

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re : Chapter 11

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Trident Microsystems, Inc., *et al.*,¹ : Case No. 12-10069 (CSS)

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Debtors. : (Jointly Administered)

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: **Re: Docket No. 524**

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LIMITED OBJECTION OF TRIDENT MICROSYSTEMS, INC. TO MOTION OF STATUTORY COMMITTEE OF EQUITY SECURITY HOLDERS FOR ORDER PURSUANT TO BANKRUPTCY RULE 2004 AND LOCAL BANKRUPTCY RULE 2004.1 DIRECTING THE EXAMINATION OF (I) NXP B.V. (II) NXP SEMICONDUCTORS NETHERLANDS B.V. AND (III) NXP-APPOINTED DIRECTORS AND IN THE ALTERNATIVE PURSUANT TO 11 U.S.C. § 105(a) AND HAGUE CONVENTION FOR AUTHORITY TO ISSUE LETTERS OR REQUEST FOR INTERNATIONAL JUDICIAL ASSISTANCE

Trident Microsystems, Inc. (“TMI”), by and through its counsel, DLA Piper LLP (US), hereby submits this limited objection (the “Limited Objection”) to the *Motion of Statutory Committee of Equity Security Holders for Order Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004.1 Directing the Examination of (i) NXP B.V. (ii) NXP Semiconductors Netherlands B.V. and (iii) NXP-Appointed Directors and in the Alternative Pursuant to 11 U.S.C. § 105(a) and Hague Convention for Authority to Issue Letters or Request for International Judicial Assistance* (the “Rule 2004 Motion”).² In support of this Limited Objection, TMI respectfully represents as follows:

¹ The Debtors are the following two entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): Trident Microsystems, Inc. (6584) and Trident Microsystems (Far East) Ltd. The mailing address of each of the Debtors, solely for purposes of notices and communications, is 1170 Kifer Road, Sunnyvale, California 94086.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Rule 2004 Motion.



I. PRELIMINARY STATEMENT

1. TMI does not, by this Limited Objection, dispute the right of the Statutory Committee of Equity Security Holders (the “Equity Committee”) to examine certain of NXP BV, NXP Semi BV (together with NXP BV, “NXP”) and/or the NXP Directors (collectively with NXP, the “NXP-Examinees”) pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 2004-1 of the Local Rules of Bankruptcy Practice and Procedure for the Bankruptcy Court for the District of Delaware. Rather, TMI is compelled to file this Limited Objection to correct certain inaccurate factual assertions—which have been clarified by documents and other information consensually provided by TMI and Trident Microsystems (Far East) Ltd. (“TMFE” and, collectively with TMI, the “Debtors”)—that serve as the predicate for the relief being sought and to urge for a more measured timeline to conduct this potentially far-reaching and costly discovery.

II. ARGUMENT

2. TMI does not dispute the broad reach of Rule 2004, or the Equity Committee’s right to conduct examinations thereunder. However, because a number of the factual bases underlying the Rule 2004 Motion are incorrect or incomplete, TMI must clarify certain of such statements. Further, notwithstanding the Equity Committee’s ultimate right to examine certain of the NXP-Examinees, the filing of the Rule 2004 Motion was ill-timed. The Debtors and their stakeholders are moving quickly from the sale processes that highlighted the early months of these cases to the complex inter-creditor negotiations that will hopefully lead to the filing of a consensual plan of liquidation. As part of this process, the Debtors have commenced efforts to “broker” an agreement between the Equity Committee and NXP. Needless to say, the contemplated examinations under Rule 2004—which can be completed once the next phase of these cases has been reached—will prove highly disruptive and distracting to these efforts.

A. Many of the Equity Committee’s Factual Assertions Relating to the NXP-Examinees are Inaccurate

3. The Equity Committee has portrayed NXP as being “in a position to affect the acts, conduct, or property and financial condition of the Debtors (potentially for its own benefit to the Debtors’ detriment).” (Rule 2004 Motion ¶ 1). While NXP was TMI’s majority shareholder, it was not a “controlling” shareholder as alleged throughout the Rule 2004 Motion. For the following reasons, as well as many others, the Equity Committee’s suggestion that NXP used its position as TMI’s majority shareholder for its own benefit are simply not correct.

4. *First*, the facts plainly establish that the NXP-Examinees did not, and could not, control the Debtors, let alone for their own benefit. This should come as no surprise to the Equity Committee, as throughout these cases, the Debtors have provided the Equity Committee with virtually all of the information it has sought.

