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7 Attorneys for Debtor and Debtor In
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8
9 **UNITED STATES BANKRUPTCY COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA, DIVISION 5**

11 In re

12 TECHNOLOGY PROPERTIES LIMITED,
13 LLC,

14 Debtor.

Case No: 13-51589 SLJ

Chapter 11

NO HEARING REQUIRED

15
16 **EX PARTE APPLICATION FOR EMPLOYMENT OF BUNSOW DE MORY SMITH &**
17 **ALLISON, LLP AS SPECIAL COUNSEL ON CONTINGENCY FEE BASIS PURSUANT**
TO 11 U.S.C. §327(e) AND 11 U.S.C. §328(a)

18 TECHNOLOGY PROPERTIES LIMITED, LLC, a Delaware Limited Liability
19 Company, the above-captioned Debtor ("TPL") seeks to employ Bunsow, De Mory, Smith &
20 Allison, LLP as special counsel to represent TPL on a contingent fee basis as local counsel
21 assisting the already approved Simon Law Firm, P.C. ("Simon") and respectfully represents as
22 follows:

23 1. On March 20, 2013 (the "Petition Date"), TPL filed a Voluntary Petition under
24 Chapter 11 with the Clerk of the above-entitled Court. No trustee has been appointed and TPL is
25 a debtor-in-possession pursuant to 11 U.S.C. §§1107 and 1108.

26 APPLICATION FOR EMPLOYMENT OF BUNSOW, DE MORY, SMITH & ALLICSON, LLP AS SPECIAL COUNSEL ON
27 CONTINGENCY FEE BASIS PURSUANT TO 11 U.S.C. §327(e) AND 11 U.S.C. §328(a)

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2. TPL desires to employ Bunsow, De Mory, Smith & Allison, LLP (hereinafter “Special Counsel”), pursuant to 11 U.S.C. §§ 327(e) and 328(a), as its Special Counsel to represent TPL regarding pending litigation matters recently transferred and now currently pending in the United States District Court for the Northern District of California (collectively the “Transferred Cases”), including:

Case Style	Case No.
TPL and MCM v. Canon, Inc., et al.	4:14-cv-03640
TPL and MCM v. Falcon Northwest Computer Sys., Inc.	4:14-cv-03641
TPL and MCM v. HiTi Digital, Inc., et al.	4:14-cv-03642
TPL and MCM v. Hewlett-Packard Company	4:14-cv-03643
TPL and MCM v. Kingston Technology Co., Inc.	4:14-cv-03644
TPL and MCM v. Newegg Inc, et al.	4:14-cv-03645
TPL and MCM v. Seiko Epson Corporation	4:14-cv-03646
TPL and MCM v. Shuttle, Inc., et al.	4:14-cv-03647
TPL and MCM v. Sony Corporation, et al.	4:14-cv-04616

These cases were previously pending in Texas, and now that they have been transferred to California, TPL and Simon need local counsel in California to assist with the above-referenced matters.

3. 11 U.S.C. §327(e) provides that a trustee, with the court’s approval, “may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.”

Special Counsel does not hold any interest adverse to TPL or the estate with respect to the matters on which Special Counsel is to be employed.

4. In addition, 11 U.S.C. §328(a) states that a trustee:

“...with the court’s approval, may employ or authorize the employment of a professional person under section 327 or 1103 of this title, as the case may be, on

1 any reasonable terms and conditions of employment, including on a retainer, on
2 an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis.”

3 Special Counsel’s arrangements with TPL are on a contingent fee basis; thus, TPL seeks
4 approval of the employment and compensation of Special Counsel pursuant to 11 U.S.C.
5 §328(a).

