

1 Kenneth H. Prochnow (SBN 112983)  
Robert C. Chiles (SBN 056725)  
2 Chiles and Prochnow, LLP  
2600 El Camino Real  
3 Suite 412  
Palo Alto, CA 94306  
4 Telephone: 650-812-0400  
Facsimile: 650-812-0404  
5 email: [kprochnow@chilesprolaw.com](mailto:kprochnow@chilesprolaw.com)  
email: [rchiles@chilesprolaw.com](mailto:rchiles@chilesprolaw.com)

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7 Attorneys For Creditor Charles H. Moore

8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 In Re:

12 TECHNOLOGY PROPERTIES LIMITED,  
13 LLC, f/k/a TECHNOLOGY PROPERTIES  
14 LIMITED, INC., a California corporation, f/k/a  
TECHNOLOGY PROPERTIES LIMITED, a  
California corporation,

15 Debtor.

Case No.: 13-51589-SLJ-11

Chapter 11

Date: TBD

Time: TBD

Place: Courtroom 3099  
280 South First Street  
San Jose, California

Honorable Stephen L. Johnson

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19 **CREDITOR CHARLES H. MOORE'S JOINDER IN MOTION OF THE CREDITORS' COMMITTEE  
FOR ORDER APPOINTING CHAPTER 11 TRUSTEE AND REMOVING DEBTOR IN POSSESSION**

20 Creditor Charles Moore hereby submits his Joinder in Motion of the Creditors'  
21 Committee for an order appointing a chapter 11 trustee and removing debtor as debtor in  
22 possession. In support of his Joinder, Creditor Moore represents the following:

23 1. On March 20, 2013, (the "Petition Date") Technology Properties Limited LLC  
24 (the "Debtor") commenced the above-entitled Chapter 11 bankruptcy case by filing a Voluntary  
25 Petition in this Court.

26 2. A trustee has not been appointed for the Debtor, and it has continued to function  
27 as the debtor-in-possession pursuant to 11 U.S.C. Sec. 1107 and 1108.

28 3. On March 28, 2013, the Office of The United States Trustee appointed the

1 Official Committee of Unsecured Creditors (the “Committee”) in this case, pursuant to 11  
2 U.S.C. Sec. 1102.

3 4. On December 16, 2013, the Committee filed the Motion Of Creditors’  
4 Committee For Orders: (1) Directing the Appointment of a Chapter 11 Trustee; and (2)  
5 Directing The Debtor and Daniel E. Leckrone To Appear and Show Cause Why They Should  
6 Not Be Held In Contempt of Court For Violation of this Court’s Order [Docket 313] (the  
7 “Motion”). The Committee’s Motion requests that that the Court enter an order (a) appointing a  
8 chapter 11 trustee in this case and (b) directing the Debtor and its responsible individual Daniel  
9 E. Leckrone to appear and show cause why they should not be held in contempt of court for  
10 their illegal and detrimental conduct in this case.

11 5. On December 27, 2013, Creditor Charles H. Moore (“Creditor Moore”) filed his  
12 Supporting Motion in Support of the Creditors’ Committee Motion. Moving Party Moore’s  
13 motion was not set for hearing.

14 6. On January 3, 2014, Creditor Moore filed his “Joinder Motion in the Creditors’  
15 Committee Motion for Order Appointing Chapter 11 Trustee and Removing Debtor In  
16 Possession” (“Creditor Moore’s Joinder”). Creditor Moore’s Joinder supports and joins in the  
17 Committee’s Motion for an Order Directing the Appointment of a Chapter 11 Trustee (Part (1)  
18 of Paragraph 4 above).

19 7. Creditor Moore’s Joinder is based upon this Motion, the Declaration of Charles  
20 H. Moore, the Request for Judicial Notice and the Points and Authorities submitted herewith;  
21 on his request for judicial notice in support of motion submitted herewith; on the pleadings and  
22 papers on file herein; on such reply papers as may be filed subsequently; and on such oral and  
23 documentary evidence and argument as may be presented at the time of the hearing.

24 Dated: January 3, 2014

25 CHILES and PROCHNOW, LLP

26  
27 By:           s/Kenneth H. Prochnow            
28 Kenneth H. Prochnow  
Attorneys for Creditor Charles H. Moore

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Robert C. Chiles (SBN 056725)  
2 Chiles and Prochnow, LLP  
2600 El Camino Real  
3 Suite 412  
Palo Alto, CA 94306  
4 Telephone: 650-812-0400  
Facsimile: 650-812-0404  
5 email: [kprochnow@chilesprolaw.com](mailto:kprochnow@chilesprolaw.com)  
email: [rchiles@chilesprolaw.com](mailto:rchiles@chilesprolaw.com)

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11 In Re:

12 TECHNOLOGY PROPERTIES LIMITED,  
13 LLC, f/k/a TECHNOLOGY PROPERTIES  
LLIMITED, INC., a California corporation,  
14 f/k/a TECHNOLOGY PROPERTIES  
LIMITED, a California corporation,

15 Debtor.

Case No.: 13-51589-SLJ-11

Chapter 11

Date: TBD

Time: TBD.

Place: Courtroom 3099  
280 South First Street  
San Jose, California

Honorable Stephen L. Johnson

19 **CREDITOR CHARLES H. MOORE'S POINTS AND AUTHORITIES IN SUPPORT OF JOINDER IN**  
20 **CREDITORS' COMMITTEE'S MOTION TO APPOINT CHAPTER 11 TRUSTEE AND TO REMOVE**  
21 **DEBTOR-IN-POSSESSION**

22 The Committee of Creditors has moved to appoint a Chapter 11 Trustee and to remove  
23 debtor-in-possession Daniel Leckrone, with hearing set for the above date and time. Creditor  
24 Charles H. Moore hereby submits his joinder in the motion for the same relief – for  
25 appointment of a Chapter 11 Trustee and to remove Daniel Leckrone as debtor-in-possession in  
this Chapter 11 proceeding.

26 ***1. Authority for Appointment of a Trustee; Removal of the Debtor-in-Possession***

27 Section 1104 of Title 11 (the "Code") authorizes appointment of a trustee or examiner  
28 under the following circumstances:

1  
2 (a) At any time after the commencement of the case but before confirmation of a plan,  
3 on the request of a party in interest or the United States trustee, and after notice and a  
4 hearing, the court shall order the appointment of a trustee –

5 (1) For cause, including fraud, dishonesty, incompetence, or gross mismanagement of  
6 the affairs of the debtor by current management, either before or after the  
7 commencement of the case, or similar cause, but not including the number of holders  
8 of securities of the debtor or the amount of assets or liabilities of the debtor; or

9 (2) If such appointment is in the best interests of creditors, any equity security holders,  
10 and other interests of the estate, without regard to the number of holders if securities  
11 of the debtor or the amount of assets or liabilities of the debtor.

12 11 USC Sec. 1104(a).

13 a. **Who may move for Section 1104(a) relief?** Section 1104(a) affords standing to  
14 any “party in interest” to this proceeding. “Party in interest” is not defined in the Code;  
15 however, according to Section 1109, “parties in interest” include “the debtor, the trustee, a  
16 **creditors’ committee**, an equity security holders’ committee, a **creditor**, an equity securities  
17 holder, or any indenture trustee” (**emphasis** supplied). Here, the moving party – the creditors’  
18 committee – is clearly authorized by the Code to move for a trustee and to replace the debtor-  
19 in-possession. Similarly, Charles H. Moore, a creditor in this proceeding, is also a “party in  
20 interest,” who would be authorized to move under Section 1104(a) in his own right and who  
21 here supports the pending motion of the creditors’ committee for Section 1104(a) relief.

22 b. **What burden does the moving party carry in seeking Section 1104(a) relief?**  
23 Here, the statute is a bit misleading. On its face, Section 1104(a)(1) sets out four bases for  
24 removal for cause – fraud, dishonesty, incompetence and gross mismanagement – and states an  
25 imperative: if any of the four bases is present, the debtor-in-possession “shall” be removed  
26 through appointment of a trustee.

