

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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MYLAN PHARMACEUTICALS INC.,  
Petitioner,

v.

COSMO TECHNOLOGIES LIMITED,  
Patent Owner.

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Case IPR2017-01035  
Patent 9,320,716 B2

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Before SUSAN L. C. MITCHELL, ZHENYU YANG, and  
KRISTI L. R. SAWERT, *Administrative Patent Judges*.

MITCHELL, *Administrative Patent Judge*.

DECISION

Granting Joint Motion to Terminate  
*35 U.S.C. § 317(a) and 37 C.F.R. § 42.72*

Petitioner, Mylan Pharmaceuticals Inc., and Patent Owner, Cosmo Technologies Limited, jointly move to terminate this proceeding pursuant to 35 U.S.C. § 317(a), 37 C.F.R. §§ 42.72 and 42.74. (Paper 23, “Motion” or “Mot.”). As the parties note, on September 21, 2017, the Board instituted *inter partes* review in this case of claims 1–29 of the U.S. Patent 9,320,716 B2 (“the ’716 patent”). On November 14, 2017, the parties represent that they entered into a settlement agreement in which Patent Owner “agrees to dismiss its infringement claim of [the ’716 patent] against Petitioner and terminate the related district court proceeding.” Paper 23, 2. The Board subsequently authorized the parties to file this motion to terminate proceedings.

The parties also filed a copy of their Settlement Agreement, made in connection with the termination of these proceedings, in accordance with 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(b). *See* Ex. 2037. The parties filed a Joint Request that the settlement agreement be treated as business confidential information, and be kept separate from the file of the involved patent, under 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c). Paper 24.

The Board generally expects that a case “will terminate after the filing of a settlement agreement, unless the Board has already decided the merits.” Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012); *see* 37 C.F.R. § 42.72. In their Motion, the parties indicate that the settlement agreement, Ex. 2037, “has resolved litigation between Mylan and Cosmo in *Cosmo Technologies Ltd. v. Mylan Pharmaceuticals Inc.*, 16-cv-00152 (D.Del.)” Paper 23, 3. The parties further state that “Petitioner

represents that it will no longer participate in this *inter partes* review and will file no further papers.” *Id.* at 4.

The parties do note a second district court litigation involving the ’716 patent and different defendants remains pending, as well as another petition for *inter partes* review involving the ’716 patent and a different petitioner, Argentum Pharmaceuticals LLC, for which Argentum is seeking joinder with this proceeding. *Id.* With respect to Argentum’s petition, the parties state that “[n]o substantive rulings have been made in that IPR proceeding,” and that “Argentum is not subject to any statutory bar under 35 U.S.C. § 315(b).” *Id.* We have confirmed in a call with the parties involving Argentum’s petition that there is no statutory bar under 35 U.S.C. § 315(b) regarding that petition.

As the parties point out, the Motion was filed after institution, but before briefing on the merits was concluded, and thus, before a final written decision has issued on the merits.

Thus, upon consideration of the facts before us, we determine that it is appropriate to terminate this proceeding. *See* 37 C.F.R. §§ 42.5(a), 42.71(a), 42.73(a), 42.74. Accordingly, we grant the Motion.

We also determine that the parties have complied with the requirements of 37 C.F.R. § 42.74(c) to have the Settlement Agreement treated as business confidential information and kept separate from the files of the patent at issue in this proceeding. Thus, we grant the Joint Request to treat the Settlement Agreement as business confidential.

ORDER

For the foregoing reasons, it is hereby:

ORDERED that the Joint Motion to Terminate is *granted*;

FURTHER ORDERED that *inter partes* review in IPR2017-01035 is terminated as to all parties; and

FURTHER ORDERED that the Joint Request of the parties to treat the Settlement Agreement (Ex. 2037) as business confidential information, to be kept separate from the patent file in the above-referenced *inter partes* proceeding, is *granted*.

IPR2017-01035  
Patent 9,320,716 B2

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