

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ONCusp THERAPEUTICS SUB, INC.,
Petitioner,

v.

DAIICHI SANKYO CO LTD,
Patent Owner.

PGR2023-00037
Patent 11,446,386 B2

Before ULRIKE W. JENKS, SUSAN L. C. MITCHELL, and
ZHENYU YANG *Administrative Patent Judges*.

MITCHELL, *Administrative Patent Judge*.

ORDER
Settlement Prior to Institution of Trial
37 C.F.R. § 42.74

DISCUSSION

On June 16, 2023, OnCusp Therapeutics Sub, Inc. (“Petitioner”) filed a Petition requesting post-grant review of claim 1–18 of U.S. Patent No. 11,446,386 B2 (“the ’386 patent”). Paper 2. On October 12, 2023, Daiichi Sankyo Company, Ltd. (“Patent Owner”) filed a Preliminary Response. Paper 8. A decision on whether to institute a post-grant review in this case has not yet been made.

On December 20, 2023, the Parties filed an authorized Joint Motion to Terminate Post-Grant Review Proceedings Pursuant to 35 U.S.C. § 327(a) (“Joint Motion to Terminate”). Paper 10. The Parties also filed a Joint Request to File Settlement Agreement as Business Confidential Information Pursuant to 35 U.S.C. § 327(b). Paper 11.

In the Joint Motion to Terminate, the Parties state that termination is appropriate because they have settled all disputes between them relating to the ’386 patent. Paper 10, 1. The Parties also represent that “there are no other agreements or understandings between Petitioner and Patent Owner, or collateral thereto, made in connection with, or in contemplation of, the termination of the PGR.” *Id.* at 2.

This proceeding is at an early stage, and we have not yet issued a decision on whether to institute a trial. In view of the early stage of this proceeding, we determine that it is appropriate to terminate the proceeding to promote efficiency and minimize unnecessary costs. Therefore, the Parties’ Joint Motion to Terminate is granted.

The Parties also filed a Joint Request to File Settlement Agreement (Exs. 1039 and 1040, collectively, the “Settlement Agreement”) as Business Confidential Information, which shall be kept separate from the file of the ’386 patent. Paper 11. After reviewing the Settlement Agreement between

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Petitioner and Patent Owner, we find that the Agreement contains confidential business information regarding the terms of settlement. We determine that good cause exists to treat the Settlement Agreement (Exs. 1039, 1040) between Petitioner and Patent Owner as business confidential information pursuant to 37 C.F.R. § 42.74(c).

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

ORDER

In consideration of the foregoing, it is hereby:

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

FURTHER ORDERED that the PGR2023-00037 proceeding is *terminated*;

FURTHER ORDERED that the Joint Request (Paper 11) to File Settlement Agreement (Exs. 1039 and 1040) as Business Confidential Information Pursuant to 35 U.S.C. § 327(b) is *granted*;

FURTHER ORDERED that the Settlement Agreement (Exs. 1039 and 1040) shall be kept separate from the file of U.S. Patent No. 11,446,386 B2 and made available only to Federal Government agencies on written request, or to any person on a showing of good cause, pursuant to 35 U.S.C. § 327(b) and 37 C.F.R. § 42.74(c); and

FURTHER ORDERED that this paper does not constitute a final written decision pursuant to 35 U.S.C. § 328(a).

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