27 In practice, however, “the appointment of a trustee in a chapter 11 case is an  
28 extraordinary remedy.” A. RESNICK & H. SOMMER, 7 COLLIER ON BANKRUPTCY [16<sup>TH</sup> ED.] Sec.  
1104.02[3][b][i], at 1104-9 [Rel. 124-12/2012], *citing, inter alia, In re Sovereign Estates, Ltd.*  
(Bankr. E.D. Pa 1989), 104 B.R. 702, 704-05; *In Re Anchorage Boat Sales, Inc.* (Bankr.  
E.D.N.Y. 1980), 4 B.R. 635, 644-45 (appointing trustee). Moving parties here must  
acknowledge the “strong presumption that the debtor should be permitted to remain in

1 possession absent a showing of need for the appointment of a trustee,” 7 COLLIER ON  
2 BANKRUPTCY, *supra*, citing, *inter alia*, *Committee on Dalkon Shield Claimants v. A.H. Robins*  
3 *Co., Inc.* (4<sup>th</sup> Cir. 1987), 828 F.2d 239, 241-42 (declining to appoint trustee despite debtor  
4 misconduct); *In Re Parker Grande Development, Inc.* (Bankr. S.D. Ind. 1986), 64 B.R. 557,  
5 560-63 (acknowledging presumption in favor of debtor-in-possession but nonetheless  
6 appointing trustee); *In Re Evans* (Bankr. W.D. Tex. 1985), 48 B.R. 46, 47-49 (acknowledging  
7 presumption but nonetheless appointing trustee).

8 This court need not hold a full evidentiary hearing on a motion for appointment of a  
9 trustee. *In Re Casco Bay Lines, Inc.* (B.A.P. 1<sup>st</sup> Cir. 1982), 17 B.R. 946, 950-52; *In Re*  
10 *Ionosphere Clubs, Inc.* (Bankr. S.D.N.Y. 1990), 113 B.R. 164, 167-68. Whether or not an  
11 evidentiary hearing is ordered, the party moving for appointment of a trustee (here, the  
12 creditors’ committee with Creditor Moore in support) must carry the burden of proof. 7  
13 COLLIER ON BANKRUPTCY, *op cit.*, Sec. 1104.02[4][b] “Procedures,” at 1104-20 (citations  
14 omitted). The courts differ on whether the standard of proof is preponderance of the evidence  
15 (e.g., *Keeley & Grabanski Land Partnership v. Keeley* (B.A.P. 8<sup>th</sup> Cir 2011), 455 B.R. 153,  
16 161-63 (rejecting Third Circuit clear and convincing evidence standard as inconsistent with  
17 later Supreme Court decision), or clear and convincing evidence (e.g., *Official Committee of*  
18 *Asbestos Claimants v. G-1 Holdings, Inc.* (3d Cir. 2004), 385 F.3d 313, 319-21).

19 Collier suggests that the “clear and convincing evidence” standard represents the  
20 majority position, 7 COLLIER ON BANKRUPTCY, *supra*, at 1104-21. Creditor Moore can find no  
21 applicable Ninth Circuit authority on the question, so this argument will assume that the  
22 evidence in support of appointment of a trustee must be clear and convincing.

23 The need for replacement of Mr. Leckrone as debtor-in-possession, and for appointment  
24 of a Chapter 11 trustee in his place, could not be clearer; nor could the evidence in support of  
25 this motion be more convincing.

26 **2. Removal and replacement for cause – Section 1104(a)(1).**

27 As noted above, the stated bases for “cause” upon which a trustee “shall” be appointed  
28 “includ[e] fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the

1 debtor by current management.” The creditors’ committee here makes a showing of clear and  
2 convincing evidence of fraud and dishonesty by the debtor-in-possession – his appropriation of  
3 all proceeds of an uncertain number of non-MMP licenses, without notice to or approval by the  
4 creditors’ committee (per negotiated, court-ordered procedure); without accounting for the  
5 proceeds of those licenses; and without provision that the creditors’ committee retain 20% of  
6 the gross proceeds in partial payment of creditor claims.

7 Of significance here: the unknown licenses issued by Mr. Leckrone’s separate, wholly  
8 owned company (Alliacense) are indeed non-MMP licenses. As they must be: Patriot and  
9 Creditor Moore were previously victimized by Alliacense issuance of an MMP license to a  
10 major Silicon Valley electronics firm, in which Mr. Leckrone, pre-bankruptcy, sought to  
11 convert the majority of the license proceeds to his own use by claiming that the license fee was  
12 split 80% for TPL’s Non-MMP Patents and 20% for the MMP Portfolio. This supposed  
13 negotiation was, to coin a phrase, patently absurd: the MMP Portfolio would represent the  
14 overwhelming majority of value in any mix of its patents with TPL’s Non-MMP Patents.

15 Patriot filed litigation and settled that litigation, gaining oversight through PDS of all  
16 future MMP Portfolio licensing by Mr. Leckrone and Alliacense; more to the point, not only  
17 must the terms of license be disclosed to PDS prior to issuance but the license must itself be  
18 signed by Carl Johnson (the Patriot representative on the PDS board).

19 PDS/Patriot oversight prevents Mr. Leckrone and Alliacense for making off with the  
20 gross proceeds of any MMP Portfolio license written by Alliacense.

21 The creditors’ committee had not previously been burned in the same fashion – until  
22 today, as evidenced by its present motion. The court will surely hear argument from Mr.  
23 Leckrone and from Alliacense that its order was ambiguous and allowed for Alliacense  
24 issuance of licenses and appropriation of proceeds without committee oversight, approval or  
25 knowledge.

26 But Alliacense’s expected argument amounts to nothing more than an admission that  
27 Mr. Leckrone (himself a lawyer, represented by bankruptcy lawyers here, with his attorney  
28 daughter functioning as TPL’s in-house counsel and with a lawyer/son running Mr. Leckrone’s

1 wholly owned, hopelessly conflicted company Alliacense), has violated only the spirit of this  
2 Court's order (to his advantage) while obeying its letter.

3         The simple fact is that the committee desired, and this Court ordered, notice and  
4 approval of non-MMP licenses to be issued through Alliacense for TPL's benefit. Mr.  
5 Leckrone and Alliacense have violated this provision for notice and approval. Several million  
6 dollars in licensing proceeds have thus gone missing, and remain unaccounted for and  
7 unavailable to the Committee for its use in addressing creditor claims.

8         This Court is left with a compelling case for removal for debtor fraud and dishonesty.

9         Section 1104(a), however, imposes other duties upon the debtor: its four bases for  
10 removal are not exhaustive but are merely suggestive. See 7 COLLIER ON BANKRUPTCY, *supra*,  
11 Sec. 1104.02[3][c], at 1104-11 ("Use of the word 'including' means that the [four] grounds  
12 listed are not exclusive and that a finding of cause [for appointment/removal] may be based on  
13 other factors as well"), citing *In re Marvel Entertainment Group, Inc.* (3d Cir. 1998), 140 F.3d  
14 463, 472.

15         The present case is informed by the following decisions representing trustee removal  
16 above and beyond the four stated factors of the statute itself -

17 - *In re Oklahoma Refining Co.* (10<sup>th</sup> Cir. 1988), 838 F.2d 1133, 1136 (debtor in possession  
18 failed to keep adequate records and to file reports, coupled with a history of questionable  
19 transactions between the debtor and affiliated companies; trustee appointed);

20 - *In re Embrace Systems Corp.* (Bankr. W.E. Mich. 1995), 178 B.R. 112, 128-29 (debtor's  
21 principal had irreconcilable conflict through interest in another enterprise seeking to acquire  
22 debtor's technology; principal more concerned with his other enterprise than with the debtor,  
23 and an independent, disinterested person was necessary to manage the debtor and investigate  
24 various causes of action that might exist; underlying conflicts and self-dealing held to  
25 constitute cause for court sua sponte appointment of a trustee);

26 - *Keeley & Grabanski Land Partnership v. Keeley, supra*, 455 B.R. at 153, 163-65 [controlling  
27 partner rented land from debtor/partnership at below market rate and failed to move case  
28 forward; appointment of trustee affirmed under both "cause" and 1104(a)(2) "best interests"]

1 standards];

2 - *In re Cajun Electrical Power Coop Inc.* (5<sup>th</sup> Cir. 1995), 69 F.3d 746, rehearing granted and  
3 result reversed, 74 F.3d 599, 600 (conflicts among debtor’s cooperative and debtor in  
4 possession failure to collect payments due from family members provided basis for  
5 appointment of trustee);

6 - *In re Marvel Entertainment Group, supra*, 140 F.3d at 472-74 (intense, irreconcilable  
7 acrimony between debtor and creditors; trustee appointed);

8 - *In re Celeritas Techs, LLC*, (Bankr. D. Kan. 2011), 446 B.R. 514, 519-21 [acrimony, coupled  
9 with debtor using bankruptcy as litigation tactic and filing of reorganization proposals that were  
10 mere ruses, led to finding of cause for appointment of trustee under 1104(a)(1) as well as “best  
11 interests” finding for such appointment under 1104(a)(2)];

12 - *In re Ionosphere Clubs, Inc., supra*, 113 B.R. at 168-72 (debtor’s consistent failure to meet its  
13 own operating projections or to satisfy requirements for its own plan proposals required  
14 appointment of a trustee under both “cause” and “best interests” criteria);

15 - *In re Bibo, Inc.* (9<sup>th</sup> Cir. 1996), 76 F.3d 256, 259 (Ninth Circuit affirmed appointment of  
16 trustee where debtor in possession was looting estate through use of an independent company  
17 he hired to provide management services to the debtor; compare, the Alliacense relationship to  
18 debtor TPL here, where Mr. Leckrone’s wholly owned licensing company Alliacense is the  
19 sole source of revenue to TPL and receives compensation, separate and apart from TPL and  
20 from control by this Court, for its licensing efforts and is reimbursed for supposed expenses,  
21 which reimbursements reduce the net revenues available for TPL).

