

Cautionary Statement Regarding Forward-Looking Statements

Kodak

This presentation includes forward-looking statements, as that term is defined under the Private Securities Litigation Reform Act of 1995. Forward-looking statements include statements concerning the Company's plans, objectives, goals, strategies, future events, future revenue or performance, liquidity, cash flows, capital expenditures, financing needs, plans or business trends, and other information that is not historical information. When used in this presentation, the words "estimates," "expects," "anticipates," "projects," "plans," "intends," "believes," "forecasts," or future or conditional verbs, such as "will," "should," "could," or "may," and variations of such words or similar expressions are intended to identify forward-looking statements. All forward-looking statements, including, without limitation, management's examination of historical operating trends and data are based upon the Company's expectations and various assumptions. Future events or results may differ from those anticipated or expressed in these forward-looking statements. Important factors that could cause actual events or results to differ materially from these forward-looking statements include, among others, the risks and uncertainties described under the heading "Risk Factors" in the Company's most recent annual report on Form 10-K under Item 1A of Part 1, in the Company's most recent quarterly report on Form 10-Q under Item 1A of Part II and those described in filings made by the Company with the U.S. Bankruptcy Court for the Southern District of New York and in other filings the Company makes with the Securities & Exchange Commission from time to time, as well as the following: the ability of the Company to continue as a going concern, the Company's ability to obtain Bankruptcy Court approval with respect to motions in the chapter 11 cases, the ability of the Company and its subsidiaries to prosecute, develop and consummate one or more plans of reorganization with respect to the chapter 11 cases, Bankruptcy Court rulings in the chapter 11 cases and the outcome of the cases in general, the length of time the Company will operate under the chapter 11 cases, risks associated with third party motions in the chapter 11 cases, which may interfere with the Company's ability to develop and consummate one or more plans of reorganization once such plans are developed, the potential adverse effects of the chapter 11 proceedings on the Company's liquidity, results of operations, brand or business prospects, the ability to execute the Company's business and restructuring plan, increased legal costs related to the chapter 11 bankruptcy filing and other litigation, our ability to raise sufficient proceeds from the sale of non-core assets and the potential sale of our digital imaging patent portfolios within our plan, the Company's ability to generate or raise cash and maintain a cash balance sufficient to fund continued investments, capital needs, restructuring payments and service its debt; the Company's ability to maintain contracts that are critical to its operation, to obtain and maintain normal terms with customers, suppliers and service providers, to maintain product reliability and quality, to effectively anticipate technology trends and develop and market new products, to retain key executives, managers and employees, our ability to successfully license and enforce our intellectual property rights and the ability of the Company's non-US subsidiaries to continue to operate their businesses in the normal course and without court supervision. There may be other factors that may cause the Company's actual results to differ materially from the forward-looking statements. All forward-looking statements attributable to the Company or persons acting on its behalf apply only as of the date of this presentation, and are expressly qualified in their entirety by the cautionary statements included in this presentation. The Company undertakes no obligation to update or revise forward-looking statements to reflect events or circumstances that arise after the date made or to reflect the occurrence of unanticipated events.

Simplified Structure

Commercial



Graphics, Entertainment & Commercial Film Business

Digital & Functional Printing

Enterprise Services & Solutions

Consumer



Retail Systems Solutions

Consumer Inkjet

Paper & Output Systems

Event Imaging Solutions

Digital Capture & Devices

Gallery

Consumer Film

Intellectual Property

2011E Revenue

\$3.4B

\$2.6B

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Commercial Segment

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Kodak

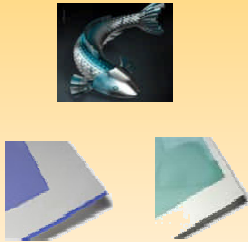
Graphics, Entertainment & Commercial
Film Business

Prepress Solutions Portfolio

Unit
Portfolio
Focus
Strategy

Offset Consumables

Trillian SP
Electra XD
Thermal Direct



Profit & Cash Generation
EM & Packaging Growth

- Winning Portfolio Transition
- New GTM Model
- Fulfillment Model

Output Devices

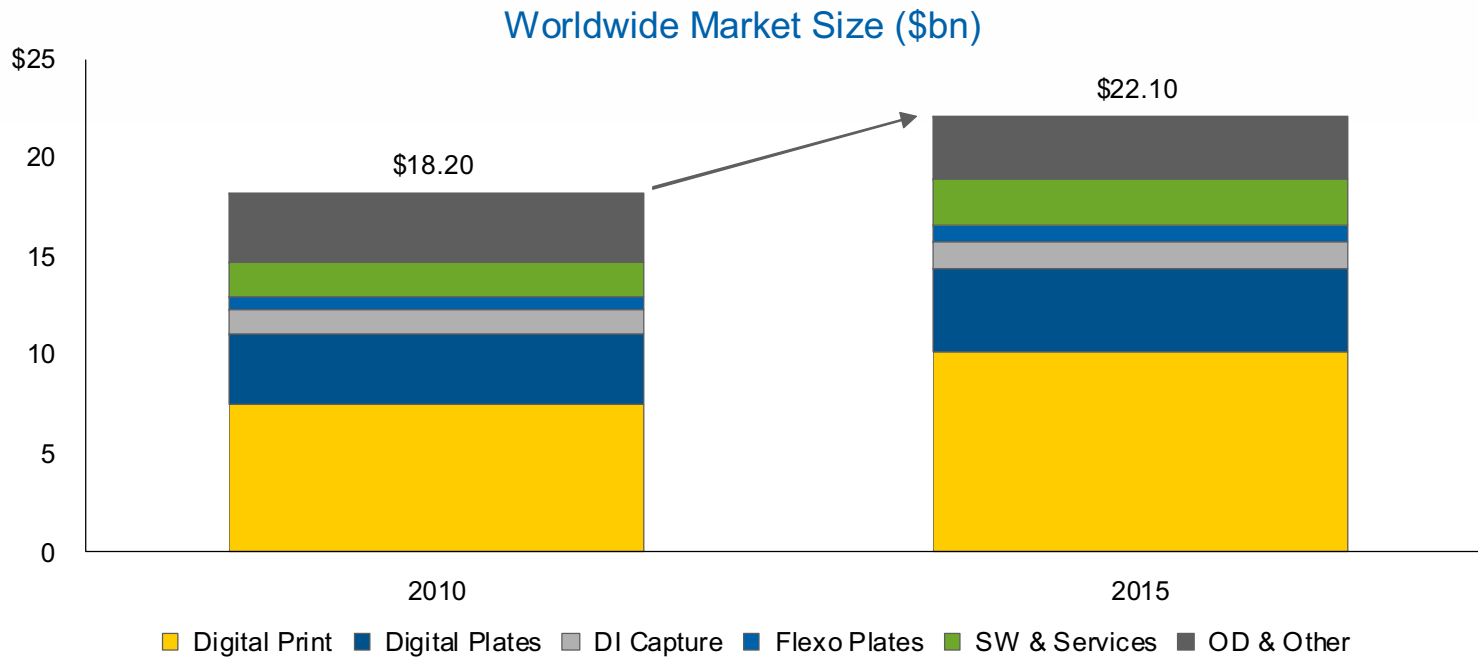
Trendsetter
Magnus
Trendsetter NX System



Profit & Cash Generation
EM & Packaging Growth

- Focus on Solutions Designed for Packaging and Emerging Markets
- Grow OEM Sales

Commercial Output Addressable Market



Worldwide Market Size (\$bn)	2010	2015	CAGR '10-'15
Flexo Plates	\$0.7	0.8	3.1%
Digital Plates	3.6	4.2	3.1
Digital Print	7.5	10.2	6.3
DI Capture	1.2	1.4	3.1
SW & Services	1.7	2.3	6.8
OD & Other	3.5	3.2	(1.7)
Total	\$18.2	\$22.1	4.0%

Entertainment Imaging

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Objectives

- Generate cash over the planning horizon
- Maintain leadership position in the industry
- Create new vectors of opportunity



Key Imperatives

- Continue to aggressively manage costs ahead of volume decline
 - Balance customer satisfaction with infrastructure activities
 - Continue to maintain product quality, while making tradeoffs between customer service level and cost
- Simplify and maintain studio contracts
 - Disney, Sony, Paramount, Universal, Warner Brothers
- Execute Silver Insulation Plan
- Find growth opportunities in a low investment manner
 - Digital Asset Management included in plan
 - Evaluate partnerships

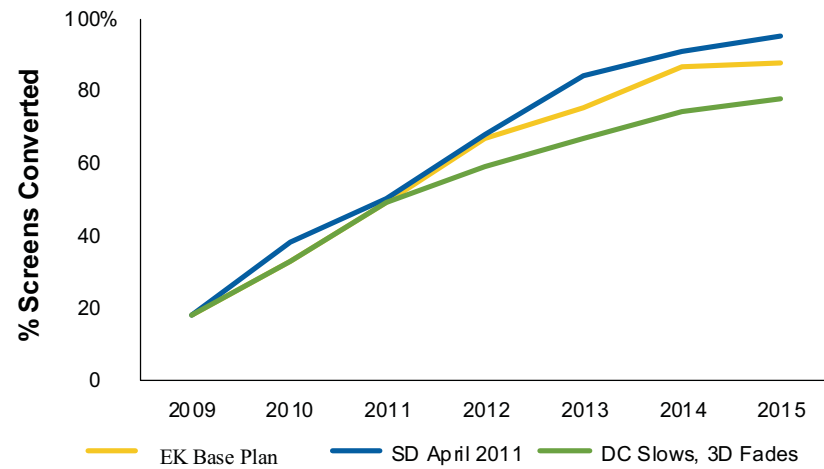
Entertainment Imaging: Industry Update

- Industry adapting to changing market dynamics
 - Declining DVD sales impact studio profitability
 - Major studio releases down, films staying in theaters longer
 - Increased number of 3D features
- Digital Cinema adoption for first-run screens at year-end 2011 estimated at 40-50%

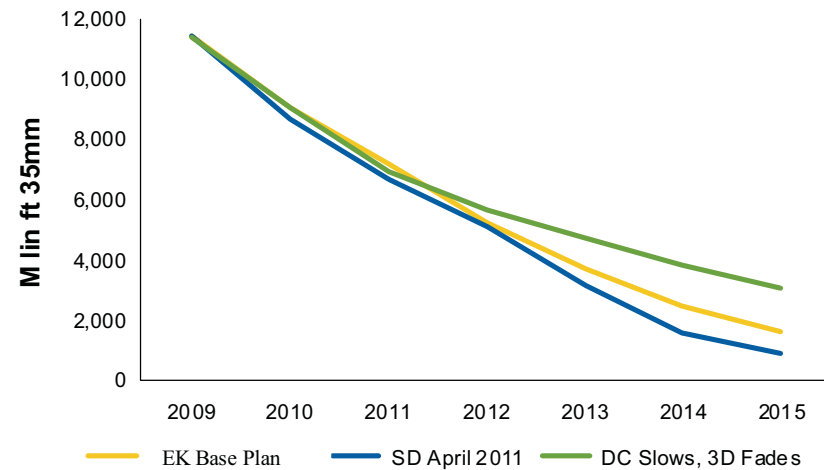


Source: Screen Digest.

Worldwide % Digital Cinema First-Run Screens Converted



ECP Volume Projections



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Digital and Functional Printing

Digital Printing Solutions

Roll-Fed Presses

High-volume roll-fed color presses



- Transaction
- Direct Mail
- Books
- Newspaper
- Magazines

Sheet-Fed Presses

B&W and color sheet-fed production presses



- Direct Mail
- Ad collateral
- Books, Photo
- Transaction
- Folding Cartons

Components

Imprinting solutions for web presses



- Direct Mail
- Books
- Inserts, Labels
- Corrugated
- Specialty

Services & Consumables

Services
Business Dev.
Operations Mgmt.
Support

Consumables

Printheads
Ink
Toner
ORC's



- All segments

Target Applications

Digital Printing Trends

Direct Mail



2.9T

Total pages

10%

Digital page CAGR
'09-'12

Value Prop

- Improved ROMI
- Lower production cost

Catalogs



3.4T

Total pages

42%

Digital page CAGR
'09-'12

Value Prop

- Improved ROMI
- Lower production cost

Promotional



6.8T

Total pages

14%

Digital page CAGR
'09-'12

Value Prop

- Improved ROMI
- Supply chain efficiency

Books



2.8T

Total pages

17%

Digital page CAGR
'09-'12

Value Prop

- Lower production cost
- Supply chain efficiency

Newspapers



19.2T

Total pages

26%

Digital page CAGR
'09-'12

Value Prop

- Improved ROMI
- Supply chain efficiency

Note: Above page volumes represent WW volumes for these specific applications.

Digital Printing Solutions Highlights – PROSPER Printing

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Prosper is a Breakthrough for Print Providers

Game-changing technology in the transformation of print

PROSPER Delivers:

- Highest-speed inkjet printing
- Magazine quality
- Broad range of media
- Lowest running cost

Expanding Solutions



Prosper
Components



Prosper
5000XL Color Press

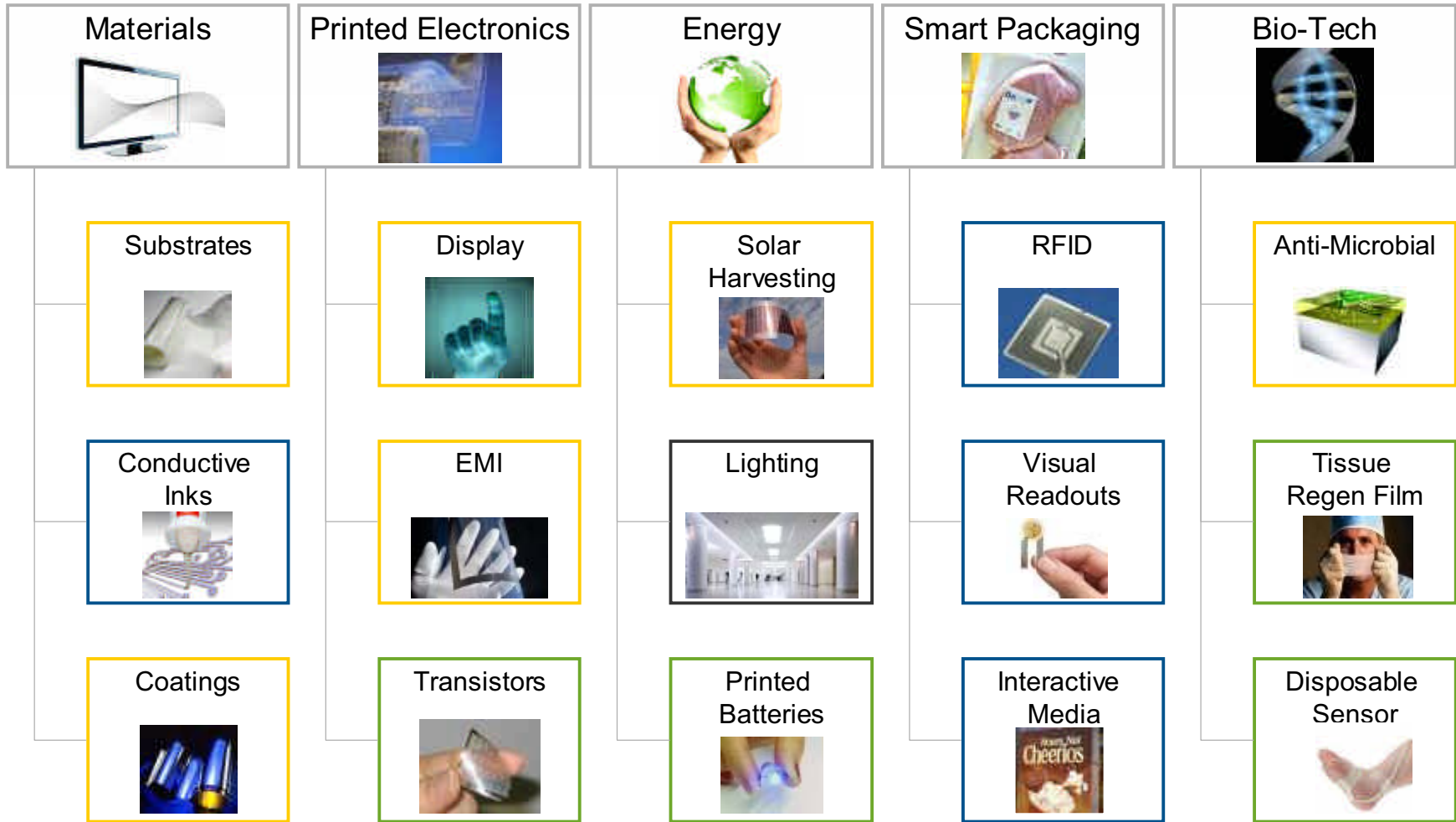
Expanding Applications

- Books
- Direct Mail
- Newsprint
- Magazines
- Catalogs
- Advertising Collateral
- Packaging

Selected Highlights

- Game-changing Stream IJ technology
- Highly advantaged production digital solutions
- Attractive margins on equipment, ink and service
- Digital pages offer 15X revenue opportunity than traditional
- Opportunity to grow in emerging markets as well as in Publishing and Promotional applications

Target Functional Printing Markets



Opportunistic 0–18

Extend Reach 18–36

Future Participation 36+

Packaging Solutions

Unit
Portfolio
Focus
Strategy

Flexo Consumables

Flexcel NX System
Flexo SRC/M/H
DITR Washout CRS



Invest & Grow

- Lead Packaging Growth Initiative

Proofing Solutions

Approval NX System
IJJ Proofing



Prepare for End of Life

- Approval Product Line Supports Packaging Initiative
- Manage Ink Jet Proofing for Cash

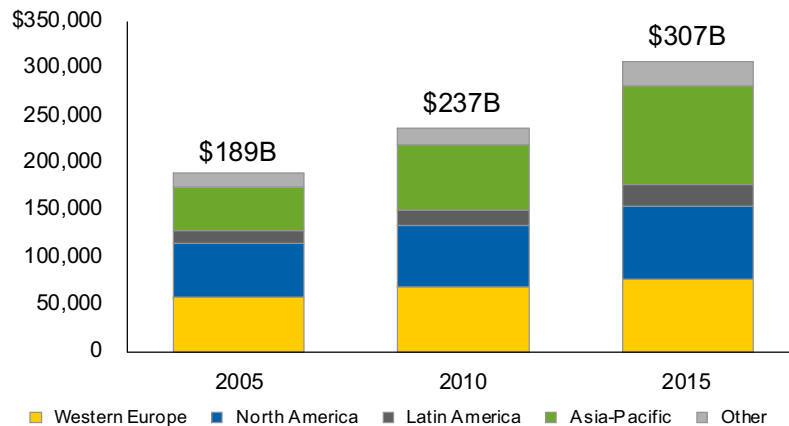
Packaging Solutions Key Highlights

The Packaging Industry

- Fastest growing and sustainable print market
- Highly fragmented value chain
- Ripe for technology substitution
- Kodak well positioned to lead digitization and drive integration
- Attractive business case, but need to accelerate to scale

Packaging Market Growth

(\$ in millions)



Selected Highlights

- Best segment-optimized digital solutions in the industry
- #1 market share worldwide in digital prepress
- Game-changing technology upsides
 - No process digital offset
 - Digital Flexo for Packaging / Functional Printing
- Growth opportunities in emerging markets, Packaging Segment, and Functional Printing

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Enterprise Services & Solutions

Enterprise Services & Solutions Business Overview

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Enterprise Document Management

Market Needs

- Making content available to drive enterprise business decisions
- Modernization in emerging markets

Target Markets

- Government
- Finance
- Retail



Applications

- Content management with imaging and document services

Enterprise Marketing & Brand

Market Needs

- Improve ROMI through increased effectiveness of multi-channel communication
- Consistent representation of the brand

Target Markets

- CPG
- Pharma
- Retail



Applications

- Marketing communications
- Packaging
- Transpromo

Print

Market Needs

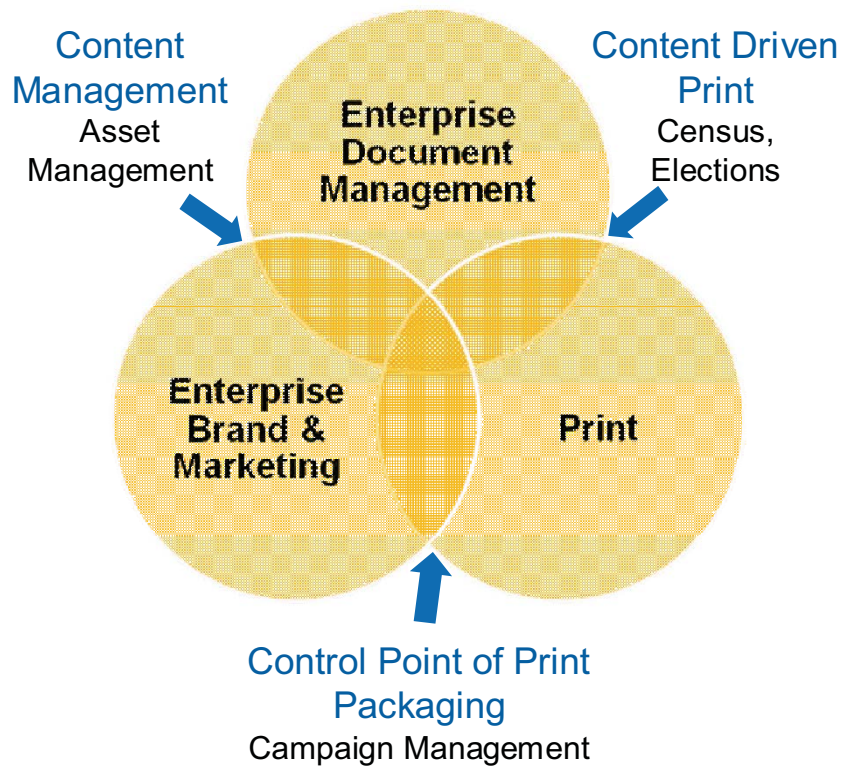
- Better ROI in declining industry
- Print effectiveness in multi channel communication
- New revenue sources for new services
- Competencies and access to digital

Target Segments

- Commercial
- Packaging
- Publishing
- Enterprise



Large Market Opportunity with Attractive Growth



Market Size And Growth

Enterprise Document Management

\$16.6bn
13% CAGR

- Scanners \$0.9bn, 2%
- Capture Software \$0.5bn, 10%
- Services \$15.2bn, 14%
- *Analog Products + Services*

Print

\$32.4bn
5% CAGR

- Software \$1.3bn, 8%
- Services \$31.8bn, 5%

Enterprise Brand & Marketing Software

\$2.1bn
12% CAGR

Enterprise Services & Solutions Highlights

Customers

Enterprise Document Management



Enterprise Marketing & Brand



Print



Selected Highlights

- Document Management leadership position
 - Access to valuable information, control points and connection for print (i.e. census, elections)
 - Critical nature of service leads to customer stickiness
- High margin and growth
- Business booked on long term contracts
- Strength in technologies such as security solutions, campaign management (VDP, effective), capture software
- Market opportunity in services for Enterprise Document Management and Print is compelling

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Consumer Segment






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Retail Systems Solutions

Retail Systems Solutions



Unit	Kodak Instant Picture Kiosks	Dry Labs (APEX)	Retail Photo Dept Software	Thermal Print Solutions	At Home / On The Go Solutions
Portfolio					
Position	<ul style="list-style-type: none"> ▪ #1 worldwide instant prints ▪ >100K placements ▪ >65K retail sites WW 	<ul style="list-style-type: none"> ▪ #1 new placements worldwide ▪ #1 installed base in US & Europe 	<ul style="list-style-type: none"> ▪ #1 worldwide ▪ 80 million unique consumers ▪ >160 million kiosk sessions/year ▪ >45k connected devices 	<ul style="list-style-type: none"> ▪ #1 worldwide ▪ Proven reliability at retail ▪ 6,600 EP Duplex Solution 	<ul style="list-style-type: none"> ▪ Net 2 Retail ▪ Host Retail Photo Sites ▪ Off site gifting fulfillment ▪ Create@Home SW

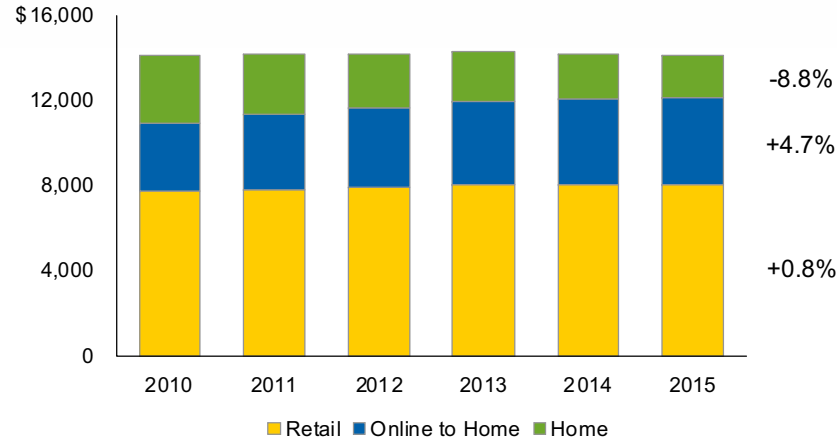
Kodak is the Market Leader in Global Retail Installed Base

WW Photo Products Output Market Opportunity

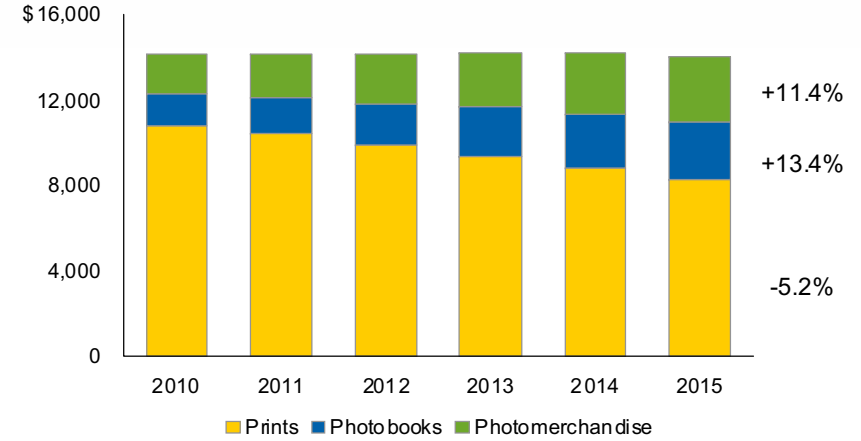


(\$ in millions)

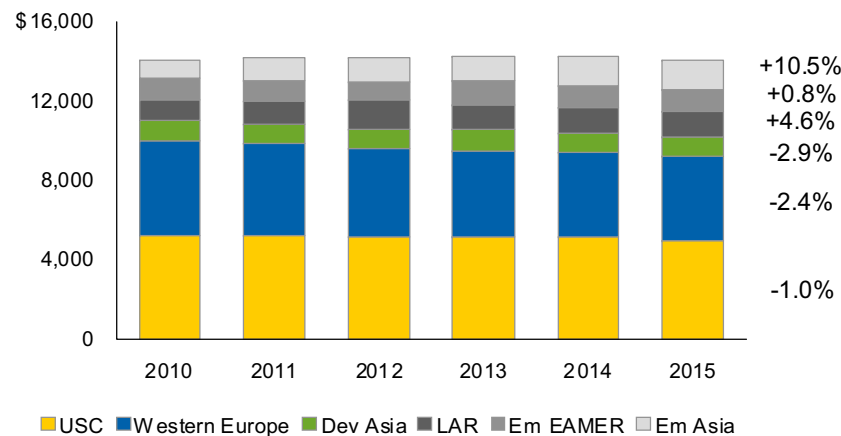
WW Consumer Value by Pathway



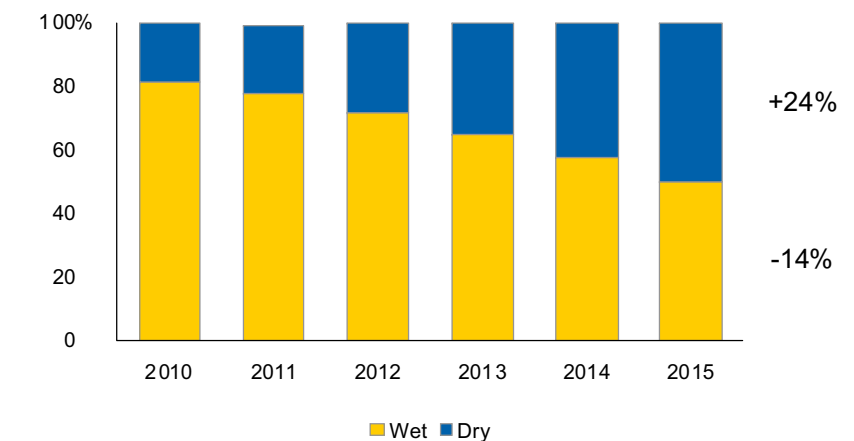
WW Consumer Value by Product



WW Consumer Value by Region



Retail Digital 4x6 Prints



Sources: IDC, Infotrends, Futuresource, Kodak OCMO & SPG BR, May 2011.