5. With respect to the specific matters at issue in the Rule 2004 Motion, on February 24, 2012, the Equity Committee served the Debtors with broad discovery relating to the then-proposed sale of the Debtors’ STB Business (the “STB Sale”). Following discussions between counsel to the Debtors and the Equity Committee, the scope of such discovery was narrowed to the following topics:

Documents related to NXP’s participation in the corporate governance of either Debtor with respect to the sale of assets by the Debtors to Entropic or any competing bidder;

communications related to NXP’s participation, if any, in the exercise of the Debtors’ business judgment with respect to any transaction to dispose of the Debtors’ STB Business or TV business within the past twelve (12) months;

communications between NXP and any potential bidder for either Debtor’s assets relative to the terms of an asset purchase agreement, management services agreement, or transition services agreement, including without limitation, Entropic; and

documents evidencing the relationship, if any, between NXP and any bidder for either Debtor's assets relative to the terms of an asset purchase agreement, management services agreement or transition services agreement, including without limitation Entropic.

6. In fully responding to the Equity Committee's document requests, on or around March 2, 2012, the Debtors produced, among other things, the minutes of all meetings of the TMI board of directors for 2011-2012 (collectively, the "Board Minutes"). As all parties in interest—and particularly the Equity Committee—are well aware, TMI is a publicly traded company. Accordingly, TMI is subject to regulation by various governing bodies, including the SEC, with stiff civil and criminal penalties possible for noncompliance.

7. As a publicly traded company with significant disclosure obligations, the Board Minutes, duly recorded and maintained, accurately depict the subject matter of all board meetings held during this time period. The Board Minutes unambiguously establish that TMI was not under the control of any of the NXP-Examinees, including the NXP Directors. In contrast, the Board Minutes reveal an independent board of directors (the "Board") focused on maximizing value, on the success of their business, and on the discharge of their fiduciary duties.

8. Additionally, the majority of TMI's board of directors were *at all times independent*. Pursuant to that certain Stockholder Agreement, dated February 8, 2010, NXP was entitled to elect four directors, out of nine, to the Board. (Stockholder Agreement, §§ 1.1(a)(ii)-(iii)). At least two such directors were required to be independent and two to have "substantial operating or industry experience." (*Id.* at § 1.1(d)). At all times, the Board was required to comprise a majority of independent directors. (*Id.* at § 1.1(a)(i)). As to the election of directors and most other matters, NXP could only vote its common stock either in favor of the recommendations of the Board or in exact proportion with the votes of the non-NXP stockholders. Further, despite having the discretion to vote its shares in connection with

amendments to bylaws, amendments to certificates of incorporation and changes of control (*see id.* at § 1.3), NXP never exercised those rights except to vote for amendments proposed by TMI itself.

9. On or around April 28, 2011, the Stockholder Agreement was amended (the “Amended Stockholder Agreement”). Pursuant to the Amended Stockholder Agreement, the Board would comprise between seven and nine individuals (Amended Stockholder Agreement § 1.1(a)(i)). Of these seven to nine directors, NXP was permitted to elect a maximum of two, both of whom were required to have “substantial operating or industry experience” and to be independent. (*Id.* at §§ 1.1(a)(ii), (d)). The remaining directors were to be elected by non-NXP stockholders. (*Id.* at § 1.1(a)(ii)). In addition, NXP gave up the right to appoint one of its directors to a Board committee and, in fact, agreed that its appointed directors would not be permitted to serve on any Board committees.

10. *Second*, the Equity Committee attempts to infer that somehow, through its involvement with TMI, NXP was able to orchestrate the STB Sale to Entropic Communications, Inc. (“Entropic”) at a lower price that was otherwise available during 2011. As the Board Minutes confirm, up until the time that NXP removed itself from the Board, despite efforts to market the STB Business through their investment banker, no meaningful offers had been received. And, following NXP’s recusal from the Board, to the Debtors’ knowledge, NXP was unaware of any efforts by the Debtors to sell their STB Business or TV Business prior to November 2011.

11. In November 2011, TMI informed NXP that it was contemplating the sale of its STB Business. At the request of the Debtors and Entropic, on November 16, 2011, NXP entered into a nondisclosure agreement with Entropic and engaged in preliminary conversations with

Entropic concerning NXP's role post-sale. TMI understands that these communications with Entropic ceased by early December and can, and does, state unequivocally that NXP played no role in drafting or negotiating the asset purchase agreement for the STB Business filed with the Court on January 4, 2012, and that NXP was not informed of the chapter 11 filing until *after* the petitions were filed.

