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10 **UNITED STATES BANKRUPTCY COURT**
11 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

12 San Jose Division

13 In re

14 **TECHNOLOGY PROPERTIES**
15 **LIMITED LLC**

16 Debtor

Case No. 13-51589 SLJ

Chapter 11

DATE:

TIME: 10:30 a.m.

JUDGE: Honorable Stephen L. Johnson

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21 **MOTION TO CLARIFY AND IMPLEMENT PRIOR ORDERS**
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1 TO: THE HONORABLE STEPHEN L. JOHNSON,
2 UNITED STATES BANKRUPTCY JUDGE

3 The Motion of MCM Portfolio, LLC (“MCM”) to clarify and implement the Court’s prior Orders
4 respectfully represents as follows:

5 1. MCM owns a portfolio of patents (the "CORE Flash Patents") and a separate family of
6 patents (the “‘549 Patent,” and collectively, the “MCM Patents”).
7

8 2. In 2006, MCM entered into a Commercialization Agreement with Technology Properties
9 Limited, LLC (“TPL”) pursuant to which TPL committed to use commercially reasonable efforts to
10 solicit license agreements from entities likely using the intellectual property covered by the MCM
11 Patents.

12 3. On March 20, 2013, TPL filed a voluntary petition for reorganization under Chapter 11 of
13 the Bankruptcy Code. During the course of the case, TPL indicated a desire to perform under the
14 Commercialization Agreement and ultimately to assume the Commercialization Agreement.
15

16 4. During the course of the case, MCM asserted that TPL was breaching its duties under the
17 Commercialization Agreement with respect to the ‘549 Patent. Thereafter, MCM and TPL negotiated an
18 agreement under which the ‘549 Patent would be carved out of the Commercialization Agreement and
19 returned to MCM, enabling MCM to pursue and fund the appeal, which MCM continues to do. TPL’s
20 Motion; Dkt #614; sought to reconvey all right, title and interest in and to the ‘549 Patent to MCM such
21 that thereafter TPL would no longer have any right, title or interest in it. The Court’s Order; Dkt #632
22 (the “‘549 Order”); so provided, and further provided that the relief granted in the ‘549 Order could not
23 be modified thereafter; e.g., through a Plan of Reorganization.
24

25 5. Notwithstanding the ‘549 Order, TPL has asserted a right to grant licenses to the ‘549
26 Patent and to intercept funds paid by licensees with respect to the ‘549 Patent.

27 6. TPL sought and obtained an Order confirming its Plan of Reorganization; Dkt #670; (the
28

1 “Confirmation Order”) pursuant to which the Commercialization Agreement, as modified by the
2 “Waterfall” set forth in Exhibit C to the Plan, was assumed.

3 7. Notwithstanding the Confirmation Order, TPL asserts rights (a) unilaterally to alter the
4 Waterfall, and (b) unilaterally to retain, offset or charge funds otherwise payable to MCM under the
5 Waterfall.
6

7 8. MCM submits that it would be appropriate for the Court to order TPL to conform its
8 conduct to the Court’s ‘549 Order and Confirmation Order.

9 WHEREFORE, MCM prays that the Court make and enter its Order:

10 1. Determining that, under the circumstances, parties in interest have received adequate
11 notice and an opportunity to be heard;

12 2. Requiring TPL to conform its conduct to the Court’s ‘549 Order and Confirmation Order;
13 and
14

15 3. Granting such other and further relief as may be just and proper.

16 DATED: April 12, 2016

Respectfully submitted,

17 ST. JAMES LAW, P.C.

18
19 By: /s/ Michael St. James .
Michael St. James
20 Counsel for MCM Portfolio LLC
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9 **UNITED STATES BANKRUPTCY COURT**
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11 San Jose Division
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22 **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF**
23 **MOTION TO CLARIFY AND IMPLEMENT PRIOR ORDERS**
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1 **I. INTRODUCTION**

2 Two Orders of this Court modified and affected the Commercialization Agreement between
3 MCM Portfolio, LLC (“MCM”) and Technology Properties Limited, LLC (“TPL”).

4 One Order carved the ‘549 Patent out of the Commercialization Agreement and returned it to the
5 exclusive control of MCM; notwithstanding that Order, TPL has asserted a right to license the ‘549
6 Patent, and to give away licenses to the ‘549 Patent "for free."

7
8 Second, the Court's Order confirming TPL's Plan of Reorganization provided for the
9 modification and assumption by TPL of the Commercialization Agreement between MCM and TPL, but
10 TPL asserts a right unilaterally to alter the economic "waterfall" contained in the Plan and to retain,
11 withhold and reallocate payments due to MCM under the Commercialization Agreement, effectively
12 repudiating the commitments contained in the Plan.

