EXHIBIT 10.4  
  
  
 PLEDGE AGREEMENT  
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 AGREEMENT, dated as of April 20, 2004, by and among XXXXXXXX X. XXXXXX  
and XXXXXX XXXX ("Xxxx"), on behalf of himself and as agent for the benefit of  
Xxxx Xxxxxxxx (collectively, the "Co-Pledgors" and each a "Co-Pledgor"), for the  
benefit of TWINKLE INTERNATIONAL FZE, an United Arab Emirates company  
("Pledgee"), and XXXXXX XXXX & PRIEST LLP, a California limited liability  
partnership, as Agent ("Agent").  
  
 WITNESSETH  
  
 WHEREAS, Distinctive Devices, Inc., a Delaware corporation ("DDI"), and  
the Pledgee have entered into a Note Purchase Agreement, dated the date hereof  
(the "Purchase Agreement"), in which the Pledgee has agreed to loan (the "Loan")  
to DDI the principal amount of US$4,000,000 pursuant to an Unsecured Promissory  
Note (the "Note");  
  
 WHEREAS, the Co-Pledgors and Xxxx Xxxxxxxx ("Xxxxxxxx") are executive  
officers and directors of DDI and its wholly-owned subsidiary galaxis technology  
ag, a German corporation, and hold options (the "Options") to purchase shares of  
DDI Common Stock, $.001 par value ("Common Stock"), pursuant to option  
agreements (the "Option Agreements"), as set forth on Schedule A hereto;  
  
 WHEREAS, to induce the Pledgee to enter into the Purchase Agreement and  
to make the Loan, each Co-Pledgor is willing to pledge the Pledged Collateral  
(defined below) in furtherance of the obligations of DDI under the Note,  
pursuant to the terms specified herein;  
  
 WHEREAS, Xxxxxxxx has pledged and delivered his Option Agreement, with  
its respective Notice of Assignment duly executed in favor of the Pledgee, to  
the Agent, with the intention that it constitute part of the Pledged Collateral,  
and has asked Xxxx to act as his agent under this Agreement, and accordingly,  
Xxxx shall make the representations, warranties and covenants contained herein  
on Xxxxxxxx'x behalf, with respect to his portion of the Pledged Collateral; and  
  
 WHEREAS, the Co-Pledgors have a direct interest in the financial  
affairs and well being of DDI and its subsidiaries and will benefit from the  
Loan contemplated by the Purchase Agreement, and accordingly, each Co-Pledgor  
desires to execute and deliver this Agreement;  
  
 NOW, THEREFORE, in consideration of the foregoing and other good and  
valuable consideration, the receipt and sufficiency of which are hereby  
acknowledged, the Co-Pledgors and Pledgee hereby agree as follows:  
  
 1. Pledge and Grant of Security Interests.  
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 1.1 Grant. Each of the Co-Pledgors hereby pledges, assigns,  
hypothecates and transfers to Pledgee, its successors and assigns, for the  
benefit of Pledgee, his respective Option Agreement representing the respective  
Options, together with a Notice of Assignment duly executed in favor of the  
Pledgee ("Pledged Collateral"), as collateral security for the payment or other  
satisfaction by DDI of its indebtedness (the "DDI Indebtedness") under the Note.  
  
  
  
  
  
 1.2 Delivery. Each Co-Pledgor shall deliver or cause to be  
delivered to the Agent his portion of the Pledged Collateral.  
  
 2. Obligations Unconditional. The obligations of the Co-Pledgors under  
this Agreement, which are limited solely to the Pledged Collateral, shall be  
absolute and unconditional and shall remain in full force and effect until the  
DDI Indebtedness shall have been paid in full or otherwise satisfied. Such  
obligations of the Co-Pledgors shall not be affected, modified or impaired by  
any statement of facts or by the happening from time to time of any event, such  
as modification or extension of the Note, whether or not such event shall occur  
with notice to, or the consent of, any of the Co-Pledgors.  
  
 3. Waiver of Co-Pledgors. Each of the Co-Pledgors hereby waives notice  
of the issuance of the Note. Each of the Co-Pledgors also waives presentment,  
demand for payment, protest and notice of nonpayment or dishonor and all other  
notices and demands whatsoever relating to the Note, other than notice of an  
Event of Default thereunder and notices as required by this Agreement.  
  
 4. Use of Collateral. Prior to payment in full of the Note, each  
Co-Pledgor shall be entitled to exercise the Options, in whole or in part, with  
respect to the Pledged Collateral. In the event a Co-Pledgor exercises the  
Options, in whole or in part, he shall cause DDI to deliver the certificates for  
the shares of DDI Common Stock issued upon such exercise to the Agent to be held  
as additional Pledged Interests under this Agreement.  
  
