

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LAROSE INDUSTRIES, LLC,
Petitioner,

v.

CHOON'S DESIGN INC.,
Patent Owner.

Case IPR2014-01353
Patent 8,485,565 B2

Before GRACE KARAFFA OBERMANN, JEREMY M. PLENZLER, and
JON B. TORNQUIST, *Administrative Patent Judges*.

PLENZLER, *Administrative Patent Judge*.

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

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On December 31, 2014, Petitioner LaRose Industries, LLC (“LaRose”) and Patent Owner Choon’s Design Inc. (“Choon’s”) filed a Joint Motion to Terminate the instant proceeding. Paper 7. The parties also filed a true copy of their Written Settlement Agreement, made in connection with the termination of this proceeding, in accordance with 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(b). Paper 8, 4–20.¹ Additionally, the parties submitted a Joint Request to treat the Written Settlement Agreement as business confidential information under 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c). *Id.* at 1.

As an initial matter, the Board authorized the parties to file the Joint Motion to Terminate, and granted the parties’ request for extending the time for filing the Joint Motion to Terminate, from December 19, 2014, to December 30, 2014 (“the Revised Due Date”), in light of the unavailability of Patent Review Processing System (“PRPS”) for two and a half days, and the holidays. Paper 6; Exhibit 3001.² The parties’ Joint Motion to Terminate, however, was filed *a day* later than the Revised Due Date.

A late action will be excused either on a showing of good cause or upon a Board decision that consideration on the merits would be in the interests of justice. 37 C.F.R. § 42.5(c)(3). The parties should have notified

¹ The parties are reminded that the Written Settlement Agreement should have been filed separately as an exhibit. *See* 37 C.F.R. § 42.6(a)(3) (“[C]ombined documents are not permitted.”).

² The e-mail communication regarding the parties’ request for an extension of time is entered as Exhibit 3001.

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the Board of the late filing or sought prior authorization for a one-day extension of time. Nevertheless, upon weighing the impact of the late filing on the instant proceeding against the prejudice to the parties of not considering the Joint Motion to Terminate, we determine that it would be in the interests of justice, under the present circumstances, to excuse the parties' late action.

Generally, the Board expects that a proceeding will terminate after the filing of a settlement agreement. *See, e.g., Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012). LaRose filed a Petition for *inter partes* review of U.S. Patent No. 8,485,565 B2 (Ex. 1001, "the '565 patent") on August 20, 2014. Paper 1. In response, Choon's timely filed a Patent Owner Preliminary Response on December 2, 2014. Paper 5. The Board, however, has not determined, under 35 U.S.C. § 314, whether to institute *inter partes* review as to the '565 patent. As no trial has been instituted based on LaRose's Petition, this proceeding is in the preliminary proceeding³ stage. Given the particular facts in the instant proceeding, we conclude that it is appropriate to enter judgment.⁴

³ A preliminary proceeding begins with the filing of a petition for instituting a trial and ends with a written decision as to whether a trial will be instituted. 37 C.F.R. § 42.2.

⁴ A judgment means a final written decision by the Board, or a termination of a proceeding. 37 C.F.R. § 42.2.

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Accordingly, it is

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

FURTHER ORDERED that the instant proceeding is *terminated* as to all parties; and

FURTHER ORDERED that the Joint Request that the Written Settlement Agreement be treated as business confidential information kept separate from the patent file, 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. § 317(b) and 37 C.F.R. § 42.74(c), is *granted*.

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