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5 Attorneys for  
6 The Simon Law Firm, P.C.

7  
8 UNITED STATES BANKRUPTCY COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10 SAN JOSE DIVISION

11  
12 In re  
13 TECHNOLOGY PROPERTIES LIMITED  
14 LLC, fka TECHNOLOGY PROPERTIES  
15 LIMITED INC., a California corporation,  
16 Debtor.

Case No. 13-51589-SLJ-11

Chapter 11

**THE SIMON LAW FIRM, P.C. EX PARTE  
APPLICATION TO FILE MOTION FOR  
CLARIFICATION OF PLAN TERMS  
UNDER SEAL**

**NO HEARING REQUIRED**

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19 The Simon Law Firm, P.C. Ex Parte Application (the “Application”) to File  
20 Motion for Clarification of Plan Terms Under Seal in the above Chapter 11 case respectfully  
21 represents:

22 1. Technology Properties Limited LLC (“TPL”) filed a voluntary petition  
23 under chapter 11 on March 20, 2013. No trustee has been appointed and, except as provided in  
24 the Joint Plan, *infra*, TPL is a debtor-in-possession within the meaning of 11 U.S.C. §§1107 and  
25 1108.

26 2. On May 2, 2013, this Court entered the Order Appointing The Simon Law  
27 Firm, P.C. (“Simon Law Firm”) as Special Counsel on Contingency Fee Basis Pursuant to 11  
28 U.S.C. §327(e) and 11 U.S.C. §328(a). See, docket no. 107. The Simon Law Firm was

1 appointed as special counsel for TPL to prosecute the ITC Proceeding and Litigation Matters.  
2 See, paragraphs 2 and 3 of the Ex Parte Application for Employment of The Simon Law Firm,  
3 P.C. as Special Council on Contingency Fee Basis Pursuant to 11 U.S.C. §327(e) and §328(a).  
4 See, docket no. 79. During the course of the Litigation Matters, the owner of the COREFlash  
5 Portfolio, MCM Portfolio LLC (“MCM”) was added as a party plaintiff. Due to the alignment in  
6 the litigation of MCM and TPL as patent owner and exclusive licensee respectively, and based on  
7 the language of The MCM Commercialization Agreement, the Simon Law Firm agreed to  
8 represent MCM in the Litigation Matters with the consent of TPL in April 2014.

9           3.       The Chapter 11 Plan of Reorganization re Joint Plan of Reorganization by  
10 Official Committee of Unsecured Creditors and Debtor was filed in this matter on January 8,  
11 2015 (docket no. 637), and confirmed by court order dated March 19, 2015 (docket no. 670).

12           4.       A dispute has now arisen between MCM and TPL regarding which of the  
13 two plaintiffs has exclusive authority to commercialize and negotiate licenses to the COREFlash  
14 Portfolio patents and accordingly settlement terms. The Simon Law Firm’s Motion for  
15 Clarification of Plan Terms (the “Motion”) will address this dispute with the Court, however in  
16 order to file such Motion, the Simon Law Firm must address certain terms of the MCM  
17 Commercialization Agreement which contains confidential commercial information. Thus, the  
18 Simon Law Firm requests that a sealing order be issued enabling the Simon Law Firm to redact  
19 all references to the MCM Commercialization Agreement to protect the confidential commercial  
20 information.

21           5.       Although there is a presumption that all documents filed in an action in  
22 Bankruptcy Court should be accessible by the public, 11 U.S.C. §107(b) provides for certain  
23 materials to be filed under seal:

24                   “[o]n request of a party in interest, the bankruptcy court shall, and  
25                   on the bankruptcy court’s own motion, the bankruptcy court may –  
26                   (1) protect an entity with respect to a trade secret or confidential  
27                   research, development, or commercial information;...”.

27 The facts that are set forth in the MCM Commercialization Agreement are confidential  
28 commercial information which if required to be made publically available would adversely affect

1 potential settlements and/or litigation and licensing involving both MCM and TPL.

2           6.       In addition, the Court in its general grant of equitable powers pursuant to  
3 11 U.S.C. §105(a) may issue any order or process that is necessary or appropriate to carry out the  
4 provisions of the Bankruptcy Code. Limiting public dissemination of the content of the MCM  
5 Commercialization Agreement is consistent with the principles of the Bankruptcy Code because it  
6 will serve to protect the value of the infringement claims and licenses, which are subject to the  
7 terms of the confirmed Joint Plan.

8           7.       The Simon Law Firm requests that it be permitted to file and serve redacted  
9 versions of the Motion for Clarification of Plan Terms and supporting pleadings upon all persons  
10 required to receive such notice in this bankruptcy case (except that counsel for the United States  
11 Trustee shall be served as described in paragraph 7 below). The Simon Law Firm seeks  
12 permission to lodge complete unredacted versions of the Motion pleadings in a separately sealed  
13 envelope with the Court in chambers so that the Court will be able to review the unredacted  
14 versions of the documents. The cover page identifying the contents of the unredacted document  
15 will be attached to the front of a sealed envelope and in the upper right hand corner (where the  
16 Clerk would normally place the filing stamp) stating, “Sealed Pursuant to Order Dated  
17 \_\_\_\_\_ . Do Not File. To be lodged in the Chambers of the Honorable Stephen L.  
18 Johnson,” referring to the date that the Court enters the order approving this Application.

