

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

In re:

VIRIDOS, INC.,¹

Debtor.

)
) Chapter 11
)

) Case No. 25-10697 (CTG)
)

)
)
) **Re: D.I. 37 & 95**
)

**LIMITED OBJECTION OF EXXONMOBIL TECHNOLOGY AND
ENGINEERING COMPANY TO THE DEBTOR’S PROPOSED SALE OF
SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS FREE AND CLEAR OF ALL
CLAIMS, LIENS, RIGHTS, INTERESTS, AND ENCUMBRANCES**

ExxonMobil Technology and Engineering Company (“*ExxonMobil*”) hereby files this limited objection (this “*Limited Objection*”) to the Debtor’s motion to sell substantially all of its assets (including intellectual property jointly developed with ExxonMobil) and granting related relief [Docket No. 37] (the “*Sale Motion*”).² In support of the Limited Objection, ExxonMobil, respectfully states as follows:

PRELIMINARY STATEMENT

1. Through the Sale Motion, the Debtor is proposing to sell substantially all of its assets, including intellectual property jointly developed with ExxonMobil, free and clear of all claims, liens, rights, interests, and encumbrances. Among the Purchased Assets is technology developed over more than a decade of collaboration between ExxonMobil and Viridos, funded in large part by ExxonMobil and governed by a series of research and development agreements, culminating in a Joint Development Agreement dated January 1, 2022 (the “*JDA*”) and a Second

¹ The Debtor in this Chapter 11 Case and the last four digits of its U.S. taxpayer identification number is: Viridos, Inc. (3940). The Debtor’s corporate headquarters is located at: 11149 N. Torrey Pines Road, La Jolla, CA 92037.

² Capitalized but undefined terms used herein shall have the meanings ascribed to them in the Sale Motion.

Amended and Restated JDA Termination Agreement dated March 15, 2023 (the “*Termination Agreement*”). ExxonMobil’s interest in the jointly developed intellectual property is not a royalty claim subject to discharge, but a continuing property interest arising from its co-development and co-funding of the technology. While the Sale Motion identifies the Purchased Assets, neither the Sale Motion, the proposed Sale Order, the Stalking Horse Agreement, nor the Bidding Procedures addresses the treatment of ExxonMobil’s interest in the Algal Program IP (as defined below). The Debtor can only sell Algal Program IP subject to ExxonMobil’s interest in the property, including the royalty and commercialization obligations that flow from that interest.

2. Absent assurance that ExxonMobil’s property rights will be preserved in any sale order, ExxonMobil cannot and does not consent to the sale of the Algal Program IP free and clear of its interest.³

3. The Debtor cannot sell that IP free and clear of ExxonMobil’s property interest under any circumstances. Section 363(f) of the Bankruptcy Code does not permit the sale of property free and clear of non-consensual, non-monetary interests in property unless one of five narrow conditions is met—none of which apply here. ExxonMobil’s property interest is not in bona fide dispute, cannot be satisfied with a monetary payment, and is not subject to extinguishment under applicable nonbankruptcy law. Accordingly, any sale of the Algal Program IP must be subject to ExxonMobil’s interest, and the proposed Sale Order must make that clear.

RELEVANT BACKGROUND

4. ExxonMobil and Viridos collaborated for about fourteen years on the development of algae-derived biofuels and related co-products. Their relationship began in 2009, when the

³ ExxonMobil spoke with Debtor’s counsel on May 29, 2025, in an attempt to resolve this issue before filing this Limited Objection. Debtor’s counsel granted ExxonMobil an extension until June 2, 2025 at 11:59 p.m. (EDT) to file this Limited Objection. While Debtor’s counsel indicated a willingness to add reservation of rights language to the Sale Order, ExxonMobil files this Limited Objection to ensure its rights are fully preserved.

parties entered into an Algae Biofuels Alliance Agreement (EM02004), effective July 8, 2009, under which they conducted foundational research on photosynthetic algae and methods for producing fuels, lubricants, and petrochemicals. After the Alliance Agreement expired in 2012, the parties executed a Settlement Agreement (EM07636) and a Post Alliance Staffing Agreement (EM07741), under which ExxonMobil compensated Viridos for continued work on the program. That same year, the parties entered into a Basic Algal Biology Research Program Agreement (EM08309), which was subsequently amended and restated multiple times, culminating in the Second Amended and Restated Basic Algal Biology Research Program Agreement (EM08309.A7), fully executed on January 2, 2018.