22 No man can serve two masters. As debtor in possession, Mr. Leckrone here serves this  
23 Court and TPL’s creditors; through Alliacense, he serves his own interests, and those of his  
24 family members, by owning and controlling the means to Debtor TPL’s revenues. The only  
25 solution to this conflict is to break it: Mr. Leckrone should serve Alliacense; the creditors’  
26 committee should achieve appointment of an independent, disinterested professional to run  
27 Debtor TPL and to secure their interests in its revenue.

28



1 And here, an end to the conflict of interest will also launch TPL (and Patriot, and Mr.  
2 Moore, all dependent upon MMP Portfolio revenues) in a promising new direction. This past  
3 year has seen unremitting attacks by courts and commentators; by patent practitioners and  
4 politicians, on so-called “patent trolls.” Alliacense here finds itself in the unenviable and  
5 unavoidable position of bearing that label. Indeed, within the past few days, in a ruling against  
6 Debtor TPL on one of the very non-MMP patents at issue here, the International Trade  
7 Commission has, mid-course, changed the rules of the game and announced that from now on,  
8 licensing efforts alone will not suffice to demonstrate a “domestic industry” in need of  
9 protection from infringement (see Exhibit 4 to request for judicial notice submitted herewith).

10 For Alliacense, the handwriting is not on the wall; it is at the bottom of the ITC  
11 decision. Even if there were not grounds aplenty for removal for cause of Mr. Leckrone as  
12 debtor in possession, this ITC sea change – in a decision not only on point but actually  
13 involving TPL and the licensing of its non-MMP patents – forces a dramatic change in course  
14 for those licensing or litigating against patent infringers.

15 Fortunately for Debtor TPL, Mr. Moore remains an owner of his MMP patents; he can  
16 and will lend his name and his testimony to protect patents that he himself practices (he builds  
17 on his invention by building chips that employ it and carry it forward).

18 No stronger or more dramatic case for removal of a debtor in possession can be  
19 imagined. And the result here will favor all concerned, including Mr. Leckrone who stands,  
20 post-bankruptcy, to resume ownership and control over a TPL that will continue to receive  
21 MMP licensing proceeds for years to come.

22 **3. Best interests of the Estate – Section 1104(a)(2).**

23 In many cases, the “interests” standard of Section 1104(a)(2) coincides with the “cause”  
24 criteria of Section 1104(a)(1); that is, in the typical case the best interests of the estate will be  
25 satisfied by appointment of a trustee only if a showing of cause for the appointment is made out  
26 under Section 1104(a)(1). See generally 7 COLLIER ON BANKRUPTCY, *op cit.*, Sec.  
27 1104.02[3][d][i] – 1104.02[3][d][ii], at pp. 1104-14 through 1104-16. Collier suggests that a  
28 “best interests of the Estate” scenario, separate and apart from any showing of 1104(a)(1)

1 “cause,” might exist “if creditors and equity security holders have entirely lost confidence in  
2 the current management of the debtor.” *Ibid.*, Sec. 1104.03[3][d][iii], at 1104-16.

3 Here, creditors and this Court were promised a 100% plan many months ago, coupled  
4 with a quick exit from bankruptcy. The debtor has instead proposed a plan that, in its initial  
5 form, apparently would continue to infinity, with no assurance of creditor payment or a date for  
6 emergence from bankruptcy. TPL’s creditors and this Court can have little confidence in TPL’s  
7 prospects under current management. And the ITC has now changed the rules for litigating  
8 injunctive actions, in a way that precludes TPL and Alliacense from effective action to protect  
9 TPL’s patents and their revenues. Any confidence in present management would be misplaced.

10 This Court has already ended exclusivity, in part because of concern that the  
11 reorganization plan proposed by debtor reflected only debtor in possession desires rather than  
12 creditors’ committee input and negotiation. Plainly, present debtor in possession, running a  
13 wholly owned licensing company that controls debtor’s revenues has been incapable of setting  
14 aside his own financial interests and concerns in his licensing company to address the concerns  
15 of the creditors’ committee or to allay the committee’s all-too-real fears that debtor in  
16 possession is maximizing his return outside of bankruptcy at the expense of meeting creditor  
17 obligations before this Court. The war on patent trolls may not be over, but debtor in  
18 possession’s business model for TPL – the use of Alliacense to license its patents – is already a  
19 casualty.

20 TPL needs the fresh start and new direction that will follow when new TPL  
21 management carries out the creditors’ committee reorganization plan.

22 This is the unusual case in which there is an independent basis for claiming that the best  
23 interests of the debtor will be served by appointment of a trustee – as well as clear and  
24 convincing evidence of cause for appointing that trustee.

#### 25 **4. Conclusion**

26 For the reasons and on the authorities stated, the creditors’ committee and Creditor  
27 Moore have provided this Court with clear and convincing evidence that cause exists for the  
28 appointment of a chapter 11 trustee, along with evidence that appointment of that trustee will

1 serve the best interests of all concerned. This Court should enter its order granting the creditors'  
2 committee motion for appointment of a chapter 11 trustee and Creditor Moore's motion for the  
3 same relief, to permit this case to proceed to and through plan approval, reorganization and the  
4 payment of all creditor claims through the plan submitted by the creditors' committee and now  
5 before this Court.

6           Respectfully submitted,

7 Dated: January 3, 2014

CHILES and PROCHNOW, LLP

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9 By:           s/Kenneth H. Prochnow            
Kenneth H. Prochnow  
Attorneys for Creditor Charles H. Moore  
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10 SAN JOSE DIVISION

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COMPANY,  
14 Debtor.

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Honorable Stephen L. Johnson

18  
19 **COVERSHEET RE: DECLARATION OF CHARLES H. MOORE IN SUPPORT OF SUPPORTING**  
20 **MOTION TO APPOINT CHAPTER 11 TRUSTEE AND TO REMOVE DEBTOR-IN-POSSESSION**  
21 **FILED IN SUPPORT OF JOINDER IN MOTION OF CREDITORS' COMMITTEE TO APPOINT**  
22 **CHAPTER 11 TRUSTEE AND TO REMOVE DEBTOR-IN-POSSESSION**

22 DATED: January 3, 2014

CHILES AND PROCHNOW, LLP

24 By:           /s/ Kenneth H. Prochnow          

Kenneth H. Prochnow

Attorneys for Creditor Charles H. Moore

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email: [rchiles@chilesprolaw.com](mailto:rchiles@chilesprolaw.com)  
6

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9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 IN RE:

12 TECHNOLOGY PROPERTIES LIMITED,  
13 LLC, A CALIFORNIA LIMITED LIABILITY  
COMPANY,

14 Debtor.

Case No.: 13-51589-SLJ-11

**Declaration of Charles H. Moore In  
Support of Supporting Motion To Appoint  
Chapter 11 Trustee and To Remove  
Debtor-In-Possession**

Chapter 11

Date: January 23, 2014  
Time: 2:00 p.m.  
Place: Courtroom 3099  
280 South First Street  
San Jose, California

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20 I, Charles H. Moore, declare:

21 1. I am over the age of 18 and am competent to and would testify to all matters set  
22 forth in this Declaration if called upon to do so as a witness.

23 2. I am a 1960 graduate of Massachusetts Institute of Technology where I received  
24 a Bachelor's of Science degree in Physics. Thereafter I engaged in post-graduate studies in  
25 mathematics at Stanford University. My work experience has included many diverse areas  
26 including programming to predict Moonwatch satellite observations at the Smithsonian  
27 Astrophysical Observatory, programming to calculate satellite orbits, electron beam steering at  
28

{2655/06/00038237.DOCX}12/26/13 CMOORE DECLARATION IN SUP MOTION REMOVE DEBTOR  
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1 the Stanford Linear Accelerator Center, and programming a real-time gas chromatograph on a  
2 minicomputer. I am known internationally for inventing the FortH computer language in 1968.

