

Hearing Date: July 2, 2012 at 2:30 p.m. (Eastern Time)  
Objection Deadline: June 25, 2012 at 4:00 p.m. (Eastern Time)

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

	)		)		)	
	In re:		)		)	Chapter 11
		EASTMAN KODAK COMPANY, <i>et al.</i> , <sup>1</sup>	)		)	Case No. 12-10202 (ALG)
		Debtors.	)		)	(Jointly Administered)

**NOTICE OF DEBTORS’ MOTION FOR ORDERS (I) (A) CONDITIONALLY  
AUTHORIZING THE SALE OF PATENT ASSETS FREE AND  
CLEAR OF CLAIMS AND INTERESTS, (B) ESTABLISHING A  
COMPETITIVE BIDDING PROCESS AND (C) APPROVING THE NOTICE  
PROCEDURES AND (II) AUTHORIZING THE SALE OF PATENT ASSETS  
FREE AND CLEAR OF CLAIMS AND INTERESTS**

**PLEASE TAKE NOTICE** that, on January 19, 2012 (the “**Petition Date**”),  
Eastman Kodak Company, Inc. and certain of its affiliates, as debtors and debtors in possession  
(collectively, the “**Debtors**”) filed voluntary petitions for relief under chapter 11 of title 11 of the

<sup>1</sup> 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.



United States Code, in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”).

**PLEASE TAKE FURTHER NOTICE** that on June 11, 2012, the Debtors filed the *Motion for Orders (I) (A) Conditionally Authorizing the Sale of Patent Assets Free and Clear of Claims and Interests, (B) Establishing a Competitive Bidding Process and (C) Approving the Notice Procedures and (II) Authorizing the Sale of Patent Assets Free and Clear of Claims and Interests* (the “**Motion**”).<sup>2</sup>

**PLEASE TAKE FURTHER NOTICE** that a hearing (the “**Conditional Sale Hearing**”) will be held before the Honorable Allan L. Gropper, United States Bankruptcy Judge, on **July 2, 2012 at 2:30 p.m. (ET)**, or on such other date as the Bankruptcy Court may determine, in the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004, to consider entry of an order (the “**Conditional Sale Order**”), among other things, approving Bidding Procedures for the conduct of a competitive process for the sale (the “**Sale**”) of all or any portion of the patents, patent applications and other assets listed on Exhibit B to the Motion (the “**Digital Imaging Patent Assets**”) and authorizing the Debtors to sell all or any portion of the Digital Imaging Patent Assets to one or more Successful Bidder(s) free and clear of Claims and Interests (other than Permitted Encumbrances), subject to the Bidding Procedures and to the Bankruptcy Court’s entry of the Final Sale Order.

**PLEASE TAKE FURTHER NOTICE** that pursuant to the Motion, the Debtors are seeking a determination that (a) subject to the terms of the Debtors’ proposed Conditional Sale Order and the Bidding Procedures, holders of Claims or Interests who do not object or who have withdrawn their objections to the Motion will be deemed to have consented to the proposed

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<sup>2</sup> Capitalized terms used but not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

Sale pursuant to section 363(f)(2) of the Bankruptcy Code and (b) all holders of Claims and Interests are adequately protected for the purposes of section 363(e) of the Bankruptcy Code because their Claims and Interests, if any, either will be assumed by the Successful Bidder(s) as a Permitted Encumbrance or will attach to the proceeds of the Sale, in the same order of priority and with the same validity, force and effect that such Claim or Interest holders had before the Sale, subject to any rights, claims and defenses of the Debtors, their estates, or any other party in interest, as applicable, or as otherwise provided in the Conditional Sale Order.

**PLEASE TAKE FURTHER NOTICE** that the Debtors are seeking a determination that (a) the Digital Imaging Patent Assets are property of the Debtors' estates and valid title thereto is vested in the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code; (b) except for the license agreements listed on Exhibit C to the Motion, no Debtor is a party to any contract (written or oral) under which it is a licensor of rights to intellectual property (as defined in section 101 of the Bankruptcy Code) relating to the Digital Imaging Patent Assets and (c) no person has an interest in the Digital Imaging Patent Assets as a co-owner for purposes of section 363(h) of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that the Motion may be obtained (i) from the Debtors' Notice, Claims and Balloting Agent, Kurtzman Carson Consultants, LLC (a) at its website at <http://www.kccllc.net/kodak>, by clicking on the "Court Documents" link, (b) by writing to [kodakinfo@kccllc.com](mailto:kodakinfo@kccllc.com) or (c) calling (888) 249-2721 or (ii) for a fee via PACER at <https://ecf.nysb.uscourts.gov/>.

**PLEASE TAKE FURTHER NOTICE** that any responses or objections to the Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, and shall be filed with the Bankruptcy Court electronically by registered users of the Bankruptcy Court's case filing system (the User's Manual for the

Electronic Case Filing System can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov), the official website for the Bankruptcy Court) and, by all other parties in interest, on a 3.5 inch disk, in text-searchable Portable Document Format (PDF), Wordperfect or any other Windows-based word processing format (in either case, with a hard-copy delivered directly to Chambers), and shall be served upon: (a) the Debtors; (b) Sullivan & Cromwell LLP, counsel to the Debtors (Attn: Andrew G. Dietderich, Michael H. Torkin and Jill C. Gadwood); (c) Wilmer Cutler Pickering Hale and Dorr LLP, counsel to the Debtors (Attn: Jay Bothwick, Mark Borden and George Shuster); (d) the Office of the United States Trustee for the Southern District of New York (Attn: Brian S. Masumoto and Susan D. Golden); (e) Milbank, Tweed, Hadley & McCloy LLP (Attn: Dennis F. Dunne, Tyson M. Lomazow and Brian Kinney) and Togut, Segal & Segal LLP, co-counsel to the Official Committee of Unsecured Creditors; (f) Arent Fox LLP (Attn: Andrew I. Silfen, Beth M. Brownstein and Carol Connor Cohen) and Haskell Slaughter Young & Rediker, LLC (Attn: R. Scott Williams and Jennifer B. Kimble), proposed co-counsel for the Official Committee of Retired Employees of the Debtors; (g) counsel to the agent under the prepetition revolving credit facility; (h) U.S. Bank, National Association, as indenture trustee; (i) Wilmington Trust, National Association, as indenture trustee; (j) the Securities and Exchange Commission; (k) the Internal Revenue Service; (l) the Environmental Protection Agency; (m) Davis Polk & Wardwell LLP, counsel to Citicorp North America, Inc., as agent for the Debtors' postpetition secured lenders (Attn: Brian M. Resnick); (n) Akin Gump Strauss Hauer & Feld LLP, counsel to the Ad Hoc Committee of Second Lien Noteholders (Attn: Michael S. Stamer, David Botter, Abid Qureshi, Alexis Freeman and Rachel Ehrlich Albanese); and (o) all parties requesting notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002 so as to be actually received **no later than June 25, 2012 at 4:00 p.m. (ET)**. Only those responses that are timely filed, served and received

will be considered at the Conditional Sale Hearing. Failure to file a timely objection shall be deemed to be “consent” for purposes of section 363(f) of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that dates set forth in this notice are subject to change, and further notice of such changes may not be provided except through announcements in open court and/or the filing of notices and/or amended agendas. Parties in interest are encouraged to monitor the electronic court docket and/or the noticing agent website for further updates.

Dated: June 11, 2012  
New York, New York

/s/ Andrew G. Dietderich  
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Debtors.	}	(Jointly Administered)

**DEBTORS' MOTION FOR ORDERS (I) (A) CONDITIONALLY  
AUTHORIZING THE SALE OF PATENT ASSETS FREE AND CLEAR OF  
CLAIMS AND INTERESTS, (B) ESTABLISHING A COMPETITIVE  
BIDDING PROCESS AND (C) APPROVING THE NOTICE PROCEDURES  
AND (II) AUTHORIZING THE SALE OF PATENT ASSETS  
FREE AND CLEAR OF CLAIMS AND INTERESTS**

<sup>1</sup> 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.

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Eastman Kodak Company (“**Kodak**”) and certain of its affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”), file this motion (the “**Motion**”) pursuant to sections 105(a), 107(b), 363, 365, 503, 507 and 541 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), rules 2002, 6004, 9007, 9014 and 9018 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and rule 6004-1 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”) for the entry of an order (the “**Conditional Sale Order**”) substantially in the form attached hereto as Exhibit A, (A) conditionally authorizing one or more sales (collectively, the “**Sale**”) of all or any portion of Kodak’s Digital Imaging Patent Assets (as defined below) free and clear of Claims and Interests (each as defined below); (B) establishing a competitive bidding process pursuant to the bidding procedures attached as Exhibit 1 to the Conditional Sale Order (the “**Bidding Procedures**”) and (C) approving the form and manner of notice of the Sale and the notice of the Final Sale Hearing (as defined below) (the “**Notice Procedures**”). The Debtors further request that at the conclusion of the Final Sale Hearing the Court enter an order (the “**Final Sale Order**”) substantially in the form to be attached as Exhibit 1 to the Debtors’ Notice of Final Sale Hearing (as defined below), authorizing and approving the consummation of the Sale to one or more successful bidders selected at the conclusion of the bidding process (as defined in the Bidding Procedures, the “**Successful Bidder(s)**”), on the terms and subject to the conditions as set forth in one or more agreements between Kodak and one or more Successful Bidder(s) relating to a sale of all or any portion of the Digital Imaging Patent Assets (such agreements, together with all schedules, exhibits and annexes thereto, the “**Sale Agreement(s)**”). In support of the Motion, the Debtors respectfully state as follows:

### Preliminary Statement

1. Since the commencement of these chapter 11 cases, the Debtors and their advisors, together with their key creditor constituencies, have worked to stabilize the Debtors' domestic and worldwide operations.

2. Having stabilized operations, the Debtors are in the midst of preparing their post-emergence business plan, and considering alternatives for financing their emergence from chapter 11. A sale of the Debtors' patents, patent applications and other assets listed on Exhibit B hereto (the "**Digital Imaging Patent Assets**"), is a likely source of that financing. In addition, pursuant to the Debtor-in-Possession Credit Agreement dated as of January 20, 2012 (the "**DIP Facility**") and the Final Order (I) Authorizing Debtors (A) To Obtain Post-Petition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1) and 364(e) and (B) To Utilize Cash Collateral Pursuant To 11 U.S.C. § 363 and (II) Granting Adequate Protection To Pre-Petition Secured Parties Pursuant To 11 U.S.C. §§ 361, 362, 363 and 364 [Docket No. 375] (the "**Final DIP Order**"), the Debtors are required to file a motion with the Court to approve bid procedures relating to a sale of all or substantially all of Kodak's Digital Imaging Patent Assets on or prior to June 30, 2012.

3. During the past 12 months, the Debtors and their advisors have been working toward a possible sale of the Digital Imaging Patent Assets. Given the unique characteristics of the portfolio and the perceived inadequacy of traditional bidding incentives to protect a "stalking horse" bidder, the Debtors have not received a starting bid for the Digital Patent Assets on terms they consider to be acceptable. The Debtors therefore believe that a bespoke sales process tailored to sufficiently address possible buyer concern regarding confidentiality and certainty of closing that a traditional auction process lacks is necessary to obtain the highest and best price for the Digital Imaging Patent Assets. The Bidding Procedures

were designed with these issues in mind, and the Debtors and their advisors believe that these proposed procedures will further the Debtors' objective of obtaining the highest and best price for the Digital Imaging Patent Assets for its stakeholders.

4. The Debtors have worked with the legal and financial advisors for certain of their principal constituents, namely, the Official Committee of Unsecured Creditors (the "**Creditors' Committee**") and the Ad Hoc Committee of Second Lien Noteholders (the "**Second Lien Noteholders Committee**"), on the Bidding Procedures, and are committed to working constructively with such constituents to attempt to resolve any remaining issues or concerns therewith prior to the Conditional Sale Hearing. The Debtors are optimistic that they will be in a position to report to the Court that each of the Creditors' Committee and the Second Lien Noteholders Committee do not object to the relief requested herein. The agent for the Debtors' postpetition secured lenders (the "**DIP Agent**") has advised the Debtors that the time frame contemplated by the Bidding Procedures is reasonably satisfactory to the DIP Agent in accordance with the terms of the DIP Facility. Although the Official Committee of Retired Employees of the Debtors (the "**1114 Committee**") did not assist in designing the Bidding Procedures, the Debtors recognize the 1114 Committee's and its constituents' importance to these chapter 11 cases, and therefore, have provided for the inclusion of the 1114 Committee and its advisors in the bidding review process. Specifically, the Debtors have agreed to keep the 1114 Committee's advisors apprised, in a timely manner, of all material aspects of the bidding process, and the 1114 Committee's advisors will be entitled to observe any Auction (as defined in the Bidding Procedures) and be noticed, in a timely manner, of and heard at all proceedings (*in camera* or otherwise) related to the bidding process.

5. Accordingly, the Debtors respectfully submit that entry of the Conditional Sale Order is in the best interest of the Debtors, their estates and all parties in interest because the Bidding Procedures are designed to maximize the value of the Digital Imaging Patent Assets for all stakeholders.

### **Background**

6. On the Petition Date, each of the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases are being jointly administered.

7. On January 25, 2012, the Office of the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) appointed the Creditors’ Committee pursuant to section 1102 of the Bankruptcy Code [Docket No. 115].

8. Founded in 1880 and long one of the world’s leading material science companies, the Debtors and their non-Debtor affiliates operate an integrated global business involving a diverse collection of mature and growth businesses and an array of valuable intellectual property. In order to address a shortfall in liquidity in the United States, monetize non-strategic intellectual property, fairly resolve legacy liabilities and focus on their most valuable business lines, the Debtors commenced these chapter 11 cases.

9. Additional factual background relating to the Debtors’ businesses and the commencement of these chapter 11 cases is set forth in detail in the 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, dated January 18, 2012 (the “**First Day Declaration**”) [Docket No. 2].



**Facts Specific to the Relief Requested**

10. Kodak has been a leading technology innovator for over 100 years and is a pioneer in the field of imaging technology. Its Digital Capture patent portfolio comprises approximately 744 U.S. patents, 374 foreign patents, 155 pending U.S. applications and 244 pending foreign applications (the “**DC Portfolio**”), and its Kodak Imaging Systems and Services patent portfolio comprises approximately 435 U.S. patents, 349 foreign patents, 163 pending U.S. applications and 171 pending foreign applications (the “**KISS Portfolio**”). These patents represent a broad set of technologies, including developments in key digital imaging fields such as digital camera functions and features, image processing algorithms and network image storage, access and fulfilment.

11. Over the past several years, the monetization through licensing arrangements of Kodak’s intellectual property, particularly the DC Portfolio, has been an integral part of funding Kodak’s digital transformation. Kodak has generated over \$3 billion in licensing revenue on the DC Portfolio since 2003 from over 30 licensees pursuant to the license agreements listed on Exhibit C hereto (the “**Scheduled Licenses**”).

12. On July 21, 2011, Kodak announced that it had engaged Lazard Frères & Co. LLC (“**Lazard**”) to advise Kodak regarding strategic alternatives in relation to the Digital Imaging Patent Assets. At the same time, as Lazard marketed the Digital Imaging Patent Assets, Kodak continued with its patent licensing program and strategic litigation. However, as Kodak’s financial condition deteriorated, a sale process, as well as new licensing transactions, became more difficult to pursue and consummate.

13. Since the filing of these chapter 11 cases, the Debtors, their advisors and key creditor constituencies have continued to assess various alternatives for monetizing Kodak’s intellectual property both as part of the Debtor’s business strategy and as a means of financing an

exit from chapter 11. The Debtors and their advisors believe that pursuing a sale would be an effective way to monetize the Digital Imaging Patent Assets and allow the Debtors to access a valuable source of financing for their emergence from chapter 11.

14. Over approximately the last year, Lazard has conducted an extensive marketing process for the Digital Imaging Patent Assets. To date, approximately 20 parties have signed confidentiality agreements, and have been provided access to an electronic data room.

15. Due to the unique dynamics of the technology industry and the Digital Imaging Patent Assets, and despite the active efforts of the Debtors and Lazard to secure a contractually committed bidder to provide the starting bid for a public auction in which Kodak could seek higher or otherwise better offers, the Debtors have not received an offer from such a bidder on acceptable terms. A number of parties, however, have expressed interest in continuing to participate in a sale process for the Digital Imaging Patent Assets.

16. In light of the challenges of implementing a sale process with a stalking horse bidder and a public auction for the Digital Imaging Patent Assets, the Debtors and their advisors began considering alternatives to the conventional stalking horse auction, with the aim of developing a fair and reasonable sale process that would encourage the submission of bids and maximize the proceeds from the Digital Imaging Patent Assets for the Debtors' estates. The Debtors, their advisors and their creditors engaged in extensive analysis and discussion regarding the competitive landscape and the dynamics of various auction and sale processes. Based on such analysis, the Debtors and their advisors have determined that a bidding process tailored to the unique nature of the assets, with strict confidentiality protections, best allows the Debtors to maximize the proceeds from a sale of the Digital Imaging Patent Assets.

### **Jurisdiction**

17. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief requested herein are sections 105(a), 107(b), 363(b), 363(f), 363(m), 363(n), 365, 503, 507 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004(h), 9007, 9014 and 9018 and Local Rules 6004-1(a) and 9013-1(a).

### **Relief Requested**

18. By this Motion, the Debtors seek (I) entry of the Conditional Sale Order (A) authorizing the Sale of Kodak's Digital Imaging Patent Assets free and clear of Claims and Interests, subject to entry of the Final Sale Order, (B) approving the Bidding Procedures and (C) approving the Notice Procedures; and (II) at the conclusion of the Final Sale Hearing, entry of the Final Sale Order; and (III) such other and further relief as the Court deems just and proper.

### **Summary of the Bidding Procedures and Notice Procedures**

#### **A. The Bidding Procedures<sup>2</sup>**

19. The Debtors have determined that a flexible, competitive sale process as set forth in the Bidding Procedures represents the best opportunity for the Debtors to maximize the value of the Digital Imaging Patent Assets. Due to the unique dynamics of the market for the Digital Imaging Patent Assets, a process requiring the Debtors to actively seek higher or better offers after entry into a definitive patent sale agreement would have a chilling effect by deterring

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<sup>2</sup> All capitalized terms used but not otherwise defined in this summary are to be given the meaning ascribed to them in the Bidding Procedures. To the extent there are inconsistencies between any summary description of the Bidding Procedures contained herein and the proposed Bidding Procedures, the terms of the Bidding Procedures shall control.

interested parties from bidding. Further, the Debtors propose that the sale process be governed by the confidentiality requirements set forth in the Bidding Procedures, which, among other things, require the Debtors and the Reviewing Creditors (as defined in the Bidding Procedures) to keep confidential the identity of bidders participating in the bidding process and the terms and conditions of submitted bids.

20. The Bidding Procedures set forth the procedures to govern the Bidding Process, and include the following provisions:

- Key Dates for Potential Bidders.

