

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

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| <p>In re:</p> <p>EDGIO INC., <i>et al.</i>,</p> <p style="padding-left: 100px;">Debtors.¹</p> | <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> | <p>Chapter 11</p> <p>Case No. 24-11985 (KBO)</p> <p>(Jointly Administered)</p> <p>Hearing Date: To be determined</p> <p>Objection Deadline: To be determined</p> <p>Re: Dkt. Nos. 34, 141, 381, 431, 465</p> |
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**MOTION OF DRNC HOLDINGS, INC.
TO (I) ENFORCE THE SALE ORDER AND PATENT
PURCHASE AGREEMENT AND (II) COMPEL PERFORMANCE BY THE DEBTORS**

DRNC Holdings, Inc., an affiliate of InterDigital Inc. (the “**Purchaser**”), by its undersigned counsel, hereby files this motion (this “**Motion**”) to: (i) enforce the Sale Order (as defined below), including the Patent Purchase Agreement (as defined below), approved thereby; and (ii) compel the Debtors to deliver immediately to the Purchaser certain Post-Closing Deliverables (as defined below) in accordance with such agreement. In support of this Motion, the Purchaser respectfully states the following:²

BACKGROUND

1. The Purchaser was the Successful Bidder (as defined below) for certain patents of the Debtors. The Sale Order approving the sale specifically provides that “[t]ime is of the essence

¹ The Debtors operate under the trade name Edgio and have previously used the trade names Limelight, Edgecast and Layer0. The Debtors in these chapter 11 cases (the “**Chapter 11 Cases**”), along with the last four digits of each Debtor’s federal tax identification number, are: Edgio, Inc. (7033); Edgecast Inc. (6704); Edgio International, Inc. (3022); Limelight AcquisitionCo, Inc. (6138); Limelight Midco, Inc. (1120); Limelight Networks VPS, Inc. (3438); and Mojo Merger Sub, LLC (7033). The Debtors’ service address for purposes of these Chapter 11 Cases is: 11811 N. Tatum Blvd., Ste. 3031, Phoenix, AZ 85028. Additional information about the Chapter 11 Cases is available at <https://OmniAgentSolutions.com/Edgio/>.

² The *Declaration of Leonid Kravets* in support of this Motion has been filed concurrently with this Motion.

in closing the Sale” and that “the Sellers and the Purchaser intend to close the Sale as soon as practicable.” Docket No. 465 at ¶ 31. While the Purchaser was prepared to close quickly, the Debtors wanted to wait until after they consummated the sale of other assets to a third party. Following consummation of that sale on Friday, December 13, 2024, the parties exchanged signatures executing the Patent Purchase Agreement and the Purchaser arranged to pay the purchase price and deliver its final closing deliverable the following Monday on December 16, 2024.

2. On Sunday, December 15, 2024, the Debtors suddenly demanded a blanket license-back agreement from the Purchaser that was never part of the bargain. The Purchaser rejected the Debtors’ last-minute effort to strong arm a material modification to the fully-executed Patent Purchase Agreement, and proceeded the next day by paying the Purchase Price (as defined below), complying with its remaining deliverable obligation under the agreement, and waiving any remaining conditions to closing owed by the Debtors.

3. Since the closing, the Debtors have doubled down on their bad faith efforts to force a license-back agreement by denying, in conclusory fashion and with no legal basis, that the closing occurred and flatly refusing to deliver the customary deliverables confirming the transfer of title of the patents. The Debtors’ wrongful conduct is clouding title to the patents to the Purchaser’s detriment. Accordingly, the Purchaser brings this Motion to enforce the Sale Order and Patent Purchase Agreement and to compel the Debtors to comply with their obligations.

JURISDICTION AND VENUE

4. The United States Bankruptcy Court for the District of Delaware (the “**Court**”) has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29,

2012 (Sleet, C.J.). This is a core proceeding under 28 U.S.C. § 157(b). Venue of these Chapter 11 Cases is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5. The predicates for the relief sought herein are sections 105(a) and 363 of the Bankruptcy Code.

6. Pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Purchaser consents to the entry of a final judgment or order with respect to this Motion if it is determined that this Court lacks Article III jurisdiction to enter such final order or judgment absent consent of the parties.

