

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CLOUDFLARE, INC.,
Petitioner,

v.

BLACKBIRD TECH LLC,
Patent Owner.

Case IPR2018-00804
Patent 6,453,335

Before DEBRA K. STEPHENS, THOMAS L. GIANNETTI,
and CHRISTA P. ZADO, *Administrative Patent Judges*.

GIANNETTI, *Administrative Patent Judge*.

JUDGMENT
Termination of the Proceeding
37 C.F.R. § 42.72

On May 20, 2019, Petitioner and Patent Owner filed a Joint Motion to Terminate *Inter Partes* Review (Paper 18; “Motion”) under 35 U.S.C. § 317(a) and 37 C.F.R. § 42.72. A Joint Stipulation to Dismiss was filed as Exhibit 2009.

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.” Generally, the Board expects that a proceeding will terminate after the filing of a settlement agreement, if the settlement agreement includes all parties. *See, e.g.*, Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012).

In their Motion, the parties indicate that they have settled their dispute with regard to U.S. Patent No. 6,453,335. Motion 2. The parties submit that termination is appropriate because the ’335 patent was previously adjudged to be invalid in a District Court judgment which has been affirmed by the Federal Circuit. *Id.* The parties represent that there are no collateral agreements between the parties made in connection with, or in contemplation of, the termination of this proceeding, and that Exhibit 2009 represents a true and accurate copy of the stipulation between the parties that resolves this *inter partes* review. *Id.* at 2–3.

Patent Owner further represents that there are no pending federal court litigations in which the ’335 patent has been asserted. *Id.* at 3. Patent Owner states further that the ’335 patent is not presently the subject of any other *inter partes* review petitions. *Id.* The parties advise the Board that no

litigation or proceeding involving the challenged patent is contemplated by the parties in the foreseeable future. *Id.*

The parties contend this request is proper because the affirmance by the Federal Circuit of the District Court Judgment effectively renders this *inter partes* review moot. *Id.*

Under these circumstances, and for the reasons give by the parfties, we are persuaded that it is appropriate to terminate this proceeding with respect to both Petitioner and Patent Owner.

Accordingly, it is

ORDERED that the Joint Motion to Terminate *Inter Partes* Review (Paper 18) is *granted*;

FURTHER ORDERED that this proceeding is terminated with respect to both Petitioner and Patent Owner.

IPR2018-00804
Patent No. 6,453,335

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