

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

FRANKLIN S. FELBER,
Application No. 14/250,223,
Petitioner,

v.

BITWAVE PTE LTD.,
Application No. 13/645,656,
Respondent.

Case DER2014-00009

Before SALLY GARDNER LANE, SALLY C. MEDLEY, and
JOSIAH C. COCKS, *Administrative Patent Judges*.

MEDLEY, *Administrative Patent Judge*.

ORDER
Dismissal of Petition
37 C.F.R. §§ 42.5 and 42.71

Introduction

On April 19, 2014, Petitioner, filed a Corrected Petition, on the basis of Petitioner's Application No. 14/250,223 ("the '223 application"), to institute a derivation proceeding against claims in Respondent's Application No. 13/645,656 ("the '656 application"). Paper 5, "Petition" or "Pet." On October 31, 2017, an Examiner issued a Notice of Abandonment of the '656 application due to the applicant's failure to respond to an Office Action mailed February 17, 2017. Ex. 3001. On May 3, 2018, the Office notified Petitioner that the '223 application was abandoned in favor of a continuation application. Ex. 3002.

On May 15, 2018, we issued an Order for Petitioner to show cause within twenty (20) days of that Order why, under such circumstances, the Petition should not be dismissed. Paper 17. We indicated that if Petitioner provides no response within that time, the Petition will be dismissed.

Discussion

Based on the facts before us, where both Petitioner's application and Respondent's application are abandoned, it is appropriate to exercise our discretion to dismiss the Petition to institute a derivation proceeding. A derivation proceeding is a contest between two inventive entities to determine which entity is entitled to a patent on an invention. See 35 U.S.C. § 135. Here, it would not appropriate to proceed when neither party has a pending application. We ordered Petitioner to show cause, by June 4, 2018, why the Petition should not be dismissed. Paper 17. That period has expired without the Petitioner filing any response. Accordingly, we dismiss the Petition.

DER2014-00009
Petitioner Application 14/250,223
Respondent Application 13/645,656

Order

It is:

ORDERED that the Petition is *dismissed*.

For PETITIONER:

Jonathan L. Pettit
Duckor Spradling Metzger & Wynne, A Law Corporation
Pettit@dsmv.com

For RESPONDENT:

Thomas Watson
AMIN, TUROCY & WATSON, LLP
watson@thepatentattorneys.com

KC Bean
BEAN LAW OFFICE
kcbean@beanlawoffice.com