Trials@uspto.gov
Tel: 571-272-7822

Paper 11
Date: June 5, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GEL BLASTER, INC.,
Petitioner,

v.

SPIN MASTER, INC.,
Patent Owner.

IPR2023-00301 (Patent No. 8,371,282 B2)
IPR2023-00302 (Patent No. 8,640,683 B2)[1]

Before HYUN J. JUNG, NEIL T. POWELL, and BRENT M. DOUGAL, *Administrative Patent Judges*.

POWELL, *Administrative Patent Judge*.

DECISION
Settlement Prior to Institution of Trial
37 C.F.R. § 42.74

[1] This Order addresses issues that are the same in the above-captioned proceedings. The parties are not authorized to use a multi-case caption.

I. INTRODUCTION

On May 19, 2023, after email authorization by the Board, Petitioner and Patent Owner (collectively "the Parties") filed a Joint Motion to Terminate Proceeding. Paper 9 ("Joint Motion").[2] In support of the Joint Motion, the Parties filed a copy of a Confidential Settlement Agreement (Ex. 1023 ("Settlement Agreement")), as well as a Joint Request to File Settlement Agreement as Business Confidential Information (Paper 10 ("Joint Request")).

II. DISCUSSION

In the Joint Motion, "the Parties move to terminate the present *inter partes* review proceeding regarding U.S. Patent No. 8,371,282 ('the '282 Patent')." Paper 9, 1. The Parties represent that the filed Settlement Agreement is "a true and correct copy" and that "[t]here are no other agreements, oral or written, between the Parties made in connection with, or in contemplation of, the termination of the proceeding." *Id.* at 1, 3.

The Parties also filed a Joint Request that the Settlement Agreement be treated as business confidential information and be maintained separate from the publicly available file of the patent involved in this *inter partes* proceeding. Paper 10, 2 ("Joint Request"). In the Joint Request, the Parties ask that the Settlement Agreement "be made available only to Federal Government agencies on written request, or to persons showing good cause on written request, pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c)." *Id.*

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[2] For purposes of expediency, we cite to papers and exhibits filed in IPR2023-00301, unless otherwise noted. The Parties filed similar papers and exhibits in IPR2023-00302.

This proceeding is in its preliminary phase. Petitioner filed its Petition on December 5, 2022 (Paper 2) and Patent Owner filed a Preliminary Response on March 23, 2023 (Paper 6). We have not yet entered a decision on institution. In view of the early stage of the proceeding and the settlement between the Parties, we determine that good cause exists to terminate the proceeding with respect to the Parties.

After reviewing the Settlement Agreement, 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 as business confidential information pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c).

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

Accordingly, for the reasons discussed above, it is:

III. ORDER

ORDERED that the Joint Motion to Terminate Proceeding is *granted*;

FURTHER ORDERED that the Joint Request to File Settlement Agreement as Business Confidential Information is *granted*, and

FURTHER ORDERED that the Petition is *dismissed.*

FOR PETITIONER:

Scott Doyle
Douglas Lewis
KELLEY DRYE & WARREN LLP
sdoyle@kelleydrye.com
dlewis@kelleydrye.com

FOR PATENT OWNER:

Kenneth W. Darby
Jennifer C. Bailey
FISH & RICHARDSON P.C.
kdarby@fr.com
jennifer.bailey@eriseip.com