

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GOOGLE LLC,
Petitioner,

v.

RFCYBER CORP.,
Patent Owner.

PGR2021-00028
Patent 10,600,046 B2

Before PATRICK R. SCANLON, KEVIN W. CHERRY, and
JAMES A. WORTH, *Administrative Patent Judges*.

SCANLON, *Administrative Patent Judge*.

TERMINATION
Due to Settlement After Institution of Trial
35 U.S.C. § 327; 37 C.F.R. § 42.74

On October 19, 2021, Google LLC (“Petitioner”) and RFCyber Corp. (“Patent Owner”) filed a joint motion to terminate this proceeding pursuant to 35 U.S.C. § 327 and 37 C.F.R. § 42.74. Paper 14. The motion was accompanied by a true, unredacted copy of a settlement and license agreement (Ex. 1051; “the Settlement Agreement”), and a joint request to treat the Settlement Agreement as business confidential information, to be kept separate from the patent file, pursuant to 35 U.S.C. § 327(b) and 37 C.F.R. § 42.74(c) (Paper 15).

Under 35 U.S.C. § 327(a), “[a] post grant 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 statute also provides that if no petitioner remains in the post grant review, the Office may terminate the review. 35 U.S.C. § 327(a).

Petitioner filed its petition in this proceeding in December 2020, and we issued a decision granting institution on July 23, 2021. We have not conducted a hearing in this proceeding, and we have not decided the merits. Under these circumstances, we determine that termination of the proceeding is appropriate. *See Consolidated Trial Practice Guide*, at 86 (Nov. 2019) (“The Board expects that a proceeding will terminate after the filing of a settlement agreement, unless the Board has already decided the merits of the proceeding).

We also determine that the parties have shown that the Settlement Agreement contains business confidential information, and that good cause exists to treat the Settlement Agreement as business confidential information under 37 C.F.R. § 42.74(c).

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This Order does not constitute a final written decision pursuant to 35 U.S.C. § 328(a).

Accordingly, it is

ORDERED that the joint motion to terminate is *granted*;

FURTHER ORDERED that the petition for post grant review in PGR2021-00028 is *dismissed*, and these proceedings are *terminated*;

FURTHER ORDERED that the joint request to treat the Settlement Agreement as business confidential information is *granted*, and the Settlement Agreement shall be kept separate from the file of U.S. Patent No. 10,600,046, and be made available only to Federal Government agencies on written request, or to any person on a showing of good cause, pursuant to 37 C.F.R. § 42.74(c).

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