% represent '10-'15 CAGRs

Retail Systems Solutions Highlights

RSS is a Sustained Partner to Leading Global Retailers



Selected Highlights

- #1 market position in retail installed base and consumables
- Number of images captured is growing exponentially; capture is rapidly moving to multi-function devices
 - Instant photobooks and photo greeting cards are driving growth in select retailers
 - Duplex capability in 5,000 stores
- Social network access from kiosks
 - 60% key accounts connected
 - Direct Facebook access to photos
- Emphasis on dry lab installs in all emerging markets
 - LAR growth 140% for 2011

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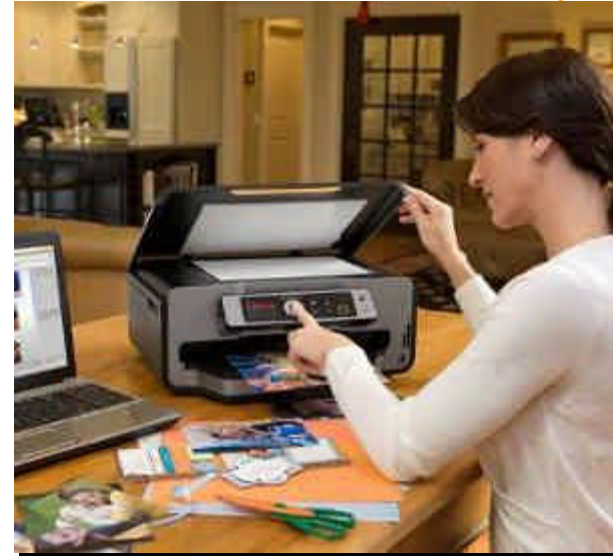
Consumer Inkjet

Consumer Inkjet

Kodak

Home & Office Printing Opportunity

- \$43 billion retail market
- Big profit pool
- Kodak has:
 - Fundamental technologies
 - Sustainable differentiation
 - Breakthrough business model
 - Price premium on printers
 - Premium ink at an affordable price
 - Momentum in the market



Consumer Inkjet Highlights

CIJ Portfolio

Cloud Printing

Smart Sensors

Leading Ease-of-Use WiFi setup

**Innovative Office printers +
Advanced Technology**

Selected Highlights

- Fundamental technology is a barrier to entry against competitors
- High gross profit margins from ink revenue
- Large printer installed base will sustain ink revenue for coming years
- Movement into SOHO market will drive better margins and higher ink usage
- Market share meaningful but still small with a lot of upside potential

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Kodak

Intellectual Property

Our Intellectual Property Strategy

Kodak

- Design Freedom
 - Over 10,000 worldwide Kodak patents supporting Kodak-branded products and current and future licensing portfolios
 - World Class Productivity: Greater than one U.S. patent per year for each \$1M of R&D spent during the past five years
- Access to New Markets and Partnerships
 - Cross licenses provide access to a broad spectrum of third-party patent portfolios
- Continued Income and Cash Generation
 - \$1.9B in revenue from 2008 – 2010
- Sale of DCD and KISS Patent Portfolios In Progress

Consistent, demonstrated performance monetizing our Intellectual Property

Summary Segment Highlights

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Leading Commercial Inkjet Technology/Stream is transforming the Print Market

Packaging products well positioned to lead digitization and drive integration

Market leader in Retail photo business driven by connectivity and large installed base

Momentum continues for the Consumer Inkjet business

Continue licensing program or sell IP Portfolio

EXHIBIT 14

Thursday, November 03, 2011

Kodak Reports 3rd Quarter 2011 Results, Steady Progress in Transformation

Cash Balance on Sept. 30 Totals \$862 Million; Year-End Cash Balance Forecasted at \$1.3 Billion to \$1.4 Billion, Before Digital Imaging Patent Sale; Company's Core Digital Growth Businesses, as a Group, Grew Revenue 13%, Led by a 44% Increase in Consumer Inkjet Printers and Ink, and an 89% Increase in Packaging; Total Digital Operating Profitability Improved, Led by \$53 Million Year-Over-Year Increase in Consumer Digital Imaging Group, Excluding Year-Ago Non-Recurring Patent Licensing Revenue; Company Updates Full-Year Financial Targets

ROCHESTER, N.Y., November 03 -- Eastman Kodak Company (NYSE:EK) today reported steady progress toward becoming a profitable and sustainable digital company as third-quarter digital earnings improved, excluding non-recurring patent licensing revenue in the prior-year period, and sales increased in its core digital growth businesses. Total company revenue declined largely because of lower sales of traditional products, a planned reduction in digital camera sales, and the absence, compared to the year-ago period, of significant non-recurring patent licensing revenue.

Third-quarter sales were \$1.462 billion, a 17% decrease from the year-ago quarter or only 5% when excluding the benefit of a \$210 million non-recurring patent licensing transaction in the year-ago period. Third-quarter digital revenue grew 3% excluding that year-ago intellectual property revenue and a 25% decline in the company's Digital Cameras & Devices business, which reflects the strategic decision this year to trade revenue for improved earnings. Revenue from the core digital growth businesses – Consumer and Commercial Inkjet, Workflow Software & Services, and Packaging Solutions – increased 13%, fueled by 44% revenue growth in Consumer Inkjet printers and ink, and 89% revenue growth in Packaging Solutions. The revenue decline rate for the company's Film, Photofinishing and Entertainment Group slowed to 10% in the third quarter.

On the basis of U.S. generally accepted accounting principles (GAAP), the company reported a third-quarter loss from continuing operations of \$222 million, or \$0.83 per share, compared with a loss from continuing operations on the same basis of \$43 million, or \$0.16 per share, in the year-ago period. The results largely reflect the absence of sizable patent licensing revenue in this year's third quarter versus the year-ago period and the continued secular decline of traditional products, partially offset by better operating performance, excluding non-recurring intellectual property revenue, in the company's digital businesses.

Non-operational items of net benefit in the third quarter of 2011 totaled \$2 million after tax, or \$0.00 per share, primarily due to tax-related items, substantially offset by restructuring charges, impairments, and corporate components of pension and other post-employment benefit costs. Non-operational items of net expense in the third quarter of 2010 totaled \$13 million after tax, or \$0.05 per share, primarily due to restructuring charges and tax-related items, partially offset by corporate components of pension and other post-employment benefit costs. (Please refer to the attached Non-Operational Items table for more information.)

"More than anything, the results of this quarter reflect our continued progress toward establishing digital growth businesses that will form the nucleus of a new Kodak," said Antonio M. Perez, Chairman and Chief Executive Officer, Eastman Kodak Company. "In Consumer Inkjet, ink gross profit dollars doubled in the third quarter and year-to-date. Our installed base of printers is now sufficiently large that we expect to meet a key milestone in the fourth quarter – achieving positive gross profit for this business as a whole, driven by ink gross profit. Packaging Solutions sales increased 89% in the quarter and more than 130% year-to-date. In Commercial Inkjet, revenue for the entire PROSPER product line rose 40% in the third quarter, and we anticipate that revenue recognition for PROSPER presses will accelerate in the fourth quarter, based on installations already in the field and continued success in the marketplace. That said, we continued to incur higher-than-planned start-up costs for PROSPER systems in the third quarter and associated delays in revenue recognition, while demand declined for legacy VERSAMARK inkjet presses. Of particular note is that customers of the PROSPER press are beginning to place additional orders as they experience the revolutionary value proposition of offset-class quality and productivity combined with the flexibility and speed of digital.

The image shows the classic Kodak logo in red, set against a white background with yellow horizontal bars above and below it.

[Full Size Image](#)

About Kodak

[Investor Center](#)

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“As for our cash-generating businesses, the digital product lines, led by Digital Cameras & Devices, significantly improved their cash and earnings performance in the quarter on an operational basis, and we expect the improved performance to continue in the fourth quarter and through 2012,” Perez said. “Our traditional business also generated a profit despite significant headwinds from high raw material costs, especially silver.

“We now expect to end the year with as much as \$1.4 billion in cash, before any proceeds from the sale of our digital imaging patent portfolios, reflecting the company’s seasonal generation of cash in the fourth quarter,” Perez said. “Remember as well that the eventual sale of our digital patent portfolios will materially increase our cash balance and help to accelerate our efforts to complete the transformation. What’s more, 2011 represents the peak year for cash usage by our business units during this transformation. In 2012, we expect cash usage attributed to the operating businesses to decline notably, stemming from significant profitability improvements in consumer and commercial inkjet as well as digital cameras. We remain confident that we are creating a digital Kodak that will help our customers grow their business through high-quality and innovative products and services. We continue to make progress against that goal, and we look forward to reporting additional progress in the months ahead.”

Other third-quarter 2011 details:

Excluding the prior-year non-recurring patent licensing revenue and certain higher raw material costs, Gross Profit improved 3 percentage points. On a GAAP basis, Gross Profit was 14% of sales, as compared to 27% of sales in the year-ago period. This decrease in margin was primarily driven by the timing of the patent licensing revenue, increased raw material costs, partially offset by improvement in the gross margins of the company’s strategic growth businesses as a group.

Operating expenses, on a GAAP basis, continue to decline as a result of company-wide cost reductions:

Selling, General and Administrative (SG&A) expenses were \$284 million, a \$29 million decline from the prior-year quarter.

Research and Development (R&D) expenses were \$68 million, a \$14 million decline from the prior-year quarter.

Primarily reflecting the timing of patent licensing revenue, third-quarter 2011 cash usage, before restructuring payments, was \$189 million, compared with the cash generation of \$123 million in the year-ago quarter. This corresponds to net cash used in continuing operations from operating activities on a GAAP basis of \$191 million in the third quarter, compared with net cash generated in continuing operations from operating activities on a GAAP basis of \$140 million in the third quarter of 2010, which included \$269 million from non-recurring intellectual property licensing receipts.

Kodak held \$862 million in cash and cash equivalents as of September 30, 2011.

Segment sales and earnings from continuing operations before interest, taxes, and other income and charges (segment earnings from operations), are as follows:

Reflecting the strategic decision this year to focus on earnings in the digital camera market and to accept lower camera revenue, Consumer Digital Imaging Group third-quarter sales were \$408 million, compared with \$664 million in the prior-year quarter. This decline also reflects the timing of patent licensing revenue, which was partly offset by growth in the Consumer Inkjet business.

Excluding the year-ago patent licensing revenue, the segment’s results improved by \$53 million, reflecting the continued growth of ink gross profit within Consumer Inkjet, reduced operating costs stemming from the participation choices in Digital Cameras & Devices, as well as improved operational performance across the entire group. The segment’s third-quarter loss from operations was \$90 million, compared with earnings of \$67 million in the prior-year quarter, which included the benefit of the non-recurring patent licensing revenue.

Graphic Communications Group third-quarter 2011 sales were \$665 million, a 1% increase over the prior-year period. The third-quarter loss from operations for the segment was \$55 million, compared with a loss of \$35 million in the year-ago quarter. The results primarily reflect start-up costs to support growth

opportunities in Commercial Inkjet, unfavorable price/mix for digital plates, and increased raw material costs.

Film, Photofinishing and Entertainment Group third-quarter sales were \$389 million, a 10% decline from the year-ago quarter, driven by continuing industry-related volume declines. Third-quarter earnings from operations for the segment were \$15 million, compared with earnings of \$28 million in the year-ago period. This decrease in earnings was primarily driven by significantly increased raw material costs, particularly silver, and industry-related declines in volumes, largely offset by cost reductions and price actions across the segment.

Update on Intellectual Property Activities

As the company has previously discussed, Kodak's intellectual property strategy has three goals: To provide the company with design freedom to develop and introduce innovative new products, to provide access to new markets and new partnerships, and to generate income and cash.

In recent years, in keeping with that strategy, the company has actively monetized its intellectual property through a series of individual transactions as a way to fund its digital transformation. Throughout this period, as previously discussed, the company has also contemplated, at an appropriate point in time, shifting its monetization approach. Given the recent trends in the IP marketplace, and a heightened demand for premier intellectual property portfolios, now is the appropriate time to make this change. As a result, the company announced in July its intention to explore strategic alternatives for approximately 1,100 U.S. digital imaging patents, which represent about 10% of its patent portfolio and which are not core to its future. The company is pleased with the progress and level of interest in the portfolios. When the sale of these portfolios does occur, the company anticipates the proceeds will materially increase its cash balance.

The company's updated outlook, detailed below, does not include any income or cash flow from the sale of its digital imaging patent portfolios, nor does it contemplate any resolution of the intellectual property litigation currently before the U.S. International Trade Commission. The company remains confident that it will ultimately prevail in its current litigation involving Apple and Research In Motion.

2011 Outlook

For the full year, the company now expects its total revenue to be in the range of \$6.3 billion to \$6.4 billion. Previously, the company forecasted full-year revenue to be in the range of \$6.4 billion to \$6.7 billion.

Kodak continues to build the scale of its digital growth businesses – Consumer and Commercial Inkjet, Workflow Software & Services, and Packaging Solutions – and now expects to achieve 2011 full-year aggregate revenue growth from these businesses of approximately 25%. Previously, the company forecasted aggregate full-year revenue growth in a range of 30% to 40%.

Kodak now expects 2011 segment losses to be closer to \$300 million, which is within the previously forecasted segment loss range of \$100 million to \$300 million. On a GAAP basis, the company now expects earnings from continuing operations before interest expense, other income (charges), net, and income taxes in the range of a negative \$300 million to negative \$400 million, reflecting lower earnings and lower gains on asset sales. Previously, the company forecasted GAAP earnings in the range of \$50 million to negative \$150 million. Kodak is now targeting a 2011 loss from continuing operations in the range of \$400 million to \$600 million. Previously, the company forecasted a loss in the range of \$200 million to \$400 million.

The company now expects a year-end cash balance of \$1.3 billion to \$1.4 billion, excluding the proceeds of any sale of its digital imaging patent portfolios. Previously, the company forecasted a year-end cash balance of \$1.6 billion to \$1.7 billion. The company continues to expect \$250 million to \$350 million in cash this year from intellectual property licensing transactions. The company now expects proceeds from sales of non-core assets to be approximately \$200 million.

The outlook detailed above reflects, on the revenue and earnings side, the impact of slowing economic momentum globally; the strategic decision to trade digital camera revenue for improved profitability; lower demand than previously forecasted for digital plates; lower growth, in the aggregate, for the four digital growth businesses; and

higher than planned start-up costs for the PROSPER press platform. The updated cash outlook excludes the proceeds of any sale of the company's digital imaging patent portfolios, as well as lower than planned earnings and the delay in the timing of proceeds from asset sales.

Form 10-Q and Conference Call Information

The Management Discussion & Analysis document is included as part of the company's Form 10-Q filing. You may access this document one of two ways:

Visit Kodak's Investor Center page at: www.kodak.com/go/invest and click on SEC filings

Visit the U.S. Securities and Exchange Commission EDGAR website at: www.sec.gov/edgar.shtml and access Eastman Kodak under Company Filings

In addition, Antonio M. Perez and Kodak Chief Financial Officer, Antoinette P. McCorvey, will host a conference call with investors at 11:00 a.m. Eastern Time today. To access the call, please use the direct dial-in number: +1 480-629-9771, conference ID 4474312#. There is no need to pre-register.

The call will be recorded and available for playback by 2:00 p.m. Eastern Time on Thursday, November 3, by dialing +1 303-590-3030, access code 4474312#. The playback number will be active until Thursday, November 10, at 5:00 p.m. Eastern Time.

For those wishing to participate via the webcast, please access our kodak.com Kodak's Investor Center page at <http://www.kodak.com/go/invest>. The webcast audio will be archived and available for replay on this site approximately one hour following the live broadcast.

CAUTIONARY STATEMENT PURSUANT TO SAFE HARBOR PROVISIONS OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

Certain statements in this document may be forward-looking in nature, or "forward-looking statements" as defined in the United States Private Securities Litigation Reform Act of 1995. For example, references to the Company's expectations regarding the following are forward-looking statements: revenue; revenue growth; gross margins; earnings; cash generation and usage; gross profit; demand for our products, including commercial inkjet, consumer inkjet, workflow software and packaging printing solutions; potential revenue, cash and earnings from intellectual property licensing and the potential outcome of intellectual property infringement litigation; liquidity; potential proceeds from asset sales and from the potential sale of our digital imaging patent portfolios; and the global economic environment.

Future events or results may differ from those anticipated or expressed in these forward-looking statements. Important factors that could cause actual events or results to differ materially from these forward-looking statements include, among others, the following risks, uncertainties, assumptions and factors as described in more detail in the Company's Annual Report on Form 10-K for the year ended December 31, 2010, Quarterly Reports on Form 10-Q for the quarters ended March 31, 2011, June 30, 2011, and September 30, 2011, under the headings "Risk Factors," "Management's Discussion and Analysis of Financial Condition and Results of Operations," and "Cautionary Statement Pursuant to Safe Harbor Provisions of the Private Litigation Reform Act of 1995" and in other filings the Company makes with the SEC from time to time:

Whether we can generate or raise cash and maintain a cash balance sufficient to fund our continued investments, capital needs, restructuring payments and service our debt;

Whether we can raise sufficient proceeds from the sale of non-core assets and the potential sale of our digital imaging patent portfolios within our plan;

Whether we are successful in licensing and enforcing our intellectual property rights on which our business depends, or if third parties assert that we violate

their intellectual property rights which could adversely affect our revenue, earnings, expenses and liquidity;

The competitive pressures we face which could adversely affect our revenue, gross margins and market share;

Whether our commercialization and manufacturing processes fail to prevent product reliability and quality issues which could adversely affect our financial results, harm our reputation and delay product launch plans;

Whether we are successful with the strategic investment decisions we have made which could adversely affect our financial performance;

Whether we effectively anticipate technology trends and develop and market new products to respond to changing customer preferences which could adversely affect our revenue, earnings and cash flow;

Continued weakness or worsening of economic conditions which could continue to adversely affect our financial performance and our liquidity;

Whether we are successful in attracting, retaining and motivating key employees which could adversely affect our revenue and earnings;

Whether our future pension and postretirement plan costs and required contribution levels are impacted by changes in actuarial assumptions, future market performance of plan assets or obligations imposed by legislation or pension authorities which could adversely affect our financial position, results of operations and cash flow;

Due to the nature of products we sell and our worldwide distribution, we are subject to changes in currency exchange rates, interest rates and commodity costs which could adversely affect our results of operations and financial position;

Whether we are able to provide competitive financing arrangements to our customers or if we extend credit to customers whose creditworthiness deteriorates which could adversely affect our revenue, profitability and financial position;

Our failure to implement plans to reduce our cost structure in anticipation of declining demand for certain products or delays in implementing such plans which could adversely affect our consolidated results of operations, financial position and liquidity;

We have outsourced a significant portion of our overall worldwide manufacturing, logistics and back office operations and face the risks associated with reliance on third party suppliers.

The Company cautions readers to carefully consider such factors. Many of these factors are beyond the Company's control. In addition, these forward-looking statements represent the Company's expectations only as of the date they are made, and should not be relied upon as representing the Company's expectations as of any subsequent date. While the Company may elect to update forward-looking statements at some point in the future, the Company specifically disclaims any obligation to do so, even if its expectations change.

Any forward-looking statements in this document should be evaluated in light of the factors and uncertainties referenced above and should not be unduly relied upon.

[Third Quarter 2011 Non-Operational Items and Non-GAAP Reconciliations](#)

2011

EXHIBIT 15

Thursday, February 09, 2012

Kodak Focuses Consumer Business On More Profitable Growth Opportunities

Plans to phase out dedicated capture devices business

ROCHESTER, N.Y., February 09 -- Eastman Kodak Company (the "Company") (OTB: EKDKQ.PK) announced today that, as a result of its ongoing strategic review process and commitment to drive sustainable profitability through its most valuable business lines, it plans to phase out its dedicated capture devices business – comprising digital cameras, pocket video cameras and digital picture frames – in the first half of 2012. Kodak will instead expand its current brand licensing program, and seek licensees in these categories. Following this decision, Kodak's Consumer Business will include online and retail-based photo printing, as well as desktop inkjet printing.

Kodak has contacted its retail partners, and is working closely with them to ensure an orderly transition. Kodak will continue to honor all related product warranties, and provide technical support and service for its cameras, pocket video cameras and digital picture frames.

"For some time, Kodak's strategy has been to improve margins in the capture device business by narrowing our participation in terms of product portfolio, geographies and retail outlets. Today's announcement is the logical extension of that process, given our analysis of the industry trends," said Pradeep Jotwani, President, Consumer Businesses, and Kodak Chief Marketing Officer.

Upon completion of the phase out, Kodak expects to achieve annual operating savings of more than \$100 million. Kodak expects to incur a charge related to separation benefits of approximately \$30 million resulting from the exit of the business.

In addition to its Consumer Businesses segment, Kodak has a Commercial Businesses segment that includes the Digital and Functional Printing, Enterprise Services and Solutions, and Graphics, Entertainment and Commercial Films units. Kodak's digital businesses now comprise approximately three-fourths of total revenues.

Kodak continues to have a strong position in the personal imaging market. While photos are increasingly taken on multi-function mobile devices, Kodak technology makes it easy for consumers to produce a broad range of photo products, anywhere, anytime – from prints to photobooks, photo greeting cards and personalized calendars. These items can be made on Kodak products, with Kodak quality at retail, at home, and ordered for delivery to home.

Kodak's continuing consumer products and services will include:

Retail-based photo kiosks and digital dry lab systems, a market in which Kodak is the clear worldwide leader. Kodak pioneered the retail-based kiosk market, and the company now has more than 100,000 kiosks and order stations for dry lab systems around the world, with some 30,000 of those units connected to the most popular photo-sharing sites.

Consumer inkjet printers, where Kodak has outpaced overall market growth for several years. Kodak consumer inkjet printers provide consumers with high-quality output and the lowest total ink replacement cost. Consumers can send documents and photos to Kodak printers from anywhere, using any web-connected device.

Kodak apps for Facebook, which make it easy for consumers to obtain photo products using photos from their Facebook albums.

Kodak Gallery (www.kodakgallery.com), a leading online digital photo products service. Kodak Gallery enables consumers to share their photos, and offers product and creation tools that enable people to do more with their photos.

The Kodak camera accessories and batteries businesses. These products are universally compatible with all camera brands, and extend into other consumer product segments such as charging units for smartphones.

The image shows the classic Kodak logo in red, bold, sans-serif font, centered between two horizontal yellow bars.

[Full Size Image](#)

About Kodak

Kodak.com

Media Contacts

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The traditional film capture and photographic paper business, which continues to provide high-quality and innovative products and solutions to consumers, photographers, retailers, photofinishers and professional labs.

CAUTIONARY STATEMENT PURSUANT TO SAFE HARBOR PROVISIONS OF THE PRIVATE SECURITIES LITIGATION REFORM ACT OF 1995

This document includes "forward-looking statements" as that term is defined under the Private Securities Litigation Reform Act of 1995. Forward-looking statements include statements concerning the Company's plans, objectives, goals, strategies, future events, future revenue or performance, capital expenditures, financing needs, plans or business trends, and other information that is not historical information. When used in this document, the words "estimates," "expects," "anticipates," "projects," "plans," "intends," "believes," "forecasts," or future or conditional verbs, such as "will," "should," "could," or "may," and variations of such words or similar expressions are intended to identify forward-looking statements. All forward-looking statements, including, without limitation, management's examination of historical operating trends and data are based upon the Company's expectations and various assumptions. Future events or results may differ from those anticipated or expressed in these forward-looking statements. Important factors that could cause actual events or results to differ materially from these forward-looking statements include, among others, the risks and uncertainties described under the heading "Risk Factors" in the Company's most recent annual report on Form 10-K under Item 1A of Part 1, in the Company's most recent quarterly report on Form 10-Q under Item 1A of Part II and those described in filings made by the Company with the U.S. Bankruptcy Court for the Southern District of New York and in other filings the Company makes with the SEC from time to time, as well as the following: the ability of the Company to continue as a going concern, the Company's ability to obtain Bankruptcy Court approval with respect to motions in the chapter 11 cases, the ability of the Company and its subsidiaries to prosecute, develop and consummate one or more plans of reorganization with respect to the chapter 11 cases, Bankruptcy Court rulings in the chapter 11 cases and the outcome of the cases in general, the length of time the Company will operate under the chapter 11 cases, risks associated with third party motions in the chapter 11 cases, which may interfere with the Company's ability to develop and consummate one or more plans of reorganization once such plans are developed, the potential adverse effects of the chapter 11 proceedings on the Company's liquidity, results of operations, brand or business prospects, the ability to execute the Company's business and restructuring plan, increased legal costs related to the Bankruptcy Filing and other litigation, our ability to raise sufficient proceeds from the sale of non-core assets and the potential sale of our digital imaging patent portfolios within our plan, the Company's ability to generate or raise cash and maintain a cash balance sufficient to fund continued investments, capital needs, restructuring payments and service its debt; the Company's ability to manage contracts that are critical to its operation, to obtain and maintain appropriate terms with customers, suppliers and service providers, to maintain product reliability and quality, to effectively anticipate technology trends and develop and market new products, to retain key executives, managers and employees, our ability to successfully license and enforce our intellectual property rights and the ability of the Company's non-U.S. subsidiaries to continue to operate their businesses in the normal course and without court supervision. There may be other factors that may cause the Company's actual results to differ materially from the forward-looking statements. All forward-looking statements attributable to the Company or persons acting on its behalf apply only as of the date of this document and are expressly qualified in their entirety by the cautionary statements included in this document. The Company undertakes no obligation to update or revise forward-looking statements to reflect events or circumstances that arise after the date made or to reflect the occurrence of unanticipated events.

