

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

LIFECELL CORPORATION,
Petitioner,

v.

LIFENET HEALTH,
Patent Owner.

Case IPR2015-01888
Patent 9,125,971 B2

Before MICHAEL W. KIM, SHERIDAN K. SNEDDEN, and
MICHAEL L. WOODS, *Administrative Patent Judges*.

SNEDDEN, *Administrative Patent Judge*.

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

On March 15, 2016, we instituted trial on claims 1–13 of U.S. Patent No. 9,125,971 B2 (Ex. 1001, “the ’971 Patent”). Paper 14. On June 27, 2016, LifeNet Health (“Patent Owner”) filed a Request for Adverse Judgment pursuant to 37 C.F.R. § 42.73(b). Paper 17 (“Request”). LifeCell Corporation (“Petitioner”) filed an opposition to the Request. Paper 18 (“Opposition”).

In its Opposition, Petitioner “does not oppose Patent Owner’s request ‘that the Board cancel claims 1–13 of U.S. Patent No. 9,125,971 and enter a final adverse judgment against Patent Owner as to these claims.’” Opposition 1, (citing Request 2). Rather, Petitioner directs our attention to Patent Owner’s pending reissue application, 14/959,698, concerning the ’971 Patent and request that we “issue a final adverse judgment against Patent Owner canceling claims 1–13 of the ’971 patent that either: a) orders that the identical reissue application claims are canceled by operation of the judgment itself; or b) requires Patent Owner promptly to cancel these identical claims in reissue application 14/959,698.” *Id.* at 3.

On July 7, 2016, claims 1–13 in reissue application 14/959,698 were canceled via a preliminary amendment. Ex. 3001. As such, the same claims sought to be canceled in the Request are sought to be cancelled in the reissue application. Any patentability issues concerning the remaining claims of the reissue application may be worked out through the ordinary reissue application examination process.

A party may request entry of adverse judgment against itself at any time during a proceeding. 37 C.F.R. § 42.73(b). Actions construed to be a request for adverse judgment include cancelation of patent claims such that a party has no remaining claim in the trial. *Id.* Patent Owner’s request to cancel claims 1–13 of the ’971 patent leaves no claim remaining for trial. Accordingly, entry of judgment against Patent Owner pursuant to 37 C.F.R. § 42.73(b) is appropriate.

Accordingly, it is

ORDERED that Patent Owner's Request for Adverse Judgment pursuant to 37 C.F.R. § 42.73(b)(2) is granted;

FURTHER ORDERED that claims 1–13 of U.S. Patent No. 9,125,971 B2 are canceled; and

FURTHER ORDERED that judgment is entered against Patent Owner with respect to claims 1–13 of U.S. Patent No. 9,125,971 B2.

PETITIONER:

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