

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACRUX DDS PTY LTD., ACRUX LIMITED, and
ARGENTUM PHARMACEUTICALS LLC,
Petitioner,

v.

KAKEN PHARMACEUTICAL CO., LTD. and VALEANT
PHARMACEUTICALS INTERNATIONAL, INC.,
Patent Owner.

IPR2017-00190
Patent 7,214,506 B2

Before ERICA A. FRANKLIN, SUSAN L. C. MITCHELL, and
ROBERT A. POLLOCK, *Administrative Patent Judges*.

MITCHELL, *Administrative Patent Judge*.

TERMINATION
Due to Settlement on Remand
37 C.F.R. § 42.74

On May 11, 2020, the Board authorized the parties to file a motion to terminate, settlement agreement, and motion to keep the settlement agreement business confidential. Thereafter, pursuant to 37 C.F.R. §§ 42.72, 42.74 and 35 U.S.C. § 317(b), Petitioners (Acrux DDS PTY Ltd., Acrux Limited, and Argentum Pharmaceuticals LLC) and Patent Owner (Kaken Pharmaceutical Co., Ltd., and Bausch Health Companies Inc. formerly known as Valeant Pharmaceuticals International, Inc.) (collectively referred to as “the parties”) filed Joint Motions to Terminate the above-referenced proceeding, including requests to treat the respective settlement agreements as Business Confidential Information and Be Kept Separate, (Papers 105 and 112 (collectively “Joint Motions”)) along with copies of two written Confidential Settlement Agreements (Ex. 2204 and Ex. 2205 (collectively “Settlement Agreements”)).

Particularly, on May 13, 2020, Patent Owner and Petitioners Acrux DDS PTY Ltd. and Acrux Limited (collectively “Acrux”) filed a Joint Motion to Terminate the above-referenced proceeding and Joint Request to keep a settlement agreement as business confidential information and to keep the settlement agreement separate from the file of the involved patent (Paper 105), along with a copy of the written Confidential Settlement Agreement (Ex. 2204—filed as BOARD’S EYES ONLY). On November 12, 2020, Patent Owner and Petitioner Argentum Pharmaceuticals LLC (“Argentum”) filed a Joint Motion to Terminate the above-referenced proceeding and Joint Request to keep a second settlement agreement as business confidential information and to keep that settlement agreement separate from the file of the involved patent (Paper 112), along with a copy

of the written Confidential Settlement Agreement (Ex. 2205—filed as BOARD’S EYES ONLY).¹

In the Joint Motions, the parties represent that they have reached agreements to jointly seek termination of this *inter partes* review proceeding, and that the filed copies of the Settlement Agreements are true and complete copies. Paper 105, 1, 4; Paper 112, 1, 4. The parties further represent that their Settlement Agreements resolve all currently pending disputes and proceedings between the parties (including Patent Office and District Court proceedings) involving the 7,214,506 patent. Paper 105, 3–4; Paper 112, 3–4.

Generally, the Board expects that a proceeding will terminate after the filing of a settlement agreement. Patent Trial and Appeal Board Consolidated Trial Practice Guide 86.² This proceeding is on remand from the United States Court of Appeals for the Federal Circuit, and a final written decision has not been rendered in the remanded proceeding. Based on the facts in this case, we determine that it is appropriate to terminate the above-referenced proceeding without rendering a final written decision.

Additionally, upon review of the Joint Motions requesting that the Settlement Agreements be treated as business confidential information and be kept separate from the file of the patent involved in this *inter partes* proceeding, we determine that good cause exists to treat the Settlement

¹ Argentum originally opposed the motion to terminate filed by Acrux DDS PTY Ltd., Acrux Limited, and Patent Owner. *See* Paper 107. Argentum, however, now jointly supports termination of this proceeding as no dispute remains between the parties and the Board. *See* Paper 112, 3–4.

² Available at <https://www.uspto.gov/TrialPracticeGuideConsolidated>.

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Agreements as business confidential information pursuant to
35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c).

Therefore, both requests in the Joint Motions are *granted*.

This Order does not constitute a final written decision pursuant to
35 U.S.C. § 318(a).

Accordingly, it is:

ORDERED that the requests in the Joint Motions (Papers 105 and
112) to terminate the above-referenced proceeding are GRANTED, and
IPR2017-00190 is TERMINATED with respect to all Petitioners and Patent
Owner;

FURTHER ORDERED that the requests in the Joint Motion that the
Settlement Agreements (Ex. 2204 and Ex. 2205) be treated as business
confidential information and be kept separate from the file of the above-
referenced proceeding and from the file of Patent 7,214,506 B2, under the
provisions of 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c), are GRANTED;
and

FURTHER ORDERED that the Settlement Agreements (Ex. 2204 and
Ex. 2205) shall remain available as BOARD'S EYES ONLY in the record in
IPR2017-00190.

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