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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

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In re:)	Chapter 11
)	
EASTMAN KODAK COMPANY, <i>et al.</i>)	Case No. 12-10202 (ALG)
)	
)	
	Debtors.)	Joint Administration Requested
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LIMITED OBJECTION OF APPLE INC. TO DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS (A) TO OBTAIN POSTPETITION FINANCING PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(C)(1), 364(C)(2), 364(C)(3), 364(D)(1) AND 364(E) AND (B) TO UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, (II) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES PURSUANT TO 11 U.S.C. §§ 361, 362, 363, AND 364, AND (III) SCHEDULING FINAL HEARING PURSUANT TO BANKRUPTCY RULES 4001(B) AND (C)

Apple Inc. ("*Apple*") hereby submits this limited objection (the "*Objection*") to the: *Debtors' Motion For Entry Of Interim and Final Orders (I) Authorizing the Debtors (A) to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(C)(1), 364(C)(2),*



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364(C)(3), 364(D)(1) and 364(E) and (B) To Utilize Cash Collateral Pursuant to 11 U.S.C. § 363, (II) Granting Adequate Protection to Prepetition Secured Parties Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364, and (III) Scheduling Final Hearing [Docket No. 16] (the “**DIP Motion**”), and respectfully states as follows:¹

Introduction

1. By the DIP Motion, Eastman Kodak Company and certain of its affiliates (collectively, “**Kodak**”) seek authority to enter into a \$950 million postpetition financing facility secured by security interests in and liens upon substantially all of Kodak’s assets, including certain patents that are subject to ongoing patent ownership and patent infringement disputes between Kodak and Apple. Central to these disputes is Apple’s belief that it is the rightful owner of the U.S. Patent No. 6,292,218 (the “**218 patent**”) and potentially other patents in Kodak’s digital imaging portfolio. As described below, the disputes are the subject of ongoing actions pending in the U.S. International Trade Commission (the “**ITC**”) and the United States District Court for the Western District of New York.²

2. Apple does not oppose Kodak’s acquisition of postpetition financing as a general matter. However, Kodak cannot grant security interests in and liens upon patents that Kodak does not own. Accordingly, Apple respectfully requests that any order approving the proposed financing (the “**Order**”) contain clarifying language that no security interests or liens will attach to patents to which Apple is the owner and has claimed ownership unless and until there is a judicial determination resolving the ownership dispute between Apple and Kodak.

¹ Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the DIP Motion.

² Among the claims asserted in these various actions are patent infringement claims by Apple against Kodak.

Background

3. Apple is a leading designer and manufacturer of personal computers and mobile communication devices, and is well-known for its iconic Macintosh, iPod, iPhone, and iPad products. Apple's history of launching technically-innovative and commercially-successful products goes back several decades and stems from its substantial commitment to research and development in a wide variety of fields. Included among Apple's research and development activities was pioneering work on digital camera and imaging technology and related hardware, software, and user and communication interfaces.

4. Apple's pioneering work in these areas led to a collaboration in the early 1990s with Kodak, which was the leader in film-based cameras at the time, to explore how the two companies could work together on various projects including commercialization of Apple's digital cameras. Through this collaboration Apple disclosed the architecture for its confidential digital camera technology to Kodak subject to various non-disclosure agreements, which also provided that any improvements Kodak made to Apple's disclosures remain the property of Apple.

5. Apple became aware in 2010 that Kodak had misappropriated Apple's technology and sought patents of its own claiming this technology. In particular, in January 2010 Kodak requested that the ITC institute an investigation to determine whether Apple's iPhone products -- which contain a digital camera -- infringe the '218 patent, and also filed a companion complaint alleging infringement of this and another patent in the United States District Court for the Western District of New York (Civil Action No. 6:10-CV-06021 (the "*021 case*"). Given the potential severity of Kodak's requested relief, in early 2010, Apple launched an extensive internal investigation into Apple's prior relationship with Kodak relating to the development of digital camera technology.