The Debtors shall, in the manner set forth in the Bidding Procedures, facilitate Potential Bidders (defined below) in conducting their respective due diligence investigations and shall accept bids submitted by Potential Bidders in accordance with the procedures set forth in the Bidding Procedures until **5:00 p.m., Eastern Time, on July 30, 2012.**

The key dates (subject to modification in the manner set forth in the Bidding Procedures) for the Bidding Process (defined below) are as follows:

July 16, 2012 at 5:00 P.M. ET	Deadline for submission of Preliminary Bid Documents (defined below)
July 30, 2012 at 5:00 P.M. ET	Bid Deadline (defined below)
August 2, 2012 at 5:00 P.M. ET	Date by which Potential Bidders will be Named as Qualified Bidders
August 8, 2012 at 10:30 A.M. ET	Auction
August 13, 2012 at 5:00 P.M. ET	Final Date for Designation of Successful Bidder(s)
August [20], 2012 at [●] [A.M./P.M.] ET	Anticipated Date for Final Sale Hearing

- Publication Notice.

Within five days of entry of the Conditional Sale Order or as soon as practicable thereafter, the Debtors shall publish notice of the Bidding Procedures in *The Wall Street Journal* (U.S. Edition and Asia Edition) and *The Financial Times* (U.S. Edition and Asia Edition).

- Confidentiality.

The Debtors and each Reviewing Creditor (defined below) shall be the only parties made aware of the identity of bidders and shall be obligated to maintain in confidence the identity of all proposed bidders, Potential Bidders (defined below) and Qualified Bidders (defined below), the existence and terms and conditions of any bid or proposed sale documentation and other non-public information relating to the bidding process (the “**Bidding Process**” and, such information, the “**Bidder Confidential Information**”). Bidder Confidential Information shall be subject to each Reviewing Creditor’s (and its Advisors’, as applicable) existing confidentiality agreements or other confidentiality agreements reasonably acceptable to the Debtors. For greater certainty, with respect to the DIP Agent, the only confidentiality agreement that shall apply shall be section 9.09 of the DIP Facility. The DIP Agent agrees not to reveal the identity of (or any information that reasonably could be expected to reveal the identity of) any proposed bidder (including any Potential Bidder or Qualified Bidder) to any Lender (as defined in the DIP Facility). Each recipient of Bidder Confidential Information agrees to use such Bidder Confidential Information only in connection with the evaluation of bids during the Bidding Process, the dispute resolution procedures set forth below, any Final Sale Hearing or otherwise in connection with these Bankruptcy Cases; provided that such information shall at all times be treated in accordance with the confidentiality arrangements referred to in the Bidding Procedures and, to the extent such Bidder Confidential Information is to be contained in any pleading or other document filed with the Court, such Bidder Confidential Information shall be filed under seal.

Notwithstanding the foregoing, and in addition to the disclosures permitted under the confidentiality agreements described above and the dispute resolution procedures contained in the Bidding Procedures,

- (a) the Debtors may disclose
  - (i) the identity of the Successful Bidder(s) and the terms and conditions of the Successful Bid(s) after execution of the Sale Agreements with such Successful Bidder(s),
  - (ii) the identity of any bidder with the prior written consent of such bidder,
  - (iii) the price and material terms of any bids received, but not including the identity of the bidder making such bid or any information that could reasonably be expected to reveal the identity of such bidder, solely for the purpose of indicating to other bidders the then-highest bid(s) and
  - (iv) in consultation with any bidder, such other information regarding such bidder as the Debtors determine is necessary to obtain entry of the Final Sale Order and
- (b) the Debtors and each Reviewing Creditor may disclose Bidder Confidential Information to each of its legal and financial advisors who have executed confidentiality agreements or otherwise have confidentiality obligations to the

Debtors or the Debtors' estates, or with respect to counsel to the DIP Agent, have confidentiality obligations to the DIP Agent (collectively, "**Advisors**").

Furthermore, for the avoidance of doubt, the Reviewing Creditors and those persons or individuals with whom the Reviewing Creditors are authorized to share Bidder Confidential Information pursuant to their respective confidentiality arrangements may disclose any Bidder Confidential Information to one another.

- Reviewing Creditors.

The "**Reviewing Creditors**" shall consist of the Creditors' Committee, the DIP Agent and the Second Lien Steering Committee, each communicating with the Debtors through their respective Advisors.

Solely for purposes of the Bidding Procedures, "**Second Lien Steering Committee**" shall consist of a number of members of the Second Lien Noteholders Committee reasonably acceptable to the Debtors who have executed confidentiality agreements with the Debtors, in form and substance reasonably acceptable to the Debtors.

The Debtors shall keep the 1114 Committee's Advisors apprised, in a timely manner, of all material aspects of the Bidding Process. In addition, the 1114 Committee's Advisors shall be entitled to (a) observe at any Auction of the Digital Imaging Patent Assets and (b) be noticed, in a timely manner, of and heard at all proceedings (*in camera* or otherwise) related to the Bidding Process. The 1114 Committee and its Advisors shall be subject to the same confidentiality requirements as the Reviewing Creditors.

- Preliminary Participation Requirements.

In order to participate in the Bidding Process, each interested person or entity must deliver the following documents (the "**Preliminary Bid Documents**") to the Debtors' counsel and Lazard, unless otherwise determined by the Debtors after consultation with the Reviewing Creditors:

- (a) a confidentiality agreement signed by the applicable bidder (a "**Bidder Confidentiality Agreement**"), which shall inure to the benefit of any purchaser of the Digital Imaging Patent Assets, and shall be substantially in the form attached to the Bidding Procedures as Appendix A or, after consultation of the Reviewing Creditors, in such other form as the Debtors and such bidder may agree; provided that if such person or entity has already entered into a confidentiality agreement with Kodak in connection with the Sale, such agreement (together with any amendments or supplements thereto) shall be deemed to be a Bidder Confidentiality Agreement for purposes of the Bidding Procedures; and

(b) preliminary proof of the financial capacity of such person or entity to close the Sale, which may include current unaudited or verified financial statements of such person or entity (or, if the entity is formed for the purpose of acquiring the Digital Imaging Patent Assets, the party that will fund the purchase price and bear liability for a breach of any definitive agreement), the adequacy of which the Debtors and their Advisors will determine in their discretion, after consultation with the Reviewing Creditors.

The Debtors may, in consultation with the Reviewing Creditors, exclude from participation in the Bidding Process any bidder that has not delivered to the Debtors' counsel and Lazard Preliminary Bid Documents acceptable to the Debtors on or prior to **5:00 p.m., Eastern Time, on July 16, 2012**. The Debtors will promptly forward the Preliminary Bid Documents following receipt thereof to each Reviewing Creditor's respective legal Advisors. No entity or consortium will be (a) considered a Potential Bidder, (b) qualified as a Qualified Bidder or (c) permitted to participate in the Auction if such entity or member of such consortium participates in more than one bid without the prior consent of the Debtors, in consultation with the Reviewing Creditors.

Each bidder submitting timely and acceptable Preliminary Bid Documents shall qualify as a "**Potential Bidder**." The Debtors will provide each Potential Bidder with an electronic copy of the form Patent Sale Agreement that was previously shared with the Reviewing Creditors, together with all schedules, exhibits and annexes thereto (the "**Form Agreement**"), through access to a confidential electronic data room (the "**Data Room**").

- Expense Reimbursement.

The Debtors do not currently intend to provide expense reimbursement to any Potential Bidder. The Debtors may decide, with the consent of the Reviewing Creditors, to provide expense reimbursement to any Potential Bidder. Any agreement to provide such expense reimbursement may be filed under seal with the Court.

- Due Diligence.

The Debtors shall provide access to the Data Room to the Potential Bidders and may, in their discretion, provide such other due diligence access or additional information as may be reasonably requested by any Potential Bidder, subject in each case to the terms of the Bidder Confidentiality Agreement. All due diligence requests shall be directed to David Descoteaux (t: 212.632.6657, email: david.descoteaux@lazard.com) or Benjamin Tisdell (t: 212.632.6855, email: benjamin.tisdell@lazard.com) at Lazard.

Each Potential Bidder who submits a bid will be deemed to acknowledge and represent that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets and liabilities of the Debtors

and their affiliates in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guarantees whatsoever, whether express, implied, by operation of law or otherwise, regarding the Digital Imaging Patent Assets, the Debtors or their affiliates, or the completeness of any information provided in connection with its bid or the Bidding Process, except to the extent expressly stated in definitive documentation entered into by the Debtors and the Successful Bidder(s).

- Deadline for Qualified Bids.

A Potential Bidder who desires to make a bid must deliver a bid that satisfies all of the bid requirements attached to the Bidding Procedures as Appendix B (the “**Bid Requirements**”) so as to be received by the Debtors’ counsel, Lazard and counsel to each Reviewing Creditor, no later than **5:00 p.m., Eastern Time, on July 30, 2012** (the “**Bid Deadline**”). The Debtors will forward each bid promptly following receipt thereof to the legal Advisors of each Reviewing Creditor.

A Potential Bidder who submits a bid prior to the Bid Deadline that, in the Debtors’ discretion after consultation with the Reviewing Creditors, satisfies all of the Bid Requirements and the Due Diligence Requirements (defined below) shall be a “**Qualified Bidder**” and its submitted bid will constitute a “**Qualified Bid.**” The Debtors may, on two Business Days’ notice to and after consultation with the Reviewing Creditors, exclude from participation in the Bidding Process any Potential Bidder who does not submit a Qualified Bid by the Bid Deadline. The Debtors will notify each Potential Bidder by **5:00 p.m., Eastern Time, on August 2, 2012**, whether such Potential Bidder qualifies as a Qualified Bidder.

The Debtors may solicit bids on all or any portion of the Digital Imaging Patent Assets and may group or exclude Digital Imaging Patent Assets as the Debtors determine is in the best interests of their estates after consultation with the Reviewing Creditors.

- Auction.

In the event that, on or before the Bid Deadline, the Debtors receive more than one Qualified Bid, the Debtors may conduct an auction (the “**Auction**”) upon notice to all Qualified Bidders at the offices of Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004 at **10:30 a.m., Eastern Time, on August 8, 2012**, or such other time, date or place as the Debtors may determine in consultation with the Reviewing Creditors.

Prior to and during the Auction, the Debtors may employ and announce such procedures as they determine appropriate under the circumstances after consultation with the Reviewing Creditors, including, without limitation, any partnering of Qualified Bidders, any minimum incremental bid requirements and the amount of time allotted to make subsequent bids. To the extent applicable, the Debtors shall provide for a court reporter to be present at and prepare a transcript



of the Auction, in which case, the transcript for the Auction shall be filed with the Court under seal.

Notwithstanding the foregoing, the Debtors may, at any time after the Bid Deadline, on two Business Days' notice to and after consultation with the Reviewing Creditors, engage in exclusive negotiations with a Qualified Bidder and, subject to the consent of the Reviewing Creditors, enter into a Sale Agreement with such Qualified Bidder without prior notice to any other Qualified Bidder, if the Debtors, in their business judgment, determine that doing so would be in the best interests of the Debtors' estates and creditors.

- Evaluation of Qualified Bids.

The Debtors shall consider the views of the Reviewing Creditors and may consider any and all other factors consistent with their obligations under the Bankruptcy Code and applicable state law when determining the value of a Qualified Bid, including, without limitation, items such as the net value and recovery to the Debtors' estates provided by such Qualified Bid, the total consideration to be received by the Debtors and the form of such consideration, the number and complexity of transactions that would be required to consummate the Qualified Bid, the number of counterparties to such transactions, the amount of assets included or excluded from the Qualified Bid, the number, type and nature of any changes to the Form Agreement, whether the Qualified Bid contemplates the assumption of liabilities and the likelihood and timing of consummating such transactions. The Debtors' determination of the value of a Qualified Bid, or the relative value of Qualified Bids shall not be subject to challenge by any Qualified Bidder; provided that the Debtors' determination shall not be binding on the Reviewing Creditors.

Only the Debtors (and their Advisors) and the Reviewing Creditors (and each of their respective Advisors) will be entitled to review Qualified Bids (which, for the avoidance of doubt, shall be treated as Bidder Confidential Information) and only Qualified Bidders will be entitled to make subsequent bids. Each Qualified Bidder will be required to confirm that it has not engaged or attempted to engage in any collusion with respect to the bidding or the Sale.

- Due Diligence from Bidders.

Each Qualified Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their representatives (the "**Due Diligence Requirements**"). If a Reviewing Creditor believes additional information is required from a Qualified Bidder, such Reviewing Creditor shall make additional due diligence requests to the Debtors (and not directly to any Qualified Bidder).

- Selection of Successful Bid.

The Debtors reserve the right to (i) determine in their discretion, subject to the consent of the Reviewing Creditors, which bid from a Qualified Bidder or combination of bids from Qualified Bidders is the highest or best bid for all or any portion of the Digital Imaging Patent Assets (such bids, consented to by the Reviewing Creditors or otherwise approved by the Court, the “**Successful Bid(s)**” and the bidder(s) making such bid(s), the “**Successful Bidder(s)**”) and (ii) reject at any time, without liability, any offer that the Debtors, in their discretion, and on two Business Days’ notice to and after consultation with the Reviewing Creditors, deem to be (x) inadequate or insufficient, (y) not in conformity with the requirements of the Conditional Sale Order, the Bankruptcy Code, the Bankruptcy Rules or any order of the Court entered in connection with the Bidding Procedures or (z) contrary to the best interests of the Debtors’ estates and creditors. The Debtors shall be under no obligation to designate a Successful Bidder. The Debtors may designate separate Successful Bidders for separate portions of the Digital Imaging Patent Assets, including for each of the DC Portfolio and the KISS Portfolio, or may designate one (or a combination of) Successful Bidder(s) for all of the Digital Imaging Patent Assets. For the avoidance of doubt, the Debtors shall not accept any bid (whether or not such bid is a Qualified Bid) for any of the Digital Imaging Patent Assets after the close of the Auction (if any).

- Dispute Resolution.

The Debtors shall, on a current basis, keep the Reviewing Creditors regularly apprised of the progress and content of discussions with Potential Bidders and Qualified Bidders (after their qualification), the terms and conditions of draft sale agreements and the progress of the Bidding Process. The Debtors and each Reviewing Creditor shall work together in good faith to resolve any potential concerns and objections.

If a Reviewing Creditor objects (or does not consent) to an action proposed to be taken by the Debtors, for which its consent is required under the Bidding Procedures, then prior to taking such proposed action, the Debtors may, on an expedited basis (but on not less than two Business Days’ prior notice), seek an emergency *in camera* hearing with the Court to resolve such Reviewing Creditor’s objection (or lack of consent). If a Reviewing Creditor objects to an action proposed to be taken by the Debtors, with respect to which the Debtors were required to consult with the Reviewing Creditors, such Reviewing Creditor may, on an expedited basis (but on not less than two Business Days’ prior notice), seek an emergency *in camera* hearing with the Court to resolve such objection. Such dispute shall remain confidential in accordance with the terms of the confidentiality agreements referred to in the confidentiality provisions of the Bidding Procedures and any filings with respect to such dispute shall be served on and made available only to the Debtors (and their Advisors) and the Reviewing Creditors (and each of their respective Advisors). Only the Debtors (and their Advisors) and the Reviewing Creditors (and each of their respective Advisors) shall be entitled to attend and receive formal notice of the *in camera* hearing

unless otherwise ordered by the Court. The Court's resolution of such dispute during any *in camera* hearing shall be binding on the Debtors and each Reviewing Creditor and, to the extent determined by the Court, shall override any lack of consent by any Reviewing Creditor for the purpose of such issue under the Bidding Procedures.

To the extent the Debtors decline to seek resolution of an objection in the manner described above, the Debtors may proceed directly to a Final Sale Hearing, in which case the Reviewing Creditors shall be entitled to raise any timely filed objections at such hearing; provided that any Bidder Confidential Information to be contained in any pleading filed in connection with the Final Sale Hearing shall be filed entirely under seal and made available only to the Debtors and the Reviewing Creditors (but otherwise subject to the terms of the Bidding Procedures).

For purposes of the Bidding Procedures, (a) any action requiring the consent of a Reviewing Creditor may be satisfied by a written statement from such Reviewing Creditor that such Reviewing Creditor does not object to such action and (b) any consent or written statement from a Reviewing Creditor may be obtained by email from the legal Advisors of such Reviewing Creditor.

**Notwithstanding anything contained in the Bidding Procedures, the Debtors may not execute any Sale Agreement(s) unless they have the consent of each Reviewing Creditor. Absent such consent, the Debtors may seek the Court's approval of any such unexecuted Sale Agreement(s) and the Reviewing Creditors shall have all rights under applicable law to object thereto.**

- Acceptance and Binding Nature of Contract.

The Debtors shall be deemed to have accepted a Qualified Bid with the consent of the Reviewing Creditors only when (i) the Debtors declare that such bid is a Successful Bid (in accordance with the terms of the Bidding Procedures) and (ii) definitive Sale Agreement(s) (in a form as to which the Reviewing Creditors have given their consent) are executed in respect thereof, in each case, in accordance with the Bidding Procedures. The Debtors shall declare the Successful Bid(s) no later than **5:00 p.m., Eastern Time, on August 13, 2012** or such other date as ordered by the Bankruptcy Court or as modified pursuant to the terms of the Bidding Procedures.

**Except as otherwise expressly provided for in the Bidding Procedures, including the provisions of the Bidding Procedures relating to dispute resolution, no further approval from the Court is necessary for the execution and delivery of any Sale Agreement(s) (consented to by the Reviewing Creditors) by the Debtors in accordance with the Bidding Procedures. Any Sale Agreements, executed in accordance with the Bidding Procedures (including the immediately preceding sentence), shall be binding on the Debtors and the Successful Bidder(s), and may include such provisions as the**

**Debtors consider reasonable to provide the Successful Bidder(s) in light of the Successful Bid(s), including ‘no-shop’ and similar exclusivity provisions, specific enforcement rights to pursue entry of the Final Sale Order, cash termination and break-up fees,<sup>3</sup> reasonable expense reimbursement and other protections.**

After execution of definitive documentation with the Successful Bidder(s), the Final Sale Hearing will be held before the Bankruptcy Court on an expedited basis in accordance with the Conditional Sale Order and the Bidding Procedures. At the Final Sale Hearing, the Bankruptcy Court will consider the Successful Bid(s) or such other bids as the Debtors seek to have approved and the relief proposed to be granted in the Final Sale Order, and will consider only those objections filed in accordance with the Conditional Sale Order and the Bidding Procedures.

- Return of Good-Faith Deposit.

Each Good Faith Deposit (as defined in the Bid Requirements) shall be returned to each Qualified Bidder not selected by the Debtors as the Successful Bidder(s) by no later than the fifth Business Day following the entry by the Court of the Final Sale Order. The Good Faith Deposits of the Successful Bidder(s) will be retained by the Debtors in accordance with the terms of the Sale Agreements executed with the Successful Bidder(s).

- Beneficiaries; Modification of Procedures.

No person or entity other than the Debtors shall be a beneficiary of or have the right or standing to enforce the Bidding Procedures; provided that nothing in the Bidding Procedures shall limit the consent, consultation or objection rights of any Reviewing Creditor as provided in the Bidding Procedures and the Conditional Sale Order, or any Reviewing Creditor’s right or standing to enforce such rights.

The Debtors may amend or modify the Bidding Procedures (including any dates set forth in the Bidding Procedures) at any time and in any manner with the consent of the Reviewing Creditors, without prior notice to any other person. Notwithstanding the immediately preceding sentence, the Debtors, in consultation with the Reviewing Creditors, may amend the Bidding Procedures to provide for a non-confidential auction format; provided that if a Qualified Bidder elects not to participate in such non-confidential auction, any Bidder Confidential Information with respect to such Qualified Bidder shall remain confidential in accordance with the terms of the Bidding Procedures.