2012

EXHIBIT 16

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Debtors in Possession*

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

In re:)	
)	Chapter 11
EASTMAN KODAK COMPANY, <i>et al.</i> , ¹)	
)	Case No. 12-10202 (ALG)
)	
Debtors.)	(Jointly Administered)
)	
EASTMAN KODAK COMPANY,)	
Plaintiff,)	
v.)	
)	Adv. Proc. No. 12-_____ (ALG)
APPLE INC. AND)	
FLASHPOINT TECHNOLOGY, INC.,)	
Defendants.)	
)	
)	

ADVERSARY COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Eastman Kodak Company (7150); Creo Manufacturing America LLC (4412); Eastman Kodak International Capital Company, Inc. (2341); Far East Development Ltd. (2300); FPC Inc. (9183); Kodak (Near East), Inc. (7936); Kodak Americas, Ltd. (6256); Kodak Aviation Leasing LLC (5224); Kodak Imaging Network, Inc. (4107); Kodak Philippines, Ltd. (7862); Kodak Portuguesa Limited (9171); Kodak Realty, Inc. (2045); Laser-Pacific Media Corporation (4617); NPEC Inc. (5677); Pakon, Inc. (3462); and Qualex Inc. (6019). The location of the Debtors' corporate headquarters is: 343 State Street, Rochester, NY 14650.

Eastman Kodak Company (“Kodak”), as Plaintiff and a debtor in these chapter 11 proceedings, on behalf of itself and its affiliated debtors and debtors in possession (collectively, the “Debtors”), by and through its attorneys, Sullivan & Cromwell LLP and Young Conway Stargatt & Taylor, LLP, for its Complaint against Defendants Apple Inc. (“Apple”) and FlashPoint Technology, Inc. (“FlashPoint” and, together with Apple, “Defendants”), alleges upon knowledge as to itself and its conduct and upon information and belief as to all other matters, as follows:

NATURE OF THE ACTION

1. This adversary proceeding is necessary to protect Kodak and its affiliated debtors from attempts by Apple and FlashPoint to delay and derail Kodak’s efforts to sell a collection of Kodak patents relating to digital imaging, known as the Digital Capture Portfolio, pursuant to section 363 of title 11 of the United States Code (the “Bankruptcy Code”).² Kodak’s planned sale of the Digital Capture Portfolio is an important element of the Debtors’ reorganization efforts. Monetization of the Digital Capture Portfolio is contemplated by the Debtors’ debtor-in-possession financing, and is important to the Debtors’ emergence from chapter 11.³ To facilitate a sale of the Digital Capture Portfolio and the KISS Portfolio, the Debtors filed on June 11, 2012, a motion authorizing a sale of the patent assets free and clear of claims or interests, and authorizing bidding and notice procedures. [Docket No. 1361.] The Debtors’ sale procedures contemplate an auction occurring on August 8, 2012.

² The Debtors also are pursuing a sale of the Kodak Imaging Systems and Services Portfolio, referred to as the KISS Portfolio. Neither Apple nor FlashPoint has asserted an ownership claim to any of the patents in the KISS Portfolio.

³ See Declaration of Antoinette P. McCorvey Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York in Support of First Day Pleadings ¶¶ 40-41, dated Jan. 18, 2012. [Docket No. 2.]

2. Apple is the single largest infringer of patents in the Digital Capture Portfolio and also a potential purchaser of those patents. All of the patents in the Digital Capture Portfolio are assigned to Kodak, and therefore are presumed to be property of the Debtors' estates as defined in section 541 of the Bankruptcy Code. The patents in the Digital Capture Portfolio have been openly licensed and litigated by Kodak for many years. Since 2001, Kodak has generated more than \$3 billion in revenue from licensing the patents in the Digital Capture Portfolio to 37 sophisticated parties in arm's length transactions.

3. Apple voluntarily appeared in the Debtors' chapter 11 proceedings on the first day of the case and claimed that it, not Kodak, owns U.S. Patent No. 6,292,218 (the "'218 patent") and certain other Kodak patents that Apple declined to identify at that time. Apple finally identified nine additional Kodak patents in March 2012—two months after the Debtors filed for chapter 11 protection in this Court—which Apple said that it owns. Those are: U.S. Patent Nos. 5,493,335; 5,828,406; 6,147,703; 6,441,854; 6,879,342; 7,210,161; 7,453,605; 7,742,084; and 7,936,391 (the "Nine Additional Kodak Patents", together with the '218 patent, the "Claimed Kodak Patents"). FlashPoint also voluntarily appeared in the Debtors' chapter 11 proceedings and asserted that it, and not Apple or Kodak, is the owner of the Claimed Kodak Patents.

4. Apple has articulated two bases for claiming that it owns the ten Claimed Kodak Patents: (a) inventorship of the Claimed Kodak Patents, and (b) breach of contract based on a December 1994 agreement between Kodak and Apple (the "December 1994 Agreement"). Apple's claims arise from joint development work between Kodak and Apple that occurred in the early 1990's—nearly 20 years ago. FlashPoint contends that a 1996 agreement between Apple and FlashPoint assigned any rights Apple has in the Claimed Kodak Patents to FlashPoint.

Both Apple and FlashPoint were on constructive or actual notice of any potential claims to the Claimed Kodak Patents many years ago, and therefore all of their ownership claims are barred by the applicable statutes of limitations and/or the equitable doctrine of laches.

5. Apple's strategy has been to use its substantial cash position to delay as long as possible the payment of royalties to Kodak, and to interfere with the Debtors' planned section 363 sale of the Digital Capture Portfolio. Each patent in that portfolio—including the Claimed Kodak Patents—is property of the estate as defined in section 541 of the Bankruptcy Code. Apple and FlashPoint are seeking to benefit from Kodak's difficult financial position, which will be exacerbated if the Debtors cannot obtain fair value for the patents in the Digital Capture Portfolio. Any interference with the planned section 363 sale will cause obvious harm to the Debtors and all of their stakeholders.

6. In this action, Kodak seeks, pursuant to sections 105, 541 and 363 of the Bankruptcy Code, (i) a declaration that Apple and FlashPoint have no interest in any of the ten Claimed Kodak Patents, (ii) a declaration that the Debtors are permitted to sell the Claimed Kodak Patents pursuant to section 363 of the Bankruptcy Code free and clear of any interest of Apple or FlashPoint, and (iii) an injunction barring Apple and FlashPoint from asserting ownership claims under any theory, including inventorship, to the Claimed Kodak Patents.

JURISDICTION AND VENUE

7. On January 19, 2012 (the "Petition Date"), each of the Debtors, including Kodak, commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors' chapter 11 cases are being jointly administered pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"). Since the Petition Date, the Debtors have been and continue to be authorized to operate their businesses and manage their

properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. This Court has jurisdiction and authority over this adversary proceeding pursuant to 28 U.S.C. §§ 157, 1334, 2201, 2202, and Bankruptcy Rules 7001(2), (7) and (9), and 7003.

9. This is an adversary proceeding initiated by the Debtors pursuant to Bankruptcy Rules 7001(2), (7), and (9), and 7003. The Court has jurisdiction over this adversary proceeding pursuant to 28 U.S.C. §§ 157, 1334, 1338, 2201, and 2202.

10. Venue is proper in this Court under 28 U.S.C. §§ 1408 and 1409(a).

11. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and this Court has the power to enter final findings of fact and conclusions of law, subject to review pursuant to 28 U.S.C. § 158.

12. The statutory predicates for the relief requested herein are sections 105, 363, and 541 of the Bankruptcy Code.

PARTIES

13. Plaintiff Kodak is a Debtor in these chapter 11 cases and a New Jersey corporation with its principal place of business at 343 State Street, Rochester, New York 14650.

14. Defendant Apple is a California corporation with its principal place of business at 1 Infinite Loop, Cupertino, California 95014.

15. Defendant FlashPoint is a privately held company with its principal place of business at 20 Depot Street, Suite 2A, Peterborough, New Hampshire 03458. Defendant FlashPoint was created in 1996 as a spin-off of the Imaging Division of Apple.

STATEMENT OF FACTS

A. Background and the Claimed Kodak Patents

16. Kodak is a digital imaging and material sciences company with a long history of innovation and successful commercialization of proprietary technologies. Kodak has invested significantly in research and development for more than a century. In 1976, Kodak designed and built the first operating digital camera, and since then has invested billions of dollars in research and development in the field of digital imaging technology. Kodak's significant investment in research and development has produced an ongoing stream of innovations in digital imaging technology—innovations that have generated thousands of patents. Today, Kodak owns approximately 10,700 patents, including all of the Claimed Kodak Patents.

17. Apple and Kodak participated in joint development efforts relating to certain digital camera technology at various times between 1992 and 1994 under the Apple project names Adam, Aspen and Phobos. The December 1994 Agreement related to Projects Aspen and Phobos, and provided, generally, that each party expressly retained ownership of its respective intellectual property, which is listed on an attached schedule. There is no provision of the December 1994 Agreement that provides any basis for Apple or FlashPoint to claim ownership of the '218 patent or the Nine Additional Kodak Patents.

18. On December 30, 1994, Kodak filed an application with the U.S. Patent and Trademark Office ("PTO") and, on September 18, 2001, the PTO issued the '218 patent, which named Kenneth A. Parulski and Timothy J. Tredwell as inventors and claimed priority to the 1994 application.⁴ By valid assignment from the two inventors, Kodak is the owner of all

⁴ The '218 patent is a division of application No. 08/367,399, filed on December 30, 1994.

rights, title and interest in and to the '218 patent. Kodak similarly is the recorded assignee of the

Nine Additional Kodak Patents in the PTO's records:

- U.S. Patent No. 5,493,335 (the "'335 patent"), entitled "Single Sensor Color Camera with User Selectable Image Record Size," was issued on February 20, 1996. It names as its inventors Mr. Parulski, Richard M. Vogel, and Seishi Ohmori, and lists Kodak as the assignee of the patent.
- U.S. Patent No. 5,828,406, entitled "Electronic Camera Having a Processor for Mapping Image Pixel Signals into Color Display Pixels," was issued on October 27, 1998. It names as its inventors Messrs. Parulski and Tredwell, and lists Kodak as the assignee of the patent.
- U.S. Patent No. 6,147,703, entitled "Electronic Camera with Image Review," was issued on November 14, 2000. It names as its inventors Michael Eugene Miller and Richard William Lourette, and lists Kodak as the assignee of the patent.
- U.S. Patent No. 6,441,854, entitled "Electronic Camera with Quick Review of Last Captured Image," was issued on August 27, 2002. It names as its inventors Mr. Lourette, Mr. Miller, Peter Fellegara, Linda M. Antos, and Robert H. Hibbard, and lists Kodak as the assignee of the patent.
- U.S. Patent No. 6,879,342, entitled "Electronic Camera with Image Review," was issued on April 12, 2005. It names as its inventors Messrs. Miller and Lourette, and lists Kodak as the assignee of the patent.
- U.S. Patent No. 7,210,161 (the "'161 patent"), entitled "Automatically Transmitting Images from an Electronic Camera to a Service Provider Using a Network Configuration File," was issued on April 24, 2007. It names as its inventors Mr. Parulski, Joseph Ward, and James D. Allen, and lists Kodak as the assignee of the patent. The '161 patent is a continuation of application No. 09/004,046, filed on January 7, 1998.
- U.S. Patent No. 7,453,605 (the "'605 patent"), entitled "Capturing Digital Images To Be Transferred to an E-Mail Address," was issued on November 18, 2008. It names as its inventors Mr. Parulski, Mr. Ward, and Michael C. Hopwood, and lists Kodak as the assignee of the patent. The '605 patent is a continuation of application No. 09/821,152, filed on March 29, 2001, which is a continuation of application No. 08/977,382, filed on November 24, 1997.
- U.S. Patent No. 7,742,084 (the "'084 patent"), entitled "Network Configuration File for Automatically Transmitting Images From an

Electronic Still Camera,” was issued on June 22, 2010. It names as its inventors Messrs. Parulski, Ward, and Allen, and lists Kodak as the assignee of the patent. The ‘084 patent is a continuation of application No. 09/783,437, filed on February 14, 2001, which is a division of application No. 09/004,046, filed on January 7, 1998.

- U.S. Patent No. 7,936,391 (the “‘391 patent”), entitled “Digital Camera with Communications Interface for Selectively Transmitting Images Over a Cellular Phone Network and a Wireless LAN Network to a Destination,” was issued on May 3, 2011. It names as its inventors Messrs. Parulski, Ward, and Allen, and lists Kodak as the assignee of the patent. The ‘391 patent is a continuation of application No. 11/692,224, filed on March 28, 2007, which is a continuation of application No. 09/783,437, filed on February 14, 2001, which is a division of application No. 09/004,046, filed on February 7, 1998.

19. Since 2004, Kodak has instituted numerous patent infringement actions to enforce the ‘218 patent in the International Trade Commission (“ITC”) and the U.S. District Court for the Western District of New York. Kodak has also sought to protect the Nine Additional Kodak Patents and other patents in the families. Every one of Kodak’s patent infringement actions that has been resolved thus far has resulted in a settlement with a royalty-bearing licensing agreement in favor of Kodak. Kodak’s successful efforts to enforce the ‘218 Patent and other patents have been highly publicized and widely reported over the last eight years.

20. On January 10, 2012, Kodak filed a complaint with the ITC claiming patent infringement by Apple and HTC Corporation of four more Kodak patents— the ‘161 patent, the ‘605 patent, the ‘084 patent, and the ‘391 patent. Despite the fact that Kodak has thousands of patents, Apple (and then FlashPoint) claimed for the first time in Bankruptcy Court that they own these four patents as well.

B. Other Litigation Relating to Apple’s Ownership Claim To the ‘218 Patent

21. In February 2010, pursuant to Kodak’s request, the ITC commenced an investigation into Apple’s importation of products that infringe Kodak’s ‘218 patent, No. 337-TA-703 (the “ITC 703 Proceeding”). In defense to Kodak’s patent infringement claims, for the first time, Apple raised an ownership claim to the ‘218 patent in the ITC 703 Proceeding. Concurrent with commencement of the ITC 703 Proceeding, Kodak filed a lawsuit for patent infringement against Apple in the U.S. District Court for the Western District of New York, Civil Action No. 6:10-cv-06021-MAT (the “W.D.N.Y. Action”). The W.D.N.Y. Action was stayed at Apple’s request pending a final decision in the ITC 703 Proceeding.⁵

22. Apple had a full and fair opportunity to obtain discovery and prosecute its ownership claim to the ‘218 patent in the ITC 703 Proceeding. Discovery was extensive, including the production of more than 3.5 million pages of documents and depositions of more than 60 witnesses. Following a six-day hearing in September 2010, Apple’s ownership claim to the ‘218 patent was squarely rejected by Chief Administrative Law Judge Paul Luckern—both on inventorship and contract grounds.

C. Apple’s and FlashPoint’s Requests for Relief In This Court

23. Undeterred by its loss in the ITC 703 Proceeding, Apple voluntarily appeared before this Court on the first day of this chapter 11 case to oppose the Debtors’ debtor-in-possession financing and to assert that it was the owner of the ‘218 patent and other

⁵ On August 25, 2010—less than a week before the start of the hearing in the ITC 703 Proceeding—Apple filed a complaint in the California state court against Kodak asserting state statutory and common law claims and seeking a declaration that Apple is the owner of the ‘218 patent. After the action was removed to federal district court in California, the court issued an order staying the action and finding that all of Apple’s claims were compulsory counterclaims to patent infringement claims asserted by Kodak in the W.D.N.Y. Action. As a result, Apple voluntarily dismissed the California state court action and filed an amended answer and counterclaims in the W.D.N.Y. Action asserting an ownership claim to the ‘218 patent.

unidentified Kodak patents. Apple continued to interfere with administration of this chapter 11 case by seeking relief from the automatic stay to proceed with the W.D.N.Y. Action and to transfer that action to the U.S. District Court for the Southern District of New York, thereby removing from this Court the ability to expeditiously resolve Apple's claims to the Debtors' valuable property.

24. On March 8, 2012, the Court denied Apple's motion for relief from the stay, noting that "Apple's proposed relief would hardly move the matter forward with the expedition needed for there to be any hope of determination on the ownership issue." (Hr'g Tr. 64:9-12, Mar. 8, 2012.) During the March 8 hearing, FlashPoint appeared before the Court and announced that it too has an ownership interest in the '218 patent that was derivative of Apple's ownership claim. (Hr'g Tr. 38:20-21, Mar. 8, 2012.)

25. On March 16, 2012, nearly two months *after* the Petition Date, Apple asserted that it owns nine other Kodak patents included in the Digital Capture Portfolio. Like the '218 patent, many of these patents have been successfully licensed and litigated by Kodak for years without any hint of an ownership claim being raised by Apple. Meanwhile, this Court authorized the Debtors to serve document requests pursuant to Bankruptcy Rule 2004 to investigate Apple's ownership claims. [Docket No. 707.] In response, Apple produced only a subset of the documents it had previously produced to Kodak in the ITC 703 Proceeding and another ITC proceeding initiated by Apple against Kodak that addressed Kodak's joint development efforts with Apple in the 1990's. Apple did not produce a single new document in support of its ownership claims, and no documents specific to its new ownership claims to the Nine Additional Kodak Patents.

26. Despite repeated requests from the Debtors, FlashPoint has declined to provide any evidence to substantiate its ownership claim to any of Kodak's patents, which has never been formally asserted. FlashPoint disclosed for the first time in its opposition to the Debtors' Motion and Memorandum of Law in Support of Their Request for an Order in Aid of an Asset Sale Pursuant to Section 363 of the Bankruptcy Code ("Motion in Aid of Sale") [Docket No. 1184] that FlashPoint believes Apple assigned to FlashPoint all of Apple's digital camera-related patents and interests therein in a 1996 agreement between the companies. On June 13, 2012, this Court heard argument on the Debtors' Motion in Aid of Sale. At that hearing, FlashPoint made clear that it is asserting an ownership interest, based on its 1996 agreement with Apple, in all ten Claimed Kodak Patents.⁶ (H'rg Tr. 56:2-3, June 13, 2012.)

27. At the June 13 hearing regarding the Debtors' Motion in Aid of Sale, the Court observed that Debtors "can obtain a final determination as to Apple and FlashPoint's ownership rights quickly" through the "commencement of an adversary proceeding." (H'rg Tr. 70:6-9, June 13, 2012.) This Complaint seeks to do that in order to facilitate the planned sale of the Digital Capture Portfolio pursuant to section 363 of the Bankruptcy Code, which is slated to go forward on August 8, 2012, subject to Court approval.

COUNT I
(Declaratory Judgment)

28. Kodak repeats and realleges, and incorporates by reference, each and every allegation contained in paragraphs 1 through 27 as if fully set forth herein.

⁶ FlashPoint has waffled in correspondence with the Debtors and before this Court as to whether its purported interest in the Claimed Kodak Patents is derived from Apple's purported interest or is instead direct against Kodak. While FlashPoint has sought to reserve its rights to contend that it has a direct ownership interest in the Claimed Kodak Patents, the only stated basis for such an interest is based on FlashPoint's 1996 agreement with Apple.

29. Each of the ten Claimed Kodak Patents is property of the Debtors' estates under section 541 of the Bankruptcy Code. Apple and FlashPoint each claim to be the owner of every one of the ten Claimed Kodak Patents.

30. There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under 28 U.S.C. § 2201. A prompt resolution of the dispute regarding ownership of the Claimed Kodak Patents is necessary in advance of the Debtors' planned sale of the Digital Capture Portfolio pursuant to section 363 of the Bankruptcy Code.

31. Kodak requests a declaratory judgment finding that Apple and FlashPoint have no interest in the Claimed Kodak Patents, including both the '218 patent and the Nine Additional Kodak Patents.

COUNT II
(Declaratory Judgment)

32. Kodak repeats and realleges, and incorporates by reference, each and every allegation contained in the paragraphs 1 through 31 as if fully set forth herein.

33. Each of the ten Claimed Kodak Patents is property of the Debtors' estates under section 541 of the Bankruptcy Code. The Debtors may sell property of their estates in accordance with section 363 of the Bankruptcy Code if authorized to do so by the Court. Apple and FlashPoint have sought to prevent the Debtors from selling the Claimed Kodak Patents free and clear by asserting spurious ownership claims to those assets of the Debtors' estates.

34. There is thus an actual controversy that is of sufficient immediacy to warrant judicial relief under 28 U.S.C. § 2201. A prompt resolution of the dispute regarding ownership of the Claimed Kodak Patents is necessary in advance of the Debtors' planned sale of the Digital Capture Portfolio pursuant to section 363 of the Bankruptcy Code.

35. Kodak requests a declaratory judgment finding that the Debtors are permitted to sell the ten Claimed Kodak Patents pursuant to section 363 of the Bankruptcy Code in due course, free and clear of any interest of Apple or FlashPoint.

COUNT III
(Injunctive Relief)

36. Kodak repeats and realleges, and incorporates by reference, each and every allegation contained in the paragraphs 1 through 35 as if fully set forth herein.

37. Kodak requests an injunction barring Apple and FlashPoint from asserting ownership claims under any theory, including inventorship, to the Claimed Kodak Patents, or otherwise attempting to prevent, hinder or delay the free and clear sale of those patents under section 363 of the Bankruptcy Code.

38. The Debtors' reorganization efforts are proceeding well, but the Debtors will continue to suffer serious harm if Apple and FlashPoint are permitted to continue their public campaign to create uncertainty as to ownership of the Claimed Kodak Patents. The administration of the Debtors' chapter 11 case will be impaired in the absence of the requested injunction, thereby harming the Debtors and all of their stakeholders. Moreover, the public interest weighs in favor of seeing the Debtors successfully emerge from bankruptcy as soon as practicable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Kodak respectfully requests that the Court enter judgment in favor of Plaintiff, as follows:

(1) Declaring that Apple and FlashPoint have no interest in any of the Claimed Kodak Patents, including the '218 patent and the Nine Additional Kodak Patents;

(2) Declaring that the Debtors are permitted to sell the ten Claimed Kodak Patents pursuant to section 363 of the Bankruptcy Code in due course, free and clear of any interest of Apple or FlashPoint;

(3) Enjoining Apple and FlashPoint from asserting ownership claims under any theory, including inventorship, to the Claimed Kodak Patents, or otherwise attempting to prevent, hinder or delay the free and clear sale of those patents under section 363 of the Bankruptcy Code;

(4) Awarding Kodak reasonable attorneys' fees; and

(5) Granting the Debtors such other and further relief as the Court deems just and equitable.

Dated: June 18, 2012
New York, New York

/s/ Andrew G. Dietderich

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8 Attorneys for Defendant
 9 EASTMAN KODAK COMPANY

10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**
 12 **SAN JOSE DIVISION**

<p>13 APPLE INC., a California Corporation,</p> <p>14 Plaintiff,</p> <p>15 v.</p> <p>16 EASTMAN KODAK COMPANY, a New Jersey Corporation,</p> <p>17 Defendant.</p>	<p>) Case No. 5:10-CV-04145-JW-PVT)) DEFENDANT EASTMAN KODAK COMPANY'S AMENDED NOTICE AND MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM PURSUANT TO FED. R. CIV. P. 12(b)(6) OR, IN THE ALTERNATIVE, TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a); MOTION TO STAY DISCOVERY PURSUANT TO FED. R. CIV. P. 26(c)))) Date: January 31, 2011) Time: 9:00 a.m.) Courtroom: 8, Fourth Floor) Judge: Hon. James Ware</p>
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**KODAK'S AMENDED NOTICE AND MOTION TO DISMISS OR TRANSFER VENUE;
 MOTION TO STAY**

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NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on January 31, 2011 at 9:00 a.m., or as soon thereafter as counsel may be heard by the above-titled court, located at 280 South 1st Street, San Jose, CA 95113, Defendant Eastman Kodak Company (“Kodak”) will and hereby does move this Court for an Order dismissing this case under Fed. R. Civ. P. 12(b)(6) for failure to state a claim. This Motion is made on the grounds that Kodak filed an infringement suit against Apple Inc. (“Apple”) in the Western District of New York, *Kodak v. Apple*, No. 6:10-CV-06021 (W.D.N.Y.), relating to the same patent that is the subject matter of the underlying suit (U.S. Patent No. 6,292,218 or “the ‘218 patent”). Apple filed an answer in the Western District of New York denying that Kodak owned the ‘218 patent. Apple now seeks to bring the subject lawsuit in this Court asserting independent claims each predicated on Apple’s purported ownership of the ‘218 patent. Ownership of the ‘218 patent is squarely at issue in the New York action, Apple is precluded from raising the same issue of ownership in an independent action before this Court, and its state law claims must be dismissed.

IN THE ALTERNATIVE, Kodak will and hereby does move this court for an Order transferring this case to the Western District of New York pursuant to 28 U.S.C. § 1404(a), on the grounds that the overlap of technologies, issues, parties, discovery, and witnesses between this action and the currently pending action before the Western District of New York warrants transfer of this action to that district.

Kodak further moves this Court for an Order staying discovery in this case pursuant to Fed. R. Civ. P. 26(c) pending determination of this potentially dispositive motion, in order to avoid prejudice to Kodak and to conserve judicial resources.

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MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

In January 2010, Kodak sued Apple in the Western District of New York for infringement of a Kodak patent related to digital imaging (“the ‘218 patent”). Apple answered Kodak’s complaint and denied that Kodak owned the ‘218 patent. Simultaneously, based on 28 U.S.C. § 1659(a), Apple moved for and received a stay of the New York action in light of a pending International Trade Commission (“ITC”) investigation into Apple’s infringement of the ‘218 patent, ostensibly in the interests of judicial economy and to reduce the burdens on the parties and minimize duplication. Yet, less than five months later—its interests in judicial economy having apparently abated—Apple sued Kodak in California state court, alleging that it owned the ‘218 patent, and asserting a number of statutory and common law claims arising from that alleged ownership.

The law prohibits Apple’s two-handed litigation strategy. Ownership is a threshold issue for any patent infringement action, and Kodak asserts—and Apple disputes—that it owns the ‘218 patent in the New York action. Apple’s state law claims are each premised on Apple’s purported ownership of the ‘218 patent, which is already squarely at issue in the New York action. Apple is precluded from raising the same issue of ownership in an independent action before this Court, and its state law claims should be dismissed.

In the alternative, Kodak moves to transfer venue to the Western District of New York. Kodak first asserted, and Apple has contested, ownership of the ‘218 patent in the New York action. The disputed technological facts, legal issues, parties, discovery, and witnesses are identical to those in the New York action. The operative facts underlying Apple’s claims against Kodak in this district occurred in New York where Kodak is headquartered; the convenience of the witnesses and parties is best suited by transfer to New York; the sources of proof are primarily located in New York; and California lacks any local interest in this controversy. Section 1404(a)’s transfer factors support transfer and illustrate why granting transfer would promote efficiency for the parties and the federal judiciary.

