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APPLE INC.

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

12 In re
13 TECHNOLOGY PROPERTIES LIMITED, LLC,
14 Debtor.

Case No. 13-51589 SLJ

Chapter 11

APPLE INC.'S RESERVATION OF
RIGHTS RELATING TO
DISCLOSURE STATEMENT FOR
JOINT PLAN OF REORGANIZATION

Date: October 14, 2014
Time: 2:00 p.m.
Place: Hon. Stephen L. Johnson
Courtroom 3099
280 South First Street
San Jose, California

22 **I. RESERVATION OF RIGHTS**

23 Apple Inc. ("Apple") submits this reservation of rights (the "Reservation") to the
24 Disclosure Statement (the "Disclosure Statement") [Dkt. No. 538] (filed on September 17, 2014)
25 offered by the Official Committee of Unsecured Creditors (the "Committee") and the bankruptcy
26 estate of Technology Properties Limited, LLC (the "Debtor" or "TPL") in connection with the
27 Joint Plan of Reorganization dated September 17, 2014 (the "Joint Plan") [Dkt. No. 539].
28

APPLE'S RESERVATION OF RIGHTS REGARDING
DISCLOSURE STATEMENT FOR JOINT PLAN OF
REORGANIZATION
Case 13-51589 Doc# 565 Filed: 10/01/14 Entered: 10/01/14 13:47:58 Page 1 of 5
sf-3461256

1 Apple is a party to a patent license with TPL (last dated as of April 16, 2010), as amended
2 by Amendment No. 1 (last dated as of April 16, 2012) (the “License Agreement”) and is a party
3 in interest in this case.¹ Among other rights, the License Agreement grants Apple a worldwide,
4 non-exclusive license to certain patent portfolios, including the portfolio of patents known as the
5 Moore microprocessor patents (the “MMP Portfolio”), the portfolio of patents known as the
6 CORE Flash portfolio (the “CORE Flash Portfolio”) and the portfolio of patents known as the
7 Fast Logic portfolio (the “Fast Logic Portfolio”).

8 As set forth in previous filings before this Court,² Apple and other similarly situated

9
10 ¹ As a licensee, Apple is a party in interest with standing to object to the Disclosure Statement. *See Motor*
11 *Vehicle Cas. Co. v. Thorpe Insulation Co. (In re Thorpe Insulation Co.)*, 677 F.3d 869, 884 (9th Cir. Cal. 2012)
(noting that “party in interest” standard is construed broadly and on a case-by-case basis where party has a sufficient
stake in the proceedings).

