

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

COMMONWEALTH SCIENTIFIC AND INDUSTRIAL RESEARCH
ORGANISATION,

Petitioner,

v.

BASF PLANT SCIENCE COMPANY GMBH,

Patent Owner.

PGR2023-00007

Patent 11,260,095 B2

Before ULRIKE W. JENKS, TINA E. HULSE, and
ROBERT A. POLLOCK, *Administrative Patent Judges*.

JENKS, *Administrative Patent Judge*.

DECISION

Settlement Prior to Institution of Trial

37 C.F.R. § 42.74

With authorization from the Board (Ex. 3001), Commonwealth Scientific and Industrial Research Organisation (“Petitioner”) and BASF Plant Science GMBH. (“Patent Owner”) filed a joint motion to terminate this proceeding. Paper 5 (“Joint Motion”). The motion was accompanied by a true, unredacted copy of a settlement and license agreement (Ex. 1016; “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 6).

The Joint Motion to terminate the proceeding comes well before the due date for Patent Owner’s preliminary response. The Board has not instituted trial in this proceeding or addressed the merits of the petition in any way. A decision whether to institute a post-grant review is not due until June 20, 2023.

The parties also represent that Exhibit 1016 “is a true copy of the complete settlement agreement entered between the parties on December 8, 2022.” Paper 5, 3. In addition, the parties also represent that “[t]his written agreement is the only agreement between the parties and there are no other agreements, oral or written, between the parties made in connection with, or in contemplation of, the termination of this proceeding.” *Id.* at 1–2.

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).

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 this proceeding is *granted*; and

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. 11,260,095 B2, 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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