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Committee of Unsecured Creditors
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9 **UNITED STATES BANKRUPTCY COURT**
10 **NORTHERN DISTRICT OF CALIFORNIA**
11 **SAN JOSE DIVISION**

12 In re:)
)
13 **TECHNOLOGY PROPERTIES LIMITED LLC,**) Case No. 13-51589-SLJ-11
fka TECHNOLOGY PROPERTIES LIMITED)
14 **INC., A CALIFORNIA CORPORATION,**) Chapter 11
fka TECHNOLOGY PROPERTIES LIMITED,)
15 **A CALIFORNIA CORPORATION,**) Date: December 9, 2015
) Time: 2:00 p.m.
16 Debtor.) Place: United States Bankruptcy Court
) 280 S. First Street, Room 3099
17) San Jose, CA 95113
) Judge: Honorable Stephen L. Johnson
18

19 **MOTION FOR ORDER IN AID OF IMPLEMENTATION OF PLAN**

20 **I. SUMMARY OF RELIEF SOUGHT**

21 The Official Committee of Unsecured Creditors (the "Committee") appointed in this Chapter
22 11 case of Technology Properties Limited LLC ("TPL" or the "Reorganized Debtor") seeks an order
23 in aid of implementation of the JOINT PLAN OF REORGANIZATION BY OFFICIAL COMMITTEE OF
24 UNSECURED CREDITORS AND DEBTOR (DATED JANUARY 8, 2015) (the "Plan") confirmed pursuant to
25 the Court's Order entered on March 19, 2015, and effective as of August 28, 2015. Specifically, the
26 Committee seeks an order directing Alliacense, Inc. ("Alliacense") to turn over information which
27 belongs to TPL relating to commercialization of the MMP portfolio as required by the relevant
28 agreements ancillary to the Plan and which is vital for the success of the Plan.

1 The Court will recall that a condition precedent to the confirmation of the Plan was the
2 resolution of all disputes between Phoenix Digital Solutions (“PDS”)¹ and Alliacense relating to the
3 Moore Microprocessor Patent portfolio (the “MMP Portfolio”) which was anticipated to be a major
4 source of revenue for the Reorganized Debtor’s operations and for payments required under the
5 Plan. PDS and Alliacense entered into an AMENDED ALLIACENSE SERVICES AND NOVATION
6 AGREEMENT on July 23, 2014 (the “Novation Agreement”) resolving all issues between Alliacense
7 and PDS. The Novation Agreement provided for, among other things, Alliacense to be the licensing
8 agent to half of the universe of potential licensees and a second licensing agent to be chosen by
9 Patriot to monetize the other half. Under the Novation Agreement, the two licensees would not be in
10 competition and were to cooperate and coordinate their efforts in the best interest of the MMP
11 Portfolio.

12 The Novation Agreement provided upon identification of the second licensing agent,
13 Alliacense would deliver two lists of potential licensees (collectively, the “Licensee Lists”), one of
14 which would be retained by Alliacense and the second of which would turned over to the second
15 licensing agent. In addition, Alliacense was to turn over work product developed as TPL’s
16 subcontractor that was critical to the success of the MMP Portfolio program. Patriot identified the
17 second licensing agent on August 24, 2014. Using various pretexts and stall tactics, Alliacense did
18 not provide the Licensee Lists. As a result, the Joint Disclosure Statement and the Plan required
19 resolution of this issue as a condition precedent to confirmation of the Plan. Almost 6 months later
20 and just days before the confirmation hearing, Alliacense turned over the lists and the Plan was
21 confirmed on February 11, 2015

22 It now appears that Alliacense had no intention of fulfilling the requirements set forth in the
23 Novation Agreement and falsely represented or intentionally concealed this fact from PDS and TPL
24 to further leverage its position to the detriment of the estate and its creditors. While Alliacense
25 apparently turned over a list of potential licenses on the eve of confirmation, it was incomplete and
26 entailed a considerable amount of time in obtaining the complete Licensee Lists. Critically,
27 Alliacense has failed and in fact has expressly refused to turn over the work product so vital to

28 ¹ PDS is a joint venture of Patriot Scientific Corporation (“Patriot”) and TPL.

