

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

TMM, INC.,
Petitioner,

v.

DIMENSION, INC.,
Patent Owner.

Case IPR2014-00804
Patent 8,639,053

Before MICHAEL W. KIM, GEORGIANNA W. BRADEN, and
GREGG I. ANDERSON, *Administrative Patent Judges*.

ANDERSON, *Administrative Patent Judge*.

JUDGMENT
Adverse Judgment
37 C.F.R. § 42.73(b)

Introduction

We entered a Decision on Institution (“Dec. Inst.,” Paper 6) in this case, which instituted trial on claims 1–16 and 22–30 of U.S. Patent No. 8,639,053 (the ’053 patent). Dimension, Inc. (“Patent Owner”) filed its Patent Owner Response (“Resp.,” Paper 17) on February 18, 2015. TMM, Inc. (“Petitioner”) filed its Reply (“Pet. Reply,” Paper 18) on February 19, 2015. On February 23, 2015, we entered an Order (the “Order,” Paper 19) giving Patent Owner until March 9, 2015, to show cause why adverse judgment under 37 C.F.R. § 42.73(b)(2) and/or (4) should not be entered against it.

Discussion

The Patent Owner Response purported to cancel all claims of the ’053 patent on which trial was instituted. Resp. 1–2. The Order gave Patent Owner notice that “we view Patent Owner’s Response to be tantamount to a request for adverse judgment under 37 C.F.R. § 42.73(b).” Order 2–3 (citing *Hospira v. Janssen Pharmaceuticals, Inc.*, IPR2013-00365, Paper 9, 2 (PTAB Oct. 24, 2013)).

The Order gave further notice to Patent Owner that adverse judgment will be entered against Patent Owner as to the claims upon which trial was instituted absent a showing of good cause. Order 3. On March 9, 2015, Patent Owner advised us via email that:

Patent Owner Dimension, Inc. has not authorized it’s counsel to file a substantive response to the Board’s Order regarding the Conduct of the Proceedings (Paper 19). Consistent with Patent

Owner's previous statements to the Board, it does not intend to defend its interests in this Proceeding. (Paper 17, pp 1-2). Accordingly, no further submissions from Patent Owner will be made on this issue.

The email states it is not a "substantive response" to the Order. Indeed, the email advises us that Patent Owner "does not intend to defend its interests in this Proceeding." Patent Owner all but expressly states it is abandoning the contest. See 37 C.F.R. § 42.73(b)(4).

The Order provided Patent Owner notice of the actions the Board would take upon the failure of Patent Owner to show good cause. Patent Owner has not responded to either the Petition or the Order in a manner that would even suggest, in any way, that Patent Owner is not abandoning the contest under any standard, let alone good cause. We are aware that Petitioner has an interest in reaching a final resolution, and Patent Owner has not provided any reason, substantive or otherwise, as to any error in our understanding that their actions are tantamount to a request for adverse judgment, despite being provided multiple express opportunities to do so. Therefore, we conclude that entry of an adverse judgment in this case is appropriate.

ORDER

Accordingly, it is:

ORDERED that adverse judgment is entered against Dimension, Inc.

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under 37 C.F.R. § 42.73(b)(4); and

FURTHER ORDERED that judgment is herein entered against
Dimension, Inc. with respect to claims 1–16 and 22–30 of U.S. Patent No.
8,639,053.

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PETITIONER

Dianna G. El Hioum
Daniel W. McDonald
MERCHANT & GOULD, P.C.
delhioum@merchantgould.com
dmcdonald@merchantgould.com
IPR.17358.0005USWX@merchantgould.com

PATENT OWNER

Luke Anderson
MAXWELL & ANDERSON LLC
landerson@maxwellandersonlaw.com

Jack Todd
TODD PARTNERS, P.C.
docket@toddpartners.com