 5. Representations and Warranties. To induce the Pledgee to make the  
Loan and enter into this Agreement, and for other good and valuable  
consideration, each Co-Pledgor hereby represents and warrants to with the  
Pledgee that:  
  
 (a) he has full legal power and authority to enter into this  
Agreement and to perform his obligations herein;  
  
 (b) this Agreement constitutes the legal, valid and binding  
obligation of such Co-Pledgor, enforceable in accordance with its terms, except  
as such enforceability may be affected by bankruptcy, insolvency, moratorium or  
similar laws affecting the enforcement of creditors' rights generally and by  
general principles of equity (regardless of whether enforcement is sough in a  
proceeding in equity or at law);  
  
 (c) the execution, delivery and performance of this Agreement does  
not and will not violate or contravene any agreement, commitment, arrangement or  
instrument to which, as of any date, he is a party; and  
  
 (d) he is the exclusive legal and beneficial owner of his Option  
Agreement, free and clear of all claims, liens, security interests and other  
encumbrances, other than restrictions on transfer under the Securities Act of  
1933, as amended, with respect to the Options and the underlying shares of  
Common Stock ("Option Shares").  
  
  
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 6. Co-Pledgors' Covenants.  
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 6.1 No Other Pledges. Each Co-Pledgor covenants and agrees that he  
will not create, incur or permit to exist any pledge, lien, mortgage,  
hypothecation, security interest, charge, option or any other encumbrance with  
respect to any of his portion of the Pledged Collateral, or any of such  
Co-Pledgor's Option Shares, or any proceeds thereof, prior to the satisfaction  
of the Note.  
  
 6.2 No Transfer. Each Co-Pledgor covenants and agrees that he will  
not transfer, assign, hypothecate, encumber, pledge or otherwise alienate his  
portion of the Pledged Collateral, or enter into any agreement with respect to  
the foregoing, including, without limitation, any of such Co-Pledgor's Option  
Shares, prior to satisfaction of the Note.  
  
 6.3 Further Assurance. Each Co-Pledgor covenants and agrees that  
he will, upon the reasonable request of the Pledgee, execute and deliver all  
such instruments and agreements as may be necessary or appropriate to give  
effect to his obligations under this Agreement.  
  
 7. Rights and Remedies upon Default. The Pledgee shall have the  
following rights and remedies:  
  
 7.1 Rights. If any Event of Default under the Note shall occur,  
and is still continuing for five (5) Business Days (a "Business Day" being any  
weekday, not otherwise a bank holiday in New York City), which has not been  
otherwise waived in writing, the Pledgee shall notify ("Default Notice") each  
Co-Pledgor and the Agent in writing of such Event of Default and its intention  
to obtain the transfer of the Pledged Collateral. If no notice objecting to the  
Event of Default or the transfer of the Pledged Collateral ("Notice of  
Objection"), made in good faith, is received by both the Agent and the Pledgee,  
from any of the Co-Pledgors within seven (7) Business Days from the date each  
such Default Notice is received by the respective Co-Pledgors, the Agent shall  
deliver to the Pledgee the Pledged Collateral. The Agent shall have no duty to  
sell or otherwise realize the Pledged Collateral. If any Notice of Objection is  
received that objects to the transfer of all or a portion of the Pledged  
Collateral pursuant to this Section 7, the Agent shall retain that portion of  
the Pledged Collateral specified in any such Notice of Objection, until such  
objection is resolved (a) through a final resolution and agreement among the  
Co-Pledgors and the Pledgee indicated by a joint written instruction of the  
Co-Pledgors and the Pledgee to the Agent, or (b) in a final unappealable order  
of a court of competent jurisdiction. Notwithstanding anything in this Agreement  
to the contrary, the Pledgee understands that upon an Event of Default by DDI  
under the Note, the Pledged Collateral shall represent the Pledgee's only  
recourse against the Co-Pledgors (including Xxxxxxxx) in respect of this  
Agreement and the Note, as the Pledgee shall have no recourse against any  
Co-Pledgor (including Xxxxxxxx) for an obligation or claim arising out of or  
based upon the Agreement other than as to the Pledged Collateral.  
  
 7.2 Application of Pledged Collateral. The Options and the Option  
Shares, if any, received by the Pledgee pursuant to this Agreement shall be  
applied to the DDI Indebtedness, valued as agreed between the Pledgee and DDI.  
This Agreement is entered into by the Co-Pledgors for the benefit of the  
Pledgee, and its successors and assigns, as the Pledgee of the Note and may be  
  
  
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enforced by any subsequent Pledgee of the Note in accordance with the provisions  
of this Agreement. This Agreement shall not be deemed to create any right in, or  
to be in whole or in part for the benefit of, any person other than such  
Pledgee, the Co-Pledgors, DDI and their respective successors, assigns, heirs  
and administrators.  
  