6 5. The October 29, 2014 Engagement Letter between Special Counsel and TPL and
7 MCM Portfolio LLC (the “Agreement”) indicates that Special Counsel’s fees are contingent
8 upon and limited to recovering from defendants in the “Transferred Cases”. Special Counsel
9 will be entitled to a 10% (ten percent) fee of the amount or value of any and all such recoveries
10 resulting from the “Transferred Cases” regardless of when received. Any recovery shall be
11 disbursed to the payment of any current unpaid expenses prior to calculating Special Counsel’s
12 10% fee. Special Counsel will not be entitled to a fee in the event of any licensing revenue
13 received by TPL or MCM from entities who are not defendants in the “Transferred Cases”.
14

15 6. During the course of engagement, TPL will be responsible for all expenses and
16 service charges relating to Special Counsel’s engagement, whether billed by Special Counsel or
17 by individual or entities retained by Special Counsel, including actual out of pocket charges.
18

19 7. Based upon (a) Special Counsel’s knowledge of and expertise in the matters
20 described above for which TPL seeks to employ Special Counsel, and (b) TPL’s need for legal
21 representation regarding such matters, TPL believes that the employment of Special Counsel is
22 necessary and would be in the best interests of the Estate.

23 8. To the best of TPL’s information and belief, Special Counsel does not hold or
24 represent an interest adverse to TPL or to the Estate herein as to the matters upon which Special
25 Counsel is to be employed, and has no connection with TPL, any creditors of TPL or other
26

1 parties in interest, or their respective attorneys and accountants, or the U.S. Trustee, except as
2 explained below.

3 9. More than five years ago, Special Counsel had represented parties in which TPL
4 was adverse to, including Apple, Inc. and Blackberry, LTD in patent infringement cases
5 unrelated to TPL. Special Counsel is no longer counsel to these entities and does not believe its
6 representation of TPL would be impacted in any way.

7 10. Special Counsel understands and agrees, even though its Agreement may indicate
8 otherwise, that there is no arbitration and that any disputes relating to its representation of TPL is
9 subject to the jurisdiction of this Bankruptcy Court. In addition, any termination or withdrawal
10 as Special Counsel shall be approved by this Court.

11 11. Special Counsel's Fees and Expenses shall be subject to review by the
12 Bankruptcy Court only under the standard of review provided under 11 U.S.C. §328(a) and shall
13 not be subject to review under 11 U.S.C. §330(a). Review shall be under the standard that
14 provides that compensation awarded by the Court may differ from the compensation provided in
15 the Agreements only if, "the terms and conditions prove to have been improvident in light of
16 development not capable of being anticipated at the time of the fixing of such terms and
17 conditions." Special Counsel shall not be required to adhere to the Guidelines for Compensation
18 and Expense Reimbursement of Professionals and Trustees promulgated in the Northern District
19 of California Bankruptcy Courts. Prior to any deadline established in this case by which
20 professionals are required to file final application for compensation, Special Counsel shall file a
21 final fee application reflecting (a) the amount of Recoveries that have been obtained in
22 connection with the litigation and licensing that are the subject of the Agreements described
23 herein; (b) the Fees and Expenses that Special Counsel has been paid by TPL during the post-
24
25
26

petition period; and, (c) a general description of the efforts required to achieve the results obtained. The amount of Recoveries may be filed under seal to protect the confidentiality of any settlement or confidential license agreement, *as well as the percentage of the contingent fee paid.* Such application shall be subject to review only under the “improvident” standard of 11 U.S.C. §328(a).

12. No agreement or understanding exists between Special Counsel and any other person for the sharing for compensation received or to be received for services rendered in or in connection with the matters for which Special Counsel is to represent other than which has already been disclosed.

WHEREFORE, TPL prays that this Court enter its Order authorizing and approving the employment of Bunsow, De Mory, Smith & Allison, LLP as Special Counsel with respect to the matters and on the payment terms heretofore set forth, and for such other and further relief as the Court deems just and proper.

Dated: November 14, 2014

TECHNOLOGY PROPERTIES LIMITED, LLC

By: /s/ Daniel E. Leckrone
Daniel E. Leckrone
Responsible Individual for TPL

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Attorneys for Debtor and Debtor In
Possession Technology Properties Limited, LLC

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA, DIVISION 5

In re

TECHNOLOGY PROPERTIES LIMITED,
LLC,

Debtor.

