

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ASCENDIS PHARMA A/S,
Petitioner,

v.

BIOMARIN PHARMACEUTICAL INC.,
Patent Owner.

PGR2026-00013
Patent 12,233,106 B2

Before SUSAN L.C. MITCHELL, BRIAN D. RANGE, and
TAWEN CHANG, *Administrative Patent Judges*.

CHANG, *Administrative Patent Judge*.

TERMINATION
Granting Joint Motion to Terminate
35 U.S.C. § 327; 35 C.F.R. §§ 42.72, 42.74

ORDER
Granting Joint Request to Keep Settlement Agreement Confidential
35 U.S.C. § 327(b); 35 C.F.R. § 42.74(c)

INTRODUCTION

On September 24, 2026, with the Board's authorization (*see* Ex. 3001), Petitioner and Patent Owner (collectively, "the Parties") filed (1) a "Joint Motion to Terminate Post-Grant Review" (Paper 25, "Joint Motion") and (2) a "Joint Request to Keep Agreement Business Confidential and Separate under 37 C.F.R. § 42.74(c)" (Paper 26, "Joint Request"). The Parties also filed a copy of a "Settlement and License Agreement." Ex. 1073.

JOINT MOTION TO TERMINATE

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." Section 327(a) also provides that "[i]f no petitioner remains in the post-grant review, the Office may terminate the review."

Under 35 U.S.C. § 327(b), "[a]ny agreement or understanding between the patent owner and a petitioner . . . made in connection with, or in contemplation of, the termination of a post-grant review under this section shall be in writing," and "a true copy of such agreement or understanding," including "any collateral agreements referred to in such agreement or understanding," "shall be filed in the Office before the termination of the post-grant review as between the parties."

In the Joint Motion, the Parties represent that they have agreed to settle all underlying disputes between the Parties with respect to U.S. Patent No. 12,233,106 ("106 patent), the patent at issue in this post-grant review.

Paper 25, 1. The Parties represent that their “agreement is manifest in the Settlement and License Agreement,” a true and correct copy of which is filed as Exhibit 1073. *Id.* at 2. The Parties represent that “[t]here are no further collateral agreements or understandings made in connection with, or in contemplation of, the termination of this proceeding.” *Id.*

The Director instituted trial for this proceeding on May 6, 2026. Paper 14. Patent Owner has not yet filed its Response to the Petition; no hearing has been held; and we have not entered a final written decision or otherwise decided the merits of the case. Under these circumstances, we determine that good cause exists to terminate the proceeding with respect to the Parties. Because no petitioner remains in the proceeding, we also terminate this post-grant review.

JOINT REQUEST TO KEEP AGREEMENT BUSINESS
CONFIDENTIAL AND SEPARATE UNDER 37 C.F.R. § 42.74(c)

In the Joint Request, the Parties seek to have the Settlement and License Agreement (Ex. 1073) “treated as business confidential information and . . . kept separate from the file of this post-grant review (PGR) proceeding.” Paper 26, 1.¹

Under 35 U.S.C. § 327(b), “[a]t the request of a party to the proceeding, the agreement or understanding” between the patent owner and

¹ 35 U.S.C. § 327(b) requires the Board to keep settlement agreements separate from the files of the involved patents, not the post-grant review proceeding. The Settlement and License Agreement is part of the record for this post-grant review, but will be maintained as business confidential and accessible to Board and parties only. The Settlement and License Agreement will be kept separate from the files of the involved patent.

a petitioner made in connection with the termination of a post-grant review as part of a settlement “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.” We have reviewed the Settlement and License Agreement and find that it contains confidential business information regarding the terms of settlement. Thus, good cause also exists to treat the Settlement and License Agreement as business confidential information pursuant to 37 C.F.R. § 42.74(c).

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the Joint Motion to Terminate Post-Grant Review (Paper 25) is *granted*, and PGR2026-00013 is *terminated*; and

FURTHER ORDERED that the Joint Request to Keep Agreement Business Confidential and Separate under 37 C.F.R. § 42.7(c) (Paper 26) is *granted* to the extent that the Settlement and License Agreement (Ex. 1073) shall be treated as business confidential information, kept separate from the file of U.S. Patent No. 12,233,106 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).

PGR2026-00013
Patent 12,233,106 B2

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