1 Finally, Kodak seeks an order staying discovery in this litigation pending determination of
 2 this potentially dispositive motion. A stay is necessary to avoid prejudice to Kodak associated
 3 with the effort required to conduct discovery in multiple cases that may be rendered pointless or
 4 redundant if this case is dismissed or transferred. Moreover, given the total overlap between this
 5 case and the New York Litigation, the conservation of judicial resources plainly requires that
 6 discovery in this litigation be stayed.

7 STATEMENT OF FACTS

8 I. On January 14, 2010 Kodak Filed Complaints Against Apple in the Western 9 District of New York for Infringement of Kodak Patents.

10 On January 14, 2010, Kodak filed a complaint against Apple in the Western District of
 11 New York, No. 6:10-cv-06021, claiming infringement of U.S. Patent No. 6,292,218 (“‘218
 12 patent”), as well as U.S. Patent No. 5,493,335 (“‘335 patent”) (the “New York Litigation”).¹ (*See*
 13 *Ex. A to the Declaration of Mikal J. Condon* (“Condon Decl.”), Kodak’s 6021 Complaint).
 14 Kodak’s complaint in the New York Litigation alleges, in relevant part, that Apple’s 3GS iPhone
 15 infringes the ‘218 patent.

16 As a precursor, Paragraph 7 of the 6021 Complaint alleges that Kodak owns the ‘218
 17 patent:

18 Kodak is the owner by assignment of U.S. Patent Nos. 6,292,218 (“the ‘218 patent”),
 19 entitled “Electronic Camera for Initiating Capture of Still Images While Previewing
 20 Motion Images[.]” . . . The ‘218 patent was duly and legally issued on September 18,
 2001.

21 (*Id.*, ¶ 7.)

22 On March 3, 2010, Apple filed an Answer and Counterclaims in the New York

23 ¹ On the same day, Kodak filed a second complaint against Apple in the Western District
 24 of New York, Case No. 6:10-cv-06022, alleging infringement of U.S. Patent Nos. 5,226,161
 25 (“‘161 patent”), 5,421,012 (“‘012 patent”), and 5,303,379 (“‘379 patent”) (the “6022 Litigation”).
 26 Both actions are assigned to Judge Michael A. Telesca. (Condon Decl. ¶ 6.) The 6022 Litigation
 27 further establishes Judge Telesca’s familiarity with the “highly technical issues” presented by
 28 various related disputes between Apple and Kodak. *Regents of Univ. of Cal. v. Eli Lilly & Co.*,
 119 F.3d 1559, 1565 (Fed.Cir.1997) (where “several highly technical factual issues are presented
 and the other relevant factors are in equipoise, the interest of judicial economy may favor transfer
 to a court that has become familiar with the issues.”). Also, on January 14, 2010, Kodak filed a
 complaint against Apple with the ITC alleging infringement of the ‘218 patent, Investigation No.
 337-TA-703 (“703 ITC Investigation”). (Condon Decl. ¶ 7.)

1 Litigation, denying Paragraph 7 of Kodak's complaint (on insufficient knowledge or
2 information), and seeking declaratory judgments of noninfringement and invalidity of the '218
3 and '335 patents. (Condon Decl. Ex. B, Apple's Answer and Counterclaims, ¶¶ 7, 37-48.)

4 On the same day, Apple filed a motion to stay the New York Litigation pending the final
5 outcome of the ITC proceeding, asserting its interests in preserving judicial economy and
6 preventing inefficiency, waste, and duplication of resources:

7
8 A stay of this case pending the final outcomes of the ITC . . . proceeding[]
9 would substantially advance the interests of judicial economy while reducing the
10 burden on the Court and the parties. Indeed, a stay will ensure that the parties do
11 not litigate the same issues at essentially the same time in the ITC and in this
12 Court. And, while the stay is pending, the ITC litigation will enable the parties to
13 obtain significant discovery and litigate issues that are pertinent to this case. The
14 parties (as well as this Court) will likewise obtain the benefit of the ITC's . . .
15 rulings. As a result, the wisdom gained from the ITC . . . proceeding[] during a
16 stay may narrow or eliminate, disputes pending in this case.

17 Further, Kodak will not be harmed by a stay. . . . To the contrary, Kodak,
18 along with the Court and Apple, will benefit from the efficiencies gained from the
19 requested temporary stay of this case. Indeed, if a stay is not granted, the parties
20 will engage in duplicative (and possibly needless) discovery and litigation in the
21 ITC and in this case. Because a stay would avoid duplicative and wasteful
22 litigation of similar issues in multiple fora, Apple respectfully requests that the
23 Court []stay this case in its entirety until the date that the ITC determination
24 becomes final[.]

25 (Condon Decl. ¶ 4 & Ex. C.) On March 25, 2010, Apple and Kodak stipulated to stay the New
26 York Litigation pending a final decision in the ITC Investigation. (Condon Decl. Ex. D,
27 Stipulation and Order to Stay.)

28 **II. On August 25, 2010 Apple Filed This Retaliatory Action Against Kodak in California State Court Alleging Ownership of the '218 Patent.**

On August 25, 2010, Apple filed this retaliatory complaint in California state court against
Kodak, asserting state statutory and common claims and seeking a declaration of ownership of the
'218 patent—the identical patent at issue in the New York Litigation. (Dckt. No. 0002-000,
Complaint.) On September 15, Kodak removed the case to federal court on diversity grounds.
(Dckt. No. 0005-000.)

Apple alleges that the '218 patent is based on a digital camera architecture developed by

1 Apple in the early 1990s and shared with Kodak and, thus, that Apple—not Kodak—is the
 2 rightful owner of the ‘218 patent. Apple also asserts that Kodak breached its non-disclosure
 3 agreements with Apple, unlawfully converted Apple’s property, breached its duty of confidence
 4 to Apple and engaged in unfair competition.

5 Apple’s Complaint and each of Apple’s state law claims are predicated on its alleged
 6 ownership of the ‘218 patent. Apple alleges:

- 7 • After Kodak filed the New York Litigation, “Apple launched an extensive internal
 8 investigation into Apple’s prior relationship with Kodak in the 1990s to determine what
 9 Apple disclosed to Kodak concerning the development of digital camera technology.
 10 Apple’s investigation, summarized in sections II-IV below, revealed that Apple is the
 11 rightful owner of the ‘218 patent pursuant to disclosures made by Apple to Kodak and
 12 contracts made between the parties in the early 1990s. (Complaint ¶ 11 (emphasis
 13 added));
- 14 • Apple’s first cause of action for breach of contract alleges that Kodak breached the 1991
 15 agreement . . . by unlawfully claiming ownership of the ‘218 patent” (*id.* ¶ 38);
- 16 • Apple’s second cause of action for conversion alleges that “Apple had ownership rights to
 17 the intellectual property it disclosed to Kodak in the early 1990s . . . [and] Kodak
 18 intentionally took possession of Apple’s intellectual property . . . and in claiming
 19 ownership to the ‘218 patent, prevented Apple from having access to its intellectual
 20 property” (*id.* ¶ 42);
- 21 • Apple’s third cause of action for declaration of ownership “requests that . . . Apple be
 22 declared the rightful owner of the ‘218 patent” (*id.* ¶ 48);
- 23 • Apple’s fourth cause of action for statutory and common law unfair competition alleges
 24 that “Kodak’s unfair demand for royalties that Kodak has exclusively extracted from
 25 competitors in the marketplace for access to the ‘218 patent . . . and unfair assert[ion of] a
 26 right and ability to exclude others, including Apple, from practicing the disclosed
 27 invention . . . which has occurred as a result of Kodak’s unfair use of the information
 28 disclosed to Kodak by Apple in confidence, has significantly threatened and harmed
 competition,” and that Kodak “used Apple’s disclosure [of digital camera technology] to
 prosecute an application for a U.S. patent, and claimed Apple’s technology as its own . . .
 which constitutes unfair competition” (*id.* ¶¶ 51-56);
- Apple’s fifth cause of action for breach of confidence alleges that “Kodak breached its
 duty of confidence in using Apple’s confidential information to conceive the alleged
 invention claimed in the ‘218 patent” (*id.* ¶ 61);

Apple’s state law claims are each premised on Apple’s contention that it is “the rightful
 owner of the ‘218 patent.” (Complaint ¶ 11.) Ownership of the ‘218 patent, however, is squarely

1 at issue in the first-filed New York Litigation: ownership is a threshold issue for a patent
2 infringement action, and Kodak asserts—and Apple disputes—that it owns the ‘218 patent in the
3 New York Litigation. Apple is precluded from raising the same issue of ownership in an
4 independent, different action before this Court, and its state law claims must be dismissed.

5
6 **III. Kodak is Subject to On-Going Discovery Obligations Pending Determination
Of Its Potentially Dispositive Motion.**

7 On October 8, the Court issued a notice setting the initial case management conference in
8 this case for November 29, 2010 at 10 a.m. (Dckt. No. 7.) That same day, Kodak filed its
9 original Motion to Dismiss, Or In The Alternative, Transfer Venue to the Western District of New
10 York. (Dckt. No. 8.) Kodak noticed its motion for November 15, the first available day for the
11 hearing. (Dckt. No. 8.) Two days later, on October 12, the Court continued the hearing on
12 Kodak’s Motion to Dismiss to January 31, 2011. (Dckt. No. 9.) The Court did not continue the
13 initial case management conference. (Dckt. No. 7.) The parties have additional discovery
14 obligations, including the Rule 26(f) conference and the case management conference statement,
15 arising from the November 29 conference date. *See* Fed. R. Civ. P. 26(f); Civ. L. R. 16-9(a).

16 On October 15, Apple issued its first set of discovery, consisting of 14 interrogatories and
17 61 requests for production of documents. (Condon Decl. ¶ 8.) Kodak’s responses to Apple’s
18 initial sets of discovery are due November 18. (Condon Decl. ¶ 8.) Kodak requested that the
19 deadline to respond to the outstanding discovery be moved until after the hearing on this motion.
20 Although Apple agreed to a two-week extension, it would not agree to move the response date
21 until after the Court’s hearing on Kodak’s potentially dispositive motion to dismiss or transfer.
22 (Condon Decl. ¶ 9.)

ARGUMENT

I. Apple’s State Law Claims Must Be Dismissed FOR FAILURE TO STATE A CLAIM Because APPLE’S CLAIMS Are PREDICATED ON APPLE’S PURPORTED OWNERSHIP OF THE ‘218 PATENT, WHICH IS SQUARELY AT ISSUE IN The NEW YORK Litigation.

Each of Apple’s state law claims is predicated on its alleged ownership of the ‘218 patent. (See Complaint ¶¶ 11 (“Apple’s investigation . . . revealed that Apple is the rightful owner of the ‘218 patent”) *see also id.* ¶¶ 38, 42, 48, 51-56, 61.) Likewise, the previously-filed New York Litigation is predicated on **Kodak’s** ownership of the ‘218 patent. 35 U.S.C. § 281 (only a “patentee shall have a remedy by civil action for infringement of his patent”); *Pandrol USA, LP v. Airboss Ry. Products, Inc.*, 320 F.3d 1354, 1367 (Fed. Cir. 2003). Indeed, **Apple** has already placed ownership directly at issue in that litigation by denying Kodak’s claim of ownership. (Condon Decl. Ex. A, B, 6021 Answer ¶ 7.)² Apple is not permitted to put ownership of the ‘218 patent at issue in the New York Litigation, and to assert separate claims related to the same issues before this Court. *See Pandrol*, 320 F.3d at 1367 (defendants waived right to contest ownership of patent by failing to raise it as a defense to plaintiffs’ summary judgment on infringement grounds, because plaintiffs’ motion “implicitly asserted ownership of the patent, which is a necessary prerequisite to winning a judgment of infringement”); *Board of Trustees of Leland Stanford Junior University v. Roche*, 583 F.3d 832 (Fed. Cir. 2009) (district court erred by striking defendants’ affirmative defense of ownership; cause of action was properly and necessarily asserted to bar to plaintiff’s standing to bring infringement action). Thus, Apple’s complaint fails to state a claim and should be dismissed under Fed. R. Civ. P. 12(b)(6). *SDMS, Inc.*, 2008 WL 4838557, at *2 (“court may properly dismiss a claim under Rule 12(b)(6) if it is shown to be barred by . . . Fed. R. Civ. Pro. 13 governing compulsory counterclaims”); *Critical-Vac Filtration Corp. v. Minuteman Intern., Inc.*, No. 99-CV-1115, 2000 WL 14654, at *3-*4

² Kodak requests that the Court take judicial notice of the New York Litigation, as well as the pleadings filed therein. Fed. R. Evid. 201; *SDMS, Inc. v. Rocky Mountain Chocolate Factory, Inc.*, No. 08 CV 0833 JM (AJB), 2008 WL 4838557, *2 (S.D. Cal. Nov. 6, 2008) (in testing the complaint’s legal adequacy on a 12(b)(6) motion to dismiss a claim barred by Fed. R. Civ. Pro. 13, the court may consider material subject to judicial notice); *Scott v. Kuhlmann*, 746 F.2d 1377, 1378 (9th Cir. 1984) (taking judicial notice of a previously-filed action, the record, and the pleadings filed therein).

1 (N.D.N.Y. Jan. 7, 2000) (granting 12(b)(6) motion to dismiss; plaintiff’s monopolization claims
 2 were compulsory counterclaims in previously-filed infringement action where alleged infringer
 3 raised as defenses in the prior litigation patent holder’s alleged deceitful performance in dealing
 4 with the Patent Office, the invalidity of the patent and non-infringement of the patent).³

5 The core issue in both lawsuits is rightful ownership of the ‘218 patent; thus, Apple’s state
 6 law claims “constitute[] compulsory counterclaim[s] because [they] arise[] out of the same
 7 transaction or occurrence that is the subject matter of [the related suit]—the invention and
 8 ownership of [a] United States patent[.]”⁴ *Varrin v. Queen’s University*, No. 01 C 9297, 2002
 9 WL 31001890 (N.D. Ill. Sept. 3, 2002) (enjoining Queen’s University from pursuing collateral
 10 proceedings in Canadian court claiming ownership of the same patents at issue in the underlying
 11 Illinois district court case: Queen’s University’s claims should have been brought as compulsory
 12 counterclaims because inventorship and ownership of the same underlying patents were the “core
 13 issues” in both lawsuits); *See also* Fed. R. Civ. P. 13(a) (requiring that a party responding to a
 14 pleading “state as a counterclaim any claim that . . . the pleader has against any opposing party if
 15 the claim [A] arises out of the transaction or occurrence that is the subject matter of the opposing
 16

17 ³ *See also, e.g., Bankcard Systems, Inc. v. Miller/Overfelt, Inc.*, 219 F.3d 770 (8th Cir.
 18 2000) (affirming dismissal of action for failure to state a claim where claims should have been
 19 brought as compulsory counterclaims in previously-filed proceeding); Wright, Miller & Kane, 6
 Fed. Prac. & Proc. Civ. § 1418 (3d ed. 2010).

20 ⁴ Thus, Apple’s first cause of action for breach of contract requires that Apple prove that
 21 the ‘218 patent was based on information disclosed by Apple to Kodak pursuant to an agreement
 22 entered into between the parties, and that Kodak breached the agreement “by unlawfully claiming
 23 ownership of the ‘218 patent” (Complaint ¶ 38); Apple’s second cause of action for conversion
 24 requires that Apple prove that “Apple had ownership rights to the intellectual property it
 25 disclosed to Kodak in the early 1990s . . . [and] Kodak intentionally took possession of Apple’s
 26 intellectual property . . . and in claiming ownership to the ‘218 patent, prevented Apple from
 27 having access to its intellectual property” (*id.* ¶ 42); Apple’s third cause of action for declaration
 28 of ownership seeks a declaratory judgment that Apple is “the rightful owner of the ‘218 patent”
 (*id.* ¶ 48); Apple’s fourth cause of action for statutory and common law unfair competition
 requires that Apple prove that Kodak “[unfairly] use[d] . . . information disclosed to Kodak by
 Apple in confidence,” specifically that Kodak “used Apple’s disclosure [of digital camera
 technology] to prosecute an application for a U.S. patent, and claimed Apple’s technology as its
 own” (*id.* ¶¶ 51-56); and Apple’s fifth cause of action for breach of confidence requires that
 Apple prove that Kodak “use[d] Apple’s confidential information to conceive the alleged
 invention claimed in the ‘218 patent” (*id.* ¶ 61). Proof of ownership is also “a necessary
 prerequisite” to Kodak’s infringement action. *Pandrol*, 320 F.3d at 1367.

1 party's claim").⁵

2 Allowing Apple to proceed with a separate litigation in this Court "would result in a
3 duplication of efforts [and] . . . could also result in inconsistent results." *Varrin*, 2002 WL
4 31001890, at *2. Rule 13(a) is designed to prevent such fragmentation of litigation and
5 multiplicity of suits. *Mitchell v. CB Richard Ellis Long Term Disability Plan*, 611 F.3d 1192,
6 1201 (9th Cir. 2010); *United States v. Heyward-Robinson Co.*, 430 F.2d 1077, 1082 (2d Cir.
7 1970). Rule 13(a) is "particularly directed against one who failed to assert a counterclaim in
8 one action and then instituted a second action in which that counterclaim became the basis of the
9 complaint"—exactly what Apple is attempting to do here. *Local Union No. 11, Int'l*
10 *Brotherhood of Electrical Workers v. G.P. Thompson Electric, Inc.*, 363 F.2d 181, 184 (9th Cir.
11 1966).⁶ Thus, if Apple has independent claims arising from its purported ownership of the '218
12 patent it must bring them in the New York Litigation. *Varrin*, 2002 WL 31001890, at *2.⁷

13
14 ⁵ The Ninth Circuit applies the liberal "logical relationship" test to determine "whether the
15 essential facts of the various claims are so logically connected that considerations of judicial
16 economy and fairness dictate that all the issues be resolved in one lawsuit." *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1197 (9th Cir. 2005) (citing *Pochiro v. Prudential Ins. Co.*, 827 F.2d 1246, 1249 (9th Cir. 1987)).

17 ⁶ Therefore, "[a] counterclaim which is compulsory but is not brought is thereafter
18 barred[.]" *Baker v. Gold Seal Liquors, Inc.*, 417 U.S. 467, 469 n. 1 (1974); *New York Life Ins.*
19 *Co. v. Deshotel*, 142 F.3d 873, 879, 882 (5th Cir. 1998) (affirming the dismissal with prejudice of
20 a compulsory counterclaim raised in an independent suit). *See also Shmuel Shmueli, Bashe, Inc.*
v. Lowenfeld, 68 F.Supp.2d 161, 165 (E.D.N.Y. 1999) ("Having failed, for whatever reason, to
assert their counterclaims in one action, plaintiffs may not institute a second action in which those
counterclaims become the basis of the complaint.").

21 ⁷ *See also Nachtman v. Crucible Steel Co.*, 165 F.2d 997, 999 (3rd Cir. 1948) (an
22 ownership defense is a compulsory counterclaim in a suit for correction of inventorship);
Hancock Oil Co. v. Universal Oil Products Co., 115 F.2d 45 (9th Cir. 1940) (counterclaim in
23 patent infringement suit alleging antitrust claims arising from plaintiff's exercise of ownership
24 and introduction to public use of the patents claimed by plaintiff, "[arose] out of the 'transaction
or occurrence that is the subject matter of the opposing party's claim,' i.e. the ownership and
25 introduction to the public of the plaintiff's patents, and since the counterclaim's allegations would
warrant the relief against the plaintiff without the presence of the other parties to the conspiracy,
26 the counterclaim is 'compulsory' in character and 'shall' be stated in the answer or the right to
recover thereon is lost."); *Regents Of University Of New Mexico v. Knight*, 321 F.3d 1111, 1125-
26 (Fed. Cir. 2003) (counterclaims for royalties are compulsory in a cause of action for a
27 declaration of ownership of those patents because they arose from the same transaction or
28 occurrence that gave rise to the plaintiff's asserted declaration of patent ownership and
inventorship claims).

1 Apple is precluded from raising the same issues of ownership before this Court, and its
 2 complaint must be dismissed for failure to state a claim.⁸ *SDMS*, 2008 WL 4838557, at *2;
 3 *Critical-Vac Filtration Corp.*, 2000 WL 14654, at *4.

4 **II. IN THE ALTERNATIVE, THE CAPTIONED LITIGATION SHOULD BE**
 5 **TRANSFERRED TO THE WESTERN DISTRICT OF NEW YORK UNDER**
 6 **SECTION 1404(a).**

7 A. Apple's Complaint Should Be Transferred to the Western District of New
 8 York.

9 “For the convenience of parties and witnesses, in the interest of justice, a district court
 10 may transfer any civil action to any other district or division where it might have been brought.”
 11 28 U.S.C. § 1404(a). The purpose of Section 1404 is to “prevent the waste ‘of time, energy and
 12 money’ and ‘to protect litigants, witnesses and the public against unnecessary inconvenience and
 13 expense.” *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964). The rule is founded on the common
 14 sense principle that the federal judiciary is a united system, and that litigation should be
 15 apportioned efficiently within that system. “Congress enacted 28 U.S.C. § 1404(a) as a federal
 16 housekeeping measure allowing easy change of venue within a unified federal system.” *Chrysler*
 17 *Credit Corp. v. Country Chrysler, Inc.*, 928 F. 2d 1509, 1515 (10th Cir. 1991). As the Supreme
 18 Court explained, “[s]ection 1404(a) reflects an increased desire to have federal suits tried in the
 19 federal system at the place called for in the particular case by considerations of convenience and
 20 justice,” regardless of where originally filed. *Van Dusen*, 376 U.S. at 616.

21 A motion to transfer venue lies within the broad discretion of the district court, and must
 22 be determined on an individual basis. *Jones v. GNC Franchising, Inc.*, 211 F.3d 495, 498 (9th
 23 Cir. 2000); *Sparling v. Hoffman Constr. Co.*, 864 F. 2d 635, 639 (9th Cir. 1988). Once a court

24 ⁸ The court also has the power to stay this action pending final determination of these
 25 issues in the New York Litigation. *See SDMS, Inc.*, 2008 WL 4838557, *3 (in co-pending
 26 actions, the court hearing the second action may dismiss the compulsory counterclaims with leave
 27 to amend in the prior action, or stay the later-filed matter until the claim or issue is determined by
 28 the court in the first-filed case); Wright, Miller & Kane, 6 Fed. Prac. & Proc. Civ. § 1418 (3d ed.
 2010) (“once a court becomes aware that an action on its docket involves a claim that should be a
 compulsory counterclaim in another pending federal suit, it will stay its own proceedings or will
 dismiss the claim with leave to plead it in the prior action”). Here, the court should exercise its
 discretion to dismiss Apple’s claims rather than to stay this lawsuit. The ownership issue has
 been squarely framed and must be decided in the New York Litigation; each of Apple’s claims
 requires express determination of that same issue. Rule 13(a) is designed to prevent multiplicity
 of lawsuits and fragmentation of litigation, and those interests can best be served by allowing all
 claims related to ownership of the ‘218 patent to be decided by a single court.

1 decides that an action “might have been brought” in the transferee district, the court should
 2 evaluate multiple factors, including: (1) the plaintiff’s choice of forum; (2) the convenience of
 3 the witnesses and parties; (3) the ease of access to sources of proof; (4) familiarity of each forum
 4 with applicable law; (4) any local interest in the controversy; and (5) the relative court congestion
 5 and time to trial in each forum. *See Jones*, 211 F.3d at 498; *see also Toyz Inc., v. Wireless Toyz,*
 6 *Inc.*, No. C 09-05091 JF (HRL), 2010 WL 334475, *11 (S.D. Cal. Jan. 25, 2010). The court
 7 should construe these factors broadly to consider specific facts appropriate in a given case. *See*
 8 *Modavox, Inc. v. AOL LLC*, NO. CV 08-05914 SJO (PJWx), 2009 U.S. Dist. LEXIS 40977, *7
 9 (C.D. Cal. Apr. 14, 2009).

10 The relevant transfer factors weigh heavily in favor of transferring this matter to the
 11 Western District of New York. The disputed technological facts, legal issues, parties, discovery,
 12 and witnesses are identical to those in the New York Litigation; the operative facts underlying
 13 Apple’s ownership claims against Kodak in this district occurred in New York where Kodak is
 14 headquartered; the convenience of the witnesses and parties is best suited by transfer to New
 15 York; the sources of proof are primarily located in New York; and California lacks local interest
 16 in this controversy.

17 B. Apple Could Have Brought its Suit in the Western District of New York.

18 As a threshold matter, the Court must determine whether Apple could have brought this
 19 action in the Western District of New York. *Hatch v. Reliance Ins. Co.*, 758 F.2d 409, 414 (9th
 20 Cir. 1985). As described above, ownership of the ‘218 patent is squarely at issue in the New
 21 York Litigation. Apple’s claims, each predicated on Apple’s purported ownership of the ‘218
 22 patent, should have been asserted as defenses or counterclaims in that lawsuit.⁹ Accordingly, the
 23 threshold requirement is satisfied.

24 C. Apple’s Choice of Forum is Entitled to Little Deference.

25 Apple’s choice of this forum is merely one of the factors to be considered by the court and
 26

27 ⁹ Moreover, the Western District of New York has original jurisdiction over this action
 28 under 28 U.S.C. § 1332 because this is a civil action between citizens of different states, one
 29 venued in the Western District, and the matter in controversy exceeds \$75,000. *See* 28 U.S.C. §
 1332(a)(1); (Complaint, ¶¶ 4-5 & Dckt. No. 1, Notice of Removal.)

1 should be given little, if any, weight for two primary reasons: (1) the “operative facts,” as alleged
 2 in the Complaint, did not occur in this forum; and (2) the overlap and relatedness of this case with
 3 the New York Litigation—combined with Apple’s apparent gamesmanship and forum
 4 shopping—significantly outweigh Apple’s choice of forum. *Modavox*, 2009 U.S. Dist. LEXIS
 5 40977 at *14; *see also Pacific Car and Foundry Co. v. Pence*, 403 F.2d 949, 954 (9th Cir. 1968)
 6 (where the operative facts have not occurred within the forum of plaintiff’s selection, plaintiff’s
 7 choice is entitled only to minimal consideration); *Viper Networks, Inc. v. Rates Tech., Inc.*, No.
 8 09CV768 L(RBB), 2009 WL 4261167, *2 (S.D. Cal. Nov. 23, 2009) (“[i]n general, cases should
 9 be transferred to districts where related actions are pending.”); *Polaroid Corp. v. Casselman*, 213
 10 F.Supp. 379, 383 (D.C.N.Y. 1962) (“an asserted right to choice of forum is, at best, a bootstrap
 11 argument under Section 1404(a) for if accorded decisive significance no action would ever be
 12 transferred. Thus, it is only one factor to be considered and is entitled to no weight whatever
 13 where it appears that the plaintiff was forum shopping and that the selected forum has little or no
 14 connection with the parties or the subject matter.”)

