statement contained in this Security Agreement, or the Note Purchase Agreement proves to have been false in any material respect when made or furnished.

(d) Loss, theft, substantial damage, destruction, sale, license (except as authorized in this Security Agreement) or encumbrance to or of any portion of the Collateral (except such encumbrances and liens which arise in the ordinary course of business and both (i) do not materially impair the Debtor's ownership or use of the Collateral and (ii) are junior to and do not adversely affect the security interest granted hereunder to the Secured Parties), or the making of any levy, seizure or attachment thereof or thereon.

(e) Debtor's dissolution, termination of existence, insolvency or business failure; the appointment of a receiver of all or any part of the property of Debtor; an assignment for the benefit of creditors by Debtor; or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Debtor or any guarantor, surety or endorser for Debtor which results in the entry of an order for relief or which remains undismissed, undischarged or unbonded for a period of sixty (60) days or more.

(f) Any statement of the financial condition of Debtor or of any guarantor, surety or endorser of any liability of Debtor to the Secured Parties submitted to the Secured Parties by Debtor or any such guarantor, surety or endorser proves to be false in any material respect.

## 6. Secured Parties' Rights and Remedies.

### (a) Rights Exclusive of Default.

(i) The Secured Parties may enter Debtor's premises at any reasonable time without interruption of Debtor's business and without any breach of the peace to inspect the Collateral and Debtor's books and records pertaining to the Collateral, and Debtor shall assist the Secured Parties in making any such inspection.

(ii) The Secured Parties may execute, sign, endorse, transfer or deliver in the name of Debtor, notes, checks, drafts or other instruments for the payment of money and receipts, certificates of origin, applications for certificates of title or any other documents, necessary to evidence, perfect or upon an Event of Default, realize upon the security interest and obligations created by this Security Agreement; however, the Secured Parties agree not to take any such actions if such actions would be inconsistent with the provisions of Section 4(h) herein.



(iii) At their option, the Secured Parties may agree to discharge taxes, liens or security interests or other encumbrances at any time levied or placed on the Collateral, may pay for the insurance on the Collateral and may pay for the maintenance and preservation of the Collateral. Debtor agrees to reimburse the Secured Parties on demand for any payment made, or expense incurred by the Secured Parties pursuant to the foregoing authorization, plus interest thereon at the rate set forth in paragraph 3(c) hereof, and will indemnify and hold the Secured Parties harmless from and against liability in connection therewith.

(b) Rights in Event of Default. In addition to any other rights which the Secured Parties may have at law or hereunder, upon the occurrence of an Event of Default, and at any time thereafter, the Secured Parties may:

(i) Declare all obligations secured hereby immediately due and payable and shall have the rights and remedies of a "secured party" under the Uniform Commercial Code in effect in the local jurisdiction where the Collateral is located, including, without limitation, the right to sell, lease, transfer, license or otherwise dispose of any or all of the Collateral and the right to take possession of the Collateral, and for that purpose the Secured Parties may enter any premises on which the Collateral or any part thereof may be situated and remove the same therefrom, so long as the same may be accomplished without a breach of the peace. The Secured Parties may require Debtor to assemble the Collateral and make it available to the Secured Parties at a place to be designated by the Secured Parties which is reasonably convenient to the party. Unless the Collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, the Secured Parties will send Debtor reasonable notice of the time and place of any public sale thereof or of the time after which any private sale or other disposition thereof is to be made. The requirement of sending reasonable notice shall be met if such notice is given to Debtor at least ten days before the time of the sale or disposition. Expenses of retaking, holding, preparing for sale, selling or the like shall include the Secured Parties' reasonable fees and expenses (including, but not limited to, reasonable fees and expenses of legal counsel), and Debtor agrees to pay such reasonable fees and expenses, plus interest thereon at the rate set forth in paragraph 3(c) hereof. Debtor shall remain liable for any deficiency hereunder or under the Secured Notes;

(ii) Notify the account of debtors or obligors of any accounts, chattel paper, negotiable instruments or other evidences of indebtedness remitted by Debtor to the Secured Parties as proceeds to pay the Secured Parties directly;

(iii) Demand, sue for, collect or make any compromise or settlement with reference to the Collateral as the Secured Parties, in their sole discretion, choose; and

(iv) Remedy any default and may waive any default without waiving or being deemed to have waived any other prior or subsequent default.

