

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ORACLE CORPORATION, NETAPP INC., and
HUAWEI TECHNOLOGIES CO., LTD.,
Petitioners,

v.

CROSSROADS SYSTEMS, INC.,
Patent Owner.

Case IPR2014-01207 (Patent 7,051,147 B2)
Case IPR2014-01209 (Patent 7,051,147 B2)¹

Before NEIL T. POWELL, KRISTINA M. KALAN, J. JOHN LEE, and
KEVIN W. CHERRY, *Administrative Patent Judges*.

CHERRY, *Administrative Patent Judge*.

ORDER

Granting Joint Motion to Terminate as to Petitioner Huawei
37 C.F.R. § 42.74

¹ The Board is entering this Order in each proceeding. The parties are not authorized to use a caption identifying multiple proceedings.

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On September 22, 2015, Petitioner Huawei Technologies Co. Ltd. (“Huawei”) and Patent Owner filed joint motions to terminate the above-captioned proceedings as to only Huawei. IPR2014-01207, Paper 56; IPR2014-01209, Paper 55. Huawei and Patent Owner filed a copy of their written settlement agreement covering, *inter alia*, Patent 7,051,147 B2, which is the patent involved in these *inter partes* reviews (Ex. 1235). Huawei and Patent Owner also filed joint motions to seal and requested to have their settlement agreement treated as confidential business information under 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c).² IPR2014-01207, Paper 57; IPR2014-01209, Paper 56. We authorized the filing of these papers.

Huawei and Patent Owner represent that the settlement agreement filed as Exhibit 1235 is a true and complete copy of their settlement agreement, and is the only settlement agreement between the parties. IPR2014-01207, Paper 56, 2; IPR2014-01209, Paper 55, 2. Huawei and Patent Owner further indicate that they have settled all of their disputes involving the aforementioned patents. IPR2014-01207, Paper 56, 1; IPR2014-01209, Paper 55, 1. In particular, they have agreed to settle and dismiss with prejudice the related district court case concerning these patents. IPR2014-01207, Paper 56, 1–2; IPR2014-01209, Paper 55, 1–2; Ex. 1235. More importantly, the termination of the *inter partes* reviews at issue, with respect to only Huawei, will not result in the termination of any of the reviews, as

² Although styled as a “Joint Motion to Seal Under 37 C.F.R. §§ 42.14 and 42.54,” the motion to terminate refers to this as a request under 37 C.F.R. § 42.74(c). *See* IPR2014-01207, Paper 56, 2; IPR2014-01209, Paper 55, 2. Because settlement agreements are addressed specifically under 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c), we apply these provisions here. Particularly, given the reference in the motion to terminate, we will interpret the “Joint Motion to Seal” as a request under 37 C.F.R. § 42.74(c).

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additional Petitioners remain. IPR2014-01207, Paper 56, 1–2; IPR2014-01209, Paper 55, 1–2.

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.” Here, although the instant *inter partes* reviews have been instituted, we have not entered a final written decision in any of the proceedings. Generally, the Board expects that a proceeding will terminate as to the parties upon settlement. *See, e.g.*, Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012). Upon review of the procedural posture of these proceedings and the facts before us, we are persuaded that good cause exists to terminate Huawei.

Both parties request that the Settlement Agreement be kept separate and treated as business confidential information under 37 C.F.R. § 42.74(b). IPR2014-01207, Paper 56, 2; IPR2014-01209, Paper 55, 2. The Joint Motion to Seal was filed along with the settlement agreement. IPR2014-01207, Paper 57; IPR2014-01209, Paper 56. Accordingly and in view of our interpretation of the Joint Motion to Seal as a request under 37 C.F.R. § 42.74(c), the Joint Motion to Seal is granted. Pursuant to 37 C.F.R. § 42.74(c), the Settlement Agreement “shall only be available: (1) [t]o a Government agency on written request to the Board; or (2) [t]o any other person upon written request to the Board to make the settlement agreement available, along with the fee specified in [37 C.F.R. §42.15(d)] and on a showing of good cause.”

In consideration of the foregoing, it is hereby:

ORDERED that the Joint Motions to Terminate, with respect to Huawei, filed in each of these proceedings, are *granted*;

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FURTHER ORDERED that these reviews are terminated with respect to Huawei only; but these reviews continue to proceed with Patent Owner and the remaining Petitioners—namely Oracle Corporation and Netapp, Inc.;

FURTHER ORDERED that the Joint Motions to Seal filed by Huawei and Patent Owner that request that the Written Settlement Agreement be treated as business confidential information kept separate from the patent file, and made available only to Federal Government agencies on written request, or to any person on a showing of good cause, pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c), are *granted*; and

FURTHER ORDERED that any subsequent papers filed in these *inter partes* reviews should not include Huawei in the caption.

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