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 REPLY IN SUPPORT OF ITS 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), AND BRIEF IN SUPPORT

Twitter, Inc. ("Twitter"), a party-in-interest in the above referenced bankruptcy case, by and through its undersigned counsel, hereby files its reply in support of its *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 11 U.S.C. § 362(d)(1) and Waiving the 14-Day Stay Under Bankruptcy Rule 4001(a)(3)* [Docket No. 21] (the "Motion"). This reply will focus only on new issues raised in the *Response and Objection to Twitter, Inc.'s Motion to Lift the Automatic Stay* [Docket No. 25] (the "Response") filed by Youtoo Technologies, LLC (the "Debtor").[1]

[1] Douglas N. Gould, as Trustee for the Debtor's bankruptcy estate, (the "Trustee") also filed an objection to the Motion, incorporating the Debtor's arguments in the Response [Docket No. 27].

1. While Twitter strongly believes that the automatic stay does not apply to the IPR Proceedings, the purpose of this reply is to address the Debtor's affirmative arguments that the bankruptcy estate will be prejudiced by lifting the automatic stay to allow the IPR Proceedings to continue.

2. As an initial matter, the Debtor has limited, if any, standing to complain about the relief sought by Twitter. The Debtor filed this case under Chapter 7, thereby surrendering possession and control over all property of the bankruptcy estate, including the Challenged Patents, to the Trustee. Nevertheless, the Debtor objects to the Motion solely in an effort to protect one subset of constituents in this case – a group of "investors" who are indirect creditors and equity owners in the Debtor. By adopting the Debtor's Response as his own, the Trustee seems to take up this fight for the Debtor's equity owners rather than independently assessing what is in the best interest of the estate and all creditors.

3. The Debtor asserts that a motion for the approval of "an 11 U.S.C. § 363 sale" will be filed soon. However, neither the Trustee nor the Debtor provides any details on this alleged sale, including (a) whether the Challenged Patents will be included in that sale; (b) what consideration, if any, a third party would be willing to provide for the purchase of the Challenged Patents (which will still be subject to the IPR Proceedings as detailed in the Motion); and (c) when the motion to approve such a sale would be filed. As set forth in the Motion, the PTAB instituted the IPR Proceedings based on its determination that Twitter is likely to prevail on the challenges it has raised to the validity of the Challenged Patents. It is unclear to Twitter why a third party would be

willing to provide significant value for patents that are likely to be declared invalid by the PTAB, and have already been found to be invalid by a district court.[2] If the sale of the Challenged Patents is simply a sale to the Debtor's parent, as an insider, in exchange for a credit-bid of their alleged secured claim, there is no real value to the estate and no real reason to further delay the IPR Proceedings. If the anticipated sale is only of the Additional Patents not currently subject to Pending IPR Proceedings, there is no reason to delay the Pending IPR Proceedings while that sale proceeds.

4. Further, the asserted "prejudice" to the Debtor's equity owners was created by those investors themselves. The "Funds" described by the Debtor purchased the majority interest in the Debtor in April of 2016, one month after the Debtor filed suit against Twitter, thus providing the Debtor with the funds necessary to finance the litigation. *See* Exhibit 1 at 14, ¶ 48. Following this purchase, the managing member of the Debtor's parent, Stephen Shafer, became the CEO of the Debtor. *See, e.g.*, Exhibit 2. After the Funds' management was replaced by a new Delaware limited liability company controlled by the Funds' investors, those investors remained in control of Youtoo's operation. Indeed, the Debtor's representative in this bankruptcy proceeding, Marsh Pitman, is the manager of the Funds. *See* Docket No. 1 at 4. The group of investors that Youtoo seeks to protect here are the same investors that funded and controlled the litigation against Twitter for nearly the last two years. It is disingenuous for the Debtor

[2] As noted in the Motion, on November 10, 2016, Judge Godbey in the Northern District of Texas issued an order finding that the '304 Patent and '506 Patent were invalid under 35 U.S.C. § 101 for claiming patent-ineligible subject matter.

and the Trustee to now state that these "investors" will be prejudiced by the continuation of proceedings that are the direct result of their own investments.

5. Finally, prejudice to the Debtor's estate is but one of the factors to consider in determining whether to lift the automatic stay. The Debtor ignores the prejudice caused by allowing an invalid patent monopoly to continue, especially in light of the PTAB's determination that the Challenged Patents are likely invalid. Twitter and other citizens should not be limited in their ability to conduct business and innovate indefinitely while the Debtor tries to organize the sale of the Challenged Patents to a yet unidentified (and likely insider) party, for what may be no more than a reduction in their secured claim.

6. The PTAB is a specialized tribunal established specifically to regulate patent monopolies. This Court should not prevent the PTAB from fulfilling its statutory duties based on the bare assertion that a sale of patents, which have already been found to be invalid, may happen in the future.

For all of the above-stated reasons and the reasons set forth in the Motion, Twitter requests that the Court enter an order (a)(i) holding that pursuant to Bankruptcy Code § 362(b)(4), the automatic stay under § 362(a) does not apply to IPR Proceedings by the PTAB, or alternatively, (ii) lifting the stay for cause under § 362(d)(1) and waiving the stay under Bankruptcy Rule 4001(a)(3), and (b) granting such other and further relief to which Twitter may be entitled.

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Respectfully submitted,

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DOCKET ALARM

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