

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

<b>In re:</b>	)	<b>Chapter 15</b>
	)	
<b>CINRAM INTERNATIONAL INC., et al.,<sup>1</sup></b>	)	<b>Case No. 12-11882 (KJC)</b>
	)	<b>Jointly Administered</b>
<b>Debtors in a Foreign Proceeding.</b>	)	
	)	<b>Objection Deadline: 07/20/2012 at 4:00 p.m. (ET)</b>
	)	<b>Hearing Date: 07/25/2012 at 10:00 a.m. (ET)</b>

**LIMITED OBJECTION AND COUNTERSTATEMENT  
OF U.S. PHILIPS CORPORATION AND KONINKLIJKE  
PHILIPS ELECTRONICS N.V. TO DEBTORS' (1) PROPOSED  
CURE AMOUNTS AND (2) PROPOSED ASSUMPTION AND ASSIGNMENT  
OF CERTAIN UNEXPIRED LEASES [RELATED TO DOCKET NOS. 9 AND 50]**

U.S. Philips Corporation and Koninklijke Philips Electronics N.V. (collectively, "Philips"), by its undersigned attorneys, submits this Limited Objection and Counterstatement to the Debtors' proposed cure amounts, as set forth in the *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* (the "Assumption Schedule Notice") (Docket No. 50) and the proposed assumption and assignment of certain executory contracts, all in connection with a proposed asset sale as set forth in the *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 Interests, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (iv) Granting Related Relief* ("Motion") [Docket No. 9]. In support of this Limited Objection and Counterstatement, Philips respectfully states:

**BACKGROUND**

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<sup>1</sup>The last four digits of the United States Tax Identification Number or Canadian Business Number, as applicable, of each of the Debtors follow in parentheses: (a) Cinram International Inc. (4583); (b) Cinram (U.S.) Holding's Inc. (4792); (c) Cinram, Inc. (7621); (d) Cinram Distribution LLC (3854); (e) Cinram Manufacturing LLC (2945); (f) Cinram Retail Services LLC (1741); (g) Cinram Wireless LLC (5915); (h) IHC Corporation (4225); (i) One K Studios, LLC (2132). The Debtors' executive headquarters is located at 2255 Markham Road, Toronto, Ontario, M1B2W3, Canada.

1. On June 25, 2012 (the “Petition Date”), the above-captioned debtors (the “Debtors”) filed voluntary petitions for relief under Chapter 15 in the United States Bankruptcy Court for the District of Delaware (the “Court”).

2. Upon information and belief, since the Petition Date, the Debtors have operated their businesses and managed their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. Debtors have identified certain intellectual property licenses between the Debtors and Philips that the Debtors *may* assume and assign to Cinram Acquisition, Inc. (“Buyer”) in a proposed asset sale transaction (the “Philips’ Contracts”).<sup>2</sup>

4. Specifically, the Debtors have identified: (i) DVD Video Disc and DVD ROM Disc Patent License Agreement (Ref. No. 675); (ii) Side Letter to DVD Video Disc and DVD ROM Disc Patent License Agreement (Ref. No. 695); (iii) [Second] Side Letter to DVD Video Disc and DVD ROM Disc Patent License Agreement (Ref. No. 695); (iv) MPEG Patent License Agreement (Ref. No. 676); (v) CD Disc Patent License Agreement (Ref. No. 677); (vi) Side Letter to CD Disc Patent License Agreement (Ref. No. 697); and (vii) Patent and Know-How License Agreement. All references to “Ref. No.” are as set forth in the Debtors’ Assumption Schedule Notice.

5. On July 6, 2012, the Debtors filed the Assumption Schedule Notice. The Assumption Schedule Notice sets forth the Debtors’ stated cure amounts for certain leases, contracts and agreements (the “Proposed Cure Amounts”) that the Debtors may potentially assume and assign, including the Philips’ Contracts. Certain of the Proposed Cure Amounts provided by the Debtors are incorrect with respect to the Philips’ Contracts.

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<sup>2</sup>The Philips’ Contracts and related documentation are voluminous and therefore have not been attached to this Limited Objection and Counterstatement; however, Philips will provide such additional documentation upon request.

