

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

B.R.A.H.M.S. GMBH,
Petitioner,

v.

BECTON, DICKINSON AND COMPANY,
Patent Owner.

Case: PGR2016-00018
Patent 9,091,698 B2

Before TONI R. SCHEINER, LORA M. GREEN and
BRIAN P. MURPHY, *Administrative Patent Judges*.

MURPHY, *Administrative Patent Judge*.

ORDER
Termination of the Proceeding
35 U.S.C. § 327; 37 C.F.R. § 42.72

On March 7, 2017, we authorized B.R.A.H.M.S GmbH (“Petitioner”) and Becton, Dickinson and Company (“Patent Owner”) to file a joint motion to terminate the above-identified proceeding. On March 8, 2017, pursuant to 35 U.S.C. § 327¹ and 37 C.F.R. § 42.74 (*see also* 37 C.F.R. § 42.72), Petitioner and Patent Owner filed a Joint Motion to terminate this post-grant review proceeding. Paper 17 (“Joint Motion” or “Joint Mot.”). Petitioner and Patent Owner also filed a copy of a settlement agreement between Petitioner and Patent Owner. Ex. 1011 (“Settlement Agreement”). The parties represent that the filed copy of the Settlement Agreement is a true copy. Joint Mot. 2.

“A post-grant 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.” 35 U.S.C. § 327(a). The Board has not yet decided the merits of this proceeding, and a final written decision has not been entered. Petitioner and Patent Owner represent that there are no other related proceedings currently pending before the Board, a District Court, or the International Trade Commission, involving the patent at issue. Joint Mot. 1. The parties further represent that all disputes regarding the patent at issue have been resolved. *Id.* at 1–2. Accordingly, we determine that good cause exists to terminate this proceeding.

¹ The Joint Motion cites 35 U.S.C. § 317, which applies to settlement of an *inter partes* review proceeding. We interpret the Joint Motion to be a request for termination of a post-grant review proceeding pursuant to 35 U.S.C. § 327.

Petitioner and Patent Owner also filed a Joint Request to File Settlement Agreement as Business Confidential Information. Paper 18. The parties requested that the Settlement Agreement be filed as business confidential information and that the Settlement Agreement be kept separate from the file of the patent involved in the post-grant review and be made available only on a showing of good cause or to Federal Government agencies on a written request. *Id.*

“At 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.” 35 U.S.C. § 327(b); 37 C.F.R. § 42.74(c). After reviewing the Settlement Agreement between Petitioner and Patent Owner, 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 between Petitioner and Patent Owner as business confidential information pursuant to 35 U.S.C. § 327(b).

IV. ORDER

For the foregoing reasons, it is
ORDERED that the Joint Motion to Terminate (Paper 17) is *granted*;
FURTHER ORDERED that the above-identified post grant review proceeding is hereby terminated; and

FURTHER ORDERED that the Joint Request to File Settlement Agreement as Business Confidential Information (Paper 18) is *granted*, and the Settlement Agreement between Petitioner and Patent Owner shall be treated as business confidential information under 35 U.S.C. § 327(b) and 37 C.F.R. § 42.74(c) and be kept separate from the publicly available file of the challenged patent.

For PETITIONER:

Beverly Lyman
Clifton McCann
THOMPSON HINE LLP
IPDocket@thompsonhine.com
cemccann@thompsonhine.com

For PATENT OWNER:

Kerry Taylor
Brenden Gingrich
KNOBBE, MARTENS, OLSON & BEAR, LLP
2KST@knobbe.com
2bsg@knobbe.com