15 **a. The operative facts occurred in New York, not California.**

16 Where the transactions giving rise to the action lack a significant connection to the
 17 plaintiff’s chosen forum, that choice is given considerably less weight. *Callaway Golf Co. v.*
 18 *Corporate Trade, Inc.*, No. 09CV384 L(POR), 2010 WL 743829, *5 (S.D. Cal. Mar. 10, 2010);
 19 *see also Saleh v. Titan Corp.*, 361 F. Supp. 2d 1152, 1156-1159 (S.D. Cal. 2005) (“[g]iven the
 20 national and international scope of these corporations’ actions . . . there is no basis for concluding
 21 that plaintiffs’ claims have a material connection with this district”). Here, Apple’s claims are
 22 predicated on agreements signed between Kodak and Apple in the 1990s, in New York,
 23 information shared by Apple with Kodak, in New York, and alleged acts of misappropriation by
 24 Kodak, in New York. Moreover, the location of Kodak’s principal place of business in the
 25 Western District of New York is the “critical and controlling consideration” because the focus in
 26 this misappropriation case is on Kodak’s alleged conduct, its employees, and its documents.
 27 *Trosper v. Metal Mulisha, LLC*, No. 4:09-CV-472-Y, 2010 WL 375481, *7 (N.D. Tex. Feb. 2,
 28

1 2010) (“suits often focus on the activities of the alleged infringer, its employees, and its
 2 documents; therefore the location of the alleged infringer’s principal place of business is often the
 3 critical and controlling consideration in adjudicating transfer of venue motions”); *see also TV-3,*
 4 *Inc. v. Royal Ins. Co. of Am.*, 28 F. Supp. 2d 407, 411 (E.D. Tex. 1998) (giving less deference to
 5 plaintiff’s choice of forum where “the facts underlying this cause of action did not occur within
 6 the Eastern District”).

7 The “operative facts” underlying Apple’s claims occurred outside of this forum. Indeed,
 8 although Apple alleges generally that Kodak “committed acts in this State that are the subject of
 9 Apple’s claims herein” (Complaint ¶ 6), the alleged facts relevant to Apple’s claims of
 10 conversion and other alleged acts of wrongful misappropriation occurred largely in *New York*,
 11 not California:

- 12 • Apple allegedly “revealed its confidential information to Kodak in confidence, which
 13 Kodak unlawfully used to prepare its application for the ‘218 patent” (Complaint ¶ 29), at
 14 a two-day meeting occurring in **Rochester, New York** (Complaint ¶¶ 16-18);
- 15 • Kodak’s alleged use of Apple’s confidential information constitute breaches of the parties’
 16 agreements and has unjustly enriched Kodak—a corporation headquartered in **Rochester,**
New York (Complaint ¶¶ 4, 30); and
- 17 • Kodak has allegedly wrongfully asserted the ‘218 patent against Apple, in the **Western**
 18 **District of New York** (Complaint ¶ 31).

19 By contrast, the Complaint is bereft of **any** facts indicating a nexus to California. Apple
 20 does not contend that Kodak is subject to specific jurisdiction in California, or that any of the
 21 purported events giving rise to this litigation occurred in California. Apple does not contend that
 22 any of the alleged meetings between Apple and Kodak occurred in California.

23 Instead, Apple asserts only that Kodak is subject to the general jurisdiction of the
 24 California court because it “sells many of [its] products and services in Santa Clara County.”
 25 (Complaint ¶5). Kodak is a leading manufacturer and retailer of consumer products; that
 26 jurisdictional allegation could be made of any district in the country. Apple does not allege that
 27 any of the products sold in California in any way relate to this case, and Kodak’s sales of
 28

1 unrelated products—especially where those same products are sold nationwide—do not provide
 2 sufficient contact with the forum to override other factors that weigh in favor of a transfer. *See*
 3 *Fuji Photo Film Co., Ltd. v. Lexar Media, Inc.*, 415 F. Supp 2d 370, 375 (S.D.N.Y. 2006)
 4 (“Where a party’s products are sold in many states, sales alone are insufficient to establish a
 5 material connection to the forum and to override other factors favoring transfer.”); *see also*
 6 *Walker v. Jon Renau Collection, Inc.*, 423 F. Supp. 2d 115, 119 (S.D.N.Y. 2005) (“Where the
 7 nexus of the allegedly infringing activity is in the transferee District, it is insufficient to find a
 8 connection” to the original forum “based solely on sales of the product that took place [there].”);
 9 *Northern Telecom Ltd. v. Samsung Elec. Co.*, No. 3:94-CV-1115-D, 1995 U.S. Dist. LEXIS
 10 21891, *7 (N.D. Tex. Jan. 17, 1995).

11 Thus, Apple has not established any meaningful connection between the operative events
 12 underlying its state law claims and this District.

13 **b.** This case is related to the New York Litigation and transfer to a
 14 district where related actions are pending is strongly favored.

15 A plaintiff’s choice of forum is entitled to minimal consideration where there is a related
 16 case pending in a transferee district. Where, as here, pending litigation in a separate venue
 17 involves the same parties and the same or similar “legal, technical and infringement issues,
 18 transfer to th[e] venue [of the pending litigation] is logical and strongly favored.” *Technical*
 19 *Concepts L.P. v. Zurn Indus.*, No. 02 C 5150, 2002 WL 31433408, *6 (N.D. Ill. Oct. 31, 2002).
 20 *See also Madani v. Shell Oil Co.*, No. C07-04296 MJJ, 2008 WL 268986, *2 (N.D. Cal. Jan. 30,
 21 2008); *Bratton v. Schering-Plough Corp.*, No. CV 07-0653-PHX-JAT, 2007 WL 2023482, *5 (D.
 22 Ariz., July 12, 2007). Indeed, the existence of the New York Litigation must be “a *paramount*
 23 *consideration* when determining whether a transfer is in the interest of justice.” *In re Volkswagen*
 24 *of Am., Inc.*, 566 F.3d 1349, 1351 (Fed. Cir. 2009) (emphasis added).¹⁰

25 ¹⁰ In fact, even where co-pending litigation involves *different* patents, transfer is
 26 appropriate where there is common subject matter and core issues significantly overlap.
 27 *Amberwave System Corp. v. Intel Corp.*, No. 2:05-CV-321, 2005 WL 2861476, *2 (E.D. Tex.
 28 Nov. 1, 2005) (finding that case including claim for patent infringement should be combined with
 earlier case seeking judicial declaration on a different patent because both cases involved same
 area of technology, the same parties, and the same products); *Whistler Group, Inc. v. PNI Corp.*,
 No. Civ.A.3:03-CV-1536-G, 2003 WL 22939214, *5 (N. D. Tex. Dec. 5, 2003).

1 As set forth above, the New York Litigation involves the ‘218 patent, **the same** patent that
2 Apple claims it owns here, as well as the same witnesses and discovery—*i.e.*, the current and
3 former Kodak employees involved in the conception and reduction to practice of the ‘218 patent,
4 including Kenneth Parulski and Timothy Tredwell, as well as Kodak’s documents pertaining to
5 the design and development of the ‘218 patent. Transferring this case to the Western District of
6 New York and coordinating it with the New York Litigation, which relates to the same
7 underlying issue of ownership, will avoid the possibility of inconsistent judgments and conserve
8 time, resources, energy and money. *Mussetter Distributing, Inc. v. DBI Beverage Inc.*, No. CIV.
9 09-1442 WBS EFB, 2009 WL 1992356, *5 (E.D. Cal. July 8, 2009); *see also Jolly v. Purdue*
10 *Pharma L.P.*, No. 05-CV-1452H, 2005 WL 2439197, *2 (S.D. Cal. Sept. 28, 2005) (“Litigation
11 of related claims in the same tribunal is strongly favored because it facilitates efficient,
12 economical and expeditious pre-trial proceedings and discovery and avoids duplic[ative]
13 litigation and inconsistent results.”); *Argonaut Ins. Co. v. Mac Arthur Co.*, No. C 012-03878
14 WHA, 2002 WL 145400, *4 (N.D. Cal., Jan.18, 2002) (“The best way to ensure consistency is to
15 prevent related issues from being litigated in two separate venues.”). Moreover, the New York
16 Litigation (as well as the related 6022 Litigation, which also presents some overlap in discovery)
17 already requires Apple to appear in New York, present witnesses at trial in New York, and take
18 discovery from Kodak in New York. Apple will not suffer prejudice if this case is transferred to
19 New York, while at the same time a transfer will “facilitate efficient, economical and expeditious
20 pre-trial proceedings and discovery and avoids duplic[ative] litigation and inconsistent results.”
21 *Id.*, *4.

22 Indeed, Apple itself admits in its motion to stay the New York Litigation that it would be
23 inconvenient, inefficient, duplicative, and wasteful to allow two separate courts to litigate the
24 same issues in different forums. (Condon Decl. Ex. C, Motion to Stay, at 3.) That same logic
25 applies here. There is, however, no mystery behind Apple’s motivation for suing Kodak in this
26 district. After having pled judicial economy to obtain a stay of the New York Litigation, Apple
27 now seeks to force Kodak to litigate a separate suit regarding ownership of the same patent
28

1 thousands of miles away, resulting in the very inefficiencies it once purportedly sought to avoid—
2 all in an effort to litigate the issues in its own backyard rather than New York. To prevent such
3 gamesmanship and waste, Apple’s state law claims should be transferred to and tried with the
4 New York Litigation. *See, e.g., Continental Grain Co. v. The FBL-585*, 364 U.S. 19, 26 (1960)
5 (“To permit a situation in which two cases involving precisely the same issues are simultaneously
6 pending in different District Courts leads to the wastefulness of time, energy and money that §
7 1404(a) was designed to prevent.”)

8
9 D. New York is the Most Convenient Forum for Witnesses.

10 The Western District of New York is a more convenient forum for the parties and non-
11 party witnesses than this venue. In addition to the existence of related litigation in the transferee
12 forum, “[t]he convenience of the witnesses is often the most important factor considered by the
13 Court when deciding a motion to transfer under Section 1404(a).” *Broadcast Data Retrieval*
14 *Corp. v. Sirius Satellite Radio, Inc.*, No. CV 06-1190JFWSSX, 2006 WL 1582091, *2 (C.D. Cal.
15 June 6, 2006). In evaluating this factor, the court should consider the convenience of non-party
16 witnesses and the geographic location of any witnesses likely to testify in this case. *Martin v.*
17 *Spring Break ‘83 Prods., LLC*, No. CV 09-6104 PSG (FMOx), 2009 WL 4673918, *3 (C.D. Cal.
18 Dec. 3, 2009). The overall convenience and availability of central witnesses in this case will be
19 greatly improved by a transfer to the Western District of New York.

20 Many of the key witnesses in this case are the current and former Kodak employees
21 involved in the conception and reduction to practice of the ‘218 patent, as well as those
22 employees involved in the purported meetings with Apple in the 1990s. Because the majority of
23 Kodak’s witnesses reside in or near the Western District of New York—*i.e.*, near Kodak’s
24 principle place of business in Rochester, New York—transfer to that venue is warranted. *See*
25 *United States ex rel. Adrian v. Regents of the Univ. of Cal.*, No. C 99-3864 THE, 2002 WL
26 334915, *4 (N.D. Cal. Feb. 25, 2002) (granting motion to transfer from California to Louisiana,
27 noting that many of the witnesses expected to testify to matters relating to the accused design and
28 its development reside on the East Coast or in the Midwest, closer to Louisiana); *see also Foster*

1 *v. Nationwide Mut. Ins. Co.*, No. C 07-04928 SI, 2007 WL 4410408, *4 (N.D. Cal. Dec. 14,
2 2007) (granting transfer to district in which defendant had its corporate headquarters because it
3 was the location of “many of the witnesses defendant would likely call to testify at trial”).

4 Specifically, regarding the ‘218 patent and Apple’s allegations of ownership,
5 misappropriation, and breach of contract, such witnesses are likely to include, among others, the
6 following Kodak employees who reside in or near the Western District of New York:

- 7 • Kenneth Parulski, a Kodak employee, one of the inventors of the ‘218 patent who was
8 purportedly involved in at least one of the meetings with Apple at which Apple alleges
9 that information was shared and misappropriated (Complaint ¶¶ 16, 17). Mr. Parulski
10 resides in or near Rochester, New York. (*See* Declaration of Michael Abernathy
11 (“Abernathy Decl.”) ¶ 7); and
- 12 • George Lathrop, a Kodak employee involved in the efforts to reduce the ‘218 invention to
13 practice. Mr. Lathrop resides in or near Rochester, New York. (*See id.* ¶ 7).

14 Messrs. Parulski and Lathrop are also expected to participate in the New York Litigation, (*id.* ¶
15 7), and will suffer tremendous disruption and inconvenience if they are asked to duplicate their
16 efforts on the east and west coasts. Kodak’s other employees would be significantly disrupted by
17 having to travel to California and provide testimony in this litigation. A transfer would eliminate
18 that inconvenience. *See Pacific Car*, 403 F.2d at 953 (reversing district court’s denial of motion
19 to transfer where “[m]any witnesses, including several of petitioner’s corporate staff, would have
20 to travel [to plaintiff’s original forum] in order to give testimony with consequent disruption of
21 the conduct of petitioner’s operation.”).

22 Kodak will also likely rely on numerous non-party witnesses, also located in or near the
23 Western District of New York. *J & J Sports Productions, Inc. v. Riviera*, No. H-10-1138, 2010
24 WL 3447719 (S.D. Tex. Aug. 30, 2010) (“it is the convenience of non-party witnesses, rather
25 than that of party witnesses, that is the more important factor and is accorded greater weight in a
26 transfer of venue analysis.”). Among the non-party witnesses that Kodak intends to call are its
27 former employees, including Timothy Tredwell (one of the inventors of the ‘218 patent who was
28 purportedly involved in at least one of the meetings with Apple at which Apple alleges that
information was shared and misappropriated (Complaint ¶¶ 16, 17)) and David Lewis (a former

1 Kodak employee who received communications from Apple purportedly conveying information
2 relating to the '218 patent (Complaint ¶ 18)). Messrs. Tredwell and Lewis are believed to reside
3 in or near Rochester, New York. (*See* Abernathy Decl. ¶ 8.)

4 Such non-party witnesses, however, cannot be compelled to appear at trial in the Northern
5 District of California. Fed. R. Civ. P. 45(c)(3)(A)(ii) (United States District Courts have no
6 power to subpoena non-parties in civil cases who reside more than 100 miles from the site of
7 trial); *see also* *Costco Wholesale Corp. v. Liberty Mut. Ins. Co.*, 472 F. Supp. 2d 1183, 1194 (S.D.
8 Cal. 2007). They would, however, become available if this action is tried in the Western District
9 of New York (and, indeed, are expected to participate in the New York Litigation).

10 By contrast, Apple's witnesses are expected to testify in related proceedings currently
11 pending in New York, and will not be similarly inconvenienced by a transfer to that forum. *See*
12 *Fuji Photo Film, Co.*, 415 F. Supp. at 374. Eric Anderson (a resident of Nevada) and Eric
13 Zarakov (a resident of Guam), two of the three Apple employees identified as having knowledge
14 of Kodak's alleged misappropriation (and, specifically, as having attended the primary meeting
15 with Kodak that forms the basis for the Complaint in this case, (Complaint ¶ 17)), are also named
16 inventors of two of the patents at issue in the 6022 Litigation currently pending before Judge
17 Telesca in the Western District of New York. *See supra* note 1. (*See* Condon Decl. ¶ 6 & Ex. E.)
18 Thus, regardless of whether this case is transferred, Messrs. Anderson and Zarakov will likely be
19 called upon to testify in New York. Transfer of this case would allow those witnesses to testify in
20 a single forum, and possibly on a single occasion, "enable[ing] [Apple] to 'kill two birds with one
21 stone,' rather than making separate and additional trips to New York to litigate this action." *Fuji*
22 *Photo Film, Co.*, 415 F. Supp. at 374.

23 Similarly, a transfer would not inconvenience Apple because the New York Litigation, as
24 well as the related 6022 Litigation, are already pending in the Western District of New York and,
25 thus, Apple and its counsel must travel there to defend and prosecute those claims and cross-
26 claims. *See id.* (finding that a transfer of venue to California was not less convenient to the party
27 because the party's representatives and counsel were already traveling to California for other
28

1 lawsuits pending there); *see also Tech. Concepts*, 2002 WL 31433408, *4 (“further relevant
2 consideration to the convenience element is the fact that the related . . . patent litigation between
3 these two parties is already pending” in the transferee district and plaintiff must travel there”).

4 By all accounts, transfer to the Western District of New York is warranted for the
5 convenience of the witnesses and parties.

6 E. The Relevant Evidence in This Case is Located in New York.

7 Apple alleges that Kodak misappropriated its proprietary information and used that
8 information as the basis for filing the ‘218 patent with the United States Patent and Trademark
9 Office. The majority of the evidence relating to Apple’s claims and Kodak’s defenses—including
10 its defense of ownership—is located in the Western District of New York, *i.e.*, at Kodak’s
11 facilities in Rochester; thus, this factor overwhelmingly favors transfer in this case.

12 The key evidentiary documents in this case would include Apple documents pertaining to
13 its digital camera architecture developed in the early 1990s and purportedly shared with Kodak
14 (including, for example, documents disclosed by Apple to Kodak at the November 17-19, 1992
15 meeting in Rochester or subsequently sent by Apple to Kodak)—which, by Apple’s own
16 admission are located in Rochester, New York. (Complaint ¶¶ 17-20.) Other key documents also
17 include Kodak’s documents pertaining to the design and development of the ‘218 patent, which
18 are kept at Kodak’s headquarters in Rochester, New York. (*See* Abernathy Decl. ¶ 10.)¹¹ For this
19 reason, too, this case should be transferred.

20 F. The Remaining Transfer Factors Demonstrate That New York, Not
21 California, is the Proper Venue.

22 In evaluating whether transfer is appropriate, courts also consider any local interest in the
23 controversy; the familiarity of each forum with applicable law; and, the relative court congestion
24 and time to trial in each forum. *See Jones*, 211 F.3d at 498. All these factors weigh in favor of
25 transfer. First, as discussed above, this is not a “localized controversy” that the Northern District
26 of California has an interest in adjudicating. *See Pacific Car*, 403 F.2d at 955 (“We are left, then,

27 ¹¹ In patent infringement cases, the bulk of the evidence usually comes from the accused
28 infringer. *See In re Genentech, Inc.*, 566 F.3d 1338, 1345-46 (Fed. Cir. 2009). The same is true
here.

1 with a choice of forum supported only by the fact that it was chosen. Such a choice cannot
 2 prevail under § 1404(a) against the showing of inconvenience here made by the petitioner.”). By
 3 contrast, New York has a strong local interest because Apple’s claims that Kodak and its
 4 employees misappropriated Apple’s proprietary information “cause[s] of action call[] into
 5 question the work and reputation of several individuals residing in or near [the Western District of
 6 New York] and who presumably conduct business in that community.” *In re Hoffmann-La Roche*
 7 *Inc.*, 587 F.3d 1333 (Fed. Cir. 2009).

8 Second, California courts have recognized that New York district courts are well suited to
 9 adjudicate highly technical patent disputes. *See Modavox*, 2009 U.S. Dist. LEXIS at *13-14
 10 (“There is no doubt that any court in New York to which this case is assigned will be well able to
 11 deal with issues of federal patent law”). Finally, neither district is significantly less congested to
 12 impact this motion; thus, this factor is neutral. *See Moore v. C.R. Eng., Inc.*, No. 09-1841 SC,
 13 2009 WL 3458303, *5 (N.D. Cal. Oct. 23, 2009) (“the Court agrees that this is, at best, a minor
 14 factor in the section 1404 calculus”). In sum, none of the factors in the transfer analysis favor
 15 keeping this case in California.

16 **III. DISCOVERY SHOULD BE STAYED PENDING DETERMINATION OF**
 17 **KODAK’S POTENTIALLY DISPOSITIVE MOTION.**

18 Shortly after Kodak filed its original Motion to Dismiss or, In the Alternative, Transfer
 19 Venue, Apple served its first set of interrogatories and requests for production. Although Kodak
 20 requested that Apple defer Kodak’s response date until after the Court’s hearing on this motion,
 21 Apple refused.¹² (Condon Decl. ¶¶ 8-9.)

22 This Court enjoys broad discretion to stay proceedings as part of its inherent power “to
 23 control . . . its docket” in the interest of “economy of time and effort for itself, for counsel, and for
 24 litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936); *see also Little v. City of Seattle*, 863
 25 F.2d 681, 685 (9th Cir. 1988). Upon showing of good cause, the court may deny or limit
 26 discovery, Fed.R.Civ.P. 26(c), and may relieve a party of the burdens of discovery while a
 27 dispositive motion is pending. *DiMartini v. Ferrin*, 889 F.2d 922 (9th Cir.1989), amended at 906

28 ¹² Apple did agree to a two-week extension of Kodak’s response date. (Condon Decl. ¶ 9.)

1 F.2d 465 (9th Cir.1990); *Rae v. Union Bank*, 725 F.2d 478 (9th Cir.1984). In an exercise of that
 2 discretion, the Court must weigh “the competing interests which will be affected by the granting
 3 or refusal to grant a stay.” *Lockyer v. Mirant Corp.*, 398 F.3d 1098, 1110 (9th Cir. 2005).

4 “Among those competing interests are the [1] possible damage which may result from the
 5 granting of a stay, [2] the hardship or inequity which a party may suffer in being required to go
 6 forward, and [3] the orderly course of justice measured in terms of the simplifying or
 7 complicating of issues, proof, and questions of law which could be expected to result from a
 8 stay.” *Id.* Other courts have articulated this third factor as a question of judicial economy.
 9 *Rivers v. Walt Disney Co.*, 980 F.Supp. 1358, 1360 (C.D. Cal. 1997).

10 Here, each of these factors strongly favors issuance of a stay.

11 1. Hardship Or Inequity Which A Party May Suffer If The Stay Is Not Issued. A stay
 12 is necessary to avoid prejudice to Kodak associated with the effort required to conduct discovery
 13 in multiple cases that may be rendered pointless or redundant if this case is dismissed or
 14 transferred. *Fuller v. Amerigas Propane, Inc.*, Nos. C 09-2493 TEH, 09-2616 TEH.2009 WL
 15 2390358, at *1 (N.D. Cal. Aug. 3, 2009).

16 2. Damage Resulting From A Stay. By contrast, a stay will not prejudice Apple. It
 17 was Apple who filed a motion to stay the New York Litigation. Because the Court is scheduled
 18 to hear this motion within a few months, “any delay caused by this stay will be of very short
 19 duration, and unlikely to cause the degradation of memories or the loss of material evidence.” *Id.*

20 3. Judicial Efficiency. Given the total overlap between this case and the New York
 21 Litigation, the conservation of judicial resources plainly requires that discovery in this litigation
 22 be stayed.

23 There is simply no reason for this Court to expend its time and energy on these cases until
 24 the pending motion [to transfer] is resolved, as transfer of this matter to another court
 25 would render redundant the efforts of this Court. Duplication of case management tasks
 26 by multiple courts is not an economical use of judicial resources. . . . An order staying all
 27 further proceedings will not only conserve the resources of this Court, but will also
 28 preserve those of both parties involved while simultaneously allowing them to tailor
 discovery and avoid duplicative or unnecessary tasks.

Id., at *2.

PROOF OF SERVICE

STATE OF CALIFORNIA, CITY AND COUNTY OF SAN FRANCISCO

I am employed in the county of San Francisco, State of California. I am over the age of 18 and not a party to the within action; my business address is **K&L Gates LLP, Four Embarcadero Center, Suite 1200, San Francisco, California 94111.**

On **November 15, 2010**, I served the foregoing document(s):

DEFENDANT EASTMAN KODAK COMPANY’S AMENDED NOTICE AND MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM PURSUANT TO FED. R. CIV. P. 12(b)(6) OR, IN THE ALTERNATIVE, TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a); MOTION TO STAY DISCOVERY PURSUANT TO FED. R. CIV. P. 26(c)

DECLARATION OF MICHAEL J. ABERNATHY IN SUPPORT OF DEFENDANT EASTMAN KODAK COMPANY’S MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM PURSUANT TO FED. R. CIV. P. 12(b)(6) OR, IN THE ALTERNATIVE, TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a)

DECLARATION OF MIKAL J. CONDON IN SUPPORT OF DEFENDANT EASTMAN KODAK COMPANY’S AMENDED NOTICE AND MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM PURSUANT TO FED. R. CIV. P. 12(b)(6) OR, IN THE ALTERNATIVE, TO TRANSFER VENUE PURSUANT TO 28 U.S.C. § 1404(a); MOTION TO STAY DISCOVERY PURSUANT TO FED. R. CIV. P. 26(c)

PROPOSED ORDERS

together with an unsigned copy of this declaration, on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope(s) addressed and sent as follows:

Gregory D. Hull
Matthew D. Powers
Steven S. Cherenesky
Weil, Gotshal & Manges LLP
201 Redwood Shores Parkway
Redwood Shores, CA 94065
650/802-3000
Fax: 650/802-3100
Email: greg.hull@weil.com
matthew.powers@weil.com
steven.cherenesky@weil.com

[] **BY MAIL (By Following Office Business Practice):** I am readily familiar with this firm’s practice of collection and processing correspondence for mailing. It is deposited with the U.S. Postal Service on that same day in the ordinary course of business. I placed such envelope(s) for collection and mailing on that date following ordinary business practice.

1 [X] **BY EMAIL:** By transmitting via electronic mail the document listed above to the email
2 address(s) set forth above.

3 I declare under penalty of perjury under the laws of the State of California that the above is
4 true and correct.

5 Executed on November 15, 2010, at San Francisco, California.

6 /s/ Apriljoy H. Sanchez

7 **Apriljoy H.Sanchez**
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EXHIBIT 18

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

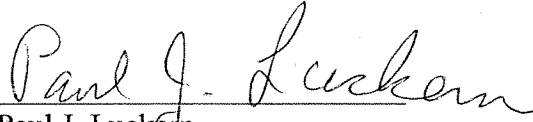
In the Matter of

CERTAIN MOBILE TELEPHONES AND
WIRELESS COMMUNICATION
DEVICES FEATURING DIGITAL
CAMERAS, AND COMPONENTS
THEREOF

Inv. No. 337-TA-703

Notice To The Parties

The Final Initial and Recommended Determinations (ID) were filed on January 24, 2011. Attached are the title page, conclusions of law and the order, which are not confidential and which form a portion of said determinations. For receiving said ID, see Commission rules 210.6 and 210.7. Counsel for complainant, respondents and the staff received a copy of this notice on January 24, 2011.


Paul J. Luckern
Chief Administrative Law Judge

Issued: January 24, 2011

PUBLIC VERSION

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

CERTAIN MOBILE TELEPHONES AND
WIRELESS COMMUNICATION
DEVICES FEATURING DIGITAL
CAMERAS, AND COMPONENTS
THEREOF

Inv. No. 337-TA-703

Final Initial and Recommended Determinations

This is the administrative law judge's Final Initial Determination under Commission rule 210.42. The administrative law judge, after a review of the record developed, finds inter alia that there is jurisdiction and that there is no violation of section 337 of the Tariff Act of 1930, as amended.

This is also the administrative law judge's Recommended Determination on remedy and bonding, pursuant to Commission rules 210.36(a) and 210.42(a)(1)(ii). Should the Commission find a violation, the administrative law judge recommends the issuance of limited exclusion orders barring entry into the United States of infringing mobile telephones and wireless communication devices featuring digital cameras and components thereof as well as the issuance of appropriate cease and desist orders. The imposition of any bond during the Presidential Review period is not recommended.