1 success in monetizing the MMP Portfolio. Alliacense voted in favor of the Plan and received a
2 release of claims of the bankruptcy estate for amounts totaling over \$15 million in pre-petition
3 transfers made by TPL to Alliacense.

4 Alliacense received substantial value in the form of releases by the bankruptcy estate as a
5 result of its fraudulent promise to perform under the Novation Agreement. The work product is an
6 asset of the bankruptcy estate. TPL is an intended beneficiary of the Novation Agreement. The
7 Committee has standing to make this Motion. Both the Code and the Plan expressly provides for
8 transaction for the Court to hear and resolve this dispute. The Court has the power to grant this
9 motion directing Alliacense to fulfill its obligations under the Novation Agreement and to turn over
10 property of the bankruptcy estate.²

11 II. FACTUAL BACKGROUND³

12 A. Patriot Scientific Corporation and TPL form the joint venture PDS.

13 1. PDS was formed in June 2005 by Patriot and TPL as a result of a settlement of
14 litigation over the ownership of the MMP Portfolio and related intellectual property. TPL and
15 Patriot each had a 50% member interest in PDS (which is still the case), and PDS was managed by a
16 three-member committee comprised of a TPL representative (Dan Leckrone until he was replaced in
17 2014 by Swamy Venkidu); a Patriot representative (during recent years, Carl Johnson); and a third
18 “independent” manager. The PDS Operating Agreement governs the limited liability company and
19 identifies each member’s rights and obligations with respect to the joint venture, including TPL’s
20 right to proceeds of the MMP Portfolio from PDS. See DISCLOSURE STATEMENT RE JOINT PLAN OF
21 REORGANIZATION BY OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND DEBTOR (DATED
22 JANUARY 8, 2015) [DKT. NO. 639] (the “Disclosure Statement”), p. 56. In addition, Patriot, PDS and
23 TPL entered into a Commercialization Agreement (the “2005 ComAg”) granting TPL exclusive
24 rights to commercialize the MMP Portfolio as well as a licensing fee in an amount equal to 15% of
25

26 ² The Committee makes this motion without prejudice and reserving all rights to seek further
27 remedies and relief, including actions for damages and punitive damages against Alliacense and its members
28 and officers for fraud and deceit and its wilful actions in connection with the confirmation and
implementation of the Plan.

³ The facts set forth in this section are supported by the DECLARATION OF CLIFFORD FLOWERS IN
SUPPORT OF MOTION IN AID OF IMPLEMENTATION OF PLAN (the “Flowers Declaration”).

1 the gross proceeds of the MMP licensing program less certain adjustments and the payment of all
2 third-party expenses.

3 **B. Conflicts arose which resulted in modifications to PDS operations.**

4 2. In 2010, Patriot and TPL had a substantial disagreement over the TPL's patent
5 licensing activities. Patriot claimed that TPL diverted MMP licensing revenue away from PDS to
6 itself by combining negotiations of MMP patent licenses with other patent portfolios that TPL
7 owned. That dispute resulted in litigation that settled in late 2010. Shortly after that dispute, the
8 PDS independent manager, Bob Neilson, resigned his position. This left PDS with only Dan
9 Leckrone and Carl Johnson as its managers.

10 3. Until July 2012, TPL fulfilled its MMP commercialization responsibilities under the
11 2005 ComAg by having Alliacense perform the patent licensing function. Alliacense is a limited
12 liability company whose sole member is Dan Leckrone, who is also the sole member of TPL. A
13 series of conflicts arose over payments owed between the parties under the various agreements,
14 which have resulted in a number of agreements through 2012. The parties agreed to amend the
15 commercialization program in July of 2012 to resolve additional disputes between the parties, the
16 result of which is that PDS licenses the MMP Portfolio instead of TPL and TPL no longer manages
17 the MMP licensing program. PDS contracted directly with Alliacense to manage and license the
18 MMP Portfolio, resulting in the Alliacense Services Agreement (the "Alliacense ComAg"). PDS
19 and Patriot then had multiple disagreements with Alliacense about its performance and entitlement
20 to payment for services and licensing fees under the Alliacense ComAg.

