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Paper 12
Entered: February 18, 2014

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EDO INTERACTIVE, INC
Petitioners

v.

TUITIONFUND, LLC
Patent Owner

Case CBM2014-00042
Patent 7,499,872
Case CBM2014-00043
Patent 7,653,572
Case CBM2014-00044
Patent 7,899,704

Before DEBRA K. STEPHENS, TRENTON A. WARD, and MITCHELL G. WEATHERLY, *Administrative Patent Judges.*

WARD, *Administrative Patent Judge*.

JUDGMENT
Termination of the Proceedings
37 C.F.R. § 42.73

On February 10, 2014, the parties filed a joint motion to terminate the trial proceedings under 35 U.S.C. § 327(a) in the following three covered business method review proceedings: CBM2014-00042 (Paper 12); CBM2014-00043 (Paper 10); and CBM2014-00044 (Paper 9) (collectively the "Edo Interactive Cases"). Along with each motion, the parties filed a copy of a document they described as the written settlement agreement between the parties (CBM2014-00042, Paper 13; CBM2014-00043, Paper 11; CBM2014-00044, Paper 10), as well as a joint request to treat the settlement agreement as business confidential information under the provisions of 35 U.S.C. § 327(b) and 37 C.F.R. § 42.74(c).

Under 35 U.S.C. § 327(a), "[a] post-grant review instituted under this chapter shall be terminated with respect to any petitioner upon the joint request of the petitioner and the patent owner, unless the Office has decided the merits of the proceeding before the request for termination is filed." A trial has not been instituted in any of the Edo Interactive Cases. Indeed, the Patent Owner has not yet filed a preliminary response. Furthermore, the parties stated in their motion that they "have reached a settlement." CBM2014-00042, Paper 13, 2.

The parties have identified ongoing litigation matters concerning the subject patents captioned *TuitionFund, LLC v SunTrust Banks, Inc., SunTrust Bank, Regions Financial Corp., Regions Bank, Vesdia Corporation, Cartera Commerce, Inc., Cardlytics, Inc.*, Case No. 3:11-cv-00069 (M.D. Tenn.) and *TuitionFund, LLC v First Horizon National Corporation, First Tennessee Bank National Assoc., BB&T Corp., Branch Banking & Trust Co., Comerica Inc., Comerica Bank, Fiserv, Inc., Ally Financial, Inc., Ally Bank, Fifth Third Bancorp, Fifth Third Bank, EDO Interactive, Inc., Affinity Solutions, Inc.*, Case No. 3:11-cv-00852 (M.D. Tenn.). Additionally, the parties have identified related petitions for covered

business method patent review, CBM2014-00058 and CBM2014-00059, which involve the same patents at issue in CBM2014-00043 (Patent 7,653,572) and CBM2014-00044 (Patent 7,899,704).

Generally, the Board expects that a proceeding will terminate after the filing of a settlement agreement. *See, e.g.*, *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48756, 48768 (Aug. 14, 2012). This proceeding is still in the preliminary stages, as the Board has not instituted a trial. The Board is persuaded that, under these circumstances, it is appropriate to terminate these proceedings without rendering a final written decision. 37 C.F.R. § 42.72.

Accordingly, it is:

ORDERED that the joint motion to terminate these proceedings, CBM2014-00042, CBM2014-00043, and CBM2014-00044, is GRANTED and each proceeding is hereby terminated;

FURTHER ORDERED that the parties' joint requests that the settlement agreement (CBM2014-00042, Paper 13; CBM2014-00043, Paper 11; CBM2014-00044, Paper 10) be treated as business confidential information, kept separate from the file of the involved patent, and made available only to Federal Government agencies on written request, or to any person on a showing of good cause, under the provisions of 35 U.S.C. § 327(b) and 37 C.F.R. § 42.74(c), is GRANTED.

CBM2014-00042 (Patent 7,499,872)
CBM2014-00043 (Patent 7,653,572)
CBM2014-00044 (Patent 7,899,704)

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