7. **Miscellaneous.**

(a) **Notices.** Any notice required or permitted by this Security Agreement shall be in writing and shall be deemed effectively given: (i) upon personal delivery to the party to be notified; (ii) when sent by confirmed facsimile or electronic transmission if sent during normal business hours of the recipient on a business day, or if not, then on the next business day; or (iii) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt (or, in the case of non-U.S. residents, two (2) business days after deposit with an internationally recognized overnight courier, specifying international priority delivery, with written verification of receipt). All communications shall be sent to the Debtor and the Secured Parties at the addresses set forth on the signature pages hereof or at such other address as the Debtor or the Secured Parties may designate by ten (10) days' advance written notice to the other parties hereto.

(b) **Construction.** "Secured Party" and "Debtor", as used in this instrument, include the administrators, successors, representatives, receivers, trustees and assigns of such party.

(c) **Headings.** The headings appearing in this instrument have been inserted for convenience of reference only and shall be given no substantive meaning or significance whatever in construing the terms and provisions of this instrument.

(d) **Governing Law.** This Security Agreement shall be governed, construed and interpreted under the laws of the State of Delaware, without regard to the conflicts of laws provisions of the State of Delaware or any other state.

(e) **Further Assurances.** All property acquired by Debtor after the date hereof, which by the terms hereof is required or intended to be subjected to the lien of this Security Agreement, shall, immediately upon the acquisition thereof and without further mortgage, conveyance or assignment, become subject to the lien of this Security Agreement as fully as though now owned by Debtor and specifically described herein. Nevertheless, Debtor will do all such further acts and execute, acknowledge and deliver all such further conveyances, mortgages, financing statements and assurances as the Secured Parties shall reasonably require for accomplishing the purposes of this Security Agreement.

(f) **Rights Cumulative; No Waiver.** The rights and remedies of the Secured Parties hereunder are cumulative, and the exercise (or waiver) of any one or more of the remedies provided for herein shall not be construed as a waiver of any of the other rights and remedies of the Secured Parties. No delay on the part of the holder of this Security Agreement in the exercise of any power or right under this Security Agreement or under any other instrument executed pursuant hereto shall operate as a waiver thereof, nor shall a single or partial exercise of any power or right preclude other or further exercise thereof or the exercise of any other power or right.

(g) Successors and Assigns. The rights and obligations of the Secured Parties and the Debtor hereunder may not be transferred or assigned by any party without the prior written consent of the other parties hereto, except the Secured Parties may transfer or assign their rights and obligations under this Security Agreement to any of its affiliated funds, affiliates, partners or limited partners, or any other fund or investment entity of such Secured Party without such consent and in such case the assignee shall be entitled to all of the rights, privileges and remedies granted in this Security Agreement to the Secured Party provided that the transfer does not violate applicable securities laws and is in connection with a concurrent assignment or transfer of the Secured Notes to such assignee or transferee; and in such event Debtor will assert no claims or defenses, other than a defense that it has performed its obligations under the Notes and this Security Agreement, it may have against the Secured Party against the assignee, except those granted in this Security Agreement. Any assignee of Debtor or the Secured Parties shall agree in writing prior to the effectiveness of such assignment to be bound by the provisions hereof. All of the stipulations, promises and agreements in this Security Agreement made by or on behalf of Debtor shall bind the successors and permitted assigns of Debtor, whether so expressed or not, and inure to the benefit of the successors and permitted assigns of Debtor and the Secured Parties.