21 **C. TPL files the bankruptcy case.**

22 4. TPL filed its voluntary petition on March 20, 2013. PDS and Patriot continued to
23 experience multiple disputes with TPL and Alliacense. Beginning in the first half of 2014, lengthy
24 negotiations ensued between PDS and Alliacense to resolve the many disagreements between them
25 under the Alliacense ComAg. These resulted in the Novation Agreement. This document attempted
26 to settle any and all disputes between PDS and Alliacense going forward.

27 5. Critical to this Motion, the Novation Agreement provided that that Patriot would
28 identify a second licensing company with which PDS would enter into a commercialization

1 agreement pursuant to which such company would solicit infringing companies to enter into
2 licensing agreements with PDS for the MMP Portfolio. Once Patriot identified the second licensing
3 company, Alliacense was required to identify all prospective MMP licensing entities and prepare the
4 Licensee Lists from which Patriot and its second licensing company would choose which list they
5 intended to pursue. In Section 3 (f)(iii) of the Novation Agreement, Alliacense was also required to
6 provide certain work product (the “Work Product”) to Patriot for Patriot to provide to the second
7 licensing company for use in negotiating licenses with the entities named in the second list.

8 6. On August 24, 2014, Patriot designated Dominion Harbor Group (“DHG”) as the
9 second licensing company. While Patriot contends that Alliacense should have started assembling
10 the lists immediately after the execution of the Novation Agreement, Alliacense was certainly
11 required to deliver the lists immediately after DHG was identified. However, after the Novation
12 Agreement was executed and PDS paid the settlement sums as required to Alliacense, Alliacense
13 devised unique and dubious ways to avoid performing its obligations. Alliacense initially claimed
14 DHG had a “conflict” because one of its employees once worked for a company which manufactures
15 microprocessor chips; however, Alliacense employed people over the years that had such conflicts
16 and never appeared then to have any concern. Patriot hired an ethics expert recommended by TPL
17 and obtained assurances that the conflict was only a minor distraction and with which could be easily
18 dealt.

19 7. After the “conflicts issue” had been resolved, Alliacense still refused to turn over the
20 lists. This time, Alliacense contended that it had not been “formally” notified of DHG’s retention.
21 See Flowers Declaration, Exhibits F and G. Alliacense claimed that it had not prepared the lists but
22 stated that they would be forthcoming “shortly”. By that time, PDS had been pressing Alliacense for
23 the lists for four weeks. On October 28, 2014, PDS notified Alliacense that it was in breach of the
24 Novation Agreement for failing to timely deliver the lists. Given the importance of these lists and
25 the MMP Portfolio and the disputes that followed and detailed in the Flowers Declaration, the
26 Committee insisted that confirmation of any plan of reorganization be conditioned upon resolution
27 of all disputed issues between Patriot, PDS, TPL and Alliacense.

28 8. Alliacense next claimed that it would need two hours per prospect (or nearly 1000

1 hours) to prepare the two lists that should have been started in July 2014, and certainly should have
2 issued “once” DHG was identified in September. To move matters along, PDS suggested that
3 Alliacense roll out the lists in waves if it really was determined to spend two hours on each name.
4 At one point Mike Davis of Alliacense agreed to do this right away. However, Mac Leckrone,
5 president of Alliacense, took the position that only the entire list would be produced when ready,
6 with no indication when it would be ready.

7 9. PDS then also pointed out (as did this Court in various hearings) that the prospects
8 could be randomly divided and mathematically no one could then really say which list would be
9 more valuable. Alliacense rejected this suggestion.