5. Over the course of this collaboration, ExxonMobil and Viridos achieved significant scientific milestones. In 2017, they announced a breakthrough algae strain that more than doubled oil content without significantly inhibiting growth—a key challenge in commercial scalability—as published in *Nature Biotechnology*.⁴ In 2018, the parties entered into the Algae Biofuels Outdoor Testing Collaboration Agreement (EM11341). This collaboration included the largest outdoor engineered algae testing program conducted to date, with three summers of field trials under EPA oversight. The results confirmed substantial improvements in photosynthetic efficiency (more than 2x over unmodified strains) and lipid production (a 145% increase), positioning the program as the most advanced of its kind. In total, ExxonMobil directly funded approximately \$320 million in algae biofuels research with Viridos under these agreements.⁵

⁴ Imad Ajjawi et al., Lipid Production in *Nannochloropsis gaditana* Is Doubled by Decreasing Expression of a Single Transcriptional Regulator, 35 *Nat. Biotechnol.* 647 (2017), <https://doi.org/10.1038/nbt.3865>.

⁵ ExxonMobil is prepared to provide copies of the referenced agreements upon request. However, given the long-standing relationship between the parties and the fact that the Debtor is in possession of these agreements, ExxonMobil assumes the Debtor can readily make them available to interested parties or the Court as needed.

6. On October 28, 2021, ExxonMobil and Viridos entered into the JDA, effective January 1, 2022, to continue their collaboration with a focus on enabling the commercialization of algae-derived bio-oils, biofuels, and related co-products. The JDA provided for continued research and development of photosynthetic algae and related agronomy, engineering, and regulatory processes. Under the JDA, certain IP is determined to be owned by one of the parties and certain is jointly owned. ExxonMobil is entitled to an initial royalty of up to 50% of the total amount received from self-commercialization royalties and third-party licensing of jointly owned technology, which is adjustable based on ExxonMobil's proportional funding (such jointly owned technology, the "***Algal Program IP***"). In addition, the JDA provided certain licenses between the parties for non-jointly owned IP under the program as well as the parties' background IP (the "***IP Licenses***").

7. In 2022, Viridos required additional funds to commercialize the Algal Program IP. In connection with Viridos obtaining such financing, on December 1, 2022, the JDA was terminated pursuant to a JDA Termination Agreement (LAW-2021-0641.A2).

8. While the JDA termination ended the parties' active collaboration and ExxonMobil's ongoing funding, the agreement recognized ExxonMobil's property interest in the jointly owned IP and continued the IP Licenses while modifying the ongoing royalty obligation in connection with the commercialization of the intellectual property.

9. Specifically, under Sections 4.1 and 4.2 of the Termination Agreement, ExxonMobil is entitled to:

- a. 5% of Licensing Income received by Viridos from third-party licenses of the Algal Program IP; and
- b. 5% of deemed Licensing Income from any self-commercialization of such IP by Viridos, calculated on a Most Favorable Nations basis.

10. These royalty obligations continue until all Algal Program IP enters the public domain and all related patents expire, are canceled, or are held invalid or unenforceable. The interest in the Algal Program IP and associated royalty rights are not merely contractual payment obligations—they are an ownership interest. The co-developer interest is not extinguished by the termination of the JDA and are enforceable against any successor or co-owner of the Algal Program IP.

11. In addition, section 2 of the Termination Agreement incorporating section 13.06 of the JDA expressly preserves section 6, *Ownership / Procurement of Program Results*, section 7, *License to Program Results*, and section 8, *License to Background Information and Patents*, of the JDA. Each of section 7 and 8 is subject to certain bankruptcy related provisions.

12. The Sale Motion seeks to transfer substantially all of Viridos' assets, including the jointly developed IP, free and clear of all claims, liens, and interests. However, ExxonMobil's interest in the Algal Program IP and associated royalty rights are not extinguishable under section 363(f) of the Bankruptcy Code and must be preserved in any sale order. ExxonMobil makes this Limited Objection to ensure that all parties in interest—including the Debtor, potential purchasers, and the Court—are on notice of this property interest.

13. Accordingly, ExxonMobil objects to the proposed Sale to the extent it seeks to divest or impair this interest.

14. Further, ExxonMobil objects to any purported assignment of the license rights under the JDA. These rights include the Debtor's right to use ExxonMobil's background IP and cannot be assigned without ExxonMobil's consent.