13 TPL's interpretation of the Court's Orders threatens the viability of the parties' relationship under
14 the Commercialization Agreement. MCM submits that it is appropriate for the Court to clarify and
15 implement its Orders, so as to enable the parties to conform their conduct to them.
16

17
18 **II. FACTS**

19 **A. *The Commercialization Agreement***

20 MCM owns a portfolio of patents (the "CORE Flash Patents") and a separate family of patents
21 (the “‘549 Patent,” and collectively, the “MCM Patents”).
22

23 In 2006, MCM entered into a Commercialization Agreement with TPL pursuant to which TPL
24 agreed to solicit license agreements from entities likely using the intellectual property covered by the
25 MCM Patents. Specifically, Section 1.1 of the Commercialization Agreement provided:

26 1.1 TPL shall exert commercially reasonable efforts to:

27 1.1.1 Develop, fund, and implement a global plan to commercialize
28 (“Commercialization Plan”) the MCM Technology; and

1 1.1.2 Improve and enhance the MCM Technology

2 It was anticipated that in some cases it might be necessary to prosecute litigation in order to
3 protect the MCM Patents or to persuade potential customers to enter into licenses. Under the
4 Commercialization Agreement, TPL undertook to fund all expenses associated with the licensing
5 program, including litigation expenses. Under the Commercialization Agreement, the parties agreed
6 that all revenues derived from the licensing program would be divided between MCM and TPL.
7

8 TPL commenced its Chapter 11 case on March 20, 2013. During the course of the case, TPL
9 indicated a desire to perform under the Commercialization Agreement and ultimately to assume the
10 Commercialization Agreement.
11

12 **B. The '549 Order**

13 Among the MCM Patents is US Patent 7,162,549 and its progeny, including reissues and non-
14 U.S. counterparts (collectively, the "'549 Patent"). Hewlett Packard initiated an *Inter Partes* Review of
15 the '549 Patent, and obtained rulings from the Patent and Trademark Appeals Board that were adverse to
16 certain claims under the '549 Patent. MCM demanded that TPL fulfill its obligations under the
17 Commercialization Agreement by prosecuting an appeal, and when TPL failed timely to do so, MCM
18 asserted a breach under the Commercialization Agreement.
19

20 MCM and TPL thereafter negotiated an agreement under which the '549 Patent would be carved
21 out of the Commercialization Agreement and returned to MCM, enabling MCM to pursue and fund the
22 appeal, which MCM continues to do. As explained in the Motion seeking approval of that agreement,
23

24 [TPL will] reconvey all right, title and interest in and to the '549 patent to MCM [and]
25 [r]econveyance of all right, title and interest in and to the '549 patent relieves TPL of the
26 administrative burden under its commercialization agreement with MCM to pay the
remaining cost of appeal of approximately over \$200,000. TPL will *retain its rights to
license and commercialize the remainder of the patents* in the CORE Flash portfolio...

27 Dkt #614, ¶¶ 7, 8 (emphasis supplied). Thus, the Prayer of the Motion was:
28

1 WHEREFORE, TPL respectfully requests that this Court issue an order granting this
2 Motion and authorizing TPL to reconvey all right, title and interest in and to the '549
3 portfolio to MCM in a form acceptable to MCM and affirming that such reconveyance is
4 in compliance with all applicable Bankruptcy Court rules and that *TPL no longer has any*
5 *right, title or interest in or to U.S. Patent '549*

6 Id. (emphasis supplied).

7 The Court granted the Motion. Its Order (the "'549 Order'") provided

8 3. TPL be and hereby is authorized to reconvey all right, title and interest in
9 and to the '549 patent (subject to any encumbrances thereon) to the owner of the patent,
10 MCM Portfolio LLC by executing Exhibit A to the Venikidu Declaration, served and
11 filed with the Motion...

12 * * *

13 5. Upon execution of the aforementioned assignment, TPL shall thereafter
14 have no right, title or interest in or to U.S. Patent '549 or its proceeds

15 * * *

16 7. *The foregoing relief may not be modified, altered or avoided hereafter,*
17 *whether pursuant to a Plan of Reorganization or otherwise...*

18 '549 Order, Dkt #632 (emphasis supplied).

19 The document which the Court specifically authorized TPL to execute in order to memorialize
20 the return of the '549 Patent provided, in part:

21 B. This Assignment *vests in [MCM] the exclusive*, worldwide right: (i) to
22 regulate and control by license, sublicense, affiliation, or other agreement the practice
23 and/or use of The '549 Patent; (ii) to otherwise *pursue the Commercialization* thereof and
24 the manufacture, sale, and use of products and/or services relying on The '549 Patent; (iii)
25 to sue and collect for its own use and benefit all claims for damages by reason of past
26 infringement or use of The '549 Patent; and, (iv) to pursue all remedies of whatsoever
27 kind or nature for its own use and benefit relating to the past, present, or future use of The
28 '549 Patent.

* * *

D. *TPL shall* have the continuing obligations to MPL hereunder to:

1. *Refrain from* activity of any kind or nature which may impede,
impair, frustrate or otherwise interfere with The '549 Patent activities of MPL
including, for example, any communication characterizing the nature of The '549
Patent, the licenses, or the litigation involving The '549 Patent;

1 Assignment, Exhibit A to Dkt #614 (emphasis supplied).

2 Over the past several months TPL has negotiated settlements with two different companies, and
3 in both cases TPL granted the company a license to the '549 Patent, notwithstanding the foregoing. In
4 each case, TPL acted unilaterally and without consulting with MCM. In one case, when MCM refused
5 to authorize a license to the '549 Patent, MCM was advised that TPL's unauthorized negotiations had
6 proceeded so far that the other company intended to seek an Order of the District Court compelling
7 enforcement of the settlement and the granting of the '549 Patent license, so far had the unauthorized
8 negotiations progressed.