RELIEF REQUESTED

7. By this Motion, the Purchaser requests that the Court enter an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), (i) enforcing its Sale Order and the related Patent Purchase Agreement; (ii) compelling the Debtors to perform under the Patent Purchase Agreement and to deliver the Post-Closing Deliverables (as defined below); and (iii) granting such other relief as the Court deems just and proper.

BACKGROUND

A. General Background.

8. On September 9, 2024 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief pursuant to chapter 11 of the title 11 of the United States Code (the “**Bankruptcy Code**”).

9. On September 20, 2024, the United States Trustee for the District of Delaware appointed the Official Committee of Unsecured Creditors (the “**Committee**”). *See* Docket No. 98.

B. Sale Process.

10. On September 9, 2024, the Debtors filed the *Motion of Debtors for Entry of an Order (I) Approving (A) Bidding Procedures for the Sale of All or Substantially All of the Debtors' Assets, (B) the Expense Reimbursement, (C) Assumption and Assignment Procedures, (D) Form and Manner of Notice of Sale Hearing, Assumption Procedures and Auction Results, (E) the Debtors' Entry Into One or More Asset Purchase Agreements, (F) Sale(s) of Assets Free and Clear of All Encumbrances, and (G) Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Scheduling Certain Dates and Deadlines, and (III) Granting Related Relief* [Docket No. 34] (the "**Sale Motion**"), whereby the Debtors sought, inter alia, approval of procedures for the solicitation of bids (the "**Bid Procedures**") for the sale of substantially all of their assets (the "**Bankruptcy Sale**").

11. In accordance with the Bid Procedures, the Purchaser submitted a bid for certain patents of the Debtors in the form of a Patent Purchase Agreement (as amended from time to time, the "**Patent Purchase Agreement**" or "**PPA**") and participated in the Auction (as defined in the Sale Motion) held on November 13, 2024.

12. The Debtors accepted the Purchaser's bid for the "**Acquired Assets**" (as defined in the PPA) and, on November 14, 2024, designated the Purchaser as the Successful Bidder (defined in the Sale Motion) in its *Notice of Successful Bidder with Respect to the Auction of Certain of the Debtors' Intellectual Property Assets* [Docket Nos. 378 and 381].

13. On November 25, 2024, the Court held the Sale Hearing (as defined in the Sale Motion) and, on November 26, 2024, the Court approved the sale of the Acquired Assets to the Purchaser (the "**Sale**") pursuant to the terms of the PPA by entry of the *Order (I) Authorizing and Approving the Debtors' Entry into a Patent Purchase Agreement, (II) Authorizing the Sale of the*

Acquired Assets Free and Clear of All Encumbrances, and (III) Granting Related Relief [Docket No. 431] (the “**Initial Sale Order**”) a cross reference in which was corrected by entry of a corrected order on December 2, 2024 [Docket No. 465] (as corrected, the “**Sale Order**”).

14. Pursuant to the Sale Order, the Court found, among other things, that “(i) the [PPA] constitutes the highest or otherwise best offer for the Acquired Assets; (ii) *there is substantial risk of depreciation of the value of the Acquired Assets if the Sale is not consummated promptly*; (iii) the Sale presents the best opportunity to maximize the value of the Acquired Assets; and (iv) *unless the Sale is concluded expeditiously as provided for in this Order and pursuant to the Agreement, potential creditor recoveries may be substantially diminished.*” Docket No. 465 at ¶ I (emphasis added).

C. Negotiation of the PPA.

15. In connection with its bid and participation in the Auction, and as the Court found in the Sale Order, the Purchaser negotiated the terms of the PPA in good faith with the Debtors. Docket No. 465 at ¶¶ O, 25. Moreover, even after its selection as the Successful Bidder for the Acquired Assets and the entry of the Sale Order approving the terms of the Sale and the PPA, the Purchaser accommodated reasonable requests of the Debtors to finalize the schedules and exhibits to the PPA and to consummate the Sale and the Bankruptcy Sale.

16. The PPA is a comprehensive agreement that is based on forms of patent purchase agreements used in the regular sale of patents in the industry. It sets forth in Article 9 the conditions for Closing (as defined in the PPA) of the Debtors in their capacities as Sellers (as defined in the PPA) and of the Purchaser. The PPA also obligates the Sellers, in Section 8.2, to take certain actions to effectuate the Closing (including “all things necessary, proper or advisable (subject to any Applicable Laws) to cause the Closing Date to occur and consummate the Closing

and the other Transactions as promptly as practicable”) and, in Section 8.4, to take certain actions post-Closing to confirm the transfer of the Acquired Assets.

