

Patent No. 8,075,338
IPR2016-01573

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CORNING OPTICAL COMMUNICATIONS RF LLC, CORNING
INCORPORATED, AND CORNING OPTICAL COMMUNICATIONS LLC,
Petitioners,

v.

PPC BROADBAND, INC.,
Patent Owner.

Case IPR2016-01573
Patent 8,075,338

**JOINT MOTION TO TERMINATE PROCEEDING
PURSUANT TO 35 U.S.C. § 317(a)**

Pursuant to 35 U.S.C. § 317(a), Patent Owner, PPC Broadband, Inc. (“PPC”), and Petitioners, Corning Optical Communications RF LLC, Corning Incorporated, and Corning Optical Communications LLC, jointly move to terminate this *inter partes* review (“IPR”) of U.S. Patent No. 8,075,338 (“’338 Patent”) due to settlement. Authorization for this motion was granted by the Board in an email dated January 5, 2017.

I. BRIEF STATEMENT OF WHY TERMINATION IS APPROPRIATE

Termination of this IPR is appropriate because the parties have settled their dispute concerning the ‘338 Patent (and other patents) in a confidential Settlement Agreement. (Exhibit 2031.)¹ The Settlement Agreement is executed by Patent Owner and Petitioner Corning Optical Communications RF LLC, and requires that the parties jointly request termination of this IPR. (Exhibit 2031 ¶ 2.3.2.) Petitioners Corning Incorporated and Corning Optical Communications LLC agree to the termination of this IPR pursuant to the Settlement Agreement.

¹ As authorized by the Board in its January 5, 2017 email, the parties have concurrently filed a Joint Request to Treat Settlement Agreement as Business Confidential Information Pursuant to 35 U.S.C. § 317(b) and 37 C.F.R § 42.74(c). The Settlement Agreement has been filed with the Board using the Patent Trial and Appeal Board’s End to End (E2E) System with access provided to the “Parties and Board only.”

Termination of this IPR is also appropriate since the proceeding is at an early stage and has not been instituted. Petitioners filed their petition for IPR on August 9, 2016. Patent Owner timely filed its Preliminary Patent Owner Response on November 17, 2016. The Board has yet to issue its decision on whether to institute the proceeding, which would be due on February 17, 2017.

II. STATUS OF LITIGATION PROCEEDING(S) INVOLVING THE ‘338 PATENT

The ‘338 Patent was involved in the following pending litigation between the parties: *PPC Broadband, Inc. v. Corning Optical Communications RF, LLC*, Case No. 5:16-00162 (N.D.N.Y.). Pursuant to the Settlement Agreement (Exhibit 2031 ¶¶ 1.5, 2.3.1), all claims in this litigation involving the ‘338 Patent have been dismissed with prejudice as ordered by the Court on January 3, 2017. (Exhibit 2032.)

The ‘338 Patent is not involved in any other litigation. As requested by the Board, the parties also confirm that no other litigation involving the ‘338 Patent is contemplated in the foreseeable future.

III. STATUS OF U.S. PATENT AND TRADEMARK OFFICE PROCEEDINGS INVOLVING THE ‘338 PATENT

The ‘338 Patent is also being challenged by Petitioners in *Inter Partes* Review Case IPR2016-01569. The parties are concurrently filing a joint motion to terminate this related proceeding.

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The '338 Patent is not involved in any other U.S. Patent and Trademark Office proceeding. As requested by the Board, the parties also confirm that no other U.S. Patent and Trademark Office proceeding involving the '338 Patent is contemplated in the foreseeable future.

IV. THE SETTLEMENT AGREEMENT

Pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(b), the Settlement Agreement (Exhibit 2031) is in writing and a true copy has been filed with the Board using the Patent Trial and Appeal Board's End to End (E2E) System. The parties certify that there are no other collateral agreements referred to in the Settlement Agreement or understandings made in connection with, or in contemplation of, the termination of this IPR.

Date: January 12, 2017

Respectfully submitted,

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