(h) Severability. In the event any one or more of the provisions contained in this Security Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Security Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(i) Amendment and Waiver. Any term of this Security Agreement may be amended only with the written consent of the Debtor and the Secured Parties representing at least two-thirds (2/3) of the aggregate principal amounts of all then outstanding Secured Notes sold under the Purchase Agreement. Any amendment or waiver effected in accordance with this Section 7(i) shall be binding upon the Debtor, all Secured Parties, and each transferee of the Notes. Any waiver by the Debtor or the Secured Parties of a breach of any provision of this Security Agreement shall not operate as or be construed to be a waiver of any other breach of such provision or of any breach of any other provision of this Security Agreement. The failure of the Debtor or the Secured Parties to insist upon strict adherence to any term of this Security Agreement on one or more occasions shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or any other term of this Security Agreement. By acceptance hereof, the Secured Party acknowledges that in the event the required consent is obtained, any term of this Security Agreement may be amended or waived with or without the consent of the Secured Party.

(j) Entire Agreement. This Security Agreement, together with the Purchase Agreement, the Secured Notes and the Warrants, constitutes the full understanding between the parties hereto with respect to the subject matter hereof, and no statements, written or oral, made prior to or at the signing hereof shall vary or modify the terms hereof.

IN WITNESS WHEREOF, the undersigned parties have executed this Security Agreement on and as of the Effective Date.

**DEBTOR:**

**VIOS, INC.**

By: \_\_\_\_\_  
Name \_\_\_\_\_  
Title \_\_\_\_\_

Address: 113 Edinburgh South, Suite 240  
Cary, North Carolina 27511  
Facsimile: (919)463-9067

IN WITNESS WHEREOF, the undersigned parties have executed this Security Agreement on and as of the Effective Date.

**DEBTOR:**

**VIOS, INC.**

By:



Name Robert L. Pickard  
Title CEO / President

Address: 113 Edinburgh South, Suite 240  
Cary, North Carolina 27511  
Facsimile: (919)463-9067

**AGREED TO AND ACCEPTED:**

**SOUTHEAST INTERACTIVE  
TECHNOLOGY FUND III, L.P.**

By: 

Printed Name: David C. Blivin

Title: Managing Director

Address: 630 Davis Drive, Suite 220  
Morrisville, North Carolina 27560  
Facsimile: (919) 558-2025

**AGREED TO AND ACCEPTED:**

**SOUTHEAST EURO INTERACTIVE  
TECHNOLOGY FUND III, L.P.**

By: 

Printed Name: David C. Blivin

Title: Managing Director

Address: 630 Davis Drive, Suite 220  
Morrisville, North Carolina 27560  
Facsimile: (919) 558-2025

**AGREED TO AND ACCEPTED:**

**SOUTHEAST INTERACTIVE  
AFFILIATES FUND III, L.P.**

By: 

Printed Name: David C. Blivin

Title: Managing Director

Address: 630 Davis Drive, Suite 220  
Morrisville, North Carolina 27560  
Facsimile: (919) 558-2025

**EXHIBIT A**

**SECURED PARTIES**

<u>Purchaser</u>	<u>Original Amount of Notes</u>
- Southeast Interactive Technology Fund III, L.P.	\$ 273,550
Southeast Euro Interactive Technology Fund III, L.P.	\$ 185,500
Southeast Interactive Affiliates Fund III, L.P.	\$ 40,950
Visiontech Partners LLC	\$ 250,000
Piedmont Venture Partners II, L.P.	\$ <u>--0--</u>
TOTAL	\$ <u>750,000</u>

**EXHIBIT B**

**INTELLECTUAL PROPERTY ASSETS**



## PATENTS

### United States Patent and Trademark Office

U.S. Patent No.:5,889,951

Filing Date: 5/13/1996

Date of Patent: 3/30/1999

Name: Systems, Methods, and Computer Program Products for Accessing,  
Leasing,

Relocating, Constructing and Modifying Internet Sites within a Multi-  
Dimensional

Virtual Reality Environment

Inventor: Julian Lombardi, Greensboro, NC

3/21/2000 – USPTO recorded certificate of merger of Viewpoint Corporation with and into  
ViOS, Inc.

