

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

MICROSTRATEGY, INC.
Petitioner

v.

ZILLOW, INC.
Patent Owner

Case IPR2013-00034
Patent 7,970,674

**PETITIONER RESPONSE TO
PATENT OWNER'S OBSERVATIONS ON CROSS EXAMINATION OF
DR. RICHARD A. BORST, Ph. D.**

1. In Observation (1), Zillow asserts that the testimony at 60:2-5 and 61:5-6 of Ex. 2016 “contradicts the assertions on page 6 of the Reply and page 5 of the Declaration of Dr. Richard Borst.” Paper 31, p. 1. However, at 60:22-24 of Ex. 2016, Dr. Borst recognized the distinction between the claims and the description of the preferred embodiment. Moreover, at 116:6-13 of Ex. 2016, Dr. Borst testified that the claims do not use the terms “automated valuation model” or “AVM.” At 117:10-20 of Ex. 2016, Dr. Borst also testified that there was evidence that the inventors of this patent were familiar with the term of art “AVM.” This testimony is relevant, because it shows that Dr. Borst applied the broadest reasonable interpretation standard when construing the claim language, and did not improperly import the details of the specification into the claim language, as Zillow attempts to do. Thus, Dr. Borst’s testimony at 60:2-5 and 61:5-6 does not contradict the assertions on page 6 of the Reply and page 5 of the Declaration of Dr. Richard Borst.

2. In Observation (3), Zillow asserts that the testimony at 27:15-28:13, 50:9-53:10, and 113:11-22 of Ex. 2016 “illustrates that Dugan's system does not automatically select comparables in the manner of a comparable sales analysis AVM.” However, at 92:10-20, Dr. Borst indicated that, in an AVM used “in [the] assessment and in [the] lending world,” users “do select their own comps, if they don't like the ones that have been selected.” Ex. 2016, 92:10-20. Moreover, at 40:18 to 41:3 of Ex. 2016, Dr. Borst testifies that, even though Dugan does not specifically describe mass appraisal, its system has the

components necessary for “automated comparable sales selection.” Most importantly, however, the term “CSA AVM” is not recited in any claims of the ‘674 patent.

3. In Observation (4), Zillow asserts that, at 91:24-92:9 and 93:8-94:14 of Ex. 2016, “Dr. Borst testified that a comparable sales AVM has to have a computerized model for selecting comparables and that, after a human creates a specification for comparables for a comparable sales AVM, the computer program can select comparables for a large number of residences automatically.” However, at 92:10-20, Dr. Borst indicated that, in an AVM used “in [the] assessment and in [the] lending world,” users “do select their own comps, if they don't like the ones that have been selected.” Ex. 2016, 92:10-20. Furthermore, at 40:18 to 41:3 of Ex. 2016, Dr. Borst testifies that even though Dugan does not specifically describe mass appraisal, its systems has the components necessary for “automated comparable sales selection.” Most importantly, however, the term “comparable sales AVM” does not appear in the claims of ‘674 patent.

4. In Observation (5), Zillow asserts that, based Dr. Borst's testimony, it is fair to assume that an AVM has to be capable of doing mass appraisal, which contradicts the assertion on page 9 of the Reply that “one of ordinary skill in the art would have understood Dugan and Kim to describe systems that could be classified as AVMs.” However, at 92:10-20 Ex. 2016, Dr. Borst indicated that, in an AVM used “in [the] assessment and in [the] lending world,” users “do select their own comps, if they don't like the ones that have been selected.” Ex. 2016, 92:10-20. Moreover, at 40:18 to 41:3 of Ex. 2016, Dr. Borst testifies

that even though Dugan does not specifically describe mass appraisal, its systems has the components necessary for “automated comparable sales selection.” Therefore, Dr. Borst’s testimony, as a whole, does not contradict the assertion on page 9 of the Reply.

5. In Observation (6), Zillow asserts that testimony at 110:19 to 111 20 of Ex. 2016 “supports the statement on page 29 of the Response” that “the relied-upon portions of [Dugan and Kim] fail to describe or suggest ‘wherein the adjustment of the obtained user input includes identifying recent sales of nearby properties regarded by the owner as similar to the distinguished property.’” The limitation to which Zillow refers is recited in dependent claim 8, which has been rejected as obvious over Dugan and Kim under 35 U.S.C. § 103. The testimony at 110:19 to 111 20 of Ex. 2016 was directed to what is explicitly recited in the Dugan and Kim references, and does not address what was obvious based on the Dugan and Kim references. Therefore, the testimony at 110:19 to 111 20 of Ex. 2016 does not support the statement on page 29 of the Response.

6. In observation (7), Zillow asserts that the testimony at 13:4-9, 55:4-9, and 58:11-16 of Ex. 2016 “supports the statement on page 29 of the Response” that “the relied-upon portions of [Dugan and Kim] fail to describe or suggest ‘wherein the adjustment of the obtained user input includes identifying recent sales of nearby properties regarded by the owner as similar to the distinguished property.’” The limitation to which Zillow refers is recited in dependent claim 8, which has been rejected as obvious over Dugan and Kim under 35 U.S.C. § 103. The testimony at 13:4-9, 55:4-9, and 58:11-16 of Ex. 2016 was

directed to what is explicitly recited in the Dugan and Kim references, and does not address what was obvious based on the Dugan and Kim references. Therefore, the testimony at 13:4-9, 55:4-9, and 58:11-16 of Ex. 2016 does not support the statement on page 29 of the Response.

7. In Observation (8), Zillow asserts that the testimony at 120:2-21 of Ex. 2016 establishes that “Dugan and Kim’s appraisal-focused systems are not automatic valuations as understood by those of ordinary skill in the art.” However, Dr. Borst’s Declaration clearly establishes that “[i]rrespective of the language used in the ’674 patent, the Dugan patent, and the Kim application, none of these three systems are producing an ‘appraisal.’” Ex. 1023, ¶ 31. Thus, Dr. Borst’s testimony at 120:2-21 of Ex. 2016 is perfectly in line with his declaration. Moreover, Dr. Borst declared that “[t]he use of the word ‘appraisal’ in the Dugan patent and the Kim application is simply being used in a more general sense to describe a property valuation, not the more specific definition used by the USPAP and relied upon by Dr. Kilpatrick to draw his distinction.” *Id.* Therefore, the testimony at 120:2-21 of Ex. 2016 does not support the statement on page 26 of the Response that “an appraisal is not an ‘automatic valuation’ as understood by those of ordinary skill in the art,” as asserted by Zillow.

8. In Observation (9), Zillow asserts that the testimony at 62:15-18 of Ex. 2016 “clarifies that the output of an AVM, such as the system described in Cheng (see Observation # 1), is not an appraisal.” Again, Dr. Borst’s Declaration clearly establishes that “[i]rrespective of

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.