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7 Attorneys For Creditor Charles H. Moore

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

11 In Re:

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

15 Debtor.

Case No.: 13-51589-SLJ-11

Chapter 11

Date: February 26, 2014

Time: 2:00 p.m.

Place: Courtroom 3099

280 South First Street  
San Jose, California

Honorable Stephen L. Johnson

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19 **CREDITOR CHARLES H. MOORE'S OBJECTION TO DEBTOR TPL'S AMENDED DISCLOSURE  
STATEMENT DATED FEBRUARY 14, 2014**

20 Pursuant to Bankruptcy Rule 3017(a), Creditor Charles H. Moore hereby submits his  
21 Objection to the February 14, 2014 Amended Disclosure Statement of Debtor Technology  
22 Properties Limited, LLC ("Debtor TPL"), Dated February 14, 2014. In support of Objection,  
23 Creditor Moore represents the following:

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

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

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

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

3 4. Creditor Moore has duly filed a timely creditor claim in this proceeding.

4 5. Debtor TPL filed an Amended Disclosure Statement on or about February 14,  
5 2014, to which this Objection pertains.

6 **1. INTRODUCTION**

7 Creditor Moore is the inventor of the MMP Portfolio of patents. On January 23, 2013  
8 Debtor TPL, Patriot Scientific Corporation, Phoenix Digital Systems (“PDS”), Daniel E.  
9 Leckrone, Mr. Leckrone’s wholly owned company Alliacense, and others agreed to a  
10 Settlement Agreement. The January 23, 2013 Settlement Agreement is to be assumed by  
11 Debtor TPL under both reorganization plans under consideration by this Court; its benefits  
12 include the elimination, without cost to Debtor TPL or its creditors, of (a) at least \$30 million  
13 in damages that Creditor Moore might otherwise claim in this proceeding and (b) of Creditor  
14 Moore’s right to 55% of all MMP Portfolio revenues paid to TPL. Under the January 23, 2013  
15 Settlement Agreement, Debtor TPL is receiving 26.075% of net MMP revenues received by  
16 PDS; Patriot, 50%; Creditor Moore, 23.925%.

17 No individual has more to gain than Creditor Moore from successful licensing of the  
18 MMP Portfolio to those who would gain from its innovations and from litigation against those  
19 who infringe upon MMP Portfolio patents. Conversely, no one has suffered more from the  
20 rapidly diminishing – and now non-existent<sup>1</sup> – MMP Portfolio revenues presided over by Mr.  
21 Leckrone, Debtor TPL (controlling MMP litigation) and Alliacense (controlling MMP  
22 licensing).

23 By any measure, MMP Portfolio licensing (Debtor TPL’s core asset) stands in need of a  
24 fresh start and a new direction. The revised plan Debtor TPL now offers modestly cuts  
25 expenses – but it offers no route to increased or sustainable MMP revenues. Debtor TPL’s

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27  
28 <sup>1</sup> Mr. Leckrone’s licensing company Alliacense has produced no MMP licensing revenue since  
August 2013 – and that revenue came not from licensing but from a litigation settlement.

1 disclosure statement falls woefully short of explanation or exposition to Court and creditors as  
2 to how the plan's "Quarterly Payments" will be generated or where the revenues underlying  
3 those purported payments will be found.

4 **2. GENERAL ISSUES WITH DEBTOR TPL'S PLAN**

5 Debtor TPL's Revised Plan presents substantial problems. In summary, they are:

- 6 a. Continued Conflict of Interest among TPL, Alliacense and PDS.  
7 b. Licensing vs. litigation support.  
8 c. More of "What doesn't work will work – *this time.*"  
9 d. The aggregator factor

10 **A. TPL conflicts of interest.**

11 As owner of Alliacense, Mr. Leckrone can "dial up" or "dial down" licensing  
12 operations for any of the portfolios in the TPL stable. Given the history, it is not a leap to  
13 believe that Alliacense inability to license will starve PDS to the point that a PDS Capital Call  
14 is warranted – thus eliminating Committee participation and putting Mr. Leckrone back as  
15 Debtor TPL's representative on the PDS Board.

16 Additional conflicts remain unaddressed. For example, Alliacense has received  
17 and under Debtor TPL's plan will continue to receive quarterly advances of \$500,000 from  
18 PDS – with no provision for Alliacense performance! These no-strings-attached advances are  
19 to be reimbursed to PDS through the 20% gross commission to which Alliacense is entitled for  
20 any licenses revenue generated via MMP licensing. Should Alliacense not generate any MMP  
21 licensing revenue (as it has not since August 2013), PDS is still on the hook to advance  
22 Alliacense \$500,000, every quarter. As its deficit to PDS builds up, Alliacense has less and  
23 less incentive to license MMP, because its commission revenues have all been spoken for.  
24 Under the existing one-sided agreement between PDS and Alliacense, Alliacense advances  
25 have no relationship to Alliacense performance. There are no revenue targets to be hit; no  
26 forecasts required. Alliacense, and Alliacense alone, can opt out of the agreement whenever it  
27 chooses. These conflicts doom Debtor TPL's plan to failure.

