

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**In re:**

**ENERGY CONVERSION DEVICES, INC.,  
et al.,<sup>1</sup>**

Debtors.

**Chapter 11**

Case No. 12-43166  
(Joint Administration Requested)

Hon. Thomas J. Tucker

**APPLICATION FOR ORDER AUTHORIZING EMPLOYMENT  
OF COVINGTON & BURLING LLP AS SPECIAL COUNSEL FOR THE DEBTORS**

Energy Conversion Devices, Inc. (“**ECD**”) and United Solar Ovonic LLC (“**USO**”), as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), hereby submit this application (the “**Application**”) for an order, substantially in the form of **Exhibit 1**, for authorization to retain and employ Covington & Burling LLP (“**Covington**”) as special counsel for the Debtors. In support of this Application, the Debtors respectfully state as follows:<sup>2</sup>

**Jurisdiction**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory predicates for the relief requested herein are section 327(e) of the Bankruptcy Code, 11 U.S.C. §§ 101-1330, as amended by the Bankruptcy Abuse Prevention and

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<sup>1</sup> The Debtors in the proposed jointly administered cases are Energy Conversion Devices, Inc. and United Solar Ovonic LLC.

<sup>2</sup> The Facts and circumstances supporting this Application are set forth in the declaration of W. Andrew Jack, a member of Covington (the “**Jack Declaration**”), a copy of which is attached as **Exhibit 2**.

Consumer Protection Act of 2005 (the “**Bankruptcy Code**”) and Rule 2014-1 of the Local Bankruptcy Rules for the Eastern District of Michigan (the “**Local Rules**”).

### **Background**

4. On February 14, 2012 (the “**Petition Date**”), Debtors commenced cases under chapter 11 of the Bankruptcy Code (the “**Cases**”). The Debtors are operating their business and managing their properties as a debtors-in-possession.

5. The Debtors are leaders in material science and renewable energy technologies, with a proven track record of successfully commercializing their technology innovations.

6. ECD is a publicly traded company listed on the NASDAQ Global Select Market (NASDAQ: ENER). ECD is primarily a holding company that operates, through its subsidiaries, businesses involving: (i) the manufacture, sale and installation of thin-film solar laminate through its indirect wholly owned subsidiary, USO; and (ii) the installation and servicing of rooftop photovoltaic (“**PV**”) systems through its wholly owned subsidiary Solar Integrated Technologies, Inc. (“**SIT**”)<sup>3</sup>.

7. Additional factual background relating to the Debtors’ commencement of these Cases is set forth in the *Declaration of William C. Andrews, Executive Vice President and Chief Financial Officer, In Support of First Day Motions* (“**Andrews Declaration**”) filed on the Petition Date [Docket No. 10].

8. The Debtors initiated these Cases to maximize value for their creditors by attracting new capital through a sale of all or substantially all of the assets of USO as a going concern and separate sales of ECD’s other assets.

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<sup>3</sup> SIT initiated a chapter 7 proceeding prior to Debtors initiating these Cases.

9. Debtors have filed a motion for joint administration of their cases and therefore caption and file this application solely in the case of ECD.

10. Debtors have filed a motion to employ Honigman Miller Schwartz and Cohn LLP (“**Honigman**”) as its general bankruptcy counsel in connection with their Cases.

### **Relief Requested**

11. The Debtors desire to retain and employ Covington as of the Petition Date as special counsel in these Cases pursuant to section 327(e) of the Bankruptcy Code.

### **Covington’s Qualifications**

12. Covington is a leading full service international law firm, with offices in San Diego, San Francisco, Silicon Valley, New York and Washington D.C. as well as London, Brussels and Beijing. It has more than 800 lawyers practicing in these key business and regulatory centers. Covington has extensive experience representing and advising clients in connection with complex corporate, litigation and regulatory matters, including mergers and acquisitions, structured finance, corporate finance (including securities offerings), commercial bank finance, federal securities law compliance, project development, joint ventures, intellectual property, tax, trade and export regulation, energy regulation, the design and implementation of employee benefits plans and all employee benefits aspects of corporate transactions.

