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Paper No. 33
December 7, 2015

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AVOCENT HUNTSVILLE CORPORATION, and
LIEBERT CORPORATION,

Petitioner,
v.
CYBER SWITCHING PATENTS, LLC,
Patent Owner.

Case IPR2015-00690 (Patent 7,550,870 B2)
Case IPR2015-00725 (Patent 7,550,870 B2)

Before MICHAEL R. ZECHER, GLENN J. PERRY, and NEIL T. POWELL, *Administrative Patent Judges*.

PERRY, *Administrative Patent Judge*.

DECISION
Termination of the Proceeding
37 C.F.R. § 42.72

The parties have requested termination of the two *inter partes* reviews captioned above. The parties' requests are granted.

Cases IPR2015-00690 and IPR2015-00725 were petitioned originally by Avocent Huntsville Corporation ("Avocent"), Liebert Corporation

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("Liebert"), Eaton Corporation, and Raritan Americas, Inc. d/b/a Raritan Computer, Inc. The only remaining Petitioner parties are Avocent and Liebert.[1] A final decision has not yet been reached in either proceeding.

The parties have filed Joint Motions[2] to terminate each of the captioned proceedings and have requested[3] to have their respective settlement agreements treated as business confidential information under 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c). The parties refer to true copies of their respective written settlement agreements, which have been filed separately as exhibits[4] in the respective proceedings. The settlement agreements were filed so as to limit viewing to the parties and the Board only.

The Joint Motions indicate that the parties have settled their disputes related to the U.S. Patent No. 7,550,870 B2 ("the '870 patent"), and that the related matters in the Northern District of California, which were identified previously in the respective *inter partes* reviews, have been dismissed with prejudice or stayed pending final determination of the applicable *inter partes* reviews.

Under 35 U.S.C. § 317(a), "[a]n inter partes review instituted under this chapter shall be terminated with respect to any petitioner upon the joint request of the petitioner and patent owner, unless the Office has decided the merits of the proceeding before the request for termination is filed." Although we instituted an *inter partes* review of claims 1–9, 11, and 12 of

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[1] IPR2015-00690, Paper 15; and IPR2015-00725, Paper 15.
[2] IPR2015-00690, Paper 31; and IPR2015-00725, Paper 31.
[3] IPR2015-00690, Paper 32; and IPR2015-00725, Paper 32.
[4] IPR2015-00690, Exhibit 9999; and IPR2015-00725, Exhibit 9999.

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the ’870 patent in both proceedings,[5] we have not yet reached final decisions on the merits.

Further, under 37 C.F.R. § 42.74(b), “[a]ny agreement or understanding between the parties made in connection with, or in contemplation of, the termination of a proceeding shall be in writing and a true copy shall be filed with the Board before termination of the trial.” As the parties have filed their written settlement agreement, and the co-pending district court cases have been or will be dismissed, we determine that it is appropriate to terminate these proceedings without rendering Final Written Decisions as to the patentability of claims 1–9, 11, and 12 of the ’870 patent. *See* 37 C.F.R. §§ 42.72, 42.73, 42.74.

[5] IPR2015-00690, Paper 16; and IPR2015-00725, Paper 16.

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ORDER

Accordingly, it is:

ORDERED that the parties' Joint Requests that the settlement agreements be treated as business confidential information under 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c) are GRANTED; and

ORDERED that the parties' Joint Motions to terminate these proceedings are GRANTED, and these proceedings are hereby terminated.

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