

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

OMNIACTIVE HEALTH TECHNOLOGIES, INC.,
Petitioner,

v.

KEMIN INDUSTRIES, INC.,
Patent Owner.

Case IPR2017-00306
Patent 9,226,940 B2

Before LORA M. GREEN, BRIAN P. MURPHY, and
KRISTI L. R. SAWERT, *Administrative Patent Judges*.

SAWERT, *Administrative Patent Judge*.

DECISION

Granting Joint Motion to Terminate Due to Settlement Prior to Institution
37 C.F.R. § 42.72, 42.74

On February 10, 2017, the parties filed a joint motion to terminate the instant proceeding (Paper 8), accompanied by a true copy of a settlement agreement (Ex. 1032) and a joint request to treat the settlement agreement as business confidential information, to be kept separate from the patent file, pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c) (Paper 9).

The parties indicate in their joint motion to terminate that they have reached an agreement resolving their dispute involving U.S. Patent No. 9,226,940 B2 (“the ’940 patent”). Paper 8, 1. Specifically, the parties state that they have entered into a Settlement Agreement that “completely settles the parties’ controversy and their dispute relating to the ’940 patent as between Patent Owner and OmniActive Health Technologies, Inc., the Petitioner and real party-in-interest in the present proceeding.” *Id.* The parties also state that the Settlement Agreement settled a related U.S. district court litigation (i.e., *OmniActive Health Technologies, Inc. v. Kemin Industries, Inc.*, Case No. 2016-cv-04988-CCC-JBC (D.N.J.)), and a related investigation at the U.S. International Trade Commission (ITC) (i.e., *Certain Food Supplements and Vitamins, Including Ocular Antioxidants and Components Thereof and Products Containing the Same*, Investigation No. 337-TA-1027). *Id.* The parties state that the related district court litigation has been dismissed, *id.* at 2 (citing Ex. 1036), and that the related ITC investigation has been initially terminated, *id.* (citing Ex. 1035).

This proceeding is in a preliminary stage. Patent Owner has not filed a Preliminary Response, and no decision on whether to institute trial has been made. Under the circumstances presented here, we determine that it is appropriate to terminate this preliminary proceeding with respect to both Petitioner and Patent Owner. Accordingly, we grant the parties’ joint motion to terminate. We also grant the parties’ joint request to treat the settlement agreement as business confidential information, to be kept separate from the patent file.

Accordingly, it is

ORDERED that the joint request to treat the Settlement Agreement as business confidential information, to be kept separate from the patent file, is GRANTED;

FURTHER ORDERED that the joint motion to terminate the proceedings is GRANTED; and

FURTHER ORDERED that the instant proceeding is TERMINATED.

PETITIONER:

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PATENT OWNER:

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