6. Philips objects to any assumption or assumption and assignment of the Philips' Contracts absent compliance by the Debtors and/or any proposed assignee with the requirements of section 365 of the Bankruptcy Code. Any proposed assumption or assumption and assignment of the Philips' Contracts must be conditioned on the Debtors first paying all amounts due and owing under the Philips' Contracts through the effective date of assumption or assumption and assignment of the Philips' Contracts, in accordance with section 365 of the Bankruptcy Code.

7. Currently, the Debtors are in default of the terms of the Philips' Contracts by failing, among other things, to make pre and post-petition royalty payments and other related charges when due. The Philips' Contracts all relate to the licensing of intellectual property to various Debtors relating to the replication of CDs, DVDs and related technology. The Debtors' obligations under the Philips' Contracts are royalty-based, which requires accurate reporting from the Debtors of production and sales figures. Because Philips does not possess accurate or current production and sales figures (and such information is in the sole control of the Debtors), Philips is unable to determine the exact amounts owed under the Philips' Contracts at this time.<sup>3</sup> However, Philips' best estimate of the total amount currently due and owing by the Debtors to Philips under the Philips' Contracts (collectively, the "Cure Amounts") is:

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<sup>3</sup>Accordingly, Philips must reserve the right to supplement any monetary default estimates provided herein with verified amounts when available.

<b>Contracts (Identified by “Ref No.” on the Assumption Notice Schedule)</b>	<b>Pre-Petition</b>	<b>Post-Petition</b>	<b>Total</b>
Nos. 675, 695 and 696: IP License Agreement relating to DVDs and related side letters	\$2,370,542.38 (as stated by the Debtors, but subject to verification by Philips based on additional information required to be provided by the Debtors and in the sole control of the Debtors)	\$123,575.66 (subject to verification by Philips based on additional information required to be provided by the Debtors and in the sole control of the Debtors)	\$2,494,118.04 (subject to verification by Philips based on additional information required to be provided by the Debtors and in the sole control of the Debtors)
No. 676: IP License Agreement relating to MPEG Technology	\$0.00	\$0.00	\$0.00
Nos. 677 and 697: IP License Agreement relating to CDs and related side letter	Subject to pending litigation in the USDC-SDNY (currently stayed as to the Debtors), but believed to be in excess of \$80 million <sup>4</sup>	Subject to verification by Philips based on additional information required to be provided by the Debtors and in the sole control of the Debtors	Subject to pending litigation and subject to verification by Philips based on additional information required to be provided by the Debtors and in the sole control of the Debtors, but believed to be in excess of \$80 million
No. 684: Patent and Know-How License Agreement relating to a cross-license purportedly assigned by Time Warner, Inc. to the Debtors <sup>5</sup>	\$0.00	\$0.00	\$0.00

<sup>4</sup>Philips reserves all rights under the pending litigation (USDC-SDNY Case No. 08-cv-00515) (“USDC Litigation”). The USDC Litigation is currently stayed with respect to the Debtors.

<sup>5</sup>The Patent and Know-How License Agreement is subject to an express reservation of rights regarding the propriety of a purported assignment of that agreement from Time Warner Inc. to the certain of Debtors (See Paragraphs 6 and 9 of the [Second] Side Letter to DVD Video Disc and DVD ROM Patent License Agreement [Dated December 1, 2004] (Ref No. 697), a true and correct copy of which is attached hereto as Exhibit “A”). In that the resolution of the propriety of the Time Warner Assignment is not an issue before this Court in the context of the instant Motion, Philips would invite the Debtors and Buyer to seek to resolve such issue consensually).

8. The Cure Amounts represent the amounts currently due and owing to Philips under the Philips' Contracts. These amounts may change prior to any actual date of assumption or assumption and assignment of the Philips' Contracts. Accordingly, Philips expressly reserves the right to amend and/or supplement the Cure Amounts from time to time and at any time, and requests that the Debtors remains liable for, among other things: (a) post-petition obligations and other charges under the Philips' Contracts which become due after the date hereof, (b) certain amounts due and owing under the Philips' Contracts, but which may be unreported, underreported, or unbilled as of the date hereof, including but not limited to period-end adjustments for royalty rate changes and similar charges, (c) any regular or periodic adjustment of charges under the Philips' Contracts which were not due or had not been determined as of the date hereof, (d) any non-monetary defaults, and/or (e) any insurance and indemnification obligations under the Philips' Contracts.

