

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COHESITY INC.,
Petitioner,

v.

COMMVAULT SYSTEMS, INC.,
Patent Owner.

IPR2021-00934 (Patent 7,725,671 B2)
IPR2021-00935 (Patent 8,762,335 B2)

Before KARL D. EASTHOM, JENNIFER MEYER CHAGNON, and
DAVID COTTA, *Administrative Patent Judges*.

EASTHOM, *Administrative Patent Judge*.

TERMINATION¹
Due to Settlement After Institution of Trial
35 U.S.C. 317; 37 C.F.R. § 42.74

¹ This Termination applies to the above-listed proceedings. The parties must seek prior approval to apply this format for future filings.

I. INTRODUCTION

On January 27, 2022, with Board authorization, Petitioner and Patent Owner (collectively “the parties”) filed joint Motions to terminate the above-captioned proceedings. Paper 13² (“Mot.”). Along with the joint Motions, the parties filed true copies of their agreements made in connection with, or in contemplation of, the termination of the above-captioned proceedings. Ex. 1026; *see also* Mot. 2. The parties also filed a joint Requests to keep their agreements separate. Paper 14.

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.” And “[i]f no petitioner remains in the inter partes review, the Office may terminate the review.” *Id.*

In these proceedings, the Board issued a decision to institute *inter partes* review. Paper 10. However, the Board has not yet decided the merits of either proceeding or entered a final written decision. In the joint Motions, the parties state that they have resolved their dispute concerning the patents at issue in the above-captioned proceedings. Mot. 3. The parties state also that “the Parties submit true copies of the Parties’ agreements made in connection with, or in contemplation of, the termination of the proceedings.” *Id.* at 2. The proceedings involve no other parties. Accordingly, in the

² All citations are to IPR2021-00934. The IPR2021-00935 proceeding includes materially the same Papers and Exhibits at issue here.

circumstances present here, it is appropriate to terminate the proceedings.

See 37 C.F.R. §§ 42.72(a), 42.74.

Further, after reviewing the parties' agreements, we find that the agreements contain confidential business information regarding the terms of settlement. We determine that good cause exists to treat the agreements between the parties as business confidential information and to keep the agreements separate from the files of the patents in the above-captioned proceedings pursuant to 37 C.F.R. § 42.74(c).

In the joint Requests, the parties additionally request "that the Board order that in the event a person or entity makes a written request . . . for access to the agreements of Exhibit 1026, that any such written request be served upon the Parties on the day the written request is provided to the Board." Paper 14, 2. No specific Board procedure provides for serving upon the parties a request for access to the agreements. Therefore, we decline to issue an order regarding requests to access the agreements.

This Order does not constitute a final written decision pursuant to 35 U.S.C. § 318(a).

III. ORDER

Accordingly, it is

ORDERED that the joint Motions are *granted* and these proceedings are terminated with respect to Petitioner and Patent Owner; and

FURTHER ORDERED that the joint Requests are *granted* and the agreements shall be kept separate from the files of Patent 7,725,671 B2 and Patent 8,762,335 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).

IPR2021-00934 (Patent 7,725,671 B2)

IPR2021-00935 (Patent 8,762,335 B2)

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