

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EBAY ENTERPRISE, INC. and EBAY INC.
Petitioners

v.

LAWRENCE B. LOCKWOOD
Patent Owner

Case CBM2014-00025
U.S. Patent No. 7,010,508

JOINT MOTION TO TERMINATE

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Patent Trial and Appeal Board
U.S. Patent & Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Pursuant to 35 U.S.C. § 327(a), 37 C.F.R. § 42.72, and to the Board's order of October 3, 2014, 2014 (Paper 40), authorizing this motion, Petitioners eBay Enterprise, Inc. and eBay Inc. ("eBay") and Patent Owner Lawrence B. Lockwood ("Lockwood") jointly request the termination of this covered business method review CBM2014-00025 of U.S. Patent No. 7,010,508.

The parties have settled their dispute and executed a settlement agreement (Ex. 2030). The Agreement includes provisions to terminate this CBM and the parties' co-pending covered business method review proceeding CBM2014-00026 of U.S. Patent No. 5,576,951.

As required under 35 U.S.C. § 327(b) and 37 C.F.R. § 42.74(b), the parties' settlement agreement has been made in writing, and a true and correct copy is being filed concurrently as Exhibit 2030. And pursuant to 37 C.F.R. § 42.74(c), the parties are also filing concurrently herewith a joint request to treat the settlement agreement as business confidential information and keep it separate from the files of this CBM and the involved patent.

Termination of this CBM is proper under 35 U.S.C. § 327(a) because the Board has not yet decided the merits of the proceeding. Indeed, the briefing and discovery process in this proceeding has not yet been completed. Lockwood has filed a Patent Owner's Response to the Petition, but Lockwood's declarants have

not been deposited, and eBay has not filed a Reply or any evidence in Reply.

Lockwood did not file a Motion to Amend and thus no such motion is pending.

There are no motions or other matters outstanding in this CBM.

Landmark submits that maintaining this CBM after settlement would discourage future settlements by removing a primary motivation for settlement: eliminating litigation risk by resolving the parties' disputes and ending the pending proceedings between them. For patent owners, litigation risks include the potential for their patents to be invalidated. If a patent owner knows that a covered business method or *inter partes* review is likely to continue regardless of settlement, it can create a strong disincentive for the patent owner to settle.

There is no litigation pending between Lockwood and eBay relating to the patent that is the subject of this CBM.

There is pending litigation relating to the '508 patent and U.S. Patent No. 5,576,951 (the subject of the co-pending CBM 2014-00026) between Lockwood and other parties in the following actions:

1. *Landmark Technology LLC v. Tempur-Pedic Int'l Inc.*, (E.D.Tex. May 22, 2013) (NO. 6:13CV00416);
2. *Landmark Technology LLC v. The ADT Corporation*, (E.D.Tex. Oct. 10, 2013) (NO. 6:13CV00758);

3. *Landmark Technology LLC v. The Jones Group*, (E.D.Tex. Oct. 10, 2013) (NO. 6:13CV00767);
4. *Landmark Technology LLC v. Hugo Boss USA, Inc.*, (E.D.Tex. Oct. 10, 2013) (NO. 6:13CV00766);
5. *Landmark Technology LLC v. Briggs & Stratton Corporation*, (E.D.Tex. Oct. 10, 2013) (NO. 6:13CV00760); and
6. *Landmark Technology LLC v. Union Pacific*, (E.D.Tex. Jan. 15, 2014) (NO. 6:14CV00026); and
7. *Landmark Technology LLC v. Vitacost.com, Inc.*, (E.D.Tex. May 22, 2013) (NO. 6:13CV00414).

All of these litigations are stayed pending the outcome of this CBM and CBM2014-00026.

The following active cases are waiting on a scheduling order/conference. These cases involve only related U.S. Patent No. 6,289,319 patent (*see* Patent Owner's Updated Mandatory Notices of Nov. 27, 2013, Paper 10, (showing Lockwood's patent family tree and the relationship of the '508 and '319 patents)):

1. *Landmark Technology LLC v. Abercrombie & Fitch Co.*, (E.D.Tex. Apr. 4, 2014) (NO. 6:14CV00243);
2. *Landmark Technology LLC v. Dunkin' Brands Group, Inc.*, (E.D.Tex. Apr. 4, 2014) (NO. 6:14CV00247);

3. *Landmark Technology LLC v. Boyd Gaming Corp.*, (E.D.Tex. Apr. 4, 2014) (NO. 6:14CV00244);
4. *Landmark Technology LLC v. Hitachi America Ltd.*, (E.D.Tex. Apr. 4, 2014) (NO. 6:14CV00249); and
5. *Landmark Technology LLC v. Harley-Davidson*, (E.D.Tex. Apr. 4, 2014) (NO. 6:14CV00248).

An *ex parte* reexamination of the '508 patent (Control No. 90/012,671; Appeal No. 2015-000143) is at the Board for oral hearing and is the only other proceeding pending before the Patent and Trademark Office relating to the patent at issue in this CBM. Lockwood filed a Reply Brief on September 11, 2014. Oral argument was requested, but no date has been set.

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