9. In addition, Philips requests that any order approving the assumption and assignment of the Philips' Contracts provide that the proposed assignee will be responsible for all accrued, but unbilled charges under the Philips' Contracts, including unpaid period-end adjustments and reconciliations, interest, and/or non-compliant royalty rates, whether accruing prior to or after the effective date of assumption and assignment of the Philips' Contracts, when such charges become due in accordance with the terms of the Philips' Contracts. This result is mandated by the requirement that the Debtors cure all arrears and that the Debtors provide adequate assurance of future performance under the terms of the Philips' Contracts. *See* 11 U.S.C. § 365(b)(1)(A) and 365(f)(2).

10. Philips further objects to the proposed assumption and assignment of the Philips' Contracts absent the proposed assignee providing Philips with sufficient information with respect to

adequate assurance of future performance in accordance with section 365 of the Bankruptcy Code. Philips has received some evidence of adequate assurance of future performance from the proposed assignee; however, Philips questions the sufficiency of such adequate assurance information. At a minimum, any proposed assignee must provide Philips with sufficient information to demonstrate that the proposed assignee is capable of satisfying all contractual obligations (monetary and non-monetary) when required under the Philips' Contracts.

11. Philips objects to the assumption and assignment of the Philips' Contracts to the extent the Debtors and/or the proposed assignee fail to satisfy the requirements set forth in section 365(b) and (f) of the Bankruptcy Code.

12. Philips expressly reserves the right to supplement and/or amend this Limited Objection and Counterstatement.

WHEREFORE, Philips respectfully requests that this Court: (a) sustain this Limited Objection and Counterstatement; (b) require that any order authorizing the assumption or assumption and assignment of the Philips' Contracts affirmatively require the Debtors to pay all amounts owing to Philips under the Philips' Contracts through the effective date of any assumption and/or assignment of the Philips' Contracts and to provide sufficient adequate assurance of future performance and the payment of attorneys' fees; (c) require that any order authorizing the assumption and assignment of the Philips Contracts be expressly subject to the reservation of rights set forth herein with respect to: (i) verification of actual royalty rates and

amounts; (ii) the pending USDC Litigation; and (iii) the invalidity of the Time Warner Assignment; and (d) grant Philips such other and further relief as this Court deems just and appropriate under the circumstances.

Dated: July 20, 2012

MONZACK MERSKY MCLAUGHLIN AND  
BROWDER, P.A.

/s/ Rachel B. Mersky

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- and -

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**COUNSEL FOR U.S. PHILIPS CORPORATION  
AND KONINKLIJKE PHILIPS ELECTRONICS  
N.V.**

# **EXHIBIT A**





# PHILIPS

## Koninklijke Philips Electronics N.V.

P.O. Box 218 - 5600 MD Eindhoven - The Netherlands

Re: DVD Video Disc and DVD ROM Disc Patent License Agreement

Ref: DVD

Date: December 1, 2004

Dear Sirs,

Reference is made to the DVD Video Disc and DVD ROM Disc Patent License Agreement ("DVD Disc Agreement") between Cinram International Inc. ("Licensee") and Koninklijke Philips Electronics N.V. ("Philips") covering the Territories of the United States and Canada and having an effective date of July 1, 2002, and to the accompanying Side Letter ("First DVD Disc Side Letter") effective as of the same date but dated August 23, 2002.

