

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FREDMAN BROS. FURNITURE COMPANY, INC.,
Petitioner,

v.

BEDGEAR, LLC,
Patent Owner.

IPR2017-00350 (Patent 8,887,332 B2)
IPR2017-00351 (Patent 9,015,883 B2)
IPR2017-00352 (Patent 8,646,134 B1)

PER CURIAM.

TERMINATION
Due to Settlement After Institution of Trial
35 U.S.C. § 317; 37 C.F.R. § 42.74

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IPR2017-00351 (Patent 9,015,883 B2)
IPR2107-00352 (Patent 8,646,134 B1)

I. INTRODUCTION

With the Board's authorization, Petitioner Fredman Bros. Furniture Company, Inc. and Patent Owner Bedgear, LLC (collectively, "Parties") filed Joint Motions to Terminate these proceedings due to settlement. IPR2017-00350, Paper 45 ("Joint Motion"); IPR2017-00351, Paper 45; IPR2017-00352, Paper 46. In support of these motions, the Parties filed a copy of a confidential settlement agreement (IPR2017-00350, Ex. 2022; IPR2017-00351, Ex. 2022; IPR2017-00352, Ex. 2022 ("Settlement Agreement")), as well as joint requests to file the settlement agreement as business confidential pursuant to 35 U.S.C. § 317 and 37 C.F.R. § 42.74(c) (IPR2017-00350, Paper 44; IPR2017-00351, Paper 44; IPR2017-00352, Paper 45 ("Joint Request")). For simplicity, we refer below only to the filings in IPR2017-00350, which are representative of the filings in each of the proceedings.

II. DISCUSSION

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 the patent owner, unless the Office has decided the merits of the proceeding before the request for termination is filed." Section 317(a) also provides that if no petitioner remains in the *inter partes* review, the Office may terminate the review. Section 317(b) requires that any agreement between the parties, including collateral agreements, made in connection with the termination of an *inter partes* review "shall be in writing and a true copy of such agreement or understanding shall be filed in the

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Office before the termination of the inter partes review as between the parties.”

The Parties represent that they have made and signed an agreement that resolves all underlying disputes between the parties, including these proceedings. *E.g.*, -00350 Joint Motion 1. Further, the Parties jointly certify that, aside from the Settlement Agreement, “there are no other agreements or understandings, oral or written, between the parties, including any collateral agreements or understandings, made in connection with, or in contemplation of, the termination of [these] proceedings,” and that the filed copy of the Settlement Agreement is a true and correct copy. *E.g.*, *id.*

We instituted trials in the above-identified proceedings. Although we decided the merits of the proceedings and entered final written decisions, the Federal Circuit vacated those final written decisions based on the Federal Circuit’s *Arthrex* decision. *Bedgear, LLC v. Fredman Bros. Furniture Co.*, 783 F. App’x 1029 (2019) (order vacating and remanding) (citing *Arthrex, Inc. v. Smith & Nephew, Inc.*, 941 F.3d 1320 (Fed. Cir. 2019)). Petitioner filed a petition for writ of certiorari, which was dismissed upon a joint stipulation of dismissal on June 23, 2021. *Fredman Bros. Furniture Co. v. Bedgear, LLC*, No. 20-408, 2021 WL 2908899 (U.S. June 23, 2021).

Notwithstanding that the proceedings have moved beyond the preliminary stages, the Parties have shown adequately that the termination of the proceedings is appropriate. Under these circumstances, we determine that good cause exists to terminate the proceedings. We further determine that the Settlement Agreement complies with the requirements for written agreements regarding termination set forth in 35 U.S.C. § 317(b).

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The Parties also filed Joint Requests that the Settlement Agreement be treated as business confidential information and be kept separate from the file of the respective patents involved in these *inter partes* proceedings. *E.g.*, -00350 Joint Request. After reviewing the Settlement Agreement between Petitioner and Patent Owner, we find that the Settlement Agreement contains confidential business information regarding the terms of settlement. We determine that good cause exists to treat the Settlement Agreement between Petitioner and Patent Owner as business confidential information pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c).

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

III. ORDER

Accordingly, for the reasons discussed above, it is

ORDERED that, for each proceeding, the Joint Motion to Terminate is *granted*, and IPR2017-00350, IPR2017-00351, and IPR2017-00352 are *terminated* pursuant to 35 U.S.C. § 317(a) and 37 C.F.R. § 42.72; and

FURTHER ORDERED that, for each proceeding, the Joint Request to File Settlement Agreement as Business Confidential is *granted*, and the Settlement Agreement shall be kept separate from the files of U.S. Patent No. 8,983,134 B2, U.S. Patent No. 9,015,883 B2, and U.S. Patent No. 8,646,134 B1, 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).

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