12. *Third*, the Equity Committee continues to raise issues with respect to the sale of Avoidance Actions, including potential claims against NXP, to both Entropic and Sigma Designs, Inc. ("Sigma"). As made clear on the record supporting these respective sales, the inclusion of Avoidance Actions as purchased assets under the two asset purchase agreements was driven by the purchasers of the assets, who did not want their suppliers made the subject of potentially disruptive litigation. The Equity Committee also ignores the fact that the Debtors' advisors provided a comprehensive avoidance action analysis to the Equity Committee, which analysis confirmed that no viable claims existed.

13. *Fourth*, the Equity Committee places great emphasis the February 8, 2010 Manufacturing Services Agreement with NXP (the "MSA"). What the Equity Committee neglects to mention, however, is that the Debtors entered into the MSA because they lacked the necessary facilities to manufacture in-house the wafers utilized in the STB Business and TV Business. The MSA and each amendment thereto were negotiated by the Debtors and NXP at arms-length and on what the Debtors' believed to be reasonable commercial terms. Indeed, the agreements recently entered between NXP and Entropic (with respect to the STB Sale) and NXP and Sigma (with respect to the TV Sale) contain price increases over the original MSA.

14. *Finally*, as the Debtors have emphasized from the outset, pronounced and prolonged market fluctuations, *not* any undue influence by the NXP-Examinees, have led to the

decline in the value of the Debtors' businesses. As of the Petition Date, the Debtors and their non-debtor affiliates (together, "Trident") designed, developed, and marketed integrated circuits and related software used in home consumer electronics applications such as set-top boxes, digital TVs, PC-TV, and analog TVs. Historically, Trident's key customers included leading manufacturers of consumer electronics, computer display, and set-top box products, including Samsung, LG, Sony, Sharp, Philips, Comcast, and DirecTV.

15. During the last several years, like many other technology-based industries, the set-top box and television industries in which Trident largely focused its operations experienced rapid change. Two such changes included (i) increased pricing pressure from Taiwanese system-on-a-chip suppliers, and (ii) an elevated level of industry semiconductor inventory levels due to a slowdown in consumer electronics markets. Simply put, these changes made it difficult for Trident to operate profitably. These pricing pressures were further compounded by a slower than anticipated launch of new products by set-top box manufacturers, resulting in higher than anticipated inventory levels and development costs. The severity of these changes led the Debtors to believe that next generation product sales would be insufficient to offset such costs. Additionally, a portion of the industry's supply chain, traditionally dominated by Asian OEM's, shifted in-house, thus reducing the need to look to outside suppliers for products.

B. The Rule 2004 Motion is Likely to Distract the Debtors and their Key Constituents from Matters of Immediate Concern

16. As the Court is well aware, the common theme throughout the pendency of the Debtors' chapter 11 cases has been the need to maximize value for all parties in interest. This goal has been achieved through two Court-approved and tremendously successful asset sales, each supported by the Debtors, the Equity Committee and the Official Committee of Unsecured Creditors.

17. Upon the filing of these cases, the Debtors identified a stalking horse bidder for the STB Business, and on March 9, 2012, the Court entered an order approving the STB Sale to Entropic. The STB Sale closed on April 12, 2012. On March 23, 2012, the Court approved bidding procedures and a stalking horse bidder for the TV Business and, on April 5, 2012, the Court entered an order approving the sale of the TV Business (the “TV Sale”) to Sigma, which transaction closed on May 4, 2012. Following the consummation of these two sales, the Debtors are working to transition these business units and to negotiate potential sales of their remaining business units. Indeed, on May 8, 2012, the Debtors filed a motion to authorize sale of their Audio Business to Cambridge Silicon Radio Limited.

18. With the sale of their principal business lines completed, these cases are rapidly transitioning into their next phase. This process will include extensive analysis and negotiations relating to the claims and rights of the Debtors’ key, and distinct, constituencies: the equity holders of TMI and the unsecured creditors of, primarily, TMFE. This process is made all the more complicated due to the extensive intercompany claims that exist between the Debtors and between the Debtors and their non-debtor subsidiaries. TMI expects that this process will consume much of the next month and will hopefully lead to a consensual plan of liquidation. As TMI’s largest shareholder, NXP is a key constituency in this process, and indeed, the Debtors have made efforts to begin to broker a potential resolution both of NXP’s claims against the estate of TMI and the litigation threat of the Equity Committee.