9
10 In addition to asserting a right unilaterally to license the '549 Patent notwithstanding the '549
11 Order, TPL asserts a right to demand that funds payable on account of a '549 Patent license be paid to
12 and held by TPL.

13 TPL has failed and refused to comply with the '549 Order, and absent instruction by this Court,
14 will continue to do so.

15
16
17 **C. The Confirmation Order**

18 As noted, the Court's '549 Order specified that it could not be modified by, *inter alia*, a Plan of
19 Reorganization. TPL sought to assume the Commercialization Agreement with respect to the balance of
20 the CORE Flash Patents, provided it could negotiate a modification of the economic terms. After
21 lengthy negotiations, the parties agreed to the "Waterfall" provided by Exhibit C to the Plan. Instead of
22 the original division of proceeds, under which "TPL [s]hall pay over to [MCM] an amount equal to
23 Sixty-Five Percent (65%) of the gross proceeds of the Commercialization Plan, not to exceed Eighty
24 Percent (80%) of Net Recovery;" Commercialization Agreement, Section 1.2; MCM agreed that it
25 would receive only 20% of the net recovery under the Waterfall. In addition, MCM agreed indefinitely
26 to defer any "cure" to which it was entitled with respect to the Commercialization Agreement.
27
28

1 Although MCM made major financial concessions to permit the assumption of the
2 Commercialization Agreement under the Plan of Reorganization, it was to receive certainty about what
3 it would be paid from licensing or litigation revenues.

4 Recently, however, in connection with an imminent settlement with a potential licensee, TPL
5 asserted that it would not proceed with the settlement unless MCM agreed to its interpretation of the
6 Plan (the “8 Key Points”) and its “Payment protocol.” Among the 8 Key Points was TPL’s asserted
7 unilateral right to alter the Waterfall; Plan Exhibit C. The asserted basis for this right was a provision on
8 page 35 of the Plan, which stated:

9 After the Effective Date, the Reorganized Company, in consultation with the TPL Board,
10 may amend and restate TPL’s operating agreement as permitted by applicable law and in
11 accordance with the terms of the Plan without further Bankruptcy Court approval.

12 Quite obviously, the ability to alter the Debtor’s corporate governance document is not license to alter
13 the treatment of creditors and executory contract counterparties under a negotiated Plan of
14 Reorganization.

15 Second, TPL demanded acceptance of its “Payment protocol” which included TPL’s asserted
16 right to hold funds otherwise payable to MCM until it decided to release them, apparently subject to its
17 unilateral right to impose deductions.

18 on closing funds are first to be paid by the licensee or litigant in settlement directly either
19 to the involved primary contingency law firm’s trust account or a TPL trust account, as
20 the case may be. TPL will then prepare a complete payment waterfall as part of its
21 approval process for any payments to involved contingency law firms and MCM
22 concerning their shares of any transaction.

23 *Only on TPL's approval* will funds then be transferred from the relevant account,
24 *according to TPL's instructions*, so TPL can then transfer payments to all participants
25 concerned regarding any payments due. *No payments or deductions of any kind* for fees
26 and expenses or for any other reason are to be made to, for or *by any other party* (except
27 as above) involved in negotiations, handling litigation or any other involvement in any
28 transaction. The payment transmission wording in any license or settlement documents
must not conflict with this payment flow procedure.

TPL’s Payment protocol, clause c.4 (emphasis supplied).

1 MCM submits that TPL's asserted rights are in derogation of the Court's Order confirming the
2 Plan of Reorganization and TPL's duties under the assumed Commercialization Agreement.

3
4 ***D. Other Disputes***

5 Lest incorrect assumptions be made, there are other, additional disputes between the parties
6 respecting the Commercialization Agreement. For example, TPL has demanded that MCM sign
7 documents which are factually incorrect, or which fail to include appropriate provisions for
8 confidentiality, asserting that the Plan of Reorganization affords MCM no discretion to decline. MCM
9 believes that the referenced provisions of the Plan reasonably relate to economic and business terms, and
10 do not require MCM to sign false statements.

11
12 Likewise, TPL has asserted that the Commercialization Agreement is not terminable, presumably
13 because the Plan does not specifically provide a right for termination. Anhalt Dec., Exhibit B. MCM
14 believes that the Plan simply provided for the assumption of the Commercialization Agreement as
15 modified, and whether the Commercialization Agreement can thereafter be terminated for breach is a
16 question of otherwise-applicable non-bankruptcy law, unaffected by the Plan of Reorganization.

17
18 Finally, MCM has repeatedly expressed grave concern about TPL's inadequate staffing and
19 persistent lack of forward movement, suggesting that it falls short of the contractual requirement of
20 "commercially reasonable efforts," potentially warranting termination of the Commercialization
21 Agreement.

22
23 Although all of these examples represent serious points of friction between the parties, they have
24 not yet ripened into "cases or controversies," and should they do so, it is not obvious that this Court
25 would have jurisdiction to resolve all of them. On the other hand, the issues relating to the Court's prior
26 Orders identified above have ripened and are, as discussed below, appropriate objects of this Court's
27 jurisdiction.