LIMITED OBJECTION

I. THE DEBTOR SEEKS TO SELL JOINTLY DEVELOPED IP WITHOUT DISCLOSING EXXONMOBIL'S INTEREST

15. Through the Sale Motion, the Debtor proposes to sell “all patents, patent applications, trademarks... intellectual property licenses... trade secrets... and other intellectual property rights” as part of the Purchased Assets. [Docket No. 37-2, Schedule 1(c)]. This sweeping definition necessarily encompasses intellectual property that ExxonMobil and the Debtor jointly developed through years of collaborative research in algae-based biofuel technology (i.e., the Algal Program IP).⁶

16. Neither the Sale Motion, the Stalking Horse Agreement, nor the Bidding Procedures disclose that portions of this intellectual property are subject to ExxonMobil's continuing property interest—which interest survived the termination of the parties' joint development relationship and that cannot be extinguished through a bankruptcy sale. This omission deprives potential bidders of material information about the assets they would be acquiring.

II. EXXONMOBIL'S INTEREST CONSTITUTES CONTINUING CO-OWNERSHIP IN JOINTLY DEVELOPED INTELLECTUAL PROPERTY

17. ExxonMobil's interest in the Algal Program IP and associated royalty rights are not merely contractual payment obligations that can be discharged in bankruptcy. Rather, they represent ExxonMobil's continuing interest in intellectual property that it jointly developed with the Debtor through collaborative research and development efforts.

⁶ Debtor does not list the Termination Agreement as an assumed contract, *see Notice of Potential Contract Assumption and Assignment* [Docket No. 100], but given the breadth of assets and rights to be assigned and the necessity of the ExxonMobil background IP, Debtor must be attempting to transfer the Termination Agreement.

18. Courts have recognized that certain continuing obligations tied to the use or commercialization of jointly developed assets constitute property interests, not merely contractual claims. In particular, the Third Circuit in *In re TWA*, 322 F.3d 283, 289 (3d Cir. 2003), held that the term “interest in property” under section 363(f) should be interpreted broadly to include obligations that “are connected to, or arise from, the property being sold.” Similarly, in *United Mine Workers of Am. 1992 Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.)*, 99 F.3d 573, 582 (4th Cir. 1996), the court recognized that interests in property encompass obligations that flow from ownership of the property itself, finding that Coal Act obligations constituted property interests where there was “a relationship between [the plans’] right to demand premium payments from [the debtors] and the use to which [the debtors] put the assets.” However, unlike the statutory benefit obligations in *Leckie*—which the court found could be reduced to a monetary satisfaction under 363(f)(5)—ExxonMobil’s interest here represents continuing co-ownership rights in jointly developed intellectual property that cannot be adequately compensated through a monetary payment alone. As such, they are the kind of “interests” that § 363(f) was designed to protect by mandating that they survive any sale unless one of the statute’s narrow exceptions is met.

19. Indeed, ExxonMobil’s rights in the Algal Program IP are properly characterized as a vested property interest arising from its role as co-developer of the technology. This interest is not dependent on the continuation of a contractual relationship or the enforcement of a royalty clause—it attaches to the intellectual property itself. Courts have recognized that when parties jointly develop intellectual property and expressly preserve post-termination rights in that IP, those rights constitute a continuing interest in the asset, not merely claims against the estate. *See, e.g., Brownstein v. Lindsay*, 742 F.3d 55, 64 (3d Cir. 2014) (joint authors are “co-owners of the work,

each entitled to undivided ownership in the entire work”); 35 U.S.C. § 116 (recognizing joint inventors as co-owners of patent rights). Bankruptcy courts have similarly held that intellectual property rights that attach to the asset itself survive a free-and-clear sale unless one of the narrow conditions of § 363(f) is met. *See In re Crumbs Bake Shop, Inc.*, 522 B.R. 766 (Bankr. D.N.J. 2014) (holding that a trademark licensee’s rights could not be extinguished by a § 363 sale because they were tied to the underlying IP and not merely contractual claims).

20. Moreover, the legislative history of the Bankruptcy Code confirms that § 363(f) was not intended to extinguish vested property rights. As the House Report explains, “[b]ankruptcy is mainly a procedural [device]... generally leaving undisturbed legal relationships that existed before bankruptcy.” H.R. REP. 95-595, 10, 1978 U.S.C.C.A.N. 5963, 5971. This principle is particularly relevant here: ExxonMobil’s interests in the Algal Program IP are not executory obligations or unsecured claims subject to discharge or sale—they are vested, undivided co-ownership rights in jointly developed intellectual property. Such rights attach to the asset itself and are not extinguished by a transfer under § 363(f), which authorizes sales “free and clear” only of interests that are subject to being cut off under applicable non-bankruptcy law. Because ExxonMobil’s rights are property interests, not claims against the debtor, they survive any such transfer.

