Trials@uspto.gov
571.272.7822

Paper No. 94
Entered: February 3, 2020

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FLYWHEEL SPORTS, INC.,
Petitioner,

v.

PELOTON INTERACTIVE, INC.,
Patent Owner.

IPR2019-00294, Patent 9,174,085 B2
IPR2019-00295, Patent 9,233,276 B1
IPR2019-00564, Patent 9,861,855 B2[1]

Before SCOTT A. DANIELS, RICHARD H. MARSCHALL, and ALYSSA A. FINAMORE, *Administrative Patent Judges.*

FINAMORE, *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 is applicable to each of these proceedings and will be entered in each proceeding. For purposes of this Order, any citation to the record refers to IPR2019-00294.

I. INTRODUCTION

Petitioner and Patent Owner jointly request that the above-referenced *inter partes* review proceedings be terminated pursuant to a settlement. On January 31, 2020, with our authorization, Petitioner filed a Joint Motion to Terminate Proceeding (Paper 83), a copy of a Confidential Settlement Agreement (Ex. 1072), and a Joint Motion to Treat as Confidential (Paper 85) in IPR2019-00294. Petitioner filed similar documents in IPR2019-00295 and IPR2019-00564.

II. DISCUSSION

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 the patent owner, unless the Office has decided the merits of the proceeding before the request for termination is filed." Section 317(b) requires that any agreement between the parties, including collateral agreements, made in connection with the termination of an *inter partes* review "shall be in writing and a true copy of such agreement or understanding shall be filed in the Office before the termination of the inter partes review as between the parties."

In the Joint Motion to Terminate Proceeding, the parties represent that they "have settled their dispute and have reached agreement to terminate these *inter partes* reviews, including all pending motions." Paper 83, 1. The parties further represent that the patents at issue in these *inter partes* review proceedings, namely U.S. Patent Nos. 9,174,085 B2, 9,233,276 B1, and 9,861,855 B2 ("the '085, '276, and '855 patents"), are the subject of pending

litigation,[2] and that the parties will file, within one (1) day of the grant of the present motion to terminate in each of these *inter partes* review proceedings, motions to dismiss the litigation involving the '085, '276, and '855 patents and litigation involving patents related to the '085, '276, and '855 patents. *Id.* at 3–4. The parties also represent that the Settlement Agreement has been made in writing, and that they filed a true copy of the same as Exhibit 1072. *Id.* at 1.

We instituted an *inter partes* review for each of these proceedings on June 5, 2019. Paper 20. We have not yet decided the merits of any of the proceedings, and a final written decision has not been entered in any of the proceedings. Given the present stage of the proceedings, the parties have shown adequately that termination is appropriate. Under these circumstances, we determine that good cause exists to terminate the proceedings. We further determine that the Settlement Agreement complies with the requirements for written agreements regarding termination set forth in 35 U.S.C. § 317(b).

With respect to the parties' Joint Motion to Treat as Confidential, we have reviewed the Settlement Agreement, and find the Settlement Agreement contains confidential business information regarding the terms of settlement. We determine that good cause exists to treat the Settlement Agreement as business confidential information pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c).

---

[2] *Peloton Interactive, Inc. v. Flywheel Sports, Inc.*, No. 2:18-cv-00390 (E.D. Tex. filed Sept. 12, 2018).

III. CONCLUSION

For the foregoing reasons, we grant the parties' Joint Motion to Terminate Proceeding and Joint Motion to Treat as Confidential in each of the proceedings. This determination does not constitute a final written decision pursuant to 35 U.S.C. § 318(a).

IV. ORDER

Accordingly, it is:

ORDERED that, for each proceeding, the Joint Motion to Terminate Proceeding is *granted*, and IPR2019-00294, IPR2019-00295, and IPR2019-00564 are *terminated* due to settlement after institution decision with respect to Petitioner and Patent Owner pursuant to 35 U.S.C. § 317(a) and 37 C.F.R. § 42.72; and

FURTHER ORDERED that, for each proceeding, the Joint Motion to Treat as Confidential is *granted*, and the Settlement Agreement shall be kept separate from the files of U.S. Patent Nos. 9,174,085 B2, 9,233,276 B1, and 9,861,855 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).

IPR2019-00294, Patent 9,174,085 B2
IPR2019-00295, Patent 9,233,276 B1
IPR2019-00564, Patent 9,861,855 B2

For PETITIONER:

Jeffrey Ginsberg
Abhishek Bapna
PATTERSON BELKNAP
jginberg@pbwt.com
abapna@pbwt.com

For PATENT OWNER:

Matthew Phillips
Kevin Laurence
Derek Meeker
LAURENCE & PHILLIPS IP LAW LLP
mphillips@lpiplaw.com
Klaurence@lpiplaw.com
dmeeker@lpiplaw.com