

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TRULIA, INC.
Petitioner

v.

ZILLOW, INC.
Patent Owner

CBM2013-00056¹
Patent No. 7,970,674

**SUPPLEMENTAL INFORMATION TO JOINT MOTION TO MODIFY
SCHEDULE PURSUANT TO 37 C.F.R. § 326**

¹ Case CBM2014-00115 has been joined with this proceeding

I. Introduction

On August 18, 2014, Petitioner (“Trulia”) and Patent Owner (“Zillow”) (collectively “Parties”) filed a Joint Motion to Modify the Schedule Pursuant to 37 C.F.R. § 326. On August 27, 2014 the Board issued an Order (Paper 33) deferring a decision on the motion and requesting further information pursuant to certain inquiries. On September 5, 2014, the Board electronically authorized a one week extension for response to the Order, thereby extending the time for response from September 5, 2014 to September 12, 2014.

Information in response to the inquiries set forth in the Board’s Order is jointly provided by the Parties hereby and set forth in further detail below.

II. Discussion

“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?*” Paper 33, p. 2.

The FTC has extended the initial waiting period by issuing an additional request for information, commonly referred to as a “second request.” Ex. 1022, p. 2.

“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?*” Paper 33, p. 2.

Both parties expect consummation of the merger. Neither is free to cancel the merger agreement unilaterally except in certain exceptional circumstances. Neither party expects said exceptional circumstances to materialize.

“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?*” Paper 33, p. 2.

The parties may agree to amend the merger agreement while the merger is pending FTC review. It is unlikely that any amendment to the merger agreement would impact the FTC review period.

“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?*” Paper 33, p. 2.

If the merger is completed, the parties would file a joint motion to terminate the proceeding.

“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?*” Paper 33, p. 3.

Absent the merger of interests, Parties have not identified a basis for settlement on the merits. Under the current circumstances, Parties would contemplate termination of the proceeding without prejudice. Whether termination can be accomplished without prejudice to either party, however, is partially outside the control of the parties. For example, should the parties agree to terminate the

proceeding but later find themselves in a position choosing to reinstitute their dispute, such a reinstatement may still fall within the discretion of the Board under 35 U.S.C. § 325(d). Furthermore, under the scenario of later reinstating the dispute, a subsequently filed proceeding may further require case-management modifications by the Board.

“6. What is the basis for the statement in the motion that this proceeding ‘is likely to terminate’?” Paper 33, p. 3.

The parties are optimistic that their respective shareholders will approve the merger and that the FTC will clear the transaction.

“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?” Paper 33, p. 3.

The parties are optimistic that the FTC will clear the transaction and expect the transaction to close in 2015. See also Ex. 1022, p. 6. The FTC could take up to 12 months to review the transaction. In addition, the FTC could challenge the transaction in court by suing the parties to enjoin the merger, which would lead to additional delay.

III. Conclusion

Parties respectfully request that the Board grant the Joint Motion to Modify the Schedule.

Respectfully submitted,

Dated: September 12, 2014

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