

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

In re

Youtoo Technologies, LLC

Debtor.

Case No. 17-14849-JDL
Chapter 7

**TWITTER, INC.'S MOTION FOR ORDER (I) HOLDING THAT THE
AUTOMATIC STAY DOES NOT APPLY PURSUANT TO 11 U.S.C. § 362(b)(4),
OR ALTERNATIVELY, (II) LIFTING THE AUTOMATIC STAY FOR CAUSE
UNDER § 362(d)(1) AND WAIVING THE 14-DAY STAY UNDER BANKRUPTCY
RULE 4001(a)(3), BRIEF IN SUPPORT THEREOF,
AND NOTICE OF OPPORTUNITY FOR HEARING**

NOTICE OF OPPORTUNITY FOR HEARING

YOUR RIGHTS MAY BE AFFECTED. YOU SHOULD READ THIS DOCUMENT CAREFULLY AND CONSULT YOUR ATTORNEY ABOUT YOUR RIGHTS AND THE EFFECT OF THIS DOCUMENT. If you do not want the Court to grant the requested relief, or you wish to have your views considered, you must file a written response or objection to the requested relief with the Clerk of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, OK 73102 no later than 14 days from the date of filing of this request for relief. You should also serve a file stamped copy of the response or objection to the undersigned movant's attorney and others who are required to be served and file a certificate of service with the court. If no response or objection is timely filed, the court may grant the requested relief without a hearing or further notice.

The 14 day period includes the three (3) days allowed for mailing provided for in Bankruptcy Rule 9006(f).

TWITTER -EXHIBIT 1021
TWITTER V. YOUTOO
IPR2017-01131

Twitter, Inc. (“Twitter”), a party-in-interest in the above referenced bankruptcy case, by and through its undersigned counsel, hereby request that the Court enter an order (i) holding that pursuant to Bankruptcy Code § 362(b)(4), the automatic stay under § 362(a) does not apply to *inter partes* review proceedings by the Patent and Trial Appeal Board (the “PTAB” or the “Board”) “of the United States Patent and Trademark Office” (the “USPTO”), or alternatively, (ii) lifting the stay for cause under § 362(d)(1). In support of its request, Twitter represents as follows:

INTRODUCTION

1. Three patents held by Youtoo Technologies, LLC. (“Youtoo”), the chapter 7 debtor in the above-referenced proceeding, are currently the subject of *inter partes* review proceedings (“IPR Proceedings”) in front of the PTAB of the USPTO. The PTAB has instituted the IPR Proceedings based on its determination that Twitter is likely to prevail on the challenges that it has raised to the validity of the challenged patents. The PTAB has been granted the statutory power to determine whether to institute IPR Proceedings, and once instituted, the power to determine the validity of issued patents. The PTAB has been granted this power to protect the public interest in preventing improper patent monopolies, not to vindicate the private rights of the party raising a patent challenge. Because IPR Proceedings are proceedings instituted by the PTAB and intended to protect the public interest, they are exempted from the automatic stay under Bankruptcy Code § 362(b)(4).

2. Further, the PTAB is a specialized tribunal with the power to re-examine its own actions in issuing a patent. Accordingly, given its specialized knowledge and

purpose, it is the best venue for the determination of whether Youtoo's patents were validly issued. Additionally, a determination of the validity of those patents will be necessary before the Trustee will be able to monetize the value of the patents for the bankruptcy estate. The PTAB has already preliminarily determined that there is a reasonable likelihood that Twitter would prevail on its challenges to three of Youtoo's patents. Given their uncertain validity, absent resolution from the PTAB, it will be very difficult to monetize what value, if any, the patents have for creditors of the bankruptcy estate. Therefore, cause exists under § 362(d)(1) to lift the stay, if applicable, to allow proceedings regarding Youtoo's patents to move forward in front of the PTAB.

JURISDICTION AND VENUE

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding under 28 U.S.C. § 157(b)(2)(G).