It is hereby agreed as follows:

1. This side letter ("Second DVD Disc Side Letter") shall constitute a legally binding and integral part of the Agreement and shall be effective as of December 1, 2004.
2. Per the First DVD Disc Side Letter (see paragraph 28), Cinram Inc. is a "Licensee" under the DVD Disc Agreement with effect from July 1, 2002.
3. Philips, Cinram International Inc., Cinram Manufacturing Inc. (having an office at 1400 East Lackawanna Ave, Olyphant, PA 18448), and Cinram Latinoamericana, S.A. de C.V. (having an office at Avenida Tlahuac 6710, Col. San Francisco Tlalenco, Delegacion Tlahuac, 13400 Mexico, D.F., Mexico) hereby acknowledge that the terms and conditions of the DVD Disc Agreement, the First DVD Disc Side Letter and this Second DVD Disc Side Letter extend, with effect from December 1, 2004, to Cinram International Inc.'s entities Cinram Inc., Cinram Manufacturing Inc., and Cinram Latinoamericana, S.A. de C.V. (each of Cinram Inc., Cinram Manufacturing Inc., and Cinram Latinoamericana, S.A. de C.V. being a "Licensee" under this Agreement). Further, the Territory as defined in Clause 1.14 shall be treated as follows:
  - (a) For Cinram Inc. and Cinram Manufacturing Inc., the Territory shall be the United States of America, its territories and possessions;
  - (b) For Cinram Latinoamericana, S.A. de C.V., the Territory shall be Mexico; and
  - (c) For Cinram International Inc., the Territory shall be Canada.
4. Philips and Cinram International Inc., Cinram Inc., Cinram Manufacturing Inc. and Cinram Latinoamericana, S.A. de C.V. acknowledge that for the convenience of the parties only one Agreement and one Side Letter has been executed, but in legal effect the Agreement and Side Letter shall be treated as separate contracts between Philips and each respective one of Cinram International Inc., Cinram Inc., Cinram Manufacturing Inc. and Cinram Latinoamericana, S.A. de C.V. Unless otherwise agreed by Philips in writing, any obligation to be performed by Cinram International Inc. or its aforementioned subsidiaries shall be

Initialed by Philips \_\_\_\_\_

Initialed by Licensee \_\_\_\_\_

Koninklijke Philips Electronics N.V.  
Eindhoven The Netherlands  
Commercial Register Eindhoven no. 17001916



provided per Territory (e.g. royalty reports and payments for Canada, Mexico and the United States to be separately reported) and submitted to the respective local Philips licensing office in each Territory as directed by Philips.

5. Cinram Manufacturing Inc. and Cinram Latinoamericana, S.A. de C.V. shall provide, inter alia, manufacturing equipment lists to Philips as required by the DVD Disc Agreement and the First DVD Side Letter, with any requisite time periods being calculated from December 31, 2004.
6. Cinram International Inc. has taken the position that it has acquired certain patent rights pursuant to an assignment from Time Warner Inc. under a certain Patent and Know How License Agreement between Philips Electronics NV and Time Warner Inc. having an effective date of January 1, 1996, with benefit to its entities identified above. Licensee acknowledges that Philips has taken the position that Philips has not yet been presented with a valid assignment between Time Warner Inc. and Cinram International Inc. of the aforesaid Patent and Know How License Agreement. Cinram International Inc. has also represented that it has acquired certain rights under the patents of Pioneer, with benefit to its entities identified above. Accordingly, Cinram International Inc., Cinram Inc., Cinram Manufacturing Inc. and Cinram Latinoamericana, S.A. de C.V. have requested that Philips specify the royalty rate to be paid by each of them under the DVD Disc Agreement for (i) in the case of DVD-Discs manufactured by each of them, for use of the Sony and LGE patents; and (ii) in the case of DVD-Discs purchased by each of them, from other DVD-Disc manufacturers duly licensed by Philips, for the use of the patents of Philips, Sony and LGE.