1 **III. ARGUMENT**

2 **A. Relief Sought**

3 The three issues raised in this Motion seek the Court's clarification and implementation of its
4 own prior Orders: the '549 Order and the Confirmation Order. It is commonplace that courts may
5 interpret and implement their own Orders.
6

7 Movant submits that the Court's prior Orders were clear, that TPL is overtly violating those
8 Orders and that it is appropriate for the Court to require TPL to comply with the Court's prior Orders.

9 The '549 Order expressly divested TPL of any right, title or interest in the '549 Patent, and the
10 separate Court-approved Assignment expressly *prohibited TPL from even discussing* the '549 Patent or
11 licenses thereof with any other party. The '549 Order specifically provided that it could not be
12 superseded by the terms of any subsequent Plan of Reorganization.
13

14 But TPL has willfully and consistently refused to comply with the '549 Order, repeatedly
15 discussing the '549 Patent and licenses thereof, essentially arrogating to itself the right to license the
16 '549 Patent. Indeed, it has insisted on the "right" to receive, hold, and in its sole discretion disburse
17 proceeds of licenses of the '549 Patent. Unless required by this Court to abide by the '549 Order, TPL
18 clearly intends to continue to attempt to negotiate licenses of the '549 Patent notwithstanding its lack of
19 any right or authority to do so. It is appropriate for this Court to enforce its '549 Order by instructing
20 TPL to cease all communications and licensing activity respecting the '549 Patent, including attempting
21 to dictate the recipient of license payments.
22

23 Likewise, the Plan of Reorganization establishes, in its Exhibit C, a specific financial waterfall
24 for recoveries subject to the Commercialization Agreement and provides for the assumption of the
25 Commercialization Agreement – that is, for TPL's continued performance thereunder. The Confirmation
26 Order implements and gives effect to the Plan of Reorganization.
27

28 But TPL has asserted a unilateral right to modify the financial waterfall and to hold funds

1 payable to MCM and others for so long as it likes, and to impose on those funds such setoffs, deductions
2 and charges as it chooses. TPL's position is in violation of the terms of the Plan and the Confirmation
3 Order, and the Court should so hold. It is appropriate for this Court to enforce its Confirmation Order
4 by instructing TPL to promptly disburse funds as contemplated by Exhibit C to the Plan, without delay
5 or unilateral deduction.
6

7
8 ***B. The Court Has Jurisdiction to Grant Relief***

9 Some months ago, the Committee moved the Court to “implement the Plan” by summarily
10 “enforcing” a contract between Phoenix Digital Solutions and Alliacense. Dkt #711, (the “Prior
11 Motion”). The Court denied the Prior Motion on the grounds that it did not have jurisdiction to grant the
12 requested relief. Order Denying Plan Implementation Motion (“Ruling”), Dkt #738. It is therefore
13 appropriate that Movant distinguish the instant Motion from the Prior Motion.
14

15 In its Ruling, the Court noted that bankruptcy court jurisdiction shrinks post-confirmation, citing
16 *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1193–94 (9th Cir. 2005) for the proposition that post-
17 confirmation bankruptcy court jurisdiction is necessarily more limited than pre-confirmation
18 jurisdiction. The Court explained that under governing Ninth Circuit law:

19 Postconfirmation, a Bankruptcy Court has jurisdiction only over matters that have a
20 “close nexus” to the confirmed plan. This means matters involving the interpretation,
21 implementation, consummation, execution, or administration of the confirmed plan.

22 Ruling, 7:24-26.

23 Concluding that the dispute involved in the Prior Motion did not have a close nexus to the
24 confirmed Plan, the Court explained that in the Prior Motion:

25 First, the operative document is the Novation Agreement, not the Plan.

26 Second, the parties to the Novation Agreement are PDS and Alliacense. Neither
27
28

1 TPL nor the OCC is a party to the agreement.¹

2 Ruling, 11:8-10. Here, on the contrary, the operative documents are the Plan and the 549 Order, and
3 TPL and the Committee are parties to the dispute.

4 The Court explained that “[u]nless a matter clearly involves interpretation of a plan or some act
5 specified under the plan...;” Ruling, 11-26-7; the court should decline jurisdiction. The Prior Motion
6 did not involve interpreting the Plan; the instant Motion clearly involves “the interpretation,
7 implementation, consummation, execution, or administration of the confirmed plan.” Ruling, 7:25-26.

8
9 The Court noted that the applicability of Section 1142 to the Prior Motion was strained,
10 explaining:

11 A leading bankruptcy treatise notes that § 1142 can provide a jurisdictional
12 premise for the court if the dispute involves the operation or interpretation of the plan
13 itself: “In light of the provisions of Code § 1142(b), the bankruptcy court retains
14 authority and concomitant postconfirmation jurisdiction for the limited purpose of
15 resolving disputes arising from the presence of patent ambiguities in the plan or disputes
16 which affect the operation of the plan as between the interested parties. Where no such
17 ambiguities are discovered, and the operation of the plan as written is not affected, it
18 lacks both authority and jurisdiction.” 6 NORTON BANKR. L. & PRAC. 3d § 114:7.

19 Norton has this right.

20 Order, 14:4-12.

21 Here, on the other hand, the Court is presented with “disputes which affect the operation of the
22 plan as between the interested parties.” The grant of authority in Section 1142(b) is directly at issue
23 here: “The court may direct the debtor... to perform any other act... that is necessary for the
24 consummation of the plan.”

