

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:	)	Chapter 15
CINRAM INTERNATIONAL INC., <u>et al.</u> ,	)	Case No. 12-11882 (KJC)
Debtors in a Foreign Proceeding.	)	Jointly Administered
	)	<b>Hearing Date: July 25, 2012 at 10:00 a.m.</b>
	)	<b>Objection Deadline: July 20, 2012 at 4:00 p.m.</b>
	)	<b>Related Docket Nos. 50 &amp; 54</b>

**ORACLE AMERICA, INC.’S LIMITED OBJECTION TO (A) FOREIGN REPRESENTATIVE’S MOTION FOR ENTRY OF AN ORDER (i) RECOGNIZING THE CANADIAN SALE ORDER, (ii) AUTHORIZING AND APPROVING THE SALE FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTEREST, (iii) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (iv) GRANTING RELATED RELIEF (“SALE MOTION”) and (B) NOTICE OF PROPOSED POTENTIAL ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH THE SALE OF SUBSTANTIAL ASSETS OF THE DEBTORS (“ASSUMPTION NOTICE”) (“LIMITED OBJECTION”)**

Oracle America, Inc., successor-in-interest to Oracle USA, Inc. and Oracle Corporation, (“Oracle”), a creditor and contract counter-party in the above-captioned Chapter 15 case, submits its Limited Objection to Cinram International Inc. et al.’s (“Debtors”) Sale Motion and Assumption Notice. In support of its Limited Objection, Oracle respectfully states as follows:

**I. INTRODUCTION**

1. In connection with the Sale Motion, the Debtors served the Assumption Notice, which identifies executory contracts and unexpired leases the Debtors may assume and assign.
2. Schedule 1 to the Assumption Notice identifies a number of Oracle “Agreements” identified as agreements, contracts, and invoices, each with a proposed cure of \$0.00.

3. Based on the descriptions of the “Agreements” in the Assumption Notice, Oracle cannot determine, with certainty, the appropriate cure amount owed to Oracle.

4. Therefore, Oracle reserves its rights to object to any proposed cure and to the scope of any proposed assumption and assignment until all targeted agreements are identified with the requisite specificity to allow identification of both the agreement and the cure involved.

5. Any cure must include sums needed to ensure that all support and renewal are current and not in payment default. Oracle is aware of at least one payment, in the amount of no less than \$130,249.11, which must be paid next month.

6. Pursuant to the Sale Motion, the Debtors are requesting authority to have an undetermined amount of time after the closing date to identify which additional contracts (“Open Contracts”), if any, will be assumed and assigned. (*See*, Sale Motion ¶41).

7. Although the Sale Motion states that the Purchaser will attempt to complete the assumption and assignment or rejection process for all Open Contracts by September 15, 2012, this procedure leaves counterparties such as Oracle in “limbo” for an undetermined period of time.

8. If the Purchaser satisfies requirements of adequate assurance of future performance, Oracle will endeavor to work reasonably with the Purchaser to ensure that the required executory contracts, and corresponding cure, are identified.

9. However, an open-ended time period to designate additional contracts, without the consent of the contract counterparty, is not acceptable.

10. The Sale Motion and Assumption Notice indicate that Cinram Acquisition, Inc. will be the purchaser of the Debtors’ assets pursuant to the Asset Purchase Agreement.

11. Because the Purchaser is a newly-formed entity, Oracle cannot determine whether the Purchaser can meet the requirement that it provide assurance of its ability to perform. Oracle conditions its consent to any proposed assignment on Purchaser's ability to provide assurance of its ability to perform and on Purchaser's willingness to execute an Oracle Assignment Agreement and related documents identifying succinctly all of the executory contracts to be assigned and cure to be paid.

12. To the extent the Debtors seek assumption and assignment of any Oracle executory contracts, the Debtors must (a) identify fully and correctly the contracts; (b) pay the amounts due and owing in cure at the time the assignment is designated; and (c) execute a standard form of Oracle Assignment Agreement.

13. Because there remain unanswered questions and missing information, Oracle requests that the Court deny, at this time, any contemplated assumption and assignment of the Oracle agreements targeted by the Assumption Notice.

