UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA

In re:	)	
YOUTOO TECHNOLOGIES, LLC,	)	
	)	**Case No. 17-14849-JDL**
	)	**Chapter 7**
Debtor(s)	)	
	)	

YOUTOO TECHNOLOGIES, LLC'S RESPONSE AND OBJECTION TO TWITTER, INC'S MOTION TO LIFT THE AUTOMATIC STAY

Youtoo Technologies, LLC ("Youtoo") hereby responds and objects to the Motion of Twitter, Inc. ("Twitter") to lift the automatic stay (Doc. 21). The automatic stay ***does*** apply to the *inter partes* review proceedings ("IPR Proceedings") of the Patent and Trial Appeal Board ("PTAB") of the United States Patent and Trademark Office ("USPTO"). The IPR proceedings are not an exercise of the PTAB's regulatory or police power, do not primarily serve a public interest, and are not an exception under 11 U.S.C § 362(b)(4). More importantly, lifting the stay upon the IPR Proceedings would defeat the purposes of bankruptcy by damaging the assets and any potential recovery by the creditors. A motion by the U.S. Bankruptcy Trustee for the acceptance of an 11 U.S.C. § 363 sale will be before this Court very soon. This sale offers the best chance to give value to the assets and payments to creditors. Lifting the stay on the IPR Proceedings would place Youtoo in a position where it is unable to defend the value of its assets and would likely destroy the sale. Granting Twitter's Motion would only serve to benefit Twitter at the creditors' expense. The Motion should be denied.

INTRODUCTION

Youtoo's assets are six or more interactive television and gaming patents. Three patents are the subject of patent infringement litigation in the Northern District of Texas, which Youtoo filed against Twitter in order to protect the value of the patents and prevent misuse of their content. Twitter then filed petitions with PTAB for *inter partes* reviews, which were granted. Without the stay, Youtoo will face immediate deadlines to file responses in the IPR Proceedings, complete with expert testimony and evidence. Youtoo is unable to pay for the services needed to prepare such response and faces the untenable position of being powerless to defend the value of its assets should this Court grant Twitter's Motion. Twitter has no pecuniary interest in Youtoo or the patents. It's relationship to this bankruptcy is solely through its involvement in the patent litigation.

There are several creditors who do have significant pecuniary interest in Youtoo and the patents, including the two investment funds Covenant Global Alpha Fund, L.P., a creditor, and Covenant Global Alpha Fund, Ltd. (collectively, the "Funds"), and other entities owned by these Funds that are creditors. Youtoo is an asset of the Funds, and a majority of investors are local Oklahoma residents. These Funds acquired ownership of Youtoo and its patents while the Funds were under the management of CFS, LLC and its sole owner Steve Shafer (collectively, "CFS"). Many investors are depending on their investments for retirement, daily living expenses, and medicine, but they have been unable to make any redemptions for more than two years and have suffered significant loss. On April 28, 2017, the Oklahoma County District Court granted the motion of the Funds' investors for a receiver, and shortly thereafter, CFS resigned. Left with little

choice in light of the overwhelming amount of payables dating back to 2013, the new manager of Youtoo filed for bankruptcy in order to protect the remaining value of the assets both for the investors and creditors.

A motion by U.S. Bankruptcy Trustee's to accept an 11 U.S.C. § 363 sale will be filed soon. This sale is dependent on the temporary stay of the IPR proceedings in order to protect the value of the patents during the pendency of the sale. Granting Twitter's motion and lifting the stay when Youtoo is unable to defend the patents in the IPR Proceedings would destroy the sale.

