

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INOGEN, INC.,
Petitioner,

v.

CAIRE INC.,
Patent Owner.

Case IPR2017-02091
Patent 6,949,133 B2

Before CHRISTOPHER L. CRUMBLEY, JON B. TORNQUIST, and
ELIZABETH M. ROESEL, *Administrative Patent Judges*.

TORNQUIST, *Administrative Patent Judge*.

DECISION
Dismissing the Petition
37 C.F.R. §§ 42.5(a), 42.71(a)

On January 24, 2018, the parties filed a “Joint Motion to Dismiss Petition” (Paper 7) and a “Joint Motion to File Settlement Agreement as Business Confidential Information” under 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c) (Paper 8). The parties also filed a copy of their settlement agreement as Exhibit 1015.

In their Joint Motion to Dismiss, the parties assert the following:

The Parties respectfully submit that dismissal is proper here. This proceeding is still in its preliminary stage: Inogen filed its petition for *inter partes* review on September 11, 2017 (Paper 1), CAIRE filed its preliminary response on December 18, 2017 (Paper 6), and the Board has not yet issued its institution decision. The '133 patent was the subject of a district court action between the Parties, but the action has now been dismissed with prejudice.

Paper 7, 1.

Under these circumstances, and in view of the joint nature of the motion, we determine that dismissal of the Petition is appropriate. *See, e.g.*, Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012) (noting that the Board expects that a proceeding will terminate after the filing of a settlement agreement).

It is, therefore:

ORDERED that the parties’ Joint Motion to Dismiss is *granted*;

FURTHER ORDERED that the Petition for *inter partes* review of U.S. Patent No. 6,949,133 B2 is *dismissed*; and

FURTHER ORDERED that the parties’ settlement agreement (Ex. 1015) will be treated as business confidential information and kept separate from the files of U.S. Patent No. 6,949,133 B2 under 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c).

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