CONCLUSIONS OF LAW

1. The Commission has in personam and in rem jurisdiction.
2. There has been an importation of accused mobile telephones and wireless communication devices featuring digital cameras, and components thereof into the United States which are the subject of the unfair trade allegations.
3. It has been established that claim 15 of the '218 patent is invalid as obvious under 35 U.S.C. § 103 in view of Mori in combination with Parulski.
4. It has been established that claim 15 of the '218 patent is invalid as obvious under 35 U.S.C. § 103 in view of Sasaki in combination with Tredwell and Parulski.
5. It has been established that claim 15 of the '218 patent is invalid as obvious under 35 U.S.C. § 103 in view of Sasaki in combination with Mori and Parulski.
6. It has not been established that claim 15 of the '218 patent is invalid in view of respondent Apple's Adam Project. 3.
7. Complainant has failed to show that asserted claim 15 of the '218 patent in issue is infringed, literally or under the doctrine of equivalents, by Apple's accused products.
8. Complainant has failed to show that asserted claim 15 of the '218 patent in issue is infringed, literally or under the doctrine of equivalents, by RIM's accused products.
9. It has not been established that claim 15 of the '218 patent is indefinite.
10. It has not been established that the '218 patent lacks a written description pursuant to 35 U.S.C. § 112 ¶ 1.
11. The '218 patent is enforceable.
12. Complainant has established a domestic industry.
13. There is no patent exhaustion.

14. The evidence establishes that there is no violation of section 337.
15. In the event a violation of section 337 is found, limited exclusion orders and cease and desist orders are recommended. However no bond is recommended.

ORDER

Based on the foregoing, and the record as a whole, it is the administrative law judge's Final Initial Determination that there is no violation of section 337 in the importation into the United States, sale for importation, and sale within the United States after importation of mobile telephones and wireless communication devices featuring digital cameras, and components thereof. It is also the administrative law judge's recommendation, should a violation be found, that limited exclusion orders issue barring entry into the United States of infringing mobile telephones and wireless communication devices featuring digital cameras and components thereof and that appropriate cease and desist orders should issue. The administrative law judge does not recommend any bond.

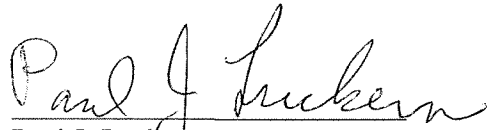
The administrative law judge hereby CERTIFIES to the Commission his Final Initial and Recommended Determinations. The briefs of the parties, filed with the Secretary, are not certified, since they are already in the Commission's possession in accordance with Commission rules.

Further it is ORDERED that:

1. In accordance with Commission rule 210.39, all material heretofore marked in camera because of business, financial and marketing data found by the administrative law judge to be cognizable as confidential business information under Commission rule 201.6(a), is to be given in camera treatment continuing after the date this investigation is terminated.
2. Counsel for the parties shall have in the hands of the administrative law judge those portions of the final initial and recommended determinations which contain bracketed confidential business information to be deleted from any public version of said determinations, no later than

February 11, 2011. Any such bracketed version shall not be served via facsimile on the administrative law judge. If no such bracketed version is received from a party, it will mean that the party has no objection to removing the confidential status, in its entirety, from these initial and recommended determinations.

3. The initial determination portion of the Final Initial and Recommended Determinations, issued pursuant to Commission rules 210.42(a) and 210.42-46, shall become the determination of the Commission, unless the Commission, shall have ordered its review of certain issues therein or by order has changed the effective date of the initial determination portion. The recommended determination portion, issued pursuant to Commission rule 210.42(a)(1)(ii), will be considered by the Commission in reaching a determination on remedy pursuant to Commission rule 210.50(a).


Paul J. Luckern
Chief Administrative Law Judge

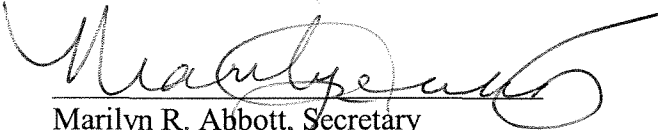
Issued: January 24, 2011

**CERTAIN MOBILE TELEPHONES AND WIRELESS
COMMUNICATION DEVICES FEATURING DIGITAL
CAMERAS, AND COMPONENTS THEREOF**

Inv. No. 337-TA-703

PUBLIC CERTIFICATE OF SERVICE

I, Marilyn R. Abbott, hereby certify that the attached **Notice To The Parties** has been served by hand upon the Commission Investigative Attorney, Vu Q. Bui, Esq., and the following parties as indicated, on January 25, 2011.



Marilyn R. Abbott, Secretary
U.S. International Trade Commission
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On Behalf of Complainants Eastman Kodak Company:

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**On Behalf of Respondents Research in Motion, Ltd. and
Research in Motion Corporation:**

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- Other: _____

EXHIBIT 19

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MOBILE TELEPHONES AND
WIRELESS COMMUNICATION DEVICES
FEATURING DIGITAL CAMERAS, AND
COMPONENTS THEREOF**

**Inv. No. 337-TA-703
(Remand)**

Notice Regarding Initial Determination On Remand on Violation of Section 337

(May 21, 2012)

On this date, I issued an Initial Determination On Remand on violation of section 337 in the above-referenced investigation. Attached are the first page and the conclusions of law from said filing, which are a matter of public record. A complete public version of the Initial Determination On Remand will issue when all the parties have submitted their redactions and I have had an opportunity to review the redactions.

SO ORDERED.

Thomas B. Pender
Administrative Law Judge

UNITED STATES INTERNATIONAL TRADE COMMISSION
Washington, D.C.

In the Matter of

**CERTAIN MOBILE TELEPHONES AND
WIRELESS COMMUNICATION DEVICES
FEATURING DIGITAL CAMERAS, AND
COMPONENTS THEREOF**

**Inv. No. 337-TA-703
(Remand)**

INITIAL DETERMINATION ON REMAND ON VIOLATION OF SECTION 337

Administrative Law Judge Thomas B. Pender

(May 21, 2012)

Pursuant to the Notice of Investigation and Rule 210.42(a) of the Rules of Practice and Procedure of the United States International Trade Commission, this is my Initial Determination on Remand in the matter of Certain Mobile Telephones and Wireless Communication Devices Featuring Digital Cameras, and Components Thereof, No. 337-TA-703.

I hereby reaffirm on remand that no violation of Section 337 of the Tariff Act of 1930, as amended, has been found in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain mobile telephones and wireless communication devices featuring digital cameras, and components thereof, in connection with claim 15 of U.S. Patent No. 6,292,218.

VI. Conclusions of Law

1. The accused Apple iPhone 3G infringes claim 15 of the '218 patent.
2. The accused Apple iPhone 3GS and iPhone 4 do not infringe claim 15 of the '218 patent.
3. The accused RIM products infringe claim 15 of the '218 patent.
4. Claim 15 of the '218 patent is invalid under 35 U.S.C. § 103 for obviousness.
5. Apple has not violated 19 U.S.C. § 1337(a)(1) with respect to the '218 patent.
6. RIM has not violated 19 U.S.C. § 1337(a)(1) with respect to the '218 patent.

EXHIBIT 20

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

In re:)	
)	Chapter 11
EASTMAN KODAK COMPANY, <i>et al.</i> , ¹)	
)	Case No. 12-10202 (ALG)
)	
Debtors.)	(Jointly Administered)
<hr/>		
In re:)	
)	
EASTMAN KODAK COMPANY, <i>et al.</i> ,)	
Plaintiffs,)	
v.)	Adv. Proc. No. 12-_____ (ALG)
)	
APPLE INC. AND)	
FLASHPOINT TECHNOLOGY, INC.,)	
Defendants.)	
<hr/>		

**JOINT SCHEDULING ORDER REGARDING THE DETERMINATION OF
OWNERSHIP INTERESTS IN CERTAIN PATENTS AS PROPERTY OF THE ESTATE**

The Court having considered the joint request of Eastman Kodak Company, on behalf of itself and its affiliated debtors and debtors in possession in these chapter 11 cases (collectively, the “**Debtors**”), Apple Inc. (“**Apple**”), and FlashPoint Technology, Inc. (“**FlashPoint**”, and together with the Debtors and Apple, the “**Parties**”) for entry of a scheduling order (this “**Order**”) in an adversary proceeding that the Debtors are planning to file which will seek a declaration that Apple and FlashPoint have no ownership interests in ten specific Kodak patents; and the Parties recognizing the need to resolve these disputes in an expeditious manner

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Eastman Kodak Company (7150); Creo Manufacturing America LLC (4412); Eastman Kodak International Capital Company, Inc. (2341); Far East Development Ltd. (2300); FPC Inc. (9183); Kodak (Near East), Inc. (7936); Kodak Americas, Ltd. (6256); Kodak Aviation Leasing LLC (5224); Kodak Imaging Network, Inc. (4107); Kodak Philippines, Ltd. (7862); Kodak Portuguesa Limited (9171); Kodak Realty, Inc. (2045); Laser-Pacific Media Corporation (4617); NPEC Inc. (5677); Pakon, Inc. (3462); and Qualex Inc. (6019). The location of the Debtors’ corporate headquarters is: 343 State Street, Rochester, NY 14650.

given the Debtors planned sale of such patents along with other patents in Kodak's Digital Capture Portfolio pursuant to 11 U.S.C. § 363; and the Parties' agreement to bifurcate proceedings as set forth below; and after due deliberation thereon and good and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Debtors shall file a complaint commencing the adversary proceeding on June 18, 2012.
2. The Debtors shall file a motion for summary judgment asserting that Apple's and FlashPoint's ownership claim are time-barred as a matter of law and equity no later than June 21, 2012 (the "**Summary Judgment Motion**"). Any responses to the Summary Judgment Motion shall be filed by June 28, 2012, and the Debtors shall file any reply by July 5, 2012.
3. The Court will hear argument on the Summary Judgment Motion on July 10, 2012 at 10:00 a.m.
4. Discovery on the merits of the ownership claims asserted in the adversary proceeding shall commence immediately upon any ruling from the Court that denies the Summary Judgment motion and holds that one or more of Apple's and FlashPoint's ownership claims are timely. No discovery shall take place prior to the Court's decision on the Summary Judgment Motion.
5. If necessary, the Parties shall submit to the Court an amended joint scheduling order that sets forth the details of merits discovery and other pre-trial matters in this adversary proceeding within five days of the Court's decision on the Summary Judgment Motion.

6. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Order.

Dated: June [•], 2012
New York, New York

Allan L. Gropper
United States Bankruptcy Judge

EXHIBIT 21

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 12-10202 (ALG)

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In the Matter of:

EASTMAN KODAK COMPANY, et al.,

Debtors.

- - - - -x

United States Bankruptcy Court
One Bowling Green
New York, New York

March 8, 2012

11:03 AM

B E F O R E:
HON. ALLAN L. GROPPER
U.S. BANKRUPTCY JUDGE

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Motion by RIM for relief from stay.

Motion by Apple, Inc. for relief from stay to facilitate patent ownership disputes prior to the Debtor's sale of those patents.

Objections filed.

Motion by Debtors for interim and final orders authorizing, but not directing, the Debtors to continue using their existing cash management system, bank accounts and business forms, maintain investment practices and continue intercompany transactions, providing postpetition intercompany claims administrative expense priority, and authorizing but not directing all financial institutions to honor all related payment requests.

Objections filed.

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Motion of Apple, Inc. seeking authority to initiate patent infringement actions against Eastman Kodak Company.

Objections filed.

Transcribed by: Linda Ferrara
Dena S. Page

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A P P E A R A N C E S :

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Office of The United States Trustee
33 Whitehall Street
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BY: BRIAN S. MASUMOTO, ESQ.

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P R O C E E D I N G S

THE COURT: Eastman Kodak Company. May I have appearances, please.

MR. TORKIN: Good morning, Your Honor, Michael Torkin from Sullivan & Cromwell on behalf of the debtors. Along with me is Andy Dietderich, Brian Glueckstein and Steven Holley.

MR. LOMAZOW: Good morning, Your Honor. Tyson Lomazow of Milbank, Tweed, Hadley & McCloy on behalf of the committee.

MR. OSWALD: Your Honor, Frank Oswald, Togut, Segal & Segal, proposed co-counsel, conflicts counsel, to Milbank.

MR. MASUMOTO: Good morning, Your Honor. Brian Masumoto for the U.S. Trustee's Office.

MR. QURESHI: Good morning, Your Honor. Abid Qureshi, Michael Stamer, Akin Gump Strauss Hauer & Feld on behalf of the second lien noteholders committee.

MR. SELIGMAN: Good morning, Your Honor. David Seligman, Marcus Sernel on behalf of Apple.

MS. ELKIN: Good morning, Your Honor. Judy Elkin on behalf of RIM.

THE COURT: You might as well sit up there, counsel, rather than going all the way back. Anyone else intending to speak today? Anyone on the phone who wishes to note an appearance for the record?

(No response.)

THE COURT: All right. Where shall we start?

1 MR. TORKIN: I think we would like to just get to the
2 cash management carryover out of the way and then turn to the
3 main show, if that's all right with Your Honor.

4 THE COURT: All right.

5 MR. TORKIN: Your Honor, we have circulated the
6 proposed order as you had requested. We reached out to the
7 committees, both the unsecured committee and the second lien
8 committee, as well as the U.S. Trustee. Both of the committees
9 have agreed with a proposed form of order, including at Your
10 Honor's suggestion, listing the specific account we want to put
11 money into today. Unfortunately, the U.S. Trustee has no
12 discretion with this. It will continue to object.

13 THE COURT: All right.

14 MR. TORKIN: We would, at this time, ask the Court to
15 enter the proposed order with that one account that everybody
16 has signed off on.

17 THE COURT: And how much money is in that account?

18 MR. TORKIN: There is nothing. We're waiting for Your
19 Honor's ability to --

20 THE COURT: How much money do you want to put in that
21 account?

22 MR. TORKIN: It will depend from time-to-time.

23 THE COURT: Is there a maximum amount?

24 MR. TORKIN: There is no maximum amount. It is U.S.
25 securities. I actually had brought Your Honor a summary of the

1 account, if you would like. I could approach.

2 THE COURT: Well, what has been in that account
3 historically?

4 MR. TORKIN: Nothing. Nothing.

5 THE COURT: Historically?

6 MR. TORKIN: Nothing.

7 THE COURT: Well, what has been in a similar set of
8 money market accounts historically?

9 MR. TORKIN: The company hasn't managed that. Right
10 now, under 345, to the extent that there's excess cash that the
11 code mandates investment only in government securities, this
12 account replicates that as opposed to managing sort of a bond
13 desk in finding government securities with which to invest in.
14 This is just simply is as compliant as you can get with the
15 Bankruptcy Code requirement but isn't completely compliant.

16 THE COURT: So, it is a money market fund that invests
17 only in government securities.

18 MR. TORKIN: It is --

19 THE COURT: Is that what you're telling me?

20 MR. TORKIN: It is --

21 THE COURT: What is investing? What's the name of it?

22 MR. TORKIN: The name of it is the Federated Treasury
23 Obligation Fund.

24 THE COURT: All right.

25 MR. TORKIN: It pursues current income consistent with

1 stability of principal, invests primarily in short term U.S.
2 Treasury securities, repurchase agreements, collateralized by
3 U.S. Treasury securities, holds Triple AM and Triple little a
4 RMS Securities from Standard & Poors and Moody's respectively.

5 THE COURT: All right. Mr. Masumoto?

6 MR. MASUMOTO: Mr. Torkin is correct. Unfortunately,
7 the only discretion that we've had then that we've discussed
8 with the parties is if they have investments in treasuries that
9 are held in their name. This account is not even entirely
10 restricted just for treasuries, as mentioned. It includes
11 repurchase agreements and so forth. And also, given that it is
12 within a specific money market fund, the idea is that if the
13 fund were to become insolvent, that these funds are not
14 protected.

15 I believe at the last hearing, we were advised that
16 they have in excess of 600 million dollars, I think 630 million
17 dollars that are currently located in authorized depositories.
18 As indicated, it appears they don't know the maximum amount
19 which they would put into these money market accounts.

20 Accordingly, based upon our current position, the
21 Federated Treasury Obligation Fund doesn't comply. So we'll
22 defer to Your Honor as to whether or not they meet the
23 standards for a waiver.

24 THE COURT: All right. Anyone else?

25 (No response.)

1 THE COURT: It appears to come very close to compliant
2 but I would like to know if there is either a maximum or an
3 approximate amount. You can provide that with a copy of the
4 order by letter and a copy to Mr. Masumoto.

5 MR. TORKIN: Will do. Thank you, Your Honor.

6 THE COURT: Thank you. Shall we take the unopposed
7 matter first on the calendar?

8 MR. TORKIN: I'm going to turn it over to Mr.
9 Glueckstein.

10 THE COURT: All right.

11 MR. GLUECKSTEIN: If you would like to, Your Honor --

12 THE COURT: I think it would be -- I always like to
13 start with the unopposed matters.

14 MR. GLUECKSTEIN: Okay. Then we will do that first
15 and turn the podium over to counsel for RIM.

16 THE COURT: Well, I don't -- we have a motion for a
17 lift stay. The debtor has decided in its judgment not to
18 oppose it. I have no opposition but a motion to lift stay is
19 obviously an important matter. Does anyone wish to be heard?

20 (No response.)

21 THE COURT: All right. Then I will grant the motion.

22 MS. ELKIN: Thank you, Your Honor.

23 THE COURT: Counsel for RIM can certainly make a
24 statement if you wish, but I don't think you want to snatch
25 defeat out of the jaws of victory.

1 MS. ELKIN: No. I've learned to sit down and shut up
2 when I win.

3 THE COURT: And I know you don't come from Texas, I
4 don't think so.

5 MS. ELKIN: No.

6 THE COURT: It's not as if you've come a long way.

7 MS. ELKIN: That's right. I believe your clerk has
8 the order. I have another disc if you want --

9 THE COURT: If you want to hand up a disc.

10 MS. ELKIN: Do you have -- you have it already.

11 THE COURT: I have an order in front of me. I don't
12 know -- yes, I have a disc in the -- it looks like a disc in
13 the file.

14 MS. ELKIN: Right, it was just sent the other day.

15 THE COURT: That's fine.

16 MS. ELKIN: So, that's good. Thank you, Your Honor.

17 THE COURT: Thank you.

18 MR. GLUECKSTEIN: Thank you, Your Honor. Then the
19 next item on the agenda is Apple's motion seeking authority to
20 initiate patent infringement actions against the debtors. I'll
21 turn the podium over --

22 THE COURT: Well, there are two Apple motions; right?

23 MR. GLUECKSTEIN: There are, Your Honor.

24 THE COURT: Why don't we take them both together or do
25 we have multiple counsel on the multiple motions? I'll find

1 out.

2 MR. GLUECKSTEIN: From the debtors' perspective, that
3 will be fine, Your Honor.

4 THE COURT: All right.

5 MR. SELIGMAN: Good morning again, Your Honor. David
6 Seligman on behalf of the debtors. I'm going to be arguing
7 both motions.

8 THE COURT: All right.

9 MR. SELIGMAN: So, we figured we would take them both.
10 I'd focus on the ITC motion first. They do interrelate but I
11 will address comments with respect to the ITC motion first and
12 proceed however you want to proceed in terms of objection and
13 rebuttal.

14 Your Honor, I also have with me, and I would like to
15 introduce, Marcus Sernel, my partner. I'm a bankruptcy lawyer.
16 Mr. Sernel is an IP litigator. To the extent that we get into
17 some of the technicalities on these complicated patents, to the
18 extent that Your Honor wishes to hear a lot more detail on
19 that, Mr. Sernel is available because there may be a point at
20 which I exceed the bounds of my knowledge of some of the
21 intricacies of these issues.

22 THE COURT: Well, can we agree for purposes of this
23 hearing that a bankruptcy lawyer can understand the patent
24 issues that may be raised in patent litigation?

25 MR. SELIGMAN: I think that's right.

1 THE COURT: All right.

2 MR. SELIGMAN: Again, there may be --

3 THE COURT: At least as well as a jury can understand
4 them.

5 MR. SELIGMAN: I think that's probably right.

6 THE COURT: So, let's --

7 MR. SELIGMAN: Again, if Your Honor has very specific
8 questions, I might cede the podium to Mr. Sernel to give some
9 detailed explanations but I will do my best, Your Honor.

10 THE COURT: All right.

11 MR. SELIGMAN: Your Honor, our first motion is with
12 respect to our request to request that the ITC commence an
13 investigation with respect to a number of products that we
14 allege infringe Apple's patents and to file a corresponding
15 district court action that would likely be immediately stayed
16 with respect to that.

17 Your Honor, we've laid out in our --

18 THE COURT: What do you mean by "would likely be
19 immediately stayed?"

20 MR. SELIGMAN: Well, I will even go stronger than that
21 to say that it is typical practice that -- it is common that
22 when somebody makes a request of the ITC to conduct an
23 investigation, that there is usually a corresponding district
24 court complaint for infringement filed simultaneously to make
25 sure that the statute of limitations, et cetera, are tolled.

1 Under the patent statute, the opposing -- the defendant has a
2 right, an unfettered right to request that the district court
3 action is stayed. They are typically stayed. As a matter of
4 fact, in the second motion we'll be talking about, the 2018
5 litigation, that is stayed as well. Apple would not oppose the
6 stay. So, in effect, it's basically just putting a marker out
7 there. A complaint would be filed and would sit there until
8 the resolution of the ITC. And again, we believe that it would
9 be Kodak's right -- as a matter of right to request. The
10 statute talks about that upon request, the district court shall
11 stay that and we would not oppose that.

12 So, I actually think that that's more of an
13 administrative matter to put a complaint on file. We would not
14 be seeking to proceed with that. We would merely just toll the
15 statute of limitations. We wouldn't have issues of laches and
16 the like.

17 So, back to the main issue though with respect to the
18 ITC action, I think we've laid out in our papers, Your Honor,
19 that this ITC investigation is accepted from the automatic stay
20 pursuant to Section 362 before because it is the exercise by a
21 governmental unit of its police and regulatory powers.

22 We have discussed that the ITC certainly is a
23 governmental unit and that its investigation here is an
24 exercise of its police and regulatory powers. There's only two
25 cases out there that even address this issue; one is an ITC --

1 a decision where they've taken the position that it is accepted
2 from the automatic stay pursuant to the police regulatory
3 powers, as well as Judge Ellis' opinion in the Qimonda case
4 where he also held that. And I was actually reading --
5 rereading that Qimonda's decision last night.

6 THE COURT: So was I.

7 MR. SELIGMAN: And I actually found, Your Honor, that
8 it probably stated better than we could in our briefs, the
9 analysis of why -- and addressed all of the counterarguments.
10 And as a matter of fact, it was a reversal of the Bankruptcy
11 Court that had first taken the position that the ITC
12 investigation was, in fact, stayed and so Judge Ellis dealt
13 with all that and reversed it and I think he articulated well
14 why this is an exercise of police and regulatory powers.

15 In Kodak's objection, they don't seriously take issue
16 with the fact that this is an exercise of police and regulatory
17 powers. They don't challenge it as a governmental unit. They
18 don't challenge that this is an exercise of regulatory powers.
19 They essentially say that these cases, the Qimonda case, the
20 Tisera case (ph.), those involved pre-existing ITC
21 investigations and that's a distinguishing factor. There's
22 nothing in those cases that makes a distinction between whether
23 it's pre-existing or it's brought after the petition is filed.
24 As a matter of fact, 362(b)(4) talks about an exception for the
25 stay if it's the commencement or the continuation. And

1 obviously --

2 THE COURT: I see that argument in your papers.

3 MR. SELIGMAN: Yes, yes. So, I won't belabor that
4 point.

5 THE COURT: That's fine.

6 MR. SELIGMAN: I would also note, Your Honor, that the
7 Second Circuit authority, specifically the Stone case, notes
8 that a continuing infringement is a continuing act every day
9 that it occurs. So, even under that rubric, it is a post-
10 petition matter.

11 There is no distinction in the Code or in any case
12 law, not only between the issue of commencement or continuation
13 but --

14 THE COURT: Well, this bankruptcy has been pending now
15 for about a month and a half; January 18, I think was the date
16 and it's now March 8. So, we're talking about forty-five days.
17 As I understand your position, you're seeking forty-five days
18 worth of damages. No? Your colleague from the patent --

19 MR. SELIGMAN: Yes.

20 THE COURT: -- side is shaking his head no, but I'll
21 let you answer. I think one counsel is usually more than
22 enough.

23 MR. SELIGMAN: Well, thank you for anything how is
24 head was shaking, because that will make sure that I address it
25 appropriately, Your Honor.

1 THE COURT: I will -- since you don't have eyes in the
2 back of your head, I'll let you know when he's shaking his
3 head.

4 MR. SELIGMAN: Thank you, Your Honor. If he's shaking
5 his head no when I'm speaking, then I'm in trouble.

6 Your Honor, no, when one requests an ITC
7 investigation, it is a request ultimately if the ITC conducts a
8 preliminary investigation, determine whether a final
9 investigation should occur and they actually engage in that
10 full investigation. The orders that they enter are actually an
11 exclusion or a cease and desist order with respect to the
12 importation of products into the United States. So, it's not a
13 -- in the ITC proceeding, we're not seeking damages.

14 THE COURT: All right. But in your pleading filed
15 concurrently that you say will likely be stayed, you are.

16 MR. SELIGMAN: That would be either an injunction or a
17 request for damages.

18 THE COURT: A request for damages and I gather you're
19 seeking forty-five days worth of damages or you're seeking
20 damages going back to whatever the statute of limitations is.

21 MR. SELIGMAN: That would be our -- the parallel
22 complaint would only seek -- if there was a -- it would be for
23 the post-petition period, whatever that is. Pre-petition,
24 we'll file a proof of claim and that will be dealt with in the
25 in the fullness of time.

1 THE COURT: So, we have duplicative proceedings out
2 there. You have one proceeding in a complaint and another
3 proceeding in a proof of claim. Would you expect to file a
4 request for payment of administrative expense, assuming that
5 you allege that these accruing damages are administrative
6 expenses in this court?

7 MR. SELIGMAN: I don't think we'd be coming in
8 tomorrow with a request for an administrative claim or payment
9 or --

10 THE COURT: Well, not tomorrow but before the --

11 MR. SELIGMAN: No, I --

12 THE COURT: -- order of confirmation.

13 MR. SELIGMAN: I think, Your Honor, and I don't want
14 to get too distracted on that complaint because it's going to
15 be filed and it's going to be marker. People are going to deal
16 with the ITC proceeding. If it makes Your Honor feel more
17 comfortable, we'll say here now that it's going to -- it will
18 be on file and it will sit there. You know, we will likely
19 file an administrative claim at the end of the case when
20 there's an administrative claim bar date and it will be dealt
21 with. I'm sure that the parties can deal with addressing that
22 in the fullness of time but we're not going to come in during
23 the course of case and request on that matter, a demand for
24 payment -- immediately payment of administrative claim, if that
25 clarifies the issue for you.

