

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ASML NETHERLANDS B.V., EXCELITAS TECHNOLOGIES CORP.,
AND QIOPTIQ PHOTONICS GMBH & CO., KG.,
Petitioner,

v.

ENERGETIQ TECHNOLOGY, INC.,
Patent Owner.

Case IPR2015-01277 (Patent 8,309,943)
Case IPR2015-01279 (Patent 7,786,455)
Cases IPR2015-01300, -01303, -01377 (Patent 7,435,982)
Cases IPR2015-01362, IPR2016-00127 (Patent 8,969,841)
Case IPR2015-01368 (Patent 8,525,138)
Cases IPR2015-01375, IPR2016-00126 (Patent 9,048,000)¹

Before SALLY C. MEDLEY, JONI Y. CHANG, and BARBARA A.
PARVIS, Administrative Patent Judges.

PARVIS, *Administrative Patent Judge.*

JUDGMENT
Termination of Proceedings after Institution
37 C.F.R. § 42.73

¹ This Decision addresses the same issue in the above-identified *inter partes* reviews. We exercise our discretion to issue one Order to be docketed in each case. The parties, however, are not authorized to use this style of filing in subsequent papers, without prior authorization.

IPR2015-01277, IPR2015-01279, IPR2015-01300, IPR2015-01303, IPR2015-01362, IPR2015-01368, IPR2015-01375, IPR2015-01377, IPR2016-00126, and IPR2016-00127

Joint Motion to Terminate and Joint Request to Treat Written Settlement Agreement as Business Confidential Information

On June 6, 2016, Petitioner, ASML Netherlands B.V., Excelitas Technologies Corp., and Qioptiq Photonics GmbH & Co. KG, and Patent Owner, Energetiq Technology, Inc. filed a Joint Motion to Terminate in each of the above-identified proceedings. Paper 31.² The parties also filed a true copy of their Written Settlement Agreement, made in connection with the termination of the proceedings, in accordance with 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(b). Ex. 1021.³ Additionally, the parties jointly requested that their Written Settlement Agreement, including written attachments, filed as Exhibit 1021, be treated as business confidential information. Paper 31, 6. For the reasons set forth below, the Joint Motions to Terminate and the Joint Request are granted.

In their Joint Motions to Terminate, the parties indicate that they have settled all of their disputes involving the following patents: U.S. Patent Nos. 7,435,982; 7,786,455; 8,309,943; 8,525,138; 8,969,841; 9,048,000; and 9,185,786. Paper 31, 5. In particular, the parties have agreed to settle and dismiss their related district court case (*Energetiq Tech., Inc. v. ASML Netherlands B.V.*, No. 1:15-cv-10240-LTS (D. Mass.)) and terminate the

² For the purpose of clarity and expediency, we treat IPR2015-01277 as representative, and all citations are to IPR2015-01277 unless otherwise noted.

³ In the Institution Decision, we consolidated the IPR2015-01300 and IPR2015-01303 *inter partes* reviews and determined that all further filings in the consolidated proceedings shall be made in only Case IPR2015-01300. IPR2015-01300, Paper 13. Accordingly, the parties submitted the Joint Motion to Terminate and Settlement Agreement in only IPR2015-01300 (Paper 31; Ex. 1119), but not in IPR2015-01303.

IPR2015-01277, IPR2015-01279, IPR2015-01300, IPR2015-01303, IPR2015-01362, IPR2015-01368, IPR2015-01375, IPR2015-01377, IPR2016-00126, and IPR2016-00127

International Trade Commission investigation (*In the Matter of Certain Laser-Driven Light Sources, Subsystems Containing Laser-Driven Light Sources, and Products Containing Same*, Inv. 337-TA-983 (U.S.

International Trade Commission)). *Id.* at 1. Furthermore, the parties also have submitted Motions to Terminate all other *inter partes* reviews requested by Petitioner for the aforementioned patents. *Id.*

The Board instituted *inter partes* reviews in each of IPR2015-01277, IPR2015-01279, IPR2015-01300, IPR2015-01303, IPR2015-01362, IPR2015-01368, IPR2015-01375, IPR2015-01377, IPR2016-00126, and IPR2016-00127. Petitioner has not filed a Reply in any of these cases and no Final Hearing has been held.

Generally, 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). Upon consideration of the facts before us, we determine that it is appropriate to terminate the above-identified proceedings as to both parties, and enter judgment.

Motion to Seal Patent Owner Response and Related Exhibits

We further note that Patent Owner filed Motions to Seal (Paper 23 in IPR2015-01362 and Paper 24 in IPR2015-01375) Patent Owner Responses (Paper 22 in IPR2015-01362 and Paper 23 in IPR2015-01375) and certain documents filed as Exhibits 2008, 2010, 2016, 2027, 2028, 2030, 2036, 2037, 2040, 2041, 2042, 2043, and 2065 in each of IPR2015-01362 and IPR2015-01375.

There is a strong public policy in favor of making information filed in *inter partes* review proceedings open to the public. *See Garmin Int'l v.*

IPR2015-01277, IPR2015-01279, IPR2015-01300, IPR2015-01303, IPR2015-01362, IPR2015-01368, IPR2015-01375, IPR2015-01377, IPR2016-00126, and IPR2016-00127

Cuozzo Speed Techs., Case IPR2012-00001 (PTAB March 14, 2013) (Paper 34). Under 35 U.S.C. § 316(a)(1), the default rule is that all papers filed in an *inter partes* review are open and available for access by the public. The standard for granting a motion to seal is “good cause.” 37 C.F.R. § 42.54. A moving party bears the burden of showing that the relief requested should be granted. 37 C.F.R. § 42.20(c).

Regarding Patent Owner’s Motions to Seal, Patent Owner, as the moving party, has failed to carry its burden. For example, Patent Owner requests that we seal Exhibit 2008 because the document purportedly “contains confidential information in the form of Energetiq proprietary design information and third party business strategy information.” Paper 23, 4. Exhibit 2008 is dated January 4, 2006, more than ten years ago, includes extensive redactions, and the remaining material does not appear to be confidential, without further explanation. As an additional example, Patent Owner requests that we seal Exhibits 2010 and 2016 because these documents purportedly contain “confidential information in the form of multiple references to documents having proprietary design information and business strategy information.” *Id.* Exhibit 2010 is approximately 120 pages and Exhibit 2016 is approximately 45 pages. Both Exhibits 2010 and 2016 include much material that does not appear to be confidential, without further explanation. Additionally, Patent Owner’s motion to seal requests that these entire documents be sealed without providing proof in the record that all of the information in these documents is confidential. Other of the Exhibits submitted by Patent Owner as confidential have similar issues.

IPR2015-01277, IPR2015-01279, IPR2015-01300, IPR2015-01303, IPR2015-01362, IPR2015-01368, IPR2015-01375, IPR2015-01377, IPR2016-00126, and IPR2016-00127

We recognize a denial of the motions to seal would immediately unseal the material that Patent Owner desires to remain confidential and the effect would be irreversible. Therefore, rather than denying the motions at this time, we will provide Patent Owner five business days (1) to refile its motion to seal with further argument and evidence, along with public versions of the Exhibits that include redactions of only confidential material, or (2) to withdraw the motions to seal and request that we expunge the confidential versions of the Patent Owner Responses (Paper 22 in IPR2015-01362 and Paper 23 in IPR2015-01375), as well as Exhibits 2008, 2010, 2016, 2027, 2028, 2030, 2036, 2037, 2040, 2041, 2042, 2043, and 2065 filed in each of IPR2015-01362 and IPR2015-01375.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.