

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CROCS, INC.,
Petitioner,

v.

POLLIWALKS, INC.,
Patent Owner.

Case IPR2014-00423
Patent 8,371,043 B2

Before JOSIAH C. COCKS, RICHARD E. RICE, and
SCOTT A. DANIELS, *Administrative Patent Judges*.

RICE, *Administrative Patent Judge*.

DECISION
Termination of the Proceeding
35 U.S.C. § 317 and 37 C.F.R. § 42.72

On December 5, 2014, Crocs, Inc. (“Petitioner”) and Polliwalks, Inc. (“Patent Owner”) (collectively referred to as “the Parties”) filed a joint motion to terminate this *inter partes* review involving U.S. Patent No. 8,317,043 B2 (“the ’043 Patent”). Paper 16 (“Joint Motion to Terminate”); *see* 35 U.S.C § 317; 37 C.F.R. § 42.72. Authorization to file the motion was given via e-mail correspondence from Board personnel on December 3, 2014. Along with the Joint Motion to Terminate, the Parties filed a true copy of their written settlement agreement (Ex. 1023), as well as a joint request (Paper 17) to have their settlement agreement treated as business confidential information under 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c).

The Parties state in their joint motion:

Pursuant to 35 U.S.C. § 317(a), Petitioner Crocs, Inc. (“Petitioner”) and Patent Owner Polliwalks, Inc. (“Patent Owner”) (collectively, “Parties”) jointly and respectfully request termination of IPR2014-00423, which challenges U.S. Patent No. 8,317,043, pursuant to the Parties’ settlement countersigned on December 1, 2014. The Parties file a concurrent joint motion to terminate Case No. IPR2014-00424.

Paper 16, 2. A lawsuit asserting the ’043 Patent against Petitioner (*Polliwalks, Inc. v. Crocs, Inc.*, Case No. 113-CV-11425-JGD (D. Mass.)) has been dismissed without prejudice. Paper 6.

Under 35 U.S.C. § 317(a), “[a]n *inter partes* review instituted under this chapter shall be terminated with respect to any petitioner upon the joint request of the petitioner and patent owner, unless the Office has decided the merits of the proceeding before the request for termination is filed.” The requirement for terminating review with respect to Petitioner is met.

Furthermore, under 35 U.S.C. § 317(a), “[i]f no petitioner remains in the *inter partes* review, the Office may terminate the review or proceed to a final written decision under section 318(a).” Termination with respect to Petitioner means that no petitioner remains in the proceeding. The Board, therefore, has discretion to terminate this review with respect to Patent Owner.

The Parties are reminded that the Board is not a party to the settlement, and may identify independently any question of patentability. 37 C.F.R. § 42.74(a). Generally, however, 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. 48,756, 48,768 (Aug. 14, 2012). The panel also observes that briefing has not been completed in this proceeding. To that end, Patent Owner has not filed a Patent Owner Response, and, correspondingly, Petitioner has not filed a Reply.

Upon consideration of the circumstances of this case, the panel has determined that termination of this *inter partes* review is appropriate as to both Petitioner and Patent Owner without rendering a final written decision.

It is

ORDERED that, as was requested timely by the Parties (Paper 17), the settlement agreement (Ex. 1023) will be treated as business confidential information under 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c); and

FURTHER ORDERED that the joint motion to terminate IPR2013-00423 (Paper 16) is *granted* and this proceeding is hereby *terminated*.

IPR2014-00423
Patent 8,371,043 B2

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