

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BUTTERFLY NETWORK, INC.,
Petitioner,

v.

FUJIFILM SONOSITE, INC.,
Patent Owner.

IPR2022-01575 (Patent 7,867,168 B2)
IPR2022-01576 (Patent 9,538,985 B2)
IPR2022-01577 (Patent 6,901,157 B2)

Before WILLIAM V. SAINDON, FRANCES L. IPPOLITO, and
JEFFREY W. ABRAHAM, *Administrative Patent Judges*.

SAINDON, *Administrative Patent Judge*.

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

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I. INTRODUCTION

With the Board’s authorization, Petitioner and Patent Owner (collectively “the Parties”) filed a Joint Motion to Terminate *Inter Partes* Review in each of the above-identified proceedings. Paper 19 (“Joint Motion to Terminate”).¹ In support of each Joint Motion to Terminate, the Parties filed a copy of a Settlement Agreement (Ex. 1059) and a Joint Motion to Keep Confidential and Separate Under 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c) (Paper 20, “Joint Motion to Keep Confidential”).

II. DISCUSSION

In the Joint Motions to Terminate, the Parties represent that they have reached an agreement to jointly seek termination of the above-identified *inter partes* review proceedings. Paper 19, 3. The Parties state that the filed copy of the Settlement Agreement is a “true and accurate copy” and that it “represents the entire agreement or understanding between the Parties made in connection with, or in contemplation of, the termination of th[ese] proceeding[s].” *Id.* at 2; *see also* Paper 20. The Parties further state that the related district court litigation has been dismissed with prejudice, and that the Parties “are not aware of any other litigation” or “any other pending USPTO proceedings regarding the patent[s]-at-issue.” Paper 19, 4.

We instituted trial in these proceedings on April 13, 2023. Paper 7. The trials are still in an early stage. An oral hearing has not been held, we

¹ This Decision cites to papers and exhibits in IPR2022-01575. Corresponding items were filed in IPR2022-01576 and -01577.

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have not yet decided the merits of the proceedings, and final written decisions have not been entered. The Parties have shown adequately that termination of these proceedings is appropriate. Under these circumstances, we determine that good cause exists to terminate the proceedings.

The Parties also filed Joint Motions to Keep Confidential, requesting that the Settlement Agreement be treated as business confidential information and be kept separate from the files of the patents involved in these *inter partes* review proceedings. Paper 20. After reviewing the Settlement Agreement between Petitioner and Patent Owner, we find that the Settlement Agreement contains confidential business information regarding the terms of settlement. We determine that good cause exists to treat the Settlement Agreement between Petitioner and Patent Owner as business confidential information pursuant to 37 C.F.R. § 42.74(c).

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

III. ORDER

Accordingly, for the reasons discussed above, it is:

ORDERED that the Joint Motion to Terminate in each of the above-identified proceedings is *granted*, and the proceedings are *terminated*; and

FURTHER ORDERED that the Joint Motion to Keep Confidential in each of the above-identified proceedings is *granted*, and the Settlement Agreement shall be kept separate from the files of Patents 7,867,168 B2; 9,538,985 B2; and 6,901,157 B2 and made available only to Federal

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Government agencies on written request, or to any person on a showing of good cause, pursuant to 37 C.F.R. § 42.74(c).

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