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Paper 13
Date: September 28, 2022

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

HUMAN POWER OF N COMPANY,
Petitioner,

v.

HEARTBEET LTD,
Patent Owner.

PGR2022-00004
Patent 11,083,747 B2

Before SHERIDAN K. SNEDDEN, SUSAN L. C. MITCHELL, and DEVON ZASTROW NEWMAN, *Administrative Patent Judges*.

NEWMAN, *Administrative Patent Judge*.

TERMINATION
Settlement Before Institution of Trial
Granting Joint Motion to Treat Settlement Agreement as Confidential Business Information and to Keep Separate from the File
35 U.S.C. § 42.74

On October 22, 2021, Human Power of N Company ("Petitioner") filed a Petition requesting post-grant review of claims 1–7 of U.S. Patent No. 11,083,747 B2 (Ex. 1001, "the '747 patent"). Paper 1. Heartbeet Ltd. ("Patent Owner") filed a Preliminary Response to the Petition. Paper 6. The

Board has not instituted trial in this proceeding, and no final decision has been rendered by the Board in this proceeding.

On September 23, 2022, with authorization of the Board, the parties filed a Joint Motion to Terminate Post-Grant Review (Paper 11) in light of a settlement agreement between the parties, a copy of their settlement agreement (Ex. 2003), and a Joint Request to Keep Separate (Paper 12), requesting that the Board treat the settlement agreement as business confidential information under 35 U.S.C. § 317(b).

The parties explain that good cause exists to terminate this proceeding because the settlement agreement resolves their disputes in this proceeding, the proceeding is still at an early stage, and the parties do not contemplate any further litigation or proceeding involving the patent at issue. Paper 11, 1–2. Pursuant to 37 C.F.R. § 42.74(b), the parties represent that a true and correct copy of their settlement agreement has been filed as Petitioner's Exhibit 2003. *Id*. at 1. The parties further represent that there are no other collateral agreements relating to the termination sought. *Id*.

In addition, the parties jointly request that the settlement agreement, filed as Exhibit 2003, be kept as a separate paper and made available only under the provisions of 35 U.S.C. § 327(b) and 37 C.F.R. § 42.74. Paper 12, 1. The parties represent that they consider the settlement agreement to contain "sensitive business information" and state that its terms require the parties "to treat the settlement agreement as confidential information and limit their ability to share the settlement agreement or disclose its contents with third parties."

Generally, 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. *See* 35 U.S.C. § 327(a) ("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."); 37 C.F.R. § 42.72 ("The Board may terminate a trial without rendering a final written decision, where appropriate, including ... pursuant to a joint request under 35 U.S.C. 327(a)"). As noted above, the Board has not yet rendered a final decision here. Thus, we agree that it is appropriate to grant the parties' Joint Motion to Terminate the proceeding.

Based on our examination of Exhibit 2003, we determine that the Settlement Agreement contains confidential business information. We also grant the parties' Joint Request to Keep Separate and will treat the agreement in Exhibit 2003 as business confidential information. That exhibit will be kept separate from the files of the challenged patent and shall be made available only to a Government agency on written request, or to other persons on a written request and showing of good cause. *See* 35 U.S.C. § 327(b); 37 C.F.R. § 42.74(c).

In consideration of the foregoing, it is hereby:

ORDERED that the Joint Motion to Keep Separate is granted, and the settlement agreement (Ex. 2003) shall be kept separate from the public files of the '747 patent, and made available only to Federal Government agencies on written request, or to any person on a showing of good cause, under 35 U.S.C. § 327(b) and 37 C.F.R. § 42.74(c); and

FURTHER ORDERED that the Joint Motion to Terminate Post-Grant Review is granted, and this proceeding is hereby terminated under 35 U.S.C. § 327(a) and 37 C.F.R. § 42.72.

FOR PETITIONER:

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