

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 B2

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

LEE, *Administrative Patent Judge.*

Order
Decision on Motion for Time Extension
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 (“FTC”). *Id.* The parties imply that FTC approval is condition precedent to closing the merger transaction.

Additionally, the joint motion request a 6-month extension of the 1-year time to complete trial in this proceeding under 35 U.S.C. § 326(a)(11), or an adjustment of the time period in which to complete trial, by up to 1 year, also under 35 U.S.C. § 326(a)(11) in case of joinder. On August 27, 2014, we issued an Order requiring supplemental information from the parties for consideration in rendering a decision on the joint motion. Paper 33. The parties filed a Response containing supplemental information, on September 12, 2014. Paper 35.

The motion is *denied-in-part*, and *dismissed-in-part*.

Discussion

According to the Response, on September 3, 2014, the FTC extended “an initial waiting period” for at least 6 months. Paper 35. That adds at least 6 months to the expected time until the merger agreement would be “closed” even if there is no other delay or obstacle to overcome. The Response also indicates that if the FTC does not approve the merger agreement, the FTC may file a lawsuit to keep the merger agreement from closing. *Id.* In that event, the merger agreement cannot close while the court case remains pending. Thus, there is a possibility that the parties need an extension of multiple years. We asked the parties on what basis

they believe this proceeding is likely to terminate. Paper 33. They answered simply that they are “optimistic” the FTC would approve the merger agreement. Paper 35. Such an answer, however, is not meaningful, as it is subjective and lacks objective facts. The parties further indicate that until actual closing of the merger agreement, the parties may decide, jointly, to amend the merger agreement for any reason, and that either party may, under special circumstances, amend the agreement. *Id.* The parties further indicate that the shareholders of their respective companies are “expected” to approve the merger agreement. *Id.* The indication makes evident that the shareholders have not yet approved the merger agreement.

These facts together present a scenario with numerous moving parts. Almost everything is uncertain. Yet, the parties desire to delay this proceeding for 6 months to 1 year, simply to wait and see. The parties state that if the merger agreement eventually is consummated, they will file a joint motion to terminate proceeding. Paper 35. The parties do not desire to settle now, but look forward to an opportunity in the future to settle, if and when all pertinent conditions develop to align in favor of settlement. That, however, does not constitute good cause for the requested extension of time for Due Dates 3–7.² Time extensions should not be granted on the basis of speculation and conjecture.

We asked the parties why they are unable to negotiate a settlement agreement that takes into account the uncertainty of FTC approval of the merger agreement. Paper 33. The parties imply that such a settlement could be reached if termination of the proceeding can be arranged without prejudice to the filing of another petition, by stating that it is beyond their control whether the Board would

² Under 37 C.F.R. § 42.5(c)(2), a request for an extension of time must be supported by a showing of good cause. To the extent that the parties characterize their request as a stay, we regard the requested stay as being no different from a long extension of time which similarly requires a showing of good cause.

accept the filing of a new petition if the FTC disapproves the merger agreement, citing 35 U.S.C. § 325(e)(1). Paper 35. The response is not sufficiently meaningful. The parties do not explain why, if they can account for uncertainty of FTC disapproval, they cannot account similarly for uncertainty of Board acceptance of a new petition. It is unclear why the settlement terms cannot include two options which address, respectively, the Board's acceptance or non-acceptance of a new petition filed after FTC disapproval of the merger agreement.

For the foregoing reasons, no good cause has been shown for an extension of time of Due Dates 3–7. Because we grant no extension of Due Dates 3–7, there is no need to consider adjustment of the 1-year period in which to complete trial, under 35 U.S.C. § 326(a)(11), in case of joinder, and also no need to consider an up to 6-month extension of the 1-year period in which to complete trial, whether or not there is joinder, also under 35 U.S.C. § 326(a)(11).

Order

It is

ORDERED that the joint motion is *denied* with respect to any time extension of Due Dates 3–7 and with respect to any stay of this proceeding;

FURTHER ORDERED that the joint motion is *dismissed* with respect to the requested adjustment of the 1-year time period in which to complete trial in case of joinder, under 35 U.S.C. § 326(a)(11); and

FURTHER ORDERED that the joint motion is *dismissed* with respect to the requested 6-month extension of the 1-year period to complete trial, whether or not there is joinder, under 35 U.S.C. § 326(a)(11).

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