### **Covington’s Longstanding Relationship with the Debtors**

13. Covington has represented the Debtors since 2007 in a wide spectrum of matters. Since 2007, Covington has maintained a dedicated core group of attorneys that have worked closely with the Debtors, each other, and the Debtors’ other attorneys and professionals, to provide coordinated, non-duplicative legal services for all assigned matters. Covington has served as counsel to the Debtors on many significant corporate transactions and has advised the Debtors with respect to a variety of matters, including: (a) financing transactions and securities

offerings; (b) mergers and acquisitions and divestiture transactions; (c) securities law disclosure and other compliance matters; (d) tax advice; (e) corporate governance matters; (f) employee benefits and executive compensation matters; (g) intellectual property matters; (h) regulatory advice; and (i) restructuring planning.

14. Through its work for the Debtors, Covington has derived considerable and intimate knowledge concerning the Debtors, and is already familiar with the Debtors' business affairs to the extent necessary for the scope of the proposed and anticipated services. The Debtors believe that Covington's experience and knowledge and its dedication to the Debtors' interest will be valuable to the Debtors in their efforts to maximize value in their sale processes. Accordingly, the Debtors wish to retain Covington as special counsel during these Cases.

15. Debtors believe Covington is able to represent them in the Cases in a most efficient and timely manner.

#### **Services to Be Provided**

16. Subject to this Court's approval, Debtors will employ Covington to perform the following tasks with respect to Debtors' Cases: (i) assist in the potential disposition of assets and other complex commercial transactions; and (ii) provide legal advice regarding securities law compliance, corporate governance, tax, employee benefits, intellectual property and regulatory compliance.

17. All services will be performed only at the request of the Debtors. Covington's services will not overlap with the services provided by Honigman. Both firms have been coordinating their efforts with each other and with other specialized counsel in the representation of the Debtors prior to commencement of the Cases so as to avoid duplication and provide responsive, cost-effective representation in their respective areas of expertise and will continue to do so during pendency of the Cases.

18. ECD has advanced approximately \$800 million to USO since 2003. At present, ECD and USO reflect that these advances were loans from ECD to USO, and debts owed by USO to ECD. At other times, these advances from ECD to USO have been treated on the Debtors' books as capital contributions from ECD to USO. Since ECD and USO have historically published consolidated financial statements, the separate accounting for the transaction is not reflected in historical published financial statements. The approximately \$800 million obligation consists of between \$300 to \$400 million advanced to fund capital expenditures, between \$300 to \$400 million advanced to fund losses at USO and between \$60 to \$70 million in accrued interest.

19. ECD is aware that there might be disputes between the ECD estate and the USO estate on interdebtor issues, such as the proper characterization of ECD's advances to USO, whether ECD's claim against USO should be equitably subordinated, whether there should be substantive consolidation of the Debtors' estates and potentially other issues. It is currently contemplated that any dispute will be resolved by a consensual plan of reorganization. However, aware of the potential for disputes on these issues, ECD and Honigman have agreed that, if there are actual disputes among the Debtors' estates regarding the proper characterization of the advances from ECD to USO or other issues, Honigman shall not represent any of the Debtors in such disputes. Instead, special counsel and/or the unsecured creditors' committees of each estate will handle such disputes.

20. Covington has stated its desire and willingness to act in this case and render the necessary professional services as attorneys for the Debtors.

#### **Terms of Retention**

21. Subject to the Court's approval, and in accordance with section 330(a) of the Bankruptcy Code, Covington intends to (a) charge for its legal services on an hourly basis in

accordance with its ordinary and customary hourly billing rates hourly rates in effect on the date services are rendered, and (b) seek reimbursement of actual and necessary out-of-pocket expenses.<sup>4</sup> Covington will maintain detailed, contemporaneous records of time and any actual and necessary expenses incurred in connection with the rendering of the legal services described above by category and nature of the services rendered.

