

1 ROBERT A. FRANKLIN (091653)
THOMAS T. HWANG (218678)
2 DORSEY & WHITNEY LLP
305 Lytton Avenue
3 Palo Alto, CA 94301
Telephone: (650) 857-1717
4 Facsimile: (650) 857-1288
Email: franklin.robert@dorsey.com
5 Email: hwang.thomas@dorsey.com
6 Attorneys for Reorganized Debtors

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8 **UNITED STATES BANKRUPTCY COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10 **SAN JOSE DIVISION**

11 In re:)	Cases Substantively Consolidated
)	
12 ATI LIQUIDATING, INC.,)	Case No. 09-54511-SLJ-11
13 formerly known as)	
14 Aviza Technology, Inc.,)	
Employer's Tax ID No.: 20-1979646)	
)	
15 AI LIQUIDATING, INC.,)	Case No. 09-54514-SLJ-11
16 formerly known as Aviza, Inc.,)	
17 Employer's Tax ID No.: 20-0249205)	
)	
18 TTI LIQUIDATING, INC.,)	Case No. 09-54515-SLJ-11
19 formerly known as)	
20 Trikon Technologies, Inc.,)	
Employer's Tax ID No.: 95-4054321)	
)	
21 Debtor(s).)	<i>[No hearing required unless requested]</i>
)	
22 440 Kings Village Road)	
23 Scotts Valley, CA 95066)	

24 **MOTION REQUESTING (1) ENTRY OF FINAL DECREE AND (2) AUTHORITY TO DESTROY RECORDS**

25 **TO: THE HONORABLE CHARLES NOVACK, UNITED STATES BANKRUPTCY JUDGE,**
26 **THE UNITED STATES TRUSTEE AND OTHER PARTIES IN INTEREST**

27 ATI Liquidating, Inc., formerly known as Aviza Technology, Inc. ("ATI"), AI Liquidating,
28 Inc., formerly known as Aviza, Inc. ("AI"), and TTI Liquidating, Inc., formerly known as Trikon

1 Technologies, Inc. (“TTI,” and collectively with ATI and AI, the “Company” or the “Reorganized
2 Debtors”) hereby submits this MOTION REQUESTING (1) ENTRY OF FINAL DECREE AND (2)
3 AUTHORITY TO DESTROY RECORDS (the “Motion”) requesting that the Court close the within
4 bankruptcy cases and enter its Final Decree pursuant to Rule 3022 of the Federal Rules of
5 Bankruptcy Procedure (the “Bankruptcy Rules”) and 11 U.S.C. § 350¹. This Motion is supported by
6 the DECLARATION OF PATRICK C. O’CONNOR IN SUPPORT OF MOTION REQUESTING (1) ENTRY OF
7 FINAL DECREE AND (2) AUTHORITY TO DESTROY RECORDS (the “O’Connor Declaration”) and the
8 NOTICE OF MOTION REQUESTING (1) ENTRY OF FINAL DECREE AND (2) AUTHORITY TO DESTROY
9 RECORDS (the “Notice”) filed concurrently herewith, the papers and pleadings on file herein and on
10 such other and further oral and documentary evidence as may be presented on any hearing, if
11 requested, on the Motion.

12 PLEASE NOTE THAT IF THE REORGANIZED DEBTORS ARE NOT CURRENT IN
13 PLAN PAYMENTS, YOU MAY OBJECT TO ENTRY OF A FINAL DECREE AND ASK THE
14 COURT TO ORDER THE LIQUIDATION OF THE REORGANIZED DEBTOR'S ASSETS. IF
15 THE REORGANIZED DEBTORS FALL BEHIND IN PLAN PAYMENTS AFTER THE ENTRY
16 OF A FINAL DECREE, YOU MAY ASK THE COURT TO REOPEN THE CASES AND ORDER
17 LIQUIDATION.

18 I. JURISDICTION

19 1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157.
20 This Motion is made pursuant to 11 U.S.C. §§ 105 and 350, Bankruptcy Rule 3022, and Bankruptcy
21 Local Rule 3022-1. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(1). As set forth in
22 Article X of the DEBTORS’ JOINT PLAN OF LIQUIDATION (DATED MARCH 2, 2010) [D.E. 490] (as
23 amended², the “Plan”) confirmed in the cases, the Court retained post-confirmation jurisdiction in

24 _____
25 ¹ All statutory references are to Title 11 of the United States Code (the “Bankruptcy Code”), unless
otherwise specified herein.

