

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APOTEX CORP.,
Petitioner,

v.

VIIV HEALTHCARE CO. and
VIIV HEALTHCARE UK LTD.,
Patent Owner.

Case IPR2014-00876
Patent 6,417,191 B1

Before LORA M. GREEN, ZHENYU YANG, and TINA E. HULSE,
Administrative Patent Judges.

GREEN, *Administrative Patent Judge.*

JUDGMENT
Termination of the Proceeding
37 C.F.R. § 42.73

On July 31, 2015, and pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74, the parties filed a copy of a settlement agreement (Paper 59¹) along with a joint request to treat the settlement agreement as business confidential, to be separate from the patent file, attached to the a joint motion to terminate the proceeding (Paper 58, “Mot.”)².

For the reasons provided below, the joint motion to terminate is granted. The joint request that the settlement agreement be treated as business confidential information is also granted.

While the parties may agree to settle their issues related to the involved patent, the Board is not a party to the settlement and may determine independently any question of patentability. 37 C.F.R. § 42.74(a).

The Board has not yet decided the merits of this proceeding. The parties represent that the only pending district court action involving the ’191 patent is *ViiV Healthcare UK Ltd. v. Lupin Ltd. et al.*, No. 14-cv-369-LPS (D. Del.), which has been settled, pending regulatory review. Mot. 2. The parties represent further that the validity of the ’191 patent has been unsuccessfully challenged in the following district court action, which was affirmed on appeal: *ViiV Healthcare UK Ltd. v. Lupin Ltd., Lupin Pharms., Inc., & Teva Pharms. USA, Inc.*, No. 1:11-cv-00576 (D. Del.), *aff’d*, 594 Fed. App’x 686 (Fed. Cir. 2015). According to the parties, the termination

¹ We do note that the preferred practice is to file a true copy of the settlement as an Exhibit, rather than a paper.

² We note further that the preferred practice is to file the joint motion to terminate and the joint request to treat the settlement agreement as business confidential as separate papers.

of this IPR “is central to the parties’ settlement agreement; to the extent the Board declines to terminate the proceeding, the settlement agreement is null and void.” *Id.* at 3–4.

In view of the parties’ settlement agreement made in connection with the termination in accordance with 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(b), we determine that it is appropriate to terminate the involvement of Petitioner. Moreover, we determine that it also is appropriate to terminate the proceeding with respect to Patent Owner, because we have not yet decided the merits of this proceeding. As a result, it is appropriate to enter judgment in the form of termination. *See* 37 C.F.R. § 42.2. Accordingly, it is

ORDERED that the parties’ request that the settlement agreement be treated as business confidential information, to be kept separate from the patent file, is GRANTED;

FURTHER ORDERED that the joint motion to terminate the proceeding is GRANTED;

FURTHER ORDERED that the proceeding is TERMINATED.

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