21. The Termination Agreement and JDA include several specific rights that follow from ExxonMobil’s ownership interest in the IP:

- A perpetual, irrevocable, and sublicensable license to use and commercialize Program Technology (Termination Agreement §§ 4.3, 4.7);
- A 5% royalty on Licensing Income from third-party licenses of the Algal Program IP (Termination Agreement § 4.1);

- A 5% deemed royalty on self-commercialization by Viridos, calculated on a Most Favorable Nations basis (Termination Agreement § 4.2);
- Audit and reporting rights (Termination Agreement §§ 4.4–4.6; JDA Art. 19); and
- Joint ownership of work product generated during the Transition Services (Termination Agreement § 4.8).

22. This interest is not extinguished by the termination of the JDA. Rather, it is expressly preserved in the Termination Agreement and is inseparable from the Algal Program IP itself. The Termination Agreement and JDA memorialize ExxonMobil’s co-developer interest in the Algal Program IP and reflect the parties’ intent to vest ExxonMobil with a continuing interest, enforceable against any successor or assignee. This structure is consistent with the Third Circuit’s recognition in *In re TWA* that interests arising from or connected to specific assets constitute protected property interests under section 363(f).

23. This distinction is critical in the bankruptcy context. While the Third Circuit recently held in *In re Mallinckrodt PLC*, 99 F.4th 617 (3d Cir. 2024), that royalties from an outright sale of IP constituted dischargeable claims, that case actually reinforces why joint development rights merit different treatment. The *Mallinckrodt* court emphasized that the seller there had made an outright sale and “kept no property or security interest” in the IP. *Id.* at 622.

24. Indeed, the *Mallinckrodt* court specifically noted that parties can protect their interests by “licens[ing] the rights...or set[ting] up a joint venture to keep part ownership.” *Id.* That is precisely the type of collaborative arrangement ExxonMobil and Viridos created here. The surviving royalty obligations reflect ExxonMobil’s continued interest in technology it helped develop, not a mere contractual right to deferred payment for assets previously sold.

III. THE ALGAL PROGRAM IP CANNOT BE SOLD FREE AND CLEAR UNDER SECTION 363(f)

25. While the Debtor seeks to sell the Algal Program IP free and clear of all interests, including ExxonMobil's interest in the Algal Program IP, such a sale is permitted only if the Debtor satisfies at least one of the narrow conditions set forth in section 363(f) of the Bankruptcy Code, which provides:

The trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, *only if*—

- (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (2) such entity consents;
- (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (4) such interest is in bona fide dispute; or
- (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.⁷

26. The Debtor bears the burden of demonstrating that at least one of these conditions applies. Here, the Debtor cannot satisfy any of these conditions with respect to ExxonMobil's continuing interest in the Algal Program IP.

A. Section 363(f)(1)

27. Section 363(f)(1) permits the sale of property free and clear of an interest if applicable nonbankruptcy law would permit such a sale. The Debtor has identified no law—and ExxonMobil is aware of none—that would permit the sale of jointly developed intellectual property free and clear of a co-developer's expressly preserved co-ownership of the Algal Program

⁷ 11 U.S.C. § 363(f) (emphasis added).

IP. I.e., there is no nonbankruptcy law that allows a debtor to sell IP free and clear of a royalty interest that runs with the asset. To the contrary, intellectual property law generally recognizes and protects the rights of joint developers and their agreed-upon interests.⁸ Therefore, the Debtor cannot satisfy section 363(f)(1).

B. Section 363(f)(2)

28. Section 363(f)(2) permits the sale of property free and clear of an interest if the entity holding such interest consents. As stated above, ExxonMobil cannot consent to the Sale without knowing that its co-ownership will be preserved and that any purchaser will take the Algal Program IP subject to its property interest. Accordingly, this interest is preserved, and ExxonMobil does not consent unless its interest is expressly preserved and acknowledged. Therefore, the Debtor cannot satisfy section 363(f)(2).

