IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

In re:	§	Chapter 11
	§	
CROSSROADS SYSTEMS, INC.	§	Case No. 17-51926
	§	
Debtor.	§	
	§	

DEBTOR'S MOTION TO ESTIMATE CONTINGENT, UNLIQUIDATED, UNKNOWN CLAIM OF ORACLE

Crossroads Systems, Inc., a Delaware corporation, as debtor-in-possession in the above-captioned chapter 11 case (the "Debtor"), files this *Debtor's Motion to Estimate Contingent, Unliquidated, Unknown Claim of Oracle* (the "Motion") and respectfully represents as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

A. General Background

2. On August 13, 2017 (the "Petition Date"), the Debtor commenced the above captioned case (the "Chapter 11 Case") by filing a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtor continues to manage and operate its business as a debtor-in-possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in the Chapter 11 Case, and no committees have been appointed or designated.

3. A detailed description of the Debtor and its business, and the facts and circumstances supporting the Motion and the Debtor's Chapter 11 Case is set forth in the *Statement of Background Information and Declaration of Jennifer Crane, Chief Financial Officer of Crossroads Systems, Inc., in Support of Debtor's Chapter 11 Petition and First Day Motion* filed on August 13, 2017.

4. Contemporaneously with the filing of the Chapter 11 Case, the Debtor filed its Prepackaged Chapter 11 Plan of Reorganization (the "Prepackaged Plan") and related Disclosure Statement. Solicitation on the Prepackaged Plan began prior to the filing of the Chapter 11 Case, and, prior to the Petition Date, the Debtor had received acceptances to the Prepackaged Plan from holders of more than two-thirds of equity interests in the only class impaired by the Prepackaged Plan. On the Petition Date, the Debtor also filed a motion seeking assumption of its obligations under the Restructuring Support Agreements (the "RSAs") that forms the basis for the Prepackaged Plan, including the investment by 210/CRDS Investment LLC ("210") that provides funding for the Prepackaged Plan transactions and for operation of the Debtor after the effective date of the Prepackaged Plan. On August 30, 2017, the Court entered the final order approving assumption of the RSAs.

5. On the Petition Date, the Debtor filed its *Debtor's Emergency Motion for an Order (I) Authorizing the Mailing of Notices, (II) Establishing a Bar Date for Filing Proofs of Claim, (III) Establishing Ramifications for Failure to Timely File Claims, (IV) Approving Consolidated Notice of (A) Case Commencement and (B) Bar Date, and (V) Approving Notice Procedures* [Docket No. 7] (the "Bar Date Motion"). Pursuant to the Bar Date Motion, the Debtor requested approval of a shortened bar date of September 13, 2017 (the "Proof of Claim

Bar Date"). On August 18, 2017, the Court entered its order approving the Bar Date Motion [Docket No. 22] (the "Bar Date Order").

B. Oracle Proof of Claim

6. On September 11, 2017, Oracle Corporation filed its proof of claim and addendum to proof of claim [Claim No. 1-1] (the "Oracle Claim"). A copy of the Oracle Claim is attached hereto as Exhibit A.

7. 210 is not to be required to, and indeed has confirmed that it will not, consummate the transactions under the Prepackaged Plan unless, in addition to the satisfaction of any other conditions precedent, the aggregate amount of all Claims, including any Claim submitted by Oracle Corporation, is determined to equal less than $50,000 pursuant to one or more final orders.

Relief Requested

8. The Debtor seeks the entry of an order, substantially in the form attached hereto (the "Proposed Order"), under sections 105(a), and 502(c) of the Bankruptcy Code estimating the Oracle Claim at zero.