## TRADEMARKS

### United States Patent and Trademark Office

**Mark:** VIOS

**Serial:** 75/864179

**Filing Date:** 12/4/1999

**Class No:** 009

**Attorney:** Randall W. Whitmeyer, Hutchison & Mason

**Status:** Received Notice of Allowance from PTO on Jan 9, 2001 – ViOS needs to  
Deliver a Statement of Use to the USPTO with the date of the mark and two  
specimens by July 9, 2001.

### Office for Harmonization in the International Market(OHIM) (European Market)

**Mark:** VIOS

**Application #:** 001839455

**Filing Date:** 9/5/2000

**Class No:** 9,35,41

**Attorney:** Neil Wolgin, Hutchison & Mason

**Status:** Received filing receipt of the EC trademark application from OHIM

### United States Patent and Trademark Office

**Mark:** VIOS (AND DESIGN) (Logo with ViOS under logo)

**Serial:** 76/153201

**Filing Date:** 10/24/2000

**Class No:** 9,35,41

**Attorney:** Neil Wolgin, Hutchison & Mason

**Status:** Filing Receipt for Trademark Application Received

### United States Patent and Trademark Office

**Mark:** VIOS (AND DESIGN) (Logo only)

**Serial:** 76-152983

**Filing Date:** 10/24/2000

**Class No:** 9,35,41

**Attorney:** Neil Wolgin, Hutchison & Mason

**Status:** Filing Receipt for Trademark Application Received

**JOINDER AND FIRST AMENDMENT  
TO  
NOTE AND WARRANT PURCHASE AGREEMENT AND SECURITY AGREEMENT**

This **JOINDER AND FIRST AMENDMENT TO NOTE AND WARRANT PURCHASE AGREEMENT AND SECURITY AGREEMENT** ("**Agreement**") is made and entered into as of February \_\_, 2001, and dated effective as of December 20, 2000 ("**Effective Date**"), by and among ViOS, Inc., a Delaware corporation (the "**Company**"); Southeast Interactive Technology Fund III, L.P., Southeast Euro Interactive Technology Fund III, L.P., Southeast Interactive Affiliates Fund III, L.P., Piedmont Venture Partners II, L.P. and VisionTech Partners LLC (collectively, the "**Original Purchasers**"); and, the individuals listed on **Schedule A** attached hereto and incorporated herein by reference (collectively, the "**New Purchasers**").

**WHEREAS**, the Company and the Original Purchasers entered into the Note and Warrant Purchase Agreement (the "**Original Purchase Agreement**") and the related Security Agreement (the "**Original Security Agreement**") effective as of December 20, 2000; and

**WHEREAS**, the Original Purchase Agreement provides for the offer and sale of up to \$5,000,000 in secured convertible promissory notes with warrants attached (collectively, the "**Securities**"), the obligations of the Company under which Securities are to be secured by the Company's intellectual property as more fully set forth in the Original Security Agreement; and

**WHEREAS**, the Original Purchasers agreed to purchase up to an aggregate of \$2,500,000, of the Securities on and subject to the terms of the Original Purchase Agreement and the Original Security Agreement; and

**WHEREAS**, the New Purchasers desire to purchase the amount of the Securities set forth opposite each of their respective names on **Schedule A** attached hereto (the "**New Securities**") out of the original allocation of securities to VisionTech Partners LLC under the terms of the Original Purchase Agreement on and subject to the terms of the Original Purchase Agreement and the Original Security Agreement (as amended by this Agreement); and

**WHEREAS**, the Company and the Original Purchasers desire to amend the Original Purchase Agreement and the Original Security Agreement and the New Purchasers desire to join as parties to the Original Purchase Agreement and the Original Security Agreement (as amended by this Agreement) so as to provide for the purchase of the New Securities by the New Purchasers; and

**NOW, THEREFORE**, in consideration of the mutual agreements set forth herein and for other consideration, the receipt and sufficiency of which are hereby acknowledged, the Company, the Original Purchasers and the New Purchasers hereby agree, as of the Effective Date, as follows:

1. **Schedule 2.1 of Original Purchase Agreement.** Schedule 2.1 of the Original Purchase Agreement is hereby deleted in its entirety and replaced with a new Schedule 2.1 so as to add the New Purchasers and New Securities as attached hereto.

