

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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HARVEST TRADING GROUP, INC.,  
Petitioner,

v.

VIREO SYSTEMS, INC.,  
Patent Owner.

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Case IPR2016-00947  
Patent 8,962,685 B2

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Before JACQUELINE WRIGHT BONILLA, MICHAEL J. FITZPATRICK,  
and ZHENYU YANG, *Administrative Patent Judges*.

FITZPATRICK, *Administrative Patent Judge*.

DECISION  
Dismissing Petition Pursuant to Settlement  
*37 C.F.R. § 42.71(a)*

Petitioner, Harvest Trading Group, Inc., Inc., filed a Petition to institute an *inter partes* review of claims 1–20 of U.S. Patent 8,962,685 B2 pursuant to 35 U.S.C. § 311(a). Paper 1. Vireo Systems, Inc. (“Vireo”), the only party who has appeared as an owner of the subject patent (see Paper 11), did not file a Preliminary Response pursuant to 35 U.S.C. § 313.

On September 7, 2016, the parties contacted Board staff by email, stating that they had settled the dispute set forth in the Petition. The parties requested a conference call “to seek authorization to file a Joint Motion to Terminate Proceedings under 35 U.S.C. § 317(a).” Section 317(a) of Title 35 governs settlement of instituted *inter partes* reviews. 35 U.S.C. § 317(a) (“An inter partes review instituted under this chapter . . .”). It does not govern settlement prior to institution. Accordingly, at our direction on September 8, 2016, Board staff sent an email to the parties, informing them that they were authorized to file “a joint motion to dismiss the Petition pursuant to 37 CFR 42.71(a).”

The parties nonetheless filed a Joint Motion To Terminate Proceeding Under 35 U.S.C. § 317(a). Paper 12. That Motion is denied, but we grant relief the parties’ seek, i.e., dismissal of the Petition, pursuant to the Rule we had directed the parties to file their motion under, i.e., 37 C.F.R. § 42.71(a).

The parties also filed a copy of the settlement agreement (Ex. 2023) and, as part of their Motion, they requested that it be treated as business confidential information and be kept separate from “the files of the IPR and the involved patent.” Paper 12, 2 (citing 35 U.S.C. § 317(b) and 37 C.F.R.

§ 42.74(c)). Neither 35 U.S.C. § 317(b) nor 37 C.F.R. § 42.74(c) provides for keeping a settlement agreement separate from the files “of the IPR,” or here, the files of the dismissed Petition. We grant the relief that is authorized under 37 C.F.R. § 42.74(c),<sup>1</sup> as set forth below.

Accordingly, it is:

ORDERED that the Motion is denied;

FURTHER ORDERED that Petition is dismissed; and

FURTHER ORDERED that the settlement agreement (Ex. 2023) be treated as business confidential information and be kept separate from the files of U.S. Patent No. 8,962,685 B2.

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<sup>1</sup> Section 317(b) of Title 35 does not govern here for the same reason that § 317(a) does not.

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