1 THE COURT: No, I don't know that it does but please
2 proceed.

3 MR. SELIGMAN: Sure. Your Honor, the second argument
4 by Kodak in response to the ITC action is they say that it
5 potentially could be subject to a 105 injunction or limitations
6 by this court under its actual powers under 959. We don't
7 think that that's the case. We don't think -- 105 --
8 obviously, there's legion of case law about 105 can't create
9 substantive rights and it can't contravene sections of the
10 Code. If the police and regulatory powers exceptions is there,
11 we don't think that 105 can overwrite it. They did cite one
12 case, the Newman case, in their paper. That was not a case
13 that involved police and regulatory powers. The Court in dicta
14 surmised that in the event it was a police and regulatory power
15 issue, maybe 105 could stay it but the Court never addressed
16 that issue because it was surmising as to what maybe the case
17 and noted that if it was 105 versus 362(d)(4), it would be a
18 hard case but the issue wasn't addressed. And we don't even
19 think that would be proper under the circumstances.

20 With respect to their 959(a) argument, again, Your
21 Honor, 959(a) is an exception to 959 which relates back to
22 post-petition actions but there's nothing in the Code, there's
23 nothing in case law that suggests that one could use 959 to
24 enjoin or to stop a proceeding that is otherwise accepted from
25 the stay under 362(b).

1 In any event, Your Honor, we don't think that there
2 would be grounds for a 105 or a 959 stay because we don't think
3 that this proceeding is going to be impeding the administration
4 of the estate. This is going to be an issue that's going to be
5 dealt with by intellectual property attorneys. It's not going
6 to involve AlixPartners or Lazard or any of the core issues in
7 this case. As a matter of fact, Your Honor, just weeks before
8 the case was filed, Kodak initiated a number of its own ITC
9 investigations against other parties. Those matters are going
10 forward. As a matter of fact, as we're going to talk about in
11 a minute, in the 218 litigation between the parties, there is
12 actively an ITC investigation of Apple brought by Kodak that is
13 proceeding at this time. So, Kodak is well-versed and very
14 facile in proceeding with these kinds of --

15 THE COURT: So, does that mean that the action in the
16 Western District of New York is stayed by virtue of the ITC
17 investigation?

18 MR. SELIGMAN: Right now, that is subject to a stay.

19 THE COURT: All right.

20 MR. SELIGMAN: And we'll get into some of those
21 specifics in a moment.

22 There is also this theme in the debtors' objections
23 with respect to lack of information. Just to address that,
24 Your Honor, we did name in our initial pleadings the categories
25 of products that we were concerned about. Kodak requested an

1 extension of time and a later hearing date on this particular
2 matter, which we agreed to. They never called us and said that
3 they needed more information. We had a conversation with them
4 last week to see if we could resolve this. They never said to
5 us if you give us information, maybe we'll be able to agree to
6 something. It was merely, this is violative of the stay and
7 nothing more.

8 We did file in our reply, we attached an exhibit, of
9 specific products to try and give them more information, if
10 they wanted additional information. If they wanted to know the
11 patent numbers, we have the patent numbers. So, we're not
12 trying to hide the ball in that regard.

13 THE COURT: Well, they also say they're going out of
14 the -- they're ceasing the use of some of the patents or the
15 information, at least as I understand it. In other words, they
16 are exiting certain lines of business that may affect the
17 issues.

18 MR. SELIGMAN: Your Honor, that ultimately may but
19 there's no guarantee that that's their --

20 THE COURT: No, we just don't -- we don't know.

21 MR. SELIGMAN: We don't know. It may happen. It may
22 not.

23 THE COURT: So, why --

24 MR. SELIGMAN: And I am sure --

25 THE COURT: What is the need for speed? Tell me if

1 this were a matter of the equities, and I'm not sure it is, but
2 if it were, tell me what the reasons are why this must be
3 determined in the first forty-five days of a bankruptcy case.
4 You're a bankruptcy lawyer. You understand that the first
5 forty-five days are difficult in any bankruptcy case. The
6 debtor has dozens of balls in the air, dozens of matters to
7 take care of. The bankruptcy stay is a respite, not forever,
8 but you're certainly familiar with the practice that the debtor
9 gets a little bit of a respite. What's your -- other than
10 putting pressure on Kodak with duplicative -- not duplicative,
11 serial motions for different issues, what's the need for
12 immediate relief?

13 MR. SELIGMAN: I would say a couple of things, Your
14 Honor. One is obviously every day there is harm to us as these
15 potentially violative products are being imported.

16 THE COURT: Right, but this has --

17 MR. SELIGMAN: But --

18 THE COURT: -- been going on for how many years?

19 MR. SELIGMAN: This hasn't been going on for --

20 THE COURT: No?

21 MR. SELIGMAN: This is not the 218 patents.

22 THE COURT: No, but I mean the importation of the
23 products that you're complaining of, did that just start in the
24 post-petition period?

25 MR. SELIGMAN: I don't know how far back but it did

1 not just start.

2 THE COURT: No.

3 MR. SELIGMAN: I can tell you that.

4 THE COURT: It goes back some years probably.

5 MR. SELIGMAN: Yes, I don't know the exact time period
6 it goes back but it's not like it just -- it's not like it
7 arose last week, I will give you that, Your Honor.

8 THE COURT: All right.

9 MR. SELIGMAN: But simply, Your Honor, if this is an
10 exercise of a government using its police or regulatory powers,
11 there's -- a debtor is not allowed, no matter what the
12 complexities, it's not allowed to violate the law. Simply put,
13 it can't hide behind the automatic stay for that.

14 You know, I was thinking this morning of sort of a
15 corresponding example of, you know, if there was a debtor that
16 was engaged in securities law violations and the SEC was
17 conducting an investigation, you know, if they're violating the
18 law, they're violating the law and they should be complying
19 with the law. And we think that that's important and that's
20 what the police and regulatory powers exception is about.

21 This is not an issue of trying to collect a money
22 judgment. It's an issue of making sure that people are
23 complying with the law and we do think that that is important.
24 And, Your Honor, the ITC proceeding will take. I mean it will
25 take quite a bit of time and we want to get the matter going.

1 There will be an initial IT --

2 THE COURT: But it won't -- I think you told me a few
3 moments ago that it won't take the time of anybody important
4 because Jay -- Alix won't have to be involved, just the patent
5 lawyers will have to be involved, right? And they're not very
6 important. They're very expensive though, aren't they?

7 MR. SELIGMAN: They very well may be and I am sure
8 Your Honor will get pulled in somehow.

9 THE COURT: I'm sure I will get pulled in somehow.

10 MR. SELIGMAN: Yes. But again, I think that it's an
11 issue that these companies deal with all the time. Kodak is
12 bringing a number of these ITC proceedings right now, including
13 against us and I'm sure that they have no problem with moving
14 forward with the ones where they're the complainants. And we
15 think that -- and they wouldn't say that they're holding off on
16 those because they're dealing with bankruptcy issues, as a
17 matter of fact. Again, the ITC proceeding with respect to the
18 218 patent is ongoing and live right now. And so we think that
19 compliance with the law is important, simply put.

20 THE COURT: Well, I certainly don't disagree with you
21 there.

22 MR. SELIGMAN: Your Honor, finally, we did just
23 articulate in our papers, you know, to the extent that Your
24 Honor were to hold that, this is subject to the stay. I think
25 we've laid our application of the Sonnax factors to this

1 particular situation. We do think that this is a matter that
2 would go to a specialized tribunal anyway. Again, as we've
3 talked about, we don't think that there's going to be a -- this
4 is going to interfere with the administration of the estate.
5 Kodak is certainly well versed with dealing with these IT
6 proceedings.

7 And again, lifting the stay to make sure they comply
8 with the law, we think is important. So, Your Honor, with
9 that, perhaps I'll pause and turn it over -- if Your Honor
10 wishes, to turn it over to Kodak to address this motion. I
11 could also turn to the other --

12 THE COURT: Well, maybe it would be easier if we take
13 the motions separately.

14 MR. SELIGMAN: Thank you, Your Honor.

15 MR. GLUECKSTEIN: Good morning, Your Honor. Brian
16 Glueckstein, Sullivan & Cromwell on behalf of the debtors.

17 With respect to this motion, Your Honor, Apple's
18 requesting blanket authority based on what they've submitted in
19 their papers to pursue unspecified patent infringement claims.
20 Counsel just represented that they intend to file a ITC action
21 with respect to patents for which they have not disclosed,
22 other than the general nature of the patents and some products
23 that potentially infringe the patents, this action.

24 Yet, if their actions are not subject to the stay, as
25 they argue, they wouldn't need to be here before this court.

1 What they're essentially asking for is this court to bless its
2 litigation strategy in advance of taking action without
3 disclosing the specifics of what it is they intend to do.

4 We submit, Your Honor, that this would set -- not only
5 subject the debtors to infringement actions as Your Honor noted
6 in the early stages of these Chapter 11 cases, outside of this
7 court, without a need to specify what it is that they are
8 seeking to accomplish and would open the door to many types of
9 these suits if somebody submits papers to say that my claims
10 are post-petition and/or subject to regulatory exception,
11 without taking the risk of going forward and doing that.

12 To respond specifically to the arguments made by
13 counsel on the points raised today, it's our position, Your
14 Honor, that this does not -- the ITC proceeding does not fall
15 within the police and regulatory exception of 364(b)(4) and
16 while there are the two cases that counsel cites, outside of
17 this district and not controlling, we also believe that the
18 facts here do have an important distinguishing situation and
19 it's the ITC action process is a process that's initiated by
20 Apple. Apple will be filing a complaint as a private party in
21 their own interests. That action will generate a preliminary
22 investigation by the ITC but the CFR is clear, the regulations
23 are clear, that a formal investigation is not commenced at that
24 time.

25 THE COURT: One moment. Apparently Court Call has

1 been disconnected. Anybody on the line?

2 (No response.)

3 THE COURT: We need to call back. Do we have the
4 numbers?

5 (Pause while Court tries to reconnect with Court Call.)

6 THE COURT: Well, maybe this will produce a spirit of
7 goodwill between the parties. So there's something good in
8 everything. We'll get to the next motion when the parties, at
9 least say that they want the same thing.

10 Hello?

11 COURT CALL: May I have the name of your court,
12 please?

13 THE COURT: This is Judge Gropper in New York. This
14 is the Kodak hearing. We were disconnected. Would you
15 reconnect us, please?

16 COURT CALL: Of course.

17 THE COURT: Tell me when that's done.

18 COURT CALL: You're connected with counsel.

19 THE COURT: Are counsel now on the line again in
20 Kodak?

21 COURT CALL: They are.

22 THE COURT: All right. Please go ahead.

23 MR. GLUECKSTEIN: Thank you, Your Honor. With respect
24 to the new ITC proceeding that Apple seeks to bring, Section
25 362(b)(4) accepts only the commencement of an action or

1 proceeding by the governmental unit. The case in Virginia that
2 Apple relies upon is significant in that the case at the time
3 of the bankruptcy filing, a formal investigation by the ITC was
4 already proceeding.

5 THE COURT: I understand the case had already been
6 commenced.

7 MR. GLUECKSTEIN: And but the distinction is that
8 because Apple's filing of the complaint is an action by a
9 private party as counsel represented with respect to other ITC
10 actions brought by Kodak where it was Kodak initiating the
11 action, Apple here would be initiating the action and
12 generating a preliminary investigation at which point then only
13 upon notice and the Commission has discretion as to whether to
14 proceed with a formal investigation, that arguably might fall
15 within the exception as the Virginia court held.

16 The facts here are different. This is to bring a new
17 action by Apple for its own benefit and so, we would submit
18 that there is a distinction to be had based on the facts here.
19 This is not a situation where the ITC as it has the power to
20 do, is seeking to institute a formal action on its own. It's a
21 private litigant here who is choosing to bring a case in the
22 ITC. And for that reason, we submit, Your Honor, that there is
23 a distinction and that the automatic stay should apply to that
24 action.

25 With respect to the district court action, counsel

1 represents that that would just be a marker and that the case
2 would be immediately stayed. While it's true that Kodak would
3 have a statutory right to a stay of that action, there still
4 would be a complaint filed in a district court in -- outside of
5 this court and should the ITC choose not to pursue an
6 investigation or should Apple at some point in the future seek
7 to move that court for a lift of the stay, that action would be
8 pending and would be a complaint on file outside of this court
9 and it is our view that that is subject to the automatic stay,
10 as well.

11 And the fact that it's simply a marker is not
12 relevant. It's still a litigation commenced against the debtor
13 outside of this court.

14 With respect to the offer to only seek the forty-five
15 days worth of damages in that action, we submit, Your Honor,
16 that even based on the facts presented by Apple is not enough.
17 Apple says that they have a post-petition claim but we don't
18 know anything about the claim. We don't know about the patents
19 at issue. We don't know about the scope of the claims, what
20 portion of the product infringes or the nature of the action
21 that they seek to commence.

22 We do cite cases in our brief for the proposition that
23 if it is a claim as Your Honor noted that goes back prior to
24 the petition date, it's not as clear-cut as Apple would like it
25 to be. They cite to a New Jersey case, the Laramie Ltd. case,

1 for the proposition that post-petition infringement is exempted
2 from the stay. But in that case, the Court did look at the
3 nature of the alleged patent infringement and noted that the
4 patents did not issue until after the petition was filed.

5 So in that situation, it was not a claim that the
6 plaintiff sat on and didn't bring until after the petition
7 date. As is likely the case here, as counsel acknowledges,
8 this is not a new issue that arose for Apple. We do believe
9 that this would set a bad precedent as far as allowing other
10 litigants to come into this court and seek preapproval to bring
11 patent infringement actions against the debtors wherever they
12 see fit at this early stage of the bankruptcy proceedings.

13 As Your Honor noted, the case is merely six weeks old.
14 The debtors have a lot of obligations that they're dealing with
15 and the idea that somehow because these cases would proceed in
16 the ITC on patent issues somehow makes them not burdensome or
17 costly for the estate to deal with over a period of potentially
18 months, if not years of defending that action, at a time when
19 the debtor is working hard to move forward with its
20 restructuring plans, we would submit that is quite a burden on
21 the estate and is not appropriate at the early stage of this
22 case.

23 THE COURT: All right. Any reply?

24 MR. GLUECKSTEIN: Thank you, Your Honor.

25 MR. SELIGMAN: Your Honor, just briefly. Your Honor,

1 there seems to be a lot of attention paid to this district
2 court action. We weren't intending to play gamesmanship or
3 anything like that. If it solves the issue, Your Honor, we
4 won't file the corresponding district court complaint and
5 that's --

6 THE COURT: Well, you have a motion. You can't say
7 maybe I will do this.

8 MR. SELIGMAN: No, no, I --

9 THE COURT: Maybe I will do that. You have a motion
10 which is ripe for determination. Obviously any motion for
11 relief from the stay can be modified, can be pursued but I am
12 deciding the motion I have before you which includes what you
13 call a marker.

14 MR. SELIGMAN: That's correct. But I just did want to
15 say, Your Honor, that if we -- if it meant modifying the
16 requested relief here from the podium, we're willing to
17 withdraw that portion of the motion --

18 THE COURT: Well --

19 MR. SELIGMAN: -- because it didn't -- we weren't
20 trying to -- yes --

21 THE COURT: I proceed with the motions I have before
22 me.

23 MR. SELIGMAN: Sure.

24 THE COURT: I'll decide this one and perhaps I will
25 look forward to another one in the next few days which will be

1 Apple's third motion against Kodak. Now, why don't you finish
2 your reply and then you can go on to your second motion in
3 which you tell me that really all you want to do is help Kodak.
4 That's what you tell me. Now tell me how you're going to help
5 Kodak. We'll put aside starting, you know, a government
6 investigation and maybe that will help Kodak. Maybe it won't
7 and I don't want to cut you off on your reply.

8 MR. SELIGMAN: Sure.

9 THE COURT: Now tell me how you're going to help Kodak
10 on your second motion.

11 MR. SELIGMAN: Well, Your Honor, if I could just
12 finish something in my reply.

13 THE COURT: Sure, absolutely.

14 MR. SELIGMAN: The only point I wanted to make is
15 there's this floodgate argument mentioned by counsel. Again,
16 each motion stands or falls on its own set of facts. So, I
17 don't need to say more about that.

18 Again, the distinguishing factor about here would be
19 an action initiated by Apple. This is the ITC complaint.
20 Again, I think that Judge Ellis dealt very well with that in
21 terms of saying that it is a process by the ITC. He addressed
22 that very issue of an ITC proceeding is in somewhat of an
23 adversary process and yes, it is commenced by one party
24 requesting that the ITC issue is in the complaint. So, I think
25 he addressed that issue and I think that his rationale applies

1 equally here. So that's my reply with respect to the first
2 motion.

3 THE COURT: All right.

4 MR. SELIGMAN: I'm prepared to move on to the second
5 motion.

6 THE COURT: All right.

7 MR. SELIGMAN: Your Honor, with respect to the second
8 motion, so -- and I promise that we would never seek a
9 substantial claim for helping out Kodak -- why are we here,
10 Your Honor? We're here because two years ago Kodak initiated a
11 patent infringement proceeding against Apple.

12 THE COURT: And an ITC proceeding --

13 MR. SELIGMAN: And an ITC --

14 THE COURT: -- apparently.

15 MR. SELIGMAN: -- proceeding. Apple raised as defense
16 counterclaims, the issue of ownership, and, you know, although
17 we -- and that litigation was stayed as Your Honor noted
18 before. So, there's been -- for example, we've learned
19 subsequent facts that would lead us to believe that we may have
20 also inventorship claim as part of that but we haven't amended
21 the complaint because the matter has been stayed.

22 And as a matter of fact, Your Honor, we actually tried
23 some while ago to lift the ITC stay in the Western District of
24 New York because we wanted the issue decided and Kodak resisted
25 that and ultimately the matter -- the stay was not lifted.

1 This concerns this 218 patent regarding digital camera
2 technology. Kodak is obviously very familiar with this patent.
3 Not only are they prosecuting against Apple, not only have --
4 there's been several years of an ITC investigation with respect
5 to this, but they have asserted this patent infringement claims
6 and/or ITC actions against at least seven different parties in
7 there, the who's who of manufacturers in this industry; Sony,
8 Matsushita, Samsung, RIM, HTC and Fujifilm.

9 They even specifically sought and requested that the
10 ITC commence and action with respect to the 218 patent against
11 HTC. That was about a week before the bankruptcy. So again,
12 very familiar and facile with this issue.

13 We're now presented with the issue, Your Honor, of the
14 DIP order requires a sale process and requires specifically a
15 sales procedures motion at the end of June. I think everyone
16 agrees that this is an important issue. It's a -- you know,
17 from Kodak's perspective, it's a valuable asset. We're simply
18 concerned, Your Honor, that absent any movement on resolution
19 of this issue, there's going to be -- we're going to wait and
20 then we're going to be a hurry-up. And there's issues about
21 our rights being affected.

22 Your Honor knows and has seen it many times before, a
23 debtor comes with a sales procedures motion, maybe has a
24 stalking horse. The deal's got to get done. There's
25 tremendous pressure to get the deal done and we don't want to

1 be in a situation where we're now in June and somebody says,
2 you know, what this issue is a very important issue. It's got
3 to be decided. You know, let's have a trial and we'll give
4 you, you know, two days because that's all we have.

5 We think that the issue should be decided. We just
6 want a --

7 THE COURT: All right. You say that the issue should
8 be decided.

9 MR. SELIGMAN: Uh-hum.

10 THE COURT: What is the issue? Tell me what the issue
11 is?

12 MR. SELIGMAN: The issue is who owns --

13 THE COURT: Who owns the 218 patent?

14 MR. SELIGMAN: Yes.

15 THE COURT: Are there any other patents that are in
16 dispute between Apple and the debtor?

17 MR. SELIGMAN: I believe that there's a variety of
18 other things but that's what we're focused on in this one, 218
19 is --

20 THE COURT: We're just focused on who owns the 218
21 patent.

22 MR. SELIGMAN: Exactly, Your Honor.

23 THE COURT: And does anybody else claim ownership?

24 MR. SELIGMAN: Does anybody else claim ownership?

25 THE COURT: Of the 218 patent? Your colleague

1 certainly can answer that question.

2 MR. SERNEL: I can address that. So, we're aware that
3 if there's a -- Apple is found to own the 218 patent, there has
4 been -- Apple's been put on notice that Flashpoint, a company
5 that spun out of Apple, might have a claim that then they
6 should get ownership from Apple. Beyond that, I don't think
7 there's any claim that -- directly to Kodak that another party
8 would own the 218 patent. So it gets complicated

9 If Apple were to be found the owner of the 218 patent,
10 somebody else might have a claim against us. I don't think
11 that's something you would be worrying about.

12 THE COURT: Well, we have somebody else who is now
13 standing up. I hate to interrupt the argument, but maybe he
14 can -- he has to identify himself first. Come forward. You
15 can come to the table though and those microphones will pick up
16 your name.

17 MR. FEINSMITH: Good morning, Your Honor. Todd
18 FeinSmith from Pepper Hamilton. We represent Flashpoint.

19 THE COURT: I'm not -- why am I not surprised?

20 MR. FEINSMITH: We claim a derivative interest through
21 Apple.

22 THE COURT: Through Apple.

23 MR. FEINSMITH: Right.

24 THE COURT: But if Apple loses, your client probably
25 loses -- I'll add, probably loses.

1 MR. FEINSMITH: I'm not certain, Your Honor.

2 THE COURT: You're not certain.

3 MR. FEINSMITH: I would have to defer to our patent
4 counsel. In fact, we also have our patent lawyer in the
5 courtroom today, too.

6 THE COURT: Well, I certainly endorse the principle of
7 never going anywhere without a patent lawyer.

8 MR. FEINSMITH: Yes, Your Honor.

9 THE COURT: Thank you.

10 MR. FEINSMITH: Thank you, Your Honor.

11 THE COURT: Your colleague can speak, if he wishes
12 because my next question is going to be to ask you what
13 additional issues you are trying to put before the district
14 court in Rochester and what those issues are.

15 MR. SERNEL: Yes, Your Honor. Marcus Sernel on behalf
16 of Apple.

17 There are currently, I think, five claims pending
18 stayed in the Western District of New York relating to
19 ownership of the 218 patent. The pleadings also refer to other
20 potential patents that were part of this joint development work
21 that we believe should have flowed to Apple, as well, as part
22 of the contractual relationship and Apple's development of the
23 technology.

24 So there are some additional patents that we've
25 identified that we believe would be in the bucket that Apple

1 should have owned versus what Kodak should have owned. One of
2 them is a family member of the 218 patent, essentially a
3 related patent that derived out of the original filing of an
4 application and then there are a handful of others that we
5 believe would be part of that.

6 In addition, as Mr. Seligman mentioned, we have an
7 inventorship claim with respect to the 218 patent we've been
8 waiting to add once that is un-stayed, that we would like to
9 add as soon as that gets back moving again.

10 THE COURT: Now, did the district court refuse to
11 un-stay the case; is that correct?

12 MR. SERNEL: That's correct. And just so we're not
13 confusing stays, that the stay that goes into place when
14 there's a parallel ITC proceeding.

15 THE COURT: No, I understand.

16 MR. SERNEL: The argument was made that -- and it was
17 a discretionary stay, that this was related enough to the
18 patent infringement claims and that ITC that it should be
19 stayed at that -- you know, stayed until the ITC proceeding --

20 THE COURT: That's been stayed for some period of
21 time.

22 MR. SERNEL: I think the stay went into place --
23 originally, we had filed these claims in California State
24 Court. They went to federal court, ended up in Rochester and
25 they've been stayed since I think May of last year.

1 THE COURT: All right. And how long do you expect the
2 ITC investigation to continue? Do you have any idea?

3 MR. SERNEL: I believe right now there's a target date
4 of August or September of this year.

5 THE COURT: Of this year?

6 MR. SERNEL: Yes.

7 THE COURT: All right.

8 MR. SERNEL: And then there's an appeal, and so I
9 don't -- I think, you know, there's an argument that it
10 wouldn't -- we would be 2013 before we would be lifting that
11 stay.

12 THE COURT: All right.

13 MR. SERNEL: Again, it's a discretionary stay and I
14 think we could go back to Western New York and say there are
15 now compelling circumstances that at least these ownership
16 claims, because of the bankruptcy and how they're intertwined
17 with it, that that needs to be lifted now.

18 THE COURT: Well, how long do you expect that
19 ownership issue to be litigated? You haven't had any
20 discovery, any formal judicial discovery, have you?

21 MR. SERNEL: There's been a lot of discovery in the
22 ITC proceeding which again, wasn't addressing these exact
23 claims but a lot of the discovery of the inventors and issues
24 surrounding the specific claims has been done. So, certainly
25 we have an interest in trying to get this done fast. We think

1 we could have a very expedited discovery schedule and --

2 THE COURT: How long do you think that would be in
3 Apple's view?

4 MR. SERNEL: I would think we could get it done in a
5 matter of months.

6 THE COURT: Yes, a matter of months rather than years
7 but how many months?

8 MR. SERNEL: You know, two, three months. We could
9 take discovery for two, three months, tee this up and probably
10 be ready to try it.

11 THE COURT: And how long would the trial be?

12 MR. SERNEL: I would think it's a week, kind of a
13 weeklong trial.

14 THE COURT: All right. Thank you.

15 MR. SELIGMAN: Your Honor, apologies for going back
16 and forth but better you should hear from my colleague than me
17 on the specifics because it is complicated.

18 Your Honor, so faced with where we are, we thought
19 that the best way to proceed with this was to request a limited
20 stay -- a limited lifting of the stay here, so we could go to
21 the Western District and ask the Western District to lift the
22 ITC stay and to transfer venue here. And, Your Honor, we
23 weren't looking to get away from the Western District. If the
24 Court -- if the Western District court were to say I'm lifting
25 the stay and I will proceed, but I think I should keep it,

1 that's fine with us, too. So we are not looking to get away
2 from it. We just want the issue decided by a district court.

3 We lay out, Your Honor, in our papers why we --

4 THE COURT: I gather you would like it decided by the
5 district court in the Southern District of New York, if you had
6 your druthers.

7 MR. SELIGMAN: If we had our druthers, Your Honor, we
8 do believe that this is an issue that it's a specialized
9 patent, patent-related issue. There's jury trial issues that
10 are implicated here.

11 THE COURT: Jury is demanded?

12 MR. SELIGMAN: A jury was demanded.

13 THE COURT: And that's going to be -- the trial is
14 going to be accomplished with a jury in a week?

15 MR. SELIGMAN: I presume that that would be our
16 intention, Your Honor. And given those, we thought that it
17 made sense for a district court to hear the matter. Again, we
18 sought to transfer it here because we thought given that this
19 is where the bankruptcy is, it made sense that if there's going
20 to be a district court overseeing this, it made sense to have
21 it here, at least a little bit more of a nexus to the Chapter
22 11 proceedings but again, if it's able to proceed in Rochester,
23 that's fine with us, too.

24 Again, so -- and that goes into the factors we laid
25 out under Sonnax, this -- basically a specialized tribunal. We

1 think that this moves forward with the resolution of the
2 issues. Again, this is a significant issue. They've
3 recognized it and again, I don't want to sound like we're being
4 overly generous, but -- in helping them out but it helps us
5 out, too to get the matter resolved and we think they would
6 share a similar interest and again, the longer that there's
7 delay here, there's more risk that this issue is going to be --
8 we actually really don't want to be accused of holding up their
9 sale process and so better we're coming in now and saying let's
10 get this issue decided than coming in in June when they file
11 their sales procedures motion raising our hand and saying they
12 can't go forward. We didn't want to be in that position and
13 somebody would say why were you sitting on your hands.

