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Paper 20
Date: September 13, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

REPLIMUNE LIMITED AND REPLIMUNE, INC.,
Petitioner,

v.

AMGEN INC.,
Patent Owner.

IPR2023-00106
Patent 10,034,938 B2

Before KRISTI L. R. SAWERT, CYNTHIA M. HARDMAN, and JAMIE T. WISZ, *Administrative Patent Judges*.

WISZ, *Administrative Patent Judge*.

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

I. INTRODUCTION

With the Board's authorization, Petitioner and Patent Owner (collectively referred to as "the Parties") filed a Joint Motion to Terminate the above-identified proceeding due to settlement. Paper 17 ("Joint Motion"). In support of the Joint Motion, the Parties filed a Settlement Agreement (Ex. 1054 ("Settlement Agreement")), as well as a Joint Request to Treat the Settlement Agreement as Business Confidential Information (Paper 18 ("Joint Request")) pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74.

II. DISCUSSION

In the Joint Motion, the Parties represent that they have reached an agreement to jointly seek termination of this *inter partes* review proceeding, and that the filed copy of the Settlement Agreement is a true copy. Joint Motion 2. The Parties further represent that their settlement agreement resolves all currently pending proceedings between the Parties involving U.S. Patent No. 10,034,938 ("the '938 patent"). *Id* at 3.

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 35 U.S.C. § 317(a) also provides that if no petitioner remains in the *inter partes* review, the Office may terminate the review.

We instituted a trial on the above-identified proceeding on May 18, 2023. Paper 11. We have not yet decided the merits of the proceeding, and a final written decision has not been entered. Notwithstanding that the proceeding has moved beyond the preliminary

stage, the Parties have shown adequately that termination of the proceeding is appropriate. Under these circumstances, we determine that good cause exists to terminate the proceeding.

We also determine that the Settlement Agreement contains confidential business information regarding the terms of settlement, and therefore 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).

The Parties further request "the Board order that in the event a person or entity makes a written request, as stated in 37 C.F.R. § 42.74(c)(1)–(2), for access to the Settlement Agreement, that any such written request be served upon Replimune and Amgen on the day the written request is provided to the Board." Joint Request 2. We have no such procedure to serve upon the Parties a request for access to the Settlement Agreement, and, further, our regulations do not require us to do so. Therefore, we decline to issue an order regarding Settlement Agreement access requests.

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 (Paper 17) is *granted*, and IPR2023-00106 is *terminated* pursuant to 35 U.S.C. § 317(a) and 37 C.F.R. § 42.72; and

FURTHER ORDERED that the Joint Request (Paper 18) to Treat the Settlement Agreement (Exhibit 1054) as Business Confidential Information is *granted*, and the Settlement Agreement shall be kept separate from the file

of Patent 10,034,938 B2, and made available only to Federal Government agencies on written request, or to any person on a showing of good cause, pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c).

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