ARGUMENTS AND AUTHORITIES

I. PURSUANT TO 11 U.S.C. § 362(a)(1), THE AUTOMATIC STAY APPLIES TO THE IPR PROCEEDING

Youtoo filed a voluntary Chapter 7 bankruptcy under 11 U.S.C. § 301. Pursuant to 11 U.S.C. § 362(a)(1), that petition operates as an automatic stay—applicable to all entities including ***governmental units*** (*ie.* United States' agencies)—on:

> the commencement or continuation, ***including the issuance or employment of process, of a judicial, administrative, or other action or proceedings against the debtor***, that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

11 U.S.C. § 362(a)(1) (emphasis added); 11 U.S.C. § 101(15) & (27). "The sweep of the automatic stay is broad and 'serves as one of the most important protections in bankruptcy law.'" *Porter v. Nabors Drilling USA, L.P.*, 854 F.3d 1057, 1061 (9th Cir. 2017) (citing *Eskanos & Adler, P.C. v. Leetien*, 309 F.3d 1210, 1214 (9th Cir. 2002)). The PTAB is a part of the Patent and Trademark Office, which is an administrative

agency that oversees administrative proceedings, including i*nter partes* reviews. *See* 35 U.S.C. §§ 1, 6. "Inter partes review is a ***trial proceeding*** conducted at the Board to review the patentability of one or more claims in a patent only on a ground that could be raised under [35 U.S.C.] §§ 102 or 103, and only on the basis of prior art consisting of patents or printed publications." USPTO, *Inter Partes Review*, https://www.uspto.gov/patents-application-process/appealing-patent-decisions/trials/inter-partes-review (last visited Feb. 13, 2018) (emphasis added) (attached as **Ex. 1**); 35 U.S.C. § 311. It is an administrative process, and its purpose is to resolve patents more quickly and cheaply outside of court and to give courts the benefit of the USPTO's expertise. *See* 157 Cong. Rec. S1053 (Mar. 1, 2011) (attached as **Ex. 2**) (stating "the entire purpose of the transitional program at the PTO is to reduce the burden of litigation" and would "improve administrative processes so that disputes over patents can be resolved quickly and cheaply without patents being tied up for years in expensive litigation"); *NFC Tech. LLC v. HTC Am., Inc.*, Case No. 2:13-CV-1058-WCB, 2015 U.S. Dist. LEXIS 29573, at *12 (E.D. Tex. Mar. 11, 2015) ("Giving the agency the authority to consider the validity of patents in the inter partes review process was designed in large measure to simplify proceedings before the courts and to give the courts the benefit of the expert agency's full and focused consideration of the effect of prior art on patents being asserted in litigation."). The *inter partes* reviews of Youtoo's patents are adversarial proceedings initiated by Twitter against the Youtoo. They clearly fall under 11 U.S.C. § 362(a)(1), and thus, their continuation is automatically stayed.

II. THE IPR PROCEEDING IS NOT EXCEPTED FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362(b)(4).

Unlike the broad language in 11 U.S.C. § 362(a), the language in subsection (b) governing exceptions to the automatic stay is more specific and limited. Subsection (b)(4) only excepts from the automatic stay "the commencement or continuation of an action or proceeding ***by a governmental unit*** . . . ***to enforce such governmental unit's or organization's police and regulatory power*** . . . ." 11 U.S.C. § 362(b)(4) (emphasis added). This exception was enacted to protect public health and safety and includes actions where the government is suing the debtor to stop violations of fraud, environmental protection, and consumer protection—proceedings that bear no similarity to *inter partes* reviews described above. *In re Edison Mission Energy*, 502 B.R. 830, 835 (Bankr. N.D. Ill. 2013); 11 U.S.C. § 362 House Judiciary Report cmt. to subsection b(4). "This exception requires both that: 1) the proceeding be brought by a governmental unit and (2) the proceeding be brought to enforce . . . police or regulatory power of the governmental unit." *In re Edison Mission Energy*, 502 B.R. at 835. In this case, neither element is satisfied.

A. THE IPR WAS NOT BROUGHT BY A GOVERNMENTAL UNIT.

IPR Proceedings can only be initiated by a third party. 35 U.S.C. § 311. In this case, Twitter brought the proceedings, and Twitter is not a governmental unit. *See* 11 U.S.C. § 101(27). Neither the USPTO nor the PTAB can bring the proceeding or even join in or commence their own proceeding. Despite Twitter's assertions to the contrary, the PTAB does not have autonomy over the proceedings. Although the PTAB is able to

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