26 ² The Plan was modified pursuant to the Bankruptcy Court’s ORDER APPROVING STIPULATION RE
27 POST-CONFIRMATION MODIFICATION OF DEBTORS’ JOINT PLAN OF LIQUIDATION (DATED MARCH 2, 2010)
[D.E. 573] entered on April 27, 2010, its ORDER APPROVING SECOND STIPULATION RE POST-CONFIRMATION
28 MODIFICATION OF DEBTORS’ JOINT PLAN OF LIQUIDATION (DATED MARCH 2, 2010) [D.E. 597] entered on
June 18, 2010, and its ORDER GRANTING MOTION BY REORGANIZED DEBTOR FOR APPROVAL OF

1 this matter to “to enter a Final Decree closing the Bankruptcy Cases.”

2 II. STATEMENT OF FACTS

3 A. BACKGROUND

4 2. On June 9, 2009 (the “Petition Date”), ATI, AI and TTI filed their respective
5 Voluntary Petitions under chapter 11 of the Bankruptcy Code. On June 10, 2009, the Court entered
6 its ORDER AUTHORIZING AND DIRECTING JOINT ADMINISTRATION OF ESTATES in each the respective
7 bankruptcy cases. [*See, e.g.*, D.E. 3 entered in Case No. 09-54514].

8 3. On April 8, 2010, the Court entered its ORDER CONFIRMING DEBTORS’ JOINT PLAN OF
9 LIQUIDATION (DATED MARCH 2, 2010) [D.E. 552] (the “Confirmation Order”).

10 4. The Plan became effective on April 23, 2010. The bankruptcy estates were
11 substantively consolidated under the Plan and the Confirmation Order.

12 5. An Official Committee of Unsecured Creditors (the “Committee”) was appointed by
13 the United States Trustee in the bankruptcy cases and was represented by counsel. Pursuant to
14 Section 6.25 of the confirmed Plan, the Committee was dissolved upon payment of final
15 distributions, with interest, by the Reorganized Debtors to creditors in the bankruptcy cases.

16 6. On October 5, 2016, the Reorganized Debtors filed their EX PARTE APPLICATION FOR
17 FIFTH ORDER EXTENDING TIME TO FILE APPLICATION FOR ENTRY OF FINAL DECREE [D.E. 783] (the
18 “Final Decree Extension Application”) due to several outstanding matters detailed therein
19 (collectively, the “Outstanding Wind Down Matters”) which the Reorganized Debtors believed
20 could require the Company’s corporate existence or the Court’s jurisdiction, including: (a)
21 addressing issues in closing the remaining two subsidiaries located internationally, (b) addressing
22 issues with respect to the sale of the Company’s real property and collection of an attendant
23 outstanding promissory note, (c) responding to any demands and concerns of the liquidator of ETEQ
24 Limited, an affiliate of the Reorganized Debtors’ United Kingdom-based subsidiary, Aviza UK, and
25 (d) liquidating remaining inventory and parts.

26 NONMATERIAL AMENDMENTS TO CONFIRMED PLAN [D.E.690] (the “Plan Modification Order”) entered on
27 November 5, 2012. The Plan Modification Order, among other things, modified compensation procedures for
28 the estate’s professionals and revised the definition of “Notice Parties” under the Plan to modify the manner
of notice to be provided to stockholders and procedures for compensation of the estates’ professionals.

1 7. The Court approved the Final Decree Extension Application pursuant to its Order
2 [D.E. 784] entered on October 6, 2016, extending the date by which the Reorganized Debtors must
3 apply for a final decree to September 30, 2017.

4 **B. STATUS OF THE CASE**

5 8. Prior to commencing the bankruptcy cases, the Company designed, manufactured,
6 sold and supported advanced semiconductor capital equipment and process technologies for the
7 global semiconductor industry and related markets.

8 9. Following a hearing on September 29, 2009, the Court approved the sale of certain of
9 the Company's assets, and the assets and stock of certain of their direct and indirect subsidiaries, to
10 Sumitomo Precision Products, Inc., which sale closed on October 16, 2009. The consideration,
11 valued by the Company at approximately \$60.0 million, included cash, certain promissory notes and
12 the assumption of certain liabilities.

13 10. The Plan sets forth the various responsibilities of the Reorganized Debtors, including
14 prosecuting and pursuing retained claims, objecting to claims, liquidating remaining assets including
15 real property, winding down subsidiaries, making distributions to creditors, making payments related
16 to the administration of the estates, and submitting quarterly reports to the United States Trustee and
17 the Court.