12 ² Licensees have been closely monitoring this case for some time and have filed various pleadings with this
13 Court to protect and preserve licensee rights. Specifically, on December 2, 2013, Fujitsu Limited filed Fujitsu’s
14 Reservation of Rights and Limited Objection to Technology Properties Limited, LLC’s Disclosure Statement [Dkt.
15 No. 296]; on January 16, 2014, Hewlett-Packard Company filed a Limited Objection and Reservation of Rights of
16 Hewlett-Packard Company to Official Committee of Unsecured Creditors’ Disclosure Statement [Dkt. No. 373]; on
17 January 16, 2014, Fujitsu Limited filed Fujitsu’s Reservation of Rights and Objection to Disclosure Statement for
18 Official Committee of Unsecured Creditors’ Plan of Reorganization [Dkt. No. 378]; on January 16, 2014, Fujitsu
19 Limited filed a Motion for Appointment of § 1102(a)(2) Committee and Related Relief for Licensee Defenders [Dkt.
20 No. 379]; on January 16, 2014, the following parties filed joinders to (1) Fujitsu’s Reservation of Rights and
21 Objection to Disclosure Statement for Official Committee of Unsecured Creditors’ Plan of Reorganization [Dkt. No.
22 378], and (2) Motion for Appointment of § 1102(a)(2) Committee and Related Relief for Licensee Defenders [Dkt.
23 No. 379]: (a) Nikon Corporation [Dkt. No. 381]; (b) Blackberry Limited [Dkt. No. 382]; (c) Alcon Research, Ltd.
24 [Dkt. No. 383]; (d) DIRECTV, LLC [Dkt. No. 384]; (e) Mattel, Inc. [Dkt. No. 385]; and (f) NEC Corporation [Dkt.
25 No. 386]; on January 21, 2014, Toshiba Corporation, Toshiba America, Inc., Toshiba America Electronics
26 Components, Inc., Toshiba America Information Systems, Inc., and Toshiba America Consumer Products, LLC filed
27 Toshiba’s Objection to the Disclosure Statement for the Plan of Reorganization Proposed by the Official Committee
28 of Unsecured Creditors [Dkt. No. 400]; on January 21, 2014, Apple Inc. filed a Joinder by Apple Inc. in (1) Fujitsu’s
Reservation of Rights and Objection to Disclosure Statement for Official Committee of Unsecured Creditors’ Plan of
Reorganization, and (2) Motion for Appointment of § 1102(a)(2) Committee and Related Relief for Licensee
Defenders [Dkt. No. 405]; on February 21, 2014, Apple Inc. filed Apple Inc.’s Combined Reservation of Rights and
Limited Objection to (1) Disclosure Statement for TPL’s Plan of Reorganization; and (2) Disclosure Statement for
Official Committee of Unsecured Creditors’ Plan of Reorganization [Dkt. No. 440]; on February 21, 2014, the
following parties filed joinders to Apple Inc.’s Combined Reservation of Rights and Limited Objection to (1)
Disclosure Statement for TPL’s Plan of Reorganization; and (2) Disclosure Statement for Official Committee of
Unsecured Creditors’ Plan of Reorganization [Dkt. No. 440]: (a) Nikon Corporation [Dkt. No. 441]; (b) NEC
Corporation [Dkt. No. 442]; (c) Mattel, Inc. [Dkt. No. 443]; (d) DIRECTV, LLC [Dkt. No. 444]; (e) Alcon Research,
Ltd. [Dkt. No. 445]; (f) Fujitsu Limited [Dkt. No. 446]; (g) Blackberry Limited [Dkt. No. 447]; on February 21,
2014, Hewlett-Packard Company filed Hewlett-Packard Company’s Combined Reservation of Rights with Respect to
the Official Committee of Unsecured Creditors’ Disclosure Statement and Limited Objection to Debtor’s Disclosure
Statement [Dkt. No. 450]; on February 21, 2014, Sony Corporation filed a Joinder by Sony Corporation in Apple
Inc.’s Combined Reservation of Rights and Limited Objection to (1) Disclosure Statement for TPL’s Plan of
Reorganization; and (2) Disclosure Statement for Official Committee of Unsecured Creditors’ Plan of Reorganization
[Dkt. No. 455]; on February 21, 2014, Toshiba Corporation, Toshiba America, Inc., Toshiba America Electronics
Components, Inc., Toshiba America Information Systems, Inc., and Toshiba America Consumer Products, LLC filed
Joinder by Toshiba in Apple Inc.’s Combined Reservation of Rights and Limited Objection to (1) Disclosure

(Footnote continues on next page.)

1 licensees³ of the Debtor have long sought clarity regarding how the TPL bankruptcy will impact
2 existing licenses, like the License Agreement. While the Disclosure Statement contains
3 absolutely no disclosure directly addressing how the Joint Plan will treat existing licenses, the
4 Joint Plan itself does include important and heavily-negotiated language addressing licensee
5 rights. See Joint Plan at Article XVI. In reliance on the licensee provisions contained in the Joint
6 Plan, as well as commitments to assume existing upstream commercialization agreements
7 described in the Disclosure Statement, and the side letter commitment described below, Apple
8 does not object to the Disclosure Statement. Nevertheless, Apple reserves its right to object to the
9 extent plan proponents have failed to disclose any risks to licensees that may exist in connection
10 with the Joint Plan. To the extent licensees will be impacted in any way different from that set
11 forth in the Joint Plan, the plan proponents must enhance their disclosure.

12 II. FURTHER RESERVATION REGARDING IP OWNER SIDE LETTERS

13 As noted, Article XVI of the Joint Plan sets forth comprehensive provisions clarifying and
14 preserving licensee rights. Among other important provisions in Article XVI, the Joint Plan
15 states that the IP Owners⁴ “have provided written confirmation and consent, substantially in the
16 forms of the side letters attached as **Exhibit ‘D’** hereto, which are incorporated herein,
17 confirming such IP Owner’s (sic) promise of non-disturbance of Licensees’ rights under their
18 existing Licenses.” Joint Plan at Article XVI.G.

19 On its face, this statement is technically true. The IP Owners have agreed to the terms set
20 forth in the side letter substantially similar to the form attached to the Joint Plan as Exhibit D.
21 For the MMP Portfolio, the letter itself has been signed and delivered and is unconditionally
22 effective. See Exhibit A hereto. However, for the CORE Flash and Fast Logic Portfolios—the
23

24 (Footnote continued from previous page.)