10 **D. The Plan is confirmed.**

11 10. Finally, on February 2, 2015, just days before the Confirmation hearing, Alliacense
12 delivered the two lists (or what appeared to be the two lists) and voted to confirm the Plan. Based on
13 that, at the confirmation hearing on February 11, 2015, Patriot did not speak up through counsel at
14 the hearing that there were any disputes underway with Alliacense (since at that point there appeared
15 to be none). DHG was provided one of the two lists prepared by Alliacense. DHG evaluated the
16 two lists and selected list No. 1. Alliacense was promptly so notified.

17 11. Among other things, the Plan assumed the MMP-related contracts to which TPL was
18 a party based on the resolution of all controversies existing between (i) PDS, TPL and Patriot and (ii)
19 Alliacense, PDS and Agility; assumed the Alliacense Services Agreement as amended by the
20 Novation Agreement; and released Alliacense from all claims based on its affirmative vote in favor
21 of the Plan.

22 **E. The Alliacense lists were incomplete and did not include work product**
23 **required to be delivered.**

24 12. Shortly after the confirmation hearing, PDS discovered that Alliacense unilaterally
25 held back the names of 57 prospects from the lists. PDS later learned from Alliacense that it had
26 been investigating those 57 prospects for purposes of initiating a new round of litigation. After a
27 series of difficult communications on that point, the 57 names were finally also delivered by
28 Alliacense in two more lists, one of which was assigned to DHG, on February 25, 2015.

1 13. Once DHG chose a list, Alliacense was then required to turn over its work product
2 related to the 200+ prospects now assigned to DHG. (See ¶ 3(f)(iii) of the Novation Agreement.)
3 With this information, DHG would know the date the prospects were notified of infringement, the
4 revenue base to negotiate the royalty, the basis for infringement of each of the prospect's products,
5 and the licensing negotiation history with each prospect. However, Alliacense resumed the same
6 stall tactics as it did before confirmation of the Plan. Mr. Davis on behalf of Alliacense made
7 various promises to turn over the information “next week” and bemoaned that he had to “redact”
8 information (for reasons that are not clear), and claimed that he was working on assembling a huge
9 volume of information.

10 14. Eventually on or about late March, 2015, Alliacense informed TPL that Alliacense
11 was taking the position that it was not going to turn over the work product unless PDS renegotiated
12 the termination provisions of the Novation Agreement. See Flowers Declaration Par. 35. Following
13 some discussions, PDS decided to terminate the Alliacense ComAg Agreement, as amended by the
14 Novation Agreement.

15 15. In August 2015, Alliacense, through Mac Leckrone in correspondence to PDS’
16 former litigation counsel James Otteson, claimed that the Work Product was its “proprietary
17 materials” and demanded that Mr. Otteson inform PDS’ present litigation counsel that its continued
18 possession of the Work Product was “wrongful”. See Exhibit Q to Flowers Declaration. In his
19 response, Mr. Otteson cogently explained that the Work Product was not proprietary to Alliacense,
20 but in fact was merely data which was prepared or created by Alliacense as a vendor to PDS for use
21 by PDS in connection with the enforcement of the MMP Portfolio.

22 III. LEGAL AUTHORITY

23 16. The Committee seeks an order from this Court in aid of implementation of the Plan.
24 Performance of the Novation Agreement is vital to the success of the Plan. First, the Work Product
25 is property of the Bankruptcy Estate. Second, enforcement of the Novation Agreement, an ancillary
26 agreement under the Plan, is vital to the success of the Plan. TPL, as is Patriot (see Flowers
27 Declaration, Exhibit J) are intended beneficiaries of the Novation Agreement. Alliacense received a
28 release under the Plan, voted in favor of the Plan, knew that the Plan could not be confirmed unless

1 its controversies with Patriot/PDS were resolved, delayed until the last second to turn over the lists
2 so that Patriot was satisfied that the disputes were resolved, but turned over an incomplete list and
3 now refuses to turn over vital work product as required under the Novation Agreement in an attempt
4 to renegotiate the very agreement that was required to be resolved as a condition of confirmation.
5 Under both the terms of the Plan and relevant Bankruptcy Code authority, the Court has the power
6 to, and should, direct Alliacense to turn over the relevant documents.