25 It is submitted that the instant Motion presents precisely the sort of dispute over which the Court
26 can and should exercise post-confirmation jurisdiction.

27 ¹ The Court noted that in the Prior Motion “The dispute concerns postconfirmation relations between non-
28 debtor parties.” Order, 12:4-5.

1 **IV. CONCLUSION**

2 Through the '549 Order, the Court confirmed that TPL had no right, title or interest in the '549
3 Patent and that TPL's rights under the Commercialization Agreement would not extend to the '549
4 Patent. The Court should clarify and implement that Order by instructing TPL not to further
5 communicate with anyone about the '549 Patent, to abstain from efforts to license the '549 Patent and
6 not to attempt to control the disbursement of funds relating to the '549 Patent.
7

8 Through the Confirmation Order, the Court provided for the assumption of the
9 Commercialization Agreement subject to the Waterfall contained in Exhibit C to the Plan. The Court
10 should clarify and implement that Order by requiring TPL promptly to disburse funds that are the
11 subject of the Commercialization Agreement in the manner provided by Exhibit C to the Plan.

12 DATED: April 12, 2016

Respectfully submitted,

13 ST. JAMES LAW, P.C.
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15 By: /s/ Michael St. James
16 Michael St. James
17 Counsel for MMC Portfolio LLC
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9 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**

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16

17
18 **DECLARATION OF SUSAN ANHALT IN SUPPORT OF**
19 **MOTION TO CLARIFY AND IMPLEMENT PRIOR ORDERS**
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1 I, Susan Anhalt, declare under penalty of perjury:

2 1. I am the Manager of MCM Portfolio LLC, and have been at all relevant times following
3 2012. Terms used in this Declaration have the meanings supplied in the accompanying Motion.

4 2. MCM owns a portfolio of patents (the "CORE Flash Patents") and a separate family of
5 patents (the "'549 Patent," and collectively, the "MCM Patents").

6
7 3. In 2006, MCM entered into a Commercialization Agreement with TPL pursuant to which
8 TPL agreed to solicit license agreements from entities likely using the intellectual property covered by
9 the MCM Patents. Specifically, the Commercialization Agreement provided:

10 1.1 TPL shall exert commercially reasonable efforts to:

11 1.1.1 Develop, fund, and implement a global plan to commercialize
12 ("Commercialization Plan") the MCM Technology; and

13 1.1.2 Improve and enhance the MCM Technology

14 4. It was anticipated that in some cases it might be necessary to prosecute litigation in order
15 to protect the MCM Patents or to persuade potential customers to enter into licenses. Under the
16 Commercialization Agreement, TPL undertook to fund all expenses associated with the licensing
17 program, including litigation expenses. Under the Commercialization Agreement, the parties agreed
18 that all revenues derived from the licensing program would be divided between MCM and TPL.

19
20 5. TPL commenced its Chapter 11 case on March 20, 2013. During the course of the case,
21 TPL indicated a desire to perform under the Commercialization Agreement and ultimately to assume the
22 Commercialization Agreement.

23 6. Among the MCM Patents is US Patent 7,162,549 and its progeny, including reissues and
24 non-U.S. counterparts (collectively, the "'549 Patent"). Hewlett Packard initiated an *Inter Partes*
25 Review of the '549 Patent, and obtained rulings from the Patent and Trademark Appeals Board that
26 were adverse to certain claims under the '549 Patent. MCM demanded that TPL fulfill its obligations
27 under the Commercialization Agreement by prosecuting an appeal, and when TPL failed timely to do so,
28

1 MCM asserted a breach under the Commercialization Agreement.

2 7. MCM and TPL thereafter negotiated an agreement under which the '549 Patent would be
3 carved out of the Commercialization Agreement and returned to MCM, enabling MCM to pursue and
4 fund the appeal, which MCM continues to do. TPL moved the Court to approve that agreement, which
5 the Court did through an Order, Dkt #632 (the "'549 Order").

6
7 8. Thereafter, MCM and TPL negotiated a modification of the Commercialization
8 Agreement, pursuant to which that Agreement would be assumed under TPL's Plan of Reorganization.
9 Specifically, the parties agreed to the "Waterfall" provided by Exhibit C to the Plan. Instead of the
10 original division of proceeds, under which "TPL [s]hall pay over to [MCM] an amount equal to Sixty-
11 Five Percent (65%) of the gross proceeds of the Commercialization Plan, not to exceed Eighty Percent
12 (80%) of Net Recovery;" Commercialization Agreement, Section 1.2; MCM agreed that it would
13 receive only 20% of the net recovery under the Waterfall. In addition, MCM agreed indefinitely to defer
14 any "cure" to which it was entitled with respect to the Commercialization Agreement.
15

16 9. MCM made major financial concessions to permit the assumption of the
17 Commercialization Agreement under the Plan of Reorganization, which it understood would afford it
18 certainty about what it would be paid from licensing or litigation revenues.

19 10. Within the past few months, separate settlements have been negotiated with two
20 prospective licensees, whom I will refer to as Company A and Company B in order to preserve
21 confidentiality.