C. Section 363(f)(3)

29. Section 363(f)(3) permits the sale of property free and clear if the interest is a lien and the purchase price exceeds the aggregate value of all liens. This provision is inapplicable because ExxonMobil's interest is not a lien but rather constitutes continuing co-ownership in jointly developed property, reflecting a vested property interest rather than a mere right to payment. Moreover, there is no evidence that the proposed sale price exceeds the value of ExxonMobil's interest, which continues for the life of the Algal Program IP and could generate substantial value over decades as the technology is commercialized, and in any event, the Debtor is not intending to

⁸ See, e.g., *Brownstein v. Lindsay*, 742 F.3d 55, 64 (3d Cir. 2014) (“When two or more people create a joint work, they become co-authors and co-owners of the work, each entitled to undivided ownership in the entire work.”) (internal quotations omitted) (citations omitted); *id.* at 68 (“A co-author can transfer or assign the rights to his ownership interest in the joint work, but this does not affect the ownership rights of his co-author.”) (citations omitted); *Dow Chem. Can. V. HRD Corp.*, 909 F. Supp 2d 340, 344-45 (D. Del. 2012) (enforcing the allocation of IP ownership under a joint development agreement). These cases underscore the principle, echoed in *In re TWA*, 322 F.3d at 290, that “interests in property” under section 363(f) include obligations that arise from or are inextricably linked to the property itself—not merely monetary claims against the estate.

provide any such proceeds to ExxonMobil in compensation. Therefore, the Debtor cannot satisfy 363(f)(3).

D. Section 363(f)(4)

30. Section 363(f)(4) permits the sale of property free and clear of an interest if such interest is in bona fide dispute. ExxonMobil's interest is clearly documented in the Termination Agreement and is not subject to any bona fide dispute. The Debtor has never challenged the existence of ExxonMobil's ownership interest or the royalty obligations. Therefore, the Debtor cannot satisfy section 363(f)(4).

E. Section 363(f)(5)

31. Finally, section 363(f)(5) permits the sale of property free and clear of an interest if such interest would be compelled, in a legal or equitable proceeding, to accept a monetary satisfaction of such interest. ExxonMobil's interest is not a lien or monetary claim—it is an ownership interest in the Algal Program IP and cannot be satisfied by a lump-sum payment. The value of the interest depends on future commercialization over potentially decades, making any present valuation speculative at best. Therefore, the Debtor cannot satisfy section 363(f)(5).

32. Because the Debtor cannot satisfy any of the five conditions set forth in section 363(f), there is no legal basis for the Algal Program IP to be sold free and clear of ExxonMobil's interest in the Algal Program IP.

IV. DEBTOR CANNOT TRANSFER LICENSE RIGHTS WITHOUT EXXONMOBIL'S CONSENT AND FULL ASSUMPTION OF THE TERMINATION AGREEMENT

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

The trustee may not assume or assign any 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.

34. Federal law makes non-exclusive intellectual property licenses non-assignable absent consent of the licensor. *See In re Catapult Entertainment, Inc.*, 165 F.3d 747 (9th Cir. 1999), *cert. dismissed*, 528 U.S. 924 (1999) (patent law renders non-exclusive patent licenses personal and non-assignable under Bankruptcy Code § 365(c)(1)); *In re Sunterra Corp.*, 361 F.3d 257, 271 (4th Cir. 2004) (holding that a debtor was statutorily barred by § 365(c)(1) from assuming a computer software license where contract counterparty did not consent to the assumption); *see also In re Trump Entm't Resorts, Inc.*, 526 B.R. 116, 126 (Bankr. D. Del. 2015) (“Non-exclusive patent and copyright licenses create only personal and not property rights in the licensed intellectual property and so are not assignable.”); *In re Rupari Holding Corp.*, 573 B.R. 111, 119 (Bankr. D. Del. 2017) (holding that the debtor could not assume and assign a trademark license without the consent of the non-debtor licensor).

35. The Termination Agreement includes ongoing licenses to Debtor of ExxonMobil assets. These license rights cannot be transferred or otherwise assigned without ExxonMobil’s consent. Therefore, pursuant to Bankruptcy Code section 365, the Debtor may not assume and assign the Termination Agreement without ExxonMobil’s consent. For the reasons discussed herein, ExxonMobil does not, at this time, consent to the Debtor’s proposed assumption and assignment, but will agree to consent if the Termination Agreement is expressly assumed.

RESERVATION OF RIGHTS

36. ExxonMobil reserves the right to amend or supplement this Limited Objection and/or raise additional issues in connection with this Limited Objection and the Sale Motion at the hearing.

CONCLUSION

37. For the foregoing reasons, ExxonMobil respectfully requests that the Court deny entry of the proposed Sale Order and grant such other and further relief as may be just or proper.

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Respectfully submitted,

Date: June 2, 2025
Wilmington, Delaware

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