The royalty rate payable in case (i) above for the use of the Sony and LGE patents shall be:

Standard Rate = 2.11 U.S. Dollar Cents/DVD-Disc  
 Compliance Rate = 1.59 U.S. Dollar Cents/DVD-Disc

The royalty rate payable in case (ii) above for the use of the Philips, Sony and LGE patents shall be:

Standard Rate = 3.96 U.S. Dollar Cents/DVD-Disc  
 Compliance Rate = 2.97 U.S. Dollar Cents/DVD-Disc

7. Notwithstanding the provisions of Clause 4.12, each of the aforementioned Licensees shall provide an estimated report for the period October 24, 2003 through September 30, 2004, no later than December 31, 2004, and pay royalties based on such estimate, no later than December 31, 2004, applying the royalty rates set forth in paragraph 6 above. Each such Licensee shall provide a final report for the above period no later than January 31, 2005. If additional royalties are due above the amounts paid based on the estimate, the respective Licensee shall pay such amount concurrent with the submission of the report. If the additional royalties due exceed 20% of the royalties paid based on the estimate, the respective Licensee shall additionally pay interest of 0.5% of the additional royalty paid. If the final report shows an overpayment, the respective Licensee may take a credit towards payment of royalties for the fourth calendar quarter of 2004, due on February 28, 2005.

Initialed by Philips: \_\_\_\_\_

Initialed by Licensee: \_\_\_\_\_



8. For the avoidance of doubt, Cinram International Inc. and Cinram Inc. have already complied with providing a "past use" audit statement pursuant to Clause 4.12. Cinram Manufacturing Inc., while formerly part of Time Warner Inc., was previously audited by Philips. Further, Philips intends to audit in calendar year 2005, each of the Cinram entities listed in paragraph 3 pursuant to Clause 4.10 of the DVD Disc Agreement. Accordingly, to avoid duplication of cost and effort, neither Cinram Manufacturing Inc. nor Cinram Latinoamericana, S.A. de C.V. shall be required to provide such "past use" audit statement, provided they comply with the planned Philips audit pursuant to Clause 4.10.
  
9. For the sake of concluding this Agreement with respect to the use of the patent rights of Sony and LGE, Philips and each Licensee have agreed to reserve their respective positions as to the assignment of any patent rights between Time Warner Inc. and such Licensee pursuant to the aforesaid Patent and Know How License Agreement. Accordingly, no inference shall be given adverse to any Party's position as a result of entering into the DVD Disc Agreement and this Second DVD Disc Side Letter. The receipt by Philips of the royalties specified in paragraphs 6 and 7, shall not be considered a waiver of any claims, rights or causes of action that Philips may have against any party arising out of or relating to the assignment of the aforesaid Patent and Know How License Agreement, the validity of the assignment, or the effective date thereof, or the use of Philips' patents.
  
10. Any patent right granted by Pioneer to Cinram International Inc. and its Associated Companies is confidential between them. Accordingly, notwithstanding the foregoing, nothing herein, nor the receipt by Philips of the royalties specified in paragraphs 6 and 7, shall be considered a waiver of any claims, rights or causes of action that Pioneer may have against any party arising out of or relating to the use of Pioneers' patents.

....continued

Initialed by Philips \_\_\_\_\_

Initialed by Licensee \_\_\_\_\_



If the above properly reflects our mutual understanding and agreement, please indicate so by signing both copies of this Side Letter and returning these to us. Upon receipt thereof we will arrange for countersignature on our part.

Yours sincerely,

Koninklijke Philips Electronics N.V.

Name: **R. PETERS**  
Title: **BY PROXY**  
Date:

Read and Agreed:

Cinram International Inc.

Name: **JOHN LIND**  
Title: **DIRECTOR OF CONSUMER RESEARCH**  
Date: **DEC 22/04**

Read and Agreed:

Cinram Inc.

Name: **Lewis Ritchie**  
Title: **Vice President**  
Date: **Dec. 22-2004**

Read and Agreed:

Cinram Manufacturing Inc.

Name: **Lewis Ritchie**  
Title: **Treasurer**  
Date: **Dec. 22-2004**

Read and Agreed:

Cinram Latinoamericana, S.A. de C.V.

Name: **Lewis Ritchie**  
Title: **Authorized Officer**  
Date: **Dec. 22-2004**

Initialed by Philips \_\_\_\_\_

Initialed by Licensee \_\_\_\_\_



**VIA FACSIMILE #(212) 403-2000**

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**VIA HAND DELIVERY**

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*Counsel to the Proposed Purchaser*

I further certify that the foregoing was also served electronically on the CM/ECF System.

Date: July 20, 2012

/s/ Shelley A. Losito

Shelley A. Losito, Paralegal