22 11. MCM was told by TPL that TPL's negotiations with Company A would not include the
23 '549 Patent. After several months, TPL then notified MCM that the settlement it had negotiated with
24 Company A included a license to the '549 Patent. The '549 Patent was not attributed any value in the
25 license, however. I declined to allow TPL to license the '549 Patent for no fee. TPL then unilaterally
26 assigned to the '549 Patent license a value that was less than half what MCM had demanded, and
27 attempted to close the transaction based on that value.
28

1 12. I responded that TPL had no right to offer a license of the '549 Patent and that MCM
2 would not proceed on the terms TPL had negotiated. The Simon Law Firm ("TSLF"), who was engaged
3 as joint counsel by TPL and MCM, advised that Company A intended to enforce the settlement in the
4 ongoing District Court case amongst TPL, MCM and Company A, and that it was possible or even
5 likely given the state of the negotiations that Company A would prevail. That is, notwithstanding the
6 '549 Order, TPL had reached agreement with Company A regarding the '549 Patent to the extent that its
7 agreement might be enforced against MCM.

8 13. In order to avoid argument in the District Court case and to preserve the settlement, I
9 reluctantly agreed to TPL's allocation of the portion of the license fee to be paid to MCM on account of
10 the '549 Patent.

11 14. TSLF then demanded a contingent fee from the funds allocated to the '549 Patent. I
12 responded that TSLF did not represent MCM with respect to the '549 Patent, that TSLF had violated
13 MCM's express instructions not to negotiate anything with respect to the '549 Patent, that neither TSLF
14 nor TPL had any authority to take the actions that had been taken with respect to discussions of the '549
15 Patent, that TSLF had not communicated with MCM regarding the licensing of the '549 Patent, and that
16 TSLF was therefore not entitled to any fee from the '549 Patent.

17 15. At about the same time, I became aware that settlement negotiations with Company B
18 were at an advanced stage, which also included the '549 Patent. I demanded that TSLF turn over to
19 MCM copies of all of its settlement communications, including all of those regarding the '549 Patent.
20 Since MCM was TSLF's client, MCM held exclusive rights to the '549 Patent, and TSLF sought fees
21 from MCM respecting the '549 Patent, I thought the demand was appropriate.

22 16. TSLF refused to turn over its communications, demanded payment to it of a contingent
23 fee on the '549 Patent as a pre-condition to disbursing the settlement funds and further advised that in
24 the event of any conflict between instructions it received from TPL and from MCM regarding, for
25 example, the disbursement of settlement proceeds, it would comply with TPL's instructions. MCM
26 thereupon fired TSLF as its counsel.

27 17. During this time, TPL started to circulate its interpretation of certain provisions of the
28 Plan of Reorganization (the "8 Key Points") and its proposed "Settlement protocol," demanding MCM's

1 assent. As a settlement with Company B came to rest, TPL attempted to couple completion of that
2 settlement with assent to the 8 Key Points and the Settlement protocol. Ultimately, TPL backed down
3 and agreed to close the settlement with Company B without resolution of the 8 Key Points and the
4 Settlement protocol. TPL's email presenting its integrated demand but agreeing to back off on those
5 two aspects is attached hereto as Exhibit A.

6 18. In the weeks leading to the settlement with Company B, MCM and TPL had agreed on
7 the amount of the settlement proceeds that would be allocated to the '549 Patent. Immediately preceding
8 the execution of the Company B settlement agreement, TPL said it would not abide by the agreed-upon
9 allocation: rather, TPL proposed to negotiate the allocation after the settlement payment was received
10 from Company B and held by TSLF. TPL insisted that TPL be given exclusive control over all
11 settlement proceeds, including settlement proceeds related to the '549 Patent.

12 19. TPL has also asserted that MCM has no right to terminate the Commercialization
13 Agreement, regardless of whether TPL performs under it. See, e.g., Exhibit B hereto, first sentence.

14 I declare under penalty of perjury that the foregoing is true and correct and that this Declaration
15 was executed in Calabasas, California on April 12, 2016.

16
17 /s/ Susan Anhalt .
18 Susan Anhalt
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Exhibit

A

From: Rob Harris [<mailto:rob@bindermalter.com>]
Sent: Wednesday, April 06, 2016 12:06 PM
To: Susan Anhalt
Cc: swamyv@bicmosfoundry.com; William Bretschneider; Rob Harris; Heinz Binder
Subject: FW: TPL - MCM understanding re [REDACTED] Settlement Guidelines

Dear Susan:

I have confirmation from the TPL Board and Committee that the [REDACTED] deal can be closed immediately (and must be closed today) on the following terms, excepting (a)(3) and (a)(7) below, for determination in a separate motion by TPL for interpretation and subject to any cross motion MCM may file as to additional points.

Please confirm by way of an affirmative response that you agree.

(a) MAIN SETTLEMENT POINTS

(a.1) The [REDACTED] settlement proceeds will be subject to the standard distribution waterfall based on a settlement amount of [REDACTED] (with [REDACTED] paid to MCM "off the top").

(a.2) MCM and The Simon Law Firm (TSLF) agree to settle any dispute regarding contingency fees (to the extent that a dispute exists) thru a channel that is agreeable to both without involving TPL.

(a.3) MCM recognizes/agrees with the "8 key points" (below) from the TPL BK Plan and the Disclosure Statement for a smooth licensing going forward.

