

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BEAR ARCHERY, INC.,
Petitioner,

v.

JAMES J. KEMPF,
Patent Owner.

Case IPR2016-01197
Patent 7,328,693 B2

Before SCOTT A. DANIELS, BEVERLY M. BUNTING, and
AMANDA F. WIEKER, *Administrative Patent Judges*.

WIEKER, *Administrative Patent Judge*.

JUDGMENT
Termination of the Proceeding
35 U.S.C. § 317(a); 37 C.F.R. § 42.72

On May 10, 2017, with the Board's prior authorization, Petitioner, Bear Archery, Inc., and Patent Owner, James J. Kempf, (collectively, "the parties") filed a joint motion (Paper 31) to terminate this proceeding pursuant to a settlement agreement ("Settlement and License Agreement," Ex. 1016). The parties also filed a true copy of their written Settlement and License Agreement (Ex. 1016), made in connection with the termination of this proceeding, in accordance with 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(b). Additionally, the parties filed a joint request to have their Settlement and License Agreement treated as confidential business information under 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c). Paper 32.

The parties submit that termination is appropriate because the parties have settled their dispute and have agreed to terminate this *inter partes* review. Paper 31, 2–3; *see also* 35 U.S.C. § 317(a). The parties represent that their agreement ends all disputes as to the '693 patent between the parties and further explain that the parties have filed, or will file, a Joint Stipulation of Dismissal with respect to the related district court litigation, *J&S R.D.T. Archery, Inc. et al. v. Bear Archery, Inc.*, 3:16-cv-00009-JAJ-HCA (S.D. Iowa). Paper 31, 3–4.

The Parties are reminded that the Board is not a party to the settlement, and may identify independently any question of patentability. *See* 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).

On November 14, 2016, the Board instituted trial. Paper 10. At this stage of the proceeding, the Board does not have before it full briefing on the

trial issues and the Board has not entered a final decision. Under these circumstances and based on the record before us, we determine that it is appropriate to terminate this proceeding with respect to the parties, at this juncture, to promote efficiency and to minimize unnecessary costs. Based on these facts, it is appropriate to enter judgement terminating this proceeding without rendering a final written decision and to treat the Settlement and License Agreement (Ex. 1016) as business confidential information. *See* 35 U.S.C. §§ 317(a), 317(b); 37 C.F.R. §§ 42.72, 42.74(c).

ORDER

Accordingly, it is:

ORDERED that the parties' joint request that the Settlement and License Agreement (Ex. 1016) be treated as business confidential information under 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c), kept separate from the patent file, is *granted*;

FURTHER ORDERED that the joint motion to terminate IPR2016-01197 is *granted*; and

FURTHER ORDERED that this proceeding is TERMINATED.

Case IPR2016-01197

Patent 7,328,693 B2

PETITIONER:

Charles J. Meyer

Blake R. Hartz

WOODARD, EMHARDT, MORIARTY, McNETT & HENRY LLP

cjmeyer@uspatent.com

bhartz@uspatent.com

PATENT OWNER:

Donald J. Ersler

DONALD J. ERSLER, S.C.

info@itspatentable.com