

ATTACHMENT A

seeks an order “confirming” that the stay is lifted. It is Defendants’ understanding that the proper procedure would be simply to move to lift the stay.

Setting aside the issue of whether this is an “emergency” and TT’s apparent circumvention of normal case management procedures (otherwise used throughout this case), Defendants note that (1) the Patent Trial and Appeal Board (“PTAB”) found it more likely than not that claims in four of the patents asserted here are, in fact, unpatentable, and (2) the proceeding that would have finally decided those validity issues was unexpectedly terminated on the eve of trial as a result of a settlement. Counsel for the remaining Defendants were not privy to those settlement discussions and did not receive advance notice that the PTAB proceedings would be terminated such that the validity issues would not in fact be adjudicated.

The serious validity concerns raised by those now-terminated PTAB proceedings thus remain unresolved. To that end, Defendants plan to request that the PTAB decide the validity of TT’s patents, by refiling challenges to most (if not all) of the patents-in-suit. Defendants plan to ask that the PTAB give expedited treatment at least as to those patents which were on the cusp of trial, since the record has already been fully developed as to those cases, and thus avoid any unnecessary delay. Given these very recent developments, Defendants respectfully request a short period of time to coordinate on these PTAB actions. Defendants expect a Covered Business Method Review Petition on one of the patents in suit to be filed by Monday, July 20, with additional petitions to be filed in the coming weeks.

Finally, although Defendants agree the AIA provision upon which the Court granted the instant stay no longer would be the basis for a stay order, there is no case law cited by TT, and Defendants in the time permitted have found none, that shows a stay automatically dissolves without permitting the Court or the parties to address future action. The parties should have a

fair opportunity to address proceedings going forward. Defendants thus suggest that the Court hold a status conference in approximately four to six weeks, in advance of which the parties can advance proposals for the further conduct of this proceeding, including a proposal that the Court further stay the litigation pursuant to its own inherent discretionary powers to manage its docket. Defendants would brief and show the Court that the best use of its resources, the parties resources, and fairness and management of the case. Indeed, that the PTAB is highly likely to institute further CBM review, at a minimum as to those patents which it already determined were likely invalid and had reached the eve of trial at the PTAB, which supports a stay. Alternatively, sound case management requires an informed plan of action or competing plans, preferably discussed among counsel for *all* parties, be presented.

Respectfully submitted,

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