25 Statement for TPL’s Plan of Reorganization; and (2) Disclosure Statement for Official Committee of Unsecured
26 Creditors’ Plan of Reorganization [Dkt. No. 456]. Most recently, Apple objected to the Disclosure Statement for
27 Moore Monetization Plan of Reorganization [Dkt. No. 552].

28 ³ As noted in the Joint Plan, there are numerous “Objecting Licensees” with similar concerns.

⁴ Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the
Joint Plan.

1 patent portfolios owned by Daniel Leckrone’s entities⁵—the form of letter has been approved and
2 signatures have been promised, but never delivered. Over the past six months, Apple has
3 repeatedly requested and been promised the signed side letters relating to the CORE Flash and
4 Fast Logic Portfolios.⁶

5 Apple’s view is that the IP Owners for the CORE Flash and Fast Logic Portfolios are
6 bound by the terms of the side letter—notwithstanding failure to sign formally—due to the course
7 of conduct between the parties and statements in the Joint Plan (signed, notably, by the same
8 human, Daniel Leckrone, whose signature would presumably appear on the outstanding side
9 letters that the Joint Plan asserts were already provided).

10 Nevertheless, Apple seeks to eliminate the risk and disruption of future litigation with the
11 IP Owners that might stem from their failure to deliver signed side letters. Therefore,
12 notwithstanding other protective language in the Joint Plan and in email correspondence
13 committing to the terms of the side letters, Apple continues to seek the signed letters for comfort
14 and assurance. The IP Owners continue to resist delivery, for reasons counsel to the IP Owners
15 will not explain. As a compromise, the IP Owners have committed to deliver the signed letters
16 prior to the Effective Date. The parties have agreed that delivery of the outstanding side letters
17 will be a condition to the Effective Date of the Joint Plan, and the Committee and Debtor have
18 agreed to modify the Joint Plan accordingly.

19 Specifically, the parties have agreed to the following addition—indicated in bold—to the
20 current definition of “Effective Date” in the Joint Plan:

21 “Effective Date” means the later of (a) the first Business Day that is at least 30
22 days after the entry of the Confirmation Order and on which no stay of the Confirmation
23 Order is in effect, including a stay pending appeal, or (b) the first Business Day on which
24 the Reorganized Company has sufficient cash to make all payments required under the
Plan on the Effective Date; provided, however, that the Effective Date shall be no later

25 ⁵ The CORE Flash Portfolio is owned by MCM Portfolio LLC, which is controlled by Mr. Leckrone.
Disclosure Statement at p.59. The Fast Logic Portfolio is owned by HSM Portfolio LLC, which is also controlled by
Mr. Leckrone. Disclosure Statement at 62.

26 ⁶ Originally, Susan Anhalt, who is the manager of the entities owning the relevant portfolios, was the point
27 of contact for negotiations, signing off on the form of side letter and promising the signatures. Apple was recently
28 directed by Debtor’s counsel to contact newly engaged counsel for such IP Owners, Michael St. James.

Exhibit A

March 20, 2014

To all existing licensees of the MMP Portfolio, including those referenced in Exhibit A hereto (collectively, the "MMP Licensees"):

Re: Non-Disturbance Agreement Relating to Existing Intellectual Property Licenses (the "Agreement")

In an effort to advance the progress of Chapter 11 case No. 13-51589-SLJ filed on March 20, 2013 (the "Bankruptcy Case") of Technology Properties Limited, LLC ("TPL") pending in the United States Bankruptcy Court for the Northern District of California (San Jose Division) (the "Court") and to address the concerns expressed by certain MMP Licensees therein, for valuable consideration, the receipt and adequacy of which is hereby acknowledged, the undersigned irrevocably and unconditionally represent, warrant and agree as follows:

1. ***Survival of Existing Protected Licenses.*** All existing licenses to the Moore Microprocessor Portfolio (the "MMP Portfolio") granted by TPL, Patriot Scientific Corporation ("PTSC") or Phoenix Digital Solutions ("PDS") (collectively, the "Protected Licenses") are, and shall survive the effective date of any confirmed plan of reorganization, as valid, binding and enforceable against the undersigned, their successors and assigns in accordance with their terms in all possible circumstances and situations, to the same extent as that which existed prior to the filing of the Bankruptcy Case. The undersigned do not dispute, challenge or contest the legal or factual basis for the prior sentence.

2. ***No Expansion of Rights.*** The Protected License rights and obligations shall not be expanded from that which existed prior to the filing of the Bankruptcy Case. Nothing herein shall expand or change the scope of any Protected License or to allow any transfer of any right or interest under any Protected License beyond what is permitted by such Protected License.