22. Covington intends to apply to the Court for allowance of compensation and reimbursement of expenses in accordance with applicable provisions of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, and local rules and orders of this Court. The Debtors, subject to the provisions of the Bankruptcy Code, Federal Rules of Bankruptcy Procedure, and local rules and orders of the Court, propose to pay Covington its standard hourly rates in effect from time to time as set forth on the Jack Declaration, and submits that such rates are reasonable.

**Covington Neither Holds Nor Represents Interests Adverse to the Debtors With  
Respect to the Matters for Which it Will Be Retained**

23. To the best of Debtors' knowledge, Covington does not have any connection with the Debtors, their creditors, or any other party in interest, or its attorneys, except as set forth herein and in the Jack Declaration, filed simultaneously herewith.

24. Should Covington be retained by other parties in interest on unrelated matters during the course of these Cases, Covington will supplement the Jack Declaration with the additional information.

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<sup>4</sup> The hourly rates charged by Covington professionals differ based on, among other things, the professional's level of experience. These rates may change from time to time in accordance with Covington's established billing practices and procedures.

### **Basis for Relief**

25. Section 327(e) of the Bankruptcy Code provides that a debtor, subject to Court approval:

May employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 327(e).

26. Moreover, Bankruptcy Rule 2014 requires that an application for retention include:

[S]pecific facts showing the necessity for the employment, the name of the [firm] to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation and, to the best of the applicant's knowledge, all of the [firm's] connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee.

27. For the reasons stated above, Debtors seek postpetition to continue to employ and retain Covington as special counsel pursuant to section 327(e) of the Bankruptcy Code. As discussed herein, Debtors believe that the postpetition employment of Covington as special counsel is in the best interests of the estates and that Covington neither holds nor represents interests adverse to the Debtors or their estates.

### **No Prior Request**

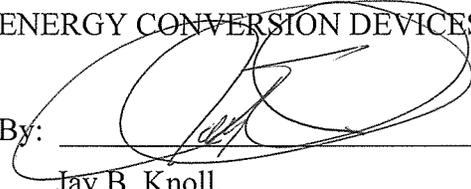
28. No prior motion for the relief requested herein has been made to this or any other court.

WHEREFORE, Debtors respectfully request entry of the Order, attached as **Exhibit 1**, Authorizing Employment of Covington & Burling LLP as Special Counsel for the Debtors and that Debtors be granted such other and further relief as is proper and just.

Respectfully submitted,

ENERGY CONVERSION DEVICES, INC.

By: \_\_\_\_\_

A handwritten signature in black ink, appearing to read "Jay B. Knoll", is written over a horizontal line. The signature is somewhat stylized and loops around the line.

Jay B. Knoll,

Executive Vice President

and Chief Restructuring Officer

Dated: February 17, 2012

**Exhibit 1**

**Proposed Order**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**In re:**

**ENERGY CONVERSION DEVICES, INC.,  
et al.,<sup>1</sup>**

Debtors.

**Chapter 11**

Case No. 12-43166  
(Joint Administration Requested)

Hon. Thomas J. Tucker

**ORDER AUTHORIZING EMPLOYMENT OF COVINGTON & BURLING LLP AS  
SPECIAL COUNSEL FOR THE DEBTORS**

This matter having come on to be considered upon the Application for Order Authorizing Employment of Covington & Burling LLP as Special Counsel for the Debtors (the “**Application**”) and the Declaration of W. Andrew Jack (the “**Declaration**”) filed by the Debtors;<sup>2</sup> no further notice or hearing being necessary, and the Court being fully advised in the premises;

IT IS HEREBY ORDERED that the Debtors are authorized to employ Covington & Burling LLP as their special counsel pursuant to the terms of the Application and Declaration as of the Petition Date.

