

1 (3) by adding at the end the following:

2 “(52) ‘intellectual property’ means—

3 “(A) trade secret;

4 “(B) invention, process, design, or plant vari-
5 ety;

6 “(C) work of authorship; or

7 “(D) mask work subject to protection under
8 chapter 9 of title 17;

9 to the extent protected by applicable nonbankruptcy
10 law; and

11 “(53) ‘mask work’ has the meaning given it in
12 section 901(a)(2) of title 17.”.

13 (b) EXECUTORY CONTRACTS LICENSING RIGHTS TO
14 INTELLECTUAL PROPERTY.—Section 365 of title 11, United
15 States Code, is amended by adding at the end the
16 following:

17 “(n)(1) If the trustee rejects an executory contract under
18 which the debtor is a licensor of a right to intellectual pro-
19 perty, the licensee under such contract may elect—

20 “(A) to treat such contract as terminated by such
21 rejection if such rejection by the trustee amounts to
22 such a breach as would entitle the licensee to treat
23 such contract as terminated by virtue of its own terms,
24 applicable nonbankruptcy law, or an agreement made
25 by the licensee with another entity; or

1 “(B) to retain its rights (other than a right under
2 applicable nonbankruptcy law to specific performance
3 of such contract) under such contract, and any agree-
4 ment supplementary to such contract, to such intellec-
5 tual property (including any embodiment of such intel-
6 lectual property to the extent protected by applicable
7 nonbankruptcy law), as such rights existed immediately
8 before the case commenced, for—

9 “(i) the duration of such contract; and

10 “(ii) any period for which such contract may
11 be extended by the licensee as of right under ap-
12 plicable nonbankruptcy law.

13 “(2) If the licensee elects to retain its rights, as
14 described in paragraph (1)(B) of this subsection, under such
15 contract—

16 “(A) the trustee shall allow the licensee to exer-
17 cise such rights;

18 “(B) the licensee shall make all payments due
19 under such contract for the duration of such contract
20 and for any period described in paragraph (1)(B) of this
21 subsection for which the licensee extends such con-
22 tract; and

23 “(C) the licensee shall be deemed to waive—

1 “(i) any right of setoff it may have with re-
2 spect to such contract under this title or applica-
3 ble nonbankruptcy law; and

4 “(ii) any claim allowable under section 503(b)
5 of this title arising from the performance of such
6 contract.

7 “(3) If the licensee elects to retain its rights, as de-
8 scribed in paragraph (1)(B) of this subsection, then on the
9 written request of the licensee the trustee shall—

10 “(A) to the extent provided in such contract, or
11 any agreement supplementary to such contract, provide
12 to the licensee any intellectual property (including such
13 embodiment) held by the trustee; and

14 “(B) not interfere with the rights of the licensee
15 as provided in such contract, or any agreement supple-
16 mentary to such contract, to such intellectual property
17 (including such embodiment), including any right to
18 obtain such intellectual property (or such embodiment)
19 from another entity.

20 “(4) Unless and until the trustee rejects such contract,
21 on the written request of the licensee the trustee shall—

22 “(A) to the extent provided in such contract or
23 any agreement supplementary to such contract—

24 “(i) perform such contract; or

1 “(ii) provide to the licensee such intellectual
2 property (including any embodiment of such intel-
3 lectual property to the extent protected by appli-
4 cable nonbankruptcy law) held by the trustee; and
5 “(B) not interfere with the rights of the licensee
6 as provided in such contract, or any agreement supple-
7 mentary to such contract, to such intellectual property
8 (including such embodiment), including any right to
9 obtain such intellectual property (or such embodiment)
10 from a third entity.”.

11 **SEC. 2. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.**

12 (a) **EFFECTIVE DATE.**—Except as provided in subsec-
13 tion (b), this Act and the amendments made by this Act shall
14 take effect on the date of the enactment of this Act.

15 (b) **APPLICATION OF AMENDMENTS.**—The amend-
16 ments made by this Act shall not apply with respect to any
17 case commenced under title 11 of the United States Code
18 before the date of the enactment of this Act.

