

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

INTIMIDATOR, INC. AND RF PRODUCTS, INC.,
Petitioner,

v.

BAD BOY, INC.,
Patent Owner.

Case IPR2018-01632
Patent 9,730,386 B1

Before FRANCES L. IPPOLITO, KEVIN W. CHERRY, and
PAUL J. KORNICZKY, *Administrative Patent Judges*.

KORNICZKY, *Administrative Patent Judge*.

DECISION and ORDER
Granting Joint Motion to Terminate this Proceeding
35 U.S.C. § 317; 37 C.F.R. §§ 42.72, 42.74

On July 10, 2019, Petitioner (Intimidator, Inc. and RF Products, Inc.) and Patent Owner (Bad Boy, Inc.) (“Parties”) filed a Joint Motion to Terminate this proceeding and a Joint Motion to file settlement agreements as business confidential information (Paper 32, including both Motions), along with a copy of the written settlement agreements (Ex. 2014). The Board authorized the filing of the Motions on July 3, 2019.

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.” 35 U.S.C. § 317(a) states that if no petitioner remains in the *inter partes* review, the Office may terminate the review. Additionally, 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. 48,756, 48,768 (Aug. 14, 2012).

We instituted trial in this proceeding on March 13, 2019. Paper 21. Patent Owner’s Response was filed on June 13, 2019 (Paper 30), but Petitioner has not yet filed its Reply. We have not yet decided the merits of this proceeding, and a final written decision has not been entered in this proceeding. Notwithstanding that this proceeding has moved beyond the preliminary stage, the Parties have shown adequately that the termination of this proceeding is appropriate. Under these circumstances, we determine that good cause exists to terminate this proceeding with respect to the Parties.

The Parties must also comply with 37 C.F.R. § 42.74(b), which requires that “[a]ny agreement or understanding between the parties made in connection with, or in contemplation of, the termination of a proceeding shall be in writing and a true copy shall be filed with the Board before the termination of the trial.” The Parties represent that their “settlement agreements and any collateral agreements made in contemplation of termination of the proceeding are in writing, and true and correct copies of such documents are being filed herewith as Exhibit 2014.” Paper 32, 4. The Parties represent that, pursuant to the settlement agreements, they have agreed to terminate not only this proceeding but also the underlying district court litigations between them (*Bad Boy, Inc. v. Intimidator, Inc. and RF Products, Inc.*, Case No. 1:17-cv-00070 (E.D. Ark.), and *Bad Boy, Inc. v. Intimidator, Inc. and RF Products, Inc.*, Case No. 1:19-cv-17 (E.D. Ark.)). *Id.* The Parties confirm “the litigation between [them] . . . involving the ’386 patent has been settled and a judgment dismissing the litigation has been entered by the District Court.” *Id.* at 6.

Based on the facts of this proceeding, and in view of the Parties’ Joint Motion to Terminate, we are persuaded that it is appropriate to terminate this proceeding with respect to both Petitioner and Patent Owner without rendering any further decisions. *See* 37 C.F.R. §§ 42.5(a), 42.72. Therefore, the Joint Motion to Terminate and the Joint Motion to treat the settlement agreements as business confidential information are *granted*.

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

Accordingly, it is

ORDERED that the Joint Motion (Paper 32) to Terminate IPR2018-

IPR2018-01632
Patent 9,730,386 B1

01632 is *granted*;

FURTHER ORDERED that the Joint Motion (Paper 32) to treat the settlement agreements (Ex. 2014) as business confidential information is *granted*; and

FURTHER ORDERED that IPR2018-01632 is *terminated* with respect to both Petitioner and Patent Owner pursuant to 35 U.S.C. § 317(a) and 37 C.F.R. § 42.72.

IPR2018-01632
Patent 9,730,386 B1

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