

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

SMITH & NEPHEW, INC.
Petitioner

v.

BONUTTI SKELETAL INNOVATIONS
Patent Owner

Case IPR2013-00604
Patent 7,087,073 B2

Before WILLIAM V. SAINDON, MICHAEL R. ZECHER and
RICHARD E. RICE, *Administrative Patent Judges*.

ZECHER, *Administrative Patent Judge*.

JUDGMENT
Termination of the Proceeding
37 C.F.R. § 42.73

On January 9, 2014, the parties filed a joint motion (Paper 13) to terminate this proceeding. *See* 35 U.S.C. § 317(a); 37 C.F.R. § 42.72. The parties also filed a copy of their written settlement agreement (Exhibit 2001), as well as a request (Paper 14) to treat the settlement agreement as business confidential information under 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c).

This proceeding is still in the preliminary stages. Patent Owner has not yet filed its preliminary response and the Board has not instituted a trial. The parties further represent that the related litigation between the parties involving U.S. Patent No. 7,087,073 B2 (“the ’073 patent”) has been dismissed without prejudice. Paper 13 at 2-3. The parties identify four related matters, all of which involve independent claim 35 of the ’073 patent, the only claim challenged in this proceeding. *Id.* at 3-4. With respect to three of the related matters, the parties stipulate that it has been more than one year since Patent Owner served each defendant with a complaint alleging infringement of the ’073 patent. *Id.* With respect to the final related matter, the parties stipulate that the Plaintiff in that matter seeks declaratory judgment of invalidity of the ’073 patent. *Id.* at 4. Under the circumstances, the Board determines that it is appropriate to terminate this proceeding without rendering either a decision to institute or a final written decision. *See* 37 C.F.R. § 42.72.

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that the parties' joint request that the settlement agreement (Exhibit 2001) be treated as business confidential information under 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c) is GRANTED; and

FURTHER ORDERED that the joint motion to terminate the proceeding is GRANTED and this proceeding is hereby terminated.

Case IPR2013-00604

Patent 7,087,073 B2

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