(a.4) TSLF will continue as counsel to TPL for the [REDACTED] litigation. MCM will not be involved with TSLF in the [REDACTED] litigation.

(a.5) MCM rescinds its purported Termination of TPL and the Cease & Desist notices previously sent to TPL.

(a.6) Alliacense will bill PDS for [REDACTED] (that was paid directly to Alliacense from [REDACTED] settlement), instructing PDS to make a direct payment to TPL.

(a.7) MCM agrees to the TPL payment protocol as distributed on October 29/30, 2015.

(a.8) MCM agrees to sign and carry out any documentation requests for both the [REDACTED] and [REDACTED] settlements that still remain to be done (including signing the [REDACTED] settlement agreement).

The following points would be the subject of a fully-noticed motion seeking a determination as to whether the Plan's terms are to be interpreted as supporting or requiring the indicated actions. Such motion would be brought by my firm with the consent of MCM and the Leckrone Family.

(b) PLAN & Disclosure (8 Key Points)

(b.1) Page 2 Preliminary Statement (at the end). "In the event and to the extent that any provision of the Plan is inconsistent with or contrary to the provisions of the Disclosure Statement, the provisions of the Plan shall control and take precedence".

Note: Further an instruction is given in this Statement that states licenses will (still) be written (only) by the IP owners (MCM), (and not any other function or authority that conflicts with TPLs Commercialization rights, which includes negotiations). See below.

(b.2) Page 27 VI. A. Business Operations, etc., of the Reorganized Company “Under new management, the Reorganized Company will continue TPL’s existing commercialization activities and specifically, continue to exercise and enforce TPL’s rights to manage litigation relating to the various patent portfolios”.

(b.3) Page 30. B. New Management. “After appointment of the CEO and the TPL Board, approval of settlements and licensing for TPL is and shall be the responsibility of the CEO, subject to the advice, direction and consent of the TPL Board”.

(b.4) Page 35. F. Articles of Organization/Operating Agreement.

“After the Effective Date, the Reorganized Company, in consultation with the TPL Board, may amend and restate TPL’s operating agreement as permitted by applicable law and in accordance with the terms of the Plan without further Bankruptcy Court approval”, etc..

Note: This is our authority for having put in place the October 29/30, 2015 Payment Protocol, as alterations in the Standard Waterfall had incorrectly been made by MCM/Alliacense in an earlier transaction and without consulting the CEO and the Board first.

(b.5) Pages 42-43. VII A. “The MCM Commercialization Agreement shall be modified as follows; as a condition of assumption (of this agreement), TPL shall, at the Effective Date, re-convey all right, title and interest in the CoreFlash portfolio on account of its license back to MCM. TPL will continue to commercialize and negotiate licenses of COREFlash patents and technology without change. It will earn precisely the same revenue it does under the current arrangement. MCM shall execute license agreements at the direction of TPL, and MCM will have no discretion to refuse to do so”.

(b.6) Also note in the Disclosure Statement Page 84, it says “The Waterfall attached as Exhibit “C” estimates these expenses “(meaning attorneys fees and expenses) per a certain percentage. This illustrates variables were contemplated to occur which could affect the Waterfall, as seen in the Plan and the Disclosure Statement.

(b.7) See also Pages 87-88 COREFlash Assumptions. This reinforces TPLs exclusive right to license and enforce the COREFlash portfolio.

(b.8) Exhibit C and Waterfall. This is the base model which is subject to changes as per transaction payments may differ (and have differed). Therefore the following 6 points – to be called The TPL Transaction/Settlement Protocol (TSP) summarized on 29/30 October 2015 Payment Protocol applies.

(c) Payment protocol

(c.1) When it becomes highly likely a transaction can be finalized, we need to have sent to TPL (the Board members and CEO), a minimum of one week prior to a potential closing or filing, a draft text of any licensing agreement or litigation settlement/event. Any imminent closings on receipt of this protocol require a draft text to be sent to TPL as soon as possible.

(c.2) Should it be necessary for the Settlement Committee or others to become involved, we will then request a conference call - as has been done almost without exception over the past 2 1/2 years in any such situation, together with a short summary of the basic points of the transaction/settlement.

(c.3) As the Creditors' Committee is still in existence, and the Board and ultimately the CEO report to it, we must have

adequate time to consult with its members, especially as settlement amounts and TPL approved waterfalls are required as part of any closings.

The contingency law firms must now take instructions from TPL and not Alliacense on all major case matters and we must be kept timely informed on any important event or alerted at least in brief so TPL is kept current and can decide accordingly.

(c.4) Although TPL and MCM are the two prime signatories to any transaction, on closing funds are first to be paid by the licensee or litigant in settlement directly either to the involved primary contingency law firm's trust account or a TPL trust account, as the case may be. TPL will then prepare a complete payment waterfall as part of its approval process for any payments to involved contingency law firms and MCM concerning their shares of any transaction.

Only on TPL's approval will funds then be transferred from the relevant account, according to TPL's instructions, so TPL can then transfer payments to all participants concerned regarding any payments due. No payments or deductions of any kind for fees and expense or for any other reason are to be made to, for or by any other party (except as above) involved in negotiations, handling litigation or any other involvement in any transaction. The payment transmission wording in any license or settlement documents must not conflict with this payment flow procedure.