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<sup>3</sup> The cash amount of any termination or break-up fee shall not exceed 2% of the net purchase price payable to the Debtors without prior order of the Court (which order may be obtained at an in camera hearing on not less than two (2) days prior notice to the Reviewing Creditors).

At any time after the Bid Deadline, the Debtors reserve the right to terminate the Bidding Process after consultation with the Reviewing Creditors.

Nothing in the Bidding Procedures, nor the participation of the DIP Agent in the Bidding Process, shall be deemed a waiver of its rights and remedies under the DIP Facility or any documents or orders relating thereto (together, the “**DIP Documents**”) or the rights and remedies of any of the Lenders (as defined in the DIP Facility) under the DIP Documents.

21. The Debtors further propose that any amounts to be paid by the Debtors to the Successful Bidder(s) under the Sale Agreements, including any allowed claims for breach thereof and any amounts paid pursuant to any termination fees, break-up fees or other bidding protections granted by the Debtors, shall (a) constitute allowed administrative expenses of the estates pursuant to sections 503(b) and 507(a)(2) of the Bankruptcy Code, (b) not be altered, amended, discharged or affected by any plan proposed or confirmed in these chapter 11 cases without the prior written consent of such Successful Bidder(s) and (c) be due and payable if and when any Debtors’ obligations arise under such Sale Agreement(s) or bidding protections, in each case without further order of the Court.

**B. The Notice Procedures**

22. Within five days after the entry of the Conditional Sale Order, the Debtors intend to serve the proposed sale notice, substantially in the form attached hereto as Exhibit D (the “**Notice of Sale**”), together with the Conditional Sale Order, upon the Sale Notice Parties (as defined below) and publish the Notice of Sale in *The Wall Street Journal* (U.S. Edition and Asia Edition) and *The Financial Times* (U.S. Edition and Asia Edition).

23. Within two Business Days<sup>4</sup> after the Debtors enter into the Sale Agreement(s) with the Successful Bidder(s), or in the event the Debtors wish to enter into one or more transactions with a bidder or bidders that have not been unanimously approved by the

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<sup>4</sup> “**Business Day**” means any day of the year on which national banking institutions in New York are open to the public for conducting business and are not required or authorized to close.

Reviewing Creditors, the Debtors intend to serve the proposed sale hearing notice, substantially in the form attached hereto as Exhibit E (the “**Notice of Final Sale Hearing**”), together with the proposed Final Sale Order and a copy of the final version of the sale agreement(s) (with any redactions as the Debtors deem appropriate in accordance with Bankruptcy Rule 9018), upon all Sale Notice Parties (as defined below).

**C. Request to Set a Date for the Final Sale Hearing**

24. The Debtors intend to present the Sale Agreement(s) and seek final approval of the consummation of the Sale by the Court at a hearing (the “**Final Sale Hearing**”) to be scheduled by the Court. The Debtors request that the Court schedule the anticipated Final Sale Hearing for August 20, 2012. The Debtors may schedule an earlier date for the Final Sale Hearing no earlier than seven days after service of the Notice of Final Sale Hearing. The Debtors shall be authorized to consummate the Sale only when the Court has entered the Final Sale Order after the Final Sale Hearing.

**D. Objections to Final Sale Order**

25. The Debtors propose that the deadline for objecting to the relief proposed to be granted by the Final Sale Order shall be 4:00 p.m. (Eastern Time) on the day that is four days prior to the Final Sale Hearing (the “**Final Sale Objection Deadline**”). The Debtors propose that at the Final Sale Hearing, only the following objections shall be considered by the Court: (a) the Debtors’ failure to comply with the Bidding Procedures or the Conditional Sale Order, (b) the right of any secured creditor to credit bid for the Digital Imaging Patent Assets, (c) allegations of collusion or bad faith by the Successful Bidder(s) with respect to the bidding process or the entry into the Sale Agreement(s), (d) objections concerning the proposed Final Sale Order, (e) those objections permitted to be heard at the Final Sale Hearing pursuant to the Bidding Procedures and (f) objections to terms and conditions in the Sale Agreement(s) that

constitute “Extraordinary Provisions” under the Amended Guidelines for the Conduct of Asset Sales (General Order M-383) (the “**Sale Guidelines**”) and are not otherwise disclosed in this Motion.

26. Objections (other than those objections subject to the dispute resolution provisions of the Bidding Procedures) must be: (a) in writing; (b) signed by counsel or attested to by the objecting party; (c) in conformity with the Bankruptcy Rules, the Local Rules and the Case Management Procedures (the “**Case Management Procedures**”) annexed as Exhibit 1 to the Order Authorizing the Establishment of Certain Notice, Case Management and Administrative Procedures, dated February 15, 2012 [Docket No. 362]; (d) filed with the Court; and (e) served in accordance with the Case Management Procedures so as to be received on or before the Final Sale Objection Deadline.

**Sale Free and Clear of Claims and Interests**

27. The Debtors propose to sell the Digital Imaging Patent Assets to the Successful Bidder(s) free and clear of (i) all claims (as defined in section 101(5) of the Bankruptcy Code, “**Claims**”) and all liens (statutory, contractual, or otherwise), pledges, mortgages, deeds of trust, security interests, hypothecations, charges, encumbrances, easements, encroachments, retentions of title, conditional sale arrangements, restrictive covenants, licenses, rights of first offer, rights of first refusal, options or any other limitations, restrictions, or interests of any kind (collectively, “**Interests**”), except for the following permitted encumbrances (collectively, the “**Permitted Encumbrances**”):

- a. the commitments to standards-setting organizations described in Exhibit F attached hereto (the “**Scheduled SSO Commitments**”);

- b. the rights of any licensee of intellectual property (as defined in section 101(35A) of the Bankruptcy Code, “**Intellectual Property**”) under section 365(n) of the Bankruptcy Code in connection with a Scheduled License, to the extent such Scheduled License is rejected by the Debtors prior to, at or after consummation of the Sale;
- c. the rights of any licensee of Intellectual Property relating to the Digital Imaging Patent Assets pursuant to any written license agreement approved by the Court after the date of the Conditional Sale Order but prior to the consummation of the Sale; and
- d. such other encumbrances or assumed liabilities expressly provided in the Sale Agreement(s).

28. The Debtors seek an order by the Court that, subject to the entry of the Final Sale Order, the sale of all or any portion of the Digital Imaging Patent Assets to the Successful Bidder(s) shall be free and clear of all Claims and Interests (other than the Permitted Encumbrances) pursuant to section 363(f) of the Bankruptcy Code, with all Claims and Interests attaching to the sale proceeds, in the same order of priority and with the same validity, force and effect that such Claims and Interests had before the Sale, subject to any rights, claims and defenses of the Debtors, their estates, or any other party in interest, as applicable, or as otherwise provided in the Conditional Sale Order.

29. The Debtors contemplate entry into a binding patent sale agreement at the conclusion of the process set forth in the Bidding Procedures, which may contain ‘no-shop’ or similar exclusivity provisions, specific enforcement rights, cash termination and break-up fees,



reasonable expense reimbursement and such other protections as the Debtors determine will benefit their estates, subject to the rights of the Reviewing Creditors as set forth in the Bidding Procedures, without further approval by the Court after the entry of the Conditional Sale Order. Except as otherwise provided in the Sale Agreement(s) and subject to the rights of the Reviewing Creditors as set forth in the Bidding Procedures, the Debtors' obligations under the Sale Agreement(s) shall be specifically enforceable against the Debtors and their estates to the extent specifically enforceable under applicable non-bankruptcy law. The Debtors may also, at any time after the Bid Deadline and in consultation with the Reviewing Creditors, engage in exclusive negotiations with a Qualified Bidder and, subject to the rights of the Reviewing Creditors as set forth in the Bidding Procedures, enter into a Sale Agreement with such Qualified Bidder without prior notice to any other Qualified Bidder if the Debtors, in their business judgment, determine that doing so would maximize the value of the Debtors' estates.

30. At the Final Sale Hearing, the Debtors intend to demonstrate, among other things, (a) that the Successful Bidder(s) are "good-faith purchasers" within the meaning of section 363(m) of the Bankruptcy Code and are entitled to the full benefit of the protections provided thereunder and (b) that neither the Debtors nor any of the bidders have engaged in any conduct that would allow the Sale to be avoided under section 363(n) of the Bankruptcy Code or that would result in the recovery of costs or damages thereunder.

**Extraordinary Provisions under the Guidelines**

31. The Bidding Procedures contain the following terms, conditions and provisions, which may be considered "Extraordinary Provisions" under the Sale Guidelines<sup>5</sup>:

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<sup>5</sup> The following list of possible "Extraordinary Provisions," as such term is defined in the Sale Guidelines, is not intended to be an admission that any of these provisions is unusual relief in sales transactions of this nature conducted pursuant to section 363 of the Bankruptcy Code.

- Private Sale/No Competitive Bidding.

After entry of the Conditional Sale Order and a competitive sale process, the Debtors contemplate entering into a binding patent sale agreement, which may contain ‘no-shop’ or similar exclusivity provisions, specific enforcement rights, cash termination and break-up fees, reasonable expense reimbursement and such other protections as the Debtors determine will benefit their estates, subject to the rights of the Reviewing Creditors as set forth in the Bidding Procedures, without further approval by the Court.<sup>6</sup> In addition, the Bidding Procedures contemplate that the Debtors may, at any time after the Bid Deadline and in consultation with the Reviewing Creditors, engage in exclusive negotiations with a Qualified Bidder and, subject to the rights of the Reviewing Creditors as set forth in the Bidding Procedures, enter into a Sale Agreement with such Qualified Bidder without prior notice to any other Qualified Bidder if the Debtors, in their business judgment, determine that doing so would provide maximize the value of the Debtors’ estates. Due to the unique dynamics of the market for the Digital Imaging Patent Assets, as discussed herein, the Debtors believe that the sale process contemplated by the Bidding Procedures is necessary to address potential bidders’ concerns regarding the certainty of closing the Sale and therefore presents the best opportunity to maximize the proceeds from the Sale.

- Deadlines that Effectively Limit Notice.

The Debtors contemplate that within two Business Days after execution of the Sale Agreements, the Debtors will schedule an expedited hearing with the Court which shall be held within 10 days after service of the Notice of Final Sale Hearing, unless the Sale Agreements provide for a longer period of time. Parties in interest already will have had an adequate opportunity to object to the relief requested in the Conditional Sale Order. Additionally, the Bidding Procedures contemplate that the Debtors and Reviewing Creditors will have the ability to resolve objections by Reviewing Creditors in an *in camera* Court hearing prior to execution of the Sale Agreement(s). Therefore, the Debtors submit that conducting the Final Sale Hearing on an expedited basis in order to ensure a swift closing of the Sale will not prejudice the rights of any party in interest and will provide a benefit to the Debtors’ estates.

- Relief from Bankruptcy Rule 6004(h).

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<sup>6</sup> The Debtors also contemplate that the Sale Agreement(s) may contain an exclusivity provision without a “fiduciary out,” if the Debtors determine that such a provision will benefit their estates. The Debtors have concluded that a “fiduciary out” would not be necessary in connection with an exclusivity provision because the Sale does not involve all or substantially all the Debtors’ assets, and because the ability to grant an exclusivity provision without a “fiduciary out” will benefit the Debtors’ estates by ensuring potential bidders of the consummation of the Sale, thus encouraging competitive bidding and producing a higher and better sale value for the Digital Imaging Patent Assets.

For the reasons discussed below, the Debtors request relief from the 14-day stay imposed by Bankruptcy Rule 6004(h). The Debtors submit that such relief is necessary and supported by legitimate business reasons because the Debtors' restructuring efforts will be hampered if the Sale is not promptly consummated.

- Use of Proceeds.

The Debtors shall cause 100% of all IP Sale Proceeds (as defined in the DIP Facility) and the Applicable Prepayment Percentage of IP Settlement Proceeds (each as defined in the DIP Facility) to be deposited directly upon receipt in a certain segregated Cash Collateral Account (as defined in the DIP Facility) for application in accordance with the terms of the DIP Facility, without further order by the Court, in compliance with their obligations under the DIP Facility. All Net Cash Proceeds (as defined in the DIP Facility) from the consummation of the Sale shall be treated in accordance with (i) the terms of the DIP Facility (including, but not limited to, the mandatory prepayment obligations under Section 2.10(b) of the DIP Facility) and (ii) any order of the Court approving the debtor-in-possession financing provided for thereunder (including, but not limited to, paragraphs 14(d) and 14(e) of the Final DIP Order).

- Future Conduct.

The Debtors propose to execute and deliver definitive and binding Sale Agreements, which may include certain bid protections, and may provide reasonable expense reimbursement to any Potential Bidder in accordance with the Bidding Procedures, after the entry of the Conditional Sale Order without any further authorization from the Court. As discussed below, the ability of the Debtors to enter into such binding agreements and grant bid protections is a necessary inducement for interested parties to submit bids that would maximize the value of the Digital Imaging Patent Assets to the Debtors and their estates and creditors. The Debtors and Reviewing Creditors will have the ability to resolve objections by Reviewing Creditors in an *in camera* Court hearing with respect to the terms and conditions of the Sale Agreement(s), the granting of any bid protection or the provision of expense reimbursement to a Potential Bidder, in accordance with the Bidding Procedures.

32. To the extent that the Sale Agreement(s) contain additional terms and conditions that constitute "Extraordinary Provisions" under the Sale Guidelines and that are not otherwise described in this Motion, the Debtors will disclose such terms and conditions in the Notice of Final Sale Hearing and parties in interest will have a right to object thereto at the Final Sale Hearing.

**Basis for Relief**

**A. Approval of the Sale of Assets Free and Clear of Liens and Other Interests is Appropriate and in the Best Interests of the Debtors' Estates and Creditors**

i. *The Sale of the Digital Imaging Patent Assets Pursuant to the Bidding Procedures is Justified by Good and Sound Business Reasons*

33. Sale of estate property other than in the ordinary course of business is governed by section 363(b)(1) of the Bankruptcy Code. Section 363(b)(1) provides, in relevant part, “the trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A court has discretion to approve a sale of assets pursuant to section 363(b) of the Bankruptcy Code if it finds a good business reason for the transaction. *In re Chrysler LLC*, 576 F.3d 108, 114 (2d Cir. 2009) (the “good business reason” requirement “balance[s] the competing concerns of efficiency against the safeguards of the Chapter 11 process.”), *vacated as moot*, 130 S. Ct. 1015 (2009) (mem.); *Motorola, Inc. v. Official Comm. of Unsecured Creditors (In re Iridium Operating LLC)*, 478 F.3d 452, 466-67 (2d Cir. 2007) (noting that the “good business reason” standard governs section 363(b) asset sales in this circuit, and upholding a sale for which the bankruptcy court identified a proper business justification); *In re Gucci*, 126 F.3d 380, 387 (2d Cir. 1997) (sale of assets outside the ordinary course of business may occur if there is a good business reason to support such sale); *Comm. Of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1066-1070 (2d Cir. 1983) (the court must be present with “some articulated business justification, other than appeasement of major creditors, for using, selling or leasing property out of the ordinary course of business,” and the policies underlying the bankruptcy statute support allowing the court “considerable discretion”); *In re GSC, Inc.*, 453 B.R. 132, 156 (Bankr. S.D.N.Y. 2011) (a court has “considerable discretion” to approve any sale for which a good business reason exists).

34. The Debtors have demonstrated that the sale of the Digital Imaging Patent Assets is supported by good and sound business reasons. As set forth above, the monetization of the Digital Imaging Patent Assets is an important aspect of the financing for their restructuring and the Debtors' transformation to a digital growth business. The Debtors and their advisors have determined that the sale of the Digital Imaging Patent Assets could yield sufficient financing for the Debtors' emergence from chapter 11 and the continued post-emergence transformation of the Debtors' businesses, as well as fulfilling the terms of the DIP Facility, thus resulting in significant financial benefits to the Debtors' estates and creditors.

35. Furthermore, the proposed sale of the Digital Imaging Patent Assets does not benefit any insider, nor does it unfairly favor any creditor or other party in interest. The Successful Bidder(s) will be selected through a competitive bidding process based on the strength of the bid submitted by each party. The final determination will be made by the Debtors with the consent of the Reviewing Creditors.

36. As discussed herein, the Debtors have been contemplating a sale of the Digital Imaging Patent Assets for over a year, and along with Lazard, have engaged in a wide-ranging marketing process. Over the course of the marketing process, a range of interested parties have been contacted and given access to due diligence materials and the opportunity to submit bids for either or both of the DC Portfolio and KISS Portfolio. The Bidding Procedures allow the Debtors to sell the DC Portfolio and KISS Portfolio to the same or separate purchasers, or to sell one portfolio and not the other, in order to ensure not only that fair and reasonable value will be received, but that the purchase price ultimately received for the Digital Imaging Patent Assets will be the highest and best under the circumstances. Accordingly, authorizing the Debtors to sell the Digital Imaging Patent Assets pursuant to the Bidding Procedures, subject to

the Court's entry of the Final Sale Order, is justified by sound business reasons, is in the best interest of the Debtors, their estates and creditors and should be approved by the Court.

ii. *Conditional Approval of the Sale is Fair and Reasonable and Provides a Benefit to the Debtors' Estates and Creditors*

37. In administering the sale of a debtor's assets, a bankruptcy court must necessarily have "broad discretion and flexibility . . . to enhance the value of the estates before it." *Consumer News and Bus. Channel P'ship v. Fin. News Network, Inc. (In re Fin. News Network, Inc.)*, 980 F.2d 165, 168 (2d Cir. 1992); *see also In re Lionel Corp.*, 722 F.2d at 1069 ("First and foremost is the notion that a bankruptcy judge must not be shackled with unnecessarily rigid rules when exercising the undoubtedly broad administrative power granted him under the Code."); *In re Chrysler LLC*, 405 B.R. 84, 94 (Bankr. S.D.N.Y. 2009) (section 363(b) "does not constrain a court with strict limitations on its ability to authorize the sale of estate assets"). To further the purposes of reorganization, bankruptcy judges must have "substantial freedom to tailor orders to meet differing circumstances," subject to the requirement that good business reasons justify the court's decision. *In re Lionel Corp.*, 722 F.2d at 1069.

38. Under the circumstances of these chapter 11 cases, the effectiveness of the sale process in maximizing the sale value of the assets to the Debtors' estates will be significantly enhanced by the Court's conditional approval of the sale of all or any portion of the Digital Imaging Patent Assets to the Successful Bidder(s). The authority to enter into a binding sale agreement with a bidder that is specifically enforceable against the Debtors and their estates is crucial if the Debtors are to attract serious bidders to the sale process in the face of the significant risks of participation.

39. The highly competitive nature of the market for intellectual property such as the Digital Imaging Patent Assets, the preexisting competitive and adversarial relationships

between the most likely potential bidders, and the bidders' resulting perception that their costly efforts to bid for the Digital Imaging Patent Assets are unlikely to be rewarded through a traditional public auction process, have severely hindered the Debtors' efforts to market the Digital Imaging Patent Assets even to admittedly interested parties. Conditional approval of the Sale by the Court, followed by expedited final approval of the consummation of the Sale, will encourage bidders to put forth their highest or best bids by minimizing the risk that an already-signed deal with the Debtors for the Digital Imaging Patent Assets can be disrupted by a strategic offer from a rival bidder or consortium of bidders after a Successful Bidder is selected. The Debtors propose to establish these procedural protections with the intention of assuring bidders of an orderly, fair sale process and of securing the greatest possible sale value for their creditors and other stakeholders, by ensuring that all good-faith bidders for the Digital Imaging Patent Assets will enter the bidding in accordance with the timeline set forth in the Bidding Procedures, as approved by the Court.