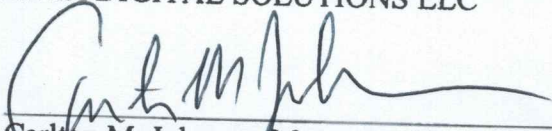
3. ***No Adverse Effect of Bankruptcy or "Ride Through."*** Without limiting the generality of Paragraph 1 above, the Protected Licenses shall remain valid and enforceable in accordance with their express terms, regardless of any developments in the Bankruptcy Case, TPL's reorganization or its exit from chapter 11, whether or not such developments or events are foreseeable or within any party's control, as if the MMP Licensees were beneficiaries of the Protected Licenses as direct licenses from the undersigned on the same terms thereof, but without imposing any affirmative obligations on the undersigned, except the obligation not to disturb the quiet enjoyment of the Protected Licenses by the MMP Licensees. For the avoidance of doubt, if any commercialization agreement, license or other agreement between the undersigned and TPL relating to the Protected Licenses (the "Related Licenses") are, or at any time become, in default (whether or not such default is noticed or stayed), terminated, or rejected under 11 U.S.C. § 365 or otherwise, such default, termination or rejection shall not terminate, prejudice, impair or otherwise affect the Protected License(s).

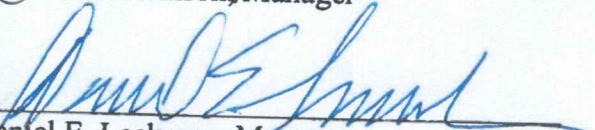
4. **Authority to Execute.** The undersigned are the owners of and/or licensor of patents and/or other intellectual property in the MMP Portfolio, referenced in filings in the Bankruptcy Case, and some or all of which intellectual property is also licensed to MMP Licensees in accordance with the Protected Licenses. The undersigned has been duly authorized to execute this Agreement as a valid, binding and enforceable Agreement, on which the MMP Licensees may fully rely.

5. **Entire Agreement and Binding Effect.** This Agreement is unconditional and irrevocable and contains the entire agreement of the parties with respect to the subject matter contained herein. This Agreement shall bind the undersigned and its successors and assigns, and shall estop, enjoin, and bar the undersigned and their successors and assigns from (i) making any claim that the rights, interests or defenses existing under the Protected Licenses have been or may be in the future modified, adversely affected or terminated as a result of any noncompliance or any bankruptcy-related event, act, omission or alleged default (whether or not such default is noticed or stayed) by TPL under any of the Related Licenses occurring on or before the Effective Date of any confirmed plan of reorganization or arising from any term of such plan; (ii) suing to invalidate the Protected Licenses or taking action to disrupt or challenge the enforceability of the Protected Licenses based on TPL's bankruptcy or reorganization and (iii) arguing that any MMP Licensee is not a licensee in the ordinary course of business, as such term is used in Section 9-321 of the Uniform Commercial Code, or that any grant of rights to such party is subject to the undersigned's security interest, if any.

[signatures on following page]

PHOENIX DIGITAL SOLUTIONS LLC

By: 
Carlton M. Johnson, Manager

By: 
Daniel E. Leckrone, Manager

TECHNOLOGY PROPERTIES LIMITED LLC

By: 
Daniel E. Leckrone, Manager

PATRIOT SCIENTIFIC CORPORATION

By: 
Carlton M. Johnson, Director

CHARLES H. MOORE


By: 
Charles H. Moore

EXHIBIT A - MMP LICENSEES

MMP Licensees

Abbott Laboratories
ADC Telecommunications, Inc.
Advanced Medical Optics, Inc.
AGCO Corporation
Agilent Technologies, Inc.
Alcon, Inc.
Alpine Electronics, Inc.
Apple Inc.
Arcelik AS
Ascom Holding AG
ASUSTeK Computer, Inc.
Audiovox Corporation
Blue Coat Systems, Inc.
Brocade Communications Systems, Inc.
Bull
Cardiac Science Corporation
Casio Computer Co., Ltd.
Caterpillar Inc.
Citizen Holdings Co., Ltd.
Cummins Inc.
Cymer, Inc.
Daewoo Electronics Corporation
Datalogic IP Tech S.R.L.
Deere & Company
Denso Wave Incorporated
DMP Electronics Inc.
Dresser, Inc.
Emerson Radio Corporation
Extreme Networks, Inc.
F. Hoffmann-La Roche Ltd., Roche Holding Ltd.
Force 10 Networks, Inc.
Ford Motor Company
Fujitsu Limited, Fujitsu Ten Limited, Fujitsu General Limited
Funai Electric Co., Ltd.
General Dynamics Corporation
General Electric Company
Gerber Scientific Inc.
GreenArrays Inc.
GTECH Corporation, Lottomatica S.p.A.
Harman International Industries, Incorporated
Hewlett-Packard Company
Hoya Corporation
HUMAX Co. Ltd
Hyundai Mobis Co., Ltd.
Intel Corporation
IXIA
JVC, JVC Americas Corporation, Victor Company of Japan, Limited
JVC KENWOOD Corporation
Koninklijke Philips Electronics N.V.
Kyocera Corporation
Lego A/S
Leica Camera AG
Lexmark International, Inc.
Lite-On IT Corporation

