

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INDEED, INC. and MONSTER WORLDWIDE, INC.
Petitioner

v.

CAREER DESTINATION DEVELOPMENT, LLC
Patent Owner

Case CBM2014-00068
Patent 7,424,438

Filed: February 12, 2014

JOINT MOTION TO TERMINATE
PURSUANT TO 35 U.S.C. § 327(a) and 37 CFR § 42.74(a)

INTRODUCTION

Indeed, Inc., Monster Worldwide, Inc., and Career Destination Development, LLC hereby file this Motion to Terminate these proceedings pursuant to 35 U.S.C. 327(a) and 37 CFR § 42.74(a). Pursuant to 35 U.S.C. 327(b) and 37 CFR § 42.74(b), the parties submit a true and correct copy of their written settlement agreements, made in connection with the termination of the instant proceeding, attached as Exhibits 2011-2013. The parties have settled these matters and the related cases pending in the United States District Court for the District of Kansas has been dismissed with prejudice. Exhibits 2014-2016. In addition, litigation on a related patent against TheLadders.Com, Inc. has also been dismissed with prejudice. With the dismissals of the lawsuits by Career Destination, LLC against Indeed, Inc., Monster Worldwide and The Ladders.Com, Inc., there are presently no other litigations pending based on the patent at issue in these proceedings.

On December 3, 2014, a conference call was held between counsel for the respective parties and Judges Medley, Petravick, and Busch at the request of the Board. The Board issued an order authorizing the parties to file a motion to terminate this proceeding (Paper 17, p. 4).

SETTLEMENT AND STIPULATION OF DUE DATES

The parties began settlement discussions in October, and culminated

in the parties agreeing to the Settlement Agreements (Exs. 2001-2003) on November 17, 2014, before Patent Owner's response date of November 18, 2014. The Settlement Agreements were executed by Patent Owner and Petitioner Indeed on November 18, 2014, Petitioner Monster on November 19, 2014, and Petitioner TheLadders.Com on November 20, 2014. The parties promptly filed joint stipulations of dismissal in the United States District Court for the District of Kansas (Exs. 2004-2006), and with the Board. However, because the parties did not previously request permission to file the Joint Motion to Dismiss from the Board, their motion was denied and the motions expunged.

Although trial has been instituted in the instant proceedings, it is still in the preliminary stage of the proceedings. As the board noted during the telephone conference on December 3, 2014, Patent Owner has not filed his response and the date has passed. However, the parties have stipulated to extending the dates and the Patent Owner will be requesting to file a motion with the Board to reset Due Dates 1-5.

Patent Owner notes that in the Scheduling Order, Due Dates 1-5 may be modified by the parties by stipulation, and the notice of stipulation must be *promptly* filed. No definition of "promptly" is provided by the Rules or in the Scheduling Order. Further, Patent Owner is aware of no provision of 37 C.F.R.

§42 *et seq.* requiring that a notice to extend a Due Date be filed with the Board before the due date that is being modified.

Patent Owner submits that had the parties filed a stipulation modifying the Due Dates on November 26, 2014 when the first motion to terminate was filed, it would have been prompt as required. However, because the parties had settled these matters, filing a stipulation adjusting the due dates would have been superfluous and a waste of resources.

Further, Patent Owner submits that filing a stipulation modifying the Due Dates within 15 days is also reasonably prompt, as requested by the Patent Owner on the telephone conference with the Board on December 3, 2014. Rather than spend time preparing and filing a stipulated notice modifying these due dates, the parties were diligently working on the precise wording of the Settlement Agreements (Exs. 2001-2003). Patent Owner reasonably and in good faith believed that it was not necessary to file a stipulation modifying the Due Dates once the settlement agreements were signed.

TERMINATION OF PROCEEDINGS

Although the Board is not a party to the settlement, and may identify independently any question of patentability pursuant to 37 C.F.R. § 42.74(a), the Board generally expects that a proceeding will terminate after filing of a settlement

agreement. *See Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48768 (Aug. 14, 2012). Patent Owner believes that it is in the best interest of all parties and the Board to terminate these proceedings with respect to the Patent Owner. If the proceeding is not terminated, the Board will expend time and resources considering Patent Owner's request to modify Due Dates 1-5 in each of the proceedings CBM2014-00068, -00069, -00070, and -00077. If the dates are modified upon a showing of good cause or upon a Board decision that consideration on the merits would be in the interest of justice, then because Petitioners will no longer participate in these proceedings, Petitioners will not file a reply to Patent Owner's response, or any motion to amend the claims. Petitioners will not be conducting any cross-examination of Patent Owner's witnesses. The Board would then be required to prepare a final decision.

Patent Owner believes that good cause may be shown because the settlement agreements were approved before DUE DATE 1. The parties agreed to prepare and file the Motion to Terminate (Paper 15, *expunged*) prior to expiration of DUE DATE 1. Patent Owner reasonably and in good faith did not believe that it was necessary to file a stipulation modifying the Due Dates if the cases had been settled. Patent Owner reasonably and in good faith did not believe that it was necessary to file a stipulation modifying the Due Dates before DUE DATE 1 because

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