

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

APPLE INC. AND TWITTER, INC.
Petitioner

v.

SUMMIT 6, LLC
Patent Owner

Case IPR2015-00687
Patent 7,765,482

**JOINT MOTION TO TERMINATE
PURSUANT TO 35 U.S.C. § 317**

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Patent Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1450
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INTRODUCTION

On May 19, 2015, one party of petitioner, Twitter, and patent owner Summit 6 entered into a settlement agreement. Separately, on May 26, 2015, the other party of petitioner, Apple, and patent owner Summit 6 entered into a settlement agreement. Pursuant to the agreements, Summit 6 agreed to dismiss with prejudice all of its pending patent infringement claims against both Twitter and Apple, which it has since done. In return, each of Twitter and Apple agreed to move to dismiss all pending *inter partes* review proceedings (IPRs) filed by Apple/Twitter against Summit 6's patents, including this one.

The Board sent an e-mail on June 8, 2015, authorizing the parties to file a joint motion to terminate the above-captioned *inter partes* review, Case No. IPR2015-00687 (the "Review"). The parties therefore jointly move to terminate the Review.

As part of the motion, the Board asked the parties to briefly explain why termination is appropriate, and to provide the Board with a status update of any related district court litigations involving the '482 patent, including the status of each of the defendants. Those sections follow below. The Board also required submission of a true copy of the Twitter/Summit 6 settlement agreement and the Apple/Summit 6 settlement agreement. The Twitter/Summit 6 settlement agreement is filed separately and concurrently with this motion, as Exhibit 1030,

along with a request to treat the settlement agreement as business confidential information under 37 C.F.R. § 42.74(c). Similarly, the Apple/Summit 6 settlement agreement is also filed separately and concurrently with this motion, as Exhibit 1031, along with a request to treat the settlement agreement as business confidential information under 37 C.F.R. § 42.74(c).

WHY TERMINATION IS APPROPRIATE

This proceeding is still in its infancy with Patent Owner having only recently filed its preliminary patent owner response pursuant to 37 C.F.R. § 42.107. Termination of this proceeding is proper under 35 U.S.C. § 317(a) because the parties are jointly requesting termination and the Office has not yet “decided the merits of the proceeding before the request for termination is filed.” The parties settled their dispute, effective on or about May 19 and 26, 2015, by entering into a settlement agreement resolving all issues and agreeing to terminate this proceeding and the related petitions for *inter partes* review. Based on this agreement, each of Apple and Twitter withdraw from, and will not participate further in, this proceeding. Accordingly, Apple/Twitter and Summit 6 jointly request that the Board terminate this proceeding in its entirety.

Concluding this proceeding at this juncture promotes the Congressional goal of establishing a more efficient and streamlined patent system that, *inter alia*, limits unnecessary and counterproductive litigation costs. *See Changes to*

Implement Inter Partes Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents, 77 Fed. Reg. 157, p. 48680 (Aug. 14, 2012). By terminating IPR proceedings based upon the parties' settlement of their disputes, the Board provides litigants a measure of certainty that promotes settlements and creates a timely and cost-effective alternative to district court litigation. *See also Office Patent Trial Practice Guide*, 77 Fed. Reg. 157, p. 48768 (Aug. 14, 2012) ("There are strong public policy reasons to favor settlement between the parties to a proceeding.").

Both Congress and federal courts have also expressed a strong interest in encouraging settlement in litigation. *See, e.g., Delta Air Lines, Inc. v. August*, 450 U.S. 346, 352 (1981) ("The purpose of [Fed. R. Civ. P.] 68 is to encourage the settlement of litigation."); *Bergh v. Dept. of Transp.*, 794 F.2d 1575, 1577 (Fed. Cir. 1986) ("The law favors settlement of cases."), *cert. denied*, 479 U.S. 950 (1986). The Federal Circuit places a particularly strong emphasis on settlement. For example, it endorses the ability of parties to agree to never challenge validity as part of a settlement. *See Flex-Foot, Inc. v. CRP, Inc.*, 238 F.3d 1362, 1370 (Fed. Cir. 2001); *see also Cheyenne River Sioux Tribe v. U.S.*, 806 F.2d 1046, 1050 (Fed. Cir. 1986) (noting that the law favors settlement to reduce antagonism and hostility between parties).

Maintaining this Review after Apple and Twitter's separate settlements with Summit 6 would discourage future settlements by removing a primary motivation for settlement: eliminating litigation risk by resolving the parties' disputes and ending the pending proceedings between them. For patent owners, litigation risks include the potential for their patents to be invalidated. If a patent owner knows that an *inter partes* review is likely to continue regardless of settlement, it can create a strong disincentive for the patent owner to settle.

Additionally, it would not be appropriate for the Board to proceed to a final written decision under section 318(a) in this case. This proceeding is in its infancy. No trial has yet been initiated. Continuing this proceeding any further will force the parties to expend unnecessary and counterproductive litigation resources. Accordingly, petitioner Apple/Twitter and patent owner Summit 6 jointly request termination of this Review.

STATUS OF RELATED LITIGATION

There are four related district court litigations involving the '482 patent and related U.S. Pat. Nos. 6,895,557 and 8,612,515. They are listed below, along with a complete list of parties and the status of each:

- *Summit 6 LLC v. Twitter, Inc.*, No. TXND-7-2015-cv-00062 (February 18, 2014). The defendant is:

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