18 11. In accordance with the Plan, the Reorganized Debtors have liquidated remaining
19 assets and continue to do so. The Reorganized Debtors also have substantially completed the wind
20 down process of its subsidiaries, do not anticipate any issues with respect to ETEQ Limited, have
21 conferred with the purchaser of the real property and believe that they will receive payment on the
22 promissory note within the next several months, although payment is not fully due until June 2018.
23 As such, the Reorganized Debtors believe that they have resolved the Outstanding Wind Down
24 Matters or that they can do so without the need for the Court to retain jurisdiction at this time.

25 12. As a result of its liquidation efforts, the Reorganized Debtors have paid all allowed
26 general unsecured claims in full with interest pursuant to the Plan. Furthermore, in November 2013,
27 the Reorganized Debtors made a distribution to the holders of ATI's common stock as of the record
28 date established by the Plan and Confirmation Order. The Reorganized Debtors anticipate that they

1 will make another distribution to equity holders as of the Plan record date, within the next 12 to 18
2 months.

3 13. The Reorganized Debtors are current on their post-confirmation quarterly reports and
4 quarterly United States Trustee fees. The Reorganized Debtors will file a final post-confirmation
5 report and pay all outstanding United States Trustee fees prior to submitting to the Court the
6 proposed form of Final Decree³. The Reorganized Debtors will obtain the United States Trustee's
7 approval of the proposed form of Final Decree prior to submitting it to the Court.⁴

8 14. The Reorganized Debtors have operated consistent with the terms of the Plan and
9 intend to continue to do so, and do not anticipate the need for further Court jurisdiction over or
10 intervention in these cases. In view of the foregoing, the Plan has been substantially consummated.

11 III. REQUEST FOR ENTRY OF FINAL DECREE

12 15. Bankruptcy Code section 350(a) provides that “[a]fter an estate is fully administered
13 and the court has discharged the trustee, the court shall close the case.” 11 U.S.C. § 350(a).
14 Bankruptcy Rule 3022 similarly provides that “[a]fter an estate is fully administered in a chapter 11
15 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a
16 final decree closing the case.” Fed. R. Bankr. P. 3022.

17 16. The meaning of “fully administered” is not defined in the Bankruptcy Code; however,
18 courts have made clear that it does not require that completion of all payments required by a plan. *In*
19 *re Kleigl Bros. Universal Elec. Stage Lighting Co.*, 238 B.R. 531, 541 (Bankr. E.D.N.Y. 1999); *see*
20 *also In re Jordan Mfg. Co.*, 138 B.R. 30, 35 (Bankr. C.D. Ill. 1992) (holding that failure to pay all
21 claims should not delay entry of final decree).

22 17. The 1991 Advisory Committee Note to Bankruptcy Rule 3022 delineates the
23 following non-exclusive factors in the consideration as to whether or not an estate has been fully

24 _____
25 ³ Because this Motion is being submitted on a “scream or die” basis pursuant to Rule 3022-1 of the
26 Bankruptcy Local Rules for the Northern District of California (the “Local Rules”), the Reorganized Debtors
27 will file a request for entry of a Final Decree upon expiration of the notice period set forth by the Court's
Practices and Procedures for final decrees in chapter 11 cases. Thus, the Final Decree will constitute the
order on the Motion.

28 ⁴ The proposed form of Final Decree will include the Reorganized Debtors' address information for
parties seeking to contact the Reorganized Debtor after the cases are closed.

1 administered: (1) whether the order confirming the plan has become final; (2) whether deposits
2 required by the plan have been distributed; (3) whether the property proposed by the plan to be
3 transferred has been transferred; (4) whether the debtor or the successor of the debtor under the plan
4 has assumed the business or the management of the property dealt with by the plan; (5) whether
5 payments under the plan have commenced; and (6) whether all motions, contested matters, and
6 adversary proceedings have been finally resolved.

7 18. Pursuant to Bankruptcy Rule 3022, the estates are fully administered in that (a) the
8 Confirmation Order has become final; (b) there has been a substantial consummation of the Plan as
9 contemplated in 11 U.S.C. § 1101(2) as all or substantially all property proposed by the Plan to be
10 transferred has been transferred; (c) distributions under the Plan have been made and will be
11 completed to the extent of the Reorganized Debtors' remaining cash; (d) any property proposed to be
12 liquidated under the Plan has been or will be so liquidated; and (d) all motions, contested matters,
13 and adversary proceedings have been resolved.