Case No: 13-51589 SLJ

Chapter 11

NO HEARING REQUIRED

**DECLARATION OF HENRY C. BUNSOW IN SUPPORT OF EX PARTE
APPLICATION FOR EMPLOYMENT OF BUNSOW DE MORY SMITH & ALLISON,
LLP AS SPECIAL COUNSEL ON CONTINGENCY FEE BASIS PURSUANT TO
11 U.S.C. §327(e) AND 11 U.S.C. §328(a)**

I, Henry C. Bunsow, hereby declare:

1. I am a partner with the firm of Bunsow De Mory Smith & Allison, LLP, Special Counsel herein ("Special Counsel") to TECHNOLOGY PROPERTIES LIMITED, LLC, a Delaware Limited Liability Company, the above-captioned Debtor ("TPL"). I am licensed to practice in the State of California. I make this declaration in support of the EX APPLICATION FOR EMPLOYMENT OF BUNSOW DE MORY SMITH & ALLISON, LLP AS SPECIAL

DECLARATION OF HENRY C. BUNSOW IN SUPPORT OF APPLICATION FOR EMPLOYMENT OF BUNSOW, DE MORY, SMITH & ALLICSON, LLP AS SPECIAL COUNSEL ON CONTINGENCY FEE BASIS PURSUANT TO 11 U.S.C. §327(e) AND 11 U.S.C. §328(a)

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COUNSEL ON CONTINGENCY FEE BASIS PURSUANT TO 11 U.S.C. §327(e) AND 11 U.S.C. §328(a) (the “Application”).

2. I have personal knowledge of the matters contained herein, except as to those matters alleged upon information and belief and as to those matters I believe them to be true. If called upon as a witness, I could and would testify as follows:

3. I am informed and believe that TPL desires to employ Bunsow, De Mory, Smith & Allison, LLP (hereinafter “Special Counsel”), pursuant to 11 U.S.C. §§ 327(e) and 328(a), as its Special Counsel to represent TPL regarding pending litigation matters recently transferred and now currently pending in the United States District Court for the Northern District of California (collectively the “Transferred Cases”), including:

Case Style	Case No.
TPL and MCM v. Canon, Inc., et al.	4:14-cv-03640
TPL and MCM v. Falcon Northwest Computer Sys., Inc.	4:14-cv-03641
TPL and MCM v. HiTi Digital, Inc., et al.	4:14-cv-03642
TPL and MCM v. Hewlett-Packard Company	4:14-cv-03643
TPL and MCM v. Kingston Technology Co., Inc.	4:14-cv-03644
TPL and MCM v. Newegg Inc, et al.	4:14-cv-03645
TPL and MCM v. Seiko Epson Corporation	4:14-cv-03646
TPL and MCM v. Shuttle, Inc., et al.	4:14-cv-03647
TPL and MCM v. Sony Corporation, et al.	4:14-cv-04616

These Transferred Cases were previously pending in Texas, and now that they have been transferred to California, I am informed and believe that TPL needs local counsel in California to assist with the above-referenced matters.

4. Special Counsel does not hold any interest adverse to TPL or the estate with respect to the matters on which Special Counsel is to be employed.

5. Special Counsel’s arrangements with TPL are on a contingent fee basis.

DECLARATION OF HENRY C. BUNSOW IN SUPPORT OF APPLICATION FOR EMPLOYMENT OF BUNSOW, DE MORY, SMITH & ALLICSON, LLP AS SPECIAL COUNSEL ON CONTINGENCY FEE BASIS PURSUANT TO 11 U.S.C. §327(e) AND 11 U.S.C. §328(a)

1 6. The October 29, 2014 Engagement Letter between Special Counsel and TPL and
2 MCM Portfolio LLC (the "Agreement") indicates that Special Counsel's fees are contingent
3 upon and limited to recovering from defendants in the "Transferred Cases". Special Counsel
4 will be entitled to a 10% (ten percent) fee of the amount or value of any and all such recoveries
5 resulting from the "Transferred Cases" regardless of when received. Any recovery shall be
6 disbursed to the payment of any current unpaid expenses prior to calculating Special Counsel's
7 10% fee. Special Counsel will not be entitled to a fee in the event of any licensing revenue
8 received by TPL or MCM from entities who are not defendants in the "Transferred Cases". The
9 Agreement is attached hereto as Exhibit "A".
10

11 7. During the course of engagement, TPL will be responsible for all expenses and
12 service charges relating to Special Counsel's engagement, whether billed by Special Counsel or
13 by individual or entities retained by Special Counsel, including actual out of pocket charges.

