Paper No. 8
Filed: September 26, 2023

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTUITION MACHINES, INC. AND CLOUDFLARE, INC.,
Petitioners,

v.

HUMAN DIFFERENTIAL INTELLIGENCE, LLC,
Patent Owner.

Case IPR2023-00631
Patent No. 8,752,141

JOINT MOTION TO TERMINATE PROCEEDING AND NOTICE OF SETTLEMENT UNDER 35 U.S.C. § 327 AND 37 C.F.R §§ 42.72 AND 42.74

TABLE OF CONTENTS

I. Introduction 1

II. Statement of Reasons for the Relief Requested 2

A. Public policy favors terminating these proceedings. 2

B. Allowing the parties to negotiate terms of a settlement, including termination of proceedings, serves the public interest. 3

C. Termination of these proceedings is appropriate at this stage in the proceedings in view of the Settlement Agreement. 4

III. Conclusion 4

I. Introduction

Petitioners and Patent Owner have entered into a confidential Settlement Agreement that resolves all underlying disputes between the parties, including IPR2023-00631 against U.S. Patent No. 8,752,141 and IPR2023-00632 against U.S. Patent No. 9,192,861, currently before the Board. The parties are filing a copy of the Settlement Agreement as Exhibit 1062 along with a request to treat it as Confidential Business Information under 37 C.F.R. § 42.74(c), and to seal it from the public absent showing of good cause. The Board authorized the filing of this Joint Motion in an email dated August 29, 2023.

In summary, the Settlement Agreement provides for, among other things, dismissal with prejudice of the district court litigation between Patent Owner and Petitioner Cloudflare, Inc. involving the ’141 and ’861 patents, and a request for termination of the pending IPRs filed by Petitioners against Patent Owner’s ’141 and ’861 patents. Other than the district court case between Patent Owner and Petitioner Cloudflare, Inc. that is being dismissed pursuant to the Settlement Agreement, there are no other pending litigation or post grant proceedings between the parties. There are no other agreements, oral or written, between the parties made in connection with, or in contemplation of, the termination of these proceedings.

Accordingly, pursuant to 35 U.S.C. § 327 and 37 C.F.R. §§ 42.72 and 42.74, the parties jointly request termination of both IPR proceedings involving the

parties—IPR2023-00631 against the ’141 patent and IPR2023-00632 against the ’861 patent—with respect to all parties, without rendering a final written decision in either of them.

For the reasons set forth below, the parties respectfully submit the public interest and the congressional intent strongly support the requested relief and, therefore, the parties jointly request that this motion to terminate be granted.

II. Statement of Reasons for the Relief Requested

A. Public policy favors terminating these proceedings

Congress and the Federal Courts encourage settlement between litigants. *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. 1986) (“The law favors settlement of cases.”), *cert. denied*, 479 U.S. 950 (1986). The U.S. Court of Appeals for the Federal Circuit also places a particularly strong emphasis on 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). Because Congress devised these proceedings as an alternative to litigation, termination following settlement comports with public policy. *See* 77 C.F.R. 48680, 48680 (“The purpose of the AIA and this final rule is to establish a more efficient and streamlined patent system that will improve patent quality and limit unnecessary

and counterproductive litigation costs"). As stated in the Board's Trial Practice Guide, "[t]here are strong public policy reasons to favor settlement between the parties to a proceeding." Patent Trial and Appeal Board Consolidated Trial Practice Guide, November 2019, at 86.

B. Allowing the parties to negotiate terms of a settlement, including termination of proceedings, serves the public interest

The Settlement Agreement is the result of negotiations between the parties, and reflects a deal in which each side has made compromises and has eliminated risks. For example, the parties are dismissing the pending district court case with prejudice, thereby eliminating the expense and associated risks of protracted litigation. If the Board were to deny the parties' concurrent joint request to terminate the IPRs, that denial would discourage future settlements by removing a primary motivation for settlement—the removal of litigation costs and risks. If the parties in a district court patent litigation and parallel post grant review proceedings wished to settle all disputes, but the patent owner still faced a risk of an invalidity finding in the post grant review, that would create a strong disincentive for settlement. The patent owner in that situation would be disinclined to enter into a one-sided settlement agreement that would completely eliminate the risk for the petitioner/defendant, but not for patent owner. In many instances, a settlement would

not make sense if it would eliminate risk for only one party (e.g., just the petitioner removing its exposure or just the patent owner removing its exposure).

C. Termination of these proceedings is appropriate at this stage in the proceedings in view of the Settlement Agreement

Because oral argument has not occurred and the Board has not decided the merits of these proceedings, the expected normal course is to terminate proceedings upon settlement and that is what should be done here. *See, e.g.*, Patent Trial and Appeal Board Consolidated Trial Practice Guide, November 2019, at 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.") (citing 35 U.S.C. §§ 317(a), 327).

III. Conclusion

For the foregoing reasons, Petitioners and Patent Owner request that the Board terminate these proceedings.

Date: September 26, 2023

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Respectfully submitted,

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **Joint Motion to Terminate Proceeding and Notice of Settlement under 35 U.S.C. § 327 and 37 C.F.R. §§ 42.72 and 42.74,** was served on September 26, 2023, via email directed to counsel of record for the Patent Owner at the following:

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Patent Owner has consented to service by email.

Dated: September 26, 2023

/William Esper/
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