

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BECTON, DICKINSON AND CO.,
Petitioner,

v.

BIOMÉRIEUX S.A.,
Patent Owner.

Case IPR2018-01566
Patent 8,367,337 B2

Before JAMES T. MOORE, SUSAN L. C. MITCHELL, and
KRISTI L. R. SAWERT, *Administrative Patent Judges*.

SAWERT, *Administrative Patent Judge*.

DECISION
Granting Joint Motion to Terminate
35 U.S.C. § 317(a) and 37 C.F.R. § 42.72

On May 8, 2019, Becton, Dickinson and Co. (“Petitioner”) and bioMérieux S.A. (“Patent Owner”) filed a joint motion to terminate this *inter partes* review pursuant to 35 U.S.C. § 317(a) and 37 C.F.R. §§ 42.72 and 42.74. Paper 9 (“Motion” or “Mot.”). The motion was accompanied by a true, unredacted copy of a settlement agreement (Ex. 2001), 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 8).

The parties represent in their joint motion that they “have settled their dispute” and have “reached agreement to terminate this IPR.” Mot. 1. Additionally, the parties state that the patent at issue in this proceeding “is not involved in a litigation between the parties, or in any other IPR proceedings.” *Id.* Thus, the parties state, “the settlement of this *inter partes* review represents the settlement of all disputes between the parties regarding U.S. Patent No. 8,367,337” (“the ’337 patent”). *Id.*

The Board generally expects that a case “will terminate after the filing of a settlement agreement, unless the Board has already decided the merits.” Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012); *see also* 37 C.F.R. § 42.72. Here, although the Board has instituted an *inter partes* review of claims 15 and 29–31 of the ’337 patent, the Board has not heard oral argument and has not decided the merits. Moreover, Patent Owner has not filed a Patent Owner Response.

Under the circumstances presented here, therefore, we determine that it is appropriate to terminate this proceeding with respect to both Petitioner

and Patent Owner. Accordingly, we grant the parties' joint motion to terminate.

We also determine that the parties have complied with the requirements of 37 C.F.R. § 42.74(c) to have the settlement agreement treated as business confidential information and kept separate from the files of the patent at issue in this proceeding. Thus, we grant the Joint Request to treat the settlement agreement as business confidential.

Accordingly, it is

ORDERED that the joint motion to terminate the proceeding is GRANTED;

FURTHER ORDERED that the joint request to treat the parties' settlement agreement as business confidential information, to be kept separate from the patent file, is GRANTED; and

FURTHER ORDERED that the instant proceeding is TERMINATED.

PETITIONER:

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