14 THE COURT: So, in June you come in and you say well,
15 we tried to go forward and we're going forward, let us say
16 hypothetically in the Western District of New York and it will
17 only take four or five more months up there, to get it
18 un-stayed, to get it disconnected to the ITC proceedings, to
19 get it teed up for trial, to get a jury, to get time from the
20 district judge, either in Rochester or in the Southern District
21 of New York. So, probably by the end of the year, is that a
22 reasonable forecast we can get this thing tried?

23 MR. SELIGMAN: Well, I --

24 THE COURT: Well, of course it depends on the district
25 court's calendar, which is --

1 MR. SELIGMAN: It depends --

2 THE COURT: -- usually very, very tight.

3 MR. SELIGMAN: It depends, obviously, on the calendar.

4 Again, we're prepared to move forward and agree as expedited
5 proceedings as we can do -- you're right, we can't control
6 somebody's calendar but we're not going to be arguing for a
7 delay. We're going to be -- we're willing to move and do
8 agreed expedited discovery schedules and all the rest to move
9 this matter forward.

10 Your Honor, in Kodak's objection, again they recognize
11 that this is an important issue. They say things like they
12 agree that there was a cloud on title. They agree that this
13 issue is important. You know, this is their words, they agree
14 that it should be decided expeditiously or promptly.

15 But, you know, rather than trying to get this
16 proceeding moving, they just basically say no, the stay should
17 stay in place because the bankruptcy court should decide the
18 issue. They don't name a process in terms of how it will
19 happen or anything of that. They just want the stay to be in
20 place.

21 So the only issue, Your Honor, is from their
22 perspective, is that they just think that it should be decided
23 by the bankruptcy court and they keep on referring in their
24 paper that this issue should be decided by this court because
25 this court has exclusive jurisdiction. They say things like

1 Apple hasn't explained why "another court" shouldn't hear this
2 matter or they say things like litigation outside of this court
3 is distracting.

4 But the point is, Your Honor, this court is a Southern
5 District of New York. This district court has the original
6 exclusive jurisdiction under 1334. It's certainly referred
7 down here automatically but that's the Court. So, to talk
8 about that a court -- that only this court should hear this
9 proceeding, we agree and this court is the Southern District of
10 new York and that's why we're trying to transfer it here.

11 They seem to be very resistant to a district court
12 judge doing it and I suppose that's their right but it almost
13 seems like a district court would be coming out of Siberia to
14 decide this issue and that they are resistant that only the
15 bankruptcy court could decide this.

16 They're essentially arguing, Your Honor, in defense of
17 this -- in objection to this motion, kind of a reverse
18 withdrawal of the reference issue and they lay out why they
19 think that this court, the bankruptcy court, is the only one to
20 decide it. We may have an issue about withdrawal of the
21 reference. Again, we raise jury trial issues, you know,
22 mandatory withdrawal issue and the like, and that may need to
23 be decided and if it needs to be decided expeditiously, we're
24 happy to move that process along. But that's not a reason,
25 Your Honor, to deny lifting of the stay to bring it to the very

1 court which has original and exclusive jurisdiction over this
2 matter, i.e., the district court.

3 So, from our perspective, we try to offer a path
4 forward. Kodak hasn't and they just say maybe something will
5 happen, maybe it won't. And it just seems like it's a waste of
6 time to sit around and wait for them to institute some kind of
7 proceedings and then we're going to be fighting about
8 withdrawal, the reference, you know, permissive abstention as
9 Your Honor did in the Leer case and things of that nature.

10 And we just don't think that really moves the ball
11 forward and if they're interested in moving the ball forward,
12 we think that this is the best way to move forward.

13 The last point mentioned by a couple of -- by the
14 committee was that they think that if we lift the stay with
15 respect to the Western District proceeding, that they won't be
16 able to participate. I'm sure we can work those issues out,
17 regardless of whether it's an adversary proceeding commenced by
18 the debtor or whether it's a proceeding transferred from the
19 Western District of New York, the same rules about intervention
20 and rights of creditors committees apply. I can't imagine that
21 that's going to be the hold-up.

22 So with that, Your Honor, I will sit down and wait for
23 rebuttal.

24 THE COURT: Thank you.

25 MR. GLUECKSTEIN: Thank you, Your Honor. Again, Brian

1 Glueckstein from Sullivan & Cromwell for the debtors.

2 Briefly, Your Honor, Apple says that they have the
3 path forward. They presented again in the first six weeks of
4 the case here, the path forward in their view to what is a
5 somewhat complicated process, to go and try to have a district
6 court remove the stay, lift the stay, in that ITC action,
7 transfer the case here to the Southern District --

8 THE COURT: Well, I gather the ITC action is going
9 forward; is that right?

10 MR. GLUECKSTEIN: The ITC action is proceeding and,
11 Your Honor, there are a number of issues, as counsel
12 represented, at issue in the Western District action, one of
13 which is their defense, counterclaim on the ownership issue
14 that they have re-raised here in this court, voluntarily, on
15 the first day of this case in response to the debtors' motion
16 to secure DIP financing.

17 They walked in here on the first day. They have filed
18 a bunch of motions since then. And now they say well we need
19 to have this stays lifted today. This is an emergency issue
20 because the debtors are intending to proceed with a sale in due
21 course of their patent portfolio that includes at least one
22 patent that is at issue in the Western District and according
23 to their filings in this court, potentially over Kodak patents,
24 of which are still unidentified.

25 They say that the debtors don't have a plan for

1 resolving this issue. Frankly, the debtors last Friday filed a
2 motion seeking to investigate these claims. We filed a motion
3 for Rule 2004 discovery to uncover the nature of the claims
4 that Apple has and to figure out the best path forward to have
5 these claims resolved expeditiously. We are in agreement that
6 this issue needs to be resolved promptly.

7 But the debtors submit that the way to do this is
8 to -- for the debtors to be permitted, and I understand the
9 discovery motion is not on for today, but is -- that is the
10 plan, to investigate these claims and then to decide whether it
11 be an adversary proceeding or a motion in connection with the
12 sale process, however -- whatever claims exist with respect to
13 ownership of Kodak's patents, including Apple's representation
14 with respect to the 218 patent, can be decided by this court in
15 our view, and should be decided by this court.

16 If Apple is so concerned about resolving this
17 expeditiously, the way forward is not to put this back in the
18 hands of the district court where Your Honor loses control over
19 the timing of this process in connection with the sale process.
20 The patents that -- at least the 218 patent that Apple is
21 asserting this ownership claim to is part of a portfolio of
22 patents that was pledged as collateral, both to the DIP lenders
23 and to the second lienholders. There are multiple parties with
24 interests in how these proceedings come out. And, Your Honor,
25 we feel that this is an issue of property of the estate. Apple

1 has come into this court voluntarily and asserted ownership
2 claim over important debtor property.

3 Your Honor has the jurisdiction to decide that issue.
4 We submit that the courts continue to hold regularly that
5 bankruptcy courts have jurisdiction to decide what is property
6 of the estate. We think Your Honor is -- this idea that this
7 is a complex patent --

8 THE COURT: The parties want a jury trial; I don't
9 have authority without the consent of the parties to try a
10 matter before a jury.

11 MR. GLUECKSTEIN: Well, Your Honor, the idea that this
12 particular ownership claim, which is a component of the claims
13 up in the Western District, that it is a foregone conclusion
14 that a juror trial right is entitled to be had is an issue,
15 potentially for another day, but it would be our submission
16 that there would be the ability for this Court to decide this
17 ownership issue, as a property of the estate issue, under the
18 Bankruptcy Code, in connection -- in advance of the sale
19 process, and to resolve any other ownership issues.

20 The exchange we had earlier here when Your Honor asked
21 whether there were any other claims to Kodak patents, and we
22 had people coming up from the gallery to discuss their
23 positions, derivative claims, these are the sorts of things
24 that the debtors submit we don't know what claims are out
25 there. And if this motion is granted and Apple is permitted to

1 go back to the district court and pursue this outside of this
2 court, we don't know who else is going to come in, citing that
3 precedent, and say, well, we have claims, too, and they should
4 be decided somewhere else.

5 The only way to administer this estate and have
6 debtors' property marshaled and administered in a timely
7 fashion to allow the 363 sale to proceed is to allow the
8 debtors, in due course, to proceed in this court with Apple's
9 ownership claims or anybody else's ownership claims, should
10 they come forward with any. And that includes Apple's claims
11 both with respect to the 218 patent and their other still-to-
12 be-unidentified (sic) claims that they've represented in their
13 papers.

14 Your Honor, with respect to their argument now, which
15 is a new argument, that they -- not only are they interested in
16 proceeding with the ownership claims in the Western District,
17 but they now want to add new claims. They want to add
18 inventorship claim or some other type of what they term to be
19 complex claim. This is, you know, in our view, is really just
20 an opportunistic shot to try to complicate a matter that is --
21 they represented themselves, when they attempted to have the
22 ITC stay lifted, that their ownership claims -- the represented
23 to the Western District that these were not patent law issues,
24 that these were straightforward contract claims that were not
25 linked to the underlying patent infringement and other patent

1 issues that are pending before the Western District.

2 So Your Honor, it's our view that both at the macro
3 level, for administration of this estate, permitting the 363
4 sale to proceed, and with respect to the burden that the
5 lifting the stay would impose on the debtors now to deal with
6 these issues outside of this court, that the motion should be
7 denied. We will take up the debtors' Rule 2004 motion. If
8 Apple is truly interested in moving this process forward, they
9 could agree to produce documents that we've asked for under
10 that motion now. And we will then proceed, in due course, to
11 asking this Court to resolve Apple's and any other ownership
12 interests that arise in advance of a sale process that can be
13 kept on track with the terms of the DIP.

14 THE COURT: All right, thank you.

15 MR. GLUECKSTEIN: Thank you.

16 MR. SELIGMAN: Very briefly, Your Honor. As to the
17 question about emergency, again, we're coming here trying to be
18 responsible, as early as we can to get this issue decided
19 because we don't want to be in a position where it's jammed and
20 we have an emergency in June.

21 This 2004, I suppose, in their way, they think that
22 that's moving things forward. Most of the request was for
23 documents that they already have in various of the other pieces
24 of litigation they're going back and forth. I suppose it
25 probably would've been easier if they picked up the phone and

1 said let's talk about a process and -- rather than just sort of
2 launching a 2004, but --

3 THE COURT: Well, I think that may be a very good
4 idea.

5 MR. SELIGMAN: And we'd be happy to have that, Your
6 Honor. Again, this property estate issue that they think that
7 it should happen here, again, we have our jury trial rights.
8 There was -- Your Honor dealt with this issue in Lear about
9 where people want -- there was a pending action and people
10 wanted to come here and bring a 541 proceeding and there were
11 issues about first trial doctrine and abstention and the like.
12 They keep on referring to it shouldn't be -- this issue
13 shouldn't be addressed outside this court. We're not trying to
14 be outside this court; we're trying to be in the Southern
15 District.

16 And so I just wanted to address those points, and with
17 that, Your Honor, unless you have any questions, I have nothing
18 else.

19 THE COURT: Thank you.

20 Very briefly; very briefly.

21 MR. QURESHI: Thank you, Your Honor. Good morning.
22 For the record, Abid Qureshi, Akin, Gump, Strauss, Hauer & Feld
23 on behalf of the second lien committee, and I will be very
24 brief.

25 I'd like to focus Your Honor on what we think one of

1 the most important issues is here, and that is what the impact
2 of Apple's motions will be on this reorganization. We are
3 wholly supportive of the debtors in opposing both motions.

4 Your Honor, this is not a case where the intellectual
5 property issues are somehow peripheral to the core estate.
6 This is very much a core of this estate in this entire
7 reorganization. If Apple and others that would surely follow,
8 Your Honor, are committed to commence proceedings in the ITC or
9 the Western District, or anywhere else, there is no question
10 that that would be incredibly damaging to the entire
11 reorganization effort. Your Honor's questions of Apple's
12 counsel, in terms of, well, what would this proceeding look
13 like in the district court; how long would discovery take; when
14 would you get a trial, well, Your Honor, it's very clear that
15 that is just not going to happen on the timetable that is
16 necessary in order for Kodak to successfully reorganize. We
17 have a DIP lender that has said you've got to have bid
18 procedures on file in June. It's just not going to happen.

19 THE COURT: No, all you have to have is a motion --

20 MR. QURESHI: That's --

21 THE COURT: -- for bid procedures.

22 MR. QURESHI: That's fair.

23 THE COURT: You don't have to have an order; you don't
24 have to have a determination. But you have to have a motion.

25 So I'm assuming that by June, the parties are going to

1 have to give a lot more thought to exactly what kind of relief
2 any court could give to the debtor under the circumstances with
3 regard to disputed patent and nonpatent issues, and I'm sure
4 the parties will give thought to that. I certainly have given
5 a little bit of thought to it, but then, these issues are newer
6 to me than they are to most of the counsel who have been
7 thinking about them, I'm sure, for some time. What relief do
8 you need in order to be able to sell the patents, if they can
9 be sold practically. It may be you need a final determination
10 of some or all of the battles with Apple, in which case, I
11 suppose, this is going to extend out for many, many, many
12 years. But I don't think you need that. I don't mean to imply
13 that.

14 MR. QURESHI: I'm not -- I think there needs to be
15 some process, Your Honor, to resolve some of these claims that
16 are being made with respect to the patents that are part of the
17 portfolio that Kodak is seeking to sell. And that process --

18 THE COURT: I think that it may be exactly correct,
19 and I don't know that Apple disagrees with that.

20 MR. QURESHI: No.

21 THE COURT: They proposed one process.

22 MR. QURESHI: Right. And the problem, Your Honor, is
23 the process they're proposing is one which is entirely outside
24 of the control of the Bankruptcy Court, entirely outside of the
25 court that will oversee the sale. And Your Honor, although

1 June is a soft deadline in the DIP, per se, with respect to
2 getting bid procedures on file, there is an outside date -- I
3 don't recall what it is -- where a sale has to actually occur.
4 And --

5 THE COURT: No, there -- I think it's the end of the
6 year.

7 MR. QURESHI: That may be.

8 THE COURT: That's right around the corner.

9 MR. QURESHI: And it is right around the corner.

10 THE COURT: It is, it is.

11 MR. QURESHI: Particularly, when you're talking --

12 THE COURT: When we're talking about patent
13 litigation.

14 MR. QURESHI: -- when you're talking about patent
15 litigation in a district court that involves a jury.

16 So Your Honor, we think that the right process for
17 determining Apple's various claims is in front of this Court.
18 And Your Honor would not be the first bankruptcy judge in this
19 country to determine patent infringement issues, if, indeed,
20 there are any.

21 THE COURT: But I would be the first bankruptcy judge
22 to try a patent case or a nonpatent case before a jury without
23 the consent of the parties.

24 MR. QURESHI: That presupposes that they're entitled
25 to a jury, Your Honor --

1 THE COURT: Yes, it does.

2 MR. QURESHI: -- which I think is an open question.

3 But we certainly think that this Court has the expertise, has
4 the jurisdiction to determine ownership of estate assets,
5 ownership of the 218 patent, and if necessary, Your Honor, the
6 question of infringement. There are bankruptcy courts that
7 have tried that issue without a jury, and if it were to come to
8 that, we certainly think that that is something that this Court
9 can and should do here.

10 So Your Honor, the debtors will be back, I'm sure, in
11 very short order with a process to lay out the path to
12 determine how the issues that Apple raises should be resolved.
13 I think there is broad agreement that they should be resolved.
14 And Your Honor, what Chapter 11 is all about, the very
15 principles of Chapter 11 will be undermined if Your Honor does
16 not keep control over that process.

17 And so we submit that the debtors should -- the Apple
18 motion should be denied, the debtors should be given the
19 opportunity, which I'm sure they will do in short order, to
20 come back to this Court and lay out a path to determine the
21 issues.

22 Thank you, Your Honor.

23 THE COURT: All right.

24 MR. OSWALD: Your Honor, just very briefly. Frank
25 Oswald for the committee.

1 We have filed a joinder. We agree with the comments
2 of the debtor. We echo the comments of the noteholders. And
3 we do think for the ownership issue, this Court is well suited,
4 particularly with the time frame we're looking at, to keep
5 control and to resolve those issues.

6 Thank you.

7 THE COURT: Thank you.

8 Anything else?

9 MR. GLUECKSTEIN: Maybe I can speak to process. I
10 don't know what the right process is, yet. I don't know the
11 extent to which these claims do or don't need to be resolved in
12 connection with the sale. We currently think that the
13 uncertainty it creates is detrimental to the estate, but it may
14 be that after we have information, we conclude they're bogus,
15 right, and there isn't enough to them to worry about taking
16 judicial resources to resolve in advance of the sale, and we
17 can sell through them.

18 That's information that we need. And the first thing
19 the debtor wants to do in terms of a process is to very, very
20 quickly collect that information. Once we have it, there will
21 be a process to resolve these claims. We believe Your Honor is
22 the best jurist in America to resolve it because Your Honor
23 understands the relationship with everything else that we're
24 doing, and this is an integrated question. It's not just
25 Apple; it's not just Flashpoint; it's not just ownership. We

1 may have issues of ownership, co-ownership, whether licenses
2 exist, the scope of existing licenses. There's any number of
3 intellectual property questions that may be material to the
4 disposition of the IP, and we will need a process for coming to
5 terms with all of those; Apple's first, but Apple's not alone.

6 And we do think that to the extent that Apple has pled
7 harm, today, if the stay isn't immediately lifted, we think
8 that harm is based on an assumption they won't have a fair
9 hearing in this court, and at least from the debtors'
10 perspective, we're going to make sure they do.

11 THE COURT: All right. Anyone else?

12 All right, I think you should have at least an
13 immediate answer on these motions because they do affect
14 parties going forward. So I'll attempt to do that, if you just
15 give me a few minutes.

16 (Recess from 12:13 p.m. until 12:44 p.m.)

17 THE CLERK: All rise.

18 THE COURT: Please be seated.

19 All right, I think it's important to decide these
20 motions promptly, both because they are -- obviously, they
21 raise important issues, and also because the case is moving
22 quickly, as every bankruptcy case should, and I hope having a
23 decision will help the parties see a way forward to deal with
24 what are, obviously, important issues and ones that are going
25 to be before the Court again in the future.

1 Specifically, Apple has brought two motions for relief
2 from the stay very early in these Chapter 11 proceedings. As I
3 think Apple's counsel stated, each motion should stand or fall
4 on its own facts. And I take each one separately. And I also
5 take them in the manner that they were filed because I gave
6 them serious attention and I took them in accordance with the
7 relief that was sought.

8 The first motion seeks a holding that the filing of a
9 complaint with the ITC and a further complaint in the Western
10 District of New York that will likely be stayed do not
11 constitute a violation of the automatic stay, or if they do, an
12 application for relief from the stay to the extent necessary.

13 Apple cites authority that the "commencement or
14 continuation" of an action or proceeding by a governmental unit
15 is not within the automatic stay as provided in Section
16 362(b)(4) of the Bankruptcy Code. Accepting its authority,
17 principally, from the district court and the Eastern District
18 of Virginia, Apple does not cite any authority that the filing
19 of a formal complaint with the ITC would be within the scope of
20 that section, but the Court need not reach that issue today.
21 Apple's motion, as filed, proposed to accompany the ITC
22 complaint with a complaint of its own to be filed in the
23 Western District of New York. Apple says it is merely putting
24 a "marker out there" by the filing of that complaint.

25 The automatic stay does not permit a litigant to put a

1 marker out there by filing a complaint against a debtor in
2 district court. The Section 362(a) "is a crucial provision of
3 bankruptcy law" and "prevents disparate actions against debtors
4 and protects creditors in a manner consistent with the
5 bankruptcy goal of equal treatment ... by ensuring that no
6 creditor receives more than an equitable share of the
7 bankrupt's estate." In re: Parr Meadows Racing Association,
8 880 F.2d 1540, 1545 (2d. Cir, 1989), cert. denied 493 U.S. 1058
9 (1990).

10 The automatic stay provides the debtor with a
11 "breathing spell" after the commencement of a Chapter 11 case,
12 shielding it from creditor harassment and from a multiplicity
13 of litigation in a variety of forums at a time when the debtor
14 should be focusing on its restructuring efforts. See E.
15 Refractories Co. v. Forty Eight Insulations, 157 F.3d 169, 172
16 (2d. Cir, 1998), Teachers Insurance v. Butler, 803 F.2d 61, 64
17 (2d. Cir, 1986).

18 Perhaps recognizing its error, Apple stated today that
19 it would withdraw its request to file a complain in the Western
20 District. If it does, it is not precluded from filing another
21 motion for relief from the stay on appropriate papers, if it is
22 so advised. But if it files another motion, it is admonished
23 to make it clear exactly what it proposes to do with the ITC
24 complaint and what the allegations are in that complaint.

25 It therefore must also respond to another entirely

1 separate deficiency in its pending motion, sufficient to merit
2 denial of the motion. And it should make clear exactly what
3 patents or other intellectual property rights are at issue and
4 what litigation it wants to commence or to have the ITC
5 commence. In so doing, Apple should make it clear exactly what
6 continuing infringement by Kodak it wants to stop, and to do so
7 in light of Kodak's announcement of its intention to exit
8 certain lines of business promptly. It's motion is entirely
9 too vague and its insistence that it will seek damages only for
10 the post-petition period appears to be disingenuous. It
11 appears not to save its action from the automatic stay in light
12 of Section 362(a)(1) that prohibits the "commencement or
13 continuation ... of a judicial, administrative, or other action
14 or proceeding against the debtor that was or could have been
15 commenced before the commencement of the case," 11 U.S.C.
16 Section 362(a)(1). It may be that each patent infringement is
17 a separate act for purposes of patent law, but for purposes of
18 bankruptcy law, there seems to be no dispute that Apple's case
19 at the ITC was or could have been commenced before the Chapter
20 11 filings. I think counsel conceded that today.

21 Under the circumstances, I think counsel for Apple
22 makes entirely too light of the decision of Judge Easterbrook,
23 a circuit court judge who knows something about bankruptcy law,
24 In the matter of Mahurkar Double Lumen Hemodialysis Catheter
25 Patent Litigation, 140 B.R. 969, 976 (D. N. D. Ill. 1992).

1 There, the court makes it clear, and I quote, "The continuation
2 during bankruptcy of conduct, such as the sale of catheters,
3 begun beforehand is most certainly one in which an action 'was
4 or could have been commenced before the commencement of the
5 case under this title.'" The court goes on to say that the
6 action before it was, in fact, commenced before the petition in
7 bankruptcy, but it certainly didn't make any difference to
8 Judge Easterbrook, who went on to say, "For what it is worth, I
9 think this literal interpretation is not only good law but also
10 good sense. Bankruptcy is a collective proceeding, one in
11 which creditors divide claims while the court attempts to
12 maximize the value of assets. ... (citations omitted) One
13 pressing task is to prevent creditors' actions that grab one
14 aspect of the business and squeeze it for value, that while
15 assisting a single creditor, and they depress the collective
16 value of the assets. Injunctions requiring debtors to abandon
17 one part of their business or dramatically change their methods
18 of doing business have a high holdup value for creditors and,
19 therefore, may lead to this unfortunate consequence."

20 So Apple's first motion is denied.

21 The second motion seeks to obtain relief from the stay
22 to unfreeze litigation that is currently stayed in the Western
23 District of New York, allegedly so that the litigation can be
24 transferred to the Southern District of New York for a jury
25 trial on certain, not too clearly specified rights or issues

1 raised in that proceeding, or perhaps all of the issues raised
2 in that proceeding; it's not clear. Apple says it is -- this
3 is counsel's statement today -- "willing to do whatever
4 possible to move this issue forward". I think in that
5 instance, he was focusing on the ownership issue of the 218
6 patent.

7 Apple's motion for relief from the stay has properly
8 focused attention on an important matter in this bankruptcy
9 case. But Apple's proposed relief would hardly move the matter
10 forward with the expedition needed for there to be any hope of
11 a determination on the ownership issue or related issues in a
12 timely fashion and keeping in mind the words of Judge
13 Easterbrook. Apple's procedure is dependent on a motion in the
14 district court in the Western District of New York, a further
15 motion to unfreeze the case, a further motion to transfer venue
16 to the Southern District of New York on very uncertain grounds,
17 and it is dependent on many other uncertainties, including
18 Apple's statement of its intention or its effort in the past to
19 move to amend the complaint or its counterclaims in the
20 complaint.

21 It is not at all certain at this stage of the Chapter
22 11 cases what determination must be made as to the debtor's
23 property rights in property that it purports to sell before
24 such property can be sold under Section 363 of the Bankruptcy
25 Code. That is an important issue; however, and it is an issue

1 for another day when I can, if necessary hear from the parties.
2 As both parties seem to -- as all parties seem to agree, if
3 there is a truly -- if there is a real interest in a quick
4 resolution of this issue in a court of law preserving
5 everyone's rights, then some procedures should be agreed to by
6 the parties for a quick resolution of the critical issues. It
7 would seem to me that this could be done without waiver of any
8 jury trial right, without waiver of Apple's claim that these
9 are issues that a district court judge would withdraw. I'm not
10 in a position to specify the appropriate procedures. The
11 parties are certainly well enough represented to have a very
12 good idea of procedures that would actually work and would move
13 this matter forward with real expedition.

14 I now have on the calendar a Rule 2004 motion related
15 to this issue; that's on for March 20th. And I would request
16 the parties to report to me on their efforts to come up with a
17 procedure that truly works, if they can. These procedures
18 would resolve some or all of the issues, and whether or not
19 they would retain control in this court is something for the
20 parties to discuss. The Court certainly has control over
21 certain of the issues, such as the 363 sale and what has to be
22 decided in order for the debtor to be able to sell the
23 property -- what, if anything, has to be decided in order for
24 the debtor to be able to sell the property.

25 I commend the parties on their mutual assertion that

1 they want to get these issues resolved in a practical and fair
2 fashion. But as I have already stated, the second motion of
3 Apple's for relief from the stay is not appropriate in terms of
4 a way forward, and it is denied. Of course, as with any motion
5 for relief from the stay, it can be renewed on account of
6 changed circumstances, but on the papers I have before me, it's
7 denied.

8 I would ask the debtors to confer with Apple on
9 appropriate orders.

10 I would also like to see the debtor and committee in
11 chambers on an entirely different matter; Apple is, of course,
12 invited. No one is disinvited, but it's not to discuss these
13 matters. It's to discuss other procedural issues altogether.
14 But Apple is obviously an interested party; we can't have
15 everybody in chambers, but perhaps we can have those
16 principally involved in the March 20th calendar.

17 Thank you very much.

18 MR. GLUECKSTEIN: Thank you, Your Honor.

19 IN UNISON: Thank you.

20 (Whereupon these proceedings were concluded at 1:00 PM)

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I N D E X

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C E R T I F I C A T I O N

I, Linda Ferrara, certify that the foregoing transcript is a true and accurate record of the proceedings.

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