

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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FUSION PHARMACEUTICALS, INC.,  
Petitioner,

v.

UNIVERSITÄT HEIDELBERG AND THE EUROPEAN ATOMIC ENERGY  
COMMUNITY (EURATOM), REPRESENTED BY THE EUROPEAN  
COMMISSION,  
Patent Owner

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Case No. IPR2023-00551  
Patent No. 10,980,901 B2

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**JOINT MOTION TO TERMINATE PURSUANT TO  
37 C.F.R. §§ 42.72 & 42.74**

Pursuant to 35 U.S.C. § 317(a) and 37 C.F.R. §§ 42.72 and 42.74, and the authorization provided by the Board via email on February 29, 2024, Petitioner Fusion Pharmaceuticals, Inc. (“Petitioner”) and Patent Owners Universität Heidelberg and The European Atomic Energy Community (EURATOM), Represented by The European Commission (“Patent Owners”) jointly move to terminate this proceeding in view of the parties’ settlement of their dispute relating to U.S. Patent No. 10,980,901 (“the ’901 patent”). The parties are filing, concurrently with the present motion, true and complete copies of their written License Agreement (Confidential Exhibit 1041) and Settlement Agreement (Confidential Exhibit 1042) (together, “Agreements”). These Agreements completely settle the parties’ dispute relating to the ’901 patent.

The parties further jointly certify that there are no other agreements or understandings, oral or written, between Patent Owners and Petitioner, including any collateral agreements, made in connection with, or in contemplation of, the termination of the present proceeding as set forth in 35 U.S.C. § 317(b).

The parties request that the Agreements be treated as business confidential information and be kept separate from the file of this IPR. A joint request to treat the Agreements as business confidential information kept separate from the IPR file pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c) is being filed concurrently with this motion.

## **I. Argument**

A joint motion to terminate “must (1) include a brief explanation as to why termination is appropriate; (2) identify all parties in any related litigation involving the patents at issue; (3) identify any related proceedings currently before the Office; and (4) discuss specifically the current status of each such related litigation or proceeding with respect to each party to the litigation or proceeding.” *Heartland Tanning, Inc. v. Sunless, Inc.*, IPR2014-00018, Paper No. 26, at \*2 (P.T.A.B. July 28, 2014). These factors are addressed in turn below.

### **A. Why Termination is Appropriate**

The parties “may terminate the proceeding ... unless the Board has already decided the merits of the proceeding.” Consolidated Office Patent Trial Practice Guide, 4 (November 2019); *see also id.*, 86 (“The Board expects that a proceeding will terminate after the filing of a settlement agreement, unless the Board has already decided the merits of the proceeding”). Here, the parties have entered into a settlement and no longer have a dispute regarding the ’901 patent. Petitioner filed its petition for *inter partes* review on February 13, 2023. The Board granted institution of *inter partes* review on August 15, 2023. Patent Owners filed their Patent Owners’ Response on November 22, 2023. Though this IPR has been instituted and Patent Owners have filed their Patent Owners’ Response, Petitioner has not yet filed its Reply, and the Board has not yet issued a final decision on the

merits. The Board has routinely terminated proceedings at the request of settling parties in cases that have progressed much further than the present proceeding. *See, e.g., Volusion, Inc. v. Versata Software, Inc.*, CBM2013-00018, Pap. 52, 2-3 (June 17, 2014) (granting motion to terminate instituted proceeding in its entirety after final oral hearing). The Board can conserve its resources by terminating now, removing the need for the Board to further consider the arguments or render a final decision. Ending this proceeding early will promote the Congressional goal of establishing a more efficient patent system by limiting unnecessary and counterproductive costs. *See* Changes to Implement Inter Partes Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents, 77 Fed. Reg. 48,680 (Aug. 14, 2012).

Termination is also appropriate for public policy reasons. Again, the parties have settled their dispute. And, Congress and federal courts favor settlement of litigation. *See, e.g., Delta Air Lines, Inc. v. August*, 450 U.S. 346, 352 (1981) (“The purpose of [Fed. R. Civ. P.] 68 is to encourage the settlement of litigation.”); *Bergh v. Dept. of Transp.*, 794 F.2d 1575, 1577 (Fed. Cir.) (“The law favors settlement of cases.”), cert. denied, 479 U.S. 950 (1986). The Federal Circuit similarly favors settlement. *See Cheyenne River Sioux Tribe v. U.S.*, 806 F.2d 1046, 1050 (Fed. Cir. 1986) (noting that the law favors settlement to reduce antagonism and hostility between parties). Indeed, the Board has stated an expectation that proceedings such

as this will be terminated after the filing of a settlement agreement: “[t]here are strong public policy reasons to favor settlement between the parties to a proceeding . . . . The Board *expects that a proceeding will terminate after the filing of a settlement agreement*, unless the Board has already decided the merits of the proceeding. 35 U.S.C. § 317(a), as amended....” Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48768 (Aug. 14, 2012) (emphasis added).

### **B. Identity and Status of Any Related Litigations**

The parties are unaware of any related litigation involving the ’901 patent.

### **C. Identity and Status of Any Related Proceedings Currently Before the Office**

The ’901 patent is not currently at issue in any other proceedings before the Board.

## **II. Conclusion**

For the foregoing reasons, the parties jointly and respectfully request that the instant proceeding be terminated.

DATED: March 1, 2024

Respectfully submitted,

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By /Linnea Cipriano/

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LEWIS ROCA ROTHGERBER

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Lead Counsel for Patent Owners

**CERTIFICATE OF COMPLIANCE WITH 37 C.F.R. § 42.24**

I hereby certify that the “Joint Motion to Terminate Pursuant to 37 C.F.R. §§ 42.72 & 42.74” complies with the type volume limitation of 37 C.F.R. §42.24(a)(1)(v) because it does not exceed 15 pages, excluding the cover page, signature block, and the parts of the document exempted by 37 C.F.R. § 42.24(a)(1).

Dated: March 1, 2024

Respectfully Submitted,

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the Joint Motion to Terminate Pursuant to 37 C.F.R. §§ 42.72 & 42.74 was served on March 1, 2024 via email to the Patent Owners by serving the correspondence email addresses of record as follows:

AHasan@LewisRoca.com  
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Dated: March 1, 2024

Respectfully Submitted,

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