 8. Release of Pledged Collateral. Upon payment in full and satisfac-  
tion of the Note, the Pledgee shall promptly take all action necessary to  
terminate the security interest in the Pledged Collateral, and the Agent shall  
deliver to each Co-Pledgor his portion of the Pledged Collateral, including  
returning Xxxxxxxx his portion of the Pledged Collateral.  
  
 9. Agent. Acceptance by the Agent of its duties under this Agreement  
is subject to the following terms and conditions, which the parties to this  
Agreement hereby agree shall govern and control the rights, duties and  
immunities of the Agent:  
  
 (a) the duties and obligations of the Agent shall be determined  
solely by the express provisions of this Agreement (except and to the extent  
otherwise expressly provided herein) and the Agent shall not be bound by the  
provisions of any other agreement;  
  
 (b) notwithstanding anything to the contrary herein, the duties  
and obligations of the Agent hereunder shall extent only to the delivery of the  
Pledged Collateral pursuant to Sections 7.1 and 8 above and such duties and  
obligations will terminate upon such delivery;  
  
 (c) the Agent shall not be responsible for any failure or  
inability of the parties to this Agreement, or of anyone else, to deliver any of  
the Pledged Collateral, including Option Shares which may become Pledged  
Collateral, or other property to the Agent or otherwise to honor any of the  
provisions of this Agreement;  
  
 (d) the Agent shall be fully protected in acting on and relying  
upon any written notice, direction, request, waiver, consent, receipt or other  
paper or document which the Agent in good faith believes to be genuine and to  
have been signed or presented by the proper party or parties from time to time;  
  
 (e) the Agent shall not be liable for any error of judgment, or  
for any act done or step taken or omitted by it in good faith or for any mistake  
in fact or law, or for anything which it may do or refrain from doing in  
connection herewith, except its own willful misconduct or gross negligence;  
  
 (f) the Agent may seek the advice of legal counsel in the event of  
any dispute or question as to the construction of any of the provisions of this  
Agreement or its duties hereunder, and it shall incur no liability and shall be  
fully protected in respect of any action taken, omitted or suffered by it in  
good faith in accordance with the written opinion of such counsel; and  
  
 (g) in the event of ambiguity in the provisions governing the  
Note, the Pledged Collateral or this Agreement or uncertainty on the part of the  
Agent as to how to proceed, such that the Agent, in its sole and absolute  
judgment, deems it necessary for its protection so to do, the Agent may refrain  
from taking any action other than to retain custody of the Pledged Collateral  
  
  
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deposited hereunder until it shall have received joint written instructions  
signed by the Pledgee and each Co-Pledgor in accordance with the provisions of  
this Agreement.  
  
 10. Resignation or Removal of Agent.  
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 10.1 The Agent may resign at any time by giving thirty (30) days'  
written notice thereof to the Pledgee and each Co-Pledgor. Within thirty (30)  
days after receiving such notice, the Pledgee and each Co-Pledgor shall appoint  
a successor escrow agent (the "Successor Agent") at which time the Agent shall  
deliver the Pledged Collateral to the Successor Agent. After appointment of the  
Successor Agent and delivery of the Pledged Collateral by the Agent to the  
Successor Agent, the Agent shall have no further duties or responsibilities in  
connection herewith.  
  
 10.2 The Pledgee and each Co-Pledgor, acting jointly, may remove  
the Agent upon written notice to the Agent stating such removal and designating  
a Successor Agent, and, upon delivery of the Pledged Collateral to the Successor  
Agent, the Agent shall thereupon be discharged from all obligations under this  
Agreement and shall have no further duties or responsibilities in connection  
herewith.  
  
 10.3 If after thirty (30) days from the date of delivery of its  
written notice of intent to resign, or of the parties joint notice of removal,  
the Agent has not received a written designation of a Successor Agent, the  
Escrow Agent's sole responsibility shall be in its sole discretion either to  
retain custody of the Pledged Collateral, or to apply to a court of competent  
jurisdiction for appointment of a Successor Agent and after such appointment to  
have no further duties or responsibilities in connection herewith.  
  
 10.4 The Pledgee acknowledges that the Agent is acting as legal  
counsel to DDI and to the Co-Pledgors. The Pledgee does not object to the  
representation of DDI and the Co-Pledgors by the Agent.  
  