(c.5) TPL must have weekly reports from the licensing entities (Alliacense or the contingency law firms), either by phone or e.mail, on all pending license negotiations. A weekly call at TPL's request will be required in certain cases.

(c.6) We must also have timely periodic reports on all pending or active litigation matters, including, well in advance, possible events that could mean expenses for the estate so these can be approved by TPL first prior to commitment.



Rob Harris
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Santa Clara, CA 95050
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F: (408) 295-1531
www.bindermalter.com
rob@bindermalter.com

CONFIDENTIALITY AND USE: This e-mail message and its attachments may contain privileged or confidential information that may only be used by the intended recipient. If you are not the intended recipient, you may not share or copy the message or its attachments. If you have received this e-mail in error, please contact the sender immediately, and permanently delete the e-mail or attachment. No communication from this firm is intended to be used, or may be used to evade or defeat any tax obligation. This message is not intended support the marketing of any transaction. This e-mail is for information only. Notwithstanding any law regarding electronic transactions, unless the e-mail contains an express statement to the contrary, neither the message nor any attachments is intended to bind me, Binder & Malter LLP, or any of its clients.

Exhibit

B

From: Gmail-Avenkidu [<mailto:avenkidu@gmail.com>]

Sent: Wednesday, March 30, 2016 10:47 AM

To: Susan Anhalt

Cc: rob@bindermalter.com; 'Michael St. James'; wlb@svlg.com; 'Krysium Advisors Ltd'; 'Marcie Brown'

Subject: FW: TPL Termination

Susan – Please see the Plan Clause Pages 42-43. VII A. where no right to terminate.

For reference once again see below taken from the Plan and the Disclosure Statement:

1. Page 2 Preliminary Statement (at the end). “In the event and to the extent that any provision of the Plan is inconsistent with or contrary to the provisions of the Disclosure Statement, the provisions of the Plan shall control and take precedence”.

Note: Further an instruction is given in this Statement that states licenses will (still) be written (only) by the IP owners (MCM), (and not any other function or authority that conflicts with TPLs Commercialization rights, which includes negotiations). See below.

2. Page 27 VI. A. Business Operations, etc., of the Reorganized Company “Under new management, the Reorganized Company will continue TPL’s existing commercialization activities and specifically, continue to exercise and enforce TPL’s rights to manage litigation relating to the various patent portfolios”.

3. Page 30. B. New Management. “After appointment of the CEO and the TPL Board, approval of settlements and licensing for TPL is and shall be the responsibility of the CEO, subject to the advice, direction and consent of the TPL Board”.

4. Page 35. F. Articles of Organization/Operating Agreement.

“After the Effective Date, the Reorganized Company, in consultation with the TPL Board, may amend and restate TPL’s operating agreement as permitted by applicable law and in accordance with the terms of the Plan without further Bankruptcy Court approval”, etc..

Note: This is our authority for having put in place the October 29/30, 2015 Payment Protocol, as alterations in the Standard Waterfall had incorrectly been made by MCM/Alliacense in an earlier transaction and without consulting the CEO and the Board first.

5. Pages 42-43. VII A. “The MCM Commercialization Agreement shall be modified as follows; as a condition of assumption (of this agreement), TPL shall, at the Effective Date, re-convey all right, title and interest in the COREFlash portfolio on account of its license back to MCM. TPL will continue to commercialize and negotiate licenses of COREFlash patents and technology without change. It will earn precisely the same revenue it does under the current arrangement. MCM shall execute license agreements at the direction of TPL, and MCM will have no discretion to refuse to do so”.

6. Exhibit C and Waterfall. This is the base model which is subject to changes as per transaction payments may differ (and have differed). Again the 29/30 October 2015 Payment Protocol applies.

7. Also note in the Disclosure Statement Page 84, it says “The Waterfall attached as Exhibit “C” estimates these expenses “(meaning attorneys fees and expenses) per a certain percentage. This illustrates variables were contemplated

to occur which could affect the Waterfall, as seen in the Plan and the Disclosure Statement.

8. See also Pages 87-88 COREFlash Assumptions. This reinforces TPLs exclusive right to license and enforce the COREFlash portfolio.

Sincerely,

Swamy Venkidu
On behalf of the TPL Board and CEO."

From: Susan Anhalt [<mailto:susan.anhalt@fountainheadip.com>]
Sent: Wednesday, March 30, 2016 7:42 AM
To: 'marciska@gmail.com'; 'avenkidu@gmail.com'; 'advisors@krysium.com'
Cc: 'Rob Harris (rob@bindermalter.com)'; Michael St. James; wlb@svlg.com
Subject: TPL Termination

Marci, Swamy and David –

Please see the attached.

SUSAN L. ANHALT
FOUNTAINHEAD IP LP
DIRECT 818.880.0578
MOBILE 818.324.1581

From: Susan Anhalt
Sent: Friday, March 25, 2016 2:43 PM
To: marciska@gmail.com; 'avenkidu@gmail.com'; advisors@krysium.com
Cc: 'Rob Harris (rob@bindermalter.com)'; Michael St. James
Subject: URGENT -- MCM Demand

Marci, Swamy and David –

Please see the attached.

SUSAN L. ANHALT
FOUNTAINHEAD IP LP
DIRECT 818.880.0578
MOBILE 818.324.1581