

Filed on behalf of: Trulia, Inc.
By: Michael T. Rosato
Jennifer J. Schmidt
WILSON SONSINI GOODRICH &
ROSATI
701 Fifth Avenue
Suite 5100
Seattle, WA 98104-7036
Tel.: 206-883-2529
Fax: 206-883-2699
Email: mrosato@wsgr.com
Email: jschmidt@wsgr.com

Paper No. _____
Filed: April 10, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TRULIA, INC.
Petitioner

v.

ZILLOW, INC.
Patent Owner

CBM2014-00115
Patent No. 7,970,674

**PETITIONER'S MOTION
FOR JOINDER UNDER 37 C.F.R. § 42.222**

RELIEF REQUESTED

Petitioner Trulia, Inc. (“Trulia”) hereby moves for joinder of (A) the Petition for Covered Business Method Review of claims 2, 5, 15-24 and 40 of U.S. Patent No. 7,970,674 (the “’674” Patent”) filed on even date herewith and (B) the instituted Covered Business Method Review styled *Trulia, Inc. v. Zillow, Inc.*, Case No. CBM2013-00056.

Joinder is not opposed by the Patent Owner.

STATEMENT OF MATERIAL FACTS

1. On September 11, 2013, Trulia filed a Petition for Covered Business Method Patent Review requesting review of claims 2, 5, 15-25 and 40 of the ’674 Patent.

2. On March 10, 2014, the Board issued a decision instituting trial on claims 2, 5, 15-25 and 40 in CBM2013-00056. CBM2013-00056, PN 13 (“CBM2013-00056 Decision”).

3. Some of the grounds instituted for trial are based on prior art reference or references which are identified in the CBM2013-00056 Decision as prior art under 35 U.S.C. §102 (e). CBM2013-00056 Decision, PN 13, p. 34.

4. In particular, the CBM2013-00056 Decision identifies, as an instituted ground, claims 2, 5, 15-18, and 40 under 35 U.S.C. § 102(e) as anticipated by Foster. *Id.*

5. The CBM2013-00056 Decision also identifies, as an instituted ground, claims 19-24 under 35 U.S.C. § 103 as unpatentable over Foster, Keyes, and Calhoun. *Id.*

6. The CBM2013-00056 Decision also identifies, as an instituted ground, claims 2, 5, and 15-18 under 35 U.S.C. § 102(e) as anticipated by Lamont. *Id.*

7. The CBM2013-00056 Decision also identifies, as an instituted ground, claims 19 and 21-24 under 35 U.S.C. § 103 as unpatentable over Lamont, Foster, Keyes, and Calhoun. *Id.*

8. The CBM2013-00056 Decision also states the following: “Petitioner asserts that claims 2, 3, 15-18, 20, 25, and 40 of the ‘674 patent are unpatentable under 35 U.S.C. § 103 as obvious over Lamont and Foster. Pet. 69-74. For claims 2, 5, 15-18, 20, and 40, this ground is redundant in light of the grounds for which we institute review of the same claims.” *Id.* at p. 33.

9. On April 1, 2014, an initial telephone conference call was held between respective counsel for the parties and Judges Lee, Cocks, and Kim. As part of the discussion, Petitioner sought to make of record corresponding published patent applications of Patent 7,130,810 (“Foster”), Patent 7,120,599 (“Keyes”), and Patent 7,219,078 (“Lamont”). A corresponding Order was issued on April 7, 2014 (CBM2013-00056, PN 18).

10. On April 7, 2014, a telephone conference call was held between respective counsel for the parties and Judges Lee, Cocks, and Kim. The subject matter of the call was the grounds instituted for trial in the CBM2013-00056 proceeding, that are based on 35 U.S.C. § 102(e) or 35 U.S.C. § 102(e)/103. A corresponding Board Order was issued on April 10, 2014. (CBM2013-00056, PN 19).

11. Specifically, the prior art references discussed were Patent 7,130,810 (“Foster”) (Ex. 1006); Patent 7,120,599 (“Keyes”) (Ex. 1007); and Patent 7,219,078 (“Lamont”) (Ex. 1009).

12. Counsel for the Petitioner pointed out that for each of Foster, Keyes, and Lamont, there is a corresponding published application with identical content, which can serve as prior art under 35 U.S.C. § 102(b).

13. Those publications were identified in the petition, as well as in the CBM2013-00056 Decision (p. 5-6).

14. For Foster, the corresponding published application is US Pub. 2004/0073508 (Ex. 1013).

15. For Keyes, the corresponding published application is US Pub. 2001/0044766 (Ex. 1014).

16. For Lamont, the corresponding published application is US Pub. 2003/0046099 (Ex. 1015).

17. During the April 7, 2014 conference call, the Board indicated that if the parties both desire to replace the grounds based on Foster, Keyes, and Lamont with grounds based on the published applications, and have the new grounds included in the CBM2013-00056 trial, the Petitioner can file another petition, including only prior art grounds based in whole or in part on the publications corresponding to Foster, Keyes, and Lamont that are identical in wording, but for the identification of references, to those grounds instituted for trial in the CBM2013-00056 proceeding that are based in whole or in part on Foster, Keyes, and Lamont. (CBM2013-00056, PN 19).

18. The Board further indicated that, together with the filing of such a petition, Petitioner would file a request for joinder for the CBM2013-00056 proceeding and indicate that joinder is not opposed by Patent Owner. (CBM2013-00056, PN 19).

19. The Board further indicated the Board could institute trial on the grounds based on the corresponding publications, which substantively would be the same as the grounds the Board instituted in the CBM2013-00056 proceeding

based on Foster, Keyes, and Lamont and then have the new proceeding joined with the CBM2013-00056 proceeding. (CBM2013-00056, PN 19).

20. The Board indicated that such a course of action would be considered if both parties desire it. (CBM2013-00056, PN 19).

21. On April 10, 2014, a conference call was held between respective counsel for the parties and Judges Lee, Cocks, and Kim.

22. During the April 10, 2014 conference call, parties informed the Board that Petitioner and Patent Owner had conferred and agreed to pursue joinder in the manner suggested by the Board.

23. The Patent Owner indicated that joinder would not be opposed by the Patent Owner, and that Patent Owner would not file a preliminary response to the joinder petition.

GOVERNING RULE(S)

§ 42.222 Multiple Proceedings and Joinder

(b) *Request for Joinder.* Joinder may be requested by a patent owner or petitioner. Any request for joinder must be filed, as a motion under § 42.22, no later than one month after the institution date of any post-grant review for which joinder is requested.

DISCUSSION

This motion is made within the one month of the date the trial in CBM2013-00056 was instituted, as required by § 42.222(b). Trial was instituted on March 10, 2014, and the instant motion has been filed on or before April 10, 2014.

The present petition identifies published applications to Foster, Keyes, and Lamont corresponding to the Foster, Keyes, and Lamont patents identified in CBM2013-00056. For Foster, the corresponding published application is US Pub. 2004/0073508 (Ex. 1013). For Keyes, the corresponding published application is

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.