40. The unique and significant challenges associated with the marketing of the Digital Imaging Patent Assets have led the Debtors to conclude, after considering the associated costs and benefits, that the Court's conditional approval of the sale will encourage competitive bidding and will result in a substantial benefit to the Debtors' estates. Conditional approval of the Sale addresses these difficulties without harm to the competitiveness of the bidding process or the opportunity of any bidder to participate. The Bidding Procedures contemplate that the Debtors will keep the Reviewing Creditors regularly apprised of the progress and content of discussions with bidders, the terms and conditions of draft sale agreements and the progress of the bidding process, and that the Debtors' entry into Sale Agreement(s) with the Successful Bidder(s) will be subject to the consent of the Reviewing Creditors. This continued involvement

of the Reviewing Creditors will ensure that all qualified bids are considered by the Debtors to the satisfaction of the Creditors' Committee, the Second Lien Noteholders Committee and the DIP Agent, resulting in a sale value that will be the highest or best under the circumstances.

Accordingly, the Debtors respectfully submit that conditional approval of the Sale is justified by sound business reasons, is in the best interest of the Debtors, their estates and creditors and should be approved by the Court.

iii. *The Sale of the Digital Imaging Patent Assets Should Be Free and Clear of Claims and Interests*

41. The Sellers propose to sell all or any portion of the Digital Imaging Patent Assets to the Successful Bidder(s) free and clear of all Claims and Interests, except for Permitted Encumbrances, with such Claims and Interests to attach to the proceeds from the Sale, subject to any applicable rights and defenses of the Debtors and other parties in interest. The sale of estate property free and clear of any interest is governed by section 363(f) of the Bankruptcy Code, which provides, in relevant part:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if –

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).



42. It should be noted that section 363(f) of the Bankruptcy Code is drafted in the disjunctive: approval of a proposed sale of assets free and clear of Claims and Interests requires only that one of the five requirements be satisfied with respect to each such Claim or Interest. *In re Borders Group, Inc.*, 453 B.R. 477, 483 (Bankr. S.D.N.Y. 2011); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (because section 363(f) is written in the disjunctive, a court may approve a sale “free and clear” provided that at least one of the subsections is applicable); *see also In re General Bearing Corp.*, 136 B.R. 361, 368 (Bankr. S.D.N.Y. 1992).

43. One or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code applies to each holder of a Claim or Interest in the Digital Imaging Patent Assets. Holders of Claims and Interests who either do not object or who withdraw their objections to the Motion are deemed to have given consent to the Sale pursuant to section 363(f)(2) of the Bankruptcy Code. One or more of the other subsections of section 363(f) of the Bankruptcy Code apply to those holders who do object to the Motion, or to all of their Claims and Interests. All holders of Claims or Interests are adequately protected within the meaning of section 363(e) of the Bankruptcy Code, because their Claims and Interests, if any, either will (a) be assumed by the Successful Bidder(s) as a Permitted Encumbrance or (b) attach to the proceeds of the Sale, in the same order of priority and with the same validity, force and effect that such Claim or Interest holder had before the Sale, subject to any rights, claims and defenses of the Debtors, their estates, or any other party in interest, as applicable, or as otherwise provided herein.

44. A sale of the Digital Imaging Patent Assets free and clear of Claims and Interests is required to maximize the value of the Digital Imaging Patent Assets. If the Digital

Imaging Patent Assets are not sold free and clear of all Claims and Interests, or if a Successful Bidder or its assets (including the Digital Imaging Patent Assets) would, or in the future could, be liable for any such Claim or Interest (other than the Permitted Encumbrances), potential purchasers would not be willing to enter into a patent sale agreement with the Debtors and would not consummate the Sale. Moreover, a sale of the Digital Imaging Patent Assets, other than one free and clear of all Claims and Interests (other than the Permitted Encumbrances), would provide substantially less value and certainty for the Debtors' estates than the proposed Sale. Therefore, a Sale that is free and clear of all Claims and Interests is in the best interests of the Debtors, their estates and creditors and all other parties in interest. A sale free and clear of Claims and Interests (other than Permitted Encumbrances) is especially appropriate in this case because any lien or claim on, in, to or against the Digital Imaging Patent Assets existing immediately prior to the closing of the Sale will attach to the sale proceeds with the same validity, priority, force and effect as it had at such time, subject to the rights and defenses of the Debtors or any party in interest. The Debtors submit that holders of Claims and Interests, if any, will be sufficiently protected by the availability of the proceeds of the sale to satisfy their Claims and Interests.

**B. Approval of the Bidding Procedures is Fair, Reasonable, Appropriate and in the Best Interests of the Debtors' Estates and Their Creditors**

45. The primary aim of any proposed sale of property of a debtor's estate is to maximize benefits to the debtor's estate. *See, e.g., Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993) ("It is a well-established principle of bankruptcy law that the . . . [debtors'] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.") (quoting *Cello Bag Co. v. Champion*

*Int'l Corp. (In re Atlanta Packaging Prods., Inc.)*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)); *see also In re GSC, Inc.*, 453 B.R. at 169. To obtain approval for a proposed sale of assets, a debtor must be able to demonstrate that the “proffered purchase price is the highest and best offer” under the circumstances of the case. *In re Integrated Res., Inc.*, 135 B.R. 746, 750 (Bankr. S.D.N.Y. 1992), *aff'd*, 147 B.R. 650 (S.D.N.Y. 1992). *See also Four B. Corp. v. Food Barn Stores, Inc. (In re Food Barn Stores, Inc.)*, 107 F.3d 558, 564-65 (8th Cir. 1997) (recognizing that, in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”).

46. Courts frequently approve the implementation of competitive bidding procedures to facilitate an asset sale outside of the ordinary course of business as a means to ensure that such sale will generate the highest return for a debtor’s estate. *See, e.g., In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) (“[C]ourt-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates.”).

47. In the interests of maximizing sale proceeds, courts have the authority to approve a bidding and sale process that accounts for the unique character of the assets sold or for other unique circumstances. *See, e.g., In re Fin. News Network, Inc.*, 980 F.2d at 170 (affirming that “the involved and somewhat speculative nature of the assets being sold required the bankruptcy court to adopt a fluid bidding process that allowed both parties at various times to amend their offers”); *In re Chrysler LLC*, 576 F.3d at 118 (affirming bankruptcy court’s approval of the sale of substantially all of the assets of the debtor at an early stage of the bankruptcy as justified in order to avoid liquidation of the debtor’s business for a significantly lower value); *In re Motors Liquidation Co.*, 430 B.R. 65, 83 (S.D.N.Y. 2010) (same).

48. The Bidding Procedures, as set forth above, are designed to maximize the value of the Digital Imaging Patent Assets by establishing “ground rules” for the bidding process, including rules governing the manner in which bidders and bids become Qualified Bidders and Qualified Bids, the receipt and negotiation of bids received, the ultimate selection of the Successful Bidder(s) and the Court’s approval of the consummation of the Sale. The Bidding Procedures are procedurally and substantively fair to all parties and will allow all interested potential purchasers a full, fair and reasonable opportunity to qualify as Qualified Bidders and submit the highest or otherwise best offer to purchase the Digital Imaging Patent Assets.

- i. *A Flexible Sale Process for the Digital Imaging Patent Assets is Fair, Reasonable and Will Produce the Highest or Best Price under the Circumstances*

49. The sale process contemplated by the Bidding Procedures is justified and reasonable given the unique nature of the Digital Imaging Patent Assets. The unique nature of the assets defies a rigidly defined auction process. Rather, the Debtors and their advisors have determined that a sale process that is tailored to the Digital Imaging Patent Assets and the market for such assets would best allow the Debtors to maximize the proceeds from a Sale and obtain an important source of financing for their continued restructuring and transformation.

50. As described above, interest in competitive bidding for the Digital Imaging Patent Assets has been chilled by potential purchasers’ reluctance to act as a “stalking horse” bidder in a conventional, public auction. The recent auction of the patent assets of Nortel Networks, Inc. (“**Nortel**”) illustrates the substantial risk that a “stalking horse” bidder for valuable intellectual property, having revealed important information to its competitors in the process, may still lose at the auction. In April 2011, Google, Inc. (“**Google**”) submitted a “stalking horse” bid of \$900 million for Nortel’s patent assets, motivated by a desire to deter and defend against patent litigation by competitors and others. Though Google was reportedly

expected to emerge as the successful bidder, the Nortel patent assets were eventually sold to a consortium of rival bidders for \$4.5 billion after several days of bidding at the auction. From observing this experience, potential bidders for the Digital Imaging Patent Assets are likely to be reluctant to invest considerable time and resources in negotiating a stalking horse bid, disclose sensitive information, and yet fail to obtain the assets through the auction process. While this risk is inherent in any competitive sale process, the Debtors and Lazard have found in their marketing efforts that even interested bidders are unconvinced that the likelihood of success at a public auction justifies the costs of entry as a “stalking horse” with an opening bid at a level acceptable to the Debtors, or that typical bid protections such as break-up fees will be sufficient to offset those costs. Moreover, the likely bidders in this case are adversaries in a highly competitive market for valuable patented technologies, and special competitive dynamics for the industry and the concentration of infringement targets discourage the public articulation of accurate pricing information by bidders well in advance of auction without a meaningful commitment in return from the Debtors.

51. Furthermore, the rationale that typically supports a public auction is inapplicable to the Debtors’ sale of the Digital Imaging Patent Assets. A debtor’s decision to follow the public auction approach may be based on (i) the need to publicize the sale and the assets, (ii) a potentially large market for the assets and (iii) the existence of timing and liquidity constraints which preclude an adequate exploration of the marketplace prior to the commencement of the sale process. These considerations do not apply to the sale of the Digital Imaging Patent Assets, which have already been fully marketed over an extended period of time. The Debtors’ reiterated their intention to sell the Digital Imaging Patent Assets in their first day motions in these chapter 11 cases. Moreover, for approximately the past year, the Debtors’

interest in selling the Digital Imaging Patent Assets has been widely known as a result of national and international media coverage regarding its restructuring efforts and the commencement of these chapter 11 cases. Any interested party wishing to propose an acquisition of all or part of the Digital Imaging Patent Assets has had ample notice, and, pursuant to the Bidding Procedures, will have full opportunity to participate in the sale process.

52. In light of challenges arising from the nature of the market for the Digital Imaging Patent Assets and the make-up of potential bidders described above, the Debtors have concluded that a sale process that incorporates elements of flexibility for the Debtors while setting forth clear, fair and reasonable rules for participation for interested parties, is necessary for the Debtors to obtain the highest and best value for the Digital Imaging Patent Assets.

53. The Bidding Procedures lay out a fair and competitive process that allows the Debtors to adapt and tailor a sale process based on market exigencies. By permitting the Debtors to engage in exclusive negotiations with a Qualified Bidder or to conduct an Auction for all or any portion of the Digital Imaging Patent Assets, the Bidding Procedures allow the Debtors to be responsive to the bids and proposals of interested parties. Further, the Debtors' ability to market and sell either the DC Portfolio or the KISS Portfolio to the same purchaser or separate purchasers, or to sell one portfolio and not the other, will allow the Debtors to structure a transaction that optimizes the value of the Digital Imaging Patent Assets to the Debtors' estates.

ii. *A Confidential Competitive Bidding Process is Fair and Reasonable and Provides a Benefit to the Debtors' Estate and its Creditors*

54. In addition to the need for flexibility in determining the course of the sale process, the Debtors believe that a confidential bidding process is essential to the maximization of the value of the Digital Imaging Patent Assets for the benefit of their estates, creditors and other stakeholders. Section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 provide

bankruptcy courts with the power to issue orders that will protect entities from any harm that could result from the disclosure of certain confidential information. The Bidding Procedures protect potential purchasers and encourage their participation in the bidding process by ensuring that the identities of bidders, the existence and terms and conditions of bids, and other non-public information will be kept confidential from other bidders, will not be used by the Debtors or the Reviewing Creditors for purposes other in connection with the evaluation of bids during the Bidding Process and will not be obtained by the Successful Bidder(s) after the conclusion of the Bidding Process.

55. By requiring that the identities of bidders, the existence and terms and conditions of bids and other sensitive commercial information remain confidential, and by establishing *in camera* court proceedings for objections by the Reviewing Creditors during the Bidding Process, the Bidding Procedures reduce the risk to bidders of exposing themselves during the sale process, thus encouraging participation and enabling the Debtors to receive the best possible value for the Digital Imaging Patent Assets from a larger pool of interested purchasers.

iii. *The Bid Protections Contemplated by the Bidding Procedures are Fair and Reasonable and Provide a Benefit to the Debtors' Estate and its Creditors*

56. The use of bid protections, including break-up fees, no-shop provisions and expense reimbursement, substantially increases the likelihood that a debtor will secure a contractually committed bidder at a price the debtor believes is fair and reasonable, allowing the debtor to enhance the sale value of its assets through a competitive sale process. The inclusion of such bid protections has become an established and necessary practice as part of the sale process in chapter 11 cases. In approving bidding incentives in the context of a sale under section 363 of the Bankruptcy Code, courts in this district apply the “business judgment rule,”

which proscribes judicial second-guessing of good-faith decisions made by a corporation's board of directors exercising its business judgment. *In re Integrated Res.*, 135 B.R. at 752 (“[T]he business judgment of the Debtor is the standard applied under the law in this district.”); *see also In re Integrated Res.*, 147 B.R. at 656 (“Parties opposing the proposed exercise of a debtor’s business judgment have the burden of rebutting the presumption of validity.”); *In re Metaldyne Corp.* 409 B.R. 661, 667 (Bankr. S.D.N.Y. 2009) (“[T]he Court is guided by the decisions in this jurisdiction emphasizing that the Court should not substitute its business judgment for that of the Debtors.”); *In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (bidding incentives may be “legitimately necessary to convince a white knight to enter the bidding by providing some form of compensation for the risks it is undertaking”).

57. It is well within a debtor’s business judgment to provide bidders with reasonable incentives and protections, notwithstanding that such bid protections by definition impose some limits on the bidding process. *See In re Integrated Res.*, 147 B.R. at 659 (break-up fee “may have deterred some bidding, but such deterrence must be weighed against the value of securing [the bidder’s] commitment. . . . [The debtor] properly balanced these conflicting concerns.”); *In re Crowthers McCall Pattern, Inc.*, 114 B.R. 877, 889 (Bankr. S.D.N.Y. 1990) (noting that no-shop provision did not bar other bidders from access to information from debtors, and that “limited deterrence is often necessary to bring prospective bidders to the table with serious bids”); *In re Adelpia Communications Corp.*, Case No. 02-41729 (REG) (Bankr. S.D.N.Y. Oct. 22, 2004) (granting prior approval of bid protections in favor of future bidders, including a no-shop provision, break-up fee and expense reimbursement). If a debtor has provided such bid protections based on a business judgment of their importance to the sale process and their attendant costs and benefits, then the debtor is entitled to a court’s presumption



that “in making a business decision the directors of [the debtor] acted on an informed basis, in good faith and in the honest belief that the action taken was in the [debtor’s] best interests.” *In re Integrated Res.*, 147 B.R. at 659.

58. In considering the validity of a break-up fee in bankruptcy, courts in this district consider (a) whether the relationship between the parties negotiating the break-up fee is tainted by self-dealing or manipulation, (b) whether the fee hampers rather than encourages bidding and (c) whether the amount of the fee is reasonable relative to the proposed purchase price. *Id.* at 657. In this case, any break-up fee will be the product of arm’s-length negotiations between the Debtors and a potential purchaser within the broader context of a competitive sale process and will be subject to the rights of the Reviewing Creditors as set forth in the Bidding Procedures. The break-up fee will not discourage or deter active bidding from other potential bidders, but reflects the time spent, efforts made and resources expended by a potential purchaser, and may be essential to securing the commitment of such purchaser. Under the Bidding Procedures, any termination or break-up fee given by the Debtors is limited to 2% of the net purchase price payable to the Debtors. Such a fee is reasonable in relation to the overall proposed purchase price and well within the market for such fees. *See, e.g., In re Tronox Inc.*, Case No. 09-10156 (ALG) (Bankr. S.D.N.Y. Sept. 23, 2009) (approving break-up fee of \$12.45 million, equal to 3% of sales proceeds); *In re Fortunoff Fine Jewelry and Silverware, LLC*, Case No. 08-10353 (JMP), 2008 WL 618983, at \*2-3 (Bankr. S.D.N.Y. Feb. 22, 2008) (approving break-up fee of 2.8%).

59. Courts have considered break-up fees to be administrative expenses of debtors’ estates, as they are “an actual and necessary cost and expense of preserving the debtor’s estate within the meaning of sections 503(b) and 507(a)(2) of the Bankruptcy Code.” *See In re*

*Ray Realty Fulton, Inc.*, Case No. 09-41225-dem, 2009 WL 2600760, at \*1 (Bankr. E.D.N.Y. Aug. 21, 2009). *See also In re Chrysler LLC*, Case No. 09-50002 (AJG), 2009 WL 1360869, at \*3 (Bankr. S.D.N.Y. May 7, 2009); *In re Lehman Bros. Holdings Inc.*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Sept. 17, 2008) (break-up fee deemed an actual and necessary cost and expense of preserving the debtors' estates within the meaning of section 503 of the Bankruptcy Code); *In re Fortunoff Fine Jewelry and Silverware, LLC*, 2008 WL 618983, at \*2 (purchasers granted an allowed administrative claim in the debtors' chapter 11 cases in an amount equal to the break-up fee).

60. The Debtors believe that amounts to be paid by the Debtors to the Successful Bidder(s) under the Sale Agreements, including any allowed claims for breach thereof and any amounts paid pursuant to a termination fee, break-up fee or other bidding protections granted by the Debtors with the consent of the Reviewing Creditors, will be actual and necessary costs of preserving the Debtors' estates. Granting priority to payments due under the Sale Agreement(s) assures bidders of the effectiveness of any break-up fees or similar protections provided by the Debtors, and provides an additional incentive for bidders to participate in the bidding process. The Debtors therefore request that any payments by the Debtors to the Successful Bidder(s) under the conditions set forth in the Sale Agreement(s) be approved as administrative expenses with priority pursuant to sections 503(b) and 507(a)(2) of the Bankruptcy Code.

61. The perceived insufficiency of break-up fees and the other buyer protections most commonly offered in a section 363 sale, however, has raised the barriers to participation in the sale process for the Digital Imaging Patent Assets. Consequently, the Debtors propose Bidding Procedures that allow for flexibility in the bid protections granted,

including not only a break-up fee and termination fees, but also ‘no-shop’ and similar exclusivity provisions, specific enforcement rights, reasonable expense reimbursement and other protections as the Debtors consider reasonable to provide the Successful Bidder(s) in light of the Successful Bid(s), subject to the rights of the Reviewing Creditors as set forth in the Bidding Procedures.

62. The Debtors submit that the factors used by courts to determine the appropriateness of a break-up fee are similarly applicable in considering the other bidding protections contemplated by the Bidding Procedures. These bidding incentives are and will be contemplated in good faith and will involve no self-dealing or manipulation of the sale process. They will not unfairly favor any bidder or impact the fairness or competitiveness of the sale process. Rather, the bid protections requested are intended to allow the Debtors to create incentives for interested parties to submit their highest or otherwise best bids, and optimize the value received from the Digital Imaging Patent Assets for their estates and creditors.

