

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BAYER CROPSCIENCE LP,
Petitioner,

v.

EXOSECT LIMITED,
Patent Owner.

Case No. PGR2017-00018
Patent No. 9,380,739 B2

**JOINT MOTION TO TERMINATE PROCEEDING
PURSUANT TO 35 U.S.C. § 327 AND 37 C.F.R. §42.74**

Mail Stop "PATENT BOARD"
Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Pursuant to 35 U.S.C. § 327 and 37 C.F.R. § 42.74, Bayer CropScience LP (“Petitioner”) and Exosect, Ltd. (“Patent Owner”) jointly move to terminate this post grant review of U.S. Patent No. 9,380,739 (“the proceeding”). The Board authorized the parties to file this motion by email on January 11, 2018.

Petitioner filed its petition for post grant review of the ‘739 Patent on April 2, 2017 (Paper 2). There are no other petitioners in the proceeding. At the time of the Petition’s filing, there was a co-pending lawsuit in Canada with respect to the corresponding Canadian patent.

The parties have agreed to a confidential settlement of their dispute. A Settlement Agreement, in accordance with 35 U.S.C. § 327(b) and 37 C.F.R. § 42.74(b), is being submitted concurrently herewith as Exhibit 1095. There are no collateral agreements, oral or written, made between the parties to this Settlement Agreement, in connection with, or in contemplation of, the termination of the proceeding.

With respect to the co-pending Canadian lawsuit, the parties are concurrently filing necessary papers to discontinue that action. There are currently no other lawsuits or proceedings involving the ‘739 Patent.

Submitted concurrently herewith is a joint request by Petitioner and Patent Owner that the Settlement Agreement be treated as business confidential information and be kept separate from the file of the involved patent, pursuant to 35 U.S.C. § 327(b) and 37 C.F.R. § 42.74(c).

Under 35 U.S.C. § 327(a), a post-grant 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.” Under 37 C.F.R. § 42.74, “[t]he parties may agree to settle any issue in a proceeding ...,” and under 37 C.F.R. § 42.72, “[t]he Board may terminate a trial without rendering a final written decision, where appropriate”

As the Board has not issued a final written decision and has not decided the ultimate merits of the proceeding, and as the parties are jointly requesting termination of the same, termination is proper in this case.

For the foregoing reasons, the parties jointly and respectfully request that the proceeding be terminated.

Dated: January 15, 2018

By: /Susan E. Shaw McBee/
Reg. No. 39,294
MCBEE MOORE WOODWARD &
VANIK IP, LLC
Counsel for Petitioner

By: /Deborah Sterling/
Reg. No. 62,732
STERNE KESSLER GOLDSTEIN & FOX
PLLC
Counsel for Patent Owner