

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

ACTAVIS LLC,
Petitioner,

v.

ABRAXIS BIOSCIENCE LLC,
Patent Owner.

Case IPR2017-01101 (Patent 7,820,788 B2)
Case IPR2017-01103 (Patent 7,923,536 B2)
Case IPR2017-01104 (Patent 8,138,229 B2)

Before JEFFREY N. FREDMAN, RAMA G. ELLURU, and SUSAN L. C. MITCHELL, *Administrative Patent Judges*.

FREDMAN, *Administrative Patent Judge*.

JUDGMENT

Termination of the Proceeding
35 U.S.C. § 317(a); 37 C.F.R. § 42.72

On January 29, 2018, pursuant to 35 U.S.C. § 317(a), the parties filed a Joint Motion to terminate each of the above-referenced proceedings. IPR2017-01101, Paper 21; IPR2017-01103, Paper 21; IPR2017-01104, Paper 21. Accompanying the Motion, the parties filed a true copy of a settlement agreement along with a Joint Request to treat the settlement agreement as business confidential, to be kept separate from the patent file under 35 U.S.C. § 317(b) and

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IPR2017-01104 (Patent 8,138,229 B2)
37 C.F.R. § 42.74(c). IPR2017-01101, Paper 22; IPR2017-01103, Paper 22;
IPR2017-01104, Paper 22. We authorized the filing of these papers in a Board
email dated January 26, 2018.

We entered a Decision to Institute an *inter partes* review in each case on
October 10, 2017, and conducted an initial conference call on November 15,
2017. See IPR 2017-01101, Papers 7, 8; IPR2017-01103, Papers 7, 8; IPR2017-
01104, Papers 7, 8. Beyond the filing by Petitioner and Patent Owner of
Objections to Evidence and Pro Hac Vice motions, little additional significant
briefing activity has occurred in this proceeding. Papers 9–11, 13, 15. The parties
explain that (i) the briefing and discovery process has not yet been completed,
(ii) Patent Owner has not filed its Response and Petitioner has not filed a Reply,
and (iii) there are no motions pending. See Paper 21 (all proceedings). At this
juncture of the proceeding, the Board does not have before it full briefing on the
trial issues and the Board has not entered a final decision.

The Joint Motions to terminate these proceedings indicates that on January
26, 2018, the parties filed a Consent Judgment in the pending litigation
involving the challenged patents, U.S. Patent No. 7,820,788, 7,923,536, and
8,138,229 requesting the claims and counterclaims be dismissed with prejudice.
Paper 21. The Board generally expects that a case “will terminate after the filing
of a settlement agreement, unless the Board has already decided the merits.”
Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,768 (Aug. 14, 2012);
see 37 C.F.R. § 42.72. Based on the facts of the case, it is appropriate to enter

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judgment¹ and terminate the proceedings without rendering a final written decision. *See* 35 U.S.C. § 317(a); 37 C.F.R. § 42.72. We also determine that the parties have complied with the requirements of 37 C.F.R. § 42.74(c) to have the Settlement Agreement treated as business confidential information and kept separate from the files of the patents at issue in these proceedings. Thus, the joint motions to terminate the proceeding and joint requests that the settlement agreement be treated as business confidential information are granted.

Accordingly, it is

ORDERED that the parties' joint requests in IPR2017-01101, IPR2017-01103, and IPR2017-01104 that the settlement agreement be treated as business confidential information, to be kept separate from the patent file, and made available only to Federal Government agencies on written request, or to any person on a showing of good cause, pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c) are *granted*;

FURTHER ORDERED that the joint motions in IPR2017-01101, IPR2017-01103, and IPR2017-01104 to terminate these proceedings are *granted*; and

FURTHER ORDERED that the proceedings in IPR2017-01101, IPR2017-01103, and IPR2017-01104 are *terminated*.

¹ A judgment means a final written decision by the Board, or a termination of a proceeding. 37 C.F.R. § 42.2.

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