63. The rights of the Reviewing Creditors to be apprised regularly and on a current basis by the Debtors of the progress of the sale process and to have objections to proposed Sale Agreement(s) heard *in camera* on an expedited basis, will further ensure that any bid protections granted by the Debtors will be fair and reasonable with respect to all participants and will not adversely impact the competitiveness of the sale process.

64. The Debtors’ decision to proceed according to the Bidding Procedures is motivated by the need to encourage participation in the sale process and is informed by the Debtors’ and Lazard’s experience in marketing the Digital Imaging Patent Assets. In particular, the marketing and solicitation process undertaken thus far has demonstrated the severe constraints that would be imposed on the Debtors by a more conventional process involving only limited bid protections. The Debtors have thus made a reasonable and considered judgment that

the authority to negotiate different bid protections pursuant to the Bidding Procedures is necessary to encourage competitive bidding and maximize the value of the Digital Imaging Patent Assets. For the foregoing reasons, the Debtors respectfully submit that the bid protections contemplated by the Bidding Procedures are in the best interests of the Debtors' estates and are entitled to the Court's deference under the business judgment standard.

**C. The Successful Bidder(s) will be Good Faith Purchaser(s) and Should be Granted the Full Protection of Bankruptcy Code Section 363(m) and the Sale Agreement(s) Will Not Be the Subject of Collusive Bidding Under Bankruptcy Code Section 363(n)**

65. Bankruptcy Code section 363(m) protects a good-faith purchaser's interest in property purchased from a debtor notwithstanding that the sale conducted under Bankruptcy Code section 363(b) is later reversed or modified on appeal. Specifically, section 363(m) states that:

The reversal or modification on appeal of an authorization under [section 363(b)] . . . does not affect the validity of a sale . . . to an entity that purchased . . . such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale . . . were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) "affords 'finality to judgment by protecting good faith purchasers, the innocent third parties who rely on the finality of bankruptcy judgments in making their offers and bids.'" *Reloeb Co. v. LTV Corp (In re Chateaugay Corp.)*, No. 92 Civ. 7054 (PKL), 1993 WL 159969, at \*3 (S.D.N.Y. May 10, 1993) (quoting *In re Stadium Mgmt. Corp.*, 895 F.2d 845, 847 (1st Cir. 1990)); *see also Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (S.D.N.Y. 1994) ("Section 363(m) . . . provides that good faith transfers of property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal"); *In re Stein & Day, Inc.*, 113 B.R. 157, 162

(Bankr. S.D.N.Y. 1990) (“pursuant to 11 U.S.C. § 363(m), good faith purchasers are protected from the reversal of a sale on appeal unless there is a stay pending appeal”)

66. The Second Circuit has indicated that a party would have to show fraud or collusion between the buyer and the debtor in possession or trustee or other bidders in order to demonstrate a lack of good faith. See *Kabro Assocs. of West Islip, LLC v. Colony Hill Assocs. (In re Colony Hill Assocs.)*, 111 F.3d 269, 276 (2d Cir. 1997) (“[t]ypically, the misconduct that would destroy a [buyer]’s good faith status at a judicial sale involves fraud, collusion between the [buyer] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders”); see also *In re Angelika Films 57th, Inc.*, Nos. 97 Civ. 2239 (MBM), 97 Civ. 2241 (MBM), 1997 WL 283412, at \*7 (S.D.N.Y. 1997) (same; holding that purchaser’s status as an insider was not *per se* bad faith).

67. In this case, the Successful Bidder(s) will have engaged in the sale process for the Digital Imaging Patent Assets pursuant to the proposed Bid Procedures, and any sale agreement(s) proposed will be the product of arm’s-length, good-faith negotiations in a competitive bidding process. Indeed, and to that end, the Debtors have included a form patent sale agreement for bidders to use that was formulated by the Debtors to ensure that all parties are beginning on a level playing field. Moreover, the participation of the Reviewing Creditors in the sale process further ensures that the consideration to be received will be fair and reasonable. Based upon the record to be made at the Final Sale Hearing, the Debtors will request a finding that the Successful Bidder(s) are good-faith purchaser(s) entitled to the protections of Bankruptcy Code section 363(m).

68. The Debtors further submit that any sale of the Digital Imaging Patent Assets pursuant to the Bidding Procedures will not be the result of collusion and there will be no

indicia of bad faith between bidders. The purchase price under the Sale Agreement(s) will not be controlled by any agreement between potential or actual bidders within the meaning of section 363(n) of the Bankruptcy Code. The Successful Bidder(s) will not be either “affiliates” or “insiders” of any of the Debtors, as those terms are defined in sections 101(2) and 101(31) of the Bankruptcy Code, respectively, absent a specific order of the Court permitting a sale to an insider. The rights of the Reviewing Creditors pursuant to the Bidding Procedures safeguard against either the Debtors or the Successful Bidder(s) engaging in conduct that would tend to hinder, delay or defraud creditors or that impose costs and damages under section 363(n) of the Bankruptcy Code. At the Final Sale Hearing, the Debtors intend to demonstrate that the Sale Agreement(s) with the Successful Bidder(s) have been negotiated, proposed and entered into by all parties without collusion, in good faith and from arm’s length bargaining positions.

69. Accordingly, the Debtors will request that the Court make a finding at the Final Sale Hearing that the Sale Agreement(s) were negotiated at arm’s length and that the Successful Bidder(s) are entitled to the full protections of section 363(m) of the Bankruptcy Code, that the Sale Agreement(s) are not the subject of collusive bidding under section 363(n) of the Bankruptcy Code and that the Debtors and Successful Bidder(s) have not engaged in any conduct that would cause or permit the Sale Agreement(s) or any of the transactions contemplated thereby to be avoided, or that would result in the imposition of costs or damages under section 363(n) of the Bankruptcy Code.

**D. Notice of the Proposed Sale and the Proposed Dates for the Bid and Objection Deadlines and the Final Sale Hearing Are Reasonable under the Circumstances**

70. Bankruptcy Rules 2002(a) and (c), Local Rule 6004-1 and the Case Management Procedures require the Debtors to give notice to certain creditors of any proposed sale of their assets, including a disclosure of the time and place of the sale hearing, the terms and

conditions of the sale and the filing deadline for any related objections. The Debtors submit that notice of this Motion and the Conditional Sale Hearing to the Sale Notice Parties (as defined below), the Notice of Sale, publication of both such notices in *The Wall Street Journal* (U.S. Edition and Asia Edition) and *The Financial Times* (U.S. Edition and Asia Edition) and the Notice of Final Sale Hearing fully comply with Bankruptcy Rule 2002, Local Rule 6004-1 and the Case Management Procedures, as applicable, and include information sufficient to (a) enable interested parties to bid on the Digital Imaging Patent Assets pursuant to the Bidding Procedures and by the Bid Deadline and (b) inform such parties of the hearings to approve the Conditional Sale Order and the Final Sale Order and the related Objection Deadlines.

71. The Debtors further submit that the proposed dates for the Objection Deadlines are reasonable and appropriate under the circumstances and that no other notice beyond that described above is required in connection with the bidding process and Sale of the Digital Imaging Patent Assets.

**E. Privacy Ombudsman**

72. Under section 363(b)(1) of the Bankruptcy Code, if the sale of consumer information containing personally identifiable information relating to individual persons does not comply with the Debtors' consumer privacy policy, a consumer privacy ombudsman should be appointed in accordance with section 332 of the Bankruptcy Code. Because the Digital Imaging Patent Assets do not include personally identifiable information relating to any individual person, section 363(b)(1) does not apply and a consumer privacy ombudsman is not needed in connection with the Sale.

**Request for Relief under Bankruptcy Rule 6004(h)**

73. Pursuant to Bankruptcy Rule 6004(h), unless the court orders otherwise, any order authorizing the sale of property pursuant to section 363 of the Bankruptcy Code is

automatically stayed for 14 days after entry of such order. Fed. R. Bankr. P. 6004(h).

Bankruptcy Rule 6004(h) is designed to provide sufficient time for an objecting party to appeal before the order is implemented. Fed. R. Bankr. P. 6004(h) advisory committee's note.

However, time is of the essence in consummating the Sale. The Debtors believe that delays in the consummation of the Sale once binding agreements relating to the Digital Imaging Patent Assets have been entered into and approved by the Court would hamper their restructuring efforts. Therefore, it is imperative that the Conditional Sale Order and the Final Sale Order be effective immediately upon entry by the Court to permit the Sale to close without any further delay by providing that the 14-day stay under Bankruptcy Rule 6004(h) be waived.

#### **Filing of Documents under Seal**

74. Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the power to issue orders that will protect entities from any harm that could result from the disclosure of certain confidential information. Bankruptcy Rule 9018 details the procedures by which a party may move for relief under section 107(b) of the Bankruptcy Code, and provides that “[o]n motion, or on its own initiative, with or without notice, the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret or confidential research, development, or commercial information.” Fed. R. Bankr. P. 9018.

75. The Debtors believe it is necessary and appropriate that the Court (a) allow the Debtors to file redacted versions of the Sale Agreement(s) when the Debtors file the Notice of Final Sale and (b) allow any Bidder Confidential Information contained in any pleading or other document filed in connection with the Final Sale Hearing to be filed under seal and made available only to the Debtors and the Reviewing Creditors, unless otherwise permitted to be disclosed in accordance with the Bidding Procedures. The Debtors anticipate that portions of the executed Sale Agreement(s) will contain sensitive commercial information regarding the



Debtors' and Successful Bidders' businesses, and redacting such information is necessary because disclosure of this information would harm the Debtors and the Successful Bidders by giving competitors access to this highly confidential and proprietary information. Furthermore, as discussed above, the disclosure of Bidder Confidential Information would harm bidders by exposing sensitive information that can be used by industry competitors in patent litigation and for other strategic purposes, such that the costs of revealing such information have deterred potential bidders from submitting bids for the Digital Imaging Patent Assets. The redaction of the Sale Agreement(s) and related agreements and the filing under seal of Bidder Confidential Information is in the best interests of the Debtors and their estates, creditors and interest holders and all other parties in interest herein. The Debtors will file unredacted versions of the Sale Agreement(s) with the Court under seal.

**Notice**

76. Notice of this Motion, the hearing to be conducted on July 2, 2012 (the “**Conditional Sale Hearing**”) and the deadline for objecting to the relief requested herein as it pertains to the entry of the Conditional Sale Order shall be provided to: (a) the Office of the U.S. Trustee; (b) Milbank, Tweed, Hadley & McCloy LLP and Togut, Segal & Segal LLP, co-counsel to the Creditors' Committee; (c) Arent Fox LLP and Haskell Slaughter Young & Rediker, LLC, proposed co-counsel for the Official Committee of Retired Employees of the Debtors (d) counsel to the agent under the prepetition revolving credit facility; (e) U.S. Bank, National Association, as indenture trustee; (f) Wilmington Trust, National Association, as indenture trustee; (g) the Securities and Exchange Commission; (h) the Internal Revenue Service; (i) Davis Polk & Wardwell LLP, counsel to the DIP Agent; (j) the Environmental Protection Agency; (k) Akin Gump Strauss Hauer & Feld LLP, counsel to the Second Lien Noteholders Committee; (l) all entities reasonably known to have expressed an interest in a transaction with respect to the

Digital Imaging Patent Assets since July 2011; (m) all entities reasonably known to have asserted any Claim or Interest in the Digital Imaging Patent Assets; and (n) all parties requesting notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002 (collectively, the “**Sale Notice Parties**”).

77. In addition, promptly after filing this Motion, the Debtors will publish notice of this Motion, the Conditional Sale Hearing and the deadline for objecting to the relief requested herein as it pertains to the entry of the Conditional Sale Order, in *The Wall Street Journal* (U.S. Edition and Asia Edition) and *The Financial Times* (U.S. Edition and Asia Edition), in the form attached hereto as Exhibit G.

78. The Debtors respectfully submit that the foregoing notice procedures are reasonable and appropriate and that further notice of this Motion and the Conditional Sale Hearing is neither required nor necessary.

**No Prior Request**

79. No prior motion for the relief requested herein has been made to this or any other Court.

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request  
that the Court grant the relief requested herein and further relief as is just and proper.

Dated: June 11, 2012  
New York, New York

/s/ Andrew G. Dietderich  
\_\_\_\_\_  
Andrew G. Dietderich  
Michael H. Torkin  
Mark U. Schneiderman  
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- and -

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*Counsel to the Debtors and Debtors in  
Possession*

**Exhibit A**

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

In re:	)	Chapter 11
EASTMAN KODAK COMPANY, <i>et al.</i> , <sup>1</sup>	)	Case No. 12-10202 (ALG)
Debtors.	)	(Jointly Administered)

**ORDER (A) CONDITIONALLY AUTHORIZING THE SALE OF PATENT ASSETS  
FREE AND CLEAR OF CLAIMS AND INTERESTS AND (B) ESTABLISHING A  
COMPETITIVE BIDDING PROCESS**

Upon the motion (the “**Motion**”)<sup>2</sup> of Eastman Kodak Company (“**Kodak**”), on behalf of itself and its affiliated debtors and debtors in possession in these chapter 11 cases (collectively, the “**Debtors**”), for entry of an order (this “**Order**”), pursuant to sections 105(a), 107(b), 363, 365, 503 and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 9007 and 9014, 9018 and Local Rule 6004-1 (A) conditionally authorizing one or more sales (collectively, the “**Sale**”) of all or any portion of Kodak’s Digital Imaging Patent Assets free and clear of Claims and Interests (each as defined below) and (B) establishing a competitive bidding process; and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and all other parties in interest, as set forth herein; and upon consideration of the Declaration of [●] [Docket No. ●] and the Declaration of [●] [Docket No. ●]; and it appearing that the legal and factual bases set forth in the Motion and at the hearing

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<sup>1</sup> 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.

<sup>2</sup> Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

conducted on July 2, 2012 (the “**Conditional Sale Hearing**”) establish just cause for the relief granted herein; and after due deliberation thereon,

IT IS HEREBY FOUND AND DETERMINED THAT:<sup>3</sup>

**Jurisdiction, Venue and Final Order**

A. This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O).

B. Venue is proper in this District and in this Court pursuant to 28 U.S.C. §§ 1408 and 1409

C. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

D. Notwithstanding Bankruptcy Rule 6004(h), this Court expressly finds that there is no just reason for delay in the implementation of this Order.

**Notice of the Motion and Conditional Sale Hearing**

E. As set forth below and as evidenced by the affidavits of service previously filed with this Court, proper, timely, adequate and sufficient notice of the Motion and the Conditional Sale Hearing has been provided in accordance with sections 102(1) and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004 and 9014, applicable Local Rules and General Orders and the Case Management Procedures (the “**Case Management Procedures**”) annexed as Exhibit 1

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<sup>3</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact to the fullest extent of the law.

to the Order Authorizing the Establishment of Certain Notice, Case Management and Administrative Procedures, dated February 15, 2012 [Docket No. 362].<sup>4</sup>

F. Actual written notice of the Motion and the Conditional Sale Hearing and a reasonable opportunity to object or be heard with respect to the Motion and the relief requested therein has been afforded to all known interested entities, including to the following parties: (i) the United States Trustee for the Southern District of New York; (ii) Milbank, Tweed, Hadley & McCloy LLP and Togut, Segal & Segal LLP, co-counsel to the Creditors' Committee; (iii) Arent Fox LLP and Haskell Slaughter Young & Rediker, LLC, proposed co-counsel for the Official Committee of Retired Employees of the Debtors; (iv) counsel to the agent under the prepetition revolving credit facility; (v) U.S. Bank, National Association, as indenture trustee; (vi) Wilmington Trust, National Association, as indenture trustee; (vii) the Securities and Exchange Commission; (viii) the Internal Revenue Service; (ix) the Environmental Protection Agency; (x) Davis Polk & Wardwell LLP, counsel to Citicorp North America, Inc., as agent for the Debtors' postpetition secured lenders (the "DIP Agent"); (xi) Akin Gump Strauss Hauer & Feld LLP, counsel to the Ad Hoc Committee of the Second Lien Noteholders (the "Second Lien Noteholders Committee"); (xii) all parties requesting notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002; (xiii) all entities reasonably known to have expressed an interest in a transaction with respect to the Digital Imaging Patent Assets since July 2011 and (xiv) all entities reasonably known to have asserted any Claim or Interest in the Digital Imaging Patent Assets (collectively, the "**Sale Notice Parties**").

G. The Debtors published notice of the Conditional Sale Hearing and the time for filing an objection to the relief requested in the Motion as it pertains to the entry of this Order in

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<sup>4</sup> See Affidavit of Service [Docket No. •].

*The Wall Street Journal* (U.S. Edition and Asia Edition) and *The Financial Times* (U.S. Edition and Asia Edition) on [●], 2012.

H. The notice given was reasonable and appropriate and no further notice of the Conditional Sale Hearing and the relief granted herein is required.

#### **Property of the Estate**

I. The patents, patent applications and other assets listed on Exhibit B to the Motion (the “**Digital Imaging Patent Assets**”) are property of the Debtors’ estates and valid title thereto is vested in the Debtors’ estates within the meaning of section 541(a) of the Bankruptcy Code.

J. Except for the license agreements listed on Exhibit C to the Motion (the “**Scheduled Licenses**”), no Debtor is a party to any contract (written or oral) under which it is a licensor of rights to intellectual property (as defined in section 101 of the Bankruptcy Code, “**Intellectual Property**”) relating to the Digital Imaging Patent Assets.

K. No person has an interest in the Digital Imaging Patent Assets as a co-owner for purposes of section 363(h) of the Bankruptcy Code.

#### **Bidding Process**

L. The Bidding Procedures attached hereto as Exhibit 1 (the “**Bidding Procedures**”) are fair, reasonable and appropriate and are in compliance with the requirements of Local Rule 6004-1.

M. The Debtors believe that a bidding process conducted in accordance with the Bidding Procedures will provide a clear benefit to the Debtors’ estates by allowing the Debtors to seek to obtain the highest and best value for the Digital Imaging Patent Assets.



N. The Debtors have exercised sound business judgment, consistent with their fiduciary duties, in determining to conduct the bidding process in accordance with the Bidding Procedures.

O. There are sound business reasons for the Debtors to seek to consummate a Sale in the manner described in the Motion and the Bidding Procedures, as justified by the circumstances described in the Motion and the Lazard Declaration.

**Section 363(f) Is Satisfied**

P. Subject to the Bidding Procedures and entry of the Final Sale Order (as defined below), the Debtors are authorized to sell all or any portion of the Digital Imaging Patent Assets free and clear of all Claims and Interests, subject only to Permitted Encumbrances, and the Sale will not subject the Successful Bidder(s) (as defined in the Bidding Procedures) or the Successful Bidder(s)' assets to any liability for any Claims or Interests (other than Permitted Encumbrances) because, with respect to each creditor asserting a Claim or Interest, one or more of the standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code has been satisfied.

Q. Subject to paragraph 16 hereof and the Bidding Procedures, holders of Claims or Interests who did not object or who withdrew their objections to the Motion are deemed to have consented to the proposed Sale pursuant to section 363(f)(2) of the Bankruptcy Code. All holders of Claims and Interests are adequately protected — thus satisfying section 363(e) of the Bankruptcy Code — because their Claims and Interests, if any, either will (a) be assumed by the Successful Bidder(s) as a Permitted Encumbrance or (b) attach to the proceeds of the Sale, in the same order of priority and with the same validity, force and effect that such Claim or Interest holder had before the Sale, subject to any rights, claims and defenses of the Debtors, their estates, or any other party in interest, as applicable, or as otherwise provided herein.

