

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

PANTIES PLUS, INC.
Petitioner

v.

BRAGEL INTERNATIONAL, INC.
Patent Owner

IPR2017-00044
Patent 7,144,296 B2

**JOINT MOTION TO TERMINATE
UNDER 35 U.S.C. § 317(a)**

Pursuant to 35 U.S.C. § 317(a), Petitioner Panties Plus, Inc. (“PPI”) and Patent Owner Bragel International, Inc. (“Bragel”) jointly request termination of the *Inter Partes* Review of U.S. Patent 7,144,296 in IPR2017-00044.

Petitioner and Patent Owner have entered into a written confidential settlement agreement that fully resolves all underlying disputes between the parties, including IPR2017-00044 against U.S. Patent 7,144,296 B2. The Parties are concurrently filing a copy of the Settlement Agreement as Ex. 1025 along with a request to treat it as confidential business information pursuant to 35 U.S.C. § 317(b). The undersigned represents that there are no other agreements, oral or written, between the parties made in connection with, or in contemplation of, the termination of the present proceeding and that Ex. 1025 represents a true and accurate copy of the agreement between the parties that resolves the present proceeding.

On June 21, 2017, the Parties informed the Board of the settlement via e-mail and requested authorization to file a joint motion to terminate the proceeding with respect to both the Patent Owner and the Petitioner. As set forth in an e-mail dated June 21, 2017, the Board authorized the filing of the requested joint motion to terminate this proceeding as to both parties. Accordingly, Petitioner and Patent Owner jointly request termination of the

present proceeding.

Public policy favors terminating the present *inter partes* review proceeding. Congress and federal courts have expressed a strong interest in encouraging settlement in litigation. *See, e.g., Delta Air Lines, Inc. v. August*, 450 U.S. 346, 352 (1981) (“The purpose of [Fed. R. Civ. P.] 68 is to encourage the settlement of litigation.”); *Bergh v. Dept. of Transp.*, 794 F.2d 1575, 1577 (Fed. Cir. 1986) (“The law favors settlement of cases.”), *cert. denied*, 479 U.S. 950 (1986). The Federal Circuit places a particularly strong emphasis on settlement. *See Cheyenne River Sioux Tribe v. U.S.*, 806 F.2d 1046, 1050 (Fed. Cir. 1986) (noting that the law favors settlement to reduce antagonism and hostility between parties). And, the Board’s Trial Practice Guide stresses that “[t]here are strong public policy reasons to favor settlement between the parties to a proceeding.” Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 46,768 (Aug. 14, 2012).

Ending this IPR early promotes the Congressional goal of establishing a more efficient patent system by limiting unnecessary and counterproductive costs. *See Changes to Implement Inter Partes Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents*, 77 Fed. Reg. 48,680 (Aug. 14, 2012). Permitting termination as to all parties provides certainty and fosters an

environment that promotes settlements, creating a timely, cost-effective alternative to litigation.

Additionally, termination of this IPR is appropriate as the Board has not yet “decided the merits of the proceeding.” *See, e.g.*, Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48768 (Aug. 14, 2012). PPI filed its petition for *inter partes* review on October 7, 2016. The Board instituted a proceeding on April 12, 2017. No depositions have taken place and neither the Patent Owner nor the Petitioner have submitted any substantive briefing post-institution. The parties have now settled their dispute, and have reached agreement to terminate this *inter partes* review. The USPTO can conserve its resources through terminating the proceedings now, removing the need for the Board to further consider the arguments, to issue an Institution Decision, and to render a Final Decision. Furthermore, no other party’s rights will be prejudiced by the termination of this proceeding.

As the Board requested in its e-mail sent June 21, 2017, the parties identify the following related district court litigations involving the ‘296 Patent to which the Patent Owner is a party, and the current status of each litigation.

(1) *Bragel International, Inc. v. Charlotte Russe, Inc. et al.*, 2:15-cv-08364 (CACD). This case was voluntarily dismissed on June 20, 2017.

(2) *Bragel International, Inc. v. Styles For Less, Inc. et al.*, 2:15-cv-01756 (CACD). This case was voluntarily dismissed on June 20, 2017.

(3) *Bragel International, Inc. v. AGaci LLC*, 2:15-cv-08439 (CACD). This case was voluntarily dismissed on March 7, 2016.

(4) *Bragel International, Inc. v. E-Retail Society d/b/a Bra Society et al.*, 2:15-cv-07148 (CACD). This case was voluntarily dismissed on October 30, 2015.

(5) *Bragel International, Inc. v. Charlotte Russe, Inc.*, 2:14-cv-07691 (CACD). This case was voluntarily dismissed on February 11, 2015.

(6) *Bragel International, Inc. v. Remi Collections, LLC*, 2:14-cv-02946 (CACD). This case was dismissed pursuant to a stipulated dismissal on August 15, 2014.

(7) *Bragel International, Inc. v. Love Culture, Inc.*, 2:11-cv-04336 (CACD). This case was voluntarily dismissed on September 6, 2011.

Other than the 2:15-cv-08364 (CACD) and 2:15-cv-01756 (CACD) civil actions, Petitioner was not a party to any of the foregoing proceedings.

If this joint motion to terminate is not granted, the Patent Owner will continue to participate in the proceeding by disputing that U.S. Patent 7,144,296 B2 should be invalidated on the ground on which *Inter Partes* Review IPR2017-00044 was instituted.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.