3 3. In the 1980s I concentrated on developing microprocessor chips. During that  
4 time I developed the Sh-Boom microprocessor chip in collaboration with Russell Fish, out of  
5 which work the patents eventually called the "Moore Microprocessor Patent" ("MMP")  
6 portfolio were derived. Russell Fish and I are indicated to be the inventors of the series of  
7 patents of the portfolio. Since 2005, MMP patent licenses have been issued to third parties,  
8 generating revenues in excess of \$300,000,000. I am informed and believe that additional  
9 licensing revenues of at least that amount could be expected through reasonable licensing and  
10 litigation efforts with respect to the MMP portfolio.

11 4. I am informed and believe that by 2005, Russell Fish's rights to the MMP  
12 Portfolio of patents had been transferred to Patriot Scientific Corporation ("Patriot").  
13 Meanwhile, on or about October 21, 2002, through a so-called "Commercialization  
14 Agreement" or "ComAg," I had hired a licensing company, Technology Properties Limited (the  
15 debtor in these proceedings; hereafter, "TPL") to evaluate the market for licensing the MMP  
16 portfolio to third parties and to generate royalties. Under my 2002 ComAg agreement, TPL  
17 was to pay me 55% of the net recovery TPL realized from its licensing of the MMP Portfolio.  
18 At all pertinent times, I am informed and believe that attorney Daniel Leckrone has been the  
19 owner and chief executive officer of TPL.

20 5. In or about 2003, I became the Chief Technology Officer of TPL. I remained in  
21 that position until 2007. In that capacity, I was the most knowledgeable TPL employee  
22 concerning the MMP portfolio attributes (logically, as the inventor), and learned of its  
23 marketability and value from my day to day activities at TPL. I reviewed many of TPL's  
24 product analyses, teardown studies, claim charts, DeCaps, relevant (infringing) revenue  
25 analyses by infringers, and similar information from which the strategies were derived to  
26 approach and notify over 400 infringing companies and to plan the appropriate terms of MMP  
27 licenses to require from those infringing parties. That, and the many reports I received from  
28

1 TPL representatives over the years, provided me the ability to value the MMP technology for  
2 licensing purposes relative to TPL's other technologies.

3 6. TPL also acquired patent rights to other technologies during my employment,  
4 including portfolios known as "Fast Logic" and "Core Flash" (I will refer to these other patent  
5 portfolios as "TPL's Non-MMP Patents"). As the TPL Chief Technology Officer, I had  
6 occasion to become informed about the TPL's Non-MMP Patents and their underlying  
7 technologies. I then understood the relative value of TPL's Non-MMP Patents compared to the  
8 MMP portfolio, and I know how TPL valued them relative to the MMP portfolio.

9 7. In or about April 2010, I learned – from Patriot, not from TPL or from Mr.  
10 Leckrone – that TPL had entered into a license transaction with a major Silicon Valley  
11 electronics firm. I am informed and believe that with this license, TPL granted the licensee  
12 rights not only under the MMP Portfolio of patents but also under TPL's Non-MMP Patents. I  
13 was never given any notice by TPL of this multi-patent license; upon information and belief,  
14 Patriot only learned of it after the fact. I am informed and believe that the gross licensing fee  
15 received by TPL for this license was substantially less than what this major Silicon Valley firm  
16 should have paid for use of the MMP Portfolio technology.

17 8. However, the true loss to the MMP Portfolio – and to me, to Patriot and to TPL  
18 – was substantially greater. I understand that under this license negotiated by TPL and Mr.  
19 Leckrone, 20% of the proceeds were to be given to the MMP portion of the license, while 80%  
20 were allocated to TPL's Non-MMP Patents (meaning the Mr. Leckrone would receive 80% of  
21 the total license fee, given his control over revenues accruing to TPL's Non-MMP Patents).

22 9. Then and now, the MMP portfolio was far and away TPL's most valuable  
23 licensing asset. Under any reasonable royalty analysis, the contributions of TPL's Non-MMP  
24 Patents to the total value of the April 2010 multi-patent license would have been minimal  
25 relative to the value of the MMP portfolio. Allocating less than 20% of the consideration  
26 received from Apple to the MMP portfolio, and permitting TPL to retain 80% of that  
27 consideration for its other technologies, was absurd.

28

1           10. I regarded the allocation of less than 20% of this major license to the MMP  
2 portfolio to be a breach of TPL's fiduciary duties to me under our licensing agreement.

3           11. I am informed and believe that Patriot felt the same way: Patriot filed a Santa  
4 Clara County Superior Court action against TPL. Patriot settled that action with an adjustment  
5 of the MMP portfolio license fees that TPL had received from the major Silicon Valley  
6 electronics firm. Upon information and belief, those fees now totaled some \$960,000 (still a  
7 fraction of what an MMP portfolio license should have yielded, but better than the fractional  
8 portion of the license fee that had initially been assigned as the MMP portfolio share).

9           12. Of greater long-term significance to the health of the MMP portfolio, in its 2010  
10 settlement with TPL, Patriot secured for itself advance notice and review of all future MMP  
11 portfolio licenses that TPL would issue through its Alliacense subsidiary.

12           13. At some point unknown to me, TPL spun off its Alliacense subsidiary.  
13 Alliacense was now a separate corporation, wholly owned by Mr. Leckrone (as was TPL).

14           14. I resigned as TPL's Chief Technology Officer in 2007, because I was not getting  
15 paid my 55% royalty. I re-negotiated my 2002 ComAg in late 2007, augmenting in part my  
16 entitlement to 55% of TPL's net MMP Portfolio receipts with an "off-the-top" advance of a  
17 much smaller percentage of TPL gross MMP Portfolio receipts. I then believed that a  
18 percentage of the gross was the only way for me to realize any return from my invention,  
19 because of repeated representations by Mr. Leckrone that TPL's expenses exceeded its  
20 licensing revenues.

21           15. TPL has received at least \$120 million in revenues from licensing my MMP  
22 Portfolio of patents. Despite my entitlement to 55% of TPL's net MMP Portfolio revenues,  
23 I was paid only \$11 million of that revenue to and through January 2013. The last payment  
24 of any kind that I received from TPL was \$15,000, received on November 13, 2009.

25           16. I know from TPL's press releases that it wrote many MMP licenses between  
26 July 2008 and July 2012. I received no royalties related to those licenses, and no accounting  
27 with respect to any of the proceeds received by TPL with respect to those licenses. I was  
28 never paid any "off the top" portion of MMP licensing revenues received by TPL.



1           17.     Following the episode concerning the mis-allocation of MMP portfolio  
2 licensing proceeds received by TPL and Mr. Leckrone from the major Silicon Valley  
3 electronics firm, I filed an action in Santa Clara County Superior Court against TPL,  
4 Alliacense, Mr. Leckrone and other individuals associated with him. My lawsuit was  
5 known as *Charles H. Moore v. Technology Properties Limited, LLC, et al*, and was  
6 assigned file no. 1-10-CV-183613 by the clerk of court, Santa Clara County Superior Court  
7 (the “*Moore v. TPL State Court Litigation*”). Mr. Leckrone and TPL filed a cross-complaint  
8 against me in the *Moore v. TPL State Court Litigation*.

9           18.     In early 2012, I learned that Chet and Marcie Brown had obtained a ruling in  
10 their own lawsuit against TPL that would entitle them to some \$10 million from TPL when  
11 that ruling was reduced to judgment.

12           19.     On January 31, 2013, I agreed to a negotiated settlement of my claims  
13 against TPL, Alliacense, Mr. Leckrone and the other defendants. Although the terms of the  
14 settlement are confidential, the rights and obligations of TPL under the January 31, 2013  
15 Settlement Agreement are being assumed under all plans of reorganization presently before  
16 this Court.

17           20.     I have filed a creditor claim in this matter. My claim is contingent upon  
18 assumption of the January 31, 2013 Settlement Agreement by TPL. If the January 31, 2013  
19 Settlement Agreement is not assumed by TPL, my creditor claim is for the \$30 million due  
20 to me by TPL under my 2002 and 2007 ComAg agreements and their promise of 55% of  
21 net MMP Portfolio revenues to me. The January 31, 2013 Settlement Agreement replaces  
22 this TPL obligation to pay over 55% of net revenues with my acceptance of a smaller share  
23 (23.975% instead of 27.5% of MMP revenues paid by PDS, not by TPL). TPL, for its part,  
24 saw its share of MMP revenues increased from 22.5% of the net to 26.025% of MMP  
25 revenues paid out by PDS.