Basis for Relief Requested

A. Estimation of the Oracle Claim

(i) The Oracle Claim Is Contingent, Unliquidated and Subject to Estimation

9. Section 502(c) of the Bankruptcy Code **requires** a court to estimate "any contingent or unliquidated claim, the fixing or liquidation of which, as the case may be, would unduly delay the administration of the case." 11 U.S.C. § 502(c); *see also in re A.H. Robbins Co.*, 788 F.2d 994, 1011-1012 (the "duty of estimation in a proper case under section 502(c) is not a permissive one; it is a mandatory obligation of the bankruptcy court"). "Estimation of unliquidated and contingent claims is essential prior to the hearing on confirmation of a plan, in

order for the court to evaluate the feasibility of the plan without delaying the confirmation process." *In re Nat'l Gypsum Co.*, 139 B.R. 397, 405 n.19 (N.D. Tex. 1992) (citation omitted).

10. The proof of claim filed by Oracle specifically states that the amount is "unknown." As set out in the "Addendum to the Proof of Claim of Oracle Corporation," Oracle states that its claim is based on certain patent infringement litigation between the parties styled *Crossroads Systems, Inc., v. Oracle Corporation*, Cause No. 1:13-cv-895-SS, currently pending in the Western District of Texas (the "District Court Litigation"). *See* Addendum to Proof of Claim of Oracle Corporation [Claim No. 1-1 part 2] (hereinafter, the "Oracle Addendum") at ¶ 5, pg. 2. Oracle further asserts that (i) it is entitled to certain unspecified costs arising out of such litigation pursuant to 28 U.S.C. § 1920; and (ii) it has the right to seek attorney fees for such litigation pursuant to 35 U.S.C. § 285, which gives courts discretion to award attorney fees to a party in cases found to be "exceptional." *Id.*

11. However, as admitted by Oracle in the Oracle Addendum, its alleged entitlement to such unspecified costs and its alleged right to seek attorney fees under 35 U.S.C. § 285 are both contingent on a judgment being entered against Debtor in the District Court Litigation. Such event has not occurred. In fact, the District Court Litigation is currently stayed. Moreover, with respect to the alleged right to seek attorney fees under 35 U.S.C. § 285, as discussed in more detail below, there is simply no good faith basis for Oracle to assert such a right. Thus, the amount of this claim and the date it may be due is not readily ascertainable.[1]

12. Estimation of the Oracle Claim, as requested in the Motion, will expedite administration of the Debtor's estate and confirm that the condition precedent under the Prepackaged Plan will be satisfied. On the other hand, failure to estimate the Oracle Claim will

[1] Notably, in its Proof of Claim, Oracle, itself, failed or is unable to identify any specific costs which it claims it would be entitled to under 28 U.S.C. § 1920.

delay administration of the Debtor's estate and potentially provide 210 with a right to terminate the 210 RSA and refuse to support the Debtor's proposed restructuring. In the Debtor's view, this would not only necessarily frustrate and prolong the Debtor's reorganization efforts but destroy enterprise value which is maximized as a result of the Prepackaged Plan. Therefore, the Court should estimate the Oracle Claim under section 502(c) of the Bankruptcy Code.

(ii) The Court Should Estimate the Oracle Claim at Zero

13. Bankruptcy courts have broad discretion in determining the method to estimate a claim, and the court may use "whatever method is best suited to the circumstances." *Addison v. Langston (In re Brints Cotton Mktg., Inc.)*, 737 F.2d 1338, 1341 (5th Cir. 1984); *see also In re MacDonald*, 128 B.R. 161, 165-66 (Bankr. W.D. Tex. 1991) ("The court is permitted to exercise its discretion in selecting a method, and the estimation will be disturbed on appeal only on a showing of abuse of that discretion."); *In re Adelphia Bus. Sol., Inc.*, 341 B.R. 415, 422-23 (Bankr. S.D.N.Y. 2003) (courts have discretion to use "whatever method is best suited to the contingencies of the case, so long as the procedure is consistent with the fundamental policy of chapter 11 that a reorganization must be accomplished quickly and efficiently") (citation omitted).