17. During the extensive negotiations of the PPA’s terms, the Purchaser agreed to, among other things, allow for a continuing Encumbrance (as defined in the PPA) created by a new Patent License (as defined in the PPA) executed between Debtors Edgio, Inc., and Mojo Merger Sub, LLC, and Akamai Technologies, Inc. (“**Akamai**”) in connection with and in furtherance of the Bankruptcy Sale. The Purchaser’s agreement to this condition facilitated Akamai’s own purchase of assets of the Debtors’ Apps & Security and Network Businesses (the “**Akamai Sale**”), as approved by a separate order of the Court entered on November 26, 2024 at Docket No. 429.

18. At no time during this months-long period, however, did the Purchaser ever agree to execute a license-back agreement to the Debtors’ estates, nor, was this requested from Purchaser at any time prior to December 15, 2024.

19. To the contrary, in connection with the Akamai Sale, the Debtors had proposed that the Purchaser agree to a temporary covenant not to sue in favor of the estate, to allow the Debtors to continue to provide certain content-delivery network services in support of the Akamai Sale through the end of the transition services period under the Akamai Sale. Instead of agreeing to this proposal, however, the Purchaser agreed to make an exception for limited continued use during the Akamai Sale’s transition services period, as reflected in Schedule 5.1(d) of the PPA. Accordingly, the PPA contains no reference to any license-back agreement or similar arrangement of any kind.

20. At all times following entry of the Sale Order, the Purchaser confirmed to the Debtors its willingness to close the Sale as soon as possible. In furtherance of a prompt closing, the Purchaser (or its counsel) requested a countersigned signature page to the PPA from the

Debtors on multiple occasions. The Debtors throughout this period reassured the Purchaser that the Sale would close once the Akamai Sale had been consummated.

D. Closing the PPA.

21. On Friday, December 13, 2024 (following the consummation of the Akamai Sale), the Purchaser confirmed again to the Debtors its readiness to close and asked that the Debtors send the fully executed PPA upon receipt of which the Purchaser would fund the Purchase Price (as defined in the PPA). The Debtors' responded by email attaching a fully compiled and executed electronic copy of the PPA³ to which the Debtors had added the date, December 13, 2024, and which included a scanned copy of their executed signature page. A copy of the email correspondence and a fully executed PPA is attached hereto as **Exhibit B**.

22. The Purchaser confirmed the Debtors' wire details and informed the Debtors of its intention to close on the Sale on the coming Monday.

23. On the eve of Closing, on Sunday, December 15, 2024, the Debtors suddenly contacted the Purchaser seeking to negotiate the terms of a brand new broad license-back agreement for all of the Acquired Assets for their remaining life—a request that had never before been raised by the Debtors or entertained by the Purchaser. Such a license-back agreement would require extensive negotiation of its terms and would constitute a material modification to the terms of the PPA and fundamentally change the economic basis for the Purchaser's investment in the Acquired Assets and the purchase price agreed in the PPA and approved by the Sale Order. Pursuant to Section 8.2 of the PPA, the Purchaser had no obligation to agree to this material modification.

³ The electronic file entitled "Project Falcon – Patent Purchase Agreement (InterDigital) [Executed].pdf" was sent to the Purchaser twice after a typo in one of the annexes had been corrected.

24. In accordance with the PPA's terms, on December 16, 2024, the Purchaser paid via wire the Purchase Price to the Debtors and counsel to the Purchaser also delivered a letter to the Debtors (the "**Closing Letter**"). The Closing Letter attached the Purchaser's sole remaining deliverable owed to the Debtors under the PPA and informed the Debtors that the Purchaser had waived any remaining conditions to Closing owed by the Debtors and that Closing had occurred. A copy of the Closing Letter is attached hereto as **Exhibit C**.