26           21.     In addition, a major effect of the January 31, 2013 Settlement Agreement  
27 eliminates me as TPL’s largest creditor, and allows the promulgation of reorganization  
28 plans that pay me nothing (given my agreement to accept a lesser share of PDS-source

1 MMP revenues to replace the 55% of the net that I had negotiated in my ComAg  
2 Agreements).

3 22. It was anticipated by all parties to the January 31, 2013 Settlement  
4 Agreement that the public announcement of settlement of all disputes between and among  
5 those with ownership or licensing interests in the MMP portfolio would be a boon to further  
6 licensing and litigation efforts.

7 23. Indeed, the moment TPL obtained my agreement to the January 31, 2013  
8 Settlement Agreement, its representatives put a licensing agreement before me. This  
9 agreement, with a major automobile manufacture, had been negotiated in anticipation of the  
10 settlement, because the manufacturer had refused to sign off on the license without written  
11 assurance from me that the license was issued with my consent and approval.

12 24. I should of course had been paid my just-agreed percentage share of this  
13 multi-million dollar license, given that my settlement-based approval was critical to its  
14 issuance. TPL insisted, however, that this license was a pre-settlement negotiation, to which  
15 my percentage did not apply. Because I did not want to litigate an agreement that had yet to  
16 be reduced to writing, and break the peace just made, I allowed this license to be treated as  
17 pre-settlement, and I received none of its proceeds.

18 25. Notwithstanding this concession, I have since learned that this license is a  
19 subject of continuing dispute between Alliacense (Mr. Leckrone's licensing company) and  
20 PDS (which would here distribute licensing proceeds, 50/50, between Patriot and TPL).  
21 Alliacense insists on retaining expense and other supposed entitlements (benefitting Mr.  
22 Leckrone and reducing payments to Debtor TPL and to Patriot).

23 26. Under the January 31, 2013 Settlement Agreement, I am to receive  
24 consulting fees from PDS, for services I can provide in litigation (technical testimony and  
25 testimony from a patent owner who "practices" his invention – in my case, who  
26 manufactures microprocessor chips). An inventor who practices his patents (and thereby  
27 creates a domestic industry to be defended in patent and ITC litigation) is a valuable asset  
28 in an era of hostility to so-called "patent trolls" who aggregate patents and sue for

1 infringement without themselves creating any product or article of commerce from the  
2 invention.

3 27. Following the January 31, 2013 Settlement Agreement, through my counsel I  
4 offered my services to testify in ongoing litigation concerning the MMP portfolio.

5 28. My offer was not taken up in the TPL/Alliacense litigation before the  
6 International Trade Commission. That case was tried during 2013, with no involvement  
7 from me, and was lost before an ITC Administrative Law Judge. An appeal is pending.

8 29. A second trial was held later in 2013, before a jury in the Northern District of  
9 California. This time, my testimony was requested; indeed, in this second trial I sat with  
10 trial counsel as the face of the patents alleged to be infringed and as the business  
11 representative of the client. A jury verdict of infringement resulted in this trial, in favor of  
12 TPL and against the defendant HTC.

13 30. My representatives and I met with Mr. Leckrone, Alliacense and patent  
14 litigation counsel, shortly after the January 31, 2013 Settlement Agreement was signed. At  
15 that time, we urged that Alliacense take advantage of the favorable publicity of the  
16 settlement and the united front it showed to infringers, to settle one or two of the eleven  
17 pending claims of infringement before the ITC. Such settlements, on a confidential basis,  
18 would have exerted substantial pressure on the remaining defendants to “catch the  
19 [settlement] train before it left the station.” I am informed and believe that Alliacense made  
20 no substantial efforts to resolve claims against the ITC defendants until shortly before trial,  
21 with the result that only one ITC defendant settled, for a nominal amount, and the other  
22 defendants successfully defended their infringing products before the ITC.

23 31. At trial before the Northern District, TPL trial counsel presented a  
24 compelling case for infringement by the defendant HTC. I was appalled, however, to hear  
25 testimony that TPL had issued some MMP licenses not because they were market rate but  
26 because TPL was short of funds; TPL trial counsel had to say during final argument that the  
27 jury should ignore such “fire sale” licenses in establishing damages.

28

1           32. Further, defense counsel argued to the jury that TPL through Alliacense had  
2 quoted an initial license fee to the major Silicon Valley electronics firm discussed earlier –  
3 of \$1.5 billion. From this initial \$1.5 billion demand, the evidence of the 2010 settlement  
4 gave an MMP license value of \$960,000. Trial counsel for TPL argued for a reasonable  
5 value of \$9 to \$10 million for an HTC license; the jury’s award of the same \$960,000  
6 (against HTC, another major electronics manufacturer) is a clear indication that TPL’s  
7 abusive “mixed” license in 2010 dramatically and negatively impacted the damages the jury  
8 awarded to a similarly situated defendant at trial.

9           33. The Alliacense negotiation strategy cost the MMP Portfolio at least \$8  
10 million of a possible award against HTC; the loss will be compounded as HTC uses the  
11 limited \$960,000 to cap its license fee for later and future products not covered by the  
12 verdict, and other manufacturers take that same number to the bank to undercut future  
13 licensing of the MMP portfolio.

14           34. Alliacense has conducted very little licensing activity on the MMP portfolio  
15 since the January 31, 2013 Settlement Agreement was signed. It now appears that  
16 Alliacense has instead devoted its efforts to TPL’s Non-MMP Patents, with the result that  
17 licenses are being written without creditors’ committee oversight or approval, and without  
18 any funds accruing for payment to TPL creditors. To all appearances, Alliacense is ignoring  
19 my MMP Portfolio (where licenses must be approved by PDS before issuing, and where  
20 revenues flow through PDS and not through Alliacense); it is instead licensing where its  
21 activities cannot be monitored or controlled, and its license proceeds cannot be secured for  
22 the benefit of TPL and its creditors.

23           35. By any measure, it is time for a fresh start to MMP portfolio marketing, by a  
24 licensor not tainted by past mistakes and low-yielding licensing, and not easily  
25 characterized and dismissed as a “patent troll” – a label that will surely be applied to  
26 Alliacense in its future marketing efforts. I urge this Court to salvage the MMP portfolio  
27 and to permit the TPL bankruptcy to proceed in an orderly and profitable manner under  
28 new management. A trustee should be appointed.

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I hereby authorize submission of a copy of this declaration bearing my facsimile or electronic signature with the same purpose and effect as if the original were available.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this Declaration is executed on December 26, 2013.

CH Moore  
Charles H. Moore

1 Kenneth H. Prochnow (SBN 112983)  
Robert C. Chiles (SBN 056725)  
2 Chiles and Prochnow, LLP  
2600 El Camino Real  
3 Suite 412  
Palo Alto, CA 94306  
4 Telephone: 650-812-0400  
Facsimile: 650-812-0404  
5 email: [kprochnow@chilesprolaw.com](mailto:kprochnow@chilesprolaw.com)  
email: [rchiles@chilesprolaw.com](mailto:rchiles@chilesprolaw.com)

6  
7 Attorneys For Creditor Charles H. Moore

8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11 IN RE:

12 TECHNOLOGY PROPERTIES LIMITED,  
13 LLC, A CALIFORNIA LIMITED LIABILITY  
COMPANY,

14 Debtor.

Case No.: 13-51589-SLJ-11

Chapter 11

Date: TBD  
Time: TBD  
Place: Courtroom 3099  
280 South First Street  
San Jose, California

Honorable Stephen L. Johnson

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21 **CREDITOR CHARLES H. MOORE'S REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF HIS  
22 JOINDER IN THE MOTION OF THE CREDITORS' COMMITTEE TO APPOINT A CHAPTER 11  
TRUSTEE AND REMOVE DEBTOR IN POSSESSION**

23 Creditor Charles H. Moore respectfully requests that pursuant to Bankruptcy Rule 9017  
24 and Rule 201 of the Federal Rules of Evidence, this honorable Court take judicial notice of the  
25 following documents, attached as Exhibits hereto, for the purposes set out below:

26 **Exhibit 1**: An article from the June 4, 2013 New York Times, originally printed at Page B1 of  
27 the Times' New York Edition, which article is entitled "Obama Orders Regulators To Root Out  
28 'Patent Trolls.'" This exhibit is not offered for the truth of matters asserted within it but for the

1 purpose of showing that the news media is currently reporting hostility by the Executive  
2 Branch to those fitting the definition of so-called "patent trolls."

3 **Exhibit 2:** An Op-Ed article from the June 5, 2013 New York Times, originally printed at Page  
4 A25 of the paper, which article is entitled "Make Patent Trolls Pay In Court." This exhibit is  
5 not offered for the truth of the matters asserted within it, but as a statement of anti-patent troll  
6 attitude and opinion by its three authors - the Chief Judge of the United States Court of Appeals  
7 for the Federal Circuit and two law professors.