6. This investigation revealed that Apple is in fact the rightful owner of the '218 patent (and potentially many other Kodak patents) pursuant to disclosures made by Apple to Kodak and contracts made between the parties in the early 1990s. As a result, Apple filed suit against Kodak in August 2010 in the Superior Court of California alleging various causes of action relating to Kodak's improper claim to ownership of Apple's technology, including the '218 patent. After removal and transfer of Apple's suit against Kodak, Apple's causes of action are now pending in the Western District of New York as part of the '021 case.

7. The patents that Kodak sought based on Apple's innovations apparently form the heart of Kodak's digital imaging portfolio and the patent monetization strategy it has pursued over the past several years. The centerpiece of Kodak's patent assertions, and thus the driving force in obtaining what Kodak claims to have been over \$3 billion to date in licensing revenues, is the '218 patent. The '218 patent generally claims a digital camera capable of capturing an image while previewing the scene to be captured on an LCD screen. Over the past several years Kodak has sued the likes of Sony, Matusushita, JVC, Samsung, and LG for infringement of the '218 patent, and claims to have reached royalty-bearing licensing agreements with each of these companies in conjunction with settling these litigations. In addition to Apple, Kodak also has sued, and has pending litigation against, RIM, HTC, Fujifilm, and Samsung (for its tablet-based products) for alleged infringement of the '218 patent.

8. Apple is entitled to restitution of all or a substantial portion of the licensing revenues that Kodak has obtained based on its improper claims to ownership of the '218 patent and potentially other patents sought based on Apple's innovations and technology. Apple has asserted that it is entitled to specific performance requiring Kodak to assign its right to at least the '218 patent to Apple, and to injunctive relief permanently enjoining Kodak from seeking to

enforce the '218 patent or any other wrongfully-obtained intellectual property right against Apple in any forum.

9. Notably, Kodak's postpetition financing is conditioned on Kodak's filing on or before June 30, 2012 of a motion seeking approval of bid procedures relating to a sale of all or substantially all of its patent portfolio.

Limited Objection

10. By the DIP Motion, the Debtors are now seeking authority to grant:

- a first priority senior security in and a lien upon all pre- and post-petition property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date (or as a result of the refinancing of the Pre-Petition First Lien Debt) is not subject to valid, perfected and non-avoidable liens (including, upon entry of the Final Order, proceeds from Avoidance Actions);
- a first priority senior priming security interest in and lien upon all pre- and post-petition property of the Debtors whether now existing or hereafter acquired, that is subject to the existing liens presently held by any of the Existing Second Lien Debt; and
- a security interest in and lien upon all pre- and postpetition property of the Debtors whether now existing or hereafter acquired, that is subject to valid, perfected and unavoidable liens in existence immediately prior to the Petition Date, or to any valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code.

See DIP Motion, p. 22.

11. Kodak can only grant security interests in and liens upon patents that it actually owns. Given the ongoing and potential additional disputes between Apple and Kodak regarding the ownership of the '218 patent and other intellectual property, Apple respectfully requests that any order approving the DIP Motion contain the following provision:

Notwithstanding anything contained herein to the contrary, no security interest or lien granted pursuant to this Order shall attach to any and all patents or other intellectual property that is or becomes subject to a claim of ownership by Apple

Inc. unless and until there is an agreement among the Debtors and Apple Inc. or a final judicial determination by a court of competent jurisdiction that such patents or intellectual property constitute property of the Debtors' estates.

Reservation of Rights

12. Apple is continuing its review of the DIP Motion and all of the other pleadings filed by the Debtors in connection with these chapter 11 cases. Apple expressly reserves the right to supplement this objection and to object to any other motion filed by the Debtors at the "first day" hearing and any other hearing scheduled with respect to these chapter 11 cases as may be necessary.

Conclusion

13. For all of the foregoing reasons, the Debtors respectfully request that the Court deny the DIP Motion to the extent Apple's limited objection is not addressed in the proposed Order.

New York, New York
Dated: January 19, 2012

/s/ Brian S. Lennon

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