EXHIBIT A - MMP LICENSEES

MMP Licensees

Mattel, Inc.
MEI Systems, Matsushita Electric Industrial Co., Ltd., Panasonic Corporation of North America
Melco Holdings Inc.
Motorola Mobility Holdings, Inc., Motorola Mobility, Inc.
Motorola, Inc.
NEC Corporation
NEC Electronics Corporation
Nikon Corporation
Nokia Corporation
Olympus Corporation
Onkyo Corporation
Optoma Technology, Inc., Coretronic Corporation
Oracle Corporation
Pantech Co., Ltd.
Pentair, Inc.
Psion Teklogix Inc.
Research In Motion Ltd.
Respironics, Inc. - Philips
Robert Bosch GMBH
Rockwell Automation, Inc.
Roland Corporation
Rolls-Royce PLC
Roper Industries, Inc.
Samsung Electronics Co., Ltd.
SanDisk Corporation
SANYO Electric Co., Ltd.
Schneider Electric Industries SAS, Eaton Corporation, Schneider Electric SA
Seiko Epson Corporation
Sharp Corporation
Sierra Wireless, Inc.
Silicon Graphics International Corp.
Sirius XM Radio Inc.
Smith & Nephew, Inc.
Sony Corporation
Stryker Corporation
TEAC Corporation
Textron Inc.
The DIRECTV Group, Inc.
The Walt Disney Company
Tokyo Electron Limited
Toshiba Corporation
TPV Technology Limited
Tyco Electronics Corporation, TE Connectivity, Ltd.
Tyco International Management Company, LLC
Unisys Corporation
United Technologies Corporation
Varian Medical Systems, Inc.
Verigy (Singapore) Pte., Ltd., Verigy Ltd.
VTech Holdings Limited
WMS Gaming, Inc., WMS Industries, Inc.

1 **CERTIFICATE OF SERVICE**
2 (Fed. R. Civ. Proc. rule 5(b))

3 I declare that I am employed with the law firm of Morrison & Foerster LLP, whose address
4 is 425 Market Street, San Francisco, California 94105-2482; I am not a party to the within cause;
5 I am over the age of eighteen years.

6 I further declare that on the date hereof I served a copy of:

7 **APPLE INC.'S RESERVATION OF RIGHTS RELATING TO**
8 **DISCLOSURE STATEMENT FOR JOINT PLAN OF REORGANIZATION**

9 **BY ELECTRONIC SERVICE [Fed. Rule Civ. Proc. rule 5(b)]** by electronically mailing a true
10 and correct copy through Morrison & Foerster LLP's electronic mail system to the e-mail
11 address(es) set forth below, or as stated on the attached service list per agreement in accordance
12 with Federal Rules of Civil Procedure rule 5(b).

13 SEE ATTACHED LIST

14 **BY U.S. MAIL [Fed. Rule Civ. Proc. rule 5(b)]** by placing a true copy thereof enclosed in a
15 sealed envelope with postage thereon fully prepaid, addressed as follows, for collection and
16 mailing at Morrison & Foerster LLP, 425 Market Street, San Francisco, California 94105-2482 in
17 accordance with Morrison & Foerster LLP's ordinary business practices. I am readily familiar with
18 Morrison & Foerster LLP's practice for collection and processing of correspondence for mailing
19 with the United States Postal Service, and know that in the ordinary course of Morrison &
20 Foerster LLP's business practice the document(s) described above will be deposited with the
21 United States Postal Service on the same date that it (they) is (are) placed at Morrison & Foerster
22 LLP with postage thereon fully prepaid for collection and mailing.

23 SEE ATTACHED LIST

24 I declare under penalty of perjury that the above is true and correct.

25 Executed at San Francisco, California, October 1, 2014.

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