IT IS HEREBY ORDERED THAT:

**General Provisions**

1. The Motion is GRANTED as set forth herein.
2. All objections to the Motion as it pertains to the entry of this Order that have not been withdrawn, waived or resolved in this Order, and all reservations of rights included therein, are hereby overruled on the merits with prejudice. All persons and entities that failed to timely object to the Motion as it pertains to the entry of this Order are deemed to have consented to the relief sought therein.

**Approval of the Bidding Process and  
Authorization to Enter into One or More Sale Agreements**

3. The Bidding Procedures are approved in their entirety.
4. The Debtors are authorized, but not required, to sell all or any portion of the Digital Imaging Patent Assets in compliance with, and subject to, the terms of this Order and the Bidding Procedures, subject to this Court's entry of a sale order (the "**Final Sale Order**"), substantially in the form to be attached to the Notice of Final Sale Hearing (as defined below).
5. Subject to each Reviewing Creditor's rights as set forth in the Bidding Procedures, the Debtors are authorized, but not required, to (a) enter into one or more agreements with the Successful Bidder(s) relating to the sale of all or any portion of the Digital Imaging Patent Assets, in such form as the Debtors may approve (such agreements, together with all schedules, exhibits and annexes thereto, the "**Sale Agreements**") and (b) provide, in a manner consistent with the Bidding Procedures, any such bid protections to the Successful Bidder(s) as the Debtors determine would benefit their estates (the "**Bidding Protections**").
6. Except as otherwise provided in the Sale Agreements and subject to each Reviewing Creditor's rights as set forth in the Bidding Procedures, (a) the Debtors' obligations

under the Sale Agreements shall be specifically enforceable against the Debtors and their estates to the extent specifically enforceable under applicable non-bankruptcy law and (b) all amounts, if any, to be paid by the Debtors to the Successful Bidder(s) under the Sale Agreements or the Bidding Protections, including any allowed claims for breach thereof, shall (w) constitute allowed administrative expenses of the estates pursuant to sections 503(b) and 507(a)(2) of the Bankruptcy Code, (x) be protected as provided herein, (y) not be altered, amended, discharged or affected by any plan proposed or confirmed in these cases without the prior written consent of such Successful Bidder(s) and (z) be due and payable if and when any Debtors' obligations arise under such Sale Agreements or Bidding Protections, in each case without further order of this Court.

7. A Sale to an "insider," as that term is defined in section 101 of the Bankruptcy Code, is not permitted by this Order.

**Sale Free and Clear**

8. Subject to entry of the Final Sale Order, the sale of all or any portion of the Digital Imaging Patent Assets shall be free and clear of all claims (as defined in section 101(5) of the Bankruptcy Code, "**Claims**") and all liens (statutory, contractual, or otherwise), pledges, mortgages, deeds of trust, security interests, hypothecations, charges, encumbrances, easements, encroachments, retentions of title, conditional sale arrangements, restrictive covenants, licenses, rights of first offer, rights of first refusal, options or any other limitations, restrictions, or interests of any kind (collectively, "**Interests**"), provided that the Digital Imaging Patent Assets shall be sold subject to the following ("**Permitted Encumbrances**"), to the extent such Permitted Encumbrances attach to particular Digital Imaging Patent Assets being sold:

- (a) the commitments to standards-setting organizations described on Exhibit F to the Motion (the “**Scheduled SSO Commitments**”);
- (b) the rights of any licensee of Intellectual Property under section 365(n) of the Bankruptcy Code in connection with a Scheduled License, to the extent such Scheduled License is rejected by the Debtors prior to, at or after consummation of the Sale;
- (c) the rights of any licensee of Intellectual Property relating to the Digital Imaging Patent Assets pursuant to any written license agreement approved by this Court after the date of this Order but prior to the consummation of the Sale; and
- (d) such other encumbrances or assumed liabilities expressly provided in the Sale Agreements.

9. All Claims and Interests (other than Permitted Encumbrances) shall attach to the sale proceeds, in the same order of priority and with the same validity, force and effect that such Claims and Interests had before the Sale, subject to any rights, claims and defenses of the Debtors, their estates, or any other party in interest, as applicable, or as otherwise provided herein.

#### Notice of Sale

10. The Debtors’ proposed notice, substantially in the form attached to the Motion as Exhibit D (the “**Notice of Sale**”), is sufficient to provide effective notice to all interested parties of the Bidding Procedures pursuant to Bankruptcy Rules 2002 and 6004 and the Case Management Procedures, and is hereby approved.

11. Within five (5) days after entry of this Order, the Debtors shall:

- (a) serve the Notice of Sale, together with a copy of this Order, upon the Sale Notice Parties in accordance with the Case Management Procedures; and
- (b) publish the Notice of Sale in *The Wall Street Journal* (U.S. Edition and Asia Edition) and *The Financial Times* (U.S. Edition and Asia Edition).

### **Notice of Final Sale Hearing**

12. The Debtors' proposed notice, substantially in the form attached to the Motion as Exhibit E (the "**Notice of Final Sale Hearing**"), is sufficient to provide effective notice to all interested parties of the Final Sale Hearing (as defined below) and the Sale pursuant to Bankruptcy Rules 2002 and 6004 and the Case Management Procedures, and is hereby approved.

13. A sale hearing (the "**Final Sale Hearing**") shall be held in this Court at **101 (ET) on August [20], 2012**. The Debtors may schedule an earlier date for the Final Sale Hearing on an expedited basis, provided that such date shall be no later than seven (7) days after service of the Notice of Final Sale Hearing, unless the Sale Agreement(s) provide for a longer period of time. The Final Sale Hearing may be adjourned or rescheduled without further notice by an announcement of the adjourned date at the Final Sale Hearing or by the filing of a hearing agenda.

14. Within two (2) Business Days after the Debtors enter into the Sale Agreements with the Successful Bidder(s), the Debtors shall serve the Notice of Final Sale Hearing, together with the proposed Final Sale Order and a copy of the Sale Agreement(s) (with any redactions as the Debtors deem appropriate in accordance with Bankruptcy Rule 9018), upon the Sale Notice Parties in accordance with the Case Management Procedures.

### **Objections to the Sale**

15. The deadline for objecting to the Sale shall be **4:00 p.m. (ET) on the day that is four (4) days prior to the Final Sale Hearing** (the “**Objection Deadline**”). At the Final Sale Hearing, only the following objections shall be considered by this Court:

- (a) the Debtors’ failure to comply with the Bidding Procedures or this Order;
- (b) the right of any secured creditor to credit bid for the Digital Imaging Patent Assets;
- (c) collusion or bad faith by the Successful Bidder(s) with respect to the Bidding Process or the entry into the Sale Agreements;
- (d) objections concerning the proposed Final Sale Order;
- (e) those objections permitted to be heard at the Final Sale Hearing pursuant to the Bidding Procedures; and
- (f) objections to terms and conditions in the Sale Agreements that constitute “Extraordinary Provisions” under the Amended Guidelines for the Conduct of Asset Sales (General Order M-383) and that were not previously disclosed in the Motion.

16. Any and all objections as contemplated by this Order (other than those objections subject to the dispute resolution provisions of the Bidding Procedures) must be: (a) in writing; (b) signed by counsel or attested to by the objecting party; (c) in conformity with the Bankruptcy Rules, the Local Rules and the Case Management Procedures; (d) filed with this Court; and (e) served in accordance with the Case Management Procedures so as to be received on or before the Objection Deadline. Failure to properly object by the Objection Deadline shall be deemed to be “consent” for purposes of section 363(f) of the Bankruptcy Code.

**Miscellaneous**

17. Nothing in this Order shall be construed as an authorization for the Debtors to assume, assign or reject any license of Intellectual Property.

18. Appointment of a consumer privacy ombudsman pursuant to sections 363(b)(1) or 332 of the Bankruptcy Code is not required in connection with the Sale.

19. The Debtors, in consultation with the Reviewing Creditors and subject to the Bidding Procedures, are authorized and empowered to execute and deliver such documents and to take and perform all actions necessary to implement and effectuate the relief granted in this Order, including taking all actions necessary to execute the Sale Agreements and consummate the transactions contemplated thereby and executing and delivering all other documents and instruments of assignment, transfer and sale that are necessary and appropriate to implement the Sale Agreements.

20. This Order shall be binding in all respects upon all holders of Claims or Interests in the Digital Imaging Patent Assets and any trustees, examiners, “responsible persons” or other fiduciaries appointed in these chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code.

21. The requirements set forth in Local Rule 9013-1(b) are satisfied.

22. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

23. This Order is immediately effective and enforceable, notwithstanding the possible applicability of Bankruptcy Rule 6004(h) or otherwise.

24. In the event there is a conflict between this Order and the Motion, this Order shall control and govern.

25. Nothing in this Order shall affect (a) the right of any Reviewing Creditor to object to the Debtors’ failure to comply with the Bidding Procedures or (b) the substantive rights of the

Debtors or any Reviewing Creditor relating to the resolution of any objection pursuant to the Bidding Procedures or otherwise.

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

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

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Allan L. Gropper  
United States Bankruptcy Judge



**Exhibit 1**

## **BIDDING PROCEDURES**

Eastman Kodak Company (“**Kodak**”) and certain of its subsidiaries (collectively, the “**Debtors**”) are debtors in possession in chapter 11 cases (jointly administered under Case No. 12-10202 (ALG)) (the “**Bankruptcy Cases**”) pending in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”).

On July [●], 2012, the Bankruptcy Court entered the Order (A) Conditionally Authorizing the Sale of Patent Assets Free and Clear of Claims and Interests and (B) Establishing a Confidential Bidding Process (the “**Conditional Sale Order**”) approving, among other things, the following “**Bidding Procedures**”.<sup>1</sup>

### **Key Dates for Potential Bidders**

These Bidding Procedures, among other things, provide interested parties with the opportunity to qualify and participate in an Auction (if any) and submit competing bids for the Digital Imaging Patent Assets. The Debtors shall, in the manner set forth herein, facilitate Potential Bidders (defined below) in conducting their respective due diligence investigations and shall accept bids submitted by Potential Bidders in accordance with the procedures set forth herein until **5:00 p.m., Eastern Time, on July 30, 2012.**

The key dates (subject to modification in the manner set forth herein) for the Bidding Process (defined below) are as follows:

July 16, 2012 at 5:00 P.M. ET	Deadline for submission of Preliminary Bid Documents (defined below)
July 30, 2012 at 5:00 P.M. ET	Bid Deadline (defined below)
August 2, 2012 at 5:00 P.M. ET	Date by which Potential Bidders will be Named as Qualified Bidders
August 8, 2012 at 10:30 A.M. ET	Auction
August 13, 2012 at 5:00 P.M. ET	Final Date for Designation of Successful Bidder(s)
August [20], 2012 at [●] [A.M./P.M.] ET	Anticipated Date for Final Sale Hearing

### **Publication Notice**

<sup>1</sup> Capitalized terms used but not otherwise defined herein have the meanings set forth in the Conditional Sale Order.

Within five (5) days of entry of the Conditional Sale Order or as soon as practicable thereafter, the Debtors shall publish notice of these Bidding Procedures in *The Wall Street Journal* (U.S. Edition and Asia Edition) and *The Financial Times* (U.S. Edition and Asia Edition).

### **Confidentiality**

The Debtors and each Reviewing Creditor (defined below) shall be the only parties made aware of the identity of bidders and shall be obligated to maintain in confidence the identity of all proposed bidders, Potential Bidders (defined below) and Qualified Bidders (defined below), the existence and terms and conditions of any bid or proposed sale documentation and other non-public information relating to the bidding process (the “**Bidding Process**” and, such information, the “**Bidder Confidential Information**”). Bidder Confidential Information shall be subject to each Reviewing Creditor’s (and its Advisors’, as applicable) existing confidentiality agreements or other confidentiality agreements reasonably acceptable to the Debtors. For greater certainty, with respect to the DIP Agent, the only confidentiality agreement that shall apply shall be section 9.09 of the Debtors’ Debtor-in-Possession Credit Agreement, dated January 20, 2012 (as amended from time to time, the “**DIP Credit Agreement**”). The DIP Agent agrees not to reveal the identity of (or any information that reasonably could be expected to reveal the identity of) any proposed bidder (including any Potential Bidder or Qualified Bidder) to any Lender (as defined in the DIP Credit Agreement). Each recipient of Bidder Confidential Information agrees to use such Bidder Confidential Information only in connection with the evaluation of bids during the Bidding Process, the dispute resolution procedures set forth below, any Final Sale Hearing or otherwise in connection with these Bankruptcy Cases; provided that such information shall at all times be treated in accordance with the confidentiality arrangements referred to herein and, to the extent such Bidder Confidential Information is to be contained in any pleading or other document filed with the Bankruptcy Court, such Bidder Confidential Information shall be filed under seal.

Notwithstanding the foregoing, and in addition to the disclosures permitted under the confidentiality agreements described above and the dispute resolution procedures contained herein, (a) the Debtors may disclose (i) the identity of the Successful Bidder(s) and the terms and conditions of the Successful Bid(s) after execution of the Sale Agreements with such Successful Bidder(s), (ii) the identity of any bidder with the prior written consent of such bidder, (iii) the price and material terms of any bids received, but not including the identity of the bidder making such bid or any information that could reasonably be expected to reveal the identity of such bidder, solely for the purpose of indicating to other bidders the then-highest bid(s) and (iv) in consultation with any bidder, such other information regarding such bidder as the Debtors determine is necessary to obtain entry of the Final Sale Order and (b) the Debtors and each Reviewing Creditor may disclose Bidder Confidential Information to each of its legal and financial advisors who have executed confidentiality agreements or otherwise have confidentiality obligations to the Debtors or the Debtors’ estates, or with respect to counsel to the DIP Agent, have confidentiality obligations to the DIP Agent (collectively, “**Advisors**”). Furthermore, for the avoidance of doubt, the Reviewing Creditors and those persons or individuals with whom the Reviewing Creditors are authorized to share Bidder Confidential

Information pursuant to their respective confidentiality arrangements may disclose any Bidder Confidential Information to one another.

The “**Reviewing Creditors**” shall consist of the Creditors’ Committee, the DIP Agent and the Second Lien Steering Committee, each communicating with the Debtors through their respective Advisors.

Solely for purposes of these Bidding Procedures, “**Second Lien Steering Committee**” shall consist of a number of members of the Ad Hoc Committee of Second Lien Noteholders reasonably acceptable to the Debtors who have executed confidentiality agreements with the Debtors, in form and substance reasonably acceptable to the Debtors.

The Debtors shall keep the 1114 Committee's Advisors apprised, in a timely manner, of all material aspects of the Bidding Process. In addition, the 1114 Committee's Advisors shall be entitled to (a) observe at any Auction of the Digital Imaging Patent Assets and (b) be noticed, in a timely manner, of and heard at all proceedings (in camera or otherwise) related to the Bidding Process. The 1114 Committee and its Advisors shall be subject to the same confidentiality requirements as the Reviewing Creditors.

#### **Deadline to Meet Preliminary Participation Requirements**

In order to participate in the Bidding Process, each interested person or entity must deliver the following documents (the “**Preliminary Bid Documents**”) to the Debtors’ counsel and Lazard (defined below), unless otherwise determined by the Debtors after consultation with the Reviewing Creditors:

- (a) a confidentiality agreement signed by the applicable bidder (a “**Bidder Confidentiality Agreement**”), which shall inure to the benefit of any purchaser of the Digital Imaging Patent Assets, and shall be substantially in the form attached hereto as Appendix A or, after consultation of the Reviewing Creditors, in such other form as the Debtors and such bidder may agree; provided that if such person or entity has already entered into a confidentiality agreement with Kodak in connection with the Sale, such agreement (together with any amendments or supplements thereto) shall be deemed to be a Bidder Confidentiality Agreement for purposes of these Bidding Procedures; and
- (b) preliminary proof of the financial capacity of such person or entity to close the Sale, which may include current unaudited or verified financial statements of such person or entity (or, if the entity is formed for the purpose of acquiring the Digital Imaging Patent Assets, the party that will fund the purchase price and bear liability for a breach of any definitive agreement), the adequacy of which the Debtors and their Advisors will determine in their discretion, after consultation with the Reviewing Creditors.

The Debtors may, in consultation with the Reviewing Creditors, exclude from participation in the Bidding Process any bidder that has not delivered to the Debtors' counsel and Lazard Preliminary Bid Documents acceptable to the Debtors on or prior to **5:00 p.m., Eastern Time, on July 16, 2012**. The Debtors will promptly forward the Preliminary Bid Documents following receipt thereof to each Reviewing Creditor's respective legal Advisors. No entity or consortium will be (a) considered a Potential Bidder, (b) qualified as a Qualified Bidder or (c) permitted to participate in the Auction if such entity or member of such consortium participates in more than one bid without the prior consent of the Debtors, in consultation with the Reviewing Creditors.

Each bidder submitting timely and acceptable Preliminary Bid Documents shall qualify as a "**Potential Bidder**." The Debtors will provide each Potential Bidder with an electronic copy of the form Patent Sale Agreement that was previously shared with the Reviewing Creditors, together with all schedules, exhibits and annexes thereto (the "**Form Agreement**"), through access to a confidential electronic data room (the "**Data Room**").

#### **Expense Reimbursement**

The Debtors do not currently intend to provide expense reimbursement to any Potential Bidder. The Debtors may decide, with the consent of the Reviewing Creditors, to provide expense reimbursement to any Potential Bidder. Any agreement to provide such expense reimbursement may be filed under seal with the Court.

#### **Due Diligence**

The Debtors shall provide access to the Data Room to the Potential Bidders and may, in their discretion, provide such other due diligence access or additional information as may be reasonably requested by any Potential Bidder, subject in each case to the terms of the Bidder Confidentiality Agreement. All due diligence requests shall be directed to David Descoteaux (t: 212.632.6657, email: david.descoteaux@lazard.com) or Benjamin Tisdell (t: 212.632.6855, email: benjamin.tisdell@lazard.com) at Lazard Frères & Co. ("**Lazard**").

Each Potential Bidder who submits a bid will be deemed to acknowledge and represent that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the assets and liabilities of the Debtors and their affiliates in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guarantees whatsoever, whether express, implied, by operation of law or otherwise, regarding the Digital Imaging Patent Assets, the Debtors or their affiliates, or the completeness of any information provided in connection with its bid or the Bidding Process, except to the extent expressly stated in definitive documentation entered into by the Debtors and the Successful Bidder(s).

#### **Deadline for Qualified Bids**

A Potential Bidder who desires to make a bid must deliver a bid that satisfies all of the bid requirements attached hereto as Appendix B (the “**Bid Requirements**”) so as to be received by the Debtors’ counsel, Lazard and counsel to each Reviewing Creditor, no later than **5:00 p.m., Eastern Time, on July 30, 2012** (the “**Bid Deadline**”). The Debtors will forward each bid promptly following receipt thereof to the legal Advisors of each Reviewing Creditor.