19           8.       The Simon Law Firm proposes to serve counsel for the United States  
20 Trustee with redacted copies of the pleadings and exhibits, and if so requested will provide the  
21 unredacted copies to the United States Trustee, subject to the United States Trustee maintaining  
22 the un-redacted documents in confidence. Therefore, the Simon Law Firm also requests that the  
23 Court provide in its order that any unredacted opposition and reply shall likewise be filed under  
24 seal according to the provisions of paragraph 6. An unredacted version of any opposition and  
25 reply shall only be served upon counsel for the Simon Law Firm. To the extent any other person  
26 must be served with any opposition and reply pleadings, such persons shall be served with a  
27 redacted version of such documents according to the same provisions in paragraph 6 and the  
28 redacted version shall be filed with the Court.

1                   WHEREFORE, the Simon Law Firm prays that this Court enter its order as  
2 follows:

3                   A.     Approving this Ex Parte Application.

4                   B.     Enter its order providing that the Simon Law Firm may file and serve a  
5 redacted copy of its pleadings on all persons required to be served with such pleadings. The  
6 unredacted version of the same documents shall be concurrently lodged in chambers in a  
7 separately sealed envelope and a copy of the unredacted version shall also be served upon counsel  
8 for the United States Trustee. The cover page identifying the contents of the unredacted document  
9 shall be attached to the front of the sealed envelope and in the upper right hand corner shall state  
10 “Sealed Pursuant to Order Dated \_\_\_\_\_. Do Not File. To be lodged in the  
11 Chambers of the Honorable Stephen L. Johnson Only,” referring to the date that the Court enters  
12 the order approving this Application.

13                  C.     Opposition and reply, if any, shall likewise be filed under seal according to  
14 the provisions of paragraph B above. An unredacted version of any opposition and reply shall  
15 only be served upon counsel for the Simon Law Firm. To the extent any other person must be  
16 served with opposition and reply, such persons shall be served with a redacted version of such  
17 documents and the redacted version shall be filed with the Court; and,

18                  D.     For such other and further relief as the Court deems just and proper.

19  
20 Dated: March 22, 2016

LUBIN OLSON & NIEWIADOMSKI LLP

21  
22 By:           /s/ Dennis D. Miller          

23 Dennis D. Miller  
24 Attorneys for  
25 The Simon Law Firm, P.C.

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15 LIMITED INC., a California corporation,  
16 Debtor.

Case No. 13-51589-SLJ-11

Chapter 11

**DECLARATION OF ANTHONY SIMON  
IN SUPPORT OF EX PARTE  
APPLICATION TO FILE THE SIMON  
LAW FIRM, P.C.'S MOTION FOR  
CLARIFICATION OF PLAN TERMS  
PLEADINGS UNDER SEAL**

**NO HEARING REQUIRED**

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20 I, Anthony G. Simon, declare and state as follows:

21 1. I am an attorney at The Simon Law Firm, P.C., ("Simon Law Firm")  
22 counsel of record for Plaintiff Technology Properties Limited LLC ("TPL") in the matters of *TPL*  
23 *v. Canon, Inc., et al.*, *TPL v. Hewlett-Packard Company* and *TPL v. Seiko Epson Corporation, et*  
24 *al.*, all matters currently pending in the United States District Court, Northern District of  
25 California.

26 2. If called to testify as to the facts set forth herein, I could and would testify  
27 competently thereto as the facts set forth herein are personally known to me to be true, and as to  
28 those matters set forth on information and belief, I believe those matters to be true.

1           3.       Prior to the filing of the Chapter 11 bankruptcy case, the Simon Law Firm  
2 had been retained to represent Technology Properties Limited LLC (the “Debtor”) and had filed  
3 multiple lawsuits against Infringers of the COREFlash Portfolio. This representation was  
4 pursuant to a pre-petition agreement between the Debtor and MCM Portfolio LLC (“MCM”) and  
5 related to the MCM Commercialization Agreement. See, Dckt No. 79.

6           4.       After the bankruptcy petition was filed on March 20, 2013, the Debtor  
7 applied for an order of employment to retain the Simon Law Firm as Special Counsel. See Dckt.  
8 No. 79. The Court entered the order approving the employment of the Simon Law Firm as  
9 Special Counsel on May 2, 2013. See Dckt No. 107.

10          5.       Because the interests of the Debtor and MCM align in the Litigation  
11 Matters, as defined in the Motion for Clarification of Plan Terms (the “Motion”), and based on  
12 the MCM Commercialization Agreement, in April 2014, the Simon Law Firm agreed to represent  
13 MCM as co-plaintiff with the Debtor by agreement of the Debtor and MCM.