14. In estimating a claim, "the court is bound by the substantive law that governs the ultimate value of that claim." *In re Texans CUSO Ins. Grp., LLC*, 426 B.R. 194, 222 (Bankr. N.D. Tex. 2010). Because the burden of proof is a "substantive" aspect of a claim, *Raleigh v. Illinois Dep't of Revenue*, 530 U.S. 15, 20 (2000), the party that would have the burden of proof under nonbankruptcy proceeding also has the burden of proof in an estimation proceeding. *See In re Texans CUSO Ins. Grp., LLC*, 426 B.R. at 222 (placing burden of proof on claimant in estimation proceedings because claimant bears the burden of proof under state law).

15. The Oracle Claim is comprised of two components: (i) costs and (ii) attorney fees. The Debtor believes the value of both components of the claim is zero.

16. With respect to the first component, Oracle alleges that, pursuant to 28 U.S.C. § 1920, it is entitled to certain unspecified litigation related costs incurred in the District Court Litigation. Section 1920 sets out the types of litigation incurred costs which may be awarded to a prevailing party. However, despite having access to any costs it presumably incurred in the District Court Litigation prior to the entry of the stay, Oracle has failed to identify any specific costs on which it bases its claim. *See* Oracle Addendum at ¶ 5.

17. With respect to the second component, Oracle's attorney fees claim is based on 35 U.S.C. § 285, which allows a court, in its discretion, to award attorney fees upon a finding that the case is "exceptional." 35 U.S.C. § 285. However, as the Supreme Court recently held in *Octane Fitness*, an "exceptional" case is "one that stands out from others with respect to the substantive strength of a party's litigating position (considering both the governing law and the facts of the case) or the unreasonable manner in which the case was litigated." *Octane Fitness, LLC v. ICON Health & Fitness, Inc.*, 134 S.Ct. 1749, 1756 (2014). Oracle, which would bear the burden of proof on this issue in the District Court, has wholly failed to allege *any* facts which could give rise to a finding by the Court in the District Court Litigation that such suit is "exceptional." *See id* at 1758 (holding that patent litigants must establish their entitlement to fees under § 285 by a preponderance of the evidence). And that is because it simply cannot.

18. Oracle has not and cannot point to any litigation position taken by Debtor in the District Court Litigation or any unreasonable conduct by Debtor or its counsel in litigating the District Court Litigation which would make such litigation "stand out from others." At most, Oracle can point to the recent decision of the Patent Trial and Appeals Board (the PTAB) which

invalidated the patents asserted in the District Court Litigation. *See, e.g.*, *Oracle Corp. v. Crossroads Sys., Inc.*, IPR2014-01207, Paper 78 (PTAB Jan. 29, 2016).[2] However, given that the PTAB uses different burdens of proof and different standards in making its determinations, such factor cannot serve to establish that Debtor's claims against Oracle were frivolous. *See, e.g., Large Audience Display Sys., LLC v. Tennman Prods.*, LLC, 660 Fed.Appx. 966, 971 (Fed. Cir. 2016).

19. In *Large Audience*, the alleged infringer had pointed to the subsequent invalidation of certain patent claims through the prior "inter partes reexamination" procedure which was conducted by the United States Patent and Trademark Office (the "PTO") as evidence of the frivolousness of the patent holder's suit against it. However, in vacating the district court's awarding of fees to the alleged infringer, the Federal Circuit held that such factor by itself was insufficient:

> The fact that the PTO canceled the asserted claims after [patent holder] filed its complaint, without more, does not support a finding of frivolousness. Notably, in a reexamination proceeding, the PTAB gives claims their broadest reasonable construction—making claims more susceptible to an obviousness rejection than they would be in district court. Next, in reexaminations, the PTAB only considers whether the claims are invalid under a preponderance of the evidence standard; unlike in the district court, no presumption of validity attaches to the claims and the question of validity is not measured by the clear and convincing evidence standard.

Id. Similarly, here such factor is simply insufficient.