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<sup>1</sup> The Debtors in the proposed jointly administered cases are Energy Conversion Devices, Inc. and United Solar Ovonic LLC.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Application.

**Exhibit 2**

**Jack Declaration**

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION**

**In re:**

**ENERGY CONVERSION DEVICES, INC.,  
et al.,<sup>1</sup>**

Debtors.

**Chapter 11**

Case No. 12-43166  
(Joint Administration Requested)

Hon. Thomas J. Tucker

**DECLARATION OF W. ANDREW JACK IN SUPPORT OF THE APPLICATION BY  
THE DEBTORS FOR AUTHORITY TO EMPLOY AND RETAIN COVINGTON &  
BURLING LLP AS SPECIAL COUNSEL**

W. Andrew Jack, declares as follows:

1. I am an attorney at law and a member of the Bar of the District of Columbia. I am a partner in the law firm of Covington & Burling LLP (“**Covington**”), which maintains offices for the practice of law at 1201 Pennsylvania Avenue, NW, Washington, DC 20004. I submit this declaration (the “**Declaration**”) in support of the application (the “**Application**”) of the debtors and debtors in possession (collectively, the “**Debtors**”) in the above-captioned chapter 11 cases (collectively, the “**Cases**”) for entry of an order authorizing the employment of Covington as special counsel pursuant to section 327(e) of the Bankruptcy Code. This Declaration constitutes the statement of Covington pursuant to Fed. R. Bankr. P. 2014(a) and 2016(b).

2. I have personal knowledge of the facts set forth herein and am competent to testify to these facts.

3. I am not related and, to the best of my knowledge after inquiry of Covington’s partners, counsel and associates, no other attorney of Covington is related to any judge of the

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<sup>1</sup> The Debtors in the proposed jointly administered cases are Energy Conversion Devices, Inc. and United Solar Ovonic LLC.

United States Bankruptcy Court for the Eastern District of Michigan or to the United States Trustee for this District or his/her employees.

4. I do not hold or represent and, to the best of my knowledge and information, no other attorney of Covington holds or represents any interest adverse to the Debtors or their estates with respect to any of the matters for which Covington's retention is sought. Insofar as Covington has been able to ascertain, neither I nor Covington, nor any partner, counsel, or associate thereof, has any connection with the Debtors in these Cases, their creditors, or any other party in interest, or their respective attorneys or accountants, except as hereinafter set forth.

**Covington's Longstanding Relationship with the Debtors**

5. Covington initially began corporate governance work for the independent directors of Energy Conversion Devices, Inc. in 2005 and has served as primary outside corporate counsel to Energy Conversion Devices, Inc. and certain of its subsidiaries (collectively, "ECD") since 2007 in a wide spectrum of matters. Since 2007, Covington has maintained a dedicated core group of attorneys that have worked closely with the Debtors, each other, and the Debtors' other attorneys and professionals, to provide coordinated, non-duplicative legal services for all assigned matters. Covington has served as counsel to ECD on many significant corporate transactions and has advised ECD with respect to a variety of matters, including: (a) financing transactions and securities offerings; (b) mergers and acquisitions and divestiture transactions; (c) securities law disclosure and other compliance matters; (d) tax advice; (e) corporate governance matters; (f) employee benefits and executive compensation matters; (g) intellectual property matters; (h) regulatory advice; and (i) restructuring planning.

6. Through its work for ECD, Covington has derived considerable and intimate knowledge concerning the Debtors, and is already familiar with the Debtors' business affairs to

the extent necessary for the scope of the proposed and anticipated services. It would be very difficult to replace the extensive familiarity with and understanding of the Debtors' corporate history, capital structure, and businesses derived from Covington's multi-year relationship with the Debtors, the Debtors' other counsel and their nonlegal professionals and advisors.