2. **Exhibit A of Security Agreement.** Exhibit A of the Original Security Agreement is hereby deleted in its entirety and replaced with a new Exhibit A so as to add the New Purchasers and New Securities as attached hereto.

3. **Representations and Warranties of Company.** The representations and warranties of the Company contained in Article 3 of the Original Purchase Agreement and Article 4 of the Original Security Agreement are true on and as of the Effective Date hereof with the same effect as if such representations and warranties were made on and as of date hereof.

4. **Representations and Warranties of the New Purchasers.** Each New Purchaser, in his or her individual capacity as "Purchaser," hereby makes such representations and warranties contained in Article 4 of the Original Purchase Agreement.

5. **Joinder.** The New Purchasers hereby agree to be bound by all of the terms and conditions of the Original Purchase Agreement and the Original Security Agreement as amended by this Agreement in their individual capacities as "Purchasers" and "Secured Parties," respectively, under each of the Original Purchase Agreement and the Original Security Agreement, as amended by this Agreement.

6. **Severability.** Each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

7. **Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

8. **Capitalized Terms.** All capitalized terms used herein that are not otherwise defined shall have the meanings assigned to them in the Original Purchase Agreement or the Original Security Agreement, as applicable, unless the context hereof requires otherwise.

9. **Miscellaneous.** Except as expressly amended as provided above, each of the Original Purchase Agreement and the Original Security Agreement remains unmodified and in full force and effect and is hereby renewed, ratified and affirmed by the Company and the Purchasers.

10. **Waiver of Notice of Preemptive Rights.** Each of the Original Purchasers hereby waives any preemptive right it may have, as well as any right to receive notice from the Company of such preemptive right, in connection with the offer and sale of the Securities under the Note Purchase Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year hereinabove first written.

*(SIGNATURE PAGE FOLLOWS)*

**SIGNATURE PAGE FOR JOINDER AND FIRST AMENDMENT TO  
NOTE AND WARRANT PURCHASE AGREEMENT**

**COMPANY:**

**ViOS, INC.**

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

Printed Name: \_\_\_\_\_

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

Address: 113 Edinburgh South, Suite 240  
Cary, North Carolina 27511  
Attn: Robert L. Pickens  
Facsimile: (919)463-9067

**SIGNATURE PAGE FOR JOINDER AND FIRST AMENDMENT TO  
NOTE AND WARRANT PURCHASE AGREEMENT**

**ORIGINAL PURCHASERS:**

**PIEDMONT VENTURE PARTNERS II, L.P.**

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

Printed Name: \_\_\_\_\_

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

Address: One Morrocroft Center  
6805 Morrocroft Boulevard, Suite 380  
Charlotte, North Carolina 28211

Facsimile: \_\_\_\_\_

**VISIONTECH PARTNERS LLC**

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

Printed Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Facsimile: \_\_\_\_\_

**SIGNATURE PAGE FOR JOINDER AND FIRST AMENDMENT TO  
NOTE AND WARRANT PURCHASE AGREEMENT**

**ORIGINAL PURCHASERS:**

**SOUTHEAST INTERACTIVE  
TECHNOLOGY FUND III, L.P.**

By: Steve Kukes  
Printed Name: Steve Kukes  
Title: Chief Financial Officer

Address: 630 Davis Drive, Suite 220  
Morrisville, North Carolina 27560  
Facsimile: (919) 558-2025

