

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

EBAY, INC.,¹
Petitioner,

v.

LEXOS MEDIA IP, LLC,
Patent Owner.

IPR2023-01001
Patent 6,118,449

Before PHILLIP J. KAUFFMAN, JEFFREY S. SMITH, and
SHARON FENICK, *Administrative Patent Judges*.

FENICK, *Administrative Patent Judge*.

TERMINATION

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

¹ The Board joined eBay, Inc. as a party (Petitioner) to this proceeding in IPR2024-00337. Original Petitioner Amazon.com, Inc. has been terminated in this proceeding.

I. INTRODUCTION

With Board authorization, Petitioner eBay, Inc. (“Petitioner”) and Lexos Media IP, LLC. (“Patent Owner”) filed a Joint Motion to Terminate. Paper 23 (“Joint Motion”). Petitioner and Patent Owner also filed copies of the confidential settlement-related agreements (Exs. 2023, 2024 (“Settlement Agreements”)) and included in the Joint Motion a request to treat these documents as business confidential information and to keep them separate from the underlying patent file, as per 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c).

II. DISCUSSION

In the Joint Motion, Petitioner and Patent Owner jointly move the Board to terminate the IPR2023-01001 proceeding pursuant to a Release Agreement reached between Petitioner and Patent Owner settling the underlying patent litigation involving, *inter alia*, U.S. Patent No. 6,118,449, which is the subject of this proceeding. Joint Motion 1. They represent that “[o]n July 17, 2024, [Petitioner] and Patent Owner entered into the Release Agreement pursuant to which they agreed, among other things, to dismiss with prejudice the Lexos Litigation, including the allegations regarding the Patents, and to seek termination of the IPR Proceedings.” *Id.* at 3–4. They additionally certify that Exhibit 2023 is a copy of the confidential Release Agreement entered into between them and that “[t]here are no other agreements, oral or written, between Patent Owner and [Petitioner] made in connection with, or in contemplation of, the termination of the IPR Proceedings.” *Id.* at 1.

We instituted trial in this proceeding on December 12, 2023. Paper 9. The trial is still in an early stage. Petitioner and Patent Owner have shown adequately that termination of this proceeding is appropriate. Under these circumstances, we determine that good cause exists to terminate the proceeding with respect to Petitioner and Patent Owner.

In the Joint Motion, Petitioner and Patent Owner also include a request that the Release Agreement (Ex. 2023) be treated as business confidential information and be kept separate from the file of the patent involved in this proceeding. Joint Motion 1–2. As the filing party for confidential Exhibit 2024, Patent Owner represents that it is “a confidential collateral agreement (‘RPX Agreement’) in connection with, or in contemplation of, the requested termination which is not between [Petitioner] and the Patent Owner.” *Id.* at 2. Patent Owner “requests that the Board treat the attached RPX Agreement as business confidential information and that it be kept separate from the underlying patent file, as provided under 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c).” *Id.* According to the Joint Motion, “Petitioner takes no position as it relates to Patent Owner’s request relating to the RPX Agreement.” *Id.*

After reviewing each of the Settlement Agreements, we find that the Settlement Agreements contain confidential business information regarding the terms of settlement. We determine that good cause exists to treat the Settlement Agreements as business confidential information pursuant to 35 U.S.C. § 317(b) and 37 C.F.R. § 42.74(c) and keep them separate from the files of the challenged patent.

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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 is *granted*, and this proceeding 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 Exhibit 2023 and Exhibit 2024 shall be kept separate from the file of Patent 6,118,449, 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).

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