

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FREDMAN BROS. FURNITURE COMPANY, INC.,
Petitioner,

v.

BEDGEAR, LLC,
Patent Owner.

IPR2017-00524
Patent 9,155,408 B2

PER CURIAM.

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

I. INTRODUCTION

With the Board's authorization, Petitioner Fredman Bros. Furniture Company, Inc. and Patent Owner Bedgear, LLC (collectively, "Parties") filed a Joint Motion to Terminate this proceeding due to settlement. Paper 39 ("Joint Motion"). In support of the motion, the Parties filed a copy of a confidential settlement agreement (Ex. 2018 ("Settlement Agreement")), as well as a joint request to file the settlement agreement as business confidential pursuant to 35 U.S.C. § 317 and 37 C.F.R. § 42.74(c) (Paper 38 ("Joint Request")).

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 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 this proceeding. 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 the present proceeding,” and that the filed copy of the Settlement Agreement is a true and correct copy. *Id.*

We instituted trial on July 17, 2017 and entered a final written decision on July 13, 2018. Although we decided the merits of this proceeding and entered a final written decision, the Federal Circuit vacated that final written decision based on the Federal Circuit’s *Arthrex* decision. *Bedgear, LLC v. Fredman Bros. Furniture Co.*, 803 F. App’x 407 (2020) (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 this proceeding has moved beyond the preliminary stages, the Parties have shown adequately that termination of the proceeding is appropriate. Under these circumstances, we determine that good cause exists to terminate the proceeding. 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).

The Parties also filed a Joint Request that the Settlement Agreement be treated as business confidential information and be kept separate from the file of the patent involved in this *inter partes* proceeding. 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

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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 the Joint Motion to Terminate is *granted*, and this
proceeding is *terminated* pursuant to 35 U.S.C. § 317(a) and 37 C.F.R.
§ 42.72; and

FURTHER ORDERED that the Joint Request to File Settlement
Agreement as Business Confidential is *granted*, and the Settlement
Agreement shall be kept separate from the file of U.S. Patent No. 9,155,408
B2, 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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