

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH
ORGANISATION,

Petitioner,

v.

BASF PLANT SCIENCE GMBH,
Patent Owner.

PGR2022-00026
Patent 11,180,769 B2

Before ULRIKE W. JENKS, JO-ANNE M. KOKOSKI, and
TINAE. HULSE, *Administrative Patent Judges*.

JENKS, *Administrative Patent Judge*.

TERMINATION
Due to Settlement After Institution of Trial
35 U.S.C. § 327; 37 C.F.R. § 42.74

With authorization from the Board (Ex. 3001), Commonwealth Scientific and Industrial Research Organisation (“Petitioner”) and BASF Plant Science GmbH (“Patent Owner”) filed a joint motion to terminate this proceeding pursuant to 35 U.S.C. § 327 and 37 C.F.R. § 42.74. Paper 10 (“Joint Motion”). The Joint Motion was accompanied by a true, unredacted copy of a settlement and license agreement (Ex. 1025; “the Settlement Agreement”), and a joint request to treat the Settlement Agreement as business confidential information, to be kept separate from the patent file, pursuant to 35 U.S.C. § 327(b) and 37 C.F.R. § 42.74(c) (Paper 11).

Under 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.” The statute also provides that if no petitioner remains in the post grant review, the Office may terminate the review. 35 U.S.C. § 327(a).

Petitioner filed its petition in this proceeding on February 28, 2022 (Paper 1), and we issued a decision granting institution on September 7, 2022 (Paper 5). In the Joint Motion, the parties state that “termination of the instant PGR is appropriate under all relevant authorities and would save the Board resources in administering this proceeding and issuing a final written decision.” Paper 10, 3. As the parties correctly assert, we have not conducted a hearing in this proceeding, and we have not decided the merits.

The parties also represent that Exhibit 1025 “is a true copy of the complete settlement agreement entered between the parties on December 8, 2022.” Paper 10, 3. Although not stated explicitly in the Joint Motion, we understand the settlement agreement that is Exhibit 1025 to be the only agreement between the parties and there are no other agreements, oral or

written, between the parties made in connection with, or in contemplation of, the termination of this proceeding. *See id.*

Under these circumstances, we determine that termination of the proceeding is appropriate. *See Consolidated Trial Practice Guide*, 86 (Nov. 2019) (“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”).

We also determine that the parties have shown that the Settlement Agreement contains business confidential information, and that good cause exists to treat the Settlement Agreement as business confidential information under 37 C.F.R. § 42.74(c).

This Order does not constitute a final written decision pursuant to 35 U.S.C. § 328(a).

Accordingly, it is

ORDERED that the Joint Motion to Terminate the Proceeding is *granted*; and

FURTHER ORDERED that the joint request to treat the Settlement Agreement as business confidential information is *granted*, and the Settlement Agreement shall be kept separate from the file of U.S. Patent No. 11,180,769, and be made available only to Federal Government agencies on written request, or to any person on a showing of good cause, pursuant to 37 C.F.R. § 42.74(c).

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