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Paper No. 38
Entered: September 9, 2019

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HYPERBRANCH MEDICAL TECHNOLOGY, INC.,
Petitioner,

v.

CONFLUENT SURGICAL, INC.,
Patent Owner.

Case IPR2018-01097 (Patent 8,033,483 B2)
Case IPR2018-01099 (Patent 8,876,021 B2)
Case IPR2018-01168 (Patent 8,210,453 B2)
Case IPR2018-01191 (Patent 9,517,478 B2)
Case IPR2018-01192 (Patent 9,700,290 B2)[1]

Before LINDA E. HORNER, BARBARA A. PARVIS, and
JASON W. MELVIN, *Administrative Patent Judges*.

MELVIN, *Administrative Patent Judge*.

TERMINATION
Due to Settlement after Institution of Trial
*35 U.S.C. § 317*; *37 C.F.R. § 42.74*

[1] This Order addresses issues that are the same in each of the identified cases. We exercise our discretion to issue one Order to be filed in each case. The parties are not authorized to use this style heading in subsequent papers.

## I. INTRODUCTION

Per our email authorization provided on September 3, 2019 (Ex. 2022), Petitioner and Patent Owner (collectively "the Parties") filed a Joint Motion to Terminate the Proceeding in each of the above-captioned proceedings. Paper 34 ("Joint Motion").[2] The Parties also filed, in each of the above-captioned proceedings, a copy of a Confidential Settlement and Patent License Agreement (Ex. 2023 ("Agreement")), and a Joint Request to Treat Settlement Agreement as Business Confidential Information (Paper 35 ("Joint Request")).

## II. DISCUSSION

The Parties represent that they "have settled their disputes, and have agreed to terminate" the above-captioned proceedings. Joint Motion 1.

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." Although Decisions to Institute were entered in each of the above-captioned proceedings (Paper 14), we have not entered Final Written Decisions on the merits.

Under these circumstances, we determine that good cause exists to terminate the proceedings with respect to the Parties. Indeed, there are strong public policy reasons to favor settlement between the Parties to a proceeding. *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012). When, as here, we have not entered Final Written Decisions on the merits, we generally

[2] The papers and exhibits filed in these proceedings are substantively the same. We cite to the record in IPR2018-01097, unless otherwise noted.

expect that trials will terminate after the filing of settlement agreements. *See id*. Accordingly, we determine that it is appropriate to terminate the above-captioned proceedings without entering Final Written Decisions. *See* 37 C.F.R. § 42.72.

The Parties also filed a Joint Request to Treat Settlement Agreement as Business Confidential Information in each of the above-captioned proceedings. Joint Request. The Parties request that the Agreement be treated as business confidential information, and that the Agreement be kept separate from the file of the patents involved in the above-captioned proceedings and not be made available to any third party, except as provided for in 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c). *Id.* at 1.

"A party to a settlement may request that the settlement be treated as business confidential information and be kept separate from the files of an involved patent or application. The request must be filed with the settlement. If a timely request is filed, the settlement shall only be available: (1) To a Government agency on written request to the Board; or (2) To any other person upon written request to the Board to make the settlement agreement available, along with the fee specified in § 42.15(d) and on a showing of good cause." 37 C.F.R. § 42.74(c).

After reviewing the Agreement between the Parties, we find that the Agreement contains confidential business information regarding the terms of settlement. We determine that it is appropriate to treat the Agreement between the Parties as business confidential information pursuant to 37 C.F.R. § 42.74(c).

## III. ORDER

Accordingly, for the reasons discussed above, it is:

ORDERED that the Joint Motion to Terminate in each of the above-

captioned proceedings is *granted*, and IPR2018-01097, IPR2018-01099, IPR2018-01168, IPR2018-01191, and IPR2018-01192 are *terminated* with respect to Petitioner and Patent Owner; and

FURTHER ORDERED that the Joint Request to Treat Settlement Agreement as Business Confidential Information in each of the above-captioned proceedings is *granted*, and the Agreement shall be kept separate from the files of Patent 8,033,483 B2, Patent 8,876,021 B2, Patent 8,210,453 B2, Patent 9,517,478 B2, and Patent 9,700,290 B2, and made available only to Federal Government agencies on written request, or to any person on a showing of good cause, pursuant to 37 C.F.R. § 42.74(c).

IPR2018-01097 (Patent 8,033,483 B2)
IPR2018-01099 (Patent 8,876,021 B2)
IPR2018-01168 (Patent 8,210,453 B2)
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