A Potential Bidder who submits a bid prior to the Bid Deadline that, in the Debtors’ discretion after consultation with the Reviewing Creditors, satisfies all of the Bid Requirements and the Due Diligence Requirements (defined below) shall be a “**Qualified Bidder**” and its submitted bid will constitute a “**Qualified Bid.**” The Debtors may, on two (2) Business Days’ notice to and after consultation with the Reviewing Creditors, exclude from participation in the Bidding Process any Potential Bidder who does not submit a Qualified Bid by the Bid Deadline. The Debtors will notify each Potential Bidder by **5:00 p.m., Eastern Time, on August 2, 2012**, whether such Potential Bidder qualifies as a Qualified Bidder.

The Debtors may solicit bids on all or any portion of the Digital Imaging Patent Assets and may group or exclude Digital Imaging Patent Assets as the Debtors determine is in the best interests of their estates after consultation with the Reviewing Creditors.

### **Auction**

In the event that, on or before the Bid Deadline, the Debtors receive more than one Qualified Bid, the Debtors may conduct an auction (the “**Auction**”) upon notice to all Qualified Bidders at the offices of Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004 at **10:30 a.m., Eastern Time, on August 8, 2012**, or such other time, date or place as the Debtors may determine in consultation with the Reviewing Creditors.

Prior to and during the Auction, the Debtors may employ and announce such procedures as they determine appropriate under the circumstances after consultation with the Reviewing Creditors, including, without limitation, any partnering of Qualified Bidders, any minimum incremental bid requirements and the amount of time allotted to make subsequent bids. To the extent applicable, the Debtors shall provide for a court reporter to be present at and prepare a transcript of the Auction, in which case, the transcript for the Auction shall be filed with the Bankruptcy Court under seal.

Notwithstanding the foregoing, the Debtors may, at any time after the Bid Deadline, on two (2) Business Days’ notice to and after consultation with the Reviewing Creditors, engage in exclusive negotiations with a Qualified Bidder and, subject to the consent of the Reviewing Creditors, enter into a Sale Agreement with such Qualified Bidder without prior notice to any other Qualified Bidder, if the Debtors, in their business judgment, determine that doing so would be in the best interests of the Debtors’ estates and creditors.

### **Evaluation of Qualified Bids**

The Debtors shall consider the views of the Reviewing Creditors and may consider any and all other factors consistent with their obligations under the Bankruptcy Code and applicable state law when determining the value of a Qualified Bid, including, without limitation, items such as the net value and recovery to the Debtors' estates provided by such Qualified Bid, the total consideration to be received by the Debtors and the form of such consideration, the number and complexity of transactions that would be required to consummate the Qualified Bid, the number of counterparties to such transactions, the amount of assets included or excluded from the Qualified Bid, the number, type and nature of any changes to the Form Agreement, whether the Qualified Bid contemplates the assumption of liabilities and the likelihood and timing of consummating such transactions. The Debtors' determination of the value of a Qualified Bid, or the relative value of Qualified Bids shall not be subject to challenge by any Qualified Bidder; provided that the Debtors' determination shall not be binding on the Reviewing Creditors.

Only the Debtors (and their Advisors) and the Reviewing Creditors (and each of their respective Advisors) will be entitled to review Qualified Bids (which, for the avoidance of doubt, shall be treated as Bidder Confidential Information) and only Qualified Bidders will be entitled to make subsequent bids. Each Qualified Bidder will be required to confirm that it has not engaged or attempted to engage in any collusion with respect to the bidding or the Sale.

#### **Due Diligence from Bidders**

Each Qualified Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their representatives (the "**Due Diligence Requirements**"). If a Reviewing Creditor believes additional information is required from a Qualified Bidder, such Reviewing Creditor shall make additional due diligence requests to the Debtors (and not directly to any Qualified Bidder).

#### **Selection of Successful Bid**

The Debtors reserve the right to (i) determine in their discretion, subject to the consent of the Reviewing Creditors, which bid from a Qualified Bidder or combination of bids from Qualified Bidders is the highest or best bid for all or any portion of the Digital Imaging Patent Assets (such bids, consented to by the Reviewing Creditors or otherwise approved by the Bankruptcy Court, the "**Successful Bid(s)**" and the bidder(s) making such bid(s), the "**Successful Bidder(s)**") and (ii) reject at any time, without liability, any offer that the Debtors, in their discretion, and on two (2) Business Days' notice to and after consultation with the Reviewing Creditors, deem to be (x) inadequate or insufficient, (y) not in conformity with the requirements of the Conditional Sale Order, the Bankruptcy Code, the Bankruptcy Rules or any order of the Bankruptcy Court entered in connection herewith or (z) contrary to the best interests of the Debtors' estates and creditors. The Debtors shall be under no obligation to designate a Successful Bidder. The Debtors may designate separate Successful Bidders for separate portions of the Digital Imaging Patent Assets, including for each of the DC Portfolio and the KISS

Portfolio, or may designate one (or a combination of) Successful Bidder(s) for all of the Digital Imaging Patent Assets. For the avoidance of doubt, the Debtors shall not accept any bid (whether or not such bid is a Qualified Bid) for any of the Digital Imaging Patent Assets after the close of the Auction (if any).

### **Dispute Resolution**

The Debtors shall, on a current basis, keep the Reviewing Creditors regularly apprised of the progress and content of discussions with Potential Bidders and Qualified Bidders (after their qualification), the terms and conditions of draft sale agreements and the progress of the Bidding Process. The Debtors and each Reviewing Creditor shall work together in good faith to resolve any potential concerns and objections.

If a Reviewing Creditor objects (or does not consent) to an action proposed to be taken by the Debtors, for which its consent is required under these Bidding Procedures, then prior to taking such proposed action, the Debtors may, on an expedited basis (but on not less than two (2) Business Days' prior notice), seek an emergency in camera hearing with the Bankruptcy Court to resolve such Reviewing Creditor's objection (or lack of consent). If a Reviewing Creditor objects to an action proposed to be taken by the Debtors, with respect to which the Debtors were required to consult with the Reviewing Creditors, such Reviewing Creditor may, on an expedited basis (but on not less than two (2) Business Days' prior notice), seek an emergency in camera hearing with the Bankruptcy Court to resolve such objection. Such dispute shall remain confidential in accordance with the terms of the confidentiality agreements referred to in the confidentiality provisions of these Bidding Procedures and any filings with respect to such dispute shall be served on and made available only to the Debtors (and their Advisors) and the Reviewing Creditors (and each of their respective Advisors). Only the Debtors (and their Advisors) and the Reviewing Creditors (and each of their respective Advisors) shall be entitled to attend and receive formal notice of the in camera hearing unless otherwise ordered by the Bankruptcy Court. The Bankruptcy Court's resolution of such dispute during any in camera hearing shall be binding on the Debtors and each Reviewing Creditor and, to the extent determined by the Bankruptcy Court, shall override any lack of consent by any Reviewing Creditor for the purpose of such issue under these Bidding Procedures.

To the extent the Debtors decline to seek resolution of an objection in the manner described above, the Debtors may proceed directly to a Final Sale Hearing, in which case the Reviewing Creditors shall be entitled to raise any timely filed objections at such hearing; provided that any Bidder Confidential Information to be contained in any pleading filed in connection with the Final Sale Hearing shall be filed entirely under seal and made available only to the Debtors and the Reviewing Creditors (but otherwise subject to the terms hereof).

For purposes of these Bidding Procedures, (a) any action requiring the consent of a Reviewing Creditor may be satisfied by a written statement from such Reviewing Creditor that such Reviewing Creditor does not object to such action and (b) any consent or written statement



from a Reviewing Creditor may be obtained by email from the legal Advisors of such Reviewing Creditor.

**Notwithstanding anything contained herein, the Debtors may not execute any Sale Agreement(s) unless they have the consent of each Reviewing Creditor. Absent such consent, the Debtors may seek Bankruptcy Court approval of any such unexecuted Sale Agreement(s) and the Reviewing Creditors shall have all rights under applicable law to object thereto.**

### **Acceptance and Binding Nature of Contract**

The Debtors shall be deemed to have accepted a Qualified Bid with the consent of the Reviewing Creditors only when (i) the Debtors declare that such bid is a Successful Bid (in accordance with the terms hereof) and (ii) definitive Sale Agreement(s) (in a form as to which the Reviewing Creditors have given their consent) are executed in respect thereof, in each case, in accordance with these Bidding Procedures. The Debtors shall declare the Successful Bid(s) no later than **5:00 p.m., Eastern Time, on August 13, 2012** or such other date as ordered by the Bankruptcy Court or as modified pursuant to the terms of these Bidding Procedures.

**Except as otherwise expressly provided for herein, including the provisions of these Bidding Procedures relating to dispute resolution, no further Bankruptcy Court approval is necessary for the execution and delivery of any Sale Agreement(s) (consented to by the Reviewing Creditors) by the Debtors in accordance with these Bidding Procedures. Any Sale Agreements, executed in accordance with these Bidding Procedures (including the immediately preceding sentence), shall be binding on the Debtors and the Successful Bidder(s), and may include such provisions as the Debtors consider reasonable to provide the Successful Bidder(s) in light of the Successful Bid(s), including ‘no-shop’ and similar exclusivity provisions, specific enforcement rights to pursue entry of the Final Sale Order, cash termination and break-up fees,<sup>2</sup> reasonable expense reimbursement and other protections.**

After execution of definitive documentation with the Successful Bidder(s), the Final Sale Hearing will be held before the Bankruptcy Court on an expedited basis in accordance with the Conditional Sale Order and these Bidding Procedures. At the Final Sale Hearing, the Bankruptcy Court will consider the Successful Bid(s) or such other bids as the Debtors seek to have approved and the relief proposed to be granted in the Final Sale Order, and will consider only those objections filed in accordance with the Conditional Sale Order and these Bidding Procedures.

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<sup>2</sup> The cash amount of any termination or break-up fee shall not exceed 2% of the net purchase price payable to the Debtors without prior order of the Bankruptcy Court (which order may be obtained at an in camera hearing on not less than two (2) days prior notice to the Reviewing Creditors).

**Return of Good-Faith Deposit**

Each Good Faith Deposit (as defined in the Bid Requirements) shall be returned to each Qualified Bidder not selected by the Debtors as the Successful Bidder(s) by no later than the fifth (5th) Business Day following the entry by the Bankruptcy Court of the Final Sale Order. The Good Faith Deposits of the Successful Bidder(s) will be retained by the Debtors in accordance with the terms of the Sale Agreements executed with the Successful Bidder(s).

**Beneficiaries; Modification of Procedures; Reservation of Rights**

No person or entity other than the Debtors shall be a beneficiary of or have the right or standing to enforce these Bidding Procedures; provided that nothing herein shall limit the consent, consultation or objection rights of any Reviewing Creditor as provided herein and in the Conditional Sale Order, or any Reviewing Creditor's right or standing to enforce such rights.

The Debtors may amend or modify these Bidding Procedures (including any dates set forth herein) at any time and in any manner with the consent of the Reviewing Creditors, without prior notice to any other person. Notwithstanding the immediately preceding sentence, the Debtors, in consultation with the Reviewing Creditors, may amend the Bidding Procedures to provide for a non-confidential auction format; provided that if a Qualified Bidder elects not to participate in such non-confidential auction, any Bidder Confidential Information with respect to such Qualified Bidder shall remain confidential in accordance with the terms of these Bidding Procedures.

At any time after the Bid Deadline, the Debtors reserve the right to terminate the Bidding Process after consultation with the Reviewing Creditors.

Nothing in these Bidding Procedures, nor the participation of the DIP Agent in the Bidding Process, shall be deemed a waiver of its rights and remedies under the DIP Credit Agreement or any documents or orders relating thereto (together, the "**DIP Documents**") or the rights and remedies of any of the Lenders (as defined in the DIP Credit Agreement) under the DIP Documents.

**Appendix A**

[To be filed prior to June 25 objection deadline]

**Appendix B**

Bid Requirements

Unless the Debtors otherwise determine after consultation with the Reviewing Creditors, a bid will be considered only if the bid includes all of the following (the “Bid Requirements”):<sup>1</sup>

- (a) a duly authorized and executed agreement to purchase (i) the DC Portfolio (excluding U.S. Patent No. 6,292,218 (the “**218 patent**”) and the assumption of all pending infringement actions premised on the ‘218 patent (“**the ‘218 Assets**”)), (ii) the DC Portfolio (including ‘218 Assets) and/or (iii) the KISS Portfolio, including the purchase price which shall be separately stated for each of the foregoing, together with all schedules, exhibits and annexes thereto, together with a version marked to show those amendments and modifications to the Form Agreement (a “**Marked Agreement**”) and the proposed Final Sale Order;
- (b) authorization for the Debtors to provide the Marked Agreement and proposed Final Sale Order for such bid to the Reviewing Creditors;
- (c) an agreement not to seek Bidder Confidential Information with respect to any other Potential Bidder or Qualified Bidder after the conclusion of the Bidding Process;
- (d) if the consideration is not entirely in the form of cash, the amount and terms of any non-cash consideration;
- (e) the identity of each entity that will be participating in connection with the bid and the terms of such participation, including, without limitation, the organizational and voting structure of any entity formed for the purpose of acquiring all or any portion of the Digital Imaging Patent Assets and any financing arrangements between the members of such entity;
- (f) information sufficient in the judgment of the Debtors, after consultation with the Reviewing Creditors, to demonstrate to the satisfaction of the Debtors that the Potential Bidder has the financial wherewithal to consummate the transaction contemplated by the Marked Agreement, or in the absence of such financial wherewithal, written evidence of a firm commitment for financing the consummation of the transaction contemplated by the Marked Agreement, or other evidence of ability to consummate the transaction contemplated by the Marked Agreement that is satisfactory to the Debtors after consultation with the Reviewing Creditors;
- (g) is not conditioned on any contingency other than those imposed by applicable law, including, without limitation, obtaining any of the following: (i) financing, (ii) equityholder approval or approval by the board of directors or equivalent governing body, and/or (iii) the outcome or completion of a due diligence review;
- (h) evidence of approval by the board of directors (or other appropriate governing body) of the Potential Bidder and, if applicable, its parent company, with respect to the submission of the bid and the execution and delivery of the Marked Agreement and the proposed Final Sale Order;

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures.

- (i) identifies with particularity each and every condition to closing;
- (j) is received on or before the Bid Deadline; and
- (k) includes a cash deposit of \$10 million to an escrow account designated by the Debtors (the “**Good Faith Deposit**”).

**Exhibit B**

**EXHIBIT B**  
**Digital Imaging Patent Assets**

<b>EKC Docket</b>	<b>Country</b>	<b>Application No.</b>	<b>Patent No.</b>	<b>Grant Date</b>
56762	US	07/781,467	5563963	10/08/1996
60056	US	08/190,714	5453840	09/26/1995
60520	JP	1993-214381	2559986	09/05/1996
60520	US	07/937,791	5302778	04/12/1994
61143	JP	93/0129662	3668499	04/15/2005
61291	US	07/697,868	5600731	02/04/1997
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**Exhibit C**

**EXHIBIT C**  
**Scheduled Licenses**

1. Patent License Agreement between Eastman Kodak Company and Ability Enterprise Co., Ltd. dated August 18, 2003.
2. Patent License Agreement between Eastman Kodak Company and Altek Corporation dated July 1, 2004, Amendment 1 dated July 12, 2006 and Amendment 2 dated July 1, 2006.
3. Patent License Agreement between Eastman Kodak Company and Asia Optical Co., Inc. dated April 9, 2004 and Amendment 1 dated July 12, 2006 and Amendment 1 dated July 12, 2006.
4. Patent License Agreement between Eastman Kodak Company and Canon Inc. dated Nov.1, 2006 and Letter Agreement dated Nov. 28, 2006.
5. Patent Cross License Agreement between Eastman Kodak Company and Casio Computer Company, Ltd. dated June 20, 2006 and Amendment 2 Dec. 22, 2006.
6. Combination Patent License Agreement between Eastman Kodak Company and Casio Computer Company, Ltd. dated June 20, 2006 and Amendment 2 Dec. 22, 2006.
7. Patent License Agreement between Eastman Kodak Company and DXG Technology Corp. dated July 8, 2008 and Amendment 1 dated July 8, 2008.
8. Patent License Agreement between Eastman Kodak Company and Flextronics International Ltd. dated Sept. 18, 2006.
9. Patent License Agreement between Eastman Kodak Company and Funai Electric Co., Ltd. dated May 12, 2004, Memorandum dated May 12, 2004 and Amendment 1 dated July 12, 2006.
10. Patent License Agreement between Eastman Kodak Company and Garmin, Ltd. dated Mar. 31, 2005.
11. Patent License Agreement between Eastman Kodak Company and Hewlett Packard Corporation dated Jan. 1, 2005.
12. Development and Patent License Agreement between Eastman Kodak Company and Intel Corporation dated April 30, 1998
13. Patent License Agreement between Eastman Kodak Company and Victor Company of Japan, Limited (JVC) dated December 21, 2007
14. Patent License Agreement between Eastman Kodak Company and LG Electronics Inc. dated November 30, 2009
15. Patent License Agreement between Eastman Kodak Company and Leaf Imaging Ltd. dated September 15, 2009
16. Patent License Agreement between Eastman Kodak Company and Matsushita Electric Industrial Co., Ltd. (Panasonic) dated December 21, 2007
17. Patent License Agreement between Eastman Kodak Company and Motorola, Inc. dated September 30, 2008
18. Patent License Agreement between Eastman Kodak Company and NEC Corporation dated December 24, 2010
19. Patent License Agreement between Eastman Kodak Company and Newsan S.A. dated January 1, 2011
20. Patent License Agreement between Eastman Kodak Company and Nikon Corporation dated Sept. 30, 2007.

