

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HOYMILES USA, INC.,

Petitioner,

v.

CYBOENERGY, INC.,

Patent Owner.

CASE: IPR2024-01106

U.S. PATENT NO. 8,786,133

**JOINT MOTION TO TREAT SETTLEMENT AGREEMENT AS
BUSINESS CONFIDENTIAL INFORMATION**

EXHIBIT LIST

Exhibit No.	Description
1001	U.S. Patent No. 8,786,133
1002	File History for U.S. Patent No. 8,786,133
1003	Declaration of Mladen Kezunovic
1004	U.S. Pub. 2009/0020151 A1 (“Fornage”)
1005	U.S. Pub. 2008/0283118 (“Rotzoll ’118”)
1006	U.S. Pub. 2005/0105224 A1 (“Nishi”)
1007	U.S. Pub. 2002/0038667 A1 (“Kondo”)
1008	B. Kjaer, <i>A Review of Single-Phase Grid-Connected Inverters for Photovoltaic Modules</i>
1009	U.S. Pub. 2009/0000654 (“Rotzoll ’654”)
1010	Patent Owner’s Response to Order Granting Request for <i>Ex Parte</i> Reexamination
1011 <i>New</i>	Confidential Settlement Agreement Between Parties [FILED UNDER SEAL]

Pursuant to 35 U.S.C. § 317 and 37 C.F.R. § 42.74, and the authorization provided in the Board's email of October 23, 2024, Petitioner Hoymiles USA, Inc. and Patent Owner CyboEnergy, Inc., by and through their respective counsel, have reached a settlement and jointly move to terminate the above-captioned proceeding. As permitted by statute, Petitioner and Patent Owner request that the Board treat as business confidential information the true and complete copy of the settlement agreement (Confidential Exhibit 1011) between the parties, as referenced in the parties' Joint Motion to Terminate Proceeding, filed concurrently herewith.

35 U.S.C. § 317(b) provides in relevant part that:

[a]t the request of a party to the proceeding, the agreement or understanding shall be treated as business confidential information, shall be kept separate from the file of the involved patents, and shall be made available only to Federal Government agencies on written request, or to any person on a showing of good cause.

Similarly, 37 C.F.R. 42.74(c) provides that:

A party to a settlement may request that the settlement be treated as business confidential information and be kept separate from the files of an involved patent or application. The request must be filed with the settlement. If a timely request is filed, the settlement shall only be available:

- (1) To a Government agency on written request to the Board; or
- (2) To any other person upon written request to the Board to make the settlement agreement available, along with the fee specified in § 42.15(d) and on a showing of good cause.

The present request, which is being filed contemporaneously with the settlement agreement, is timely and complies with the foregoing authority. The parties therefore respectfully request that the settlement agreement (Confidential Exhibit 1011) (i) be treated as business confidential information, (ii) be maintained separate from the publicly available file of the involved patent, and (iii) 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).

Further, Petitioner and Patent Owner each request that they be notified if the Board receives and/or considers a request for access to the settlement agreement and be offered an opportunity to respond to any such request. *See Arista Networks, Inc. v. Castlemorton Wireless, LLC*, IPR2020-00986, Paper 7 (PTAB Oct. 28, 2020).

Date: October 23, 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 23, 2024, a true and correct copy of the foregoing was served on the following counsel for Patent Owner by electronic mail:

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