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1 **B. Licensing vs. Litigation Support.**

2 Alliacense provides both licensing and litigation support functions. Over the past three  
3 years, litigation support has provided more and more of the revenue earned by Alliacense.  
4 Money earned by Alliacense that doesn't come from TPL must come from PDS. Thus, PDS  
5 has been providing the majority of the revenue earned by Alliacense as Alliacense provides  
6 litigation support to PDS and TPL's legal partner, Agility Law. This arrangement has a double  
7 benefit for Mr. Leckrone. First, unlike MMP licensing revenues, PDS litigation support  
8 revenue provides Alliacense with 100% dollars: Alliacense does not have to send any money  
9 down stream to investors or creditors. Second, draining the coffers of PDS means that no  
10 royalty money is paid out to Patriot, to Creditor Moore – or to Debtor TPL. Without money  
11 flowing into TPL, TPL creditors cannot be paid. The bottom line: Mr. Leckrone and his entity  
12 Alliacense receive 100% dollars for providing litigation support services while the MMP  
13 owners and TPL creditors receive nothing.

14 **C. More of “What doesn’t work will work – this time”.**

15 Debtor TPL latest plan has nothing new to offer. The same management will remain in  
16 place. The same licensing organization will remain in place. The same contracts will remain in  
17 place. TPL will continue pursuing licensing and litigation for MMP, CORE Flash, Fast Logic  
18 and 3D Art. Yet, gross licensing and litigation revenue generated since 2007 have declined  
19 each year from a high of \$100 million to just \$10 million in 2013.

20 The Debtor suggests that the “magic bullet” is TPL emerging from bankruptcy. The  
21 claim is made that this event will be the trigger for greater licensing revenue being generated;  
22 the plan, however, offers no explanation as to why this would be true, and has offered no  
23 guidance as to what should be the expected or when. Moreover, the steep decline in MMP  
24 revenues has been ongoing since at least 2009. **The TPL bankruptcy has not caused**  
25 **reduced licensing revenue: reduced licensing revenue, poor marketing and failed**  
26 **litigation caused the bankruptcy.** The TPL Plan has nothing new to offer. If it did, TPL  
27 would have implemented it by now, the Committee and the creditors would have seen positive  
28 results, and Creditor Moore, Patriot and Debtor TPL would be getting paid.

1 **D. The Aggregator Factor.**

2 TPL is a patent aggregator. It buys or licenses patents, finds potential infringers, and  
3 demands money for a license. In certain circles this might be termed a “shake down”. TPL has  
4 been one of the most aggressive aggregators in the IP world since 2009. But TPL was not  
5 always a patent aggregator. When it began licensing operations in earnest in 2005, TPL was  
6 supporting the continuing efforts of Creditor Moore, advancing his technologies and  
7 "practicing" the patents. TPL flourished using this business model, earning \$340 million in  
8 licensing revenues for MMP. Things changed when TPL changed its business model in 2009  
9 to become a patent aggregator.

10 Patent aggregators have come under serious scrutiny by technology companies and the  
11 federal government. The ITC has ruled that licensing patents does not constitute a domestic  
12 industry: practicing the art of the invention (using its articles in commerce) now appears to be a  
13 prerequisite for standing before the ITC action. The federal government has changed the patent  
14 laws, making it easier for companies to challenge patents through the re-examination process.  
15 All of this has made it more difficult for patent aggregators to operate in an increasingly hostile  
16 environment. The TPL Plan offers no answer to this challenge.

17 **3. SPECIFIC PLAN SHORTCOMINGS**

18 Debtor TPL’s plan describes its most recent approach as a departure from its prior  
19 licensing efforts for the MMP Portfolio. Now, the approach is one of litigation first, with  
20 licensing to follow successful results before the Courts.

21 More specifically, Debtor TPL and Alliacense turned their efforts – and their reliance –  
22 on efforts before the International Trade Commission. Indeed, the Plan notes that TPL’s  
23 federal district court cases have been routinely stayed, in favor of looking first to results before  
24 the ITC and the faster adjudications of injunctive actions there.

25 Debtor TPL’s Plan fails to address the consequences of what is now demonstrably a  
26 failed litigation strategy before the ITC.

27 First, TPL does admit defeat in the cases it filed before the ITC alleging infringement of  
28 the so-called ‘336 MMP patent, by eleven major electronics firms. “On September 6, 2013,

1 *Administrative Law Judge Gildea issued an Initial Determination finding the requisite domestic*  
2 *industry but no violation of Sec. 337 due to no infringement of any of the claims of the US'336*  
3 *patent.*” TPL Disclosure Statement at 17: 18-20.

