

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

DELPHIX CORPORATION,
Petitioner,

v.

ACTIFIO, INC.,
Patent Owner.

Case IPR2015-01689
Patent 8,788,769

Before THOMAS L. GIANNETTI, DAVID C. McKONE, and
ROBERT L. KINDER, Administrative Patent Judges.

GIANNETTI, *Administrative Patent Judge.*

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

BACKGROUND

Petitioner requested *inter partes* review of claims 1–8 (all claims) of U.S. Patent No. 8,788,769 (“the ’769 patent”). Paper 1. The Board granted the Petition and instituted an *inter partes* review of all challenged claims. Paper 8. On May 12, 2016, Patent Owner notified the Board of the filing of a Disclaimer under 37 C.F.R. § 1.321(a), disclaiming claims 1–8 of the ’769 patent. Paper 13. Patent Owner has filed a copy of the Disclaimer. Ex. 2001.

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). Here, Patent Owner has disclaimed all challenged claims such that Patent Owner has no remaining claim in the trial, which is construed as a request for adverse judgment. See 37 C.F.R. § 42.73(b)(2). Under these circumstances, entry of judgment adverse to the Patent Owner is appropriate.

CONCLUSION AND ORDER

In view of the disclaimer by Patent Owner of claims 1–8 of the ’769 patent, adverse judgment against Patent Owner is *granted*.

It is, therefore,

ORDERED that adverse judgment against the Patent Owner is entered under 37 C.F.R. § 42.73(b)(2);

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

FURTHER ORDERED that the pending motions for *pro hac vice* admission filed by Petitioner (Papers 11 and 12) are dismissed as moot.

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Patent 8,788,769

For PETITIONER:

David Hadden
Saina Shamilov
FENWICK & WEST LLP
dhadden-ptab@fenwick.com
sshamilov-ptab@fenwick.com

For PATENT OWNER:

Robert Steinberg
Jonathan Link
LATHAM & WATKINS LLP
bob.steinberg@lw.com
jonathan.link@lw.com