8 **Exhibit 3:** An Internet news report, authored by Dan Graziano and dated June 25, 2013,  
9 entitled "ITC Plans New Action To Prevent Patent Trolls." This exhibit is not offered for the  
10 truth of the matters asserted within it, but as a report of reaction by the International Trade  
11 Commission, an Executive Branch agency, to calls by the Obama Administration (see Exhibit  
12 1) for action against "patent trolls."

13 **Exhibit 4:** The United States International Trade Commission's December 19, 2013 "Notice of  
14 Commission Determination Terminating The Investigation With A Finding Of No Violation Of  
15 Section 337 [19 U.S.C. Sec. 1337]" in that matter known as "In the Matter of CERTAIN  
16 COMPUTERS AND COMPUTER PERIPHERAL DEVICES, AND COMPONENTS  
17 THEREOF, AND PRODUCTS CONTAINING SAME," ITC Investigation No. 337-TA-841.  
18 This exhibit is offered for the truth of the fact (a) that the ITC has filed such Notice in a matter  
19 in which Technology Properties Limited, LLC (**Debtor TPL herein**) is a party, seeking relief  
20 against certain foreign entities for alleged infringement of certain of TPL's Non-MMP Patents;  
21 (b) that the ruling is against Debtor TPL (affirming Administrative Law Judge findings adverse  
22 to Debtor TPL as to three of four patents, and reversing an Administrative Law Judge finding  
23 of infringement that had been favorable to Debtor TPL as to the so-called '623 patent); and (c)  
24 the reversal rests in part on an ITC finding that "TPL has not demonstrated the existence of an  
25 article protected by the '623 patent." (The ITC echoed this finding with respect to the three  
26 affirmed, "noninfringing" patents, stating that "TPL failed to demonstrate the existence of a  
27 domestic industry because it failed to demonstrate the existence of articles practicing these  
28 patents.") TPL's inability to establish the "domestic industry" prong of so-called 1337 actions

1 before the ITC means that Debtor TPL, under its present licensing arrangements with  
2 Alliacense, will be unable to protect its patents before the ITC.

3 TPL and Alliacense are regrettably, irretrievably and irreversibly on the wrong side of  
4 the patent troll debate now embroiling the Executive Branch and its agencies, the courts and the  
5 court of public opinion. Mr. Leckrone's ownership of Alliacense has at all times constituted a  
6 demonstrable conflict of interest with Debtor TPL and the patent portfolios on which TPL  
7 relies for all of its revenues. Now, with TPL needing a life preserver to sustain its chances to  
8 survive and thrive on patent licensing revenues, Alliacense has proved to be an anchor.

9 The best interests of Debtor TPL will be served by appointment of a chapter 11 trustee  
10 and the implementation of the creditors' committee plan, which contemplates severance of all  
11 relationships between Alliacense and Debtor TPL with respect to those patent portfolios in  
12 which Debtor TPL has an ownership or licensing revenue interest.

13 The public and political clamor against "patent trolls" made severance of the  
14 TPL/Alliacense relationship desirable. The ITC's just-received ruling against Debtor TPL - with  
15 an adverse domestic industry ruling that rests on licensing that Debtor TPL carried out through  
16 Alliacense - makes that severance a necessity.

17 Respectfully submitted,

18 Dated: January 3, 2014

CHILES and PROCHNOW, LLP

19  
20 By:           s/Kenneth H. Prochnow            
21 Kenneth H. Prochnow  
22 Attorneys for Creditor Charles H. Moore  
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# Exhibit 1

**The New York Times**

June 4 2013

# Obama Orders Regulators to Root Out 'Patent Trolls'

By EDWARD WYATT

WASHINGTON — One company threatened to sue 8,000 coffee shops, hotels and retailers for patent infringement because they had set up Wi-Fi networks for their customers.

Another claimed that hundreds of small businesses were violating its patents by attaching a document scanner to an office computer system. One claimed rights to royalties from anyone producing a podcast.

Now the Obama administration is cracking down on what many call patent trolls, shell companies that exist merely for the purpose of asserting that they should be paid because they hold patents that are being infringed by some software or electronic process.

The companies exploded onto the technology scene in the last two years, accounting for more than half of the 4,000 patent infringement lawsuits filed in the United States last year, according to several studies, up from 45 percent the year before and from less than 30 percent in every prior year.

That surge can be traced partly to the very law that was supposed to stamp out some of the trouble. The America Invents Act, signed in 2011, made it illegal to file a single lawsuit claiming a whole bunch of defendants had infringed a patent in the same way. Now, a patent holder must file individual lawsuits against each company, which has caused the number of lawsuits to soar, patent experts say.

On Tuesday, President Obama took direct aim at the companies and their practices, announcing several executive orders "to protect innovators from frivolous litigation" by patent trolls.

Mr. Obama ordered the Patent and Trademark Office to require companies to be more specific about exactly what their patent covers and how it is being infringed. The administration also told the patent office to tighten scrutiny of overly broad patent claims and said it would aim to curb patent-infringement lawsuits against consumers and small-business owners who are simply using off-the-shelf technology.

But some big software companies, including Microsoft, expressed dismay at some of the proposals, saying they could themselves stifle innovation. A trade group known as BSA: The Software Alliance, which represents software companies, urged caution.

"Some of the White House proposals are problematic," Matt Reid, senior vice president for external affairs for the group, said in a statement.

Mr. Reid said a proposal to expand the patent office's program allowing for special review of computer-related patents "could inadvertently put at risk innovation for many industries that rely on software, from manufacturing to biotech." Changing measures that have been in effect for less than a year "before we see the results doesn't make sense," he said.

Some states have decided to act. Vermont passed a law last month that would allow companies singled out by patent-infringement lawsuits to sue their tormentors. Usually companies cannot fight back by countersuing because the patent trolls don't make anything that itself could violate a company's patents.

In Vermont, companies that bring patent lawsuits and lose could be forced to pay the legal fees of the winning side and damages up to \$150,000. Vermont has one of the highest per-capita rates of issued patents in the country.

Lawmakers encountered resistance in 2011 to some of the measures Mr. Obama ordered on Tuesday. The opposition came from, among others, pharmaceutical companies that feared that the legislation would hinder their ability to defend their own patents.

Representative Robert W. Goodlatte, a Virginia Republican who is chairman of the House Judiciary Committee and drafting a bill to address the patent troll issue, said at a panel discussion Tuesday that the opposition was stiff enough that "it led a number of people to believe that it was going to delay overall patent reform."

Mr. Goodlatte said the jump in the number of lawsuits brought the issue back to the fore.

Arti K. Rai, a patent law professor at Duke University, said in an interview that those numbers "are a little bit manipulated."

There probably would still be more lawsuits without the provision in the 2011 law that required a plaintiff to file separate lawsuits, said Ms. Rai, who in 2009-10 was the administrator for the Office of External Affairs at the patent office.

But, she added, it was ironic that victims of patent infringement suits were asking for relief because of a law that was created to help them.

Microsoft expressed wariness about some of the president's plans. Horacio Gutierrez, deputy general counsel at Microsoft, said in a blog post that the company was "concerned and surprised" that the proposal "goes beyond patent assertion entities and instead targets software innovations more broadly."

Intellectual Ventures, one of the largest companies that specializes in owning and protecting patents, said it believes the provisions requiring more disclosure on ownership of a patent are "misguided and merit further discussion."

Senator Patrick Leahy, a Vermont Democrat who is chairman of the Senate Judiciary Committee and who was a primary sponsor of the 2011 law, said he backs the president's effort to suppress patent trolls.

"The United States patent system is vital for our economic growth, job creation, and technological advance," Mr. Leahy said in a statement. "Unfortunately, misuse of low-quality patents through patent trolling has tarnished the system's image."

Others described the patent-assertion entities in less polite language.

"These guys are terrorists," said John Boswell, chief legal officer for SAS, a business software and services company, said at a panel discussion on Tuesday. SAS was cited in the White House report as an example of a company that has spent millions to defend itself against what it believes are frivolous lawsuits.

"It does not cost much to be a troll and to make broad, vague demands," Mr. Boswell said in the White House report. "On the other hand, the risk to the company receiving a troll threat is enormous."

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# Exhibit 2

**The New York Times**

June 4, 2013

# Make Patent Trolls Pay in Court

By RANDALL R. RADER, COLLEEN V. CHIEN and DAVID HRICIK

FROM an early age we are taught the importance of fighting fairly. But as the vast number of frivolous patent lawsuits have shown, too many people are rewarded for doing just the opposite.