7 **A. The Bankruptcy Code authorizes the Court to issue orders in aid of**
8 **implementation of the Plan.**

9 17. Acting pursuant to Bankruptcy Code Section 1142(b), the court retains jurisdiction to
10 issue any order necessary for the implementation of the plan. It provides as follows:

11 The court may direct the debtor and any other necessary party to
12 execute or deliver or to join in the execution or delivery of any
13 instrument required to effect a transfer of property dealt with by a
14 confirmed plan, and to perform any other act, including the satisfaction
of any lien, that is necessary for the consummation of the plan.

15 18. This authority includes jurisdiction to order third parties to perform acts necessary to
16 consummate a plan. In *In re Erie Hilton Joint Venture*, 137 B.R. 165 (Bankr. W.D. Pa. 1992), as
17 part of the plan, certain investors committed to fund the debtor's reorganization plan. After eight
18 months, the funding had not been paid. In light of the debtor's reluctance to pursue the investors, the
19 committee there filed an adversary proceeding to compel the investors to proceed with the funding.
20 The court found that the committee had standing to pursue the action and that relief was available
21 under § 1142(b).

22 19. In this case, resolution of the controversies between Patriot, PDS, TPL and Alliacense
23 was a condition precedent for confirmation of the Plan. Based on the actions of Alliacense in voting
24 for the Plan and Patriot's acknowledgment that the controversies were resolved, the Plan was
25 confirmed. However, Alliacense subsequently failed to satisfy its obligations as it agreed to do and,
26 it appears, never intended to do so. Fulfillment of these obligations is vital to the success of the
27 Plan. Alliacense's failure and refusal to perform, immediately upon confirmation of the Plan, is
28 precisely a circumstance that § 1142(b) was intended to remedy. Alliacense voted in favor of the

1 Plan and received valuable consideration in the form of a release of claims held by the bankruptcy
2 estate. Under § 1142(b), the Court has the authority to order Alliacense to fulfill the obligations it
3 undertook under the Novation Agreement in order to implement the Plan. *Parker v. MSB Energy,*
4 *Inc.* (In re MSB Energy, Inc.) (Bankr. S.D. Tex 2010) 438 BR 571. Where lessor of oil and gas
5 rights to bankruptcy debtor asserted that leases were terminated and were not property of debtor's
6 bankruptcy estate, bankruptcy court retained jurisdiction to resolve dispute after confirmation of
7 debtor's reorganization plan since plan provided for payment to creditors from lease interests, and
8 thus dispute was core proceeding.

9 **B. The Plan vests the Court with jurisdiction to resolve controversies**
10 **concerning, among other things, any agreements referred to in the Plan**
11 **or executed in contemplation of or to implement the Plan.**

12 20. In addition to § 1142(b), the Plan provides for the Court to retain jurisdiction to
13 decide controversies such as the one here. Section 10 of the Plan provides in pertinent part as
14 follows:

15 . . . the Bankruptcy Court shall retain and have all authority and
16 jurisdiction as is allowed under the Bankruptcy Code and other
17 applicable law to enforce the provisions, purposes, and intent of this
18 Plan, including matters or proceedings that relate to: . . .