E. Debtors' Failure to Perform Post-Closing.

25. In the Closing Letter, the Purchaser demanded that the Debtors deliver certain post-closing deliverables as required under Section 8.4 of the PPA including, a Patent Assignment (as defined in the PPA) (the "**Patent Assignment**"), an electronic file containing the Importation Information (as defined in the PPA) (the "**Importation Information File**"), and electronic copies of the Patent Documents (as defined in the PPA) (together with the Patent Assignment and the Importation Information File, the "**Post-Closing Deliverables**"). These Post-Closing Deliverables are customary deliverables for sales of patents and are intended to be used to confirm the transfer of title in the Acquired Assets and facilitate the Purchaser's future use of the Acquired Assets.

26. On Tuesday, December 17, 2024, the Debtors' counsel emailed the Purchaser a letter (the "**Reply**") stating the Debtors' position that Closing had not occurred. A copy of the Reply is attached hereto as Exhibit D. The Reply states no basis for the Debtors' position under the terms of the PPA or applicable law. Instead, the Debtors simply reiterated their improper demand for a material modification of the PPA.

27. On Friday, December 20, 2024, counsel to the Purchaser responded to the Reply with another letter (the "**Post-Closing Letter**") to the Debtors and their counsel informing them that if the Debtors failed to deliver the Post-Closing Deliverables as required by the PPA that the

Purchaser would seek recourse through the Court to enforce the PPA and the Sale Order. A copy of the Post-Closing Letter is attached hereto as **Exhibit E**.

F. Implications of the Failure to Acknowledge Closing.

28. The Debtors' refusal to acknowledge that Closing has occurred significantly clouds the Purchaser's title in the Acquired Assets to the Purchaser's detriment.

29. Certain of the Acquired Assets are patent applications subject to pending patent prosecution at the United States Patent and Trademark Office ("USPTO") in which the Purchaser will need to respond to defend its interests. Several of these patent matters will require the Purchaser to take action on or before the end of January 2025 to protect the rights it purchased through the PPA. In the absence of such actions before such deadlines, those patent applications will be deemed abandoned and their value will become zero.

30. Additionally, the Debtors and their advisors continue to refuse to honor their obligations under the PPA in a bid to force the Purchaser to negotiate go-forward licensing agreements with potential purchasers of the remainder of the Debtors' estates assets on terms less favorable to the Purchaser than the Purchaser would freely seek.

31. Furthermore, although the Purchaser has been willing to engage in preliminary negotiations with such potential purchasers given its go-forward ownership of the Acquired Assets, the refusal of the Debtors to acknowledge Closing has clouded these negotiations and forced the Purchaser to divert time and resources to taking actions to enforce its rights under the PPA and Sale Order.

32. This diversion may lead some of these potential purchasers to cease engagement in licensing discussions with Purchaser and could result in the loss of economic opportunities both for the Purchaser and for the Debtors' estates.

33. It is essential that the Court act quickly and confirm the Purchaser's title in the Acquired Assets so that it can protect the economic rights for which it bargained and which the Court approved by the Sale Order.

BASIS FOR RELIEF REQUESTED

34. It is axiomatic that a bankruptcy court has authority to “interpret and enforce its own prior orders.” *Travelers Indem. Co. v. Bailey*, 129 S. Ct. 2195, 2205 (2009); *In re Ross*, 858 F.3d 779, 783 (3d. Cir. 2017). Here, the Court specifically retained jurisdiction under the Sale Order:

“to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the Agreement and related Transaction Documents, all amendments thereto, and any waivers and consents thereunder, including, but not limited to, retaining jurisdiction to ***(i) compel delivery of the Acquired Assets to the Purchaser; (ii) interpret, implement, and enforce the provisions of this Order, the Agreement and the other Transaction Documents;*** (iii) protect the Purchaser Parties against any Encumbrances against the Sellers or other Debtors or the Acquired Assets of any kind or nature whatsoever; and (iv) enter any order under sections 363 and 365 of the Bankruptcy Code.” (emphasis added)

See Sale Order ¶ 35.

35. Further, section 105(a) of the Bankruptcy Code provides that the Court “may issue any order, process, or judgment that is necessary or appropriate to carry out the provision of this title.” See 11 U.S.C. § 105(a).

36. The Court should enforce and implement the Sale Order and the PPA. Specifically, the Court should confirm that Closing (as defined in the PPA) has occurred and that the sale of the Acquired Assets has been consummated in accordance with the PPA. The Court should further direct the Debtors to deliver the Post-Closing Deliverables to the Purchaser as required under the terms of the PPA.