20. More generally, as the Federal Circuit noted in *SFA Systems, LLC, v. Newegg Inc.*, "[i]n *Octane Fitness*, the Supreme Court made clear that it is the 'substantive *strength* of the party's litigating position' that is relevant to an exceptional case determination, not the *correctness* or eventual success of that position." 793 F.3d 1344, 1348 (Fed. Cir. 2015)

[2] A true and correct copy of the Final Written Decision of the PTAB in IPR2014-01207 is attached hereto as Exhibit B

(emphasis in original). And, in that regard, the validity of patents in this family has previously been upheld by the United States Patent Office (both through reexamination[3] and through continued issuance of additional patents in this family[4]), the United States District Court for the Western District of Texas and the Federal Circuit. *See Crossroads Sys., (Tex.), Inc. v. Chaparral Network Storage, Inc.*, No. 1:00-cv-217, slip op. (W.D. Tex. Nov. 15, 2001) (No. 179), *aff'd without op*., 56 F. App'x 502 (Fed. Cir. 2003) (involving the parent patent to the one at issue in the District Court Litigation). The *only* forum in which these patents have been held to be invalid is before the PTAB, through the recently established "Inter Partes Review" process, the constitutionality of which is currently before the Supreme Court in an unrelated case. *See Oil States Energy Servs., LLC. V. Greene's Energy Grp, LLC*, 137 S. Ct. 2239 (2017) (granting cert in a case challenging the constitutionality of the Inter Partes Review process).

21. In short, there is simply no good faith basis for Oracle to seek attorney fees in the District Court Litigation pursuant to 35 U.S.C. § 285, much less sufficient grounds for the Court to actually find the District Court Litigation to be exceptional.

22. Other than conclusory statements, Oracle has not provided any facts supporting its right to or the amount of its claim. Moreover, the Debtor believes that there are no facts which would support Oracle's claim or any amount of such claim. Thus, the Debtor believes that the Court should enter an order valuing the Oracle Claim at zero.

Debtor's Reservation of Rights

23. Nothing contained herein is intended or should be construed as an admission as to the validity or priority of any claim against the Debtor or a waiver of the Debtor's rights to dispute any claim. The Debtor expressly reserves its rights to contest any claim and to withdraw

[3] *See* Ex Parte Reexamination Certificate for United States Patent No. 6,425,035, a true and correct copy of which is attached hereto as Exhibit C.
[4] *See, e.g.*, United States Patent Nos. 8,402,194, 8,402,193, 8,046,515, 8,028,117, and 8,015,339.

the Motion at any time prior to approval by the Bankruptcy Court in the event that the parties are unable to reach an agreement on any objections to the Motion.

WHEREFORE, the Debtor respectfully requests that the Court (i) grant the Motion and (ii) grant such other and further relief as is just and proper.

RESPECTFULLY SUBMITTED this 14th day of September, 2017.

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CERTIFICATE OF SERVICE

I hereby certify that true and correct copies of this document was served via on September 14, 2017, via U.S. First Class Mail, postage paid, (or via the Court's ECF System, where applicable), and via email/fax if known, to the parties on the attached service list. This document has also been served by email on counsel for Oracle, Cisco Systems, Inc, NetApp, Inc., Dot Hill Systems Corp., and Quantum Corporation.

/s/ Eric Terry

Label Matrix for local noticing
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Larkspur, CA 94939-1760

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Greenbrae, CA 94904-3100

Promise Technology, Inc.
580 Cottonwood Dr.
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Proware Technology Corp
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Pao Chao Road
Hsin Tien City, Taipei Hsein, TAIWAN
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QLogic Corporation
26650 Aliso Veijo Pkwy.
Aliso Viejo, CA 92656-2674

RAID Inc.
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Rafferty Holdings
1010 Franklin Ave.
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Rasilient Systems, Inc.
270 Santa Ana At.
Sunnyvale, CA 94085-4512

Rave Computer Associatio, Inc.
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StorMagic Inc.
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Eden Prairie, MN 55344-3317

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Division of Corporations
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The preferred mailing address (p) above has been substituted for the following entity/entities as so specified by said entity/entities in a Notice of Address filed pursuant to 11 U.S.C. 342(f) and Fed.R.Bank.P. 2002 (g)(4).

Texas Comptroller of Public Accounts
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