

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

C.R. BARD, INC.,
Petitioner,

v.

MEDLINE INDUSTRIES, INC.,
Patent Owner.

Case IPR2015-00514
Patent 8,678,190 B2

Before JOSIAH C. COCKS, JENNIFER MEYER CHAGNON, and
TIMOTHY J. GOODSON, *Administrative Patent Judges*.

GOODSON, *Administrative Patent Judge*.

JUDGMENT
Termination of the Proceeding
37 C.F.R. § 42.73

I. INTRODUCTION

On December 30, 2014, C.R. Bard, Inc. (“Petitioner”) filed a Petition seeking *inter partes* review of claims 1–7 and 9–18 of U.S. Patent No. 8,678,190 B2 (“the ’190 patent”). Paper 2. On June 26, 2015, we instituted *inter partes* review of claims 1–7, 9, and 11–13 of U.S. Patent No. 8,678,190 B2 (“the ’190 patent”), but denied institution as to claims 10 and 14–18. Paper 10. Petitioner filed a Request for Rehearing challenging our decision not to institute as to claims 10 and 14–18, which Request for Rehearing we denied. Papers 12, 13.

On July 23, 2015, Medline Industries, Inc. (“Patent Owner”) filed a Request for Adverse Judgment¹ stating that “Patent Owner cancels claims 1–7, 9, and 11–13” of the ’190 patent. Paper 14. “In view of the requested cancellation of claims 1–7, 9, and 11–13 of the ’190 patent upon which trial was instituted, Patent Owner respectfully requests that the PTAB enter an adverse judgment against Patent Owner in this proceeding under 37 C.F.R. 42.73(b)(2).” *Id.*

II. DISCUSSION

A party may request entry of adverse judgment against itself at any time during a proceeding. *See* 37 C.F.R. § 42.73(b). Also, under 37 C.F.R. § 42.73(b)(2), actions construed as a request for entry of adverse judgment include cancellation of a claim such that the party has no remaining claim in the trial. Here, Patent Owner has requested cancellation of all the claims identified for trial and expressly requested entry of adverse judgment.

¹ Although Patent Owner did not receive authorization to file this motion as required by 37 C.F.R. § 42.20(b), because there is no apparent prejudice, we waive that requirement pursuant to our authority under 37 C.F.R. § 42.5(b).

Paper 14. Patent Owner's requests for cancellation of claims 1–7, 9, and 11–13 of the '190 patent and for entry of adverse judgment are *granted*.

III. ORDER

For the foregoing reasons, it is

ORDERED that judgment is entered against Patent Owner under 37 C.F.R. § 42.73(b);

FURTHER ORDERED that claims 1–7, 9, and 11–13 of U.S. Patent No. 8,678,190 B2 are cancelled;

FURTHER ORDERED that this constitutes a final written decision under 35 U.S.C. § 318(a); and

FURTHER ORDERED that this proceeding is hereby terminated.

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