37. The Debtors' Reply cites no basis for contesting that Closing has occurred. Nor does any such basis exist as all conditions specified in the PPA for Closing have been satisfied or waived. The executed PPA unambiguously provides that the Closing occurs upon the satisfaction or waiver of all conditions set forth in Article 9 thereof. The Purchase Price has been paid and, as set forth in the Closing Letter, all conditions in Article 9 to the Closing have been satisfied, including all conditions in Section 9.1 (*Conditions Precedent to Performance by Sellers and Purchaser*) and all conditions in Section 9.3 (*Conditions to Obligations of Sellers*). With respect to Section 9.2 (*Conditions to Obligations of Purchaser*) all conditions have been satisfied or, as set forth in the Closing Letter, have been waived (which Section 9.2 makes clear the Purchaser may do in "its sole discretion"). See PPA § 9.2. Accordingly, Closing has occurred, the Purchaser has performed all of its obligations under the PPA, and the Debtors' delivery of the Post-Closing Deliverables is now required under Section 8.4 of the PPA.

38. It is concerning that this Motion seeking further action by the Court is even required. As set forth in paragraph 17 of the Sale Order, the Sale is self-executing:

"The Sale is self-executing, and neither the Sellers nor the Purchaser Parties shall be required to execute or file releases, termination statements, assignments, consents, or other instruments to effectuate, consummate, and implement the provisions of this Order; *provided, however*, that the Sellers and the Purchaser Parties are authorized to execute or file any such document that they deem advisable."

See Sale Order ¶ 17.

39. In other words, the Post-Closing Deliverables being requested from the Debtors are not required to give effect or even evidence the Sale once Closing has occurred. Nevertheless, the Purchaser was forced to file this Motion given the Debtors' wrongful efforts to cloud title over the Acquired Assets by asserting that the Sale has not been consummated and demanding as a condition to Closing a license-back of all the Acquired Assets which is included nowhere in the

PPA. These actions by the Debtors are specifically foreclosed by Section 8.2 of the PPA which provides that the Purchaser is under no obligation to modify the terms of the PPA or otherwise concede to any condition to its use of the Acquired Assets. *See* PPA §§ 8.2(a) and (b). Given its self-effectuating nature, the Debtors' position is a clear-cut violation of the Sale Order.

40. The Sale Order is final and provides the Court with jurisdiction and authority to resolve any disputes emanating from the PPA, the sale of the Acquired Assets, and any related agreements or other documentation executed in connection therewith. The Sale Order specifically retains jurisdiction for the Court to enforce the PPA against the Debtors and compel their performance in accordance with its terms. The terms of the PPA are clear and unambiguous, were negotiated in good faith between the Debtors and the Purchaser, and were approved in their entirety by this Court pursuant to the Sale Order. Sale Order ¶¶ 2, 4, and 28.⁴

RESERVATION OF RIGHTS

41. The Purchaser reserves all rights to (i) amend or supplement this Motion, (ii) exercise all available remedies under the PPA or applicable law, (iii) serve discovery in connection with this Motion, and (iv) seek additional relief from the Court, including, without limitation, to (a) file an administrative claim for any damages arising from the Debtors' breach of the PPA, (b) seek further specific performance of the Debtors' obligations under the PPA, (c) seek an order sanctioning the Debtors or its advisors for continued violation of the Sale Order, or (d) seek other appropriate relief.

⁴ To the extent the Court were to conclude that Closing has not occurred, the Court should direct the Debtors to consummate the Closing immediately as they are required to do under the Sale Order and Section 8.2 of the PPA.

NOTICE

42. Notice of this motion will be given to: (a) the Debtors; (b) the U.S. Trustee; (c) the Committee; and (d) any party that, as of the filing of this Motion, has requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Purchaser submits that no other or further notice of this Motion is necessary or required.

CONCLUSION

WHEREFORE, the Purchaser respectfully request that the Court enter the Proposed Order, (i) enforcing the Sale Order and PPA, and (ii) compelling the Debtor to deliver the Post-Closing Deliverables in accordance with the PPA.

Dated: December 20, 2024

/s/ Robert F. Poppiti, Jr.

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