FACTUAL BACKGROUND

1. The above-referenced bankruptcy proceeding was filed on November 30, 2017 (the "Petition Date"), and Douglas N. Gould was appointed as the chapter 7 trustee for the Youtoo bankruptcy estate (the "Trustee").

2. On January 31, 2017, Twitter filed two petitions requesting *inter partes* review of U.S. Patent No. 9,083,997 ("'997 Patent"), which were assigned proceeding numbers IPR2017-00829 and IPR2017-00830. The PTAB instituted *inter partes* review proceedings for Twitter's challenges of the '997 Patent on August 11, 2017, based upon the PTAB's finding that there is a reasonable likelihood that Twitter would prevail on its challenges. *See* 35 USC § 314(a).

3. The statute governing *inter partes* review requires that the PTAB issue its final written determination in these proceedings no later than August 11, 2018 (one year from the institution of the proceeding). 35 USC § 316(a)(11). That deadline may be extended no more than six months upon a showing of good cause. *Id.*

4. On March 24, 2017, Twitter filed a petition for *inter partes* review challenging claims of U.S. Patent No. 8,601,506 (“’506 Patent”), and a petition for *inter partes* review challenging claims of U.S. Patent No. 8,464,304¹ (“’304 Patent”), and together with the ’997 Patent, and the ’506 Patent, the “Challenged Patents”), which were assigned proceeding numbers IPR2017-01133 and IPR2017-01131, respectively (collectively with IPR2017-00829 and IPR2017-00830, the “Pending IPR Proceedings”). The PTAB instituted *inter partes* review proceedings for Twitter’s challenges of both the ’506 Patent and the ’304 Patent on October 2, 2017, based upon the PTAB’s finding that there is a reasonable likelihood that Twitter would prevail on its challenges. *See* 35 USC 314(a).

5. As with the IPR Proceeding for the ’997 Patent, the statute governing *inter partes* review requires that the PTAB issue its final written determination in the ’506 Patent and the ’304 Patent proceedings no later than October 2, 2018, and that deadline

¹ Twitter notes that, on November 10, 2016, in the district court action brought by Youtoo against Twitter alleging infringement of the ’997 Patent, ’304 Patent, and ’506 Patent (Case No. 3:16-cv-00764 (N.D.Tex.)), Judge Godbey issued an Order granting Twitter’s Partial Motion to Dismiss Youtoo’s infringement claims for the ’304 Patent and ’506 Patent, finding that the ’304 Patent and ’506 Patent were invalid under 35 U.S.C. § 101 for claiming patent-ineligible subject matter.

may be extended no more than six months upon a showing of good cause. 35 USC 316(a)(11).

6. On December 7, 2017, the PTAB entered an order in the Pending IPR Proceedings, attached hereto as Exhibit 1, authorizing Youtoo to file a motion to stay the Pending IPR Proceedings as a result of its bankruptcy filing, and authorizing Twitter to respond. The Trustee filed a motion to stay on December 13, 2017, and Twitter responded on December 20, 2017.

7. On December 28, 2017, the PTAB entered an order, attached hereto as Exhibit 2, providing Twitter an opportunity to seek a determination that the automatic stay does not apply or an order granting relief from the automatic stay, and extending Youtoo's deadline to respond to the *inter partes* review petitions to February 5, 2018.

8. On January 19 and February 1, 2018, the PTAB entered two orders, attached hereto as Exhibit 3 and Exhibit 4, requiring, among other things, Youtoo to file a reply in support of its motion for stay no later than February 5, 2018, and extending Youtoo's deadline to respond to the *inter partes* review petitions to February 26, 2018.

9. Youtoo also owns U.S. Patent No. 8,311,382 ("'382 Patent"), U.S. Patent No. 8,413,206 ("'206 Patent"), and U.S. Patent No. 9,319,161 ("'161 Patent," and together with the '382 Patent and the '206 Patent," the "Additional Patents"). The '382 Patent is in the same patent family as the '997 Patent and is directed to similar subject matter as the '997 Patent, specifically, recording and publishing content on social networking websites. The '206 Patent and '161 Patent are directed to methods of enabling viewers to participate in a television program over a communication network.

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