19 (d) The title, rights or interests of the Debtor or the Reorganized
20 Company in any property, *including the recovery of all assets and*
21 *property of the Bankruptcy Estate wherever located;*

22 (h) Resolution of controversies and disputes, including the correction
23 of any mistake, defect, or omission regarding consummation,
24 interpretation or enforcement of the Plan, the Confirmation Order, and
25 *any agreements referred to in the Plan or executed in contemplation of*
26 *or to implement the Plan;...(emphasis added)*

27 21. The provisions of a confirmed Chapter 11 plan bind the debtor, any entity issuing
28 securities under the plan, any entity acquiring property under the plan, and any creditor, equity
security holder, or general partner in the debtor, whether or not the creditor, equity security holder,
or general partner has accepted the plan. Thus, once an order is entered confirming a plan, it is a
final binding order accorded res judicata effect as to all issues and claims arising thereunder. 11
U.S.C. § 1141(a)⁴. *See DNK Properties Crystal Lake v. Mutual Life Ins. Co. of New York*, 112 F.3d

⁴ Except as provided in 11 U.S.C. § 1141(d)(2) and (d)(3)

1 257, 259 (7th Cir. 1997) (citing *In re Heritage Hotel Partnership I*, 160 B.R. 374, 377 (9th Cir. BAP
2 1993), affirmed 59 F.3d 175 (9th Cir. BAP 1995); *Bizzell V. Hemingway*, 548 F.2d 505 (4th Cir.
3 1977); see also *Katchen v. Landy*, 382 U.S. 323, 334 (1966) (“the ordinary rules of res judicata and
4 collateral estoppel apply to the decisions of bankruptcy courts”) (citations omitted).

5 22. The Work Product is property of the Bankruptcy Estate. TPL is a joint venturer under
6 the PDS Operating Agreement and responsible for the prosecution of the MMP Litigation.
7 Alliacense has no claim to the Work Product as “proprietary”, but instead created the Work Product
8 in the course of its duties and obligations to its vendee PDS. Alliacense has no right to refuse
9 turnover of the Work Product. Further, execution of the Novation Agreement and resolution of
10 disputes arising thereunder were conditions precedent to confirmation of the Plan. As such, the
11 Novation Agreement is a vital component to the success of the Plan. Alliacense’s delivery of the
12 lists in the days just prior to the confirmation hearing signaled the resolution of controversies
13 required as a condition precedent in confirming the Plan; yet Alliacense immediately reneged on its
14 promises under the Novation Agreement and revived the controversies. Under both the Bankruptcy
15 Code and the terms of the confirmed Plan, this Court has the power to resolve these controversies
16 arising under the Novation Agreement.

17 **C. Alliacense is required to deliver Work Product under the Novation**
18 **Agreement.**

19 23. The Novation Agreement provides at Section 3(f)(iii) that Alliacense shall deliver the
20 Work Product to Patriot for delivery to DHG. Alliacense has simply stated that it will not do so
21 unless and until the Novation Agreement is renegotiated. It now appears that Alliacense had no
22 intention of resolving the issues among the various parties, but instead is leveraging performance of
23 its obligations under the Novation Agreement by withholding the required documents to force PDS
24 to renegotiate the very same Novation Agreement, the execution and performance of which were
25 conditions precedent to the confirmation of the Plan, while retaining the benefit of a release of
26 valuable claims held by the estate. In so doing, Alliacense is intentionally thwarting the
27 commercialization efforts to monetize the MMP Portfolio and thereby thwarting the implementation
28 of the Plan in order to get what it wants. This is a blatant disregard of Alliacense’s obligations under

1 the Novation Agreement. This Court should hold Alliacense to its commitment to perform the
2 Novation Agreement when it voted for the Plan and received its release.

3 **IV. CONCLUSION**

4 Alliacense is in possession of property of the Bankruptcy Estates which it refuses to turnover.
5 Alliacense has willfully failed to honor its obligations under the Novation Agreement and has
6 actively interfered with the Debtor's efforts to implement the Plan. For the foregoing reasons, the
7 Court should order Alliacense to turn over the Work Product by releasing it to PDS.

8 Dated: October 29, 2015

DORSEY & WHITNEY LLP

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10 By: /s/ Robert A. Franklin
11 Robert A. Franklin
12 Attorneys for Official Committee
13 of Unsecured Creditors
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