### **Covington's Qualifications**

7. Covington is particularly well-suited to serve as the Debtors' special counsel in these Cases. Covington is a leading full service international law firm, with offices in San Diego, San Francisco, Silicon Valley, New York and Washington D.C. as well as London, Brussels and Beijing. It has more than 800 lawyers practicing in these key business and regulatory centers. Covington has extensive experience representing and advising clients in connection with complex corporate, litigation and regulatory matters, including mergers and acquisitions, structured finance, corporate finance (including securities offerings), commercial bank finance, federal securities law compliance, project development, joint ventures, intellectual property, tax, trade and export regulation, energy regulation, the design and implementation of employee benefits plans and all employee benefits aspects of corporate transactions.

### **Services to Be Provided**

8. All services will be performed only at the request of the Debtors. Debtors will employ Covington to perform the following tasks with respect to Debtors' Cases: (i) assist in the potential disposition of assets and other complex commercial transactions; and (ii) provide legal advice regarding securities law compliance, corporate governance, tax, employee benefits, intellectual property and regulatory compliance.

### **Avoidance of Overlap with Other Retained Counsel**

9. Covington's services will not overlap with the services provided by the Debtors' bankruptcy counsel, Honigman Miller Schwartz and Cohn LLP ("**Honigman**"). The Debtors

have reviewed with Covington, and have advised Covington that they have reviewed with Honigman, the anticipated services to be provided by both firms. Both firms have been coordinating their efforts with each other and with other specialized counsel in the representation of the Debtors prior to commencement of the Cases so as to avoid duplication and provide responsive, cost-effective representation in their respective areas of expertise and will continue to do so during pendency of the Cases.

**Terms of Retention**

10. Subject to the Court’s approval, and in accordance with section 330(a) of the Bankruptcy Code, Covington intends to (a) charge for its legal services on an hourly basis in accordance with its ordinary and customary hourly billing rates hourly rates in effect on the date services are rendered, and (b) seek reimbursement of actual and necessary out-of-pocket expenses.<sup>2</sup> Covington will maintain detailed, contemporaneous records of time and any actual and necessary expenses incurred in connection with the rendering of the legal services described above by category and nature of the services rendered.

11. The current hourly rates charged by Covington for each of the above-referenced services to be provided on an hourly basis, are:

<b><u>Billing Category</u></b>	<b><u>Range</u></b>
Partners	\$600 to \$965 per hour
Counsel	\$600 to \$965 per hour
Associates	\$280 to \$595 per hour
Paraprofessionals	\$200 to \$360 per hour

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<sup>2</sup> The hourly rates charged by Covington professionals differ based on, among other things, the professional’s level of experience. These rates may change from time to time in accordance with Covington’s established billing practices and procedures.

12. The compensation arrangement is consistent with and typical of arrangements entered into by Covington and other attorneys with respect to rendering similar services for clients such as the Debtors.

13. These hourly rates and any applicable hourly rates as may be agreed to by the Debtors and Covington are subject to periodic adjustments to reflect economic and other conditions. The rates set forth above are at a level designed to fairly compensate Covington for the work of its attorneys and legal assistants and to cover fixed and routine overhead expenses. It is Covington's policy to charge its clients in all areas of service for all other expenses incurred in connection with the client's account. The expenses charged to clients include, among other things, telephone toll and other charges, mail and express mail charges, special or hand delivery charges, document processing, photocopying charges, travel expenses, expenses for "working meals," computerized research, messengers, couriers, postage and non-ordinary overhead expenses such as overtime for secretaries and others. Covington will charge the Debtors for these expenses in a manner and at rates consistent with charges made generally to Covington's other clients, to the extent the rates are in accordance with the United States Trustee guidelines. Covington believes that it is more equitable to charge these expenses to the clients incurring such expenses than to increase hourly rates and spread the expenses among all clients.