## II. **ARGUMENT**

### **A. The Debtors May Not Assume And Assign The Oracle Agreements As They Pertain To One Or More Licenses Of Intellectual Property And Oracle Does Not Consent To The Proposed Assignment At This Time.**

14. Section 365(c)(1) of the Bankruptcy Code provides, in relevant part:

The trustee may not assume or assign an executory contract ... of the debtor ... if (1)(A) applicable law excuses a party, other than the debtor, to such contract or lease from accepting performance from or rendering performance to an entity other than the debtor ..., whether or not such contract or lease prohibits or restricts assignment of rights or delegation of duties; and (B) such party does not consent to such assumption or assignment.

15. Federal law makes non-exclusive patent licenses non-assignable absent consent of the licensor. In re Catapult Entertainment, Inc., 165 F.3d 747 (9th Cir. 1999), *cert. dismissed*, 528 U.S. 924 (1999). See, In re Access Beyond Technologies, Inc., 237 B.R. 32, 48, 49 (Bankr.

D. Del 1999) (*citing In re: West Elec., Inc.*) 852 F. 2d 79 (3d Cir. 1988); In re ANC Rental Corporation, Inc., 277 B.R. 226, 235 (Bankr. D. Del. 2002); In re Golden Books Family Entertainment, Inc., 269 B.R. 311, 316 (Bankr. D. Del. 2001).

16. Oracle's license agreements involve the non-exclusive licensing of patented software. At this time, Oracle does not consent to any proposed assignment, as the Oracle agreements are insufficiently described to allow Oracle to assess the impact of the proposed assumption and assignment.

17. Accordingly, any potential assumption and assignment should be denied with respect to Oracle agreements targeted in the Assumption Notice.

**B. The Proposed Assumption And Assignment Should Be Denied With Respect to the Oracle Agreements Resulting From The Possible Failure to Provide for Payment of Appropriate Amounts Required In Cure.**

18. The Debtors cannot assign the Oracle license agreement until all arrearages are tendered; Oracle will not consent to the assignment of a contract in payment default.

19. Based on the provided information, Oracle cannot identify the intended contract or contracts in order to ascertain the correct sums owed. Oracle is aware of at least one payment, in the amount of no less than \$130,249.11, which must be paid next month.

20. For these reasons, Oracle must withhold its consent to any assignment of the Oracle agreements identified in the Assumption Notice. *See* 11 U.S.C. § 365(b)(1)(A).

21. Absent payment of the appropriate amounts to Oracle, the Oracle agreements may not be assumed or assumed and assigned. Oracle reserves its right to object further to the cure amount until more certainty on the contract or contracts at issue are established.

### **III. CONCLUSION**

22. The Debtors are prohibited from assuming and assigning the Oracle agreements targeted by the Assumption Notice in the absence of Oracle's consent pursuant to section 365(c) and applicable case law.

23. The Debtors have failed to comply with the statutory prerequisites for assumption and assignment of the targeted Oracle agreements by failing to identify the contract or contracts at issue with specificity so as to permit an evaluation of either their assignability or the accuracy of the resultant cure payment at the time of the assignment or designation.

24. In addition, the Debtors and the Purchaser must execute an Oracle Assignment Agreement to document any assignment.

25. For these reasons set forth in this Limited Objection, Oracle respectfully requests that the Court deny, at this time, the Debtors' Assumption Notice and the Sale Motion, to the extent they include an effort to assume and assign agreement with Oracle.

Dated: July 20, 2012  
Wilmington, Delaware

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**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

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CINRAM INTERNATIONAL INC., <u>et al.</u> ,		)		Case No. 12-11882 (KJC)	
		)			
		)		Jointly Administered	
Debtors in a Foreign Proceeding.		)			

**CERTIFICATE OF SERVICE**

I, James E. Huggett, hereby certify that on July 20, 2012, I served a copy of *Oracle America, Inc.’s Limited Objection to (A) Foreign Representative’s Motion for Entry of an Order (i) Recognizing the Canadian Sale Order, (ii) Authorizing and Approving the Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interest, (iii) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (iv) Granting Related Relief (“Sale Motion”) and (B) Notice of Proposed Potential Assumption and Assignment of Certain Executory Contracts and Unexpired Leases in Connection with the Sale of Substantial Assets of the Debtors (“Assumption Notice”) (“Limited Objection”)* on the parties listed on the attached service list via electronic mail.

/s/ James E. Huggett  
James E. Huggett (#3956)

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