14          6.       Since the entry of the order confirming the Chapter 11 Plan of  
15 Reorganization Re: Joint Plan of Reorganization by Official Committee of Unsecured Creditors  
16 and Debtor (“Joint Plan”) on March 19, 2016, a dispute has arisen between the Debtor and MCM  
17 over who has the exclusive authority to commercialize and negotiate licenses to the COREFlash  
18 Portfolio patents which now impedes the Litigation Matters. This issue requires the Court’s  
19 interpretation of the language of the Joint Plan. Recently, MPM has terminated the Simon Law  
20 Firm as its counsel.

21          7.       The Simon Law Firm intends to file its Motion, but in doing so, must  
22 disclose certain information of the MCM Commercialization Agreement to the Court, which is  
23 confidential commercial information, and if disclosed would have damaging effects on the  
24 Litigation Matters, including infringement and licenses. Thus, the Simon Law Firm requests the  
25 Court to grant the sealing order terms and conditions as requested in the Ex Parte Application,  
26 filed concurrently herewith.

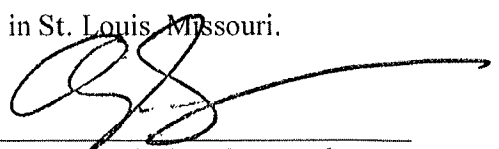
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I declare under penalty of perjury under the laws of the United States of America  
that the foregoing is true and correct.

Executed this 21st day of March 2016 in St. Louis, Missouri.

  
\_\_\_\_\_  
ANTHONY G. SIMON, Declarant

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**ORDER APPROVING THE SIMON LAW  
FIRM, P.C.'s EX PARTE APPLICATION  
TO FILE MOTION FOR CLARIFICATION  
OF PLAN TERMS UNDER SEAL**

**NO HEARING REQUIRED**

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18  
19 The Simon Law Firm, P.C. EX PARTE APPLICATION TO FILE MOTION FOR  
20 CLARIFICATION OF PLAN TERMS UNDER SEAL (the "Application") having been filed by  
21 The Simon Law Firm, P.C. ("Simon Law Firm") regarding its Motion for Clarification of Plan  
22 Terms and the Declaration of Anthony Simon, filed in support thereof, has been considered by the  
23 Court and good cause appearing,

24 IT IS HEREBY ORDERED that:

- 25 1. The Application is approved.  
26 2. The Simon Law Firm may file and serve a redacted copy of its pleadings in  
27 connection with the Simon Law Firm's Motion for Clarification of Plan Terms on all persons required to be  
28 served with such pleadings. The unredacted version of the same documents shall be concurrently lodged



1 in chambers in a separately sealed envelope and a copy of the unredacted version shall also be served upon  
2 counsel for the United States Trustee. The cover page identifying the contents of the unredacted document  
3 shall be attached to the front of the sealed envelope and in the upper right hand corner shall state "Sealed  
4 Pursuant to Order Dated \_\_\_\_\_. Do Not File. To be lodged in the Chambers of the  
5 Honorable Stephen L. Johnson Only," referring to the date that the Court enters the order approving this  
6 Application.

7 3. Opposition and reply, if any, shall likewise be filed under seal according to the  
8 provisions of paragraph 2 above. An unredacted version of any opposition and reply shall only be served  
9 upon counsel for the Simon Law Firm. To the extent any other person must be served with opposition and  
10 reply, such persons shall be served with a redacted version of such documents and the redacted version  
11 only shall be filed with the Court.

12 \*\*END OF ORDER\*\*  
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**COURT SERVICE LIST**

ECF Recipients

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Chapter 11

**CERTIFICATE OF SERVICE**

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19 I, Catherine Montoya, declare:

20 I am a citizen of the United States and employed in San Francisco County, California. I  
21 am over the age of eighteen years and not a party to the within-entitled action. My business  
22 address is Transamerica Pyramid, 600 Montgomery Street, 14th Floor, San Francisco, California  
23 94111. On March 22, 2016, I served a true and correct copy of the following document(s):

24 **THE SIMON LAW FIRM, P.C. EX PARTE APPLICATION**  
25 **TO FILE MOTION FOR CLARIFICATION OF PLAN**  
**TERMS UNDER SEAL;**

26 **DECLARATION OF ANTHONY SIMON IN SUPPORT OF**  
27 **EX PARTE APPLICATION TO FILE THE SIMON LAW**  
28 **FIRM, P.C.'S MOTION FOR CLARIFICATION OF PLAN**  
**TERMS PLEADINGS UNDER SEAL; and**

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**ORDER APPROVING THE SIMON LAW FIRM, P.C.'s EX  
PARTE APPLICATION TO FILE MOTION FOR  
CLARIFICATION OF PLAN TERMS UNDER SEAL**



**(BY NEF)** To be served by the Court Via Notice of Electronic Filing (“NEF”): Pursuant to controlling General Orders(s) and Local Bankruptcy Rule(s) (“LBR”), the foregoing document will be served by the court via NEF to all those person(s) listed on the Electronic Mail Notice List.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 22, 2016, at San Francisco, California.

*/s/ Catherine Montoya*

\_\_\_\_\_  
Catherine Montoya