14. Subject to the Court's approval, and in accordance with section 330(a) of the Bankruptcy Code, the applicable provisions of the Bankruptcy Rules and the Local Rules of this Court and pursuant to the additional procedures established by the Court in these Cases, Covington intends to apply to the Court for payment of compensation and reimbursement of expenses. Covington shall submit with its fee applications detailed daily time entries for each individual in one-tenth (0.10) hour increments explaining the services provided, as well as a

categorized summary of all disbursements and expenses for which Covington is seeking reimbursement.

**Prepetition Fees and Expenses**

15. On October 19, 2011, Covington received a retainer of \$100,000 as a prepayment for services to be rendered and/ or expenses to be incurred. Covington received payment of its ongoing post-retainer prepetition fees and expenses while continuing to hold the retainer. As a result, Covington holds a retainer of \$100,000 for services to be rendered in the Debtors' chapter 11 cases and as an advance against expenses incurred, all subject to the approval of the Court upon proper application therefore.

**Covington Neither Holds Nor Represents Interests Adverse to the Debtors With Respect to the Matters for Which it Will Be Retained**

16. Covington has undertaken a conflicts check that compares certain of the Debtors' largest creditors against the list of engagements Covington maintains in a master client database (the "**Client Database**"). The Client Database includes the names of current and former clients, the names of the parties who are adverse to such current and former clients, and the names of Covington personnel who are or were responsible for the matters involving such clients. To the best of my knowledge, information and belief, except as otherwise set forth therein, Covington does not hold or represent any interest adverse to the Debtors or their chapter 11 estates, their creditors, equity security holders, or any other party in interest, or their attorneys or accountants in connection with these Cases.

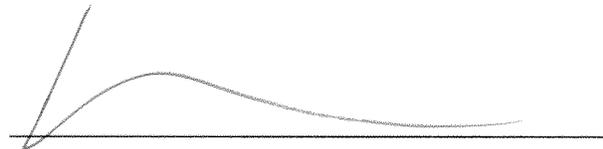
17. Stuart Eizenstat, a partner of Covington, is a director of Blackrock Funds, a minor shareholder of Energy Conversion Devises, Inc..

18. Covington currently represents in other, unrelated matters parties in interest in these Cases as set out on **Exhibit A**. Should Covington be retained by other parties in interest on

unrelated matters during the course of these Cases, Covington will supplement this Affidavit with the additional information.

19. Covington has received no promises as to compensation in connection with this case other than in accordance with the provisions of the Bankruptcy Code. Covington has no agreement with any other entity to share (a) any compensation it has received or may receive for services rendered in connection with these Cases with another party or person or (b) any compensation another party or person has received or may receive for services rendered in connection with these Cases.

20. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read 'W. Andrew Jack', is written over a horizontal line. The signature starts with a sharp upward stroke on the left, curves to the right, and then tapers off to the right.

**W. Andrew Jack**

Execution in Washington, D.C.

On February 16, 2012

**Exhibit A to Jack Declaration**

**Current Representations**

1. Triton Digital (affiliate of Oaktree Capital Management)
2. RBC Capital Markets (affiliate of Royal Bank of Canada)
3. The Bank of New York Mellon
4. Itochu International Inc.
5. Protiviti Inc (subsidiary of Robert Half International Inc.)
6. JP Morgan Chase Bank, N.A.
7. National Energy Marketers Association (Deloitte & Touche is a member)
8. BASF and BASF Performance Products LLC.
9. De Lage Landen (China) Co. Ltd.
10. Cooperatieve Centrale Raiffeisen-Boerenleenbank (Rabobank) (parent of De Lage Landen Financial Services, Inc.)
11. Dell Inc. and Dell NV
12. FDK Corporation and affiliates FDK America, Inc., Fujitsu America, Inc. and Fujitsu Ltd.
13. American Honda Motor Company
14. Siemens PLM Software Inc.
15. Wells Fargo & Company and Wells Fargo Bank NA