

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ENDOLOGIX, INC.,
Petitioner,

v.

LIFEPOR SCIENCES LLC,
Patent Owner.

Case IPR2015-01722
Patent 8,192,482 B2

Before JOSIAH C. COCKS, JAMES B. ARPIN, and
MICHAEL L. WOODS, *Administrative Patent Judges*.

COCKS, *Administrative Patent Judge*.

ORDER

Joint Motion to Terminate the *Inter Partes* Review
35 U.S.C. § 317 and 37 C.F.R. § 42.72

I. Introduction

On April 4, 2016, Petitioner, Endologix, Inc. (“Endologix”) and Patent Owner, Lifeport Sciences LLC (“Lifeport Sciences”) (collectively referred to as “the parties”), filed a “Joint Motion to Terminate” this *inter partes* review proceeding. Paper 12 (“Joint Motion to Terminate”).¹ Along with the Joint Motion to Terminate, the parties filed true copies of two written settlement agreements (Exs. 1023 and 1024), as well as a joint request to have their settlement agreements treated as business confidential information under 35 U.S.C. § 317 and 37 C.F.R. § 42.74(c) (Paper 13).

II. Discussion

The parties are reminded that the Board is not a party to the settlement, and may identify independently any question of patentability. 37 C.F.R. § 42.74(a). Generally, however, 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).

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.” The requirement for terminating review with respect to Endologix is met.

Furthermore, under 35 U.S.C. § 317(a), “[i]f no petitioner remains in the *inter partes* review, the Office may terminate the review or proceed to a

¹ Filing of the Motion to Terminate was authorized in e-mail correspondence from Board personnel on March 31, 2016. Paper 12, 1.

final written decision under section 318(a).” Endologix is the sole petitioner in this *inter partes* review, such that termination with respect to Endologix means that no petitioner remains in the proceeding. We, thus, have discretion to terminate this review with respect to Lifeport Sciences. We entered a Decision to institute trial on February 18, 2016 (Paper 9). Lifeport Sciences has filed no Patent Owner Response. In the Joint Motion to Terminate, the parties represent the following:

The Board should terminate IPR2015-01722 because the review is still in its early stages, because the Board has not yet finally decided any of the merits, because no motions are outstanding, because the Petitioner and Patent Owner have ended the related district court litigation, because termination of the present *inter partes* review would resolve all presently pending disputes between the parties pertaining to the '482 Patent, because no litigation or other proceedings involving the '482 Patent are contemplated by either party, and because both Petitioner and Patent Owner agree that this *inter partes* review should be terminated.

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Upon consideration of the circumstances of this case, we have determined to terminate this *inter partes* review as to both Endologix and Lifeport Sciences without rendering a final written decision.

III. Orders

It is

ORDERED that the Joint Motion to Terminate IPR2015-01722 (Paper 12) is *granted*, and this proceeding is hereby *terminated*; and

FURTHER ORDERED that, as was requested timely by the parties (Paper 13), the settlement agreements (Exs. 1023 and 1024) will be treated

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as business confidential information under 35 U.S.C. § 317(b) and 37 C.F.R.
§ 42.74(c).

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