

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ARGENTUM PHARMACEUTICALS LLC,
Petitioner,

v.

ICOS CORPORATION,
Patent Owner.

Case IPR2017-01762
Patent 6,943,166 B1

Before SHERIDAN K. SNEDDEN, SUSAN L. C. MITCHELL, and
ZHENYU YANG, *Administrative Patent Judges*.

YANG, *Administrative Patent Judge*.

DECISION

Dismissing Petition's Motion for Joinder
Termination of the Proceeding Due to Settlement before Institution
37 C.F.R. §§ 42.72, 42.74

On July 12, 2017, Argentum Pharmaceuticals LLC (“Petitioner”) filed a Petition for an *inter partes* review of claims 1–12 of U.S. Patent No. 6,943,166 B1. Paper 2. Petitioner concurrently filed a Motion for Joinder (Paper 3), seeking to be joined to *Mylan Pharmaceuticals Inc. v. ICOS Corporation*, Case No. IPR2017-00323. Patent Owner filed an Opposition to Petitioner’s Motion for Joinder. Paper 7.

On August 28, 2017, pursuant to 35 U.S.C. § 317(a), and with the Board’s authorization, the parties filed a Joint Motion to Terminate. Paper 9. In addition, pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c), the parties filed a true and correct copy of a Settlement Agreement (Ex. 1039), along with a Joint Motion to Keep Confidential and Separate that Settlement Agreement (Paper 8).

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 patent owner, unless the Office has decided the merits of the proceeding before the request for termination is filed.” Under 37 C.F.R. § 42.72, “[t]he Board may terminate a trial without rendering a final written decision, where appropriate, including . . . pursuant to a joint request under 35 U.S.C. 317(a).”

This case is in its preliminary stage. No decision on whether to institute a trial has been made. After reviewing the Joint Motion to Terminate and the Settlement Agreement, we determine that it is appropriate to terminate the proceeding without rendering a final written decision. Therefore, the Joint Motion to Terminate is GRANTED, and the Motion for Joinder is DISMISSED as moot.

Accordingly, it is

ORDERED that Petitioner's Motion for Joinder is *dismissed* as moot;

FURTHER ORDERED that the Joint Motion to Terminate Proceeding is GRANTED and the proceeding is hereby TERMINATED; and

FURTHER ORDERED that the Joint Motion to Keep Confidential and Separate is GRANTED, and the Settlement Agreement will be kept separate from the patent files.

IPR2017-01762
Patent 6,943,166 B1

PETITIONER:

Kevin Laurence
Tyler Liu
Matthew` Phillips
klaurence@lpiplaw.com
tliu@agpharm.com
mphilips@lpiplaw.com

PATENT OWNER:

Mark J. Feldstein
Maureen D. Queler
Yieyie Yang
Joshua L. Goldberg
FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER, LLP
mark.feldstein@finnegan.com
maureen.queler@finnegan.com
yieyie.yang@finnegan.com
joshua.goldberg@finnegan.com

Mark J. Stewart
Dan L. Wood
Gerald P. Keleher
Eli Lilly and Company Lilly Corporate Center
stewart_mark@lilly.com
wood_dan_1@lilly.com
keleher_gerald@lilly.com