

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

OBALON THERAPEUTICS, INC.,
Petitioner,

v.

POLYZEN, INC.,
Patent Owner.

Cases IPR2017-00812 (Patent 7,682,306 B2)¹
IPR2017-00813 (Patent 7,883,491 B2)
IPR2017-01023 (Patent 6,712,832 B2)

Before KRISTINA M. KALAN, JON B. TORNQUIST, and
CHRISTOPHER M. KAISER, *Administrative Patent Judges*.

KALAN, *Administrative Patent Judge*.

DECISION

Dismissing the Proceedings
37 C.F.R. § 42.5(a), 37 C.F.R. § 42.71(a)

¹ This Decision addresses the same issues in each of three related cases. We exercise our discretion to issue one Decision to be entered in each case. The parties are not authorized to use this style heading in their papers.

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The parties have requested that the above-captioned proceedings be terminated pursuant to a settlement. The Board authorized the parties to file a joint motion to terminate or dismiss the above-captioned proceedings on August 18, 2017.

On August 18, 2017, and pursuant to 35 U.S.C. § 317, the parties filed a joint motion to terminate in each of the above-captioned proceedings (IPR2017-00812, Paper 10; IPR2017-00813, Paper 10; IPR2017-01023, Paper 11) and a joint request to treat the settlement agreements as business confidential information, to be kept separate from the patent file pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c) (IPR2017-00812, Paper 11; IPR2017-00813, Paper 11; IPR2017-01023, Paper 12), along with a copy of the settlement agreements (IPR2017-00812, Exs. 1013, 1014; IPR2017-00813, Exs. 1010, 1011; IPR2017-01023, Exs. 1018, 1019).

Generally, the Board expects that a proceeding will terminate after the filing of a settlement agreement. *See, e.g.*, Office Patent Trial Practice Guide, 77 Fed. Reg. 48756, 48768 (Aug. 14, 2012). These cases are in the preliminary proceeding stage. A preliminary proceeding begins with the filing of a petition for instituting a trial and ends with a written decision as to whether trial will be instituted. *See* 37 C.F.R. § 42.2. In each of the above-captioned proceedings, Petitioner filed a Petition, and Patent Owner filed a Preliminary Response, but no decision whether to institute a trial has been made.

The parties jointly request that IPR2017-00812, IPR2017-00813, and IPR2017-01023 be terminated. IPR2017-00812, Paper 10, 1; IPR2017-00813, Paper 10, 1; IPR2017-01023, Paper 11, 1. In each case, the parties

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“certify that there are no collateral agreements or understandings made in connection with, or in contemplation of, the termination of this inter partes review” and that the “Settlement and License Agreement and Inter Partes Review Proceedings Settlement Agreement reflect the final settlement and resolution of all disputes between Patent Owner and Petitioner regarding this inter partes review.” *Id.* at 2. The parties represent that, pursuant to the settlement agreements, they have agreed to terminate not only the present proceedings but also the related district court litigation in the United States District Court for the Southern District of California. *Id.* at 1.

Based on the facts of these cases, and in view of the parties’ joint motions in these proceedings, we determine that it is appropriate to dismiss the Petitions in each of the above-captioned cases as to both Petitioner and Patent Owner without rendering either a decision to institute or a final written decision. *See* 37 C.F.R. §§ 42.5(a); 42.71(a). Therefore, the joint motions and the joint requests to treat the settlement agreements as business confidential information are *granted*. This paper does not constitute a final written decision pursuant to 35 U.S.C. § 318(a).

Accordingly, it is

ORDERED that, in each of the above-captioned proceedings, the joint request to treat the settlement agreements as business confidential information, to be kept separate from the patent file, is *granted*;

FURTHER ORDERED that the joint motion filed in each of the above-captioned proceedings is *granted*; and

FURTHER ORDERED that the Petitions for *Inter Partes* Review of each of the above-referenced patents are *dismissed*.

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