

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TRULIA, INC.,
Petitioner,

v.

ZILLOW, INC.,
Patent Owner.

Case CBM2013-00056¹
Patent 7,970,674

Before JAMESON LEE, JOSIAH C. COCKS, and MICHAEL W. KIM,
Administrative Patent Judges.

LEE, *Administrative Patent Judge.*

Order
Conduct of Proceeding
37 C.F.R. § 42.5

¹ Case CBM2014-00115 has been joined with this proceeding.

Introduction

On August 18, 2014, the parties filed a Joint Motion to Modify Schedule. Paper 31. Specifically, the parties seek “to modify Due Dates 3–7 in the Revised Scheduling order (Paper No. 24) by one year, but no less than six months, in view of a merger agreement between the parties.” *Id.* at 1. According to the parties, the merger is expected to “close” sometime in 2015, and the merger agreement has been submitted for review by the Federal Trade Commission. *Id.* The parties imply that FTC approval is condition precedent to closing the merger transaction.

Discussion

The parties represent that “an initial waiting period” for FTC review expires on September 3, 2014, but that the FTC may extend that waiting period “anywhere from 6 to 9 months.” Paper 31, 1. Thus, September 3, 2014, appears to be a critical date. We defer a decision on the motion until after September 3, 2014, and ask the parties to provide the following supplemental information:

1. If FTC does not extend the initial waiting period beyond September 3, 2014, what extension or adjustment of due dates, if any, do the parties require, and why?
2. To what extent are the parties bound by the merger agreement, in the sense that neither is free to cancel it, before or after FTC approval?
3. Are the parties free to change the terms of the merger agreement while the agreement is pending review by the FTC, and if so, how would that modification affect the period of FTC review?
4. If the merger transaction is consummated, how would that affect this proceeding, e.g., will there be a joint motion to

terminate proceeding without reaching the merits, or some other resolution?

5. Why are the parties unable to settle this proceeding now, by agreeing to terms of settlement which take into full consideration of the likelihood of FTC approval of the merger agreement, with any uncertainty reflected in the specific terms of settlement?

6. What is the basis for the statement in the motion that this proceeding “is likely to terminate”?

7. What is the worst case scenario in terms of the time it would take for the FTC to decide on whether to approve the merger agreement?

Order

It is

ORDERED that the parties have until September 5, 2014, to provide the information sought in the above-noted inquiries, limited to ten pages, and to provide an update as to whether the FTC has extended the initial waiting period;

FURTHER ORDERED that the parties are invited to call the Board in connection with any question regarding providing a meaningful answer to the above-noted inquires; and

FURTHER ORDERED that the parties are authorized to stipulate to different Due Dates 1–5, provided that none extends beyond Due Date 6.

CBM2013-00056
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