21. D-SLR Patent License Agreement between Eastman Kodak Company and Nikon Corporation dated Sept. 30, 2007.
22. Patent License Agreement between Eastman Kodak Company and Nintendo Co., Ltd. dated April 5, 2009
23. Patent License Agreement between Eastman Kodak Company and Nokia Corporation dated September 30, 2008
24. Patent License Agreement between Eastman Kodak Company and Olympus Corporation dated September 22, 2006
25. Patent License Agreement between Eastman Kodak Company and Sakar International, Inc. dated March 30, 2011
26. Patent License Agreement between Eastman Kodak Company and Samsung Electronics Co., Ltd. dated December 17, 2009 and Amendment dated Jan. 8, 2010.
27. Patent License Agreement between Eastman Kodak Company and Samsung Electronics Co., Ltd. dated September 16, 2010
28. Patent License Agreement between Eastman Kodak Company and Samsung Techwin Co., Ltd. date January 1, 2004, Amendment 1 dated July 18, 2004 and Amendment 2 dated July 12, 2006.
29. Patent License Agreement between Eastman Kodak Company and Sanyo Electronic Co., Ltd. dated January 1, 2005 and Amendment 1 dated July 12, 2006.
30. Patent License Agreement between Eastman Kodak Company and Sharp Corporation dated Oct. 1, 2011
31. Patent License Agreement between Eastman Kodak Company and Skanhex Technology Inc. dated May 12, 2003 and Amendment dated Dec. 31, 2003.
32. Patent License Agreement between Eastman Kodak Company and Sony Ericsson Mobile Communications AB dated December 27, 2006
33. Patent License Agreement between Eastman Kodak Company and Sony Corporation dated December 27, 2006
34. Patent License Agreement between Eastman Kodak Company and Group 47, LLC dated September 8, 2010
35. Patent License Agreement between Eastman Kodak Company and Rohm and Haas Denmark Finance A/S dated June 15, 2007
36. Patent License Agreement between Eastman Kodak Company and Roper Acquisition Subsidiary, Inc dated November 15, 1999
37. Patent License Agreement between Eastman Kodak Company and ITT Industries, Inc. dated August 13, 2004
38. Patent License Agreement between Eastman Kodak Company and BRCK Acquisition Corp. dated March 31, 2011.
39. Patent License Agreement between Eastman Kodak Company and Carestream Health, Inc. dated April 30, 2007.
40. Patent License Agreement between Eastman Kodak Company and LG Display Co. Ltd. In the OLED field, dated Dec. 30, 2009.
41. Patent License Agreement between Eastman Kodak Company and Image Sensor Technologies Acquisition Corporation dated Nov. 7, 2011

42. Cross-license agreement regarding OLED technology, excluding materials patents, between Chi-Mei EL Corporation and Eastman Kodak Company dated May 23, 2007.
43. OLED license agreement between Denso Corporation and Eastman Kodak Company dated Nov. 28, 2001.
44. OLED, head-mount display field of use license agreement between FED Corporation (eMagin) and Eastman Kodak Company dated April 1, 1998.
45. OLED, miniature high-resolution display field of use license agreement between FED Corporation (eMagin) and Eastman Kodak Company dated Mar. 29, 1999.
46. Cross-license agreement regarding OLED technology between Fuji Electric Holdings Co., Ltd. and Eastman Kodak Company dated April 23, 2004.
47. OLED license agreement between Lightronic Technology, Inc. and Eastman Kodak Company dated Dec. 31, 2003.
48. OLED license agreement between Lite Array Co. and Eastman Kodak Company dated July 13, 2000.
49. OLED license agreement between MicroOLED, SARL and Eastman Kodak Company dated Nov. 19, 2009.
50. OLED license agreement between Ness Display Co., Ltd. and Eastman Kodak Company dated Aug. 24, 2004.
51. OLED license agreement between Nippon Seiki Co., Ltd. and Eastman Kodak Company dated Nov. 1, 1999.
52. OLED license agreement between Opsys Ltd. and Eastman Kodak Company dated Mar. 31, 2001.
53. OLED license agreement between Optrex Corp. and Eastman Kodak Company dated June 10, 2001.
54. OLED license agreement between Truly Semiconductor Ltd. and Eastman Kodak Company dated July 17, 2003.
55. OLED license agreement between Pioneer Electronic Corp. and Eastman Kodak Company dated Sept. 5 1995.
56. OLED license agreement between Ritek Corp. and Eastman Kodak Company dated May 15, 2000.
57. OLED license agreement between Tohoku Device Co., Ltd. and Eastman Kodak Company dated May 26, 2006.
58. Four-way OLED license agreement between Samsung NEC Mobile Display Co., Ltd. (SNMD), Samsung SDI Co., Ltd., NEC Corporation and Eastman Kodak Company dated Jan. 1 2003.
59. OLED license agreement between Teco Electric and Machinery Co., Ltd. and Eastman Kodak Company dated Mar. 15, 2000.
60. OLED license agreement between TDK Corp. and Eastman Kodak Company dated Aug. 12, 1999.
61. Cross-license agreement covering scanners, printers and OLED displays, between Seiko Epson Corporation and Eastman Kodak Company dated Oct. 1, 2006.
62. License and software agreement covering patents related to "Rocket-A" typed printers and software related to 6810 printer driver and SDK between Zebra Technologies Corp. and Eastman Kodak Company dated Feb. 1, 2007.

63. Joint development agreement covering integrated printer controller circuit board between Zebra Technologies Corp. and Eastman Kodak Company dated Oct. 1, 2004.
64. PCD Write/Read software license agreement between IBM Corp. and Eastman Kodak Company dated May 18, 1994.
65. Image PAC Write/Read software license agreement between Color Concept and Eastman Kodak Company dated July 6, 1995.
66. PCD Write/Read software license agreement between Apple Computer Inc. and Eastman Kodak Company dated Oct. 17, 1995.
67. Image PAC Write/Read software license agreement between SAS institute, Inc. and Eastman Kodak Company dated Mar. 29, 1996.
68. Image PAC Write/Read software license agreement between Mind Systems Co., Ltd. and Eastman Kodak Company dated April 22, 1996.
69. Image PAC Write/Read software license agreement between Accusoft and Eastman Kodak Company dated June 5, 1995.
70. Image PAC Write/Read software license agreement between Candela Ltd. and Eastman Kodak Company dated May 2, 1995.
71. Image PAC Write/Read software license agreement between Cloanto Italia SRC and Eastman Kodak Company dated Dec. 22, 1995.
72. Image PAC Write/Read software license agreement between Koyosha Graphics of America, Inc. and Eastman Kodak Company dated May 12, 1995.
73. Image PAC Write/Read software license agreement between Nikon Corporation and Eastman Kodak Company dated Sept. 14, 1995.
74. Image PAC Write/Read software license agreement between Peacock A.G. and Eastman Kodak Company dated Sept. 25, 1995.
75. Image PAC Write/Read software license agreement between Personal Media Corp. and Eastman Kodak Company dated Dec. 7, 1995.
76. Image PAC Write/Read software license agreement between Photosoft Inc. and Eastman Kodak Company dated Sept. 15, 1995.
77. Image PAC Write/Read software license agreement between Shima Seiki Mfg., Ltd. and Eastman Kodak Company dated Jan. 3, 1996.
78. Image PAC Write/Read software license agreement between Visiontel Inc. and Eastman Kodak Company dated Nov. 8, 1995.
79. Image PAC Write/Read software license agreement between Dice America and Eastman Kodak Company dated May 2, 1995.
80. Image PAC Write/Read software license agreement between Philips Electronics N.V. and Eastman Kodak Company dated Oct. 1, 1996.
81. Image PAC Write/Read software license agreement between News International Newspapers, Ltd. and Eastman Kodak Company dated Nov. 24, 1995.
82. Image PAC Write/Read software license agreement between News Access Co, Ltd. and Eastman Kodak Company dated May 17, 1996.
83. Image PAC Write/Read software license agreement between Scitex Corp, Ltd. and Eastman Kodak Company dated Sept. 23, 1996.
84. Cross-license agreement, covering certain patents, between Fuji Photo Film Co., Ltd. and Eastman Kodak Company, dated April 21, 2005.

85. Confidential settlement, release and license agreement between DR Systems, Inc. and Eastman Kodak Company, dated Dec. 1, 2009.
86. Intellectual property and equipment transfer agreement, covering cholesteric displays, between industrial Technology Research Institute (ITRI) and Eastman Kodak Company, dated Aug. 31, 2007.
87. Bi-lateral agreement including certain patents, covering information handling systems, between IBM Corp. and Eastman Kodak Company, dated Jan 1, 1985.
88. License agreement including 8 patents, covering information handling systems, between IBM Corp. and Applied Science Fiction Inc, dated Mar. 23, 2000.
89. License agreement granted by Kodak to ei Solutions, Inc. incurred by the sale of assets of Eastman Software, Inc. to ei Solutions, Inc. and Eastman Kodak Company, dated Aug. 31, 2000.
90. License agreement granted by Kodak to National Semiconductor Corp. incurred by the acquisition of imaging assets from National Semiconductor Corp, Inc. by Eastman Kodak Company, dated Sept. 7, 2004.
91. Termination and release agreement between Osterhout design Group and Eastman Kodak Company dated May 31, 2011.
92. License agreement between IMAX Corporation and Eastman Kodak Company dated Sept. 18, 2011.
93. Lab sales agreement between CPI Corporation and Eastman Kodak Company dated Aug. 1, 2006, including amendment 1 dated 4/17/2009 and amendment 2 dated June 1, 2011.
94. Settlement agreement and release between ATLC, Inc. and Eastman Kodak Company dated Aug. 27, 2007.
95. Master Development and License agreement covering technical projects and member license discounts, between industrial Technology Research Institute (ITRI) and Eastman Kodak Company, dated Nov. 12, 2002.
96. License agreement covering IR Matte scanners between Filmlight Ltd., Filmlight Digital Film Technology Inc. and Eastman Kodak Company, dated Feb. 1, 2008.
97. License agreement covering motion picture film recorders, between Imagica Corporation and Eastman Kodak Company, dated Feb. 1, 2005 including Amendment 1 which assigns the agreement to Imagica Technologies Corp. dated Aug. 21, 2006, Amendment 2 dated Mar. 3, 2008 and a second titled Amendment 2 dated Mar. 1, 2009.
98. License agreement covering Kodak grain reduction and adaptive sharpening algorithms between DaVinci Systems and Eastman Kodak Company, dated May 4, 2009.
99. License agreement covering film scanning defect mattes and Kodak Display Manager between Cintel international Ltd. and Eastman Kodak Company, dated May 5, 2007.
100. Joint development agreement covering a the picture archiving and sharing standard (PASS) between Fuji Photo Film Co., Ltd., Konica-Minolta Photo Imaging Inc. and Eastman Kodak Company, dated July 20, 2004, and the extension agreement dated July 20, 2005.
101. License and joint development agreement covering OLED technology between Sanyo and Eastman Kodak Company, dated March 4, 2005.
102. Settlement agreement covering JAVA technology between Sun Microsystems Inc. and Eastman Kodak Company, dated Oct. 7, 2004.
103. Development agreement and amendments between Texas Instruments and Eastman Kodak Company, dated Oct. 30, 2004.

104. Master Agreement by and between Eastman Kodak Company and Lasergraphics, Inc. dated April 11, 2008.
105. Master Agreement by and between Eastman Kodak Company and Rennie Johnson & Associates dated Mar. 22, 2010
106. Master Agreement by and between Eastman Kodak Company and Arnold & Richter Cine Technik GmbH & Co. Betriebs KG, dated Dec. 1, 2004.
107. License agreement (covering HDCP) between Digital Content Protection LLC and Eastman Kodak Company dated June 9, 2008.
108. License and distribution agreement between Applied Science Fiction, Inc., and Pixel Magic Imaging, Inc., dated Aug. 9, 2000.
109. Master Agreement by and between Pacific Image Electronics Co., Ltd., and Applied Science Fiction, Inc., dated Oct. 24, 2002.
110. Master Agreement by and between Microtek International Inc. and Applied Science Fiction, Inc., dated Sept. 3, 2002.
111. ICE Technology Master License and Distribution Agreement by and between Acer Communications & Multimedia Inc. and Applied Science Fiction, Inc., dated Sept. 13, 2000.
112. Software License Agreement and Amendments 1 and 2 between Quark, Inc. and Eastman Kodak Company dated Feb. 2, 1997.



**Exhibit D**

[To be filed prior to June 25 objection deadline]

**Exhibit E**

[To be filed prior to June 25 objection deadline]

**Exhibit F**

**EXHIBIT F****Patents Associated with Standards Organizations****Standards in Which Patents Were Declared**

Standard	US Patent Number	Portfolio
[SMPTE: Society of Motion Picture & Television Engineers]	5583666	DC
	5754184	KISS
	5778385	DC
	6017157	KISS
	6069637	KISS
	6111950	KISS
	6269184	KISS
	6278800	DC
	6865550	KISS
	6894806	KISS
	6947061	DC
	6993196	KISS
CIPA DPS Specification DC-001-2003 (PictBridge) [CIPA: Camera and Imaging Products Association]	6573927	DC
	7038714	DC
Exchangeable Image File Format (EXIF2.2 JEITA CP-3451) [JEITA: Japan Electronics and Information Technology Industries Association ]	6310647	DC
	5983229	DC
	5696850	DC

**Consortia Specifications With No Specific Patents Declared**

Digital Print Order Format (DPOF)		DC
EVERPLAY (OSTA) [OSTA: Optical Storage Technology Association]		DC

**Standards Which Did Not Require Specific Patents to be Declared**

Design Rule for Camera File system (DCF) JEITA CP-3461		DC
ISO 12234-1 (Removable memory model) [ISO: International Organization for Standards]		DC
ISO 12234-2 (TIFF/EP Image formats)		DC
CIPA DPS Specification DCG-006-2012 (DPS over IP)		DC

**Exhibit G**

Andrew G. Dietderich  
Michael H. Torkin  
Mark U. Schneiderman  
Jill C. Gadwood  
SULLIVAN & CROMWELL LLP  
125 Broad Street  
New York, New York 10004-2498  
Telephone: (212) 558-4000  
Facsimile: (212) 558-3588

Counsel to the Debtors and Debtors in Possession

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

	)		
In re:	)	Chapter 11	
	)		
EASTMAN KODAK COMPANY, <i>et al.</i> , <sup>1</sup>	)	Case No. 12-10202 (ALG)	
	)		
Debtors.	)	Jointly Administered	
	)		

**NOTICE OF DEBTORS’ MOTION FOR ORDERS (I) (A) CONDITIONALLY  
AUTHORIZING THE SALE OF PATENT ASSETS FREE AND CLEAR OF  
CLAIMS AND INTERESTS, (B) ESTABLISHING A COMPETITIVE BIDDING  
PROCESS AND (C) APPROVING THE NOTICE PROCEDURES  
AND (II) AUTHORIZING THE SALE OF PATENT ASSETS  
FREE AND CLEAR OF CLAIMS AND INTERESTS**

**PLEASE TAKE NOTICE** that, on January 19, 2012 (the “**Petition Date**”), Eastman Kodak Company, Inc. and certain of its affiliates, as debtors and debtors in possession (collectively, the “**Debtors**”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, in the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”).

**PLEASE TAKE FURTHER NOTICE** that on June 11, 2012, the Debtors filed the *Motion for Orders (I) (A) Conditionally Authorizing the Sale of Patent Assets Free and Clear of*

<sup>1</sup> 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.

*Claims and Interests, (B) Establishing a Competitive Bidding Process and (C) Approving the Notice Procedures and (II) Authorizing the Sale of Patent Assets Free and Clear of Claims and Interests [Docket No. • ] (the “Motion”).<sup>2</sup>*

**PLEASE TAKE FURTHER NOTICE** that a hearing (the “**Conditional Sale Hearing**”) will be held before the Honorable Allan L. Gropper, United States Bankruptcy Judge, on **July 2, 2012 at 2:30 p.m. (ET)**, or on such other date as the Bankruptcy Court may determine, in the United States Bankruptcy Court for the Southern District of New York, One Bowling Green, New York, NY 10004, to consider entry of an order (the “**Conditional Sale Order**”), among other things, approving Bidding Procedures for the conduct of a competitive process for the sale (the “**Sale**”) of all or any portion of the patents, patent applications and other assets listed on Exhibit B to the Motion (the “**Digital Imaging Patent Assets**”) and authorizing the Debtors to sell all or any portion of the Digital Imaging Patent Assets to one or more Successful Bidder(s) free and clear of Claims and Interests (other than Permitted Encumbrances), subject to the Bidding Procedures and to the Bankruptcy Court’s entry of the Final Sale Order.

**PLEASE TAKE FURTHER NOTICE** that pursuant to the Motion, the Debtors are seeking a determination that (a) subject to the terms of the Debtors’ proposed Conditional Sale Order and the Bidding Procedures, holders of Claims or Interests who do not object or who have withdrawn their objections to the Motion will be deemed to have consented to the proposed Sale pursuant to section 363(f)(2) of the Bankruptcy Code and (b) all holders of Claims and Interests are adequately protected for the purposes of section 363(e) of the Bankruptcy Code because their Claims and Interests, if any, either will be assumed by the Successful Bidder(s) as a Permitted Encumbrance or will attach to the proceeds of the Sale, in the same order of priority and with the same validity, force and effect that such Claim or Interest holders had before the Sale, subject to any rights, claims and defenses of the Debtors, their estates, or any other party in interest, as applicable, or as otherwise provided in the Conditional Sale Order.

**PLEASE TAKE FURTHER NOTICE** that the Debtors are seeking a determination that (a) the Digital Imaging Patent Assets are property of the Debtors’ estates and valid title thereto is vested in the Debtors’ estates within the meaning of section 541(a) of the Bankruptcy Code; (b) except for the license agreements listed on Exhibit C to the Motion, no Debtor is a party to any contract (written or oral) under which it is a licensor of rights to intellectual property (as defined in section 101 of the Bankruptcy Code) relating to the Digital Imaging Patent Assets and (c) no person has an interest in the Digital Imaging Patent Assets as a co-owner for purposes of section 363(h) of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that the Motion may be obtained (i) from the Debtors’ Notice, Claims and Balloting Agent, Kurtzman Carson Consultants, LLC (a) at its website at <http://www.kccllc.net/kodak>, by clicking on the “Court Documents” link, (b) by writing to [kodakinfo@kccllc.com](mailto:kodakinfo@kccllc.com) or (c) calling (888) 249-2721 or (ii) for a fee via PACER at <https://ecf.nysb.uscourts.gov/>.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

**PLEASE TAKE FURTHER NOTICE** that any responses or objections to the Motion must be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court, and shall be filed with the Bankruptcy Court electronically by registered users of the Bankruptcy Court's case filing system (the User's Manual for the Electronic Case Filing System can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov), the official website for the Bankruptcy Court) and, by all other parties in interest, on a 3.5 inch disk, in text-searchable Portable Document Format (PDF), Wordperfect or any other Windows-based word processing format (in either case, with a hard-copy delivered directly to Chambers), and shall be served upon: (a) the Debtors; (b) Sullivan & Cromwell LLP, counsel to the Debtors (Attn: Andrew G. Dietderich, Michael H. Torkin and Jill C. Gadwood); (c) Wilmer Cutler Pickering Hale and Dorr LLP, counsel to the Debtors (Attn: Jay Bothwick, Mark Borden and George Shuster); (d) the Office of the United States Trustee for the Southern District of New York (Attn: Brian S. Masumoto and Susan D. Golden); (e) Milbank, Tweed, Hadley & McCloy LLP (Attn: Dennis F. Dunne, Tyson M. Lomazow and Brian Kinney) and Togut, Segal & Segal LLP, co-counsel to the Official Committee of Unsecured Creditors; (f) Arent Fox LLP (Attn: Andrew I. Silfen, Beth M. Brownstein and Carol Connor Cohen) and Haskell Slaughter Young & Rediker, LLC (Attn: R. Scott Williams and Jennifer B. Kimble), proposed co-counsel for the Official Committee of Retired Employees of the Debtors; (g) counsel to the agent under the prepetition revolving credit facility; (h) U.S. Bank, National Association, as indenture trustee; (i) Wilmington Trust, National Association, as indenture trustee; (j) the Securities and Exchange Commission; (k) the Internal Revenue Service; (l) the Environmental Protection Agency; (m) Davis Polk & Wardwell LLP, counsel to Citicorp North America, Inc., as agent for the Debtors' postpetition secured lenders (Attn: Brian M. Resnick); (n) Akin Gump Strauss Hauer & Feld LLP, counsel to the Ad Hoc Committee of Second Lien Noteholders (Attn: Michael S. Stamer, David Botter, Abid Qureshi, Alexis Freeman and Rachel Ehrlich Albanese); and (o) all parties requesting notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002 so as to be actually received **no later than June 25, 2012 at 4:00 p.m. (ET)**. Only those responses that are timely filed, served and received will be considered at the Conditional Sale Hearing. Failure to file a timely objection shall be deemed to be "consent" for purposes of section 363(f) of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that dates set forth in this notice are subject to change, and further notice of such changes may not be provided except through announcements in open court and/or the filing of notices and/or amended agendas. Parties in interest are encouraged to monitor the electronic court docket and/or the noticing agent website for further updates.