 11. Indemnity. The Pledgee and each Co-Pledgor will, jointly and  
severally, keep the Agent harmless and will indemnify the Agent to the fullest  
extent permitted by law against any claim, action, suit or demand, which may be  
brought or made against the Agent and any of its partners, employees or agents  
(each an "Indemnified Party") in connection with the performance by the Agent in  
its role as Agent in accordance with the terms of this Agreement and will pay  
any reasonable cost and expense (including without limitation reasonable  
attorneys' fees payable in advance) incurred by an Indemnified Party in  
connection with this indemnity, as and when incurred, except to the extent (if  
any) for matters arising out of the gross negligence or intentional misconduct  
of the Agent.  
  
 12. Expenses. Unless otherwise indicated in this Agreement, the Pledgee  
and each Co-Pledgor shall each pay their own respective costs, fees and  
expenses, incurred in connection with this Agreement.  
  
 13. Assignment. The Agent, subject to the terms of the this Agreement,  
shall have the right to assign this Agreement. The Co-Pledgors may not assign,  
transfer or otherwise dispose of any of its rights or obligations hereunder, by  
operation of law or otherwise, and any such assignment, transfer or other  
disposition without the Pledgee's written consent shall be void. All of the  
  
  
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rights, privileges, remedies and options given to Pledgee under this Agreement  
and the Note shall inure to the benefit of any successors and assigns, and all  
the terms, conditions, covenants, provisions and warranties herein shall inure  
to the benefit of and bind the permitted successors and assigns of each  
Co-Pledgor.  
  
 14. Notices. All notices and other communications under this Agreement  
shall be in writing and shall be deemed given when delivered and, if delivered  
by mail, shall be mailed by recognized international courier or sent by  
facsimile, and addressed as follows (or to such other address any party hereto  
may hereafter duly advise the other parties):  
  
if to the Co-Pledgors:  
  
 c/o Xxxxxx Xxxx  
 Distinctive Devices, Inc.  
 Xxx Xxxxxx Xxxxx  
 Xxxxx 000  
 Xxxx Xxx, Xxx Xxxxxx 00000  
 Facsimile: (000) 000-0000  
  
if to the Pledgee:  
  
 Twinkle International FZE  
 X-0-000  
 Xxxxx Xxxxxxx Xxxx Xxxx  
 X.X. Xxx 00000  
 Xxxxx, XXX  
 Attn: \_\_\_\_\_\_\_\_\_\_\_  
 Facsimile: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
if to Agent:  
  
 Xxxxxx Xxxx & Priest LLP  
 00 Xxxx 00xx Xxxxxx  
 Xxx Xxxx, XX 00000  
 Attn: Xxxxx X. Xxxx, Esq.  
 Fax Number: (000) 000-0000  
  
 15. Miscellaneous. This Agreement (i) constitutes the entire agreement,  
and supersedes all prior agreements and understandings, both written and oral,  
among the parties with respect to the subject matter hereof; (ii) may be  
executed in several counterparts, each of which shall be deemed an original, but  
all of which together shall constitute one and the same instrument; (iii) may be  
terminated, amended or modified only by an instrument in writing signed by the  
duly authorized representatives of the parties; (iv) shall be binding upon the  
parties hereto, and their respective heirs, administrators, successors and  
assigns, and (v) shall be governed in all respects, including validity,  
interpretation and effect, by, and shall be enforceable in accordance with, the  
law of the State of , without giving effect to principles of conflicts  
of law. If any provision of this Agreement shall be held to be invalid by any  
  
  
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court of competent jurisdiction, the invalidity of such provisions shall not  
affect any of the remaining provisions.  
  
 16. Headings. The descriptive headings hereunder used are for  
convenience only and shall not be deemed to limit or otherwise effect the  
construction of any provision hereof.  
  
 IN WITNESS WHEREOF, this has been executed as of the  
date first above written.  
  
  
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 XXXXXXXX X. XXXXXX  
  
  
  
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 XXXXXX XXXX  
  
AGREED TO AND ACCEPTED:  
  
  
TWINKLE INTERNATIONAL FZE  
  
  
By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
Its:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
XXXXXX XXXX & PRIEST LLP, as Agent  
  
  
By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
Its:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  
  
  
  
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 SCHEDULE A  
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1. Option Agreement, dated as of January 14, 2004, and amended as of April 20,  
 2004, between Distinctive Devices, Inc. and Xxxx Xxxxxxxx for 250,000  
 shares of Common Stock.  
  
2. Option Agreement, dated as of January 14, 2004, and amended as of April 20,  
 2004, between Distinctive Devices, Inc. and Xxxxxxxx X. Xxxxxx for  
 1,250,000 shares of Common Stock.  
  
3. Option Agreement, dated as of January 14, 2004, and amended as of April 20,  
 2004, between Distinctive Devices, Inc. and Xxxxxx Xxxx for 1,000,000  
 shares of Common Stock.  
  
  
  
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