The onslaught of litigation brought by “patent trolls” — who typically buy up a slew of patents, then sue anyone and everyone who might be using or selling the claimed inventions — has slowed the development of new products, increased costs for businesses and consumers, and clogged our judicial system.

Their business plan is simple: trolls (intellectual-property lawyers use less evocative terms like “non-practicing entities” and “patent-assertion entities”) make money by threatening companies with expensive lawsuits and then using that cudgel, rather than the merits of a case, to extract a financial settlement. In the apt summary of President Obama, who on Tuesday announced a plan to stave off frivolous patent litigation, trolls just want to “hijack somebody else’s idea and see if they can extort some money.”

So far, legislative action against the practice has been meager. In May, Gov. Peter Shumlin, Democrat of Vermont, signed legislation — the first of its kind — that amends the state’s consumer protection laws to empower its attorney general and others to sue patent holders who assert infringement claims against a Vermont business or resident in bad faith. But lawmakers in the remaining 49 states and in Congress, where no less than four bills now sit in various committees, have yet to legislate specifically against patent trolling.

Mr. Obama’s latest proposals echo those in several bills, including making it harder for patent litigants to set up shell companies to hide their activities.

In the meantime, vexatious patent litigation continues to grind through our already crowded courts, costing defendants and taxpayers tens of billions of dollars each year and delaying justice for those who legitimately need a fair hearing of their claims. Trolls, in fact, filed the majority of the roughly 4,700 patent suits in 2012 — and many of those were against small companies and start-ups that often can’t afford to fight back.

The problem stems largely from the fact that, in our judicial system, trolls have an important strategic advantage over their adversaries: they don't make anything. So in a patent lawsuit, they have far fewer documents to produce, fewer witnesses and a much smaller legal bill than a company that does make and sell something.

Because they don't manufacture products, they need not fear a counterclaim for infringing some other patent. They need not be concerned with reputation in the marketplace or with their employees being distracted from business, since litigation is their business.

Trolls, moreover, often use lawyers to represent them on a contingent-fee basis (lawyers get paid only when they win), allowing trolls to defer significant legal costs that manufacturers, who generally must pay high hourly fees, cannot.

With huge advantages in cost and risk, trolls can afford to file patent-infringement lawsuits that have just a slim chance of success. When they lose a case, after all, they are typically out little more than their own court-filing fees. Defendants, on the other hand, have much more to lose from a protracted legal fight and so they often end up settling.

Lost in the debate, however, is that judges already have the authority to curtail these practices: they can make trolls pay for abusive litigation.

Section 285 of the Patent Act, as well as Rule 11 of the Federal Rules of Civil Procedure, give judges the authority they need to shift the cost burden of litigation abuse from the defendant to the troll. But remarkably, judges don't do so very often: by our count, fees were shifted under Section 285 in only 20 out of nearly 3,000 patent cases filed in 2011.

Our judicial system's bias against shifting fees partly explains that reluctance, but Section 285 is flexible enough to help defend against trolls. And even though many cases settle, the prospect of paying fees will discourage aggressive suits and frivolous demands.

To make sure Section 285 is implemented with appropriate vigor, judges must look more closely for signs that a patent lawsuit was pursued primarily to take improper advantage of a defendant — that is, using the threat of litigation cost, rather than the merits of a claim, to bully a defendant into settling.

One sign of potential abuse is when a single patent holder sues hundreds or thousands of users of a technology (who know little about the patent) rather than those who make it — or when a patent holder sues a slew of companies with a demand for a quick settlement at a fraction of the cost of defense, or refuses to stop pursuing settlements from product users even after a court has ruled against the patentee.

Other indications of potential bullying include litigants who assert a patent claim when the rights to it have already been granted through license, or distort a patent claim far beyond its plain meaning and precedent for the apparent purpose of raising the legal costs of the defense.

Judges know the routine all too well, and the law gives them the authority to stop it. We urge them to do so.

*Randall R. Rader is chief judge of the United States Court of Appeals for the Federal Circuit. Colleen V. Chien is an assistant professor of law at Santa Clara University. David Hricik is a professor of law at Mercer University.*



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# Exhibit 3

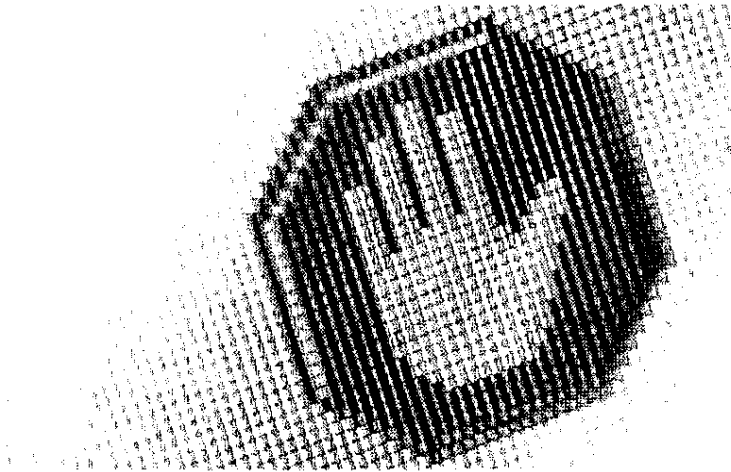
# ITC plans new action to prevent patent trolls

By Dan Graziano (<http://bgr.com/author/dan-graziano/>) on Jun 25, 2013 at 10:45 PM

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The International Trade Commission announced on Monday that it will be taking new steps to cut down on the number of lawsuits filed by patent trolls. According to *Reuters* (<http://www.reuters.com/article/2013/06/24/us-usa-patents-litigation-idUSBRE95N1F920130624>), the agency will soon require companies to show that they have “a significant presence in the United States” before filing a patent complaint. A pilot program has been created that will be led by six administrative judges who will determine whether a company has a large enough presence in U.S. production, licensing and research to utilize the court. The committee will determine whether or not a company qualifies within 100 days. The ITC has seen an increased number of patent lawsuits in recent years (<http://bgr.com/2012/06/26/patent-troll-suits-total-29-billion/>) brought on by non-practicing entities. The agency’s latest move to prevent lawsuits from patent trolls (<http://bgr.com/2013/06/20/motorola-patent-troll-lawsuit/>) was praised by companies like Google (<http://bgr.com/tag/google>), HP, Intel and Oracle.

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# Exhibit 4

UNITED STATES INTERNATIONAL TRADE COMMISSION  
Washington, D.C.

In the Matter of

CERTAIN COMPUTERS AND COMPUTER  
PERIPHERAL DEVICES, AND COMPONENTS  
THEREOF, AND PRODUCTS CONTAINING  
SAME

Investigation No. 337-TA-841

NOTICE OF COMMISSION DETERMINATION  
TERMINATING THE INVESTIGATION  
WITH A FINDING OF NO VIOLATION OF SECTION 337

**AGENCY:** U.S. International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to terminate the above-captioned investigation with a finding of no violation of section 337 of the Tariff Act of 1930, 19 U.S.C. § 1337.

**FOR FURTHER INFORMATION CONTACT:** Sidney A. Rosenzweig, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 708-2532. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, S.W., Washington, D.C. 20436, telephone (202) 205-2000. General information concerning the Commission may also be obtained by accessing its Internet server at <http://www.usitc.gov>. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205-1810.

**SUPPLEMENTARY INFORMATION:** The Commission instituted this investigation on May 2, 2012, based on a complaint filed by Technology Properties Limited, LLC ("TPL") of Cupertino, California. 77 *Fed. Reg.* 26041 (May 2, 2012). The complaint alleged violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. § 1337, by reason of infringement of certain claims of U.S. Patent Nos. 6,976,623 ("the '623 patent"), 7,162,549 ("the '549 patent"), 7,295,443 ("the '443 patent"), 7,522,424 ("the '424 patent"), 6,438,638 ("the '638 patent"), and 7,719,847 ("the '847 patent"). The complaint further alleged the existence of a domestic industry. The notice of investigation named twenty-one respondents, some of whom have since settled from the

investigation. As a result of these settlements, the '638 patent is no longer at issue, as it has not been asserted against the remaining respondents. The remaining respondents are Acer Inc. of New Taipei City, Taiwan; Canon Inc. of Toyko, Japan; Hewlett-Packard Company of Palo Alto, California; HiTi Digital, Inc. of New Taipei City, Taiwan; Kingston Technology Company, Inc. of Fountain Valley, California; Newegg, Inc. and Rosewill Inc., both of City of Industry, California; and Seiko Epson Corporation of Nagano, Japan.