14 8. Special Counsel does not hold or represent an interest adverse to TPL or to the
15 Estate herein as to the matters upon which Special Counsel is to be employed, and has no
16 connection with TPL, any creditors of TPL or other parties in interest, or their respective
17 attorneys and accountants, or the U.S. Trustee, except as explained below.

18 9. More than five years ago, Special Counsel had represented parties in which TPL
19 was adverse to, including Apple, Inc. and Blackberry, LTD in patent infringement cases
20 unrelated to TPL. Special Counsel is no longer counsel to these entities and does not believe its
21 representation of TPL would be impacted in any way.

22 10. Special Counsel understands and agrees, even though its Agreement may indicate
23 otherwise, that there is no arbitration and that any disputes relating to its representation of TPL is
24

1 subject to the jurisdiction of this Bankruptcy Court. In addition, any termination or withdrawal
2 as Special Counsel shall be approved by this Court.

3 11. Special Counsel understands that prior to any deadline established in this case by
4 which professionals are required to file final application for compensation, Special Counsel shall
5 file a final fee application reflecting (a) the amount of Recoveries that have been obtained in
6 connection with the litigation and licensing that are the subject of the Agreements described
7 herein; (b) the Fees and Expenses that Special Counsel has been paid by TPL during the post-
8 petition period; and, (c) a general description of the efforts required to achieve the results
9 obtained. The amount of Recoveries may be filed under seal to protect the confidentiality of any
10 settlement or confidential license agreement.
11

12 12. No agreement or understanding exists between Special Counsel and any other
13 person for the sharing for compensation received or to be received for services rendered in or in
14 connection with the matters for which Special Counsel is to represent other than which has
15 already been disclosed.

16 Executed on November 10, 2014 at San Francisco, California. I declare under penalty of
17 perjury that the foregoing is true and correct.
18

19 /s/ Henry C. Bunsow

20 Henry C. Bunsow
21
22
23
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25

26 DECLARATION OF HENRY C. BUNSOW IN SUPPORT OF APPLICATION FOR EMPLOYMENT OF BUNSOW, DE MORY, SMITH &
27 ALLICSON, LLP AS SPECIAL COUNSEL ON CONTINGENCY FEE BASIS PURSUANT TO 11 U.S.C. §327(e) AND 11 U.S.C. §328(a)

Page 4

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TECHNOLOGY PROPERTIES LIMITED, LLC

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re

TECHNOLOGY PROPERTIES LIMITED,
LLC,

Debtor.

Case No. 13-51589-SLJ-11

Chapter 11

NO HEARING REQUIRED

CERTIFICATE OF SERVICE

I, Natalie D. Gonzalez declare:

I am employed in the County of Santa Clara, California. I am over the age of eighteen (18) years and not a party to the within entitled cause; my business address is 2775 Park Avenue, Santa Clara, California 95050.

On November 14, 2014, I served a true and correct copy of the following document(s):

EX PARTE APPLICATION FOR EMPLOYMENT OF BUNSOW DE MORY SMITH & ALLISON, LLP AS SPECIAL COUNSEL ON CONTINGENCY FEE BASIS PURSUANT TO 11 U.S.C. §327(e) AND 11 U.S.C. §328(a)

DECLARATION OF HENRY C. BUNSOW IN SUPPORT OF EX PARTE APPLICATION FOR EMPLOYMENT OF BUNSOW DE MORY SMITH & ALLISON, LLP AS SPECIAL COUNSEL ON CONTINGENCY FEE BASIS PURSUANT TO 11 U.S.C. §327(e) AND 11 U.S.C. §328(a)

via electronic transmission and/or the Court's CM/ECF notification system to the parties
registered to receive notice as follows:

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MCM Portfolio, LLC
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Executed on November 14, 2014, at Santa Clara, California. I certify under penalty of
perjury that the foregoing is true and correct.

/s/ Natalie D. Gonzalez
Natalie D. Gonzalez