

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

CROWDSTRIKE, INC. and
AO KASPERSKY LAB,
Petitioner,

v.

OPEN TEXT INC.,
Patent Owner.

IPR2023-00289
Patent 8,418,250 B2

Before GREGG I ANDERSON, MICHELLE N. WORMMEESTER, and
AARON W. MOORE, *Administrative Patent Judges*.

WORMMEESTER, *Administrative Patent Judge*.

ORDER

Settlement as to CrowdStrike, Inc.
35 U.S.C. § 317; 37 C.F.R. § 42.74

I. INTRODUCTION

Petitioner CrowdStrike, Inc. (“CrowdStrike”) filed a Petition (Paper 1) requesting *inter partes* review. Thereafter, Petitioner AO Kaspersky Lab (“Kaspersky”) filed a motion to join IPR2023-01334 with this proceeding. *AO Kaspersky Lab v. Open Text Inc.*, IPR2023-01334, Paper 2 (PTAB Aug. 18, 2023). We granted the joinder motion and joined Kaspersky as a party to this proceeding. Paper 23 (Decision Granting Institution and Granting Motion for Joinder). Since the filing of CrowdStrike’s Petition, CrowdStrike and Patent Owner filed a joint motion to terminate this proceeding pursuant to a settlement agreement. Paper 21 (“Joint Motion to Terminate”). CrowdStrike and Patent Owner also filed a copy of their settlement agreement made in connection with the termination of the proceeding. Ex. 1023. In a concurrently filed paper, CrowdStrike and Patent Owner jointly request the settlement agreement to be treated as business confidential and to be kept separate from the file of the involved patent under 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c). Paper 22 (“Joint Request to Keep Confidential and Separate”). We authorized the filing of the jointly-filed papers in an e-mail dated November 13, 2023. Ex. 3001.

II. DISCUSSION

The Board has not decided the merits of this proceeding. CrowdStrike and Patent Owner represent that their settlement agreement “resolves all disputes between the Parties concerning the Challenged Patent,” and that Exhibit 1023 is a “true,” “correct,” and “complete” copy of their settlement agreement. Paper 21, 1, 4; Paper 22, 1. CrowdStrike and Patent Owner further represent that “[n]o other such agreements, written or oral, exist

between or among the Parties.” Paper 21, 2. In view of the foregoing, we determine that it is appropriate to terminate this proceeding with respect to CrowdStrike. *See* 35 U.S.C. § 317(a). Because Kaspersky remains a petitioner, we do not terminate this proceeding as to Kaspersky and Patent Owner. *See id.*

Further, after reviewing the settlement agreement between CrowdStrike 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 as business confidential information and to keep it separate from the file of the patent in the above-identified proceeding pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c). Additionally, because Kaspersky remains in this proceeding, and CrowdStrike and Patent Owner do not wish for Kaspersky to have access to the settlement agreement, the settlement agreement will remain categorized as “Board Only” in the Board’s P-TACTS system.

We note that CrowdStrike and Patent Owner also “request that the Board inform us if anyone seeks production of the Agreement and afford the parties an opportunity to address whether such request is supported by good cause.” Paper 22, 2. The statute, however, does not provide for any such notification or opportunity to respond. *See* 35 U.S.C. § 317(b). Nor does the regulation. *See* 37 C.F.R. § 42.74(c). Moreover, we see no persuasive reason or special circumstance here that would justify issuing an order that imposes these additional requirements. Thus, we deny that part of the joint request by CrowdStrike and Patent Owner.

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

III. ORDER

Accordingly, it is:

ORDERED that the Joint Motion to Terminate (Paper 21) is *granted*;

FURTHER ORDERED that this proceeding is terminated with respect to Petitioner CrowdStrike, Inc. only;

FURTHER ORDERED that this proceeding will continue between Petitioner AO Kaspersky Lab and Patent Owner;

FURTHER ORDERED that the Joint Request to Keep Confidential and Separate (Paper 22) is *granted-in-part*, and the settlement agreement (Exhibit 1023) shall be treated as business confidential information, kept separate from the file of the above-identified patent, 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); and

FURTHER ORDERED that the settlement agreement (Exhibit 1023) will remain available only to the Board in the P-TACTS system.

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