14 19. The Reorganized Debtors seek entry of a Final Decree to avoid the administrative
15 cost of further post-confirmation reports and payment of United States Trustee fees. The
16 Reorganized Debtors intend to continue operating consistent with the terms of the Plan and do not
17 anticipate the need for further Court jurisdiction over or intervention in these cases. The
18 Reorganized Debtors are current on all quarterly post-confirmation quarterly reports and all United
19 States Trustee fees, and will file a final quarterly report and pay all final fees prior to submission of
20 the proposed Final Decree. In sum, the administration of the estates is essentially complete. In the
21 event that it becomes necessary to invoke the Court's jurisdiction following entry of the Final
22 Decree, the Court may reopen these cases for "cause" pursuant to 11 U.S.C. § 350.

23 20. Pursuant to the Plan⁵ and Local Rule 3022-1(b) and the Court's Practices and

24 ⁵ Section 6.27.3 of the Plan provides that "[a]fter the Bankruptcy Estates are fully administered, the
25 Reorganized Debtors shall file, and serve on the Notice Parties, an application for entry of the Final Decree."
26 Section 1.58 of the Plan defines the "Notice Parties" as follows: "...the Reorganized Debtors, counsel for the
27 Reorganized Debtors, the Creditors' Committee, counsel for the Creditors' Committee, the United States
28 Trustee, the Responsible Person, the Banks, counsel for the Banks, and any Creditor who, after the
Confirmation Hearing, delivers a notice to the Debtors requesting to be added as a notice party; provided that
(a) any Creditor whose Claim has been paid in full shall no longer be a Notice Party; (b) if all Creditors have
been paid in full with interest in accordance with the Plan, the Reorganized Debtors shall cause any notice
required to be mailed to the Notice Parties to be posted on its website prior to mailing notice to the Notice

1 Procedures for final decrees in chapter 11 cases, the Reorganized Debtors have caused the Motion,
2 the O'Connor Declaration and the Notice (the "Motion Papers") to be served on the United States
3 Trustee and all parties requesting special notice in these cases.⁶ In addition, the Reorganized
4 Debtors will maintain the Company's website for a period of at least 90 days and post the Motion
5 Papers on the website for such period.

6 IV. DESTRUCTION OF RECORDS

7 21. Section 12.8 of the Plan provides: "On or before the filing of their application for the
8 entry of the Final Decree, the Reorganized Debtors may seek an order of the Bankruptcy Court
9 authorizing the abandonment and destruction of their books and records; provided, however, that the
10 Reorganized Debtors shall comply with the Notice Procedure."⁷

11 22. Subsequent to the distribution of all remaining cash, the final dissolution of the
12 Reorganized Debtors, and the termination of their corporate existence, the Reorganized Debtors wish
13 to dispose of the records in their possession and under their control, in order to avoid the incurrence
14 of any additional administrative costs in connection with the storage and maintenance of such
15 records. Accordingly, the Reorganized Debtors respectfully request that in conjunction with the
16 entry of the Final Decree, the Court authorize the Reorganized Debtors to abandon, destroy and
17 otherwise dispose of any remaining books, records, or papers in their possession or control.

18 **WHEREFORE**, the Reorganized Debtors pray that this Court:

- 19 1. Enter the Final Decree;
- 20 2. Close this case immediately upon entry of the Final Decree;

21 Parties, and such notice shall remain on its website for a period of not less than 90 days from the date such
22 notice was mailed to the Notice Parties; and (c) the United States Trustee shall no longer be a Notice Party
upon closing of the Bankruptcy Case."

23 ⁶ Local Rule 3022-1(b) and the Court's Practices and Procedures require notice to be served on the
24 Committee, or, if there is no committee, the 20 largest unsecured creditors. Because the Committee has been
25 dissolved and all creditors have been paid in full with interest, the Reorganized Debtors have not served
creditors but instead will effect service on the "Notice Parties" in accordance with the Plan by posting the
Notice on the Company's website.

26 ⁷ Section 6.26.2 defines "Notice Procedure" in part as follows: "Whenever the Plan requires a Person
27 to comply with the Notice Procedure, such Person seeking the particular relief shall be required to serve a
written notice on the Notice Parties of the proposed action. Such Person shall be authorized to take any action
28 proposed to be taken in such notice fifteen (15) days after service of such notice unless, before the expiration
of such fifteen (15)-day period a written objection is made to the proposed action..."

1 3. Authorizing the Reorganized Debtors to abandon, destroy and otherwise dispose of
2 any books, records, or papers in their possession or under their control, subsequent to the final
3 distribution of all remaining cash, the final dissolution of the Reorganized Debtors, and the
4 termination of their corporate existence; and

5 4. For such other and further relief as the Court deems just and proper.

6 Dated: May 16, 2017

DORSEY & WHITNEY LLP

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8 By: /s/ Thomas T. Hwang
9 Thomas T. Hwang
10 Attorneys for the Reorganized Debtors

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