4 Then, misleadingly, the Disclosure Statement goes on: “*On the heels of the [HTC*  
5 *federal district court] infringement verdict, complainants TPL, et al., petitioned the ITC for*  
6 *review of ALJ Gildean’s Initial Determination, and on November 25, 2013, the ITC announced*  
7 *that it will review ALJ Gildea’s Initial Determination regarding claims 6 and 13 of the US’336*  
8 *patent. The results of that review have not yet been announced.*” TPL Disclosure Statement at  
9 18:5-8. What TPL fails to disclose is that the ITC also directed the parties to brief the issue of  
10 domestic industry – the issue on which TPL and Alliacense had prevailed before the ALJ.

11 There is every indication that the ITC is poised to deal a crippling blow to the ability of  
12 TPL and Alliacense to bring action before the Commission.

13 NOWHERE in the TPL Disclosure Statement is there a mention of the ITC – that is, the  
14 Commission – decision against TPL and Alliacense on not only infringement BUT ALSO on  
15 the issue of domestic industry standing. That ITC decision was announced on December 19,  
16 2013, in the Matter of Certain Computers and Computer Peripheral Devices, etc., No. 337-TA-  
17 841. That case is indeed TPL and Alliacense litigation, involving TPL’s so-called “CORE  
18 Flash” portfolio.

19 The TPL Disclosure Statement falsely states: “*The finding of the Administrative Law*  
20 *Judge was released in early August of 2013 and found infringement of one asserted patent, but*  
21 *not the others. TPL believes that the ruling will have a favorable impact on projected revenue*  
22 *from this CORE Flash Licensing Program, A final determination from the ITC should be*  
23 *released by the end of 2013.*” TPL Disclosure Statement at 19:5-8.

24 The ITC indeed issued its final determination, “by the end of 2013.” The result,  
25 nowhere admitted or addressed in the disclosure statement, is a disaster for TPL and Alliacense  
26 – both for its CORE Flash program and, prospectively, for MMP as well. The Commission’s  
27 ruling reverses the single finding of infringement that TPL now states, in disclosure, “will have  
28 a favorable impact on projected revenue...” The Commission decision cites two Federal Circuit

1 decisions (InterDigital Communications. LLC., v ITC, 690 F.3d 1318 (Fed.Cir. 2012) and  
2 Microsoft Corp. v. ITC, 731 F.3d 1354 (Fed.Cir. 2013), as supporting the assertion that all ‘337  
3 actions before the ITC require a domestic industry showing of “an article protected by the  
4 [pertinent] patent.”

5 Neither TPL nor Alliacense made such a showing, nor is capable of making such a  
6 showing. Neither TPL nor Alliacense can defend the patents it has aggregated in actions before  
7 the ITC.

8 And it remains an open question as to whether TPL or Alliacense can devise or execute  
9 a strategy that will allow it either to prevail in federal district court litigation against a torrent of  
10 commentary and criticism directed at “patent trolls.”

11 The revised TPL Plan is deafening silent as to how its failed litigation strategy can be  
12 somehow revitalized and converted into a viable licensing program for MMP.

13 This Court must direct TPL to correct its misrepresentation of victory before the ITC in  
14 its CORE Flash Litigation, and explain to Court and creditors how TPL and Alliacense can  
15 function when neither will have standing before the ITC.

16 TPL’s projected Quarterly Payments are simply fiction in the absence of licensing  
17 possibilities. A plan the rests upon thin air is no plan at all.

#### 18 **4. CONCLUSION**

19 The TPL Plan for reorganization is not a viable plan that will provide TPL’s creditors  
20 with any payment, let alone a 100% payback. The plan offers a dearth of new ideas and only  
21 more of the same wishful thinking that has put TPL into bankruptcy, now compounded by  
22 litigation reverses.

23 The continued conflicts of interest among TPL's owners and affiliated companies such  
24 as Alliacense leads to doubt as to whether the debtor in possession can meet its fiduciary duty  
25 to TPL and its creditors. TPL is a patent aggregator, loathed by the technology industry and  
26 under fire from political interests. TPL has had an opportunity to prove that it could make its  
27 plan work over the last 8 months, given the HTC trial win. Had TPL generated **any real MMP**  
28 **revenue in 2013**, the Debtor Plan would have sailed through the bankruptcy process unscathed.

1 But TPL failed to achieve its objectives, and there is little reason to believe it will achieve them  
2 in the future with the current plan.

3 Dated: February 21, 2014

4 CHILES and PROCHNOW, LLP

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6 By: s/Kenneth H. Prochnow  
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8 Attorneys for Creditor Charles H. Moore  
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