

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

KNAPPCO CORPORATION,
Petitioner,

v.

CHS INC.,
Patent Owner.

Case IPR2016-00342
Patent 8,905,089 B2

Before MICHAEL R. ZECHER, JENNIFER S. BISK, and
SHEILA F. McSHANE, *Administrative Patent Judges*.

McSHANE, *Administrative Patent Judge*.

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

DISCUSSION

Knappco Corporation (hereafter “Knappco” or “Petitioner”) filed a Petition (“Pet.”) requesting an *inter partes* review of claims 1, 2, and 5–18 of U.S. Patent No. 8,905,089 B2 (“the ’089 patent,” Ex. 1001). Paper 1. Patent Owner, CHS Inc. (hereafter “CHS” or “Patent Owner”) filed a Mandatory Notice designating Messrs. Jeffrey L. Cameron and Joseph C. Huebsch of Brooks, Cameron & Huebsch, PLLC as lead and back-up counsel, respectively, and consenting to service by e-mail. Paper 4. Patent Owner timely filed a Preliminary Response. Paper 5. Patent Owner made no subsequent filings identifying a change of counsel. See 37 C.F.R. § 42.8(a)(3) (requiring either party to update their mandatory notice information “within 21 days of a change of the information”). On June 6, 2016, we instituted trial as to claims 1, 2, and 5–18 of the ’089 patent (Paper 6, 20), and we issued a Scheduling Order, which set August 29, 2016 as DUE DATE 1, the due date by which Patent Owner was required to file a response to the Petition and a Motion to Amend (Paper 7, 6).

Patent Owner failed to file a response to the Petition or a Motion to Amend by August 29, 2016. Paper 7, 6. On September 7, 2016, we received an email communication from Petitioner noting Patent Owner’s failure to file a response to the Petition and Motion to Amend, and requesting a conference call to discuss whether it was appropriate to treat Patent Owner’s failure to file papers as abandonment that would warrant adverse judgment under 37 C.F.R. § 42.73(b). Patent Owner was copied on that email communication.

On September 14, 2016, we entered an Order to Show Cause as to why we should not construe Patent Owner’s failure to act as consistent with

abandonment of the contest and enter adverse judgment against Patent Owner pursuant to 37 C.F.R. § 42.73(b)(4), which states that “[a]ctions construed to be a request for adverse judgment include . . . [a]bandonment of the contest.” Paper 10. The Order set a deadline for Patent Owner to file a paper demonstrating good cause why adverse judgment should not be entered at ten business days (September 28, 2016) after the date of the Order. Since the time of entry of the Order to Show Cause, Patent Owner has not contacted the Board nor has Patent Owner filed a paper in response to the Order by the September 28, 2016 deadline.

Under these particular circumstances, we treat the failure of Patent Owner to timely file a response to the Petition and Motion to Amend and to timely file a responsive paper to the Order to Show Cause, along with a lack of any other communications from Patent Owner on this issue, as consistent with abandonment of the contest. Under 37 C.F.R. § 42.73(b), we construe this abandonment as a request for adverse judgment.

ORDER

Accordingly, it is

ORDERED that adverse judgment is entered against Patent Owner under 37 C.F.R. § 42.73(b)(4);

FURTHER ORDERED that claims 1, 2, and 5–18 of U.S. Patent 8,905,089 will be cancelled;¹ and

¹ See 37 C.F.R. § 42.80 (indicating that after the Board issues a final written decision in an *inter partes* review proceeding, the Office will issue and publish a certificate canceling any claim of the patent finally determined to be unpatentable).

FURTHER ORDERED that, because this is a Final Written Decision, parties to this proceeding seeking judicial review of our decision must comply with the notice and service requirements of 37 C.F.R. § 90.2.

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Patent 8,905,089 B2

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