

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GALDERMA SA; GALDERMA LABORATORIES, INC.;
GALDERMA LABORATORIES LP; GALDERMA
RESEARCH & DEVELOPMENT SNC; AND
NESTLÉ SKIN HEALTH, INC.,
Petitioner,

v.

ALLERGAN, INC.,
Patent Owner.

Case IPR2015-01119
Patent 7,148,041 B2

Before LORA M. GREEN, SHERIDAN K. SNEDDEN,
and ROBERT A. POLLOCK, *Administrative Patent Judges*.

POLLOCK, *Administrative Patent Judge*.

JUDGMENT AND FINAL WRITTEN DECISION
35 U.S.C. § 318(a) and 37 C.F.R. § 42.73(b)

Petitioner, Galderma SA; Galderma Laboratories, Inc.; Galderma Laboratories LP; Galderma Research & Development SNC; and Nestlé Skin Health, Inc. filed a Petition (Paper 2; “Pet.”) to institute an *inter partes* review of claims 1–11 of US 7,148,041 B2 (Ex. 1001; “the ’041 patent”). Patent Owner, Allergan, Inc., did not file a Patent Owner Preliminary Response.

On October 20, 2015, we granted the Petition to institute an *inter partes* review as to claims 1–11 of the ’041 patent. Paper 9. Also on October 20, 2015, we issued a Scheduling Order, which set January 11, 2016 as DUE DATE 1, the date by which Patent Owner could file a response to the Petition or a Motion to Amend. Paper 10. Patent Owner did not file a response to the Petition or a Motion to Amend.

On March 25, 2016, Petitioner served and filed a Reply in Support of Petitioner’s Petition noting Patent Owner’s failure to file a Patent Owner’s Response and requesting a final written decision of unpatentability. Paper 11. Patent Owner did not respond.

Our Scheduling Order also set June 22, 2016, as the date for oral argument, and indicated that a party must request oral argument by DUE DATE 4, set for May 16, 2016. As of the date of this Order, Patent Owner has not requested oral argument, nor contacted the Board with any explanation for its failure to participate substantively in these proceedings.

Pursuant to Board rules, “[a]ctions construed to be a request for adverse judgment include . . . [a]bandonment of the contest.” 37 C.F.R. § 42.73(b)(4). Patent Owner’s failure to file substantive papers in this trial is consistent with abandonment of the contest. Accordingly, on June 20, 2016, we ordered Patent Owner to, within five business days, show cause why adverse judgment under 37 C.F.R. § 42.73(b)(2) should not be entered against it. Paper 12. As of the date of

this Order, Patent Owner has not responded to our order to show cause. We interpret Patent Owner's failure to respond to our order as a request for adverse judgment.

Under these circumstances, the entry of judgment adverse to the Patent Owner and cancellation of the claims is appropriate.

ORDER

In consideration of the foregoing, it is hereby:

ORDERED that Petitioners' request for adverse judgment under 37 C.F.R. § 42.73(b) with respect to claims 1–11 of U.S. Patent No. 7,148,041 B2 is GRANTED;

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

FURTHER ORDERED that claims 1–11 of U.S. Patent No. 7,148,041 B2 be CANCELLED.

PETITIONER:

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