**SOUTHEAST EURO INTERACTIVE  
TECHNOLOGY FUND III, L.P.**

By: Steve Kukes  
Printed Name: Steve Kukes  
Title: Chief Financial Officer

Address: 630 Davis Drive, Suite 220  
Morrisville, North Carolina 27560  
Facsimile: (919) 558-2025

**SOUTHEAST INTERACTIVE  
AFFILIATES FUND III, L.P.**

By: Steve Kukes  
Printed Name: Steve Kukes  
Title: Chief Financial Officer

Address: 630 Davis Drive, Suite 220  
Morrisville, North Carolina 27560  
Facsimile: (919) 558-2025

**SIGNATURE PAGE FOR JOINDER AND FIRST AMENDMENT TO  
NOTE AND WARRANT PURCHASE AGREEMENT**

**NEW PURCHASERS:**

**DON PIPER IRA ACCOUNT**

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

Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

\_\_\_\_\_

Facsimile: \_\_\_\_\_

**CAROL PIPER IRA ACCOUNT**

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

Name: \_\_\_\_\_

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

Address: \_\_\_\_\_

\_\_\_\_\_

Facsimile: \_\_\_\_\_

\_\_\_\_\_  
**NARESH GANDHI**

Address: \_\_\_\_\_

\_\_\_\_\_

Facsimile: \_\_\_\_\_



**SCHEDULE A**

**New Purchasers**

<u>Name</u>	<u>Original Principal Amount of Notes</u>
Don Piper IRA Account	\$25,000
Carol Piper IRA Account	\$ 5,000
Naresh Gandhi	<u>\$50,000</u>
	<u>\$80,000</u>

**EXHIBIT A**  
**SECURED PARTIES**

Name of Purchaser	Principal Amount of Secured Notes to be Purchased at Initial Closing	Principal Amount of Additional Secured Notes to be Purchased at Second Closing	Principal Amount of Additional Secured Notes to be Purchased at Piedmont Closing	Principal Amount of Note to be Purchased at Additional Closings
Piedmont Venture Partners II, L.P.	\$0	\$0	\$1,000,000	
Southeast Interactive Technology Fund III, L.P.	\$273,550	\$273,550	\$0	
Southeast Euro Interactive Technology Fund III, L.P.	\$185,500	\$185,500	\$0	
Southeast Interactive Affiliates Fund III, L.P.	\$40,950	\$40,950	\$0	
VisionTech Partners LLC	\$170,000	\$250,000	\$0	
Don Piper IRA Account	\$25,000		\$0	
Carol Piper IRA Account	\$5,000		\$0	
Narash Gandhi	\$50,000		\$0	
<b>TOTAL</b>	<b>\$750,000</b>	<b>\$750,000</b>	<b>\$1,000,000</b>	<b>Up to \$2,500,000</b>

**SCHEDULE 2.1  
CLOSINGS**

Name of Purchaser	Date Funds Advanced if earlier than Initial Closing Date	Principal Amount of Note to be Purchased at Initial Closing	Principal Amount of Note to be Purchased at Second Closing	Principal Amount of Note to be Purchased at Piedmont Closing	Principal Amount of Note to be Purchased at Additional Closings
Piedmont Venture Partners II, L.P.		\$0	\$0	\$1,000,000	
Southeast Interactive Technology Fund III, L.P.		\$273,550	\$273,550	\$0	
Southeast Euro Interactive Technology Fund III, L.P.		\$185,500	\$185,500	\$0	
Southeast Interactive Affiliates Fund III, L.P.		\$40,950	\$40,950	\$0	
VisionTech Partners LLC		\$170,000	\$250,000	\$0	
Don Piper IRA Account	12/15/00	\$25,000	\$25,000	\$0	
Carol Piper IRA Account	12/18/00	\$5,000	\$5,000	\$0	
Narash Gandhi		\$50,000	\$50,000	\$0	
<b>TOTAL</b>		\$750,000	\$750,000	\$1,000,000	Up to \$2,500,000