19. It against this backdrop that the Equity Committee has chosen this point in time to file the Rule 2004 Motion. TMI submits that the time and resources of all parties are better deployed in completing the tasks at hand rather than in expensive and potentially unnecessary

discovery on claims that, even if viable, are anticipated to be preserved pursuant to the Debtors' plan of liquidation.

Dated: May 9, 2012
Wilmington, Delaware

Respectfully submitted,

/s/ Stuart M. Brown

Stuart M. Brown (DE 4050)
Cynthia Moh (DE 5041)
DLA PIPER LLP (US)
919 North Market Street, Suite 1500
Wilmington, Delaware 19801
Telephone: (302) 468-5700
Facsimile: (302) 394-2341
Email: stuart.brown@dlapiper.com
cynthia.moh@dlapiper.com

-and-

Richard A. Chesley (IL 6240877)
Kimberly D. Newmarch (DE 4340)
Chun I. Jang (DE 4790)
DLA PIPER LLP (US)
203 N. LaSalle Street, Suite 1900
Chicago, Illinois 60601
Telephone: (312) 368-4000
Facsimile: (312) 236-7516
Email: richard.chesley@dlapiper.com
kim.newmarch@dlapiper.com
chun.jang@dlapiper.com

ATTORNEYS FOR TRIDENT MICROSYSTEMS, INC.

CERTIFICATE OF SERVICE

I, Stuart M. Brown, hereby certify that on the 9th day of May, 2012, I caused a true and correct copy of the foregoing *Limited Objection of Trident Microsystems, Inc. to Motion of Statutory Committee of Equity Security Holders for Order Pursuant to Bankruptcy Rule 2004 and Local Bankruptcy Rule 2004.1 Directing the Examination of (I) NXP B.V. (II) NXP Semiconductors Netherlands B.V. and (III) NXP-Appointed Directors and in the Alternative Pursuant to 11 U.S.C. § 105(a) and Hague Convention for Authority to Issue Letters or Request for International Judicial Assistance* to be served in the manner indicated upon the parties on the attached service list.

/s/ Stuart M. Brown
Stuart M. Brown (DE Bar No. 4050)

Via Hand Delivery

Counsel to Equity Committee
Bayard PA
Neil B Glassman
Jamie L Edmonson
GianClaudio Finizio
222 Delaware Ave Ste 900
Wilmington, DE 19801

Via Hand Delivery

Counsel to the Official Committee of
Unsecured Creditors
Pachulski Stang Ziehl & Jones LLP
Bruce Grohsgal
Peter J Keane
919 N Market St 17th Fl
Wilmington, DE 19801

Via Hand Delivery

Counsel to NXP Semiconductors
Netherlands B.V.
Landis Rath & Cobb LLP
Adam G Landis
Richard S Cobb
Matthew B McGuire
919 Market St Ste 1800
Wilmington, DE 19801

Via Hand Delivery

US Trustee for District of DE
Office of the United States Trustee
Delaware
Juliet Sarkessian
844 King St Ste 2207
Lockbox 35
Wilmington, DE 19899-0035

Via Overnight Delivery

Counsel to Equity Committee
Dewey & Leboeuf LLP
Martin J Bienenstock
Timothy Q Karcher
Vincent Indelicato
1301 Ave of the Americas
New York, NY 10019-6092

Via Overnight Delivery

Counsel to the Official Committee of
Unsecured Creditors
Pachulski Stang Ziehl & Jones LLP
Debra I Grassgreen
John D Fiero
150 California St 15th Fl.
San Francisco, CA 94111-4500

Via Overnight Delivery

Counsel to the Official Committee of
Unsecured Creditors
Pachulski Stang Ziehl & Jones LLP
Richard M Pachulski
10100 Santa Monica Blvd 13th Fl
Los Angeles, CA 90067-4003

Via Overnight Delivery

Counsel to NXP Semiconductors
Netherlands B.V.
Sullivan & Cromwell
Hydee R Feldstein
Michael H Steinberg
1888 Century Park East
Los Angeles, CA 90067-1725

Via Overnight Delivery

Conflicts Counsel
Quinn Emanuel Urquhart & Sullivan LLP
Benjamin Finestone
51 Madison Ave 22nd Fl
New York, NY 10010