

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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NUVASIVE, INC.,  
Petitioner,

v.

ACANTHA LLC,  
Patent Owner.

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IPR2020-00706  
Patent RE43,008 E

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Before TIMOTHY J. GOODSON, JAMES J. MAYBERRY, and  
TIMOTHY G. MAJORS, *Administrative Patent Judges*.

MAYBERRY, *Administrative Patent Judge*.

TERMINATION  
Due to Settlement After Institution of Trial  
*35 U.S.C. § 317; 37 C.F.R. § 42.74*

## I. INTRODUCTION

With the Board's authorization, Petitioner and Patent Owner (collectively referred to as "the Parties") filed a Joint Motion to Terminate the above-identified proceeding due to settlement. Paper 13 ("Joint Motion"). In support of the Joint Motion, the Parties filed a copy of a Settlement Agreement, License and Release (Ex. 2019 ("Settlement Agreement")), as well as a Joint Request to File Settlement Agreement as Business Confidential Information pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c) (Paper 14 ("Joint Request")).

## II. DISCUSSION

Under 35 U.S.C. § 317(a), "[a]n inter partes 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." Section 317(a) also provides that if no petitioner remains in the *inter partes* review, the Office may terminate the review.

In the Joint Motion, the Parties represent that they have reached an agreement that "resolves all underlying disputes between the Parties, including this proceeding." Joint Motion 1. The Parties further represent that the filed copy of the Settlement Agreement is a true copy, and "there are no collateral agreement or understandings made in connection with, or in contemplation of, the termination of this proceeding." *Id.*

We instituted a trial on the above-identified proceeding on August 25, 2020. Paper 11. We have not yet decided the merits of the proceeding, and a final written decision has not been entered. Notwithstanding that the

proceeding has moved beyond the preliminary stage, the Parties have adequately shown that termination of the proceeding is appropriate. Under these circumstances, we determine that good cause exists to terminate the proceeding with respect to the Parties.

In the Joint Request, the Parties request that the Settlement Agreement be treated as business confidential information, be kept separate from the file of the patent involved in this *inter partes* proceeding, and be made available only to Federal Government agencies on written request or to other persons on a showing of good cause. Joint Request, 1–2. After reviewing the Settlement Agreement between Petitioner and Patent Owner, we find that the Settlement Agreement contains confidential business information regarding the terms of settlement. We determine that good cause exists to treat the Settlement Agreement between Petitioner and Patent Owner as business confidential information pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c).

This Order does not constitute a final written decision pursuant to 35 U.S.C. § 318(a).

### III. ORDER

Accordingly, for the reasons discussed above, it is:

ORDERED that the Joint Motion to Terminate (Paper 13) is *granted*, and IPR2020-00706 is *terminated* with respect to Petitioner and Patent Owner pursuant to 35 U.S.C. § 317(a) and 37 C.F.R. § 42.72; and

FURTHER ORDERED that the Joint Request to File Settlement Agreement as Business Confidential Information (Paper 14) is *granted*, and the Settlement Agreement (Ex. 2019) shall be kept separate from the file of Patent RE43,008 E, and be made available only to Federal Government

IPR2020-00706  
Patent RE43,008 E

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).

IPR2020-00706  
Patent RE43,008 E

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