On October 4, 2012, the ALJ issued a *Markman* order construing disputed claim terms of the asserted patents. Order No. 23. On January 7-11, 2013, the ALJ conducted an evidentiary hearing, and on August 2, 2013, the ALJ issued the final ID. The ALJ found that TPL demonstrated the existence of a domestic industry, as required by 19 U.S.C. § 1337(a)(2), through TPL's licensing investment under 19 U.S.C. § 1337(a)(3)(C). ID at 152-55. The ALJ rejected TPL's domestic-industry showing based upon OnSpec Electronic, Inc.'s research and development, and engineering investments under section 337(a)(3)(C), as well as subsections (a)(3)(A) and (a)(3)(B). *Id.* at 155-57.

The ALJ found that the respondents had not shown that any of the asserted patent claims are invalid. However, the ALJ found that TPL demonstrated infringement of the '623 patent, and not the other patents. With respect to the '623 patent, the ALJ found that TPL demonstrated direct infringement of the asserted apparatus claims (claims 1-4 and 9-12). Accordingly, the ALJ found a violation of section 337 by the four respondents accused of infringing these apparatus claims.

On August 19, 2013, the parties filed petitions for review, and on August 27, 2013, the parties filed responses to each other's petitions.

On October 24, 2013, the Commission issued a notice that determined to review the ID in its entirety. The Commission notice invited briefing from the parties on five enumerated topics, and briefing from the parties and written submissions on remedy, the public interest, and bonding. On November 7, 2013, the parties filed opening briefs and written submissions, and non-party Intel Corp. filed a submission on remedy and the public interest. On November 15, 2013, the parties filed responses to each other's filings.

On December 11, 2013, TPL and Acer filed a joint motion to terminate the investigation as to Acer on the basis of a settlement agreement. Having examined the record of this investigation, including the December 11, 2013 motion and exhibits thereto, the Commission has determined to grant the motion to terminate the investigation as to Acer. *See* 19 C.F.R. § 210.21. The Commission finds that settlements are generally within the public interest and that terminating Acer will not cause an adverse effect on the public health and welfare, competitive conditions in the U.S. economy, the production of like or directly competitive articles in the United States, or U.S. consumers. *See* 19 C.F.R. § 210.50(b)(2).

Having examined the record of this investigation, including the ALJ's final ID, the petitions for review, and the responses thereto, and the briefing in response to the notice of review, the

Commission has determined to terminate the investigation with a finding of no violation of section 337.

The Commission has determined to find no violation of section 337 for the following reasons. For the '623 patent, the Commission adopts the respondents' proposed construction of "accessible in parallel." The Commission therefore reverses the ID's finding of infringement as to that patent. Based upon that claim construction, the Commission also finds that TPL has not demonstrated the existence of an article protected by the '623 patent. The Commission finds that the Federal Circuit's decisions in *InterDigital Communications, LLC v. ITC*, 690 F.3d 1318 (Fed. Cir. 2012), 707 F.3d 1295 (Fed. Cir. 2013) and *Microsoft Corp. v. ITC*, 731 F.3d 1354 (Fed. Cir. 2013), require a complainant to make such a demonstration regardless of whether the domestic industry is alleged to exist under 19 U.S.C. § 1337(a)(3)(A), (B), or (C).

For the '443, '424, and '847 patents, the Commission affirms the ID's determination that TPL failed to demonstrate that the accused products infringe the asserted claims. The Commission also finds for these three patents that TPL failed to demonstrate the existence of a domestic industry because it failed to demonstrate the existence of articles practicing these patents.

TPL did not raise the '549 patent in its petition for review. 19 C.F.R. § 210.43(b)(2). The Commission affirms the ID's noninfringement finding, and its finding that TPL failed to show that its domestic industry products meet certain claim limitations.

The reasons for the Commission's determinations will be set forth more fully in the Commission's opinion.

Commissioner Aranoff dissents from the Commission's finding that TPL was required to demonstrate the existence of articles practicing the asserted patents in order to show a domestic industry based on licensing under 19 U.S.C. § 1337(a)(3)(C).

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. § 1337), and in sections 210.42-46, and 210.50 of the Commission's Rules of Practice and Procedure (19 C.F.R. §§ 210.42-46, 210.50).

By order of the Commission.



Lisa R. Barton  
Acting Secretary to the Commission

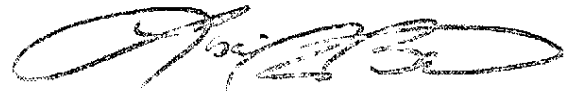
Issued: December 19, 2013

**CERTAIN COMPUTERS AND COMPUTER PERIPHERAL  
DEVICES AND COMPONENTS THEREOF AND  
PRODUCTS CONTAINING THE SAME**

**Inv. No. 337-TA-841**

**PUBLIC CERTIFICATE OF SERVICE**

I, Lisa R. Barton, hereby certify that the attached **NOTICE** has been served upon the following parties as indicated on **December 19, 2013**.



\_\_\_\_\_  
Lisa R. Barton, Acting Secretary  
U.S. International Trade Commission  
500 E Street, SW, Room 112  
Washington, DC 20436

**On Behalf of Complainant Technology Properties Limited  
LLC:**

Anthony G. Simon, Esq.  
**THE SIMON LAW FIRM PC**  
800 Market St., Ste. 1700  
St. Louis, MO 63101

( ) Via Hand Delivery  
( ) Via Express Delivery  
(  ) Via First Class Mail  
( ) Other: \_\_\_\_\_

**On Behalf of Respondent Hewlett-Packard Company:**

Marcia H. Sundeen, Esq.  
**KENYON & KENYON LLP**  
1500 K Street, NW  
Washington, DC 20005

( ) Via Hand Delivery  
( ) Via Express Delivery  
(  ) Via First Class Mail  
( ) Other: \_\_\_\_\_

**On Behalf of Respondent HiTi Digital Inc.:**

Jenny W. Chen, Esq.  
c/o Darrin A. Auito, Esq.  
**WESTERMAN HATTORI DANIELS & ADRIAN LLP**  
1250 Connecticut Avenue, NW, Suite 700  
Washington, DC 20036

( ) Via Hand Delivery  
( ) Via Express Delivery  
(  ) Via First Class Mail  
( ) Other: \_\_\_\_\_

**On Behalf of Respondent Acer Inc.:**

Eric C. Rusnak, Esq.  
**K&L GATES LLP**  
1601 K Street, NW  
Washington, DC 20006-1600

( ) Via Hand Delivery  
( ) Via Express Delivery  
(  ) Via First Class Mail  
( ) Other: \_\_\_\_\_

**CERTAIN COMPUTERS AND COMPUTER PERIPHERAL  
DEVICES AND COMPONENTS THEREOF AND  
PRODUCTS CONTAINING THE SAME**

**Inv. No. 337-TA-841**

Certificate of Service – Page 2

**On Behalf of Respondent Seiko Epson Corporation:**

Louis S. Mastriani, Esq.  
**ADDUCI, MASTRIANI & SCHAUMBERG LLP**  
1133 Connecticut Avenue, NW, 12<sup>th</sup> Floor  
Washington, DC 20036

( ) Via Hand Delivery  
( ) Via Express Delivery  
(  ) Via First Class Mail  
( ) Other: \_\_\_\_\_

**On Behalf of Respondent Canon Inc.:**

David M. Maiorana, Esq.  
**JONES DAY**  
901 Lakeside Avenue  
Cleveland, OH 44114

( ) Via Hand Delivery  
( ) Via Express Delivery  
(  ) Via First Class Mail  
( ) Other: \_\_\_\_\_

**On Behalf of Respondent Kingston Technology Company,  
Inc.:**

Christine Yang, Esq.  
**LAW OFFICES OF S.J. CHRISTINE YANG**  
17220 Newhope Street, Suites 101-103  
Fountain Valley, CA 92708

( ) Via Hand Delivery  
( ) Via Express Delivery  
(  ) Via First Class Mail  
( ) Other: \_\_\_\_\_

**On Behalf of Respondents Newegg Inc. and Rosewill Inc.:**

Kent E. Baldauf, Esq.  
**THE WEBB LAW FIRM**  
420 Ft. Duquesne Boulevard, Suite 1200  
Pittsburgh, PA 15222

( ) Via Hand Delivery  
( ) Via Express Delivery  
(  ) Via First Class Mail  
( ) Other: \_\_\_\_\_

**On Behalf of Respondent Dane Memory, S.A. (a/k/a Dane-Elec  
Memory):**

Jeffrey G. Jacobs, Esq.  
**THE LAW OFFICE OF JEFFREY G. JACOBS PC**  
15770 Laguna Canyon Road, Suite 100  
Irvine, CA 92618

( ) Via Hand Delivery  
( ) Via Express Delivery  
(  ) Via First Class Mail  
( ) Other: \_\_\_\_\_