

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

NAUTILUS HYOSUNG INC.,
Petitioner,

v.

DIEBOLD SELF-SERVICE SYSTEMS DIVISION OF DIEBOLD
NIXDORF, INC.,¹
Patent Owner.

Case IPR2016-00581
Patent 7,249,761 B2

Before BARBARA A. BENOIT, GEORGIANNA W. BRADEN, and
KERRY BEGLEY, *Administrative Patent Judges*.

BEGLEY, *Administrative Patent Judge*.

JUDGMENT

Granting Patent Owner's Request for Adverse Judgment
37 C.F.R. § 42.73(b)

¹ After institution of *inter partes* review in this proceeding, Patent Owner changed its name. See Paper 11. We use Patent Owner's updated name in this Order.

Petitioner Nautilus Hyosung Inc. (“Petitioner”) filed a Petition requesting *inter partes* review of claims 1–4, 6, 14, 15, and 19 of U.S. Patent No. 7,249,761 B2 (“the ’761 patent”). Paper 1. On August 18, 2016, we issued a decision instituting *inter partes* review of each of these claims, along with an accompanying Scheduling Order setting deadlines for the trial. Papers 6–7. The Scheduling Order set November 9, 2016 as the deadline for Diebold Self-Service Systems Division of Diebold Nixdorf, Inc. (“Patent Owner”) to file a Response to the Petition and a Motion to Amend. Paper 7, at 3, 6 (Due Date 1). Patent Owner, however, did not file a Response to the Petition or a Motion to Amend. See Paper 10. On February 7, 2017, Patent Owner filed a Request for Adverse Judgment, requesting that the Board cancel claims 1–4, 6, 14, 15, and 19 of the ’761 patent, which constitute all of the claims at issue in the trial, and enter adverse judgment against Patent Owner. Paper 12. Petitioner has not opposed or otherwise responded to Patent Owner’s request.

A party may request adverse judgment against itself at any time. 37 C.F.R. § 42.73(b). Cancellation of claims of the patent at issue “such that the party has no remaining claim in the trial” is construed as a request for adverse judgment. *Id.*

Here, Patent Owner requests adverse judgment and the cancellation of all claims of the ’761 patent at issue in this trial. Thus, after cancellation of the specified claims of the ’761 patent, no claims would remain in the trial. Under these circumstances, the Request for Adverse Judgment is appropriate. Therefore, we grant Patent Owner’s request and enter judgment against Patent Owner under 37 C.F.R. § 42.73(b).

ORDER

Accordingly, it is:

ORDERED that Patent Owner's Request for Adverse Judgment is *granted*, and judgment is entered against Patent Owner under 37 C.F.R. § 42.73(b) with respect to claims 1–4, 6, 14, 15, and 19 of U.S. Patent No. 7,249,761 B2; and

FURTHER ORDERED that claims 1–4, 6, 14, 15, and 19 of U.S. Patent No. 7,249,761 B2 are CANCELLED.

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PETITIONER:

Timothy W. Riffe
Patrick J. Bisenius
Stuart A. Nelson
Nicholas Jepsen
Daniel Tishman
FISH & RICHARDSON P.C.
IPR42590-0001IP4@fr.com
riffe@fr.com
snelson@fr.com

PATENT OWNER:

Jason P. Cooper
Christopher B. Kelly
ALSTON & BIRD LLP
Jason.Cooper@alston.com
Chris.Kelly@alston.com